

**CITATION:** Peel Standard Condominium Corporation No. 745 v. Voitenko, 2025 ONSC 6827

**COURT FILE NO.:** CV-21-00004326-0000

**DATE:** 20251205

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

PEEL STANDARD CONDOMINIUM  
CORPORATION NO. 745

) POLIS, Natalia, for the Applicant

)  
)  
)  
)  
) Applicant )

- and -

VOITENKO, Zoya

) SELF - REPRESENTED, for the  
) Respondent

)  
)  
) Respondent )

) **HEARD:** November 20, 2025

**RULING ON MOTION**

**WILKINSON J.**

**The Issue**

[1] This motion involves a determination as to whether the Respondent's application to the Ontario Human Rights Tribunal was filed out of time. For the reasons that follow, I find that the application was filed out of time.

### **Background**

[2] The Respondent, Ms. Voitenko, owns a condominium unit located in a building managed by the Applicant, Peel Standard Condominium Corporation No. 745 ("the Condominium"). The Condominium is statutorily required to maintain common elements under s. 90(1) of the *Condominium Act, 1998*, S.O. 1998, c. 19. The balconies to the condominium units are considered to be common elements of the condominium for the purposes of the Act.

[3] The Condominium obtained an engineering opinion that the balconies required waterproofing, as water seeping into the cracks of the balcony will over time impair the integrity of the balcony, which could eventually cause the balcony to fail.

[4] On August 2, 2021, the Condominium was in the process of applying sealant to Ms. Voitenko's balcony, when she demanded that the work halt because of noxious fumes that she said were entering her unit. The email sent by Ms. Voitenko to the Condominium on that same date references her concerns about her three-month old baby inhaling the fumes. The email did not mention concerns about her own health, or the health of Ms. Voitenko's mother.

### **History of Communications Between Counsels for the Parties**

[5] Ms. Voitenko initially had counsel representing her. The record contains numerous emails between her lawyer, Timothy Lockhart, and counsel for the condominium, Natalia Polis. In an email dated August 20, 2021, the Condominium agreed to defer the waterproofing of Ms. Voitenko's balcony to the spring of 2022 as a good faith gesture.

[6] On November 15, 2021, Mr. Lockhart sent an email to Ms. Polis which stated that Ms. Voitenko was agreeable to materials being applied to the balcony provided that the product used was neither a suspected nor confirmed carcinogen. On November 19, 2021, Ms. Polis provided specific detail to Mr. Lockhart regarding the materials intended to be used for the balcony waterproofing.

[7] The Condominium issued its application against Ms. Voitenko on December 6, 2021. On December 8, 2021, the Condominium served its application on Mr. Lockhart, who had agreed to receive the application on behalf of Ms. Voitenko. In the application the Condominium sought orders requiring Ms. Voitenko to provide the Condominium with access to her balcony to waterproof the balcony, plus costs. The application also included a generic request for "such further and other relief as counsel may request and this Honourable Court deems just".

[8] On April 4, 2022, Mr. Lockhart provided the names of alternate products for the Condominium to consider using to waterproof the balconies. This email did not

mention any concerns regarding disability issues. Mr. Lockhart sent another email dated April 20, 2022 in which he stated “To be clear, your position is that the condo has the right to expose my client to carcinogenic and toxic materials? This is the chief issue”. There was no mention in this email about a human rights concern.

[9] On May 16, 2022, Ms. Polis sent an email to Mr. Lockhart advising that the engineers had not approved the materials proposed by Ms. Voitenko, as they did not provide adequate waterproof protection. The same email stated that the Condominium’s motion would have to be adjourned to permit the exchange of materials and cross-examinations. The email also stated that phase two of the waterproofing of the condominium was scheduled for July 6, 2022, and that the Condominium wanted an order to permit it to also waterproof Ms. Voitenko’s unit at that time.

[10] On June 8, 2022, the Condominium sent another email to counsel for Ms. Voitenko which provided information regarding the product being used to waterproof the balcony, including a confirmation that the materials used for waterproofing posed no health hazards.

[11] On June 21, 2022, Mr. Lockhart sent an email to Ms. Polis asking that the Condominium pay for alternate accommodation for Ms. Voitenko and her family while the waterproofing was being conducted as her mother was “relatively immobile”, and Ms. Voitenko was her primary caregiver, as well as being the

primary caregiver for the baby. This email did not, however, specifically reference a human rights infringement. Ms. Polis responded to this request on July 6, 2022 by stating that the Condominium would not be providing alternate accommodation for Ms. Voitenko and her family.

[12] On July 7, 2022, Mr. Lockhart sent an email to counsel for the Condominium in which he communicated Ms. Voitenko's consent to allow the waterproofing work to be done on her balcony in the spring/summer of 2025 "when her child is more mobile". This email did not reference any disability issues as being the reason why Ms. Voitenko needed accommodation.

[13] Mr. Lockhart sent another email on August 8, 2022, in which he stated that Ms. Voitenko's mother was in "stable condition" and was "mobile enough to move", although her health situation was in flux. On August 9, 2022, Ms. Polis responded that unfortunately, the contractors were no longer at the Condominium at that point, and they had already removed all their equipment given that the waterproofing work was scheduled to conclude on July 6, 2022. On that same day, Mr. Lockhart emailed a response to Ms. Polis that stated "I believe my client will consent to doing the balcony work next year. My client will need adequate notice".

[14] On October 6, 2022, Mr. Lockhart added in a new requirement that Ms. Voitenko was willing to have the waterproofing completed if her condominium could be taped off with a polyethylene vapour barrier. The email is silent as to

which party was expected to pay the costs for the vapour barrier. A subsequent email was sent by Mr. Lockhart on December 6, 2022, in which Ms. Voitenko specifically required that the Condominium pay the costs of the vapour barrier.

[15] On December 8, 2022, Ms. Polis responded to Mr. Lockhart that the Condominium was not willing to pay the cost of the vapour barrier. She pointed out that over 90 other balconies at the Condominium had been waterproofed, and none of them required a vapour barrier. Ms. Polis also made the following comment in the email:

The waterproofing is necessary to ensure the safety and security of the property and avoid any potential damage to the common elements and/or other units. The Corporation has an obligation to maintain the safety and security of the property. Your client is hindering the Corporation from adhering to its obligations under the Condominium Act and its governing documents.

[16] On December 15, 2022, Mr. Lockhart sent an email to Ms. Polis advising that he would no longer be representing Ms. Voitenko.

[17] On February 13, 2023, Ms. Polis received an email from Yulia Pesin, who was now representing Ms. Voitenko. In that email, Ms. Pesin formally raised human rights concerns for the first time:

Briefly, I note that this matter involves human right considerations as my client and her family, particularly her mother who is gravely ill and largely immobile, suffers from odour and/or chemical sensitivity. This was the reason why the family had such an adverse physical reaction to the odour migrating into their unit from the weather proofing chemicals used, while presumably others at the Corporation had no

such issues (as far I know at this juncture). In either event, my client is currently in the process of obtaining the requisite medical records from her family's treating physicians. I will reach out to you further once I am in possession of the medicals.

[18] On March 9, 2023, Ms. Polis wrote a letter to Ms. Pesin asking for clarification as to what accommodation Ms. Voitenko was seeking, and also, for medical documentation confirming that a resident in the unit had a disability that was protected by the Code. Ms. Polis also asked that Ms. Pesin provide an explanation as to how the waterproofing or waterproofing materials would have adverse health implications for the residents who claim they have a disability.

[19] When Ms. Pesin had not responded for over two months, Ms. Polis sent a follow up letter to her on May 26, 2023 requesting a response to her March 9, 2023 letter. Ms. Polis sent a further email to Ms. Pesin on July 27, 2023 when she still had not received a response. Ms. Pesin finally responded on that date, indicating that she was unable to provide a response as she did not have instructions.

### **Timing of the Human Rights Complaint**

[20] On August 14, 2023, the Condominium received a copy of the Human Rights application that Ms. Voitenko filed on March 17, 2023.

[21] The Condominium filed its response to Ms. Voitenko's Human Rights application on September 8, 2023. Its submissions included an argument that the application had not been filed within the one-year time limit stipulated in s. 34 of the Code.

[22] On October 24, 2023, Ms. Pesin informed Ms. Polis that she was no longer representing Ms. Voitenko.

[23] On March 4, 2024, the Human Rights Tribunal sent Ms. Voitenko a letter asking her to provide additional submissions, including responding to the issue as to whether her application was filed within one year of a human rights infringement.

[24] Ms. Voitenko provided a response on March 15, 2024, in which she stated that she was unable to file the complaint earlier because of her physical, mental and emotional state. She stated that these health difficulties were a post partum condition, that was aggravated by the stress caused by the condominium waterproofing situation. She stated that she was “unable to act and make decisions”. Ms. Voitenko included a report from psychologist Dr. Hakim dated December 20, 2023 in support of her claim that she was psychologically incapable of taking legal action at the time of the alleged human rights infringement. In the report Dr. Hakim diagnosed Ms. Voitenko with Post Traumatic Stress Disorder and Major Depression, caused by multiple life stressors, including the sudden drowning death of her husband in 2019.

[25] In her response, Ms. Voitenko also stated that the Condominium was continuing to engage in ongoing discrimination, as she stated that every time it affirmed its position it created an emotional impact for her and her family.

[26] On December 24, 2024, the Human Rights Tribunal notified the parties that the application was approved to continue in the Tribunal's process, but that the decision was not final as to whether the Tribunal would ultimately accept jurisdiction for the application.

[27] On July 10, 2025, I released a ruling that the Human Rights issue was to be addressed prior to the Condominium's application. In my ruling I seized myself of Ms. Voitenko's Human Rights application pursuant to s. 46.1 of the *Human Rights Code*. I did so because the Condominium had provided sufficient engineering evidence to satisfy me that the waterproofing of Ms. Voitenko's balconies could not be postponed indefinitely due to safety concerns. However, there was no indication from the Tribunal that Ms. Voitenko's application would be adjudicated in the near future.

[28] On July 29, 2025, the parties appeared before me, and a schedule was set by me for the delivery of materials to address the limitation period issue, along with setting an attendance for November 20, 2025 for me to hear submissions regarding the limitation issue.

### **Preliminary Issue Raised by Ms. Voitenko**

[29] When the parties appeared before me on November 20, 2025, Ms. Voitenko raised a concern that she had not previously received a copy of the July 29, 2025 endorsement from the court, despite having been assured by me that she

would receive a copy. The main purpose of that endorsement was to set out the timeline for the parties to exchange materials regarding the limitation argument. Despite apparently not having received a copy of the July 29, 2025 endorsement from the court office, Ms. Voitenko successfully filed her materials by the deadline given to her by me in advance of the November 20, 2025 hearing date.

[30] Ms. Voitenko also expressed the concern that when she received the Condominium's voluminous materials on October 31, 2025, she did not have adequate time to prepare a response by November 14, 2025. Although both parties had completed their submissions regarding the limitation argument, she asked that she be given an extension to file additional materials.

[31] I ruled that Ms. Voitenko was not going to be given any further extensions to file additional materials. At the July 29, 2025 attendance the parties were given clear deadlines for the exchange of written materials. Ms. Voitenko's materials filed in advance of the November 20, 2025 attendance appropriately addressed her position regarding the limitation issue, including case law. The parties then provided oral submissions on November 20<sup>th</sup>, in which both parties responded to the submissions of the opposing party regarding the limitation issue.

[32] Ms. Voitenko was reminded that the primary purpose of the November 20, 2025 attendance was to determine if her Human Rights complaint had been filed in time.

[33] Following argument on November 20, 2025, Ms. Voitenko sent several emails to the court expressing a concern that the documents she had filed with the court were attached to an application as opposed to an affidavit. She sought leave to file the materials through an affidavit, and further, she asked to provide additional submissions responding to the materials filed by the Condominium with respect to the November 20<sup>th</sup> attendance.

[34] It is not clear to me if the additional materials Ms. Voitenko wishes to submit relate to specifically to the limitation issue, or more generally to her human rights complaint. Either way, to allow Ms. Voitenko to produce additional materials in response to the Condominium's limitation argument will at this point create procedural unfairness for the Condominium. Both parties knew the deadlines to file materials. Both parties filed materials in support of their position regarding the limitation period by the deadlines assigned, and were given the opportunity to provide oral submissions with respect to the issue.

[35] I understand that as a self-represented litigant Ms. Voitenko may indeed find this process at times challenging. However, my endorsement released on July 10, 2025 was clear regarding the need to first determine the limitation issue regarding the Human Rights Complaint before the merits of Ms. Voitenko's Human Rights complaint could be considered.

[36] At the November 20<sup>th</sup> hearing I was also clear in my direction to the parties that if the Condominium's limitation argument was successful, that would end Ms. Voitenko's Human Rights claim. If the Condominium's limitation argument was not successful, a schedule was already in place for cross-examinations and the exchange of materials in advance of argument on the merits of the Human Rights claim, scheduled to proceed in March 2026.

[37] My ruling regarding Ms. Voitenko's request to file additional materials has not changed since the time it was initially made on November 20<sup>th</sup>. I will not be accepting any further written or oral submissions from either party regarding the limitation issue.

[38] I appreciate and acknowledge Ms. Voitenko's concern regarding the requirement for proper evidence to be before me in the form of an affidavit. Fortunately, in this case there appear to be no key facts in dispute regarding the limitation issue. There is also no dispute as to the date when the parties or their lawyers exchanged communications, nor is there any dispute as to the content of those communications.

[39] Ms. Voitenko's original Human Rights complaint filed in March 2023 was part of the Condominium's Application Record, along with her supplementary submissions filed with the Tribunal in March 2024. I therefore had the benefit of reviewing the psychological report from Dr. Hakim, and all the other material that

Ms. Voitenko filed with the Tribunal when she provided reasons for her late filing of the application. I also had the benefit of hearing Ms. Voitenko's submissions in response to the Condominium's limitation arguments. I see no useful purpose in delaying this litigation further by permitting Ms. Voitenko to file affidavit evidence about undisputed facts.

### **Position of the Condominium**

[40] The Condominium takes the position that as Ms. Voitenko did not make a human rights claim until March 2023, and that all the back and forth correspondence and negotiations prior to that date were in response to the Condominium's application.

[41] The Condominium further argues that Ms. Voitenko's position has continually shifted during the course of this litigation. The concerns were initially about possible carcinogens contained in the sealant. Then, on June 21, 2022, the email from Mr. Lockhart mentioned mobility concerns relating to Ms. Voitenko's mother. However, on August 8, 2022, Mr. Lockhart sent a further email which stated that Ms. Voitenko's mother was mobile enough to move, and that he anticipated that Ms. Voitenko would consent to the balcony being waterproofed in the next year.

[42] The Condominium argues that Ms. Voitenko's objection to the waterproofing was initially about her family's aversion to the fumes that she says

came into her condominium in August 2021. Further, it highlights that in the Human Rights application Ms. Voitenko stated that her mother's rights were breached in August 2021. The Condominium therefore submits that Ms. Voitenko's Human Rights application was clearly out of time when it was filed in March 2023.

[43] The Condominium also submits that Ms. Voitenko has not provided a good faith explanation for her delay in filing the Human Rights application, and that it has been severely prejudiced because of the delay in filing.

### **Position of Ms. Voitenko**

[44] Ms. Voitenko argues that her mother's human rights have been breached repeatedly by the Condominium's continued refusal to accommodate her mobility disability with respect to housing, by failing to provide alternate accommodations for the family while the waterproofing was being conducted, or alternatively, by failing to pay for the costs of a vapour barrier to be installed during the waterproofing.

[45] In her written materials Ms. Voitenko summarized her position that the Condominium had engaged in a series of discriminatory acts as follows:

After the request for accommodation was denied in the first incident, there were 2 more distinct and separate incidents of discrimination that took place in May 2022 and in October 2022 which fall under the definition of a series of incidents which make the HRTO application fall within the limitation period of one year.

[46] Ms. Voitenko argues that since the Condominium refused to pay for the vapour barrier in the fall of 2022, the one-year time deadline to file her Human Rights application ought to have begun running at that time. She therefore argues that her Human Rights application was filed on time when it was filed in March 2023, as she alleges the Condominium engaged in a series of three separate incidents of discrimination:

- 1) the initial incident in August 2021;
- 2) the refusal to relocate the family in the spring of 2022; and
- 3) the refusal to install a vapour barrier in October 2022.

[47] Ms. Voitenko also argues that she was psychologically incapable of filing a Human Rights application prior to March 2023 due to her diagnosis of Post Traumatic Stress Disorder and Major Depression, which therefore establishes a good faith basis for her late application as per s. 34(2) of the *Code*.

[48] Ms. Voitenko did not address the Condominium's position that it has been prejudiced as a result of her delay in filing the Human Rights application in either her written or oral argument.

### **The Law**

[49] Section 34(1) of the *Human Rights Code* sets out the one-year deadline by which an application must be filed with respect to an alleged infringement of a human right:

**34 (1)** If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

(a) within one year after the incident to which the application relates; or

(b) if there was a series of incidents, within one year after the last incident in the series.

[50] Section 34(2) of the Human Rights Code sets out the circumstances when a late application may be received:

**Late applications**

**(2)** A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

[51] The Tribunal decision of *Garrie v. Janus Joan Inc.*, 2012 HRTO 1955, at para. 30 provides guidance as to the factors to be considered when determining if an alleged violation is a single act of discrimination with continuing effects, or a series of incidents which are each separate violations:

- a) What is the last alleged incident of discrimination to which the Application relates?

- b) Do the allegations relate to a series of separate and independent incidents of discrimination or do they relate to the continuing effect of a single incident of discrimination?
- c) What is the nature or character of the alleged discrimination and is it part of a pattern or series of incidents of a similar nature or character?
- d) What is the temporal gap between the alleged incidents of discrimination?

[52] The Tribunal held that it is not an ongoing incident of discrimination where an employer has made a particular decision about an applicant's accommodation, and the applicant tries repeatedly to have the employer reverse or change its position: *Garrie*, at para. 35.

[53] Another example of the distinction between “an incident” and a “series of incidents” can be seen in *Clarke v. Canadian Blood Services*, 2011 HRTO 411, where the Tribunal held that the respondent's ongoing refusal to accept blood donations from the applicant did not amount to a series of discriminations but rather arose from a single incident which was the initial decision to ban her blood donations.

[54] A further example of this distinction can be seen in *Mafinezam v. University of Toronto*, 2010 HRTO 1495, where the Tribunal held that an ongoing exclusion from a university pursuant to a trespass notice did not constitute a series of incidents within the meaning of s. 34(1). It held that the issuance of the trespass notice was the last alleged incident of discrimination, and that the ongoing

exclusion of the applicant from campus was a continuing effect of this single incident of discrimination.

[55] A repeated denial of the same request for accommodation does not equate to an ongoing incidence of discrimination. A new or fresh step is required to be taken by the applicant to establish an ongoing incident of discrimination: *Visic v. Ontario Human Rights Commission*, 2008 CanLII 20993 (ON SCDC), at paras. 45 and 50.

### **Analysis**

#### ***Do the facts support an allegation of a singular incident of discrimination or a series of incidents?***

[56] A review of communication between the parties and/or their counsels establishes that Ms. Voitenko's concerns were not originally framed as a human rights violation. However, in her Human Rights application she stated:

Original date when the incident occurred is August 2021. I was looking for human rights help then but decided that we would try to resolve it, instead they pushed us even further, they did not complete the work in the 2<sup>nd</sup> phase of the balcony waterproofing project and request that we pay for the work to be separately without any accommodation or we can lose the ownership of the unit over it.

[57] In her submissions before me, Ms. Voitenko argued that the Human Rights breach occurred first in August 2021, when the Condominium refused to relocate

her family to another location to allow the waterproofing to proceed, and that this refusal was maintained in the spring of 2022.

[58] The Condominium argues that Ms. Voitenko never made a clear claim that there was an alleged Human Rights breach until March 2023. It argues that all the communications between August 2021 and March 2023 were attempts to resolve the application served by the Condominium on Ms. Voitenko.

[59] Although Ms. Voitenko's submission is that the Condominium failed to accommodate her disabled mother in August 2021, I find that Ms. Voitenko did not clearly advance a claim that her mother's Human Rights had been breached until March 2023, which is clearly more than one year from the initial incident in August 2021.

[60] In addition, Ms. Voitenko was served with the Condominium's application in December 2021. If she had any hope that the Condominium was going to relocate her family or accommodate her requests, it ought to have been clear to her when she was served with the Condominium's application that the Condominium was not providing any accommodation. Yet Ms. Voitenko did not commence her Human Rights application for another fifteen months after being served with the Condominium's application.

[61] I reject Ms. Voitenko's argument that her ongoing negotiations with the Condominium following her receipt of the Condominium's application can be

characterized as “a series of incidents” to extend the one-year limitation under the *Human Rights Code*. The fact that the Condominium exercised legal remedies under the *Condominium Act* such as demanding that the waterproofing be paid for individually by Ms. Voitenko does not create a new alleged human rights violation.

[62] The correspondence between counsel for the Condominium and counsel for Ms. Voitenko makes it clear that the Condominium always intended to complete the waterproofing. While the Condominium on a good faith basis considered Ms. Voitenko’s suggestions for alternate waterproofing materials to be used, and offered to defer the waterproofing until the spring of 2022, it ultimately did not alter its original position that the waterproofing had to be completed with the materials used on all the other balconies owned by the other residents at the Condominium.

[63] Ms. Voitenko has not produced evidence of new steps or new issues that developed to trigger a new alleged human rights violation. All the correspondence and communication between the parties and/or their counsel stemmed from the same issue, which was, the Condominium’s alleged refusal to accommodate Ms. Voitenko’s mother due to her alleged mobility disability.

[64] The fact that the Condominium did not agree to pay for the vapour barrier or relocation costs for Ms. Voitenko is not a separate act of alleged discrimination, but rather, a repeated denial of the same request for accommodation.

[65] Ms. Voitenko's submission of medical documentation to support her allegation that her mother is disabled also does not change the substance of the original alleged violation which was that the Condominium discriminated against her mother by not accommodating her disability.

[66] In her Human Rights application, Ms. Voitenko takes the position that the Condominium violated her mother's human rights in August 2021. I make no findings as to whether Ms. Voitenko's mother's human rights were violated on that date. However, in light of Ms. Voitenko's position that there was a violation on that date, I find that Ms. Voitenko knew, or ought to have known, that her mother's human rights may have been violated as of that date. Accordingly, that is the date when the one-year deadline for Ms. Voitenko to file her Human Rights application began to run.

[67] If I am incorrect that there was a clear refusal by the Condominium to accommodate Ms. Voitenko's mother in August of 2021, the service of the Condominium's application on Ms. Voitenko in December 2021 demonstrates a clear refusal to accommodate Ms. Voitenko's request. It follows that even if the alleged human rights violation did not occur until December 2021, Ms. Voitenko's human rights application was still filed out of time when it was filed in March 2023.

[68] I therefore conclude that Ms. Voitenko's Human Rights application was not filed within one-year of the alleged discrimination as required by s. 34(1) of the Code.

***Has Ms. Voitenko established a good faith explanation as to her failure to file the Human Rights Application within one year of the alleged discrimination as per s. 34(1)(b) of the Code?***

[69] Although Dr. Hakim did not swear an affidavit attaching her report, I find that it is reliable hearsay evidence which can be considered by me on this motion, as it is already contained in the file of the Human Rights Tribunal, and was filed by the Condominium as part of the materials for me to review on this application.

[70] I have no doubt that Ms. Voitenko has endured exceptional suffering following the sudden death of her husband. I accept that Ms. Voitenko suffers from Post Traumatic Stress Disorder and Major Depression.

[71] I also accept that at the time when Ms. Voitenko halted the waterproofing in August 2021, she had substantial personal responsibilities caring for a baby who was just a few months old, along with her mother who has significant health challenges.

[72] Based on the materials before me, however, I cannot find that Ms. Voitenko's psychological distress rendered her incapable of filing a human rights complaint within one year following the August 2021 incident, or within one year of

receiving the application from the Condominium. I make this finding for the following reasons:

- a) Ms. Voitenko retained counsel almost immediately after the incident, and was represented by the same lawyer for the next sixteen months, which included the one year period following service of the Condominium's application on Ms. Voitenko.
- b) In her submissions to the Human Rights Tribunal, Ms. Voitenko stated that she was looking for human rights help in August 2021 but decided to try to resolve the issue with the Condominium. This comment suggests that she was capable of considering making a Human Rights complaint during the one-year period following the alleged breach, but chose not to do so.
- c) The report of Dr. Hakim stated that in the same time frame that Ms. Voitenko was in a dispute over the waterproofing with the Condominium, she attended a mediation and resolved a legal dispute with the adult children of her deceased husband regarding his estate. She was therefore capable of involvement with legal matters during the relevant timeframe.
- d) Dr. Hakim did not specifically state an opinion in her report upon which I could rely to find that Ms. Voitenko was incapable of filing a Human Rights application within one year of the alleged incident of discrimination as a result of her psychological distress.

[73] I find that Ms. Voitenko has failed to establish a good faith reason to explain her delay in waiting until March 2023 to file the Human Rights application. Her

request to have her Human Rights application accepted outside of the one-year deadline under the Code is therefore denied.

***Has the Condominium suffered prejudice because of Ms. Voitenko's delay in filing the Human Rights Application as per s. 34(1)(b) of the Code?***

[74] The engineering evidence filed by the Condominium indicated that the balconies required waterproofing as the introduction of water into the concrete was contributing to an erosion of the integrity of the concrete in the balconies over time.

[75] The original hearing date for the Condominium's application was March 10, 2022. The application was then adjourned several times before the parties appeared before Justice Bloom on February 12, 2024. Justice Bloom adjourned the hearing for two months to allow the Human Rights Tribunal to address the Human Rights application.

[76] The matter returned before me on July 4, 2024, which required me to balance the need for the Condominium to proceed with its application due to safety concerns with Ms. Voitenko's right to make a complaint under the Human Rights Code. I adjourned the application *sine die* to permit the Condominium to provide additional engineering evidence to allow me to assess the urgency of the Condominium's application.

[77] The parties appeared before me again on January 8, 2025 to set a timetable for the application, which was ultimately argued on April 28, 2025. After

I concluded that the Human Rights issue had to be determined before the Condominium's application, the parties attended before me on July 29, 2025 to set the timetable for argument on the limitation issue, followed by the attendance on November 20, 2025.

[78] The Human Rights complaint raised by Ms. Voitenko delayed the Condominium's application by 22 months, and required the Condominium to incur legal fees for numerous attendances required to address the interaction between the *Condominium Act* and the *Human Rights Code*, and to prepare materials and argue the limitation issue.

[79] There is no doubt that the Condominium has been prejudiced by Ms. Voitenko's late filing of her Human Rights application given the long procedural delays, and the anticipated continued degradation of the concrete in the balconies over time. In addition, the Condominium has incurred additional legal fees to address Ms. Voitenko's Human Rights complaint.

[80] Ms. Voitenko's request to have her Human Rights application accepted outside of the one-year deadline under the Code is therefore also denied based on her failure to establish that the Condominium has not been prejudiced as a result of the delay in filing her Application.

***Has the Condominium established entitlement to the relief sought in its Application?***

[81] Having determined that Ms. Voitenko's Human Rights application was filed out of time, there are no further procedural issues preventing a determination of the Condominium's application. Argument regarding this issue was completed by both parties on April 28, 2025.

[82] There is no dispute that the s. 119 of the *Condominium Act* requires owners of a condominium to comply with the Act. There is also no dispute that the Condominium is required to maintain the common element balconies under s. 90 of the *Condominium Act*, and further, that it is permitted to enter portions of residential units to maintain common elements such as the balconies. In her oral submissions, Ms. Voitenko confirmed that she agreed that the Condominium must proceed with waterproofing the balconies.

[83] Ms. Voitenko is ordered to permit the Condominium to proceed with waterproofing her balconies at a date to be chosen by the Condominium. If Ms. Voitenko wishes to arrange for a vapour barrier during the time that the waterproofing is scheduled to take place, she is at liberty to do so at her own expense, provided that the installation of the vapour barrier does not delay the waterproofing once it is scheduled.

[84] In addition to seeking orders permitting it to proceed with waterproofing Ms. Voitenko's balconies, the Condominium also seeks an order requiring Ms. Voitenko to pay the additional costs that will be incurred by the Condominium to

re-engage the company that previously performed the waterproofing on the balconies of the other residents of the Condominium.

[85] The Condominium also seeks an order allowing it to chargeback the costs of the future waterproofing of the balconies that are the subject of this application to Ms. Voitenko in the same manner as common expenses payable to Ms. Voitenko's unit, with corresponding lien rights in favour of the Condominium.

[86] The waterproofing of Ms. Voitenko's balconies could have been completed both in August 2021, and again in July 2022 when phase two of the waterproofing was being completed, at no additional cost to Ms. Voitenko. Now the Condominium will be required to incur extraordinary expenses to arrange for the equipment for waterproofing the balconies to be brought in, for the sole purpose of waterproofing Ms. Voitenko's balconies. It is appropriate that Ms. Voitenko be ordered to pay the Condominium the additional costs that will be incurred by the Condominium with respect to this waterproofing.

[87] The Condominium is permitted to chargeback the costs of the future waterproofing of the balconies to Ms. Voitenko in the same manner as common expenses payable to Ms. Voitenko's unit, with corresponding lien rights in favour of the Condominium.

**Costs**

[88] The Condominium was wholly successful in its application, and is presumptively entitled to costs. The Condominium is encouraged to work with Ms. Voitenko to agree upon a cost payment and a payment plan. If the parties are unable to reach an agreement regarding the costs to be paid by Ms. Voitenko, the Condominium may prepare a cost submission which shall be filed and served by December 12, 2025.

[89] Ms. Voitenko may prepare a responding cost submission which shall be filed and served by December 19, 2025. All cost submissions shall be no longer than three pages double-spaced. The parties shall ensure that all cost submissions are uploaded to Case Center and emailed to my attention at [scj-csj.general.brampton@ontario.ca](mailto:scj-csj.general.brampton@ontario.ca). The motion date of March 30, 2026 is now vacated.

Wilkinson J.

**Released:** December 5, 2025

**CITATION:** Peel Standard Condominium Corporation No. 745 v. Voitenko, 2025 ONSC 6827  
**COURT FILE NO.:** CV-21-00004326-0000  
**DATE:** 20251205

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

Peel Standard Condominium Corporation  
No. 745

Applicant

**- and -**

VOITENKO, Zoya

Respondent

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**RULING ON MOTION**

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Wilkinson J.

**Released:** December 5, 2025