



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Cindy Welykyi

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

AND BETWEEN:

Z.K. by his next friend T.S.

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

AND BETWEEN:

William Bowerman

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

AND BETWEEN:

T.S.

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

AND BETWEEN:

Mimi Marilyn Gow

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

AND BETWEEN:

Betty Jarvis

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

AND BETWEEN:

Elsie Biloki

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

AND BETWEEN:

Debora Crew

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

AND BETWEEN:

The Estate of Harold (Mike) Large

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

AND BETWEEN:

The Estate of Rae Fuller

Applicant

-and-

Rouge Valley Co-operative Homes Inc. / Board of Directors

Respondent

DECISION

Adjudicator: Douglas Sanderson

Date: March 4, 2016

File Number: 2012-12227-I; 2012-12228-I; 2012-12229-I; 2012-12280-I;
2012-12293-I; 2012-12442-I; 2012-12444-I; 2012-12445-I;
2012-12622-I; 2012-12295-I

Citation: 2016 HRTO 299

Indexed as: **Welykyi v. Rouge Valley Co-operative Homes Inc.**

APPEARANCES

Cindy Welykyi, T.S., Z.K., Mimi)	
Marilyn Gow, Debora Crew, the Estate)	
of Harold (Mike) Large, William Bowerman,)	Karen Sanchez, Counsel
Elsie Biloki, Betty Jarvis, and the Estate)	
of Rae Fuller, Applicants)	
)	
)	
Rouge Valley Co-operative Homes Inc. /)	Kiel Ardal, Counsel
Board of Directors, Respondent)	
)	

[1] These Applications are filed under s. 34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”), and allege discrimination with respect to occupancy of accommodation.

PROCEDURAL HISTORY

[2] By Interim Decision 2013 HRTO 519, dated March 27, 2013, the Tribunal consolidated these Applications, and by Interim Decision, 2013 HRTO 667, dated April 22, 2013, the Tribunal denied a Request for Interim Remedy. In Interim Decision 2013 HRTO 892, dated May 24, 2013, the Tribunal granted requests to increase the damages requested in several of the Applications. In Interim Decision 2013 HRTO 1119, dated June 25, 2013, the Tribunal granted requests to include the ground of reprisal to several of the Applications: Mimi Gow (2012-12293-I), Elsie Biloki (2012-12444-I), William Bowerman (2012-12229-I), Debora Crew (2012-12445-I), Cindy Welykyi (2012-12227-I), T.S. (2012-12280-I), and Harold Large (2012-12622-I).

THE HEARING

[3] The hearing of this matter took place over five days: January 5, 6 and 7, 2015 and May 20 and 21, 2015. The applicants presented 11 witnesses; the respondents presented two.

BACKGROUND

[4] The respondent is a non-profit housing cooperative located in Toronto, Ontario. All of the applicants were members of the respondent Cooperative (“the Co-op”) at times material to this Application. Rae Fuller passed away before the hearing commenced and Harold Large passed away shortly after the hearing concluded. Between April 28, 2012 and September 15, 2012, someone wrote or posted 18 vulgar and incredibly vicious messages in the Co-op building that were directed at the applicants. These messages refer to the applicants in terms related to the prohibited grounds of disability, race, sex, gender identity, ancestry, age and receipt of public assistance. The content of these messages are truly heinous and display a shocking

level of ignorance and intolerance. Rather than record all of the messages, which is in my view unnecessary and impractical, I have included one of the messages that is characteristic of all messages left in the Co-op, including the rudimentary spelling errors, as follows:

COME SEE THE INBREEDS AND RETARTS IN 406
COME SEE THE FAT SLOB PIGS IN 202
COME SEE THE DUMBFUCK HICKS IN 408
COME SEE THE DRUNK IN 608
COME SEE THE CUNT AND THE CRIPPEL IN 502
COME SEE THE CRIPPEL FREAK IN 705
COME SEE THE OLD WHORE IN 1008
COME SEE THE OLD DRUNK IN 506
COME SEE THE FAT OLD WHORE IN 905
BETTER THAN THE CIRCUS
EVERY NIGHT IN ROUGE VALLEY PARK
FREE SHOW

[5] The parties agree that these messages amount to discrimination and harassment contrary to the *Code*. Unfortunately, the perpetrator was never identified. The applicants claim that the respondent failed in its duty to deal with this issue appropriately. As noted, several of the applicants allege that the respondent reprised against them because the respondent allegedly prevented them from running for positions on the Co-op Board of Directors because they had filed human rights applications against the respondent.

[6] The parties jointly submitted an agreed statement of facts, which cross-referenced the documents establishing the agreed facts in their respective books of documents. I have included the agreed facts that I consider to be relevant and material, as follows:

1. The anonymous discriminatory and harassing messages and flyers that are the subject of the applications constitute harassment and

discrimination contrary to the Ontario *Human Rights Code*.

2. April 28, 2012: first discriminatory/harassing message (“Isabel Drunk” and “Deb Crew Cunt”) written on the walls of the service and passenger elevators [Applicants’ Book of Documents Tab 2, Respondent’s Book of Documents Tab 6].
3. May 6, 2012: the second discriminatory/harassing message (“PIG 1105”) written on the wall of the service elevator [Applicants’ Book of Documents Tab 13, Respondent’s Book of Documents Tab 7].
6. May 30, 2012: the third discriminatory/harassing message, a flyer, found in Co-op [Applicants’ Book of Documents Tab 3, pg. 3].
7. May 31, 2012: fourth discriminatory/harassing flyer appears in the Co-op.
8. June 6, 2012: Co-op issues notice to all members re stopping vandalism at the Co-op [Applicants’ Book of Documents, Tab 17, Respondent’s Book of Documents Tab 11].
10. July 2, 2012: Fifth discriminatory/harassing message (“Fat Pig Lives Here”) written on Ms. Welykyi’s door [Respondent’s Book of Documents Tab 14].
11. July 6, 2012: Co-op issues notice to all members re stopping vandalism [Applicants’ Book of Documents, Tab 29, Respondent’s Book of Documents, T16].
12. July 19, 2012: Co-op re-locates two security cameras (on 7th and 11th floors) and installs 22 additional security cameras that did not record footage. These 22 cameras that did not record footage were removed a few days after they were installed [Applicants’ Book of Documents Tab 91, Respondent’s Book of Documents Tab 59].
13. July 25, 2012: Sixth discriminatory/harassing message flyer directed to T.S., Z.K. and Ms. Welykyi found [Applicants’ Book of Documents Tab 3].
14. July 2012 (exact date unknown): Seventh discriminatory/harassing message: a flyer identifying applicants by their unit numbers [Applicant’s Book of Documents: Tab 3].
15. August 7, 2012: Eighth Discriminatory/harassing message taped to door of unit 202 [Respondent’s Book of Documents Tab 3].

16. August 8, 2012: Letter from Anne Campbell of Centre for Equality Rights in Accommodation (“CERA”) to Co-op [Applicants’ Book of Documents T39, Respondent’s Book of Documents Tab 23].
17. August 9, 2012: Letters to former Board members re invitation to mediation with assistance of CHFT [Applicants’ Book of Documents Tab 40, Respondent’s Book of Documents T24].
18. August 10, 2012: Ninth discriminatory/harassing message taped to door of unit 202 [Respondent’s Book of Documents Tab 3].
19. August 11, 2012: Tenth discriminatory/harassing message taped to door of unit 202 [Respondent’s Book of Documents Tab 3].
20. August 11, 2012: Eleventh discriminatory/harassing message placed in mailroom [Respondent’s Book of Documents, Tab 3].
21. August 20, 2012: Co-op sends a Notice to all Co-op Members Re: “Discriminatory Harassment” [Applicants’ Book of Documents Tab 43, Respondent’s Book of Documents T29].
22. August 23, 2012: Ms. Borden (president of the Co-op’s Board) and Ms. Crew meet with Constables Dale Nichiporik & Gary Gomez [Respondent’s Book of Documents Tab 42].
23. August 24 or 25th, 2012: Twelfth discriminatory/harassing message placed in door of unit 204 [Applicants’ Book of Documents, Tab 45].
24. August 26, 2012: Thirteenth discriminatory/harassing message taped to door of unit 202 [Respondent’s Book of Documents Tab 3].
25. August 29, 2012: Fourteenth discriminatory/harassing message taped to door of unit 202 [Respondent’s Book of Documents Tab 31].
26. September 4, 2012: Fifteenth discriminatory/harassing message posted to door of unit 202 [Applicants’ Book of Documents Tab 49, Respondent’s Book of Documents Tab 34].
27. September 8, 2012: Sixteenth discriminatory/harassing message taped to door of unit 202 [Respondent’s Book of Documents Tab 3].
28. September 9, 2012: Special Board meeting regarding mediation [Applicants’ Book of Documents Tab 53, Respondent’s Book of Documents Tab 35].
29. September 10, 2012: Co-op’s security contractor re-locates the security camera on 2nd floor [Applicants’ Book of Documents Tab 91, Respondent’s Book of Documents Tab 59].

30. September 11, 2012: Seventeenth discriminatory/harassing message put in mailbox of unit 202 (in mailroom) [Respondent's Book of Documents T3].
31. September 15, 2012: Eighteenth discriminatory/harassing message put in mailbox of unit 202 (in mailroom) [Respondent's Book of Documents Tab 3].
32. October 2, 2012: The Agency approves funding for the Co-op to install a camera in the Co-op's mailroom [Respondent's Book of Documents, Tab 40].
33. October 9, 2012: Security camera installed in the Co-op mailroom [Respondent's Book of Documents, Tab 59].
34. Late September/early October 2012: live camera footage from three common areas removed from the live-circuit television.
35. February 14, 2013: Members of the Co-op send petition to Board to reinstate camera footage live-feed [Applicants' Book of Documents: Tab 74].
36. February 20, 2013: Board decides to activate live feed to south side entrance only. [Applicants' Book of Documents: Tab 75].

[7] There was no dispute that the respondent's governing body is a Board of Directors ("the Board"), the members of which are elected by the members of the Co-op. The evidence was that the Board's role was to make decisions regarding the management and operation of the Co-op, including enforcing by-laws, financial decisions, addressing arrears, giving direction to the property management staff, approving new members and addressing issues as they arise. There was no dispute that prior to May 23, 2012 several of the applicants – Deborah Crew, Mimi Gow, Elsie Biloki and Cindy Welykyi – were members of the Board. There is no dispute that Laura Borden, a Co-op member, was a member of the Board until she resigned her position on April 6, 2012. There is no dispute that the other members of the Board, including the applicants on the Board of the time, had on several occasions asked Ms. Borden to produce receipts to establish that she paid for updates to her apartment that went beyond the improvements approved by the Co-op. The Board held a "Requisition Meeting" on May 23, 2013, after several members presented a petition seeking such a meeting because of dissatisfaction with the Board. The Requisition Meeting was an

opportunity for the Co-op members to determine whether they wished to remove the incumbent Board and replace it. At the meeting, the membership removed the existing Board and replaced it with new members. Ms. Borden was elected president. The tension between the “Old Board” and the “New Board”, as the witnesses referred to them, is an important context in these proceedings.

[8] There was no dispute that the Co-op had no anti-discrimination / anti-harassment policies at the times material to these Applications and that Board members did not receive any training about dealing with human rights issues. There is no dispute that as a result of the incidents arising in these Applications and because of the Applications, the Co-op adopted a comprehensive Human Rights By-law (approved in March 2014) and that Board members underwent human rights training. The By-law includes a procedure for members to file human rights complaints and for the Co-op to investigate and address them. The training consisted of both the HR 101 program provided by the Ontario Human Rights Commission and a seminar delivered by legal counsel.

EVIDENCE

The Applicants’ Evidence

[9] Deborah Crew is in the applicant in Application number 2012-12445-I. Ms. Crew had been a resident of the Co-op for approximately 5 years at the time she testified.

[10] Ms. Crew was elected to the Board in November 2010 and was removed from the Board in the Requisition Meeting in May 2012. Her evidence was that the Board met every two weeks when she was a member. Ms. Crew stated that the Board could call emergency meetings if needed. An example would be to deal with membership applications. The process was to notify the property manager to call the Board members to determine if quorum could be met, and, if so, to proceed with the meeting.

[11] Ms. Crew’s evidence was that Ms. Borden had been the President of the Board until she resigned in April 2012. Ms. Crew stated that the Canadian Mortgage and Housing Corporation (“CMHC”) conducted a site visit over several days in June 2011

and provided a report to the Board setting out their findings, dated November 17, 2011. Amongst other things, the report stated that one of the directors was able to use a contractor doing renovations to upgrade her apartment in a manner not available to other Co-op members. The report concluded that the director took advantage of her position on the Board. Ms. Crew's evidence was that Ms. Borden admitted that the director in question was her. The other Board members wanted Ms. Borden to prove that she paid for the upgrades herself, which led to her resignation. Ms. Crew stated that Ms. Hayward, an employee of the Co-op, relayed that Ms. Borden stated that she would "come after" the remaining Board members "full force" when she tendered her resignation.

[12] As noted in the agreed facts, the first harassing message was a vulgar comment directed at Ms. Crew and another Board member written on the elevator wall. Ms. Crew stated that she and another Board member discovered the message on April 28, 2012. Ms. Crew's evidence was that she called the police. The police came and photographed the messages and inquired if they suspected who wrote it, but they did not. The next harassing message was discovered on May 6, 2012 and the police were again called and filed a report.

[13] Ms. Crew testified that the third offensive message was discovered on May 30, 2012 and referred to her family (TS is Ms. Crew's first cousin). This was in the form of a poster or flyer, as the parties described them. The flyer was taken to property management and date stamped. Ms. Crew's evidence was that the process for bringing the offensive messages to the attention of the Board was to take them to the office, where property management staff would stamp them and "supposedly", in Ms. Crew's words, present them to the Board at their next meeting. Ms. Crew's evidence was that she did not take all of the offensive messages to property management staff herself. TS or Cindy Welykyi delivered some of them and they would also sometimes be sent as an e-mail attachment. The same process was followed when the next offensive flyer was posted on May 31, 2012. Ms. Crew's evidence was that the Board did not contact her about the flyers. As noted in the agreed facts, Therese Baduria, the Interim Property

Manager, issued a notice, dated June 6, 2012, to all members of the Co-op regarding vandalism notices entitled “YOUR HOME NEEDS YOU NOW Please put a stop to the ongoing vandalism!” The first two paragraphs read as follows:

We are writing to you to appeal to your sense of community and care for your home. As you are probably aware in recent times, our Co-op has been subjected to extreme and repeated vandalism and some very disturbing behaviour.

We are sure that most of you have seen the damage to our Co-op property, the mess left to the elevators and in the staircases. We are not certain who is doing this and why would they choose to make their own homes suffer the consequence of their disagreement with someone or a group.

[Emphasis in the original]

[14] The balance of the document is a direct and forceful plea to members to take responsibility and do what they can to prevent such behaviour in the future. The notice also states that there are appropriate ways to express disagreement without making their home and neighbours suffer. Ms. Crew’s evidence was that this notice was not about the offensive flyers. Ms. Crew stated that the Co-op had been experiencing vandalism, including incidents where eggs and urine were left throughout the premises.

[15] The fifth offensive message was written on the door to Ms. Welykyi’s unit on July 2, 2012. On July 6, 2012, Ms. Baduria issued another notice to the Co-op members. It reads as follows:

**VANDALISM AND ABUSE OF OUR
CO-OP COMMUNITY CONTINUING**

Additional surveillance and security cameras maybe (sic) coming.

As you are aware, despite our plea for a sense of cooperation and respect of our Co-op community, there are members who continue to vandalize and abuse the common space of the Co-op for the purpose of expressing their point of view. This has to stop and to assist us, the Board of Directors is considering installation of surveillance cameras in various locations in the common areas to apprehend those who are destroying our Co-op. While these cameras will not be monitored live by someone, they will be

placed discreetly in various locations to record activities which will assist the Co-op to take further action.

The Board is determined to protect our home and community. We ask for your cooperation to please respect the place we live and call our home.

Ms. Crew's evidence was that this notice also did not address the offensive flyers, which are not mentioned in the notice. In her view, the notice also referred to vandalism the Co-op had been experiencing at that time. Ms. Crew stated that no one contacted her about the flyers at this point.

[16] Ms. Crew's evidence was that on July 19, 2012, the Co-op repositioned hallway cameras to cover the door of TS and Amanda Whalen, a Board member. The Co-op also installed 22 other cameras that Ms. Crew learned were not real cameras. Her evidence was that her unit was broken into in early August and she asked Ms. Baduria to review the recordings from the cameras to see if the burglar could be identified. According to Ms. Crew, Ms. Baduria stated that a police order was needed to review the tapes. Ms. Crew received a letter from Ms. Baduria dated August 9, 2012 confirming that due to the "Privacy Act" the Co-op could not release any surveillance camera tapes unless requested by the police. The police detective involved advised Ms. Crew that the recordings are kept for only two weeks and then recorded over. The detective also advised her that in any event 22 of the cameras were fakes that did not record footage.

[17] As noted in the agreed facts, the offensive flyers continued to appear, including the flyer recorded in paragraph 4, above. The flyer attributes highly offensive descriptions for several members of the Co-op by their unit numbers, which included several of the applicants. This flyer was affixed to Ms. Welykyi's door, as were most of the flyers, and she brought it to Ms. Crew and Bill Bowerman, who were in the park outside the building. The flyer was, of course, upsetting, and Mr. Bowerman presented it to Ms. Borden, who was sitting at a nearby bench. Ms. Crew's evidence was that after reading the flyer Ms. Borden chuckled and made a comment to the effect that the author needed to learn how to spell. Mr. Bowerman stated that they needed to catch the "guy doing this". Ms. Borden replied that the culprit had been caught on video and was not a

man, and he (Mr. Bowerman) would be surprised when he learned who it was. Ms. Crew stated that she was shocked, but thought that the perpetrator would be caught. Ms. Crew's evidence was that Ms. Borden assured them that she was working with the police.

[18] Ms. Crew testified that towards the end of July 2012 she contacted the Centre for Equality Rights in Accommodation ("CERA"). She did so because she was aware that CERA had assisted a member with difficulties with the Board. Ms. Crew stated that she was aware that both TS and Ms. Welykyi also contacted CERA at about this time. Ms. Crew stated that she had heard nothing from the Board by this time. Ms. Crew stated that she sent the flyers to CERA by fax and also spoke to CERA representatives by phone.

[19] By letter dated August 8, 2012, Anne Campbell, a Human Rights Caseworker at CERA, advised the Board that it had come to their attention that several members of the Co-op were experiencing discriminatory harassment with respect to their housing. Ms. Campbell noted that one of the flyers identified members by their unit numbers and the comments related to prohibited ground of discrimination. Ms. Campbell advised the Board that the Co-op has an obligation to take appropriate steps to ensure a discrimination-free environment for its members and urged them to take timely and appropriate actions.

[20] Ms. Crew's evidence was that she began working with the police at this point. She stated that she contacted the local community policing unit to inquire about the investigation and was stunned to learn that the police had not heard about the issues at the Co-op before. Ms. Crew and another member met with two officers from 42 Division of the Toronto Police Service: Constable Dale Nichiporik and Constable Gary Gomez, respectively a community Service Officer and a Crime Prevention officer. According to Ms. Crew, the police advised that it was hard for them to do anything without an identified perpetrator. The officer suggested "peephole" cameras. Ms. Crew stated that she investigated this option, but found they cost approximately \$400, which was not

feasible. Ms. Crew stated that they asked the police to assign undercover detectives or other steps to create a deterrent, but the police declined.

[21] Ms. Crew acknowledged that she received an invitation from the Board to meet on September 6, 2012, but could not attend because she was on vacation at the time.

[22] As reflected in the agreed facts, three offensive flyers were posted on August 10 and 11, 2012. Two were found on Ms. Welykyi's door. The third was found in the mailroom. In addition to describing the applicants in vile terms, this flyer also explicitly stated that the applicants' presence detracted from the environment at the Co-op, that they were unwelcome and should leave. Ms. Crew's evidence was that each of these flyers were sent to the Board, the Cooperative Housing Federation of Toronto ("CHFT") and CERA. Again, no response came from the Board.

[23] On August 20, 2012, the Board sent a memorandum to members addressing discriminatory harassment, which stated as follows:

The Board by way of this notice would like to make it absolutely clear that Rouge Valley Cooperative Homes will not tolerate any discriminatory harassment of any kind towards any of our members. The recent notices sent out by unknown sources is a clear example of discriminatory harassment towards several of our members and the language used in the notice constitutes a violation of the Ontario's (sic) Human Rights *Code*.

The Board will aggressively pursue anyone who may be directly or indirectly involved in these malicious acts or initiatives and we will take any action necessary to protect the rights of our members.

All members are reminded that you are bound by the Occupancy Agreement of the Co-op to comply with the Co-op By-laws and Policies and anyone who is found to ignore the By-laws will face serious action which could include eviction and termination of Occupancy rights.

[24] Ms. Crew stated that, in her view, this memorandum was the first response from the Co-op that addressed the harassment to which the applicants had been subjected. Ms. Crew was also of the view that the memorandum came about because of CERA's involvement, as Ms. Campbell had been persistent in raising the issue.

[25] Ms. Crew and Ms. Borden met with the police on August 23, 2012. Ms. Crew's evidence was that Constable Nichiporik asked whether they would consider mediation and had arranged to have a mediator present. Ms. Crew stated that she was willing to meet, but did not think mediation would help. Ms. Crew asked the mediator how mediation would stop the flyers. Ms. Crew's view was that mediation was not a solution and declined to participate. Ms. Crew stated that, during the meeting, Ms. Borden described the flyers as disgusting, but had no suggestions about stopping them. Ms. Crew's evidence was that the meeting focused on the dispute regarding the renovations to Ms. Borden's unit, as Ms. Crew had continued to pursue her for receipts and the conflict between the Old Board and the New Board.

[26] On August 24 or 25, 2012 an offensive flyer was placed on the door of unit 204. The flyer included the following statement:

LEAVE US ALONE AND STOP YOUR
BULLSHIT NO ONE LIKES YOU HERE
ALL YOU DO IS CAUSE TROUBLE
YOU JUST WANT THE BOARD BACK
SO YOU CAN HAVE ALL THE
CONTROL NEVER GOING TO HAPPEN
PEOPLE WANT US HERE SO JUST GET
OUT FIND SOMEWHERE ELSE TO
POLLUTE

Ms. Crew stated that, in the context of this passage, she interpreted "us" to refer to the Board. As a result, Ms. Crew suspected that the perpetrator was a Board member. Ms. Crew stated that, again, there was no response from the Board regarding this flyer or regarding offensive flyers posted on Ms. Welykyi's door on August 26, August 29, September 4 or September 8, 2012.

[27] Ms. Crew testified that Betty Jarvis, her mother, moved out of the Co-op on September 1, 2012. Mr. Crew stated that the offensive flyers, that also targeted Ms. Jarvis, continued and the environment deteriorated at the Co-op. Consequently, Ms. Crew and her brother decided that it would be best if Ms. Jarvis moved out of the Co-op to live with her son. The flyer posted on September 4, 2012 referred to the fact that Ms.

Jarvis was moving out, albeit in the most offensive terms imaginable. Ms. Crew stated that these references made her feel that the flyers came from “inside” because only someone familiar with the day-to-day operation of the Co-op would have known that Ms. Jarvis was moving. Accordingly, Ms. Crew advised the police that she felt the perpetrator of the flyers was either on the Board or a member of property management, as no one else knew Ms. Jarvis was moving out. Ms. Crew stated that she suspected Paul Walsh was responsible for the harassment, but had no proof. Mr. Walsh was not a member of the Co-op, but was the boyfriend of Amanda Whalen, who was a Board member at the time.

[28] On September 8, 2012, Ms. Crew sent an e-mail message to several addressees, including the Co-op, CMHC, the Agency for Cooperative Housing (“the Agency”), CHFT, Constables Gomez and Nichiporik, Mayor Ford (as he then was) and CERA. The message is a plea for help. In the message, Ms. Crew notes that flyers continued to be posted on Ms. Welykyi’s door, but no camera had yet been placed to cover her door. Ms. Crew also noted that the victims could not afford peep hole cameras or 24-hour security guards. Ms. Crew goes on to state that they needed help to catch the perpetrators, not mediation. Ms. Crew’s evidence was that she sent a message in desperation because mediation, which the Board had suggested, would not resolve the issue or catch the perpetrators.

[29] On September 10, 2012, the security camera on the second floor was relocated to cover unit 202, Ms. Welykyi’s unit. According to Ms. Crew, the relocation of this camera came after CERA again contacted the Co-op because the situation was escalating. Ms. Crew’s evidence was that Ms. Campbell from CERA advised her that she had recommended to the Co-op that they relocate the camera. This recommendation is reflected in an e-mail message from CERA to the Ms. Borden and the Board, dated August 30, 2012. Ms. Crew stated that she learned that the camera had been repositioned from CERA, but was not sure when. The Co-op did not give any notice about the camera. On September 11, 2012 a new flyer was found in Ms. Welykyi’s mailbox and warned “You and your friends better watch your back you went

too far”. The fact that the perpetrator avoided the repositioned camera the day after it was relocated also led Ms. Crew to conclude that the perpetrator was someone with inside information.

[30] The last flyer was discovered in Ms. Welykyi’s mailbox on September 15, 2015. Ms. Crew’s evidence was that she called CERA and CERA recommended that the Co-op install a security camera in the mailroom. This recommendation is reflected in an e-mail message from CERA to Ms. Borden and the Board, dated September 19, 2013. Ms. Crew acknowledged that a camera was “eventually” installed in the mailroom on or about October 2, 2012.

[31] Ms. Crew testified, and it was not disputed, that the Co-op operates a closed-circuit television security system (CCTV). The system is connected to each resident’s television, which allows members to watch the footage in real time. The cameras for the CCTV system cover the lobby, the side doors, the basement and the underground parking garage. Ms. Crew stated that the CCTV system is an important security feature. Her evidence was that the CCTV system allowed members to watch out for each other and noted that friends sometimes ask each other to watch them enter and leave the building.

[32] As noted in the agreed facts, access to the live camera footage was removed from members with respect to three common areas: the side doors, the basement and the parking garage. Ms. Crew’s evidence was that the footage was removed without notice to the members. Ms. Crew stated that she asked for an explanation for the removal of the footage. Ms. Crew testified that she was advised that the members’ access to the footage was removed because of privacy concerns, pursuant to the *Personal Information Protection and Electronic Documents Act*, S.C 2000, c.5 (“*PIPEDA*”). Ms. Crew researched *PIPEDA* and concluded that it had nothing to do with the CCTV systems. Ms. Crew relayed her findings to the Board in an e-mail message dated December 9, 2012. Ms. Crew also requested that the Board restore the footage but she received no response. Ms. Crew stated that she also called Donna Carbonneau of the Agency because she had been informed that Ms. Carbonneau recommended

removing the footage on privacy grounds. According to Ms. Crew, Ms. Carbonneau denied making such a recommendation. Ms. Crew also contacted Constable Gomez about the CCTV issue. Constable Gomez responded in an e-mail message that it made sense to him that members have access to the camera footage as a deterrent for “wrongdoers”. Ms. Crew stated that she passed this advice onto the Board, but received no response.

[33] On February 14, 2013, a petition drafted by Ms. Crew and signed by a few dozen members was presented to the Board. The petition sought reinstatement of the CCTV footage and submitted that removal of feeds had reduced the security of the Co-op. The petition further submitted that viewing footage of common areas did not amount to a breach of privacy.

[34] The Minutes of the Board’s meeting on February 20, 2013 indicate that the Board considered the petition and decided to reinstate access to one CCTV feed covering the south side entrance. This decision was relayed to the members in a memorandum dated March 6, 2013. The memorandum clarified that the surveillance system had never been inactive and that recordings of footage were available to assist in investigations.

[35] The Co-op held its Annual General Meeting (“AGM”) on November 19, 2012. Ms. Crew’s evidence was that there were some positions open on the Board and elections were to be held during the meeting. Ms. Crew stated that she and some of the other Old Board members were nominated for the positions, but she had not decided if she would run. Jo-Anne McNamara from the CHFT was appointed to be the chairperson of the meeting. According to Ms. Crew, Ms. McNamara announced that members who had filed applications against the Co-op were not permitted to run for positions on the Board. Ms. Crew’s evidence was that Board said nothing about the statement.

[36] Ms. Crew stated that she expected the Board to at least contact the members targeted by the flyers. In Ms. Crew’s view, the Board should have alerted the other members of the Co-op and should have called a special meeting to address the issue. Ms. Crew also stated that the Board should have invested in things like rental cameras

for victims' units and should have been working closely with the police. Ms. Crew testified that she felt disabling fear as a result of the flyers and stated that she suffers from depression as well as an anxiety disorder. She stated that she constantly worried about what would happen next at the Co-op. She stated that the experience had been horrendous, but was thankful to have the opportunity to have her voice heard.

[37] In cross-examination, Ms. Crew agreed that the description "extreme and repeated vandalism and some very disturbing behaviour" as set out in the notice to the members of June 6, 2012 could describe the offensive flyers and messages displayed at the Co-op. She pointed out, however, that there were other activities occurring at the Co-op that would also fit that description. Mr. Crew also agreed that "vandalism and abuse of our Co-op community" as described in the notice of July 6, 2012 could also describe the messages and flyers posted in the Co-op. Ms. Crew denied that she was aware in advance of the cameras that were installed on July 19, 2012. She stated that no one told her about this and she learned about the cameras when she returned home from work.

[38] Ms. Crew acknowledged that the Board had responded to CERA's letter of August 8, 2012 with a memorandum to the membership regarding "Discriminatory Harassment", dated August 20, 2012. Ms. Crew agreed that the memorandum condemned the flyers and threatened strong action against the perpetrator, if ever discovered. She did not agree that the memorandum was mailed to all members. She stated that, rather, the memorandum had been posted in the common areas. Ms. Crew agreed that the Board acted on all of CERA's advice, i.e., to publish the memorandum of August 20, 2012, to position the camera outside of Ms. Welykyi's door and to place a camera in the mailroom. Ms. Crew stated that she believed the Board had no choice but to comply with this advice. Ms. Crew acknowledged that she did not write to the Board to express her suspicions regarding Mr. Walsh. She noted that Ms. Whalen, who was on the Board, was his girlfriend at the time and she feared escalation.

[39] William Bowerman is the applicant in Application 2012-12229-I. He is a member of the Co-op and lives with Ms. Crew. Mr. Bowerman testified that he has suffered two

strokes: one in 1992 and he could not recall the date of the other. Mr. Bowerman stated that he has aphasia, which affects his memory, and also paralysis on his right side. Mr. Bowerman did not recall the precise timing, but stated he became aware the flyers and messages in the elevator were directed at him and described him as a “cripple”. He stated that he did not see the flyers when they were up and believed Ms. Crew showed them to him. Mr. Bowerman testified that he was stunned to be described in this manner, as he does not think of himself that way. This description was so upsetting for Mr. Bowerman that he cried.

[40] Mr. Bowerman’s evidence was that he confronted Ms. Borden with one of the flyers when they were outside in the park. He did not recall the date. The flyer referred to him; therefore, he wanted an explanation from Ms. Borden, since she was the president of the Board. According to Mr. Bowerman, Ms. Borden commented on the poor spelling in the flyer advised him to leave it with her, and she would look into the matter. Mr. Bowerman stated that Ms. Borden also advised that the culprit was a woman. Mr. Bowerman stated that he expected Ms. Borden to find out who was posting the flyers, but stated, however, that it was like “talking to a wall” and he never heard from her. Mr. Bowerman stated that Ms. Borden did not give him the impression that she took the matter seriously and only commented on the spelling errors in the flyer.

[41] Elsie Biloki is the applicant in Application 2012-12444-I. Ms. Biloki is a member of the Co-op and lived with Rae Fuller, the applicant in application 2012-12295-I, until he passed away in early October 2012. Ms. Biloki’s evidence was that the flyers referred to her and Mr. Fuller by their unit number. Ms. Biloki stated that the flyers referred to her as a “drunk old hick” and “lazy scum” and to Mr. Fuller as a “hick”. Ms. Biloki stated that she had spoken to the office staff about the flyers. She expected the Board to find out who was responsible for the flyers and to make the members of the Co-op aware of the situation. Ms. Biloki stated that no one from the Board ever contacted her.

[42] Ms. Biloki testified that she was caring for her husband throughout this episode, knowing that he was not going to recover. Ms. Biloki stated that it was unkind to pick on a dying person you do not even know. Ms. Biloki found this behaviour very hurtful.

[43] Ms. Biloki testified that Mr. Fuller had been confined to bed, but nonetheless attended a meeting with the police. She stated that the meeting occurred before Mr. Fuller's health began to deteriorate rapidly and agreed that September 9, 2012 seemed like the correct date. Ms. Welykyi, Ms. Borden, Amanda Whalen and a policeman also attended the meeting. Ms. Biloki's evidence was that her purpose in attending the meeting was to have the Board apologize to Mr. Fuller in person, but Ms. Whalen laughed at the suggestion.

[44] In cross-examination, Ms. Biloki stated that notices from the Board are supposed to be posted on the bulletin Board and sent to each unit. Ms. Biloki stated that she heard about the notice of July 6, 2012, but did not see it. She agreed that she had seen the notice distributed by the Board on August 20, 2012. Ms. Biloki stated that she recalled when the "phony" cameras were installed. She stated that she could see that they were not real cameras, as there were no wires connecting them. She noted they were installed during the day and looked different than the other cameras. Ms. Biloki confirmed that she did not make any suggestion to the Board because she felt they would just ignore her and considered such effort to be a "waste of breath".

[45] Dale Nichiporik is a Police Constable in the Toronto Police Service. He is a Community Service Officer at 42 Division and had been in that role for four years at the time of the hearing. Constable Nichiporik testified that he is very familiar with the Co-op and had been contacted by Ms. Crew when she was on the Board. Constable Nichiporik testified that Ms. Crew had contacted him for general safety advice and the police had conducted an environmental design audit to assess the Co-op and give advice about simple measures to improve safety. In or about 2011, Constable Nichiporik's partner put on a general safety workshop for the Co-op. Ms. Crew had been the contact person for the Co-op.

[46] Constable Nichiporik's evidence was that Ms. Crew again contacted him in April 2012 regarding the first incident of harassment. Ms. Crew advised him of the ongoing issues of the Co-op. Constable Nichiporik was not sure if Ms. Crew was on the Board at the time. Constable Nichiporik's recollection was that harassing notes or letters began

to be posted in the Co-op and Ms. Crew asked the police for assistance. Constable Nichiporik's advice was to file a complaint and have a police report completed, which was done. Constable Nichiporik stated that he received copies of the flyers from Ms. Crew through e-mail. He described the flyers as "horrible". Constable Nichiporik's understanding was that there was infighting and bickering going on at the Co-op, e.g., regarding Board activities, and that the flyers were an extension of that dispute. Constable Nichiporik's evidence was that the dispute seemed to be about allocation of resources, e.g., whether Ms. Whalen would pay for damages to the party room. Constable Nichiporik stated that he was aware that at some point Ms. Crew was no longer on the Board, but remained the primary contact between the Co-op and the police.

[47] Constable Nichiporik's evidence was that he spoke with Ms. Borden on one occasion, but did not recall who initiated contact. Ms. Borden's concern was with stopping the flyers being posted in the Co-op. Constable Nichiporik's advice was to install cameras. Constable Nichiporik's evidence was that he had no further contact with Ms. Borden after making that suggestion. Constable Nichiporik stated that Ms. Borden did not display the same sense of urgency about the flyers as did Ms. Crew. He noted that he received about 50 e-mail messages from Ms. Crew, but none from Ms. Borden.

[48] Constable Nichiporik's evidence was that he initiated a meeting on August 23, 2012 to take place at 42 Division under the "Scarborough Conflict Resolution Program". Ms. Crew and Ms. Borden attended the meeting, as did Constable Nichiporik and Moheen Lambar, a mediator and the coordinator of the program. Constable Nichiporik stated that mediation might assist in addressing the issues between the Board and the former Board. Constable Nichiporik stated that he was not sure mediation would work, but thought it was worth a try. Unfortunately, Ms. Crew and Ms. Borden had several specific issues to address regarding the operation of the Co-op. The purpose of the meeting had been to address the flyers, but the flyers were not really discussed. Mediation was not viable and Ms. Crew left. Constable Nichiporik spoke to Ms. Borden, who again asked for suggestions to stop the flyers. According to Constable Nichiporik,

Ms. Borden expressed her suspicion that Ms. Whalen and Paul Walsh were responsible for the flyers, but did not have any real evidence to support the suspicion. Ms. Borden gave no indication that she ever confronted Ms. Whalen.

[49] Constable Nichiporik testified that he attended a Board meeting of the Co-op on September 9, 2012. Constable Nichiporik understood that the Board had invited members of the former Board to have a discussion. Ms. Crew invited Constable Nichiporik to attend and his attendance was not expected by Ms. Borden. Nonetheless, he was invited into the meeting. His observation was that two former Board members attended the meeting and began attacking Ms. Whalen and making accusations of poor treatment. Constable Nichiporik's evidence was that the meeting did not touch on the flyers in a significant way. Rather, the discussion focused on issues such as the cost of a damaged door.

[50] Gary Gomez is also a Police Constable assigned to 42 Division of the Toronto Police Service. He has been a police officer for 25 years and currently works as a Crime Prevention Officer. The mandate of the Crime Prevention Officer is to educate the public about safety and to take measures to prevent crime.

[51] Constable Gomez's evidence was that prior to 2012 he had conducted a safety audit of the Co-op building. This arose after Constable Nichiporik received a call from Ms. Crew, who was concerned about safety. Constable Gomez conducted a walk-through of the property and made some suggestions, although his assessment was that the building was decent from a safety perspective.

[52] Constable Gomez testified that most of the communication from the Co-op came through Constable Nichiporik, as he is a Community Relations Officer. Constable Gomez did, however, attend the meeting held at 42 Division on August 23, 2012. The meeting was held with a view to getting the parties to the disputes within the Co-op to sit down to address their differences. Constable Gomez stated that his understanding was that the flyers were the result of fighting between members of the Co-op and that the dispute arose from the situation with the Board, e.g., removal of the previous Board and

questions about allocation of finances. In Constable Gomez's view Ms. Crew was very forthcoming and had a genuine concern for safety. Constable Gomez's observation was that the meeting became sidetracked by discussion of how the Board should conduct itself, including a call for transparency. Constable Gomez stated that they could not control the meeting and it ended without any resolution. Constable Gomez also observed the tension between Ms. Borden and Ms. Crew during the meeting. In Constable Gomez's view, the victims of the flyers were not getting any support because of the antagonism between the Board and Ms. Crew and her friends. Constable Gomez stated that the Board should have called an emergency meeting to involve everyone in the Co-op and should have made a strong statement about what was happening at the Co-op. Constable Gomez stated that it was not clear that such a message was sent in this case.

[53] Ms. Crew later contacted Constable Gomez regarding the Board's decision to remove members' access to three of the four security camera feeds. Constable Gomez's evidence was that it is common for apartment buildings to have security cameras connected to all apartments, which he considered to be a good idea. Constable Gomez sent an e-mail message to Ms. Crew confirming his view that it is a good idea to provide residents with access to security camera footage. Constable Gomez's view was that there was no privacy issue in this case because the camera feeds in question, the side doors, the basement in the parking garage, are all public spaces where there is no expectation of privacy.

[54] In cross-examination, Constable Gomez agreed that the Board's notice sent on August 20, 2012 was the kind of message he would look for in the circumstances of this case, as were the other notices sent by the Board. Constable Gomez also agreed that relocating cameras to cover the doors of affected members was a good idea, but installing fake cameras was not. In his view cameras are a good deterrent.

[55] In re-examination, Constable Gomez was asked for his view of the Board's response, assuming the notice of August 20, 2012 was the first notice that actually addressed the issue of discrimination and harassment. Constable Gomez stated that

the incidents began in April 2012 and should have been addressed right away. In his view immediate action shows urgency, while delay indicates that the issue is not important.

[56] TS is the applicant in Application 2012-12280-I and is the mother of ZK, who is the applicant in application 2012-12228-I. TS testified that she has lived at the Co-op since 2009. TS testified that ZK has several physical and developmental delays, resulting from several disabilities. ZK cannot walk and uses a wheelchair. ZK was 11 years old at the time of TS's testimony. She described him as a bright young man who is aware of his surroundings. ZK attends a specialized school and requires additional therapy. As a result, TS works part-time in order to be able to take him to his appointments. TS chose to live at the Co-op because she thought it was a community-based environment that would be good for ZK. The rent of the Co-op is also modest, for which TS receives a subsidy, which is beneficial given TS' need to work part-time.

[57] TS served on the Board from November 2009 until June 2010, when she left after being involved in a motor vehicle accident. TS also served on the Board of another cooperative that she lived in. TS stated that she had no problems in the building until the Board changed in 2012 after the Requisition Meeting. TS' evidence was that she and Ms. Whalen had been friends when Ms. Whalen moved in. Ms. Whalen disclosed some personal information about herself to TS, including that she had been convicted of a criminal offence. TS stated that she advised of the Board of this in a letter after Ms. Whalen became a Board member after the requisition meeting. TS stated that she did not want Ms. Whalen signing cheques. TS stated that she regretted having done so, as she had expected the information to be confidential. TS stated that she received a phone call after the first meeting of the New Board on June 25, 2012. The caller stated that TS has a "big mouth". TS believed Ms. Whalen was the caller and reported the incident to the police. On June 26, 2012, TS filed a written complaint to the property manager and the Board regarding a verbal altercation with Ms. Whalen and Mr. Walsh as they took the elevator. Amongst other things, TS complained that Mr. Walsh described her as "sick in the head". TS stated that the Board did not respond to the

letter, but she was advised that there was no prohibition against Ms. Whalen serving on the Board.

[58] TS' evidence was that someone spat on her door at about 11 p.m. on Tuesday, July 10, 2012. In an e-mail message dated July 11, 2012 to the Board, TS described the circumstances of this incident, which pointed to Mr. Walsh as the culprit. TS filed a complaint about the incident with the property manager and the Board on Wednesday, July 11, 2012 regarding an incident on that date. The complaint states that TS was cooking dinner and someone shouted outside of her door: "YOU INBREED, YOU INBREED, YOU ARE A FUCKING INBREED" several times. TS looked through the peep hole in her door and saw Mr. Walsh. She heard Ms. Whalen, who lived in apartment 707, tell Mr. Walsh to get back into her apartment. TS opened her door and told him to shut up. TS called the police who spoke to Ms. Whalen and Mr. Walsh, who made false accusations against her. TS raised concerns about her son's safety and requested that Mr. Walsh be removed from the premises as he was not a member. TS stated that she received no reply from Board.

[59] TS' evidence was that on July 16, 2012 she returned to her apartment after dropping ZK off his bus to find that two eggs had been thrown at her door. TS filed a written complaint to the Board the same day. In the complaint, TS requested that the security cameras be reviewed on regular basis, noting that her neighbour had experienced similar incidents.

[60] TS' evidence was that she moved from apartment 712 to apartment 406 on August 1, 2012 to avoid Ms. Whalen and Mr. Walsh. Within about a week of the move the flyer set out in paragraph 4, above, was posted on apartment 202. Amongst other things, the flyer refers to "THE INBREED AND RETARTS (*sic*) IN 406". TS noted that the term "inbred" or "inbreed" was used in several of the flyers and often described, in odious terms, ZK's mother or parent. As a result, TS concluded that the term referred to her. Given Mr. Walsh's use of the term on July 11, 2012, TS suspected that he was the author of the flyers. TS also concluded that the reference to "us" in the flyer posted on August 24 or 25, 2012 (see paragraph 26, above) indicated that a Board member was

involved with the flyers. TS took some of the flyers to the property management staff to have them submitted to the Board. She also complained to the police, who came to see her and asked her whom she thought was responsible. The police sought to review the security camera footage, but were told that the cameras “were down”. TS stated that the Board never contacted her about the flyers.

[61] TS’ evidence was that the notice issued by property management on June 6, 2012 was not about the flyers. TS stated that the notice concerned the messes left in the elevator and stairwells at the time. TS noted that the Co-op was experiencing incidents where urine, toilet paper and condoms were found in the stairwell. TS stated that the notice said nothing about the flyers and that the description of “very disturbing behaviour” could refer to anything. TS stated that she did not recall the notice issued on July 6, 2012.

[62] TS testified that she contacted CERA about the flyers and spoke to Ms. Campbell, a Human Rights Caseworker, on a regular basis. TS stated that she sent the flyers to CERA to keep them informed. According to TS, CERA advised the Co-op that they should install cameras, especially for apartment 202. TS understood that CERA regularly contacted the Board and property management with a view to having them take action. TS’ evidence was that CERA stated that the Board had a duty to protect its members and also that it had difficulty contacting Ms. Borden. TS noted that Board approval is required to install cameras.

[63] TS stated that she recognized the memorandum posted on August 20, 2012 and that the memorandum was definitely about the flyers. She stated that the Board started to take the issue seriously after the victims of the flyers began filing human rights applications. TS’ evidence was that she was the first to file, on or about August 13, 2012. She stated that she was being harassed and had been unable to stop it in the courts and that CERA was only so helpful. Consequently, TS filed applications for herself and on behalf of her son as a last resort. TS’ evidence was that before the applications were filed the Board showed no sense of urgency in dealing with the flyers,

e.g., those targeted by the flyers had received no response from the Board and no one had reviewed the camera tapes.

[64] TS' evidence was that she depended on the CCTV feeds. She stated that she would put the CCTV feeds on her television at night. This allowed her to monitor her friends coming and going. The CCTV coverage also allowed her to see what was going on in the areas of the building covered by the cameras, e.g., the parking garage. TS' evidence was that she learned that three of the four CCTV feeds had been removed when she turned on the channel on television and discovered that only the lobby camera was available. There had been no notice of the change and members had not been consulted. TS stated that she overheard Ms. Whalen say that she did not want her boyfriend watched. TS signed the petition started by Ms. Crew. TS acknowledged that one CCTV camera feed was reinstated. She noted, however, that the screen flips back and forth between the two views. As a result, she no longer watches it because of the risk that the alternating views will cause her son to have a seizure.

[65] TS stated that her expectation was that the Board take the matter seriously and take prompt action such as an emergency meeting, which could be held over the phone. TS stated that the Board should have at least reached out to the affected members. In TS' view, the Board could have stopped the harassment, for example, by reviewing the security camera feeds at the time the flyers were posted. TS stated that she found the excuse that "the cameras were down" to be very convenient and asserted that the Board seem to be able to get camera footage when it suited them. TS' evidence was that even before April 2012 there were several security cameras situated throughout the building. Each floor has cameras by the elevators and the camera view catches the doors of the apartments near the elevators, i.e., those numbered '06 and '07. TS stated that these cameras would have shown Mr. Walsh leaving Ms. Whalen's apartment, #707, with the flyers. TS stated that as soon as Ms. Whalen's door was egged a camera was directed at TS' door.

[66] When asked about the evidence that Ms. Borden suspected that Ms. Whalen was involved in the flyers, TS stated that Ms. Borden should have acted on her

suspicions, e.g., by reviewing the cameras. TS' view was that Ms. Borden enjoyed the harassment and had no interest in finding the perpetrators.

[67] TS stated that the harassment had been difficult and the attacks on her son were particularly hard to take. TS stated the situation would have been much better if the Board tried to get to the bottom of the situation. Instead, TS stated that she knew the harassment would continue with no end in sight.

[68] TS' evidence was that she attended the AGM on November 19, 2012 and that some of the applicants wanted to run for the Board. The chairperson, however, stated that members with human rights applications could not run for the Board. TS stated that Ms. Baduria, the interim property manager, immediately took their names off the nomination Board. TS' evidence was that the Minutes of the meeting did not record this. TS' evidence was that the same thing happened at an AGM in March 2013. The chair of the meeting, Mary Ann Hannant from CHFT, also announced that members with human rights applications against the Co-op could not run for the Board. The Board members present did not object to this statement.

[69] There is no dispute that the Co-op membership passed a Human Rights By-law in March 2014. TS' view was that this by-law was the result of human rights applications by another member, Isabel Carreiro, who was also targeted by the flyers. This application proceeded independently of these Applications. TS reiterated her view that the respondent began to take the matter seriously because the Applications showed that the applicants were not going to be run out of their homes.

[70] In cross-examination, TS disagreed that the notice distributed on June 6, 2012 was about the flyers. She maintained that the notice related to issues in the stairwell. She agreed that the flyers could be described as "very disturbing" and that they amounted to vandalism. TS agreed that no flyers were posted between July 6 and 19, 2012, and a camera had been pointed at her door. TS agreed that the notice of August 20, 2012 came about because of CERA's urging and that CERA had recommended that cameras be placed on the second floor and in the mailroom. These recommendations

are reflected in e-mail messages from CERA to the Co-op, dated August 30, 2012 and September 19, 2012. As far as TS was aware, the Board implemented all of CERA's suggestions.

[71] TS agreed that she made complaints to the Board on July 11 and 16, 2012, and that a camera was directed at her door on July 19, 2012. TS agreed that she never filed a complaint alleging that either Ms. Whalen or Mr. Walsh was responsible for the flyers. TS confirmed her belief that the flyers stopped because of the human rights applications filed against the Co-op. Counsel for the respondent showed TS the Notice of Application the Tribunal sent to the respondent along with her application. She agreed that the Notice was dated September 10, 2012. TS did not recall if the flyers had been placed in the mailbox of unit 202 on September 11, 2012, or whether another had been posted in the mailroom on September 15, 2012. With respect to the AGM on November 19, 2012, TS stated that she does not recall that any member asked whether members bringing human rights applications against the Co-op could run for the Board. She agreed, however, that Ms. McNamara stated that members bringing human rights applications may want to consider if they wish to run because of a perceived conflict of interest. In re-examination, TS reaffirmed that the chair of the meeting stated that members who filed human rights applications against the Co-op could not run for positions on the Board. TS understood that members who filed human rights applications did not have the right to run for the Board. TS agreed that Ms. Baduria's letter to Ms. Crew of August 9, 2012 advised that only staff were authorized to view security camera footage and that footage would be released only to the police. TS noted that this state of affairs had been authorized by the Board who could also change it.

[72] Following TS' testimony, I noted that the Minutes of the AGM of November 19, 2012 regarding the Board election had not been put to Ms. Crew. Ms. Crew was in attendance and respondent's counsel submitted that they could be put to her at that time. The applicants did not object. I reaffirmed Ms. Crew and the relevant portions of the Minutes were put to her. Ms. Crew agreed that the chair of the meeting, Ms. McNamara, discussed election procedures, as stated in the Minutes. She did not agree

that anyone from the membership inquired whether members with applications against the Co-op could run for positions on the Board. Ms. Crew also did not agree that Ms. McNamara spoke about potential conflicts of interest or that she suggested that the members with applications to the Tribunal should consider whether they should run.

[73] In re-examination, Ms. Crew stated that the Minutes of the November 19, 2012 AGM were first presented at the AGM in March 2013. The Minutes did not include Ms. McNamara's comments about whether applicants to the Tribunal could run for Board positions. Ms. Crew's evidence was that she objected to this omission and Ms. McNamara stated that everything cannot be recorded. Ms. Crew stated that it was very important to include this discussion. Acceptance of the Minutes was therefore put over the next AGM in November 2013. Ms. Crew's evidence was that members with applications against the Board were again prevented from running at the meeting in March 2013. The Minutes of the November 19, 2012 AGM were presented for acceptance at the AGM in November 2013 also did not include the discussion about whether members bringing applications could run for the Board. Ms. Crew stated that she objected again, but was met with "general disapproval" for raising the issue again and the Minutes were accepted by the membership in their current form.

[74] Cindy Welykyi is the applicant in Application 2012-12227-I. Ms. Welykyi has been a member of the Co-op since July 2010. Ms. Welykyi has limited mobility as a result of a disability and uses a scooter. The week prior to the hearing, Ms. Welykyi injured herself in a fall and therefore testified by telephone on the agreement of the parties.

[75] Ms. Welykyi's evidence was that she served on the Co-op Board for about one month prior to the requisition meeting on May 23, 2012. Ms. Welykyi stated that she did not understand the motivation of the members who were seeking to replace the Board and stated that the reasons given for the requisition were false. Ms. Welykyi's belief was that Ms. Borden had spearheaded the requisition request following her resignation from the Board in the face of requests to prove that she paid for improvements to her apartment. Ms. Welykyi stated that she had heard that Ms. Borden advised Linda Hayward that she would go after the Board "full force".

[76] Ms. Welykyi's evidence was that she had lived at apartment 1105 at the Co-op until mid-2012, when she moved to apartment 202. Ms. Welykyi testified that many of the flyers were taped to her door and many of them referred to her, identifying her apartment number and/or by boorish references to her weight. Ms. Welykyi acknowledged that she is a large woman. Ms. Welykyi's evidence was that when she found a flyer on her door she would contact Ms. Crew. Ms. Welykyi stated that all of the flyers were delivered to the office by either herself, TS or Ms. Crew. Ms. Welykyi theorized that most of the flyers were posted on her door because her apartment is close to the stairwell. Notwithstanding the fact that most of the flyers were found on her door, the Board never contacted Ms. Welykyi about them.

[77] Ms. Welykyi recognized the notice dated June 6, 2012, which she stated had been posted in the Co-op. Ms. Welykyi stated that by June 6, 2012 several flyers had been put up in the Co-op. However, Ms. Welykyi's evidence was that the notice made no reference to the flyers or to harassment. Ms. Welykyi interpreted the reference to vandalism to refer to incidents of vandalism in the stairwell and elevators. She agreed that the flyers could be seen as vandalism, but noted that the notice said nothing about the flyers or that members with disabilities were being harassed. Ms. Welykyi also recognized the notice posted in the Co-op on July 6, 2012, but stated that she did not really know what it was about. Ms. Welykyi believed the reference to vandalism and abuse of common space referred to writing in the elevator. Ms. Welykyi acknowledged that she had signed a petition, as did several of the applicants, dated June 14, 2012, to have Mr. Walsh removed from the Co-op. Ms. Welykyi also sent a letter to the office staff and the Board dated September 12, 2012 in which she complained of an altercation with Ms. Whalen who, amongst other things, called Ms. Welykyi a "fat pig" and a "fat cow". Ms. Welykyi requested the Ms. Whalen be removed from the Board in light of this conduct.

[78] Ms. Welykyi recalled that 22 cameras were installed on July 19, 2012. Her evidence was that she found out they were fake cameras the same day. She came to

this conclusion because they were installed very quickly and her neighbour had commented to the effect that it is hard to believe that they were real.

[79] Ms. Welykyi's evidence was that she contacted CERA sometime in July 2012. A friend had referred her to a different organization and was then directed to CERA. Ms. Welykyi stated that she contacted CERA for assistance and found them to be the first people to be actually interested in helping. Ms. Welykyi spoke to CERA two or three times. Ms. Welykyi recalled the August 20, 2012 notice entitled "Discriminatory Harassment", which stated that the flyers would not be tolerated and that the Board would take aggressive action against the perpetrators. In Ms. Welykyi's view, the notice came about because CERA's intervention got the Board to take action. Ms. Welykyi's evidence was that the membership was generally unaware of the harassing flyers, since the Board did not comment about them until August 20, 2012. Mr. Welykyi stated that other members have advised her that they did not know about the flyers.

[80] Ms. Welykyi testified that she attended the special meeting called by the Board. The Board invited the members of the Old Board. Three members from the previous Board attended: Ms. Welykyi, Mimi Gow and Ms. Biloki. Ms. Welykyi stated that she thought the purpose of the meeting was to discuss the flyers, but Ms. Hannant of the CHFT said that they were not going to discuss that issue. Ms. Welykyi stated that she was confused about why she was there. According to Ms. Welykyi, Ms. Borden began to discuss an incident in the park that Ms. Welykyi had complained about. Ms. Whalen then began a verbal attack on Ms. Welykyi and left the room to calm down. Ms. Welykyi responded to the attack when Ms. Whalen returned. The flyers were never discussed.

[81] Ms. Welykyi's evidence was that members had been able to watch security cameras covering four areas of the Co-op: the front entrance, the side door, the basement and the hallway to the underground. Ms. Welykyi stated that she used the channel to keep track of her friends as they came and went. Her evidence was that access to three of the four feeds was removed without notice to the membership, leaving access to only the front door feed. By letter dated November 5, 2012 to the Board, Ms. Welykyi criticized the decision to remove access to the camera feeds and

requested that the Board identify the person who apparently gave the Board the advice that removal of the feeds was appropriate. Ms. Whalen told her that Donna Carbonneau of the Agency had advised that allowing the members to watch the security feeds was an invasion of privacy. Mr. Welykyi therefore spoke to Ms. Carbonneau about her involvement. In an e-mail message to Ms. Carbonneau dated November 27, 2012, Ms. Welykyi summarized their conversation. Mr. Welykyi recorded that Ms. Carbonneau denied giving advice that the camera feeds should be removed. Rather, she had mentioned in passing to Ms. Hayward that using the cameras as the Co-op did could be an invasion of privacy and the Co-op should investigate the matter. Ms. Welykyi recorded that Ms. Whalen had reported at the AGM that she had had several lengthy conversations with Ms. Carbonneau and that removal of the camera feeds had been based on Ms. Carbonneau's "sound advice". Ms. Welykyi went on to express her opinion that Ms. Carbonneau's advice was poorly informed and wrong and suggested that she reconsider. By letter dated November 30, 2012 the Agency advised Ms. Welykyi that Ms. Carbonneau had merely advised the Co-op to investigate whether the use of the security cameras ran afoul of *PIPEDA*, and did not recommend removal or relocation of any camera. Ms. Welykyi signed the petition to have the security camera feeds restored and the side door feed was restored in March 2013.

[82] Ms. Welykyi's evidence was that once the camera was finally positioned to cover the door to her unit the flyers stopped being posted there. She noted the flyers began to be placed in her mailbox.

[83] Ms. Welykyi testified that she attended the AGM on November 19, 2012 and that she nominated one of the other applicants for a position on the Board. Ms. Welykyi stated that she also wanted to get back onto the Board. Her evidence was that either Ms. Hannant or Ms. McNamara said that members with applications against the Co-op could not run for positions on the Board. Ms. Welykyi reviewed this section of the Minutes of the AGM regarding the election and agreed that Ms. McNamara explained the election procedure. She also agreed that a member had asked about members with applications against the Co-op running for the Board. She did not recall who made this

request. Ms. Welykyi did not agree that Ms. McNamara advised that members in those circumstances should consider whether they should run in light of the perceived conflict of interest. Ms. Welykyi's evidence was that they were told that members with human rights applications could not run. Ms. Welykyi stated that the applicants who had been nominated, including her and Mike Large, then withdrew from the election. Ms. Welykyi's evidence was that the Board said nothing about this issue.

[84] Ms. Welykyi stated that the flyers were shocking and made her feel like she never wanted to leave her apartment. She was saddened to realize that people in the Co-op thought such things about others, particularly about a child. Ms. Welykyi asserted that she would have expected the Board to respond in some fashion immediately after the first flyer appeared. In her view, the Board should have reached out to the targets of the flyers to assure them that they would do their best to put a stop to the harassment, but instead, the Board never contacted any of the victims and never called a special meeting to deal with the issue. Ms. Welykyi accepted that it may not have been possible to catch the perpetrator, but stated that the Board should have showed that it cared, which it did not. Ms. Welykyi stated that the indifference shown by the Board was more hurtful than the flyers themselves. Ms. Welykyi stated that she filed her Application because of the flyers and the lack of action taken by the Board in response to them. Ms. Welykyi turned to the Tribunal because she has the right to live peacefully and to be respected, but no one was helping her.

[85] In cross-examination, Ms. Welykyi rejected the suggestion that the notice on June 6, 2012 referred to the flyers. She reiterated her account that this notice was about vandalism in the stairwells. She agreed that the flyers could be characterized as very disturbing behaviour and that they amounted to "abuse of the community". Ms. Welykyi stated, however, that the notices were not clear about the behaviour was intended to address. Ms. Welykyi agreed that installing cameras was one way to stop the flyers. Ms. Welykyi acknowledged that cameras had been repositioned on the eleventh and seventh floors. Ms. Welykyi agreed that the notice posted by the Board on August 20, 2012 addressed the flyers and stated that the notice came about because of CERA's

involvement, as did the relocation of cameras towards her door. Ms. Welykyi was not aware if the Board had not acted on any of CERA's recommendations. Ms. Welykyi agreed that the flyers were no longer posted on her door after the camera was installed near her unit and that a camera was later installed in the mailroom.

[86] Ms. Welykyi agreed that she attended a Board meeting in early September 2012. She reiterated that the flyers were not discussed and the purpose of the meeting appeared to be mediation. As she recalled the meeting, mediation was discussed as a means to address the hard feelings of the members removed from the Board in May 2012. Ms. Welykyi stated that the flyers "was not even a conversation" at the meeting and that the meeting was pointless. Ms. Welykyi agreed that she did not advise the Board in writing that she suspected Mr. Walsh and Ms. Whalen of being responsible for the flyers because she did not have sufficient proof. In re-examination, Ms. Welykyi stated that the Board was aware that they were suspected. In general Ms. Welykyi stated the Board was very passive about what was going on.

[87] Betty Jarvis is the applicant in Application 2012-12442-I. Ms. Jarvis was a member of the Co-op until September 28, 2012, when she moved into her son's home. Ms. Jarvis stated that she moved out of the Co-op because of the flyers and messages written on elevators and because she feared violence. Ms. Jarvis stated that she lived in apartment 1008. Ms. Jarvis's evidence was that Ms. Crew, her daughter, brought some of the flyers to her attention. Ms. Jarvis also testified the water pump in her car was tampered with and that she had a flat tire in the parking garage. She stated that she did not know if someone damaged her vehicle or if the incidents were chance occurrences. In any event, Ms. Jarvis did not feel safe in the parking garage.

[88] Ms. Jarvis recalled the notice posted in the Co-op on June 6, 2012. In her view, the notice referred to messages written in the elevator, eggs thrown at doors and "stuff left in the elevator". Ms. Jarvis stated that there was "quite a mess" at the time at the Co-op. Ms. Jarvis stated that the Board did nothing about the flyers and described the fake cameras as useless. She expected that the Board would take steps to discover the culprit, but the Board did not even contact her about them. Ms. Jarvis stated that she

moved out of the Co-op because of the deterioration of the environment, which she described as “horrible”.

[89] In cross-examination, Ms. Jarvis stated that the notice of June 6, 2012 was about writing on the elevator wall, but mostly about vandalism to stairwells and elevators. She did not agree that the notice was about the flyers, although she agreed the flyers amounted to abusive behaviour.

[90] Mike Large was the applicant in Application 2012-12622-I. Mr. Large stated that he has difficulty walking following a workplace accident and after he broke his hip in an accident which occurred after he moved into the Co-op.

[91] Mr. Large’s evidence was that Ms. Crew brought the flyers to his attention and that he was identified as a “short fat man” in the flyers.

[92] Mr. Large attended the AGM on November 19, 2012. His evidence was that Ms. Hayward, the respondent’s Housing Administrator, announced that members with applications against the Co-op could not run for Board positions, but then denied the statement. Mr. Large was shown the Minutes of the meeting, which he said he recognized. Mr. Large reviewed item 13 in the Minutes, which dealt with the Board election. Mr. Large recalled that Ms. McNamara explained the election procedure, as is recorded in the first paragraph of item 13. The second paragraph states that a member asked about the members who had human rights applications against the Co-op. Mr. Large did not recall this specifically, but stated that it may have been him who posed the question. The third paragraph records that Ms. McNamara suggested that members bringing human rights applications may wish to consider if they should run in light of a perceived conflict of interest. Mr. Large confirmed that this is what occurred. Mr. Large understood this meant that members with human rights applications could not run in the election and he had no choice in the matter.

[93] Mr. Large testified that he did not feel that the Co-op supported him during the period he was subject to harassment. He acknowledged that he did not complain

directly to the Board. He did alert Ms. Baduria to a message written in the Co-op to which she replied, with no sense of urgency, that a picture would have to be taken. Mr. Large stated that the Board never contacted him about the flyers.

[94] Mr. Large stated that he used to watch the CCTV feeds on his television until all but the lobby feed were discontinued. Mr. Large stated that feeds were important to him because it allowed him to see who was coming and going. Mr. Large stated that he understood that the security cameras were a legal requirement. Mr. Large's evidence was that the reason given for removing excess to three of the camera feeds was that they were an invasion of privacy, which he did not think was correct.

[95] Mr. Large's view was that whoever was responsible for the flyers wanted to get him to leave the Co-op because he is disabled. Mr. Large stated that he has the right to live in the Co-op; therefore, he filed an application to the Tribunal.

[96] In cross-examination, Mr. Large stated that he recalled the notices posted by the Co-op on June 6 and August 20, 2012. He agreed that these notices addressed writing on elevators and the harassing flyers. Mr. Large stated that he was aware that the Co-op installed fake cameras on July 19, 2012. He stated that he saw them being installed and knew they were fake because there was no drilling. Mr. Large was unaware that cameras were repositioned on the eleventh and seventh floors. Mr. Large stated that he is aware of the camera installed in the mailroom, but did not recall when it was installed. Mr. Large was aware that many of the flyers were posted on Ms. Welykyi's door, apartment 202. He was not immediately aware that a camera was installed outside her apartment on September 10, 2012 but noticed it fairly soon after it was installed.

[97] When asked about the AGM on November 19, 2012, Mr. Large clarified that he had been at the back of the room and did not hear what Ms. McNamara said about the Board election. Ms. Hayward came to the back of the room and announced that members with human rights applications against the Co-op could not run for Board positions. Mr. Large stated that Ms. Hannant delivered the same message at the AGM on March 20, 2013. Mr. Large stated that he had been nominated but withdrew in light

of the apparent prohibition on his candidacy. Mr. Large's evidence was that he had subsequently been elected to the Board and left Board meetings when the Applications were discussed.

[98] Mimi Gow is the applicant in Application 2012-12293-I. Ms. Gow has a disability that prevents her from leaving her home often and she testified by telephone on the agreement of the parties.

[99] Ms. Gow's evidence was that she had been on the Co-op Board until the requisition meeting on May 23, 2012 when the Old Board was removed. Ms. Gow stated that she believed Ms. Borden led the effort against the Old Board. Ms. Borden had resigned because the Board had asked her to prove that she had paid for upgrades in her apartment. According to Ms. Gow, Ms. Borden was very upset by these requests and felt disrespected.

[100] Ms. Gow's evidence was that the harassing flyers started in April 2012 and continued into September 2012. Ms. Gow stated that she was referred to as the "fat old whore in 905". Ms. Gow stated that she lives in apartment 905 and that she has a weight problem. Ms. Gow stated that either Ms. Crew or Isabel Carreiro brought the flyers to her attention. Ms. Gow stated that she called the Co-op office above the flyers, but did not put anything in writing because she knew others were bringing the flyers into the office. Ms. Gow spoke to Ms. Hayward, who advised her that the flyers would be forwarded to the Board; therefore, she did not need to file a separate complaint. Ms. Gow's evidence was that she had no contact with the Board and that they did not appear to be doing anything.

[101] Ms. Gow testified that she contacted CERA three or four times in July and August 2012 because she wanted more information about human rights. She did not recall to whom she spoke. The advice she received was that those targeted by the flyers have the right to protect themselves and that they should try to get the Board to address the harassment.

[102] Ms. Gow's evidence was that the notice posted by the Co-op on June 6, 2012 was generally about people defacing Co-op property. She stated that she felt it was about the flyers and writing in elevators as well. Ms. Gow stated that there was other vandalism occurring in the Co-op, including misuse of the stairwell. Ms. Gow's evidence was that the Co-op posted a notice that was clearly about the harassing flyers on August 20, 2012. Ms. Gow stated her view that the Board was prepared to write about the flyers, but not to do anything. Ms. Gow's evidence was that the Board had phony cameras installed, which in her view solved nothing and gave people a false sense of security.

[103] Ms. Gow attended the special Board meeting on September 6, 2012, which she described as a waste of time. She attended in the hopes of working together to stop the flyers. According to Ms. Gow, insults were exchanged between members even before the meeting started. Ms. Hannant chaired the meeting, who allowed Ms. Borden to speak but not Ms. Welykyi. Ms. Gow's evidence was that Ms. Borden stated that the flyers were terrible, but that she did not want to discuss them. The issue of a broken door was raised, which upset Ms. Whalen, who also started an argument with Ms. Welykyi. Ms. Gow stated there was very little time to discuss anything.

[104] Ms. Gow attended the AGM on November 19, 2012. Ms. Gow stated that several of the members with applications against the Co-op were nominated for Board positions, as was she. Ms. Gow's evidence was that Ms. McNamara, who chaired the meeting, said that members with human rights applications against the Co-op could not run for the Board. Ms. Gow stated that she was not asked to consider whether to run because of a perceived conflict of interest. She was not left with the option to run as suggested in the Minutes of the meeting.

[105] Ms. Gow's evidence was that she watched that CCTV feeds on her television, which allowed the members to keep an eye on each other as they came and went. Three of the feeds were removed in September 2012 without notice. Ms. Gow described the reason given for removing them, privacy, as "hogwash". Ms. Gow stated that access to the feeds was important for safety. She noted that many women come and go and

that too many people have access to the building. Ms. Gow's evidence was that she signed the petition to have the CCTV feeds restored and that one feed was restored to the side door entrance. The view available to residents alternates between the front door and the side door.

[106] Ms. Gow stated that she believed that the perpetrator of the flyers was on the Board, but could not say for sure who it was. She stated that the person involved had to be someone with information about the victims and their issues. According to Ms. Gow, Ms. Whalen was not on the Board long enough to have information and Mr. Walsh would not have had access to information, such as apartment numbers. In Ms. Gow's view, the flyers were a well-organized effort by someone who knew the victims well.

[107] Ms. Gow stated that the situation has impacted her deeply. She stated that she lost faith in people and lives in fear when coming and going. Ms. Gow said that she no longer makes an effort to meet new people in the building and no longer volunteers her time.

[108] In cross-examination, Ms. Gow agreed the notice posted in the Co-op on June 6, 2012 was about writing on the walls of the Co-op, which she agreed could amount to vandalism. She also agreed that the flyers and the messages written on walls were disturbing behaviour and amounted to abuse. Ms. Gow confirmed that the Co-op installed fake cameras on or about July 19, 2012, which she noticed three or four days later. When asked if she knew the Co-op relocated cameras on the seventh and eleventh floors, Ms. Gow stated that she believed that the cameras had been directed towards Ms. Whalen's door, on the seventh floor. Ms. Gow stated that this action was taken because eggs and coffee grounds had been thrown at Ms. Whalen's door.

[109] Ms. Gow agreed that the notice posted on August 20, 2012 was about the harassing flyers, but stated that the notice did not mean the Board was actually going to do anything. Ms. Gow also acknowledged that a camera was located on the second floor on September 10, 2012, but stated that they had been asking for cameras all summer. Ms. Gow agreed the flyers stopped being posted on Ms. Welykyi's door and

began to appear in the mailroom. She agreed that a camera was installed in the mailroom. Ms. Gow acknowledged that she did not suggest that the Board contact CERA for advice.

[110] Linda Hayward is the Housing Administrator employed by the respondent. Ms. Hayward was originally hired as a clerk and was promoted into her role by the Board in 2011. Ms. Hayward reports to the Board, but also deals with property management personnel. The property management company retained by the Board is Precision Property Management. In 2012, Ms. Hayward's hours of work were 8:30 a.m. to 2 p.m. Monday to Thursday and 8:30 a.m. to 11:30 a.m. on Fridays. Ms. Hayward stated that when members have a complaint they are required to put it in writing. Such a complaint is date stamped and forwarded to the Board for consideration. Ms. Hayward was familiar with the flyers that were posted in the Co-op, as most of them were brought to her to be forwarded to the Board, usually by TS, Ms. Crew or Ms. Biloki. Ms. Hayward's evidence was that Ms. Baduria put the flyers in a package of materials to be presented to the Board. Ms. Hayward stated that she was not required to attend Board meetings once the New Board took office in May 2012.

[111] Ms. Hayward stated that she believed Ms. Borden and Ms. Whalen started the requisition petition. Ms. Hayward's understanding was based on the fact that the Board had been pushing Ms. Borden and to prove that she paid for upgrades in her apartment. Ms. Hayward stated that she understood the requisition process was a strategy to shut down the inquiry about Ms. Borden's apartment by replacing the Board. Ms. Hayward testified that she was in the office with Ms. Baduria when Ms. Borden delivered her letter of resignation. According to Ms. Hayward, Ms. Borden made a statement to the effect of "we will get them back". Ms. Hayward stated that she understood Ms. Borden was not happy about the issue raised about her apartment and intended to have changes made to the Board. Ms. Hayward stated that Ms. Borden had "always been on the Board" and liked to be in control of matters at the Co-op. It was Ms. Hayward's view was that Mr. Walsh and Ms. Whalen were responsible for the flyers and that Ms. Borden knew they were involved. Ms. Hayward based her conclusion on the fact that Mr. Walsh

had posted flyers about bed bugs and that the flyers were posted at a height that suggested a male culprit.

[112] Ms. Hayward's view was that the Board took appropriate action in sending out the notices in June and July 2012. She agreed the first notice concerned vandalism. Her evidence was that vandalism was occurring in the building, including derogatory writing in the halls. Ms. Hayward believed the Co-op had acted in a timely manner, noting that they had not dealt with this kind of issue before.

[113] Ms. Hayward attended the AGM on November 19, 2012 and recalled that some of the applicants were running in the election for the Board. Ms. Hayward's evidence was that they did not run because Ms. McNamara said that members with human rights applications could not run for the Board.

[114] In cross-examination, Ms. Hayward identified an e-mail message she sent to Ms. Baduria on September 13, 2012 with the subject line "Cindy #202-note". In the message Ms. Hayward stated that she had spoken to Dale (Nichiporik) who said there was nothing he could do about the harassment because it was not a criminal act. Ms. Hayward's evidence was that she asked Dale, a police officer, for assistance regarding the flyers, but he stated that there was little to be done without proof. Ms. Hayward stated that she checked the security cameras occasionally to try to see who might be responsible for the flyers and writing on the walls. Her evidence was that she reviewed the cameras on her own initiative and the Board did not instruct her to do so. She agreed that the posters had been placed out of sight of the cameras. She agreed that one can see which way the cameras are pointed and it is possible to avoid them.

[115] Ms. Hayward's evidence in cross-examination was that the Co-op relocated cameras in front of Ms. Whalen's door (apartment 707) and Ms. Welykyi's unit (1105). The Co-op also installed a camera in front of Ms. Welykyi's door after she moved to apartment 202, and later in the mailroom. Ms. Hayward's evidence was that the notices the Co-op distributed on June 6, 2012 and July 6, 2012 were in response to the flyers, as was the notice of August 20, 2012.

[116] Regarding the AGM of November 19, 2012, Ms. Hayward stated that she did not hear what Ms. McNamara said, as she was sitting in the third row and was experiencing hearing difficulties because of a hole in her ear drum. Consequently, Ms. Hayward could not be sure if the statements attributed to Ms. McNamara in the Minutes of the meeting are accurate. Ms. Hayward denied that she stated that members with human rights claims could not run in the election. Her evidence was that no one from the Co-op for the Board made such an announcement. Ms. Hayward further stated that there was no discussion between the Board and staff about whether members with human rights claims could run in the election.

[117] In re-examination, Ms. Hayward stated that she understood Ms. McNamara to state that members with human rights claims could not run in the Board election. When asked if the Minutes assisted her to recall the meeting, Ms. Hayward stated that she heard Ms. McNamara talking about something “perceived” later in the meeting.

[118] Therese Baduria is an employee of Precision Property Management and was the Interim Property Manager for the Co-op between April 1, 2012 and September 15, 2014. In that role, she spent about 24 hours a week at the Co-op. Ms. Baduria stated that her hours varied, but she was at the Co-op almost every day. In the role of Property Manager, Ms. Baduria reported to the Board about finances, rent arrears and vacancies. Ms. Baduria would also update the Board regarding any changes to government regulations, answer questions and give advice. Ms. Baduria’s evidence was that she took notes of the Board meetings she attended and tried to capture the highlights of the discussion. Ms. Baduria identified her notes of Board meetings held between April 2012 in March 2013 and they were entered into evidence.

[119] Ms. Baduria was directed to her notes of the Board meeting held on July 30, 2012, specifically with respect to security cameras. Ms. Baduria recalled the discussion and stated that Ms. Carbonneau had attended. Ms. Baduria’s evidence was that Ms. Carbonneau gave the Board advice about security cameras as recorded in her notes. The notes reflect that only designated staff and the police, not Board members, should be allowed to review security camera footage. Ms. Baduria’s evidence was that the

Board had received letters from members who had privacy concerns regarding security cameras. Ms. Baduria stated that, ultimately, the decision to remove three of the four CCTV camera feeds was because of such privacy concerns.

[120] Ms. Baduria attended the AGM on November 19, 2012, and took notes. Ms. Baduria recalled that the chair of the meeting advised that the members with human rights claims against the Co-op may be in a perceived conflict of interest. Ms. Baduria's evidence was that she understood that regardless of whether members had a claim against the Co-op they had the right to run for Board positions. When advised that Ms. Hayward understood the members with human rights applications could not run, Ms. Baduria stated that Ms. Hayward had been sitting at the back of the room. Ms. Baduria reiterated that her understanding was that the applicants were entitled to run, despite the perceived conflict of interest. Ms. Baduria stated that she prepared the Minutes of the November 19, 2012 AGM. Her evidence was that they were not accepted at the next AGM on March 20, 2013. Ms. Crew had objected because the discussion regarding whether members with human rights applications could run for Board positions was not included. Ms. Baduria stated that she had not believed the issue was important and had simply recorded the nominees and results as was the usual practice. Ms. Baduria amended the Minutes to reflect their current form for presentation at the AGM in November 2013 based on her recall.

[121] In cross-examination, Ms. Baduria confirmed that she usually attended Board meetings and that she attended the Board meetings held on May 28, June 25, July 30, September 6, and September 24, 2012, which is confirmed by the "In-Camera Minutes" for each of these meetings. Ms. Baduria agreed that the Board meets approximately once a month. Ms. Baduria's evidence was that the Board discussed the flyers during the meetings of May 28, 2012, the first meeting of the newly installed Board, but did not recall whether they discussed messages written on walls. Ms. Baduria recognized the various offensive flyers posted in the Co-op and described some of the efforts taken to address them. Ms. Baduria stated that the Board sent out notices in June and July 2012 and considered asking the former Board members to meet to address the issue in a

special meeting. Ms. Baduria stated that at the meeting, held on September 6, 2012, the Board offered mediation to the former Board members, which was not accepted. Ms. Baduria's evidence was that the "In-Camera Minutes" of this meeting reflect the invitation extended to the former Board members. Ms. Baduria stated that the purpose of the meeting was to deal with harassing flyers, which had been forwarded to the Board. Ms. Baduria stated that during the July 30, 2012 Board meeting, Ms. Carbonneau advised the Board to hold a meeting with the former Board members to resolve their issues and build up the community. Ms. Baduria stated that the community was divided between the New and former Board; therefore, the Board wanted to reach out to the former Board. When it was put to her that three other witnesses had testified that Ms. Hannant had informed the attendees that the meeting was not about the flyers, Ms. Baduria stated that it was explained at the start of the meeting the purpose of the meeting was to resolve ongoing issues with the former Board members.

[122] Ms. Baduria agreed that the notices sent out on June 6, July 6, and August 20, 2012 were in response to the flyers, and were sent to each unit and posted on the bulletin boards. Her evidence was that she drafted the first two notices and the third was drafted by another employee of Precision Property Management because she was on vacation at the time. Ms. Baduria's evidence was that the repositioning of cameras on the seventh and eleventh floors as well as installation of false cameras on July 19, 2012 was intended to deter whomever was posting the flyers. Precision Property Management advised, however, to remove the non-functioning cameras due to liability concerns. A camera was installed in front of Ms. Welykyi's door (unit 202) on September 10, 2012 and later in the mailroom for the same purpose. Ms. Baduria's evidence was that she sought the police's advice sometime after the meeting on September 6, 2012. Ms. Baduria also spoke with Ms. Hannant and Ms. Carbonneau for advice. Ms. Baduria did not recall any advice that Ms. Hannant may have given her and recalled that Ms. Carbonneau suggested mediation.

[123] Ms. Baduria's evidence was that the Board did not call an emergency meeting because monthly meetings were already scheduled. In her view, it was unnecessary for

the Board to meet more often to deal with the flyers because they were already dealing with the issue. Ms. Baduria also stated that the Board had hoped the meeting held on September 6, 2012 would resolve the problem. I asked Ms. Baduria why she thought meeting with the former Board members would stop the harassment. Ms. Baduria responded that they hoped to discuss other options to help them and to seek their insight to stop the behaviour. In Ms. Baduria's view, the Board did "what it had to do" and made its best efforts to resolve the issue. Ms. Baduria also suggested that other agencies could have helped.

[124] Also in cross-examination, Ms. Baduria stated that she understood that members with human rights applications were allowed to run for Board positions at the AGM of November 19, 2012 even after Ms. McNamara's comments. Ms. Baduria's evidence was that Ms. McNamara was responding to a question from a member. Ms. Baduria's evidence was that she did not tell Ms. McNamara what to say and was not aware that anyone else did. Ms. Baduria confirmed that she was present when Ms. Borden resigned from the Board in April 2012. She did not recall that Ms. Borden made a statement when she resigned and did not recall that Ms. Borden made a statement to the effect that she would "go after the Board".

[125] In redirect, counsel for the applicant asked Ms. Baduria why the Board proposed mediation. Ms. Baduria responded that the Board wanted to reach out to the former members to try to resolve ongoing issues. In Ms. Baduria's view, there were two groups of the Co-op that were not getting along. Ms. Baduria agreed that there appeared to be a connection between the tension between the Old and New Boards; therefore, mediation could be a way to deal with the flyers. Ms. Baduria stated that the Board wanted to get the former Board members' suggestions about how to stop the flyers. The Board hoped that the victims would have a solution. Ms. Baduria's evidence was that reducing the tension between the Old and New Boards could have been a start to addressing the flyers. Ms. Baduria agreed that she worked closely with the Board and that she had to follow the Board's directions.

[126] Ms. Baduria's evidence was that Ms. Borden was in touch with the police. Ms. Baduria did not contact the police until September 6, 2012. When confronted with the fact that the harassment began in April 2012, Ms. Baduria stated that the applicants had involved the police; therefore, the matter was already in the hands of police. Ms. Baduria agreed that Ms. McNamara did not have authority to make decisions on the Board's behalf, but disagreed that she had decided that the applicants could not run for Board positions. Ms. Baduria stated that she had no knowledge that Ms. McNamara discussed her statement about a perceived conflict of interest with the Board. Ms. Baduria was of the view that the three notices posted by the Board were sufficient. Ms. Baduria stated that they could have done more, but that they did their share. Ms. Baduria asked rhetorically what more they could have done and asserted that they did not have concrete courses of action to pursue.

[127] Ms. Baduria's evidence was that the new Human Rights By-law was created in response to the applications filed by the applicants. She stated that a human rights by-law likely would have been adopted anyway as the CMHC had proposed one. The Applications made them more aware of the need for a human rights by-law. When asked why the Board did not act because of the harassment and discrimination itself, Ms. Baduria stated that events unfolded very quickly after the requisition meeting. Ms. Baduria further stated that the Board had so many issues to address already and had to put other issues aside to address the human rights applications.

[128] Christele Pierre is a Co-op member who has resided there for 22 years. She was elected to the Board after the Old Board was removed following the requisition vote. Ms. Pierre held the position of Treasurer and remained on the Board until April 2015. In this role Ms. Pierre dealt with the financial issues related to the Co-op's operation. She stated that the Co-op finances were very poor.

[129] Ms. Pierre's evidence was that the New Board received information about the flyers in their first Board meeting. Ms. Pierre stated that all of the meetings at the time dealt with the flyers. Ms. Pierre testified that they had no time to train about being Board members and that Ms. Hannant tried to assist them in addressing the harassment. Ms.

Pierre's evidence was that the Board responded by posting notices about living in a community and respecting each other. Ms. Pierre identified the notices published on June 6, July 6 and August 20, 2012. With respect to the last notice, Ms. Pierre stated that this notice was published after the police were involved. The police felt the Co-op should continue posting notices.

[130] Ms. Pierre's evidence was that she was shocked by the flyers and had never seen such hostility. Ms. Pierre stated, however, that the Board could not do much about the harassment and that they felt they were in "a rock and a hard place". Nonetheless, on the suggestions of the police, the Board undertook activities to "build the community" and connect with members, including a garage sale and barbeque. Ms. Pierre stated that the office (i.e., property management staff) would respond to the notices and they would look into other means to address them. Ms. Pierre testified that they consulted with CHFT, who connected them with other agencies and also advised the Board to relocate security cameras. Ms. Pierre was aware that cameras were relocated on the seventh floor, where she lives, but was not sure of other floors. In Ms. Pierre's view it was unnecessary to hold an emergency meeting regarding harassing flyers because the monthly Board meetings were lengthy, 4-5 hours long, and the Board was dealing with so many complaints about various issues and other business.

[131] Ms. Pierre's evidence was that the Board decided to reduce members' access to security camera footage as noted in the notice to the membership dated October 25, 2012. According to Ms. Pierre, the Board made the decision because two tenants were being stalked by other members who were using the cameras to track them.

[132] Ms. Pierre's recollection of the AGM of November 19, 2012 was vague, but her evidence was that the Minutes of the meeting reflected what Ms. McNamara said regarding the Board election. Ms. Pierre's understanding was that the applicants retained the right to run in the Board election. Ms. Pierre stated that she did not tell Ms. McNamara to comment on the eligibility of the applicants and that the Board did not discuss the issue. Neither the Board nor the property management staff made any announcement regarding the applicants' eligibility to run for the Board.

[133] Ms. Pierre's evidence was that she spoke to the police prior to the meeting with some of the former Board members on September 6, 2012. According to Ms. Pierre, two officers, whom she identified as Mark and Dale, attended the meeting and brainstormed with the Board members prior to the meeting. Ms. Pierre's evidence was that the officers told them that they had done all they could and individuals affected would have to file complaints. Ms. Pierre's evidence was that the Co-op could not deal with this issue and that the Board had done its part by removing the flyers and graffiti.

[134] In cross-examination, Ms. Pierre confirmed that the Board spent a lot of time in meetings addressing the harassment occurring in the Co-op. Ms. Pierre confirmed that the Board dealt with many other matters, but spent more time on the harassment complaints and in fact, did not have time to deal with some other issues. Counsel for the applicants confronted Ms. Pierre with Ms. Baduria's notes of the Board meetings and suggested that these notes showed the Board spent almost no time dealing with harassment issues. Ms. Pierre stated that the notes were not hers and reiterated that the Board dealt with the flyers and other complaints. Counsel for the applicants took Ms. Pierre through the notes for the Board meeting of June 25, 2012, which she agreed was the New Board's first meeting. The notes described a long list of issues of the Board dealt with, which for the most part Ms. Pierre recalled. Counsel pointed out that there was no mention of human rights issues. Ms. Pierre's evidence was that this issue was taken "in-camera", which the Board did when discussing sensitive issues. The in-camera portion of the meeting was not included in the notes.

[135] Mr. Pierre's evidence was that the Board concluded that the members would still be safe with only a view of lobby from the security cameras. The Board's view was that the members did not need to see the other views.

[136] Ms. Pierre agreed that the Human Rights By-law was implemented as a response to the human rights applications filed if the Co-op. When asked why the by-law was not enacted in response to the harassment and discrimination itself, Ms. Pierre stated that the Board never faced such an issue before and could not be expected to know how to handle it. In Ms. Pierre's view, the Board reacted as best they could to help

and sought guidance. Ms. Pierre asked rhetorically what more the Board could have done. In Ms. Pierre's view, the applicants did not need to take legal action. Ms. Pierre stated that the Board reached out to the former Board, but only two former Board members showed up. Ms. Pierre further stated that there was a communication barrier between the Board and the former Board.

[137] When asked what the Board hoped to resolve through mediation, Ms. Pierre noted that a lot of complaints came from the former Board members. For example, Ms. Crew and TS submitted complaints about a number of things, and believed the flyers were retaliation after the requisition meeting. Ms. Pierre stated that they did not understand what was going on or how matters had reached the point that they did. Consequently, the Board wanted to gain a better understanding of the situation and to work with the former Board members. When asked why the Board did not call an emergency meeting, Ms. Pierre stated that the Board had offered mediation, which was refused, and the Board felt it had done its part. In Ms. Pierre's words, if the former Board members did not want to "come to the table", then the Board would deal with the matter in the course of their normal meetings. When advised that Constables Nichiporik and Gomez gave evidence that they perceived the Board to have taken a relaxed attitude to the harassment, Ms. Pierre said she was shocked and asserted that they had "picked their (i.e., the officers') brains for ideas". Ms. Pierre disagreed that removing the security camera footage was a bad idea and stated that no one had been caught on camera. Ms. Pierre also pointed out that the removal of the camera feeds did not result in increased occurrences of harassment. Rather, the harassment decreased because of the steps taken by the Board. When asked if more notices could have been posted and camera footage checked when flyers were posted, Ms. Pierre stated that she believed the footage was checked, e.g., when a door was egged. She did not recall if the cameras were checked each time a flyer was posted. It was her recollection that the cameras did not catch apartment doors.

[138] In redirect, Ms. Pierre stated that the purpose of the meeting on September 6, 2012 was to address both the flyers and other complaints.

[139] Laura Borden has been a member of the Co-op for about 20 years. As noted above, Ms. Borden had served on the Old Board and her evidence was that she resigned her position on the Old Board in April 2012 because she did not agree with the manner in which the Old Board conducted itself. According to Ms. Borden, the “last straw” pushing her towards resignation was the Old Board’s repeated requests for her to produce receipts to establish that she, and not the Co-op, paid for certain upgrades to her apartment. Ms. Borden stated that she provided her receipts, but the Old Board continued to press her. Ms. Borden disagreed that she made a comment to the effect that she “would go after them full force” in reference to the Old Board at the time she resigned, as Ms. Hayward had testified. Rather, her evidence was that she said something to the effect of “they are going to get them”, i.e., the Old Board would get her receipts. Following the resignation, other Co-op members began circulating a petition to require a meeting in order to remove the Board. Ms. Borden stated that she signed the petition, but did not initiate it. As is well-established, the Old Board was removed at the requisition meeting and the New Board voted in with Ms. Borden as president.

[140] Ms. Borden testified that she was familiar with the offensive flyers posted in the Co-op, as members brought them to the administrative staff to be forwarded to the Board. In cross-examination, Ms. Borden stated that she did not actually read the flyers – she found them too distressing – but that they were read aloud at Board meetings. Ms. Borden testified that the Board was shocked and disgusted by the flyers and wanted to find out who was responsible. Accordingly, the Board directed Ms. Baduria to review the security cameras. Ms. Borden stated that the Board did not know what to do, but advised CMHC and considered speaking to members to see if there were any witnesses. Ms. Borden was not sure when she first contacted the police but estimated that it would have been the end of June or early July 2012. According to Ms. Borden, the police advised her that the Co-op needed to find out who had posted the flyers. Ms. Borden stated that some members spoke to her about the flyers and she advised that the Board was looking into it. Ms. Borden stated that she spoke to members in passing or at the park about whether they had seen anything.

[141] Ms. Borden's evidence was that she advised CMHC of the situation. Ms. Borden stated that she had a brief conversation with a person named Michelle who advised that the Co-op had to try to find the culprit.

[142] Ms. Borden testified that she told Ms. Crew that she contacted the police, not that she was working with them. Ms. Borden's evidence was that she and Ms. Crew met with Constables Gomez and Nichiporik on August 23, 2012. Ms. Borden stated that the focus of the meeting was the flyers and how to work together to stop "all of this". Ms. Borden's evidence was that the police offered mediation for both "sides", which was declined. The police did not offer any other solutions to respond to the flyers. Ms. Borden confirmed that she shared her suspicion with constable Nichiporik that Ms. Whalen was responsible for the flyers. Ms. Borden stated that she thought Ms. Whalen may be involved because she and TS had a falling out. Ms. Borden stated that she had no proof of Ms. Whalen's involvement and that Ms. Whalen denied responsibility when asked. Ms. Borden stated that she took no steps to investigate whether Ms. Whalen was involved and stated that there was nothing she could do at that point.

[143] Ms. Borden's evidence was that the notice sent to members on June 6, 2012 was an attempt to remind them that vandalism and postings were not acceptable and would not be tolerated. The notice of July 6, 2012 was a follow up because the vandalism continued and it needed to stop, as horrible things were being written and things such as eggs and coffee grounds had been thrown at members' doors. Ms. Borden stated that the third notice, dated August 20, 2012, came about after she contacted CERA. According to Ms. Borden, CERA suggested a notice stating that the Co-op had no tolerance for harassing flyers. Ms. Borden stated she drafted the notice with the assistance of the property management company. Ms. Borden stated that she was not sure if CERA received a copy of the third notice, but stated that they were quite pleased by the action taken.

[144] Ms. Borden testified that the Co-op relocated cameras on the seventh floor because of concerns about vandalism. Ms. Borden stated that the cameras on the eleventh floor were relocated because she believed Ms. Welykyi had concerns, but did

not recall Ms. Welykyi's exact complaint. Ms. Borden's evidence was that the security surveillance company employed by the Co-op advised that fake cameras would be a good deterrent, since installing real cameras was not financially feasible. The fake cameras were removed when the property management company expressed concerns about liability if the cameras were not recording. Ms. Borden stated that she did not recall why cameras were located on the second floor. According to Ms. Borden, the property management company was advised that they could move cameras without Board approval if needed. Ms. Borden stated that, to her knowledge, Ms. Baduria checked the security cameras. Ms. Borden stated that Ms. Baduria was to check the cameras when requested by the police. Ms. Borden stated that she also checked the cameras with the police. Ms. Borden testified that no evidence regarding who was posting the flyers was gained through the security cameras. Ms. Borden identified a letter, dated August 9, 2012, that she sent to the former Board members on behalf of the Board. The letter reads as follows:

I am writing on behalf of the Board of Directors to extend an invitation to the former Board members to attend a special meeting with the current Board. The goal of this meeting is to collectively develop a plan to serve our Co-op in the future. The Board has scheduled this meeting on Thursday, September 6, 2012 at 7:00 p.m. in the Co-op Office. We have asked CHFT to accommodate us with neutral facilitator in order to have a positive and productive discussion. The Board recognizes that we are all members of the Rouge Valley Co-op and are committed to respect cooperative living.

We look forward to seeing you at the meeting.

On behalf of the Board of Directors, I want to thank you for your cooperation.

[145] Ms. Borden's evidence was that the purpose of the invitation was to work together with the Old Board members about the vandalism in the building. When advised that the Tribunal had heard evidence that she had stated the purpose of the meeting was not to address the flyers, Ms. Borden asserted that the meeting was not intended to address the details of the flyers, but to find ways to stop them from being posted.

[146] Ms. Borden was also asked about Ms. Crew's evidence to the effect that Ms. Crew had presented her with a flyer while in the park and Ms. Borden stated that the author of a flyer could not spell and advised that a woman had been caught on camera. Ms. Borden denied that she had seen a flyer in the park and stated that she thought the flyers were disgusting. Ms. Borden stated that she viewed security camera footage following an incident of vandalism. The footage revealed a woman in a motorized scooter come and go and then showed a broken egg in the same vicinity. The police thought this person may have been responsible for the egg and spoke to her about it. According to Ms. Borden, there was no discussion that the person throwing eggs was also the person who posted flyers.

[147] Ms. Borden testified that she was present at the AGM of November 19, 2012. Ms. Borden was directed to paragraph 13 of the Minutes of the AGM regarding the Board election that recorded Ms. McNamara's statement about a perceived conflict of interest if any of the applicants ran for the Board. Ms. Borden stated that she did not recall hearing the statement, as it was very loud at the meeting, but said that she believed Ms. McNamara did make the statement. Ms. Borden's understanding was that Ms. McNamara made the statement attributed to her after a member was heard to assert that members with human rights applications could not run. Ms. Borden's evidence was that the Board did not direct Ms. McNamara to make the statement. Ms. Borden also stated that the Board had been advised not to speak at the meeting. Ms. Borden stated that the Board did not decide that the applicants were not entitled to run for Board positions.

[148] Ms. Borden's evidence was that the Board adopted the Human Rights By-law because of the flyers and in response to the applicants' complaints. Ms. Borden stated that the Board felt helpless to find out who posted the flyers, which they were advised to do. Ms. Borden stated that because the flyers were posted out of camera range there was nothing more they could do.

[149] In cross-examination, Ms. Borden stated that she resigned from the Board in April 2012 because of the Board's behaviour in general. The main reason was not a

request for receipts. She agreed that the request for her receipts upset her. Ms. Borden denied that she stated that she wanted “go after” the Board when she delivered her resignation letter. Rather, she meant that the Board would “get them”, i.e., the receipts.

[150] Ms. Borden agreed the flyers were brought to the Board and that she did not read them. Ms. Borden stated that it was not important for her to read them and the content was so abusive. Ms. Borden stated that no one should be subject to such behaviour. Ms. Borden noted the flyers were read out at Board meetings. As a result, Ms. Borden did not recognize specific flyers, as there were so many of them. She did not recall a reference to “us” in a flyer posted on August 24, 2012 regarding the Board. Ms. Borden agreed that the word “us” in a flyer appeared to refer to the Board. Ms. Borden stated that she was not sure she could have believed that a Board member was responsible if she had read this flyer at the time. Ms. Borden agreed, however, that she asked Ms. Whalen, who is on the Board of the time, if she had anything to do with the flyers.

[151] Ms. Borden recalled that Ms. Crew and Mr. Bowerman brought a flyer to her in the park. Ms. Borden denied that she read the flyer. Rather she glanced at it and said it was horrible. Ms. Borden did not recall that she commented on the poor spelling in a flyer, but remembered handing it back to him because he had to bring it to the Board. She disagreed with Mr. Bowerman’s assessment that she showed little empathy by commenting only on spelling. Ms. Borden stated that she cared very much about the flyers.

[152] Ms. Borden’s evidence was that Ms. Hayward was directed at a Board meeting to review security cameras when requested and that the Board delegated this function to the staff. Ms. Borden stated that the Board was meeting once or twice per month, but could also hold phone meetings. She agreed that the Board did not call a meeting to address the flyers specifically. When asked what it meant that the Board “was looking into it”, i.e. the flyers, Ms. Borden stated that the Board directed Ms. Baduria to view the security cameras, but the flyers were out of range. Ms. Borden stated that she also spoke to the police and another agency. The Board also looked at relocating and adding

cameras. When it was put to her that Constable Gomez testified that she only left him one voicemail message, Ms. Borden stated that she called him more than once, although she may have left only one message for him. Ms. Borden also stated that she had been unaware that he was on vacation. It was also put to Ms. Borden that Constable Gomez was frequently in contact with some of the applicants and this suggested that she did not try very hard to contact him. Ms. Borden denied the suggestion and stated she definitely made efforts and that the issue was not taken lightly. It was also put to Ms. Borden that Constable Gomez testified that he did not believe that the Board took the harassment seriously and that it appeared that the tension between the Board and the Old Board affected the Board level of interest in the issue. Ms. Borden stated that the perception that the Board did not take the issue seriously was disappointing. She disagreed that the Board gave the flyers less attention because of the relationship between the Board and former Board. Ms. Borden stated that they all lived in the Co-op and had interest in stopping the flyers.

[153] Ms. Borden disagreed that mediation was intended to address issues between the Old and New Boards. Rather, she asserted that it was an attempt to bring everyone back together. She agreed that there was a link between the discrimination and the tension between the Old and New Board because the Board was accused of not doing anything. Ms. Borden was shown an e-mail message from Ms. Baduria to Ms. Hannant dated August 7, 2012. The message indicates that the Board decided to meet with the former Board and asked Ms. Hannant for her availability so that she could chair the meeting. The message describes the purpose of the meeting as “reaching out to move forward, not to air grievances”. The message also states as follows: “The Board is only prepared to sit down with them for an hour. It will NOT be an avenue for ‘complaints, recalling the requisition, eggs and vandalism, etc.’” The message also confirms that the Board adopted a policy over the weekend to prevent members from using mailboxes to distribute information after the former Board members inserted letters into mailboxes about their situation. When it was put to her the message indicated that the meeting was not to address the flyers, Ms. Borden agreed that she did not intend to discuss the individual flyers, but wanted to hear from former Board members about the flyers and

any suggestions they may have had. Ms. Borden agreed that both TS and her son had been targeted by the flyers, but TS was not invited to the meeting. Ms. Borden's explanation for this was that TS was not on the former Board. When asked why TS was not invited if the subject of the meeting was the flyers and not Board versus Old Board issues, Ms. Borden stated that she just knew that it was the prior Board they needed to meet with. Ms. Borden could not say why TS was not invited, but stated that, in hindsight, she should have been.

[154] Ms. Borden was shown a letter dated August 8, 2012 from CERA. The letter urges the Co-op to take action to address discriminatory harassment at the Co-op. Ms. Borden agreed that the victims of the harassment contacted CERA for help. Ms. Borden stated that she contacted CERA as well, although CERA contacted her first. She had not been aware that the victims had contacted CERA. The letter was date stamped as received by the Co-op on August 14, 2012, but Ms. Borden was not sure when she first saw it. Ms. Borden agreed that the notice to the membership of August 20, 2012 was prompted by CERA's letter. Ms. Borden also agreed that the notice of August 20, 2012 was the first notice that specifically referred to discrimination and the *Human Rights Code* and that confirmed that the flyers violated members' human rights. Ms. Borden stated that this was another reason to reach out to the victims as they may have knowledge by virtue of their contact with CERA.

[155] Ms. Borden acknowledged that the Co-op did seek legal advice about the harassment, but did not recall precisely when. Ms. Baduria was in touch with the Co-op's lawyer. Apparently, the advice received was that the Co-op could not take action without proof of the perpetrator. Ms. Borden agreed that the Board could have advised the membership that the notices were contrary to the *Code* sooner than it did. Ms. Borden stated that when the notices did not stop they needed to take action. When asked why she thought the notices would stop, she said that she would not have expected them to continue and she had spoken to members about how serious it was and that the cameras were monitored.

[156] Ms. Borden was shown an e-mail message from Ms. Baduria dated August 31, 2012, entitled “Harassment continues at Rouge Valley Cooperative Homes Inc. - Human Rights are being violated” related to more flyers attached to the door of apartment 202. Counsel for the applicant directed Ms. Borden to the fourth paragraph which reads as follows:

The Agency c/o of the Manager who’s taking over while Donna is on vacation, called me yesterday and expressed her concerns. The alleged harassment may escalate into a bigger case if the Co-op and the Board will not do any further action to stop these disturbing notices. This time, even hurtful words like “retarded” targeting an innocent child is being posted.

Ms. Borden denied that the message implied that the Board was not doing enough to address the harassment. Ms. Borden stated that, rather, the message indicated that matters had escalated and they needed to do something more to address the problem. Ms. Borden was then directed to the sixth paragraph of the message which read as follows:

We are recommending for the immediate relocation of the existing hallway camera on the second floor to point unit 202, same way we did to the 7th floor camera when 707 was complaining about eggs. [*errors in original*]

Ms. Borden stated that she did not respond personally to the message, but that she understood the camera was moved and that cameras were moved whenever asked.

[157] Ms. Borden was shown another e-mail message from Ms. Baduria to the Board, dated September 5, 2012. The message was a follow-up to Ms. Baduria’s message of August 31, 2012 and states as follows:

Dear Board Members,

We had thought that the harassment stopped, as we did not hear anything over the weekend.

However, we received this morning attached notice posted on unit 202’s door yesterday between 3 and 3:30 pm. This is really very disturbing.

We highly recommend for the relocation of the camera ASAP, possibly today if 360 Security is available.

The Co-op and the Board should not tolerate this type of harassment. The Board must do something about it before the Board gets sued for negligence or lack of interest to stop the harassment.

The relocation is very effective, as experienced by the member in 707.

Ms. Borden agreed that Ms. Baduria requested immediate relocation of a camera on August 31, 2012, and repeated the request on September 5, 2012. Ms. Borden stated that Ms. Baduria had been given permission to have cameras relocated. Ms. Borden stated that she responded to the message by telling Ms. Baduria that she did not need further permission to move cameras.

[158] Ms. Borden was shown an e-mail message dated October 2, 2012 from Ms. Baduria to the Board. The message advised the Board that the Agency had approved the installation of a new camera in the mailroom and asked for the Board's approval. Ms. Borden stated that she did not personally receive this message, as she does not check her e-mail, but the message was brought to the Board. When challenged about not checking her e-mail during a serious situation, Ms. Borden agreed that the situation was serious and therefore wanted to be notified personally. In response to the suggestion that the message indicates that the new camera was in response to the human rights applications, Ms. Borden said the camera was installed because flyers began to appear in the mailroom. Ms. Borden denied that the Board took the issue seriously only when the applicants filed human rights applications. Ms. Borden stated that the Board took the situation seriously from the beginning, but did not know what to do. Ms. Borden agreed that it may appear that the Board's actions were reactionary, e.g., when asked by CERA, but stated that there was no manual to follow. Ms. Borden asked rhetorically what can be done without proof. Ms. Borden agreed, however, the Human Rights By-law implemented by the Co-op was in response to the human rights applications and not the discrimination itself. Ms. Borden stated that following the human rights training, the Board had a better understanding of the issues and she wished they could have worked together more to address the issue. Ms. Borden agreed

the Human Rights By-law sets out the investigation procedure, but agreed that the Board could have investigated without the by-law.

[159] When asked why members with human rights applications thought they could not run for the Board, Ms. Borden suggested that they may have concluded that they could not run if Ms. McNamara said there was a conflict. Ms. Borden stated that she did not hear Ms. McNamara because it was loud at the meeting. Ms. Borden reiterated that the Board did not instruct Ms. McNamara to comment on the human rights applications. Ms. Borden's evidence was that she later asked Ms. McNamara if she had asserted that there may be a perceived conflict if the applicants ran for the Board and Ms. McNamara confirmed that she did.

[160] Ms. Borden's evidence was that the issue of the security camera feeds was not really connected to the flyers. Ms. Borden stated that the Board was trying to balance privacy and safety concerns of its members. In her view, removing the camera feeds did not compromise safety.

[161] In re-examination, Ms. Borden stated that the Board had conducted a few telephone meetings between May 23 and September 2012. Ms. Borden's evidence was that the Board held telephone meetings to address applications for memberships. Ms. Borden stated that the Board spoke about viewing cameras by telephone. Ms. Borden stated that the Board agreed that she would contact the police on the Board's behalf. Ms. Borden was asked whether it was expected that the flyers would cease if the tension between the Old Board and the New Board subsided. She replied the Board felt that if the two groups came together, then they would have a better understanding of how people felt they would be able to get to the bottom of the issue. Ms. Borden stated that she had not been aware of CERA until she was contacted by them. Ms. Borden stated that the Human Rights By-law was adopted in response to the flyers and property damage experienced at the Co-op, as well as because of the breakdown in communications between members.

ANALYSIS AND DECISION

[162] The relevant provisions of the *Code* are as follows:

2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

...

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

[163] Many of the facts were not disputed, but, as is described below, some of my findings of fact are based upon my assessment of witness' credibility. In assessing credibility, I have applied the principles set out in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA). At pages 356-357, the British Columbia Court of Appeal stated:

...Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility.

The credibility of interested witnesses, particularly in cases of conflict of evidence cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions (...) Again, a witness may testify to what he sincerely believes to be true, but he may be quite honestly mistaken.

Other factors for assessing credibility include the witness' motives, the witness' relationship to the parties, the internal consistency of their evidence, and inconsistencies and contradiction in relation to other witnesses' evidence: *Cugliari v. Telefficiency Corporation*, 2006 HRTO 7.

[164] I also have been assisted by the observations on credibility assessment made in *R. v. Taylor*, 2010 ONCJ 396, as follows (at paragraphs 58 to 60):

“Credibility” is omnibus shorthand for a broad range of factors bearing on an assessment of the testimonial trustworthiness of witnesses. It has two generally distinct aspects or dimensions: honesty (sometimes, if confusingly, itself called “credibility”) and reliability. The first, honesty, speaks to a witness' sincerity, candour and truthfulness in the witness box. The second, reliability, refers to a complex admixture of cognitive, psychological, developmental, cultural, temporal and environmental factors that impact on the accuracy of a witness' perception, memory and, ultimately, testimonial recitation. The evidence of even an honest witness may still be of dubious reliability.

All of this has been said many times before, including by Doherty J.A. for the Court of Appeal in *R. v. Morrissey* (1995), 1995 CanLII 3498 (ON CA), 97 C.C.C. (3d) 193, at 205:

Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is honest witness, may, however, still be unreliable.

Depending on the circumstances, some portions of a witness' testimony may be more credible or worthy of belief than other portions. Accordingly, I can, with good reason, accept all, some or none of any witness' evidence: see *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at para. 65.

[165] The person responsible for the harassing messages and flyers was never identified. Although some of the applicants have suspicions about who the perpetrator was, as noted above, the applicants' claim regarding the messages and flyers is that the respondent did not adequately address the harassment and discrimination they experienced. The parties acknowledged that the Tribunal's jurisprudence establishes that the right to be free of discrimination and harassment in the occupancy of accommodation imposes an obligation on a housing provider such as a landlord or Co-operative to address complaints of *Code* violations. This jurisprudence was first developed in the employment context. See *Laskowska v. Marineland of Canada Inc.*, 2005 HRTO 30, and cases cited therein. The Tribunal has found that similar obligations arise in the housing context. See *Bekele v. Cierpich*, 2008 HRTO 7. In *Laskowska*, the Tribunal set out the following oft-cited principles for assessing whether a complaint has been addressed adequately, at paragraphs 59-60:

- (1) **Awareness of issues of discrimination/harassment, Policy, Complaint Mechanism and Training:** Was there an awareness of issues of discrimination and harassment in the workplace at the time of the incident? Was there a suitable anti-discrimination/harassment policy? Was there a proper complaint mechanism in place? Was adequate training given to management and employees;
- (2) **Post-Complaint: Seriousness, Promptness, Taking Care of its Employee, Investigation and Action:** Once an internal complaint was made, did the employer treat it seriously? Did it deal with the matter promptly and sensitively? Did it reasonably investigate and act; and
- (3) **Resolution of the Complaint (including providing the Complainant with a Healthy Work Environment) and Communication:** Did the employer provide a reasonable resolution in the circumstances? If the complainant chose to return to work, could the employer provide her/him with a healthy, discrimination-free work environment? Did it communicate its findings and actions to the complainant?

While the above three elements are of a general nature, their application must retain some flexibility to take into account the unique facts of each case. The standard is one of reasonableness, not correctness or perfection. There may have been several options – all reasonable – open

to the employer. The employer need not satisfy each element in every case in order to be judged to have acted reasonably, although that would be the exception rather than the norm. One must look at each element individually and then in the aggregate before passing judgment on whether the employer acted reasonably.

[166] The Tribunal has also found that the relative sophistication of the respondent should be considered in assessing whether it acted reasonably in the circumstances. See *Coates v. Communication, Energy & Paperworkers Union, Local 324*, 2009 HRTO 1631. In this case, the respondent Co-op is run by a volunteer Board, elected from the membership, that does not have the same sophistication as a large employer. Notwithstanding this context, I find that the respondent did not meet its obligation to the applicants to address their complaints of harassment and discrimination.

[167] In my view, the evidence discloses significant deficiencies in the respondent's response to the harassment directed at the applicants.

[168] There is no dispute that the Co-op did not have an anti-discrimination/harassment policy at the time the harassment in question in these Applications occurred. Similarly, there is no dispute that the Board members did not receive any human rights training and there is no evidence that any of the administrative/property management staff did either. The evidence was that the antidiscrimination/anti-harassment policy currently in place at the Co-op and the training received by Board members regarding human rights issues came about as a result of these incidents and the applicants' Applications. The Co-op had a complaint mechanism in place to deal with the various complaints and issues that arise in the day-to-day life of the Co-op. The mechanism was to put complaints in writing, which would be considered at the next Board meeting. There was no mechanism to deal with human rights issues specifically. There was a mechanism to deal with emergent issues, but it was not invoked regarding the harassment experienced by the applicants. In my view, the evidence clearly shows that Board members had no awareness of human rights issues. The evidence was that the Board had no appreciation of human rights dimension of the harassment until they received CERA's letter of August 8, 2012. The respondent's

witnesses stated and the evidence was that the Board did not know what to do in response to the harassment.

[169] In my view, the formal processes and policies that a housing provider may have in place are less important than what it actually does once it receives a complaint of harassment. Whether the respondent's reaction to complaints of harassment was reasonable, depends, as noted, on the unique circumstances of each case. One of the unique and obvious characteristics of this case was that the harassment experienced by the applicants was egregious and persistent. In this context, the evidence does not support the respondent's contention that it took the matter seriously or addressed it with a sense of urgency. In my view, the respondent's most significant failure was the complete absence of communication with the applicants. In my view, when a respondent receives a human rights complaint it should acknowledge the complaint, assure the complainant(s) that the complaint is important, and that action will be taken to address it. In ongoing situations such as this one, a respondent should maintain contact with the complainant(s) and keep them apprised of the actions the respondent intends to take. Such communication is particularly important in the housing context, where a housing provider does not have control over the residents and therefore has limited ability to investigate and address complaints. An employer, by contrast, can compel its employees to participate in investigations and may take action even when investigation results are inconclusive. In cases of surreptitious harassment, such as this one, it may not be possible to catch the culprit, but the victims must be assured of their right to live in an environment free from discrimination and harassment. The evidence was that the Co-op never contacted the applicants about the flyers.

[170] The respondent submitted that the special meaning of September 6, 2012 was an attempt by the Board to address the harassment by reaching out to the victims. There was some conflict in the evidence regarding the date of this meeting (September 6 or September 9, 2012), but the evidence, including the Minutes of the meeting, indicate that it was most likely held on September 6, 2012. Nothing turns on the actual date. While there is no doubt that a meeting was held on September 6, 2012, the

evidence does not support the conclusion that anything was communicated about the harassing flyers or that this meeting could in any way be considered a response, much less an effective one, to the harassing flyers. First, calling a meeting in early September to deal with harassment that commenced in late April can hardly be described as proactive. Second, it is not at all clear that the meeting was intended to deal with the flyers. The Board only invited the Old Board, rather than all the victims of the harassment, as it should have if the flyers were to be discussed. The invitation to the meeting stated that the goal of the meeting was to “develop a plan to serve our Co-op in the future”. In the context where, on the evidence, there was ongoing conflict between the Board and the Old Board about operational issues at the Co-op, it is far from clear that the ongoing harassment was an intended topic of discussion. The invitees’ confusion about the meeting is demonstrated by the fact that CERA asked for clarification about the purpose of the meeting on their behalf in an e-mail message to the Co-op on August 30, 2012, which also contained the recommendation to install a camera in the mailroom. There is no evidence of the Co-op responded to this query. Third, it was at this meeting of the Board offered mediation to the Old Board members. The respondent’s witnesses were repeatedly asked how “mediation” was expected to address the harassment experienced by the applicants. I found both Ms. Pierre’s and Ms. Borden’s evidence on this point to be evasive and illogical. Mediation is a dispute resolution process in which a mediator assists parties in negotiating a resolution or settlement to a dispute. There is no doubt that the New Board and the Old Board had a number of disputes about the management of the Co-op. Resolving these disputes through mediation would have been, in my view, a logical and reasonable proposal. There was no dispute, however, about the harassing flyers. Both the Board and the victims wanted them to stop. The issue was the applicants’ perception that the respondent was not doing enough to stop them. Mediation as a means to stop the harassing flyers implies that the Board could put an end to the flyers if the Old Board members agreed to some sort of resolution. Of course, the Board had no such ability and the respondent’s witnesses did not suggest the Board was seeking something in exchange from the Old Board to stop the harassment. Rather, the respondent’s witnesses stated that they wanted to discuss any ideas the Old Board members may

have had to address the harassment. The Board could have simply asked the Old Board members present for their ideas at the meeting of September 6, 2012 – mediation was not required. The Board made no such inquiry. In my view the evidence does not support, on the balance of probabilities, that the meeting of September 6, 2012 was called to address the flyers. Finally, whatever the Board’s intention, the evidence was that the meeting broke down and the issue of the harassing flyers was never in fact discussed.

[171] In coming to this conclusion, I reject Ms. Pierre’s evidence that the Board sought suggestions (“picked their brains”) from the police officers who attended the meeting or that these officers advised the Board that they had done all they could to address the harassment. Constable Nichiporik’s evidence was that he was not expected at the meeting and he gave no evidence that anyone questioned him about measures to be taken to address the harassment. This was also not specifically put to him in cross-examination. His evidence was that the harassment was not really discussed at all at the meeting. Constable Nichiporik did not explicitly testify that he felt the Board’s response to the harassment was inadequate, as the applicants submitted, but he certainly did not express the opinion that the Board had done all it could. Constable Nichiporik had no interest in these proceedings and provided his observations in a straightforward, even-handed, factual manner. I find it likely that had Ms. Pierre and the other Board members pressed him for ideas to combat the harassment, Constable Nichiporik would have included this in his testimony. Ms. Pierre’s actions were directly impugned in these Applications and she had an interest in casting her actions in the best possible light. Ms. Pierre’s recall of events was sometimes vague and she tended to exaggerate the Board’s efforts. Moreover, none of the other witnesses who attended this meeting testified that anyone spoke to the officers about the harassment or that they commented positively about the Board’s actions. In all the circumstances, I find it unlikely that the officers were asked for advice about the harassment or that they commented to the effect that the Board had done all it could.

[172] The only evidence of direct communication between the applicants and the respondent regarding the harassing flyers was when Mr. Bowerman and Ms. Crew presented one of the flyers to Ms. Borden in the park. I prefer the evidence of Mr. Bowerman and Ms. Crew to Ms. Borden's. Mr. Bowerman and Ms. Crew had consistent, specific and detailed recollections of this event. In particular, both Mr. Bowerman and Ms. Crew testified that Ms. Borden read the flyer and commented on the poor spelling in the flyer, which is consistent with the fact that rudimentary spelling errors were featured in almost all the flyers. Both Mr. Bowerman and Ms. Crew testified that Ms. Borden advised them that the culprit had been caught on camera, was not a man and that they would be surprised to learn who it was. This is consistent with Ms. Borden's evidence that she had reviewed security camera footage following an egg-throwing incident and the footage indicated that the person responsible was a woman. Ms. Borden first denied that she read a flyer in the park. She later stated that she was presented with a flyer, but only glanced at it. Accordingly, her testimony was not consistent. Ms. Borden's recall of events arising in these Applications was not particularly strong, particularly given the gravity of the situation and her leadership position, and, of course, her actions, or inaction, were directly impugned by the applicants. On a balance of probabilities, I find that this incident occurred as Mr. Bowerman and Ms. Crew described it. That is, Ms. Borden was presented with a harassing flyer, commented only on the author's spelling difficulties, and advised that it appeared that a woman may be responsible. Accordingly, Ms. Borden expressed no denunciation of the flyers or concern for the victims and gave no indication that she or the Board would do anything about them other than that "she would look into it". Ms. Borden presented her testimony in a rather detached, unconcerned manner and this reaction may have been a product of Ms. Borden's personality. Nonetheless, this interaction gave Mr. Bowerman and Ms. Crew no reason to believe that Ms. Borden thought the harassment was a particularly important issue.

[173] The failure to communicate with the applicants coloured their view of some of the actions the respondents did take. For example, several of the applicants did not believe the notices posted in the Co-op on June 6 and July 6, 2012 had anything to do with the harassing flyers. Rather, they understood them to address other unwelcome behaviour

occurring in the building, such as vandalism in the stairwell, to which the first notice specifically refers. Had the Board advised the applicants in advance that the first two notices were to be posted and were intended to address the flyers, the applicants would have had a better sense of being supported and could have advocated to have the notices clearly address the harassing flyers.

[174] In that respect, the applicants' criticism of the first two notices was in my view well-founded. The harassment experienced by the applicants created a poisoned atmosphere for them. In these circumstances, a housing provider must take action to counteract the effect of the harassment, i.e., to "take back" the living space for the residents. This requires public denunciation of the harassment and engagement with residents to advise them of the situation and to enlist their collaboration in addressing the issue. Notices or letters to residents can be an effective tool to achieving these ends. To be effective, however, notices must clearly identify the nature of the harassment. The first two notices do not do that. The first flyer refers to vandalism and "very disturbing behaviour" and goes on to cite specific examples of vandalism, but not the flyers. There is no doubt that the harassing flyers amount to very disturbing behaviour, a point repeatedly made by respondent's counsel in cross-examination. In other words, the notices *could* be about the flyers. Some of the harassment, such as the writing on Ms. Welykyi's door, can also be considered "vandalism", which denotes acts of property damage. In my view, the flyers, the most common medium for the harassment at the Co-op, did not really come within that definition. Further, given the references to the specific acts of vandalism occurring at the Co-op, I find it unlikely that the term "vandalism" in the notices is a reference to the flyers. The fact that the notice is arguably about the harassment perpetrated at the Co-op is not adequate. To be effective, the notices should have explicitly described the harassment occurring at the Co-op. It may have been that the author, Ms. Baduria, was trying to address several issues in the same notice. If so, there is nothing necessarily problematic about addressing harassment along with other issues, provided the harassment is clearly identified and denounced. In this case, the harassing flyers were affixed to one of the applicants' door, most often Ms. Welykyi's, and were removed soon after they were

posted. Consequently, members not affected by the harassment and/or living on other floors would have had no reason to be aware of the flyers. There was little evidence about whether the membership was aware of them. To be sure they were aware, the notice needed to be explicit about the harassment.

[175] The second notice, posted on July 6, 2012, suffers from the same defects. It was a follow-up to the first notice and indicates that the behaviour in question, “vandalism and abuse of Co-op community,” did not cease. The second notice could also arguably be about the harassment occurring at the Co-op, as the respondent submitted. In my view this was not an adequate response to the very serious harassment occurring at the Co-op, for the same reasons I found the first notice to be ineffective, above.

[176] There is no dispute that the notice or memorandum entitled “Discriminatory Harassment” sent to membership on August 20, 2012 specifically referred to the harassing flyers (as “notices”) and clearly stated that they amounted to violations of the *Code*. The notice denounces this behaviour and threatens eviction for anyone caught acting in this manner. Although the notice would have benefited from more detail about the harassment, the nature of the impugned behaviour was clear and could not be confused with any other unwelcome activity at the Co-op. However, this was the first – and only – communication from the Co-op that clearly addressed the harassment directed at the applicants. The notice of August 20, 2012 was distributed nearly four months after the harassment began and nearly two months after the previous, more ambiguous notices, a period in which six further harassing flyers were posted in the Co-op. The evidence was also that this notice came about because CERA contacted the Board, in Ms. Campbell’s letter of August 8, 2012, and informed the Board of its obligation to take appropriate action to provide a discrimination-free environment for its members. There is no evidence that could support the inference that the Board would have sent another notice, but for the prompting of CERA. In my view, these factors demonstrate a lack of proactivity and urgency on the Board’s part.

[177] I accept the evidence of Ms. Borden and Ms. Pierre that they and the Board disapproved of the harassment and wanted it to stop. The evidence does not support

the inference that they treated the issue particularly seriously or with a sense of urgency. A key indicator of this lack of urgency was that the Board gave the harassment no priority and dealt with it as an issue, amongst others, that they dealt with in the course of their regular meetings, which were held once a month at that point. Between the meetings, the harassing flyers continued to go up in the Co-op and were delivered to the office to be brought to the next Board meeting. The evidence was the Board could deal with matters, such as applications for membership, between meetings. The Board did not apply this procedure or implement any other practice to deal with the harassment as it occurred. I note that at the same time the harassment was ongoing the Board moved with great speed to implement a policy prohibiting members from using mailboxes to distribute material after the Old Board used the mailboxes to distribute a memorandum expressing their concerns. This formal, public and quick response was in stark contrast to the Board's response to the harassment. The result was that the harassment continued without any response or recognition of the problem. This was not an appropriate manner in which to address harassment, especially persistent harassment such as this, and the Board's response falls well short of the requirement to deal with the matter promptly and seriously. Ms. Pierre's and Ms. Baduria's evidence was that the Board did not need to call special meetings to address harassment because they were dealing with it at their monthly meetings. This showed that they and the Board lacked an appreciation for the gravity of the situation or for the effect on the victims. The excerpts of the Minutes of Board meetings and Ms. Baduria's notes indicate that the Board devoted almost no time to the issue. Ms. Pierre stated that this was because discussions regarding the harassment were held "in camera" because it was a sensitive issue meaning, apparently, that no notes were taken about such discussions. In my view, such secrecy is inexplicable and completely at odds with the Board's obligation to address the harassment quickly, forcefully and publicly. This approach may have resulted from the adversarial relationship between the New and Old Boards. Rather than hide their actions, the Board should have made the membership aware that they were discussing the issue. Even better would have been to include victims and members in the discussion.

[178] Both Ms. Baduria and Ms. Pierre stated that the Board neglected other issues to deal with harassment. Neither of them provided an example of such an issue and Ms. Baduria's notes indicate that the Board was fully engaged in the Co-op's normal business. In my view, this evidence amounts to self-serving statements made with a view to exaggerating the Board's actions.

[179] On July 19, 2012, the Board had the security cameras on the seventh and eleventh floors redirected. The action taken on the seventh floor appears to have been in response to vandalism experienced by Ms. Walsh and TS. There is no evidence of a harassing flyer or message appearing on that floor. Ms. Welykyi lived on the eleventh floor at the time and her door had been vandalized on July 2, 2012. Although the 17-day delay between a message written on Ms. Welykyi's door and the redirection of the camera onto her door cannot be described as prompt, it is also true that no messages or flyers appeared in the Co-op in this period. Relocating a camera in this way was appropriate action for the Board to take. The installation of fake cameras, whatever the other issues that arise with deploying non-operational cameras, *could* have been a reasonable approach for the Board to take in light of its poor finances. Non-operational cameras could be a deterrent, provided that the fact that they do not function does not become known. In this case, the fact that these cameras were not real became widely known almost immediately. The poor execution of the plan to use non-functioning cameras eliminated their effectiveness.

[180] The Co-op next approved the redirection of a camera on September 8, 2012 to cover unit 202, where Ms. Welykyi had moved in July. The camera was actually redirected on September 10, 2012. From July 25, 2012 until September 8, 2012, 12 harassing flyers were found in the Co-op, of which seven were found on Ms. Welykyi's door. Despite this escalation in harassment and the apparent targeting of Ms. Welykyi, the Board took no action to redirect a camera to protect Ms. Welykyi for over a month. The need for a camera covering unit 202 was first raised by CERA in an e-mail message to Ms. Borden on August 30, 2012. In e-mail messages dated August 31 and September 5, 2012, Ms. Baduria urgently requested that the Board approve relocation

of a camera to cover unit 202, noting that the Board faced legal liability if it did nothing. Notwithstanding Ms. Baduria's urgency, it was not until September 10, 2012 that the camera was redirected. This evidence, in my view, underscores the fact that the Board lacked a sense of urgency in dealing with the harassment and implemented no procedure to deal with harassment proactively.

[181] The delay in redirecting the camera to unit 202 also in my view contradicts Ms. Borden's evidence that the property management personnel had been given permission to relocate cameras without asking for the Board's permission. Giving the property management/administrative staff such permission would have been a reasonable and proactive step to take. Unfortunately, I do not find Ms. Borden's evidence on this point to be credible. In general, Ms. Borden was prone to making self-serving statements and her recall of key events was not particularly strong. More specifically, the fact that Ms. Baduria did ask for permission to relocate a camera in late August/early September 2012 clearly indicates that she had not been given permission to relocate cameras on her own initiative. Ms. Baduria's recommendations to the Board in her e-mail messages of August 30 and September 5, 2012 were urgent. I find it most likely that she would have had the camera redirected on her own initiative if she had been given this discretion. In her testimony, Ms. Baduria gave no indication that she had been given permission to have cameras redirected and this was not put to her by respondent's counsel.

[182] Similarly, I do not accept Ms. Borden's evidence that the Board gave directions to either the property management staff or Ms. Hayward to review security camera footage in connection with the ongoing harassment at the Co-op. The evidence was that only the staff, i.e., not Board members, were authorized to review the security cameras when requested and tapes of footage would be released only to the police. Directing the staff to review security camera footage after each incident of harassment would also have been a prudent and proactive measure (especially if the victims were advised of it). Ms. Hayward's evidence was that she occasionally reviewed the footage on her own initiative and was not instructed to do so. Ms. Baduria, again, gave no evidence that she

ever reviewed security camera footage. I would have expected both Ms. Hayward and Ms. Baduria to recall if they had been instructed to review security camera footage as a response to the harassment. The issue was not actually raised with Ms. Baduria when she testified. While Ms. Hayward and Ms. Baduria were called as witnesses by the applicants, their interests were more closely aligned to the respondents and they considered the Co-op to have acted appropriately. Accordingly, neither witness had any motive to frame their evidence to cast a negative light on the respondent. Ms. Borden's actions are directly impugned in these applications and she had an interest in presenting her actions in a positive manner. In all the circumstances, I find it unlikely the Board instructed Ms. Hayward or Ms. Baduria to review the security camera footage in a systematic way in response to the harassment.

[183] No more flyers were placed on the door of unit 202 after a camera was directed to cover it. Soon after, on September 11 and September 15, 2012, harassing flyers were placed in the mailbox of unit 202. A camera was eventually installed in the mailroom on October 9, 2012. Given the recent history of harassment at the Co-op, it should not have taken the Board a month to have a camera installed. The delay is explained by the fact that the Board did not turn its mind to the issue until October 2, 2012 when it received a recommendation from Ms. Baduria by e-mail (as noted in the agreed statement of facts, paragraph 33). The e-mail exchange in the proceeding messages indicates that Ms. Baduria took the initiative to research the cost of a new camera and received approval from Ms. Carbonneau for the cost. The recommendation to the Board reads as follows:

Dear Board members,

In light of the ongoing human rights cases, please be advised that Donna from the Agency has approved the installation of a new camera in the mailroom. (pls see e-mail exchange below).

Kindly confirm your approval of such recommendation of installing a new camera in the mailroom ASAP.

[184] The Minutes of the Board meeting held on September 24, 2012 indicate that the Board discussed the applicants' recently filed human rights applications against the Co-op. There is no record in the Minutes of this meeting or in Ms. Baduria's notes that the Board discussed the harassing flyers recently found in the mailroom or any action to address them. The failure to address this issue is particularly surprising given that among the documents tendered by the respondent was an e-mail message from CERA, dated September 19, 2012, noting that harassing flyers were being placed in the mailroom and inquiring when a camera would be installed there. In my view, the evidence discloses that even after five months of persistent harassment the respondent did not take an appropriately proactive or urgent approach to addressing the issue.

[185] The evidence was that the Co-op made some efforts to get advice about how to address the harassment. The evidence was that Ms. Baduria sought assistance from Ms. Hannant and Ms. Carbonneau. Ms. Borden stated that Ms. Baduria also spoke to the Co-op's lawyer. Ms. Borden had a brief conversation with a representative of CMHC. There was very little detail about these interactions and there is no evidence that any of these resources had any expertise in human rights matters. Ms. Borden was also in contact with the police, although not with nearly the frequency of some of the applicants. The police, unfortunately, offered no real assistance. The advice the Board received was that they had to catch the perpetrator of the harassment. Catching the culprit and putting an end to harassment is of course the best result and to do so is good advice, as far as it goes. Catching a harasser is not always possible, as in this case, and a housing provider should not focus on apprehension to the exclusion of other considerations, such as communicating with and supporting the victims. It appears that the Board, in light of the advice it received, believe that catching the harasser was the only effective response and were resigned to the fact that this was beyond their capabilities. There is no evidence, however, that the Board made any real effort to investigate the harassment. Ms. Borden stated that she discussed the issue with members in passing, which is not the kind of investigation expected of a housing provider. A housing provider cannot compel residents to participate in an investigation in the way an employer can compel employee cooperation. A housing provider should

nonetheless attempt to speak to residents or anyone else who may have knowledge of the incidents in question, e.g., the residents living on the floor where incidents occurred. The primary goal of investigation is to gather evidence, but the act of investigating also shows the victims and other residents that the housing provider takes the matter seriously and is doing what it can to address the harassment. The respondent made no such efforts in this case.

[186] The applicants were outraged that the Board decided to remove three of the four CCTV security camera feeds. The applicants' feelings are understandable since the decision was implemented in late September/early October 2012. At that time, they could not have known that the harassment had ceased and were justifiably attuned to safety and security issues. The decision was not announced beforehand and the membership was not consulted. The justification the Board eventually provided, i.e., that they received "sound advice" that disabling three of the CCTV feeds was necessary to protect members' privacy, appears to be untrue. As Constable Gomez testified, it is unclear how privacy concerns arise in public spaces. There is no indication that Ms. Pierre's evidence that the feeds were disabled because someone was using them to stalk one of the members was ever disclosed previously. Consequently, it appears that the Board's decision to disable the CCTV feeds may not have been a good one, or have been supported by the reasons given. I tend to agree with Ms. Borden's evidence, however, that the CCTV issue is not really related to the harassment. The CCTV feeds do not cover any of the areas where the harassing messages were found. Moreover, the perpetrator of the harassment clearly had access to the building and it is not clear to me how the CCTV feeds that were removed could have acted as a deterrent. In the cover letter to members' petition to have the feeds restored, the petitioners point to the fact that they no longer are able to see what may be going on in the areas covered by the cameras and the petition seems to be focused on the stairwells. These are important security concerns, but I find that they are not sufficiently connected to the harassment experienced by the applicants to be evidence of an inadequate or unreasonable response by the Co-op.

[187] The respondent cited several cases in support of its submission that it acted reasonably in addressing the harassment. In my view, these cases are distinguishable. The respondent submitted that in *Stephens v. Lynx Industries*, 2005 HRTO 18, the Tribunal found the respondent acted reasonably when it removed graffiti in the form of a racial slur and notified employees that graffiti would be grounds for dismissal. However, the evidence was that there had been only one such incident (which the Tribunal found did not amount to harassment) and the respondent acted immediately by warning its employees that further incidents could have drastic consequences. In my view, a respondent's reaction to a single incident of Code-related graffiti is not particularly relevant to the circumstances of this case, involving persistent and escalating harassment. The respondents submitted that in *Worthington Cylinders v. United Steelworkers of America, Local 9143 (Gamba Grievance)*, [2001] OLAA No. 649 (Tacon), the arbitrator found, amongst a variety of issues, that the respondent acted reasonably when it cleaned racist graffiti in the washroom and posted a notice that it would not be tolerated. However, the arbitrator's reasons indicate that the employer took far more wide-ranging measures to address the graffiti. These measures included holding meetings with employees to discuss the inappropriateness of the graffiti and to warn employees that anyone caught writing graffiti would be disciplined. The employer conducted "audits" of the washroom to try to catch the culprit. The employer was sympathetic to the grievor and understood his emotional reaction. In my view, the employer's response in *Worthington Cylinders* was far more comprehensive and proactive than was the respondent's in this case. In *Baisa v. Skills for Change*, 2010 HRTO 1621, another case cited by the respondent, the Tribunal found that an employee had harassed the applicant on Code grounds by making two comments related to sex and marital status. The Tribunal found that the employer acted reasonably to the applicant's complaint by immediately speaking to her, investigating the allegations and imposing sanctions on the harasser and also followed up with the applicant. Consequently, I find that the fact scenario and the respondent's actions in *Baisa* bear little resemblance to those in this case.

[188] The respondent did take actions to address the harassment directed at the applicants and it appears that these measures, relocation and installation of security cameras in particular, eventually led to the cessation of the harassment. However, I have found that the respondent did not take the issue seriously, did not act with urgency and completely failed to communicate with the applicants. The effectiveness of some of the actions the Board did take was reduced by lack of clarity, poor execution and delay. Having assessed the actions the respondent took in response to the harassment experienced by the applicant both individually and in the aggregate and in the unique circumstances of this case I find that the respondent did not act reasonably in response to the harassment.

Reprisal

[189] The prohibition against reprisal protects individuals from intimidation and retaliation that might deter them from claiming and enforcing their rights under the *Code*. A reprisal claim is distinct from allegations of discrimination because an applicant must establish the respondent intended to punish or retaliate against the applicant. The Tribunal set out the elements of a successful reprisal application in *Noble v. York University*, 2010 HRTO 878 at paragraphs 33 and 34, as follows:

Thus, in a complaint or application alleging reprisal, the following elements must be established:

- a. An action taken against, or threat made to, the complainant;
- b. The alleged action or threat is related to the complainant having claimed, or attempted to enforce a right under the *Code*; and
- c. An intention on the part of the respondent to retaliate for the claim or attempt to enforce the right.

In addition, the following principles are relevant:

- a. There is no strict requirement that the complainant has filed a complaint or application under the *Code*, and

b. There is no requirement that the Tribunal find the respondent did in fact violate the complainant's substantive rights to be free from discrimination.

[190] All of the applicants who testified about the AGM of November 19, 2012 stated that Ms. McNamara announced that members with human rights applications could not run for Board positions. Mr. Large and TS gave evidence that Ms. McNamara made the statement attributed to her in the Minutes regarding a perceived conflict of interest, but they nonetheless understood that they were not eligible to run. Ms. Hayward also testified that she understood the applicants could not run for the Board. The respondent's witnesses and Ms. Baduria each gave evidence that they understood that Ms. McNamara did not say that the applicants could not run in the election. Ms. Borden, Ms. Pierre, Ms. Baduria and Ms. Hayward each testified that the issue of whether the applicants could run was not discussed before the AGM and they did not direct Ms. McNamara to comment on the issue. There seems to be no doubt that Ms. McNamara said something about the applicants' eligibility to be candidates. Ms. McNamara did not testify, which makes it more difficult to ascertain what she may have said. Given that intent is a necessary element to prove reprisal, the failure to call Ms. McNamara also makes it difficult to determine why she commented on the issue. In the circumstances of this case, the applicants are obviously highly suspicious of the Board, perhaps justifiably. It is understandable that, assuming Ms. McNamara announced a prohibition on their candidacy, that such an announcement was seen to be a reprisal for filing their Applications. The issue is not as straightforward as that, however, even assuming Ms. McNamara unambiguously stated that the applicants could not run. The fact is that any applicant sitting on the Board would have been in a conflict of interest regarding the Applications against the Co-op. There is evidence, e.g., from Ms. Welykyi and Mr. Large, that the issue was raised during the meeting and Ms. McNamara would have had to address the question. There was no evidence that the Board or anyone else considered this question in advance of the meeting and had in mind the procedure that allowed applicants such as Mr. Large to sit on the Board while the Applications were in progress. The applicants invited me to conclude that the Board must have advised Ms. McNamara to make the statement attributed to her and that it was intended to punish

the applicants for filing human rights applications against the Co-op. I find that the evidence does not provide a proper basis for such an inference. The respondent's witnesses denied instructing Ms. McNamara in this way and without the benefit of Ms. McNamara's evidence and the opportunity to explore her motives and credibility, I cannot find, on a balance of probabilities, that the statement attributed to Ms. McNamara was intended to punish the applicants, assuming she made it. There was also evidence that Ms. Hannant announced that the applicants could not run for the Board at the AGM in March 2013. There was very little detail to this evidence and Ms. Hannant did not testify. In these circumstances, the evidence is insufficient to support a finding that Ms. Hannant, assuming she made the statement attributed to her, intended to punish the applicants or that the Board instructed her to make the statement to punish the applicants for filing human rights applications against the Co-op.

Remedy

[191] The Tribunal's remedial authority is set out in section 45.2 of the *Code* as follows:

45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.

[192] An award of compensation for injury to dignity, feelings and self-respect is intended to recognize the inherent value of the right to be free from discrimination and

the experience of victimization. In *ADGA Group Consultants Inc. v. Lane*, 2008 CanLII 39605, 91 OR (3d) 649 (ON SCDC), the Divisional Court confirmed that the factors to be considered in setting the amount of damages include: humiliation, hurt feelings, the loss of self-respect, dignity and confidence by the applicant, the experience of victimization, the vulnerability of the applicant, and the seriousness of the offensive treatment.

[193] In *Arunachalam v. Best Buy Canada*, 2010 HRTO 1880, the Tribunal stated as follows regarding the jurisprudence dealing with awards for injury to dignity, feelings and self-respect, at paragraphs 52-54:

(...) The Tribunal's jurisprudence over the two years since the new damages provision took effect has primarily applied two criteria in making the global evaluation of the appropriate damages for injury to dignity, feelings and self-respect: the objective seriousness of the conduct and the effect on the particular applicant who experienced discrimination: see, in particular, *Seguin v. Great Blue Heron Charity Casino*, 2009 HRTO 940 at para. 16 (CanLII).

The first criterion recognizes that injury to dignity, feelings, and self-respect is generally more serious depending, objectively, upon what occurred. For example, dismissal from employment for discriminatory reasons usually affects dignity more than a comment made on one occasion. Losing long-term employment because of discrimination is typically more harmful than losing a new job. The more prolonged, hurtful, and serious harassing comments are, the greater the injury to dignity, feelings and self-respect.

The second criterion recognizes the applicant's particular experience in response to the discrimination. Damages will be generally at the high end of the relevant range when the applicant has experienced particular emotional difficulties as a result of the event, and when his or her particular circumstances make the effects particularly serious. Some of the relevant considerations in relation to this factor are discussed in *Sanford v. Koop*, 2005 HRTO 53 (CanLII) at paras. 34-38.

[194] The applicants were subjected to horrible harassment over a period of roughly five months. There is no doubt that this harassment was a grave affront to their dignity and that it affected them profoundly. The respondent was not responsible for the harassment, but was responsible for not addressing the harassment adequately. It is

important not to conflate the harassment with the inadequate response when assessing the appropriate remedy for the applicants. The respondent's failure to take reasonable actions to address the harassment was objectively serious. The applicants felt completely unsupported by the respondent and the harassment most likely would have ceased sooner had the respondent taken meaningful action more promptly. The applicants' evidence indicates that they felt abandoned by the respondent and had no reason to believe the harassment would stop, since, in their view, nothing was being done about it. Ms. Welykyi's evidence was that the respondent's indifference was more hurtful than the harassment itself. The evidence of the particular experience of each applicant relative to the failure to address the harassment did not disclose effects such as emotional difficulties that would call for a higher award of compensation. Nonetheless, I accept the applicant's submission that the respondent's failure to address the harassment adequately exacerbated the effect of the harassment.

[195] In terms of monetary compensation for losses arising out of the infringement of the applicants' right to be free from discrimination and harassment with respect to occupancy of accommodation, including compensation for injury to dignity, feelings and self-respect, the applicants' demands, set out in their Applications or Amended Applications, range from \$2,000.00 to \$2.5 million. At the hearing, counsel for the applicants submitted that *Bekele v. Cierpich*, above, was an appropriate precedent. In *Bekele*, the Tribunal awarded a total of \$10,000.00 in damages in compensation for discrimination and for failing to investigate the applicant's complaint. Respondent's counsel made vigorous submissions to the effect that no award of monetary compensation was necessary in this case. In that regard, respondent's counsel pointed to the steps the respondent took to address the harassment, to the fact that the respondent was not responsible for the harassment, the Board's lack of knowledge and sophistication with respect to human rights issues, and the Human Rights By-law and training implemented by the respondent.

[196] In my view, an award of monetary compensation to the applicants is warranted in this case. While it is true that the respondent took some action in response to the

harassment, I have found these actions were inadequate for the reasons described above. In this case, the Board had little knowledge of its obligations, but on the other hand, the Board voluntarily took on the obligation and responsibility to lead the Co-op, after, somewhat ironically, the Old Board was removed for poor performance. I agree with the statement in *Bekele*, at paragraph 89, that inexperience cannot justify a failure to address discrimination or harassment.

[197] The Tribunal has awarded monetary compensation specifically for the failure to address discrimination and/or harassment on several occasions: *Islam v. Big Inc.*, 2013 HRTO 2009 (\$2,000.00); *Xu v. Quality Meat Packers Ltd.*, 2013 HRTO 533 (\$5,000.00); *Harriott v. National Money Mart*, 2010 HRTO 353 (\$7,500.00); and *Payette v. Alarm Guard Security Service*, 2011 HRTO 109 (\$5,000.00). I note that in *Islam*, *Harriott* and *Payette*, the Tribunal found no evidence that the respondents took any action to investigate and address the applicants' complaints of harassment and discrimination. In this case, the respondent did take some action, but given the persistent failure to address the harassment directed at the applicants, the respondent's failure to act, and was somewhat more serious than in *Islam*, which should be reflected in the award of compensation. In my view, an award of \$3,000.00 for compensation for failing to adequately investigate and address the harassment experienced by the applicants is appropriate. In reaching this conclusion I have also considered both the objective seriousness of the respondent's conduct as well as the evidence, such as it was, with respect to the subjective effect on each applicant. I do not find there is a sufficient evidentiary basis to warrant a differential award as between the applicants.

[198] The applicants submitted that several non-monetary remedies were appropriate. The applicants submitted that the Tribunal should order the respondent to reinstate all of the CCTV security camera feeds that had been removed, that the Tribunal order the respondent to formally apologize to the applicants, and that the Tribunal order the respondent to notify the members of this Decision.

[199] For the reasons set out above, I have found that the removal of the CCTV feeds was not related to the harassment directed at the applicants and did not amount to a

violation of their *Code* rights. Consequently, there is no proper basis for granting the request to reinstate the CCTV feeds.

[200] The Tribunal has generally declined to order parties to provide an apology on the basis that such orders are viewed as inappropriate or an ineffective remedy and raise potential freedom of expression concerns. See *Adorgloh v. Seasons Foodmart and Feng Lin*, 2013 HRTO 1201, *Abdallah v. Thames Valley District School Board*, 2008 HRTO 230, and *Turnbull v. Famous Players*, 2001 CanLII 26228 (ON HRT). I agree with the concerns described in the jurisprudence. The applicants are in my view entitled to an apology, but a forced apology is of negligible value and I decline to order one.

[201] In my view, notifying the Co-op membership of this Decision will promote compliance with the *Code*. Accordingly, I find that it appropriate to order the respondent to post copies of this Decision on the bulletin boards in the Co-op for a period of six months from the date it is posted. I also find it appropriate to order the respondent to notify its members of the Decision by means of a notice to be sent to each unit of the Co-op and also to be posted on the bulletin boards in the Co-op for a period of six months from the date it is posted. The notice shall contain the following information:

- That several of the Co-op's members were subjected to serious and persistent harassment between April and September 2012 and that the harassment violated the members' human rights;
- That the members targeted by the harassment felt unsupported by the Co-op and filed human rights applications to the Human Rights Tribunal of Ontario;
- That the Human Rights Tribunal of Ontario held a hearing of the applications and found that the Co-op did not adequately address the harassment and failed in its obligation to provide members with a discrimination and harassment free environment;
- That the Human Rights Tribunal of Ontario ordered the Co-op to pay \$3,000.00 in compensation to each of the members targeted by the harassment to compensate them for the failure to adequately address the harassment and provide a discrimination and harassment free environment; and,

- That the Human Rights Tribunal of Ontario’s Decision is posted on the bulletin boards in the Co-op and may also be found on the internet at the following web address: <http://www.canlii.org/en/on/onhrt/>.

ORDER

[202] The Tribunal orders as follows:

1. Within 60 days of the date of this Decision, Rouge Valley Co-operative Homes Inc. shall pay \$3,000.00 to each of Cindy Welykyi, Z.K., T.S, William Bowerman, Mimi Marilyn Gow, Betty Jarvis, Elsie Biloki, Debora Crew, the Estate of Harold (Mike) Large, and The Estate of Rae Fuller as monetary compensation for the infringement of their right to be free from discrimination and harassment in the occupation of accommodation, including injury to dignity, feelings and self-respect;
2. In the event that Rouge Valley Co-operative Homes Inc. fails to make the payment described above within 60 days of the date of this Decision, the respondent shall pay post-judgment interest in accordance with section 129 the *Courts of Justice Act*, R.S.O 1990, c. C.43;
3. Within one week of the date of this Decision, Rouge Valley Co-operative Homes Inc. shall post copies of this Decision on the bulletin boards in the Co-op. The respondent shall cause this Decision to remain so posted continuously for a period of six months from the date of it is posted; and,
4. Within one week of the date of this Decision, Rouge Valley Co-operative Homes Inc. shall notify its members of this Decision by means of a notice to be sent to each unit of the Co-op and also to be posted on the bulletin boards in the Co-op. The respondent shall cause the notice to remain so posted continuously for a period of six months from the date it is posted. The notice shall contain the information described in paragraph 201, above.

Dated at Toronto, this 4th day of March, 2016.

“Signed by”

Douglas Sanderson
Vice-chair