CITATION: Gangoo and Giuntoli v. Toronto Standard Condominium Corporation No. 1737, 2023 ONSC 260
COURT FILE NO.: CV-19-624340
DATE: 20230110

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Natasha Gangoo and Vincent Giuntoli, Applicants

AND:

Toronto Standard Condominium Corporation No. 1737, Lorraine Coughlan, Jeremy Howe, Dudley Campbell, Robert MacLeod and Solvia Lo

BEFORE: W.D. Black J.

COUNSEL: *Shawn Pulver and Jackie Bartlett,* for the Applicants

Jordan Cowman, for the Respondents

HEARD: October 31 – November 4, 2022 and December 12, 2022

ENDORSEMENT

Overview

[1] This application was converted to a summary hybrid trial, and proceeded before me with affidavits (and in the case of the two expert witnesses, reports), serving as evidence in chief with "live" cross-examinations.

[2] The applicants are an engaged couple who live in unit 537 at 18 Mondeo Drive in Toronto (the "Building"). The corporate respondent ("1737" or the "Corporation"), is a condominium corporation and operates the Building under the *Condominium Act, 1998*, S.O. 1998, c. 19 (the "Act"). The individual respondents, who were added as parties at a point after the application was well underway, are directors or former directors on 1737's Board of Directors (the "Board").

[3] The applicants allege that elections for positions on 1737's Board in 2018 and, in particular in 2019, were conducted in a fashion that was unfair to the applicants and contrary to the requirements of the Act and of 1737's by-laws.

[4] While the applicants originally sought Orders for the disqualification (or requiring the resignation) of all current directors of 1737, the passage of time has rendered that relief academic. The three-year terms of all directors on the Board as at the time the application was commenced have since expired. Some of those directors have stepped down, and others have successfully run for re-election.

[5] Accordingly, the applicants now allege and limit their claims to oppression, and seek relief under the oppression remedy provisions under s. 135 of the Act, including declarative relief and claims for monetary damages.

[6] The respondent 1737's position is that, while the election process and procedures may have been imperfect in some ways, the election(s) at issue were demonstrably fair and the results legitimate. 1737 suggests that what actually motivates this application is the applicants' unwillingness to accept that they simply lost the election(s).

Ms. Gangoo's Initial Decision to Run for a Board Position

[7] Ms. Gangoo's evidence is that, as a result of frustrations that she and Mr. Giuntoli experienced in dealing with the Building's management relative to a noise issue and an issue involving a leak (in 2017), she felt that the Board was not as involved and available to residents of the Building as it should be. More particularly, by delegating responsibility to management (that is, a third party property management company, hereinafter "Del Property"), to deal with all day-to-day problems, without retaining a meaningful oversight role, she felt that the Board was shirking important obligations to residents.

[8] Accordingly, Ms. Gangoo decided to run for a position on the Board with a view to improving the Board's performance and accountability.

[9] Members of the Board of 1737 are exclusively volunteers, and Board positions are for three-year terms.

[10] Most years, at 1737's annual general meeting ("AGM"), one or more Board positions have become vacant (as directors' terms expire or directors give up their positions for other reasons), and candidates put their names forward to vie for the vacant position(s).

[11] Ms. Gangoo first decided to run for a Board position in the election at the 2018 AGM.

[12] The details and reasons for her ultimate lack of success in that effort, while not front and center in this proceeding – which focuses more particularly on the 2019 election – are nonetheless addressed in the evidence, including the expert evidence, and form an important aspect of the relevant narrative.

Ms. Gangoo's Allegations About the 2018 Election

[13] The brief version of the events relative to the 2018 election starts from the fact that when she filed the materials that she was obliged to file in order for her particulars to be included in the package of materials to be circulated to residents in advance of and for the purpose of the vote, Ms. Gangoo did so at the very last minute.

[14] That is, the deadline for submission of these materials was April 6, 2018, at 5:00 p.m., and Ms. Gangoo arrived at the on-site property management office to file her materials that day at about 4:45 p.m. She stayed in the office until after 5:00 p.m. and was advised (by Vanessa Anton,

who received Ms. Gangoo's materials, and who was the Del Property employee tasked with running the day-to-day aspects leading up to the election), that she was the only candidate to have submitted materials. Thus, according to Ms. Gangoo's recollection of what Ms. Anton told her, she understood that she would be appointed to the (one) vacant director position by default/acclamation.

[15] As it turned out, however, when an information package about the pending election was delivered to residents a couple of weeks later, it indicated that, in addition to Ms. Gangoo, Solvio Lo would be seeking to be re-elected as a director (i.e. also contesting the vacancy sought by Ms. Gangoo).

[16] Ms. Gangoo's evidence is that she asked Ms. Anton how it was that Ms. Lo was now running for election, and that Ms. Anton said that she "didn't know what had happened" since Ms. Gangoo's application "was the only application submitted for the position".

[17] In addition to her concerns about this apparent post-deadline entry of Ms. Lo into the 2018 election, Ms. Gangoo has other concerns about the conduct of that election.

[18] She alleges that Ms. Anton advised her, when she submitted her application, that she was not allowed to collect proxies for the 2018 election and that only current Board members were entitled to do so.

[19] Heeding that advice, Ms. Gangoo canvassed and introduced herself to many unit owners in the weeks leading up to the election but did not solicit proxies.

[20] She was then surprised when, on the day of the election, Ms. Anton asked her how many proxies she had collected. Ms. Gangoo immediately scrambled to collect proxies in the time remaining to her that day (before the election). She succeeded in collecting 13 proxies, but ultimately lost the election (to Ms. Lo) by three votes.

[21] Ms. Gangoo also expresses particular concerns about the documentation that Ms. Lo submitted for the purposes of the 2018 election.

[22] In short, Ms. Gangoo suggests that Ms. Lo did not complete her application herself, and takes issue with Ms. Lo's reconstruction of how she submitted the application. That is, Ms. Lo testified that she had no recollection of the specific mechanisms by which she completed and submitted her Candidate Disclosure Form ("CDF"), but believes that she scanned her completed (and signed) CDF at her workplace and submitted it to Del Property by email.

[23] Ms. Gangoo characterizes this explanation as unlikely, and went so far as to present evidence from a handwriting expert (about which more below), to the effect that Ms. Lo's alleged signature on her 2018 CDF was not her own.

[24] I take a step back at this point to observe that the alleged imbroglio relative to Ms. Lo's CDF, while only the tip of the iceberg of allegations, is reflective of the overall nature of the claim. That is, what the respondents put down to at most, minor missteps and irregularities about which

they have little or no memory, Ms. Gangoo (and Mr. Giuntoli) see as part of a concerted effort, stemming from a wish to keep the then board in place and a dislike and distrust of Ms. Gangoo in particular, to thwart Ms. Gangoo's ambitions.

[25] As such, while it might be possible to view the uncertainty about exactly what happened with Ms. Lo's application to run for re-election in 2018, and the details of how her CDF was completed, as something of a tempest in a teapot, it is important in my view to consider these allegations within the totality of the applicants' allegations which, taken together, they assert, amount to oppression.

Relevant Events Following the 2018 Election

[26] Following her unsuccessful bid for the Board in the 2018 election, Ms. Gangoo was concerned that the process had been unfair. She deposed that she "met with a number of other unit owners who were unhappy with how the Board and Management had been running the Corporation".

[27] Given those concerns, Ms. Gangoo and Mr. Giuntoli set in motion a process to air and address these and other concerns about the Board and management of the Building.

[28] Specifically, in the summer of 2018, they began canvassing owners with a view to requisitioning a meeting pursuant to s. 46(1) of the Act – to discuss concerns about the way 1737 was being run.

[29] To compile evidence about the number of owners with concerns, the applicants used a form of petition on which they sought and, to a considerable extent, obtained signatures of owners.

[30] This effort led to a series of steps on the part of the then president of the Board, Robert MacLeod, to which the applicants point as further instances of oppression.

[31] On Friday August 17, 2018, Mr. MacLeod left a note on the door of the applicants' unit. The note said, "Please give me a call" and provided Mr. MacLeod's name and telephone number.

[32] I pause here to note that, as a further reflection of the brewing animosity and distrust already festering by the summer of 2018, the applicants allege that Mr. MacLeod's act of leaving a note on their door was unacceptable conduct on his part.

[33] They note in their written submissions that Mr. MacLeod agreed in cross-examination that he had never before, or since, left a note on any other homeowner's door, and allege that Mr. MacLeod's failure, in his affidavit, to reference his act of leaving the note on the applicants' door was significant and should lead me to draw an adverse inference. They also argue that the fact that Mr. MacLeod received from Del Property the applicants' unit number means that both he and they "committed a breach of trust and privacy".

[34] Mr. MacLeod's evidence was that he planned to have a discussion with the applicants about their concerns and to invite them to a board meeting to allow a fulsome discussion in that regard.

[35] He testified that the invitation in the note to call him was meant as a good faith gesture, and that he thought he was doing a good thing.

[36] In any event, the applicants did not call Mr. MacLeod as his note requested, and on the Monday, August 20, 2018, following the Friday that he had left the note on the door, Mr. MacLeod prepared and posted in public areas within the Building, a notice concerning canvassing/petitioning in the Building.

[37] Mr. MacLeod's evidence was that he discussed the notion of posting a notice with counsel for 1737, Mr. Spears, but did not run the specific text of the notice by Mr. Spears before posting it. The notice said:

> "For your information, neither the Property Management Office nor your Board or Directors have authorized anyone to collect your name on a petition or similar document. Door to door solicitation may be considered contrary to…our Declaration. Should anyone approach your door, please feel free to refer them to the Management Office. Thank you for your kind attention to this very important matter."

[38] Ms. Gangoo said that in response, she and other owners with whom she had been in discussions about concerns, decided to send an email to management and the Board to explain that they were petitioning to requisition a meeting with the Board, which was an endeavor sanctioned under the Act. They sent that email to Del Property, requesting that it also be provided to the Board, on the same day that the notice was posted, August 20, 2018.

[39] The next day, August 21, 2018, the first notice was removed and was replaced, again in public spots within the Building, with a second notice. This second notice said:

> "An owner is knocking on unit owners' doors and requesting to sign a document of some kind and to list any issues. This action is contrary to the Declaration…Section 16…which states: 'no activity shall be carried on, within any unit or upon any portion of the common elements that will unreasonably interfere with the use and enjoyment by other owners of the common elements and their respective units'. Should anyone come knocking at your door, feel free to turn them away, and contact the Property Management Office."

[40] Mr. MacLeod explained that the genesis of the second notice was that he advised Mr. Spears about the email received relative to the first notice, and that Mr. Spears provided advice as to the contents of the second notice.

[41] Mr. MacLeod explained at trial that although he understood that owners could go door to door to requisition a meeting under the Act, he believed that the applicants had been going beyond that, and soliciting a "lists of issues".

[42] Mr. MacLeod also testified that the decision to post the notices was not something for which he sought or received the Board's approval, but rather something he did of his own volition.

Events in Relation to the 2019 Election

[43] The next, and main, set of items and events to which the applicants point as evidence of oppression all relate to the 2019 annual general meeting and in particular, events relative to the Board election that took place at that meeting.

Alleged Inadequacy of Information Relative to New Proxy Forms

[44] First, the applicants note that the proxy form mandated for use in the 2018 and 2019 elections was a new form (provided by the government of Ontario), first released in 2018.

[45] The applicants assert that the new form of proxy "represented a massive change within the industry" and suggest that, given widespread confusion about how to fill in the new proxy properly, various articles (mostly it seems by lawyers practicing in the condominium field), and other resources, were developed to assist people in filling them out.

[46] The applicants' point on this is that despite the widespread confusion and consternation over the new form, and despite the articles and resources generated to alleviate this confusion, 1737 provided no guidance to unit owners about how to complete the new proxy form. This becomes important, say the applicants, having regard to the events that unfolded (discussed below).

[47] The applicants maintain that the instructions on the proxy form itself are inadequate to allow a lay person to properly complete the form, and rely on the parallel effusion of "how to" articles and online resources as evidence of the shortcomings of those instructions.

[48] They also note that the information package circulated by the Board and Del Property, prior to the 2019 AGM, included no instructions nor reference to resources available explaining how to complete the form.

[49] This lack of guidance, they allege, is particularly inexplicable inasmuch as there was evidence that certain employees of Del Property themselves attended seminars with industry lawyers to learn about changes to the Act in 2018, including changes to the proxy form, in turn discussed the proxy form at monthly management meetings, and also reviewed the proxy form with members of the Board at a meeting in advance of the 2019 AGM.

[50] Thus, they say, the respondents knew about the widespread concerns, had the wherewithal to educate unit owners about the proxy form and yet failed to do so.

[51] Mr. MacLeod acknowledged in cross-examination that it would have been a "good idea" to have included in the information package – assembled by Del Property but circulated under a cover letter signed by Mr. MacLeod – information about how to fill out the proxy form, but that it did not occur to him at the time to do so.

[52] The applicants summarize their argument on this aspect of the case by saying:

> "Mr. MacLeod, the Board and the Corporation took no steps to ensure that the Corporation's owners and residents would understand how to properly fill out the new proxy forms. The Applicants submit that his failure unfairly disregarded their interests, in breach of section 135 of the Act."

[53] While the applicants rely on all of the foregoing items as evidence of oppression under s. 135 of the Act, the main thrust of their claim relates to the events surrounding and on the day of the 2019 Board election.

[54] By the day of the AGM at which the Board election took place, the applicants had collected some 65 proxies.

Afternoon Meeting Between Applicants and Mr. Morillo on Day of 2019 AGM

[55] It is agreed between the parties that on the afternoon of the day on which the AGM took place, some hours before the commencement of the AGM that evening, the applicants attended at the management office on site in the Building. There they met with Jamie Morillo, the senior-most Del Property employee on-site on a full-time basis.

[56] Exactly what happened during the meeting is contentious.

[57] The applicants say that they brought with them to the meeting some of the proxies that they had obtained with the express intention of ensuring – by obtaining confirmation from Mr. Morillo – that they were properly filled out. I should note that the applicants say that their 2019 proxies were filled out in exactly the same way as the 13 proxies Ms. Gangoo obtained for the 2018 election, which were accepted and counted in that vote. Nonetheless, the applicants say, they wanted assurance that their 2019 proxies were valid.

[58] To that end, they say that they provided a couple of the proxies for Mr. Morillo to look at, and they say that he did so and said "fine" or "okay" by which they understood that the proxies were properly completed and valid, and would be accepted at the meeting that evening for purposes of the Board election.

[59] Mr. Morillo's evidence, on the other hand, is that although he acknowledges that the applicants may have shown him "one or two" proxies, and that he may have said "okay" or "fine", he did not have the expertise or authority to determine whether the proxies were properly filled out.

[60] In his evidence, Mr. Morillo said that the applicants would have been more than welcome to leave their proxies with him, and that if they had done so he could have asked his superior at Del Property, Naseer Abassi, or the Corporation's legal counsel Mr. Spears, or the Board president Mr. MacLeod, to review the proxies for validity. It is frankly not clear in the evidence that Mr. Morillo made any such offer; the applicants deny that he did so. He testified, though, that the applicants declined to leave their proxies with him, and that therefore there was nothing more he could do.

[61] There is no evidence to suggest that Mr. Morillo later told anyone about his meeting with the applicants that afternoon, or about his understanding that they were seeking confirmation that their proxies were valid. The applicants assert that this failure by Mr. Morillo to advise any of his colleagues or the Board about his meeting with the applicants, takes on significance in the context of the events at the AGM.

Disallowance and Failure to Return Applicants' Proxies Just Before AGM Started

[62] Upon arriving at the AGM, the applicants presented their 65 proxies to Sherry Chan, a Del Property employee who was sitting at the head table and collecting proxies, at about 6:50 p.m., a few minutes before the AGM was to start at 7:00 p.m.

[63] The applicants recall that the proxies were then taken by Mr. Abassi, the Del Property manager with ultimate responsibility for 1737 and other condominiums managed by Del Property. Mr. Abassi was present not only to observe the AGM, but also to chair the Board election (which was item #8 on the AGM agenda). Mr. MacLeod chaired the balance of the AGM.

[64] The applicants observed Mr. Abassi taking a photograph with his phone, of one of the proxies.

[65] Within a short time, Mr. Abassi approached the applicants, and asked to speak with them outside the room where the meeting would take place.

[66] He told them that their proxies were deficient and could not be accepted for the board election.

[67] Ms. Gangoo's recollection is that she said, in response, "ok, give them back to me and I will get them fixed". Ms. Gangoo testified that she believed there was sufficient time before the vote would take place – again, it was item #8 on the agenda – that she could fix whatever problems Mr. Abassi saw with the proxies and still present them in time for the election.

[68] Mr. Abassi's response, which figures in the applicants' allegations, is that once the proxies were handed over by the applicants, they became the property of the Corporation and could not be returned.

[69] I observe here that the proxies submitted by the applicants were in fact demonstrably deficient.

[70] In each case, on the second page of the proxy, the forms collected and submitted by the applicants failed to name the proxy-holder and failed to include the date and signature of the proxy-giver as required.

[71] The proxies also failed to set out the voting instructions to the proxy-holder, in terms of which agenda items were to be voted and the extent of the voting authority given (for certain routine items and/or the Board election), which, on the form of proxy, was to be accomplished by checking one of three boxes.

[72] Mr. Abassi's evidence is that he noted these problems and sent a photo of one of the proxies to Mr. Spears, the Corporation's legal counsel, to obtain his view as to whether or not the proxies were valid.

[73] He says that Mr. Spears advised that they were not and could not be counted in the election.

[74] On the question of whether or not the Corporation was obliged to keep the proxies once they were submitted, whereas Mr. Abassi's evidence was somewhat equivocal as discussed below, the respondents' position in argument is clear that under Rule 197 of Wainberg's "Company Meetings Including Rules of Order" the original proxies, once "deposited", become records of the Corporation.

[75] Mr. Abassi's equivocation in his evidence was to say that, given that, as it turns out, the applicants had taken photocopies of their proxies, these rejected proxies could in theory have been fixed by the applicants before the Board election was called at agenda item #8.

[76] In any event, there is no suggestion that the applicants were given that option at that time, and so the applicants' 65 proxies were disqualified and not counted in the election, and not returned to the applicants to allow correction.

[77] Pausing here to take stock of the key aspects of the applicants' position on the oppression relative to the treatment of them in relation to their proxies, they say, among other things:

(a) Proxies that were filled out in the same way in 2018 were accepted, whereas in 2019 proxies filled out in that way were rejected;

(b) No general guidance or information was provided to the applicants, or any owners, concerning the proper way to fill out the proxies, notwithstanding:

(i) The proxies were new, and known in the condominium industry to be confusing;

(ii) Both management and the Board had received training and information about how to fill out the new form of proxies; and

(iii) There was a wealth of materials available in the public domain to which, even apart from guidance being provided directly to owners by management or the Board, owners could have been referred;

(c) The applicants went to Mr. Morillo hours in advance of the AGM, specifically with the intention of confirming that their proxies were properly completed, and believed and understood that they had received Mr. Morillo's affirmation that the proxies were valid;

(d) Since by his own admission, Mr. Morillo did not tell anyone at management or on the Board about the interaction with the applicants that afternoon, the fact that the

applicants had sought specific confirmation of the validity of their proxies was not taken into account in making a decision about what to do regarding the proxies;

(e) Despite the fact that there was still some time between the rejection of their proxies and the board election, the applicants were not given back their proxies at that time, despite their request, such that the applicants could not take advantage of the time available to attempt to repair their proxies;

(f) They also note that the Corporation's By-law No. 8 which was enacted and in place before the new proxy form came into being, and had not been repealed at the time of the 2019 AGM, and argue that the proxies were valid according to that rubric;

(g) Finally, they suggest that Mr. MacLeod completely abdicated his duties as chair in relation to the proxies by having, according to his own admission, nothing to do with the proxies in issue. This is despite the fact that as Chair of the meeting he was charged, under another section of By-law No. 8, with overall responsibility for making decisions to accept or reject proxies if any issue arose.

[78] The applicants' position is that these problems were then compounded by the events at the AGM and during the Board election itself.

[79] As noted above, they complain that the proxies were not returned to them to allow them to attempt remediation.

[80] They also dispute the respondents' position that the respondents are mandated, by the Wainberg's excerpt, on which the respondents rely, to keep the proxies as corporate records once handed over.

[81] They focus on the word "deposited" in the relevant Wainberg's provision, and argue that a proxy can only be seen as deposited if and when it is accepted for purposes of a vote. Proxies that are rejected, they say, cannot be seen as deposited, and the respondents cannot have it both ways.

Events at the Meeting Relative to Candidate Disclosure

[82] The next area about which the applicants express particular concern relates to events at the meeting itself.

[83] Notwithstanding the rejection of their proxies without recourse, the applicants note there were still a number of unit holders who attended the AGM and election in person, and who voted in person at the meeting.

[84] For these unit owners, the applicants suggest that their votes may have been dependent, at least to an extent, on the resumes and speeches of candidates running for Board positions.

[85] To understand the applicants' complaint here in context, it is important to understand that the pre-notice package for the AGM included the CDF form, which was a standard form developed

by a third-party condominium law firm. The CDF form included a series of questions designed to ensure that a would-be candidate had no conflicts of interest or other reasons disqualifying them from running for election.

[86] While normally the CDF is simply filled out, signed, and submitted to management in advance of an election, the applicants allege that, despite their many attempts to file their CDFs in advance of the AGM, Del Property did not accept these CDFs in advance of the meeting. The respondents' position is that the applicants attempted to submit their CDFs past the stated deadline for doing so.

[87] Whatever the reason, the fact that the applicants were not able to file their CDFs in advance meant that they were obliged to give oral disclosure in response to the standard questions about conflicts, posed to them during the course of the meeting itself.

[88] In the event, Mr. Abassi, who took over the chair role for the election portion of the AGM, also took on the mantle of posing questions to the applicants to elicit their answers to the standard disclosure items (to ensure no conflict or other basis for disqualification).

[89] The evidence, in particular through the testimony of Mr. Morillo, was to the effect that Mr. Abassi had considerable experience chairing Board elections, and that as such, he did not need to, or at least chose not to rely on the language contained in the CDF form itself, inasmuch as his extensive experience meant that he knew the questions to ask.

[90] In his cross-examination, while clearly deferring to Mr. Abassi's experience and therefore seeing or presuming no issue, Mr. Morillo acknowledged that Mr. Abassi's questions to the applicants during the meeting deviated from the questions as written in the CDF form.

[91] Specifically, it seems to be agreed by the parties that one of the items for which Mr. Abassi went "off-script", was in relation to the standard question asking whether a would-be Board member is involved in litigation against the Corporation.

[92] The provision in in the CDF form requiring disclosure reads as follows:

> "I, my spouse, my child, my parent, my spouse's child, my spouse's parent, an occupier of a unit I own, an occupier of a unit my spouse owns, and/or someone with whom I occupy a unit is/are a party to a legal action to which the Corporation is a party."

[93] A small detour is required here for further context. After not being elected during the 2018 Board election, and believing that she had been unfairly treated in that setting, in January of 2019, Ms. Gangoo responded to a notice indicating that a Board member had resigned, and that the remaining Board members and management would be conducting interviews for a replacement.

[94] She was in fact interviewed for the vacant position on February 28, 2019.

[95] Ms. Gangoo appears to have treated the opportunity to meet the Board as in part a forum for raising the concerns that she had about the 2018 election. Her evidence is that at that meeting, although Ms. Lo made certain admissions fitting with Ms. Gangoo's suspicions about what had happened, Mr. Abassi then intervened and prevented Board members from answering Ms. Gangoo's further questions about the 2018 election.

[96] Ms. Gangoo came away from this meeting with the Board unsatisfied (and also was not selected for the vacant Board seat).

[97] With the 2019 AGM approaching, and feeling that the Board had not answered her questions about the 2018 election, Ms. Gangoo retained counsel to follow up on these concerns.

[98] It is clear that this counsel (not the counsel who represented the applicants before me) and the Corporation's counsel, Mr. Spears, exchanged various letters in which the Corporation rejected Ms. Gangoo's various allegations. It is also clear that in one letter not long before the 2019 AGM, Ms. Gangoo's counsel suggested that the applicants and the Board and Corporation should mediate their dispute.

[99] However, it is also clear that the applicants had not commenced litigation and were not parties to any action against the Corporation at any time prior to the 2019 AGM.

[100] As such, the applicants' fair and correct answer to the standard question on the CDF about litigation would be "no". Likewise, if Mr. Abassi had asked the standard question at the meeting, the correct answer would have been "no".

[101] Instead, Mr. Abassi asked a wider ranging question along the lines of whether the applicants had "retained legal counsel" in relation to issues involving the Corporation. Whatever the precise question, the applicants felt that it required them to answer affirmatively.

[102] The minutes of the meeting reflect an even more discordant version of the question and answer exchange at the meeting as compared to the disclosure sought by the CDF form.

[103] That is, the minutes state, in relation to Mr. Giuntoli, that he "is an occupier of a unit that was a party to legal action to which the Corporation was a party, however, is no longer a party to that legal action".

[104] In the case of Ms. Gangoo, the minutes say: "Is no longer a party to legal action to which the Corporation was a party and had no intention to sue but had intention to mediate."

[105] So, whereas the CDF standard form specifically asks about whether the candidate is a party to a legal action against the Corporation (in effect), Mr. Abassi, in his misguided version of the question, inappropriately elicited information not required by the form. In so doing, it is conceivable that Mr. Abassi tainted the applicants' candidacies in the eyes of those voters in attendance at the meeting.

[106] It is noteworthy that Mr. Abassi's evidence in his affidavit is that he simply asked the questions that were on the CDF form. It is also clear, based on Mr. Morillo's evidence, and what is recorded in the minutes of the meeting, that Mr. Abassi in fact went beyond the language on the CDF form, and did so in a way that was potentially detrimental to the applicants.

[107] The applicants allege that Mr. Abassi, who was well aware of Ms. Gangoo's concerns about the 2018 election, and had in fact prevented Ms. Gangoo from thoroughly ventilating those concerns during her interview meeting with the Board earlier in 2019, intentionally modified the questions from the CDF form with a view to preventing the applicants, whom he viewed as trouble-makers, from being elected.

[108] Somewhat related to this allegation, it emerged during the testimony of Mr. Morillo, who testified on the last day of evidence, that the Corporation had taken an audio recording of the entire 2019 AGM. Despite the clear relevance of the events of the AGM, none of the 14 affidavits filed by the respondents mention the audio recording and its existence only came to light on the last day of testimony. The applicants argue that this omission should weigh against the credibility of the respondents' evidence.

Conduct of the Board Election

[109] A great deal of the evidence at trial dealt with the next aspect of the applicants' complaint, being the way in which votes for the Board election were compiled, processed, and counted.

[110] First, the applicants note an apparent discrepancy between the covering letter accompanying the 2019 AGM information package sent to unit owners, which suggested that provision of a proxy entitled the proxy holder to vote a ballot on the proxy-giver's behalf, and section 9 of the "Instructions for Balloting and Proxy Use" included within that package, which states that the proxy would itself be used as the ballot for election purposes.

[111] Mr. Morillo appeared to acknowledge in cross-examination that section 9 meant that the proxy itself would be used as a ballot, and that no conversion to a ballot would be necessary. In the event, however, it appears that certain directors were asked to convert proxies into ballots and that Mr. Morillo participated in facilitating this conversion.

[112] As a result of the decision to convert proxies to ballots, the ballots converted from proxies were in fact filled out by the individual respondents, two of whom, Mr. Howe and Mr. Campbell, were running for re-election at that time. Given the lack of discipline and precise accounting for the voting process, discussed below, this allocation of blank ballots to two of the candidates strikes me as something of a "fox in the henhouse" problem.

[113] The applicants allege, based in part on evidence from their handwriting expert, that four members of the Board, individual respondents herein, in fact filled out numerous ballots that they were not entitled to fill out based on the number of proxies that each received in their own names.

[114] Moreover, the applicants assert that the evidence shows that these individual directors failed to reference underlying proxies when filling out ballots, and in each case filled out more ballots than the number of completed proxies would authorize.

[115] To illustrate this point, the applicants point to the evidence of Mr. MacLeod, who had received the largest number of proxies, but who was clear in testimony that he simply signed the ballots placed in front of him, without making any effort to cross-reference the underling proxies purportedly authorizing those ballots. They note that neither Mr. MacLeod, nor any of the respondents, can point to any protocol authorizing this practice, nor to any due diligence to provide comfort about the way this was done.

[116] This lack of diligence and accountability becomes irretrievably problematic, say the applicants, when coupled with the troubling evidence of uncertainty about the number of owners who in fact attended at the AGM in person and cast votes in the election.

[117] The applicants say that, although there were clearly more owners in attendance at the meeting than in other years, the only place the attendance at the meeting is quantified is in the minutes for the meeting, which record the chair as reporting that 55 units were represented by unit owners who attended in person and 38 units were represented by proxy for a total of 93 units.

[118] If these numbers are an accurate tally of attendance, it may have significant implications for the vote that took place.

[119] The number of votes that the respondent says each candidate received is as follows:

1. Dudley Campbell is said to have received 61 votes in person and 38 votes by proxy, for a total of 99 votes;

2. Jeremy Howe is said to have received 54 votes in person and 38 votes by proxy for a total of 92 votes;

3. Vincent Giuntoli is said to have received 15 votes in person and 0 votes by proxy for a total of 15 votes, and

4. Natasha Gangoo is said to have received 29 votes in person and 0 votes by proxy for a total of 29 votes.

[120] Referencing these numbers, the respondents point out that of the 65 proxies accumulated by the applicants, it is evident that 21 of the unit owners who provided these proxies in fact attended at the meeting in person, and five more of the proxy-givers were in arrears of common expenses (such that, as specified in the Corporation's by-laws, they could not provide a valid proxy). There was a further reduction of one proxy owing to a duplication of that proxy. As such, say the respondents, even if one adds the remaining total of the 65 proxies, 38, to the actual votes received by the applicants at the meeting, that would still leave them short of the number of votes required to be elected (to illustrate, if one adds 38 votes to the 29 votes cast for Ms. Gangoo at the meeting, it would give her 67 total votes, well short of the successful candidates' totals). The

respondents rely on *Davis v. Peel Condominium Corporation No. 22*, 2013 ONSC 3367, for the proposition that in order for a dispute about a number of votes to be meaningful, the party alleging improper ballots must show that the disputed ballots, if counted or rescinded, would make a difference in the outcome of the election in question.

[121] However, the applicants point out, the overall number of ballots counted, and the number of ballots ultimately produced by the Corporation, yield numbers substantially exceeding the 93 voters (in person and by proxy) recorded in the minutes as being accounted for at the meeting.

[122] The number of ballots produced by the Corporation was 119, reflecting some 26 more voted ballots than the minutes suggest, if 93 is an accurate number, could be the case. It must be recalled that each ballot could contain up to two votes, so that based on the 119 ballots produced by the Corporation, the theoretical number of votes potentially cast totals 238, which is close to the total number of votes allocated by the respondents among the four candidates.

[123] Moreover, say the applicants, it is uncontested that Mr. MacLeod filled out 38 ballots. That number of ballots corresponds to the number of proxies that the minutes say were in hand at the meeting, and corresponds also to the 38 "proxy votes" that the respondents reported were received by each of Mr. Campbell and Mr. Howe (one vote each on each of the 38 proxies).

[124] The evidence, however, although there is a dispute about just how many ballots were completed by the individual directors (other than Mr. MacLeod), is clear that at least some of these directors completed at least some ballots, such that the overall number of ballots allegedly voted based on proxies is self-evidently more than 38.

[125] The respondents cannot provide any real comfort about this discrepancy. The evidence about which directors filled out which ballots, whether or not in so doing they reviewed proxies, and how many ballots were completed by each individual director, is inconsistent and inconclusive.

[126] The evidence about the number of in-person votes is no more reassuring.

[127] That is, the respondents' position is that the 2019 AGM attracted considerably more attendance than prior such meetings, that one or more of the Del Property staff responsible for recording the number of attendees were stressed to the point of being overwhelmed by the number of people who showed up, and that in the result no accurate or comprehensive record of attendance was taken.

[128] The applicants go further to allege that the 93 eligible voters confirmed in the minutes (again, 55 voters in person and 38 proxies accepted by the Corporation as valid), is the only recording of the attendance (in person or by proxy) at the meeting.

[129] They note that this number was approved, as part of the approval of the 2019 minutes, at the 2020 AGM, and that no effort has ever been made to amend those minutes to reflect a corrected attendance figure.

[130] They say that if one uses 93 as the total universe of potentially eligible voters, yielding in turn a total potential number of votes of 186, adding back the votes from the disallowed proxies to Ms. Gangoo's total – particularly when one considers the irregularities in the total votes recorded for Mr. Howe and Mr. Campbell – might have changed the outcome.

[131] Given that the applicants no longer seek to change the outcome of the 2019 Board election, I need not conduct the somewhat speculative exercise of recalculating the proper number of votes and attempting to allocate them to particular candidates.

[132] What I can observe, however, is that there are obvious shortcomings in the respondents' recording and accounting of the number of eligible ballots and number of votes cast for each candidate.

[133] This in turn reflects deficiencies in the protocols and procedures for the 2019 election.

[134] In my view, while the proper outcome of that 2019 election is at best uncertain – albeit that it is now conceded to be academic – these problems mean that the applicants' concerns about the handling of the election are well-founded.

[135] The question remains, as discussed below, as to whether these shortcomings, in and of themselves or together with the applicants' other allegations, reach the very high evidentiary threshold required to demonstrate oppression for purposes of s. 135 of the Act.

Allegations About Respondents' Post-Election Conduct

[136] Before turning to that analysis, I should note that the applicants also allege oppression in various aspects of the respondents' conduct in the aftermath of the 2019 election.

[137] They allege that the concerns they expressed following the election were effectively stonewalled by the respondents in the months following the AGM, and that among other items, the respondents failed and refused to undertake an audit of the election results.

[138] They also allege that in 2020 and 2021, Ms. Gangoo received a number of disturbing and threatening handwritten notes and emails sent to an account she used for business.

[139] Despite Ms. Gangoo bringing these troubling communications to the attention of the respondents, it is alleged, the respondents took no meaningful steps to investigate the concerns, let alone to do anything about them.

[140] There are also concerns expressed by the applicants about certain conduct of the respondents, or some of them, in subsequent elections, for example, in failing in some cases to disclose that some respondents were involved as parties in this case.

[141] For the most part, in my view, such discrepancies, if any, can be explained on the basis of the timing of events and potential misunderstandings about what needed to be disclosed and when. I do not find that they rise to the level of oppression.

[142] Similarly, with respect to the threatening communications that Ms. Gangoo received, while again unfortunate, and while the Corporation's response was not optimal, the communications at issue were received and reported in the midst of the pandemic, and part of the Corporation's explanation of its response that it did not set up in-person meetings in that setting, may be fair.

[143] In any event, it appears to me that these post-2019 AGM allegations are largely window-dressing, and that my consideration of potential oppression should instead focus on some of the events described above, both pre-dating the meeting and at the meeting itself.

The Expert Evidence

[144] In this context, I should also discuss the expert evidence called at trial.

[145] The applicants called Brenda Petty, a Certified Questioned Document Examiner based in Duncan, Oklahoma, and on consent (given the summary and hybrid nature of the trial) filed her reports.

[146] I should say at the outset, that while there are reasons for concern, as set out above, regarding the respondents' handling of the proxies and ballots at the election, I did not find that Ms. Petty's opinions added much to my assessment of the evidence; I found her testimony somewhat underwhelming.

[147] Part of that is not Ms. Petty's fault. The handwriting samples available to her were limited in number and were not original documents. She herself acknowledged, albeit somewhat grudgingly, that these limiting factors in turn limited her ability to articulate definitive conclusions.

[148] Beyond that, however, I have some concerns about Ms. Petty's qualifications in relation to aspects of the exercise she undertook, and about certain contents of her reports (in addition to her initial report she prepared a responding report to the respondents' expert, who was ultimately not called to testify at trial).

[149] In terms of Ms. Petty's qualifications, while there is a credentialling process for forensic document examiners, the training for the accreditation process undergone by Ms. Petty was not undertaken in an academic setting, and its features appear to be somewhat haphazard and difficult to assess in terms of rigor and quality control.

[150] Clearly, Ms. Petty has done some study in the area, reads available literature, and has an ongoing education and study program with someone she describes as a leader in the field, but I am left with misgivings about the extent to which this somewhat informal collection of training and ongoing study assures the Court about Ms. Petty's expert acumen and the reliability of her conclusions.

[151] It was also pointed out in cross-examination of Ms. Petty that certain passages of her report, with respect to overarching neuroscientific theories purporting to underline the legitimacy of observations made by document examiners like Ms. Petty (based on writers' repetitive habits and

patterns of writing), were not in fact authored by Ms. Petty but were borrowed without attribution from other experts in the field.

[152] It also appears that this concern about Ms. Petty in particular has been raised in at least one other case before this Court.

[153] In *Re/Max v. 2452303 Ontario Inc. et al.*, 2022 ONSC 776, at paras. 202-203, Shaw J. expressed these same concerns about Ms. Petty, in terms of her failure to attribute passages in her report to their actual authors, but also in terms of Ms. Petty's apparent failure to recognize this as a problem. Shaw J. wrote:

> "Ms. Petty appeared surprised when questioned about her failure to attribute portions of her report that came from other sources and writers. My concern is Ms. Petty's failure to appreciate the importance, as a proffered expert who is to provide opinion evidence to assist the court, that her report ought to be her own and that if she is using writings from another source, she should properly identify those sources. By failing to do so, she is holding out work to be her own when it is not.
>
> While these paragraphs may not be central to her final opinion, and even though she testified on re-examination that she agreed with everything she quoted from other authors, the concern is utilizing works, phrases and a manner of expression that are not her own without full disclosure."

[154] In cross-examination before me, Ms. Petty acknowledged the passages in her report that were written by others, and that she had failed to attribute those passages to their actual authors, but again seemed somewhat unconcerned about these facts.

[155] While in this case, as in the case before Shaw J., the passages in question were not central to the substance of Ms. Petty's report, they were nonetheless passages purporting to lend an air of scientific legitimacy to the overall undertaking of document examiners. Her failure to attribute these passages to their sources, and equally her failure to acknowledge the serious potential consequences of plagiarism, were troubling.

[156] The applicants' argument on this issue, that Shaw J.'s decision was not released until after Ms. Petty authored her reports in the case before me, was not reassuring.

[157] Presumably, even if Shaw J.'s decision did not come out until after Ms. Petty issued her reports in this case, Ms. Petty would nonetheless have undergone cross-examination during the course of the trial before Shaw J. in which the problems in her approach were pointed out. This would in turn have provided for Ms. Petty the opportunity to amend her reports in the case before me to comply with expectations of proper attribution.

[158] Moreover, and more importantly, Ms. Petty's relative tone-deafness to the concern about plagiarism, particularly after it had previously been brought to her attention in the proceedings before Shaw J., is very troubling.

[159] I have other concerns about the methodology employed by Ms. Petty, and about the way in which the documents were provided to her and the questions she was asked to consider, neither of which were "blinded" or designed to ensure the objectivity of Ms. Petty's ultimate opinion.

[160] In the result, in combination with my concerns above about the nature of Ms. Petty's training and accreditation, and her (grudging) acknowledgment of the less-than-optimal samples available to her for review, these concerns mean that I cannot and do not place much weight on Ms. Petty's opinion.

Discussion of Alleged Oppression

[161] I turn now to consider whether or not the evidence that I have reviewed and to some extent summarized above, meets the test for oppression under the Act.

[162] The case law elucidating the definition of oppression for purposes of s. 135 is somewhat limited, and tends to confirm a broad and flexible approach to applying the remedy.

[163] In *McKinstry et al v. York Condominium Corporation No. 472* (2003), 68 O.R. (3d) 557 (S.C.), Juriansz J., then sitting in this court and considering s. 135 not long after it came into force, stated that:

> "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 this section protects legitimate expectations and not individual wish lists, and that the court must balance 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."

[164] In *Niedermeier v. York Condominium Corporation No. 50*, [2006] 45 R.P.R (4th) 182 (Ont. S.C.), at paras. 6-9, D.C. Shaw J. commented on the definition of "oppression, unfair prejudice and unfair disregard" as follows:

> "Oppression is conduct that is coercive or abusive. Oppression has also been described as conduct that is burdensome, harsh and wrongful, or an abuse of power which results in an impairment of confidence in the probity with which the company's affairs are being conducted.
>
> Unfair prejudice has been found to mean a limitation on or injury to a complainant's right or interests that is unfair or inequitable.

> Unfair disregard means to ignore or treat the interests of the complainant as being of no importance.
>
> Koehnen comments that courts in Ontario have held that the use of the word "unfairly" to qualify the words "prejudice" and "disregard" suggest that some prejudice or disregard is acceptable and that it is not unfair."

[165] Somewhat more recently, in *Wu v. Peel Condominium Corporation No. 245*, 2015 ONSC 2801, at paras. 96-97, G.D. Lemon J. observed:

> "...Oppressive conduct requires a finding of bad faith. Stated another way, there may be no oppression remedy when the board has acted in good faith.
>
> "Good faith" is defined to "describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation," or "an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities or law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious."

[166] Justice Lemon went on to offer at, para. 159 that, "while bad faith is a factor to consider" in determining oppression, "a lack of bad faith is not determinative. Rather the test, as set out in *Hakim*, is contextual."

[167] Speaking of context, I am mindful of guidance from authorities that when one is dealing with volunteers working in a not-for-profit setting, the court should be circumspect about intervening too readily. This caution was expressed eloquently by Nordheimer J. in a decision I brought to counsel's attention during closing argument, in *Lee v. Lee's Benevolent Assn. of Ontario* [2004], O.J. No. 6232 (S. C.) at para. 12, where His Honour said:

> "Non-profit organizations such as the Association should not be required to adhere rigorously to all of the technical requirements of corporate procedure for their meetings as long as the basic process is fair. Nor should the court be too quick to grant relief in such circumstances that may only serve to encourage a disgruntled member of such an organization to seek relief. Absent some demonstrated evidence that any irregularities went to the heart of the electoral process or lead to a result which does not reflect the wishes of the majority, the court should be loathe to interfere in the internal workings of such groups."

[168] Applying the guidance from these various authorities to the facts at hand, I first note that despite the submissions of the applicants that the respondents' conduct was in some respects deceitful and reprehensible, for example, in alleging that the respondents deliberately manufactured ballots to "stuff" the ballot box, in my view, the evidence falls short of demonstrating such malice.

[169] For one thing, as noted above, the expert evidence on which the allegations of deliberate manufacture of votes is largely based is problematic and unpersuasive.

[170] In addition, while there is no question that the procedures followed to assemble and count the votes at the election were flawed and unsatisfactory, I am hard-pressed to find that this was a result of anything more than carelessness on the part of the volunteer board members who undertook these activities during the AGM.

[171] Those volunteers likely left too much of the organization and execution of the election to their paid property managers. While this is not to be encouraged, and while condominium boards and board members should be expected to meet a higher standard than the haplessness exhibited by the Board here, I am not convinced that their conduct shades over from negligence to oppression and, given the latitude to be given to volunteers in a not-for-profit setting, I am not prepared to assume mendacity in their behaviour.

[172] Del Property is not entitled to the same deference. Its representatives were paid employees on whose advice the Board clearly relied at various critical junctures during the events at issue, and I am troubled by aspects of Del Property's conduct. As the Corporation's manager who dealt with key aspects of these events, Del Property stands in the Corporation's shoes for those purposes, and the Corporation is responsible for conduct and decisions based on advice from Del Property.

[173] It is unacceptable in my view that Mr. Morillo, when he was approached by the applicants on the afternoon of the day on which the AGM took place (some hours later), knowing that they were looking to him for confirmation that their proxies were valid, did not tell anyone, in particular Mr. Abassi, that that interaction had taken place.

[174] That is especially so inasmuch as the interaction, given Mr. Morillo's apparent affirmation of the proxies, by saying "ok" or "fine" (as he acknowledged he did), reasonably caused the applicants to understand that there were no issues about their proxies, and that the votes authorized by the proxies would be counted.

[175] Had Mr. Morillo volunteered this information, even if only once an issue was raised about the validity of the applicants' proxies at the AGM itself, it would reasonably have required the respondents to consider whether fairness dictated that the applicants be allowed to submit their proxies, or at the very least, be given an opportunity to correct the deficiencies.

[176] When instead, Mr. Abassi not only refused to count the proxies, but also refused to return them to the applicants (or even to inquire if the applicants had copies with which they could work), and despite his acknowledgment in his evidence that there was an opportunity, and that he felt it would have been a good idea to attempt to fix the deficiencies in the proxies, he compounded the unfairness caused by Mr. Morillo's conduct in misleading the applicants as to the validity of their proxies and then failing to tell anyone about that exchange.

[177] Mr. Abassi left the applicants, who had in good faith canvassed unit owners and collected proxies, without any recourse to correct the deficiencies in what were acknowledged to be somewhat complicated and relatively new proxy forms. While I do not find oppression by virtue

of the respondents' failure to educate unit owners about these proxy forms, I do find that in the circumstances some additional latitude, at the very least providing advice and an opportunity to correct the proxies during the time available during the AGM, would have been appropriate.

[178] What concerns me perhaps the most is Mr. Abassi's conduct during the election portion of the AGM itself. As noted above he disqualified the applicants' proxies without recourse – and while he received advice from the Corporation's lawyer, he did not tell that lawyer about the applicants' meeting with Mr. Morillo earlier that day, because Mr. Morillo in turn, did not tell Mr. Abassi about that – and refused to return the deficient proxies to the applicants or otherwise provide them with a chance to fix the problems. He then effectively sealed the applicants' fate in the election by the way he conducted the live and in-person inquisition about the elements required to be answered in the CDF.

[179] That is, as also noted above, he went off-script and asked for information not required by the CDF form. Moreover he did so in a circumstance and a way calculated to, or at least leading to the result, that unit owners attending the meeting in person and having not yet voted, would tend to view the applicants in a less than favourable light.

[180] While it is impossible to know what impact this had on the results of the election, I find that the way in which this inquiry was conducted was unfairly prejudicial to, and unfairly disregarded the rights and interests of the applicants.

[181] With respect to the jumbled handling of the election and the counting of votes, I am not prepared to find oppression. As discussed, the process and procedures were far from optimal and should not be seen as acceptable. A condominium corporation should always take an accurate "head count", including both unit owners attending in person and unit owners who have provided proxies, of how many voters and votes are present at the meeting. If, as is alleged here, the circumstances are "overwhelming" as people join the meeting, it is imperative to take a pause and a careful count, just before a Board election, of the number of voters and proxies present.

[182] A Condominium Corporation should also always be able to provide a comprehensive and clear tabulation and explanation of the votes cast.

[183] While the Board again relied on Del Property in this regard, in my view, the evidence shows not that the conduct of the election was oppressive and unfair, but rather that it was unacceptably sloppy.

[184] This sloppiness may or may not have actually caused unfairness to the applicants – it is frankly difficult to come to a definitive conclusion in that regard – but having regard to my findings above, and especially given that the passing of time means that the applicants are no longer contesting the outcome of the election per se, I need not drill down further on this issue.

[185] Relative to the oppression claim, in summary, I find that the way in which 1737, through Del Property, handled the applicants' proxies on the day of the election, and the way in which Mr. Abassi questioned the applicants about the required disclosure item regarding litigation, were unfairly prejudicial to, and/or unfairly disregarded the interests of the applicants, amounting to a

breach of s. 135 of the Act. While there are other aspects of the respondents' conduct, including in particular the collection and counting of votes, that was suboptimal and concerning, I do not find that it rises to the level necessary to engage relief under s. 135 of the Act. In that regard, my findings above of conduct that does breach s. 135 are limited to 1737. I do not find breaches by the individual respondents.

Damages

[186] Having found that the applicants have led evidence entitling them to a finding under s. 135 of the Act, there remains the question of damages.

[187] Whereas the applicants claim several hundred thousand dollars in damages, in my view they are entitled to no more than nominal damages at most.

[188] What the applicants have suffered, in particular, is the loss of potential opportunity to serve as volunteers on the Corporation's Board. While such service is admirable and to be encouraged, and while the applicants like most people contesting for positions on a board presumably sought the opportunity based on an altruistic desire to make the operation of the Board and the Corporation better, it is hard to identify quantifiable damages arising relative to that lost opportunity.

[189] Similarly, while clearly the applicants have been frustrated and have arguably suffered some amount of public embarrassment and humiliation as a result of the events at issue, it is my view that they have also overreacted to some extent to perceived misconduct on the part of the respondents.

[190] For example, I accept without reservation that Mr. MacLeod's entreaty by placing a note on the applicants' door, and inviting a call, was a reasonable and appropriate step for him to take in the circumstances. It is trite but true that in-person communication often resolves or at least reduces misunderstandings and disputes. By characterizing Mr. MacLeod's conduct in leaving the note as undesirable or worse, the applicants have themselves exacerbated the situation.

[191] Nonetheless, I find that the applicants are entitled to nominal damages.

[192] I award them $5,000.00.

Costs

[193] I encourage the parties to try to resolve the issue of costs. If they cannot do so within 20 days of the date of release of this endorsement (January 30, 2023), then the applicants should provide their costs outline and bill of costs, together with written submissions no more than 6 pages in length, within 10 further days (February 9, 2023 – date will be 30 days after the release of this endorsement). The respondents may then file written submissions, also not to exceed 6 pages in length, within a further 10 days (February 20, 2023). The respondents may also file their costs outline and/or bill of costs if they choose to do so.

W.D Black J.

Date: January 10, 2023