Date: 20170622
Docket: CI 16-01-01736
(Winnipeg Centre)
Indexed as: Shen v. Winnipeg Condominium Corp. No. 16
Cited as: 2017 MBQB 119

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:

JIE SHEN also known as CLAIRE SHEN,	)	Counsel:
applicant,	)	Jason E. Roberts,
- and -	)	for the applicant
WINNIPEG CONDOMINIUM CORPORATION NO. 16,	)	Karen R. Poetker, for the respondent
respondent.	)	JUDGMENT DELIVERED: June 22, 2017

REMPEL J

Introduction

[1] The competing interests at play in this litigation are the reasonable expectations of individual condominium unit owners regarding the use and enjoyment of property juxtaposed to the duty of the Board of Directors of the condominium corporation to take action for the collective benefit of all unit owners. The deep issue in this litigation is when and how a condominium corporation can make changes to common elements without notice to individual unit owners.

Background

[2] The applicant, Ms. Shen, is the owner of one of ninety-eight units in a residential condominium complex in Winnipeg. The units are contained in a cluster of five separate three storey buildings.

[3] In the fall of 2015, Ms. Shen was unpleasantly surprised to discover a decision had been made by the Board of Directors of the Respondent Condominium Corporation (the "Board") to attach a metal safety ladder to an exterior concrete wall adjacent to her unit (the "Ladder"). The Ladder includes metal ribs that form a protective cylinder around anyone climbing it. Each of the five buildings had a safety ladder installed to an exposed exterior concrete wall.

[4] Ms. Shen's affidavit indicates that she had no knowledge about the Board's decision until workers arrived on site to start the installation of the Ladder. The affidavit also sets out Ms. Shen's profound unhappiness as to how the Ladder obstructs the view from inside her unit and from her balcony.

Relief Sought

[5] Ms. Shen brings an action under ***The Condominium Act***, C.C.S.M., c. C170 (the "***Act***"), arguing that:

1. The form of notice prescribed by the ***Act*** for substantial changes to common elements was not provided to her and there was no effort by the Board to obtain written consent from the unit holders to approve those substantial changes as prescribed in the ***Act***; and
2. The Board acted in a manner oppressive and unfairly prejudicial to her.

[6] Ms. Shen is asking that I order that the Ladder be relocated to a part of the complex that is out of the direct sight-lines from inside her unit and that the costs of this relocation be allocated to the other unit holders and not her. Further, Ms. Shen is also seeking damages.

Decision

[7] I am allowing the application and granting Ms. Shen the relief she is seeking. My reasons follow.

Facts

[8] There is no dispute that the decision of the Board to provide safer access to the buildings for workers was a prudent one. It was simply becoming too difficult for the Board to find workers willing to access the roofs of the buildings with portable ladders to conduct routine maintenance and to service the roof-top air conditioners. The controversy that brings the parties to court is how the decision to install the safety ladders was made and how the particular location of the Ladder adjacent to Ms. Shen's unit was chosen.

[9] Prior to deciding that safety ladders should be installed on each building, the Board researched various options for safe roof access. This included meeting with an engineer and a roofing company, who examined the roof system. The option of renting or purchasing equipment such hydraulic lifts for roof access was rejected by the Board, notwithstanding that it would have resulted in an equal sharing of the burden by the unit holders.

[10] At a Board meeting on May 19, 2015, the then-President of the Board, reported that the only viable location for each safety ladder would be on

exposed concrete block walls in the complex. This conclusion was based on recommendations from an engineer hired by the Board and the contractor who had visited the site.

[11] Choosing walls covered in siding was considered to be too expensive because these walls would require reinforcement from the inside and additional waterproofing work. Attaching the safety ladders to the exposed concrete block walls would avoid the expense and inconvenience of reinforcing walls from inside individual units and applying waterproofing materials.

[12] The day after the Board meeting, a notice about an information meeting scheduled for June 16, 2015, was circulated to all mailboxes within the complex, including the applicant's mailbox. In addition, this notice of meeting was mailed to all off-site owners. The notice clearly stated that the purpose of the meeting was to consider methods to gain access to the roof, including the installation of the safety ladders on each building.

[13] Ms. Shen has no recollection of receiving this notice but does not dispute that she must have received it. Given her lack of information, she failed to attend the meeting. Shortly after this meeting, the Board unanimously opted for the installation of safety ladders on exposed concrete wall of each building.

[14] The decision as to where to locate each safety ladder in the complex was a "marriage of several considerations" according to the contractor. Each building has two exposed concrete walls. The Ladder which Ms. Shen objects to was installed directly adjacent to her unit on the west side of the building in order to allow access to service vehicles and workers. The west side presents

the closest possible location to where service vehicles can gain access to the roof. The east side of the building is only accessed by a narrow sidewalk and all other land around it is green space owned by the City of Winnipeg.

[15] Ms. Shen strenuously objected to the location of the Ladder, as it restricted her views from inside, and she wanted it relocated further away from her windows where it would be less noticeable. The Board agreed to modify the base of the Ladder but not the parts of the Ladder that run past Ms. Shen's windows close to her balcony.

Principles of statutory Interpretation

[16] The modern approach to statutory interpretation demands consideration of the words that are used and the context in which they are used, the scheme of the ***Act,*** and both the object of the ***Act*** and the intention of the legislature in enacting the legislation (***Thunderbird Holdings Ltd. v. Manitoba***, 2013 MBCA 78 at para. 36, 299 Man.R. (2d) 60). In ***Thunderbird***, the Court of Appeal cites its earlier decision in ***Stuart v. Toth***, 2011 MBCA 42, 268 Man.R. (2d) 50.

[17] In the ***Stuart*** decision, the Court of Appeal enunciates the principle of statutory interpretation, as follows (at para. 16):

> As elaborated on recently, and in more detail, in Professor Ruth Sullivan's restatement of Professor Driedger's principle:
>
> > There is only one rule in modern interpretation, namely, courts are obliged to determine the meaning of the legislation in its total context, having regard to the purpose of the legislation, the consequences of proposed interpretations, the presumptions and special rules of interpretation, as well as admissible external aids. In other words, the courts must consider and take into account all relevant and admissible indicators of legislative meaning. After taking these into account, the court must then adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its

> promotion of the legislative purpose; and (c) its acceptability, that is, the outcome is reasonable and just.
>
> [**Driedger on the Construction of Statutes**, 3rdEd. (Toronto:Butterworths, 1994) at 131]

The Objectives of the *Act*

[18] The objectives of the ***Act*** and the intention of the Legislature, in my view, are to establish a methodology to allow for the rights of the individual unit owner to be balanced against the communal interest of all unit owners. Fairness, like beauty, lies in the eye of the beholder and there is no possibility of condominium boards maintaining the common good to the satisfaction of each individual unit holder. In my view, the ***Act*** sets out a way to balance the collective good against the rights of an individual unit holder, without giving an absolute right to one interest in favour of the other.

[19] The ***Act*** acknowledges that at some point decisions for the collective good must be made even if certain individual unit owners might want to object and in particular circumstances, which I will refer to later in these reasons, it permits condominium boards to make certain decisions without notice or consent. The ability to make certain kinds of decisions without giving notice or seeking consent of individuals is a sweeping power and speaks to a need for swift and decisive action by condominium boards in certain circumstances to advance the common good.

[20] The balancing of rights under the ***Act*** is created by establishing a classification for changes deemed necessary by a condominium board. Unless and until that threshold is reached, there is no duty on the board to give notice

or seek consent of unit holders. The term "change" is described in section 172(1) of the ***Act*** as follows:

> **Definitions**
>
> 172(1) The following definitions apply in this Part.
>
> "**change**" means
>
> (a) an addition, alteration or improvement to the common elements;
> (b) a change to a common asset; or
> (c) change to a service or amenity that a condominium corporation provides to unit owners.

[21] The threshold for changes that trigger a duty on condominium boards to give notice and seek consent is described by the ***Act*** as a "substantial change" and it is defined in section 172(2) as follows:

> **Substantial change**
>
> 172(2) For the purpose of this Part, a change is substantial if
> (a) upon completion, it will materially alter the manner in which the common elements or common assets are used or enjoyed;
> …

[22] Ms. Shen is arguing here that the installation of the Ladder immediately adjacent to her unit materially alters the manner in which she uses and enjoys the common elements of the complex. This triggers the substantial change threshold and invokes the sections of the ***Act*** calling for a formal notice to unit owners and the written consent of the specified majority.

Legal Issues

[23] There are two issues to be determined in this application, namely:

1. Whether the Board violated section 176(1) of the ***Act*** in Part 9 (Changes to Common Elements and Common Assets and the Maintenance and Repair of Units and Common Elements); and

2. Whether the Board violated section 225 of the ***Act*** in Part 12 (Compliance and Dispute Resolution).

Issue #1 – Whether the Board Violated Section 176(1) of the *Act* in Part 9 (Changes to Common Elements and Common Assets and the Maintenance and Repair of Units and Common Elements)

Is the Installation of the Ladder a Substantial Change?

[24] As I have already noted, Part 9 of the ***Act*** relates to changes to the common elements by a condominium corporation and the duty to maintain the common elements. The Board concedes that the concrete block wall to the southwest of the entry to Ms. Shen's unit is a common element as defined by the ***Act***. Further, the Board concedes that the installation of the Ladder was a change to that common element.

[25] The Board denies, however, that the installation of the Ladder amounts to a "substantial change" as set out in the ***Act***.

Can a Change to the View Materially Alter Use or Enjoyment?

[26] The Board adamantly opposes any suggestion that Ms. Shen's view from one of her windows or the external appearance of her unit is something that can be enjoyed. No one could possibly enjoy looking at an exposed concrete wall according to the Board. Further, the Board argues that any obstruction of the view by the highly obtrusive presence of the Ladder from inside the unit or from the balcony cannot constitute a substantial change to a common element. A plain reading of the section, according to the Board, requires not only a material change but proof that the enjoyment of the unit holder must be altered in a material way.

[27] I disagree with this submission. I can take judicial notice of the fact that the esthetic value of a view from inside a residential property is a significant part of its market value. It is also fair for me to observe, without the benefit of an opinion from a real estate expert, that the external appearance or "curb appeal" of a residential property greatly affects its market value. It defies common sense to argue that a view cannot be enjoyed by an owner and a material alteration to such a view might significantly diminish that enjoyment and ergo the market value of a property.

[28] The photographs placed into evidence by Ms. Shen that show the views from inside and outside the unit are worth a thousand words. In my opinion, any reasonable and objective person looking at the photographs would agree that the views from Ms. Shen's unit have been significantly obstructed by the Ladder and this materially alters her use and enjoyment of her unit.

[29] The Ladder dominates the view of any observer looking at the front of the unit or looking out from the inside. The Ladder is approximately 4 metres away from the balcony and 1.4 metres away from the front door landing, and is visible from many of the windows in the unit. The Ladder gives an objective viewer a sense that the unit is part of a secure facility or a commercial building rather than a private home.

[30] I am satisfied that the Ladder considerably impedes and alters the views Ms. Shen previously enjoyed from her unit and the balcony. In addition, the Ladder greatly diminishes the curb appeal of her unit. I also agree with Ms. Shen's submission that the Ladder also interferes with her sense of safety

and privacy, as anyone climbing the ladder has easy views inside the unit. It cannot be fairly said, as was alleged by the Board, that the Ladder is no more obtrusive than a tree. In fact, it is a ridiculous analogy.

[31] I am satisfied that viewed objectively, the manner in which Ms. Shen can use and enjoy the common elements of the complex has been materially altered and the threshold of substantial change as defined by section 172(2) of the ***Act*** has been met by virtue of the installation of the Ladder.

Legal Requirements for Making Substantial Changes

[32] According to section 176(1) of the ***Act***, a substantial change requires the written consent of unit owners who hold the specified percentage of voting rights in the corporation:

> **Approval required for substantial change**
>
> 176(1) If the change proposed in a notice under subsection 175(2) is substantial, the change may be made only with the written consent of unit owners who hold the specified percentage of voting rights in the corporation.

[33] In section 1(1) of the ***Act***, "specified percentage" is defined as follows:

> **Definitions**
>
> **1(1)** The following definitions apply in this Act.
>
> **…**
>
> **"specified percentage"**,
>
> (a) in relation to a requirement in this Act for the written consent of unit owners for any matter, means 80% or, if a greater percentage is specified in the declaration for that matter, that percentage specified in the declaration;

[34] The Board argues that in these circumstances the need for the written consent of 80 per cent of the unit owners does not apply given the overriding

duty of the Board to maintain units and common elements. The broad duty to maintain is set out in section 180(1) of the ***Act*** as follows:

> **Condominium corporation's duty to maintain**
>
> 180(1) Subject to the declaration or a change agreement, a condominium corporation has a duty to maintain the common elements.

[35] Changes flowing from the duty to maintain are described in section 173(a) of the ***Act***. That section reads as follows:

> **Non-Application**
>
> 173 Sections 174 to 179 do not apply to the following changes:
>
> (a) a change resulting from work done by a condominium corporation to carry out its duty to maintain units or common elements or to repair them after damage, if that work is done using materials that are as reasonably close to the original materials as is appropriate under current construction standards;

[36] The Board relies on ***Briggs v. Winnipeg Condominium Corp. No. 30***, 2007 MBQB 35, 211 Man.R. (2d) 257, in support of the argument that the installation of the safety ladders was part of its duty to maintain. ***Briggs*** involved the replacement of all of the windows of a complex that had exceeded their life expectancy by several decades. Jewers J. concluded in that case that the replacement of windows was part of the duty of the board to maintain the complex under the ***Act*** and that window replacement did not amount to a material change.

[37] The ***Briggs*** decision indicates that "Broadly speaking, to maintain is to preserve and prevent a decline in the condition of the property" (at para. 55), and that "maintenance" as defined in the ***Act*** extends past the simple remedial

work necessary to repair an existing defect to include the prevention of the development of future defects (at para. 56).

[38] I disagree with the argument advanced by the Board that, because the Ladder will be used by maintenance staff to access the roof, the installation of the Ladder itself was somehow an act of maintenance. Installing a safety ladder where none previously existed is not at all analogous to the replacement of windows that are beyond repair. A plain reading of section 173(a) of the ***Act*** leads me to conclude that the section speaks to maintenance that constitutes the replacement of building materials that are defective or worn out. The section mandates that any work done to maintain or repair common elements must use materials reasonably close to the original materials.

[39] What this section contemplates, in my view, is the replacement of materials that wear out over time like carpets, siding and windows, rather than the means workers might use to access the roof. The suggestion that these words can be stretched to include the permanent installation of safety ladders that were not previously in existence tortures the plain meaning of these words.

Safety Considerations – Sections 175(1)(a) and (b)

[40] The Board also relies on sections 175(1)(a) and (b) of the ***Act*** to argue that the installation of the Ladder was justifiable as it fell within the scope of the Board's duty to ensure the safety of persons on the property or making use of common assets. Those sections read as follows:

Changes made without notice, approval

175(1) A condominium corporation may, if authorized by a resolution of the board, make a change without notice to the unit owners and without their approval if

(a) the change is required by an Act, regulation or municipal by-law or to give effect to an order of a court or tribunal; or

(b) in the board's opinion, it is necessary to make the change to ensure the safety or security of persons on the property or who are using the common assets, or to prevent imminent damage to the property or common assets.

[41] There is no evidence that the installation of the safety ladders was required by an ***Act***, regulation or municipal by-law, or to give the effect to an order of a court or tribunal. The Board formed the view that the existing practice (use of two portable ladders to access the roof) was not safe according to the regulations set out under ***The Workplace Safety and Health Act,*** C.C.S.M., c. W210, and it had a duty to comply with those regulations. Even if the Board is correct in this assessment, compliance with those regulations did not compel the Board to install safety ladders on each building in the complex.

[42] The evidence shows the Board came to the conclusion that the existing method of workers using portable ladders to access the roof was unsafe and the Board then reviewed no fewer than six options as an alternative to the existing method of roof access. Installing safety ladders was only one of these six options. Accordingly, the installation of the Ladder adjacent to Ms. Shen's unit cannot be said to have been "required by an Act, regulation or municipal by-law".

[43] In a similar vein, it cannot reasonably be said that the Board's concerns about safety made the installation of the safety ladders necessary for the security of persons on the property or persons using the common assets, or to

prevent imminent damage to the property or common assets. As already noted the Board had no fewer than six potential options to modify the existing method of roof access, which the Board viewed as unsafe. Installing safety ladders was only one of these options.

[44] What really happened here is that the Board came to the view that some kind of change to the existing method of roof access was prudent or necessary and it chose one of six options open to it to effect that change. There is no evidence that the installation of safety ladders was necessary or essential to ensure safety as defined in section 175(1)(b) of the ***Act*** or that the safety ladders were installed to prevent imminent damage to the property or common assets as contemplated by section 175(1)(b).

[45] The Board, in my view, cannot meet its onus on these facts to prove that the decision to install the safety ladders is permitted by sections 175(1)(a) or (b) of the ***Act***. Accordingly, the installation of the safety ladders, including the one adjacent to Ms. Shen's unit, required the written consent of 80 per cent the of unit owners. The Board violated section 176(1) of the ***Act*** by not seeking or obtaining the necessary written consents to this substantial change. The Board also violated section 175(2) of the ***Act*** in failing to provide the required form of notice of the change to unit owners, describing their right to a special general meeting under section 114 to discuss and comment on the proposed change.

Issue #2 – Whether the Board Violated Section 225 of the *Act* in Part 12 (Compliance and Dispute Resolution)

Standard of Review and the Oppression Remedy

[46] Counsel were unable to point to a Manitoba decision on the standard of review applicable to decisions made by condominium boards. In my view, the decision of the Ontario Court of Appeal in ***3716724 Canada Inc. v. Carleton Condominium Corporation No. 375***, 2016 ONCA 650, 61 B.L.R. (5th) 173 (the "Carleton Decision") is persuasive on this issue and that the applicable standard of review is reasonableness.

[47] In the Carleton Decision, the Court of Appeal noted the oppression remedy set out in section 135 (2) of the Ontario ***Condominium Act***, 1998, S.O. 1998, c. 19 (the "Ontario Act"), sets out a two pronged test requiring a claimant to first establish a breach of a reasonable expectation and secondly that the impugned conduct amounts to oppression, unfair prejudice or an unfair disregard to the interests of the claimant.

[48] The oppression remedy under the Ontario Act clearly sets out a balancing test between the reasonable expectations of a unit owner and how condominium boards can go about performing the various duties resting on them to ensure that necessary maintenance and repairs are completed and that the safety and security of persons in the complex are provided for. The ***Act*** in Manitoba sets out a substantially similar balancing test between reasonable expectations of unit owners on the one hand and the incumbent duties of condominium boards on the other hand.

[49] Section 225(1) of the ***Act*** reads as follows:

> **Order – improper conduct**
>
> 225(1) A unit owner, condominium corporation, buyer of a proposed unit, holder of a registered instrument in respect of a unit, declarant or owner-developer who reasonably believes that improper conduct has taken place may apply to the court for an order under this section.

[50] Section 225(2) then goes on to define "improper conduct" as follows:

> **Meaning of "improper conduct"**
>
> 225(2) In this section, **"improper conduct"** means
>
> (a) the conduct of the condominium corporation's business affairs in a manner that is oppressive or unfairly prejudicial to the applicant or that unfairly disregards the applicant's interests;
>
> (b) the exercise of the board's power in a manner that is oppressive or unfairly prejudicial to the applicant or that unfairly disregards the applicant's interests;

[51] In my opinion, the reasonableness standard for review set out in the Carleton Decision with respect to condominium board decisions should apply in Manitoba. The Carleton Decision sets out the test as follows (at para. 53):

> Therefore, to summarize, the first question for a court reviewing a condominium board's decision is whether the directors acted honestly and in good faith and exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. If they did, then the board's balancing of the interests of a complainant under s. 135 of the Act against competing concerns should be accorded deference. The question in such circumstances is not whether a reviewing court would have reached the same decision as the board. Rather, it is whether the board reached a decision that within a range of reasonable choices. If it did, then it cannot be said to have unfairly disregarded the interests of a complainant.

[52] On these facts however, I cannot get past the fact that the Board did not act in a manner consistent with the duty resting on boards as set out in the Carleton decision, which is the duty to act honestly and in good faith, and that it exercise the care, diligence and skill that a reasonably prudent person would

exercise in comparable circumstances. The Board's breach of this fundamental obligation by completely ignoring its duty to obtain the written consent of 80 per cent of unit owners to substantial changes or giving the prescribed form of notice means that I am not obliged to show deference to its decision as to how it balanced the competing concerns between an individual complainant and the common interests of all unit owners.

[53] In this case, the Board made every effort to avoid the due process for notice and written consent of 80 per cent of the unit owners as set out in the ***Act***. On at least two occassions the Board requested legal advice as to the necessity of written consent under the ***Act*** and after receiving no reply from its lawyers the Board decided to ignore the provisions for written consent to substantial changes. The decision of the Board to shoot first and ask questions later has certainly resulted in fundamental unfairness to Ms. Shen.

[54] The Board would obviously have known that the option of renting or purchasing equipment to access the roof would have affected the cost shared by every unit owner on a *pro rata* basis. In my view, a decision to rent or purchase equipment may very well have been a situation where no credible argument as to a substantial change under the ***Act*** could have been raised and the sections of the ***Act*** permitting boards to take action without consent or votes as to matters of maintenance and safety could have been safely invoked.

[55] But, in this case, the Board had knowledge of the fact that some unit owners would be adversely impacted by the change in their views and property values by virtue of the installation of the safety ladders, while other unit owners

would suffer no consequences whatsoever. The transcript of the cross examination of Mr. Jim Glenn (a Board member) reveals that the Board proceeded without written consent despite having knowledge of the fact that the installation of permanent caged safety ladders would adversely affect certain unit owners more than others. Notwithstanding this knowledge, the Board moved decisively towards the installation of the safety ladders.

[56] The following exchanges took place in the cross-examination of Mr. Jim Glenn on July 25, 2016, on this point:

Q. 392, p. 87	Q:	Accordingly, the board determined that the fixed ladder option was the most practical and economical solution for the complex. You see that? Yeah?
	A:	Yes.
Q. 393, p. 87	Q:	Despite being, to the board's mind, the most practical and economical solution, sir, the board was surely aware that the permanent ladder option would adversely affect some unit owners more than others, right?
	A:	Yes.

[57] Ironically, this may well have been a situation where the written consent of 80 per cent of unit owners would have been given on proper notice. In that case, the reasonableness standard of review may have called for deference to the Board's decision to proceed with the installation of caged safety ladders in the locations that were ultimately decided on. By ignoring the requirements set out in the ***Act*** as to written consent to substantial changes and riding roughshod over the rights of potential dissenting voices among the unit owners to be heard, the Board turned any notion of fairness into a farce.

[58] Completely disregarding the interests of a unit holder by ignoring the provisions in the ***Act*** for written consent as to substantial changes meets the definition of oppressive conduct in my view. The behaviour of the Board also meets the definition of bad faith as it acted in a way that was wrongful, lacking in probity and unjust. Due to the fact that the Board failed to act honestly and in good faith, and that it did not exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, I have no hesitation in concluding that Ms. Shen is entitled to a remedy. The question now becomes what remedy she is entitled to.

[59] **Remedies**

[60] The ***Act***, in section 225(3), sets out the orders a court may give if the business affairs of the condominium corporation has been carried in a way that meets the definition of "improper conduct" set out in section 225(2). The orders open to the court are set out in section 225(3) as follows:

> **Contents of orders**
>
> 225(3) If the court is satisfied that improper conduct has taken place, the court may make one or more of the following orders:
>
> (a) an order prohibiting the conduct referred to in the application;
> (b) an order requiring the amendment of the condominium corporation's declaration or plan as specified in the order;
> (c) an order giving directions as to how matters are to be carried out so that the improper conduct will not continue or re-occur;
> (d) an order requiring the payment of compensation to the applicant, if he or she suffered a loss or damage due to the conduct;
> (e) an order requiring the payment of costs;
> (f) any other order the court considers appropriate.

[61] Counsel were unable to point to case law in Manitoba interpreting section 225(3). In my view, the decision in ***McKinstry et al. v. York Condominium Corporation No. 472 et al***., (2003) 68 O.R. (3d) 557, is helpful in interpreting

how the remedial provisions of the ***Act*** are to be interpreted. In that decision, the Court addressed the issue of remedies under the Ontario Act (at para. 33):

> This interpretative principle and the foregoing passages apply to s. 135 of the *Condominium Act, 1998*. This new creature of statute should not be unduly restricted but given a broad and flexible interpretation that will give effect to the remedy it created. Stakeholders may apply to protect their legitimate expectations from conduct that is unlawful or without authority, and even from conduct that may be technically authorized and ostensibly legal. The only prerequisite to the court's jurisdiction to fashion a remedy is that the conduct must be or threaten to be oppressive or unfairly prejudicial to the applicant, or unfairly disregard the interests of the applicant. Once that prerequisite is established, the court may make any order the judge deems "proper" including prohibiting the conduct and requiring the payment of compensation. This broad powerful remedy and the potential protection it offers are appropriately described as "awesome". It must be remembered that the section protects legitimate expectations and not individual wish lists, and that the court must balance the objectively reasonable expectations of the owner with the condominium board's ability to exercise judgment and secure the safety, security and welfare of all owners and the condominium's property and assets.

[62] I agree with the conclusion in the ***McKinstry*** decision that provisions for remedies under the ***Act*** should not be unduly restricted and should be given a broad and flexible interpretation that will give effect to the potential remedies set out in the ***Act***.

Conclusion

[63] Under the broad powers open to me with respect to remedies I make the orders as follows:

a) that the Board permanently remove the Ladder from its existing place adjacent to Ms. Shen's unit and relocate it to one of the end walls of the Building as far away as possible from the sight lines of Ms. Shen's unit;

b) that the Board refrain from allocating any costs associated with this relocation to any common elements fees that might be charged back to Mr. Shen or her unit and further that the Board avoid any other kind of fee, levy or allocation which may directly or indirectly require Ms. Shen to pay or contribute to the costs of the relocation of the Ladder; and

c) that the Board pay compensation to Ms. Shen of $10,000.00 for the interference with her view and her loss of enjoyment of the property that took place without giving the benefit of due process as set out under the ***Act***. Again, the Board must avoid any charge back to Ms. Shen with respect to this payment or any allocation of this expense to her unit.

[64] The parties can speak to costs if they cannot agree.

REMPEL J.