CITATION: Baha v. Waterloo North Condominium Corporation No. 37, 2025 ONSC 7043
COURT FILE NO.: CV-24-373
DATE: 2025/12/18

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
ANTOANETA CLAUDIA BAHA Applicant	Applicant is Self-Represented
– and –	
WATERLOO NORTH CONDOMINIUM CORPORATION NO. 37 Respondent	Michael Ruhl and Jonathan Pettit, Counsel for the Respondent
	HEARD: May 30, 2025

THE HONOURABLE JUSTICE I.R. SMITH

REASONS FOR JUDGMENT

1. Introduction

[1] This matter began with a complaint about dogs barking. It has since ballooned into five separate pieces of litigation. On the application before me alone, the record stands at well over 4,000 pages. This is another discouraging case about condominium dwellers who do not get along.

[2] The applicant, Ms. Baha, owns a unit within the respondent condominium corporation (the "corporation") in Waterloo. She lives in her unit with her partner, Joseph Murphy. Relying on sections 37 and 135 of the *Condominium Act, 1998*, S.O. 1998, c. 19, (the "Act"), the applicant seeks a declaration that the corporation and its directors have acted oppressively against her. She

also seeks damages for that alleged oppression. She further asserts that the status certificate produced by the corporation before she purchased her unit was deficient, and that she is therefore entitled to a reduction in her share of the common expenses of the condominium. In this respect she relies on s. 76 of the Act.

[3] For the reasons which follow, the application is allowed in part. I have concluded that, in one respect, the corporation did act unfairly in its treatment of the applicant, but the application is otherwise dismissed.

2. Background

2.1 The genesis of the issues between the parties

[4] The applicant, who suffers from generalized anxiety disorder and, to help her manage that condition, uses a service dog, purchased her unit in the condominium on January 9, 2023. The very next evening, according to the applicant and Mr. Murphy (who also uses a service dog), as they were removing old carpet from the unit, the occupant of the unit situated below their unit, knocked on their door and advised "in a very curt and aggressive tone" that renovations were not permitted after 8:00 p.m. The applicant says that she later learned that her downstairs neighbour was Mr. Anthony Bohnert and that he was the president of the condominium board.

[5] Later in January, the applicant, Mr. Murphy and some friends were painting the apartment. They had their service dogs with them. Mr. Bohnert knocked on their door again and complained that he could hear dogs barking. According to the applicant, he was "extremely argumentative, and condescending." Before leaving, he said, "in a very aggressive tone," that he was going to complain to the corporation's board. He did not mention, according to the applicant, that he was the president of the board.

[6] The applicant says that the next day, January 28, 2023, she provided notice to the corporation that she had a service dog and provided medical documentation in support of her claim that she has a disability which requires her to have a service dog. Her email to the then property

manager, Crystal Cormier (an employee of Sanderson Management Inc. ("Sanderson"), a company hired by the corporation to provide management services), reads in part as follows:

> I wanted to let you know that I have a service dog living with me.
>
> My neighbour came to complain that the dog was barking "constantly" which is absolutely not true. The dog will bark to let me know he needs to go out and I take action immediately.
>
> The bylaw is very clear, noise nuisance is persistent barking or whining, my dog is never alone, I work from home so there will never be persistent barking or whining. There is absolutely no barking at night, the dog has been trained and sleeps throughout the night. I have cameras in every room that record noise and movement if need be, I can prove that there is no persistent barking.
>
> As a psychiatric service dog, my dog will occasionally bark to redirect my attention when I have a panic attack.
>
> Doctor's note attached.

[7] The attached letter from the applicant's physician confirmed the diagnosis of general anxiety disorder and that the applicant has frequent panic attacks. She added that the "service dog is really helpful to calm [the applicant] down when she has these attacks."

[8] Neither the applicant's email nor the physician's letter made any reference to Mr. Murphy and his service dog.[1]

[9] Ms. Cormier replied, thanking the applicant for her email and noting that it and the doctor's note had been provided to the board "should anyone complain to them."

[10] In February 2023, the applicant confirmed with her neighbours across the hall that they had no concerns with the barking they could hear occasionally from her unit. Attached to Mr.

[1] In cross-examination, the applicant said that she omitted reference to Mr. Murphy's dog because "my dog is the one who barks." In addition, given that both dogs always wear red vests identifying them as service dogs, she "assumed their service dog status was known to the corporation."

Murphy's affidavit is a letter from one of those neighbours confirming that the dogs were causing no trouble at all.

[11] Nevertheless, Anne Beauchesne, another Sanderson employee, says that she continued to receive noise complaints from Mr. Bohnert after this time and attaches to her affidavit as examples emails from him dated February 26 and 27, 2023.

[12] Pamela Baker, a long-time board member (including during the entirety of the time during which the applicant has been a resident at the condominium),[2] said that in March 2023 she became aware of complaints made by Mr. Bohnert about noise coming from the applicant's unit. Ms. Baker says that Mr. Bohnert, the board president, recused himself from all board discussions of the complaints made by him about the applicant. Ms. Baker says that Mr. Bohnert continued to make complaints in the months following March 2023, saying that the noise, particularly dogs barking, interrupted his work and disturbed his sleep.

[13] On March 15, 2023, the corporation posted notices throughout the building reminding residents that the corporation's by-laws allowed no more than one pet per unit and that visitors were not permitted to bring pets to the property. The notice indicated that management had "recently … noted that there are quite a few owners who have more than one pet in their unit." On March 20, 2023, the applicant wrote to the property manager and advised that both she and her partner, Mr. Murphy, have service dogs. She said that both dogs were properly documented "as required by the Accessibility for Ontarians with Disability Act [*sic*] and the Ontario Human Rights Code."

[14] The property manager, Ms. Cormier, replied almost immediately. The applicant describes Ms. Cormier's reply as having "a very aggressive tone." Ms. Cormier wrote as follows:

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[2] In her reply affidavit, the applicant expresses surprise upon learning of Ms. Baker's very long tenure on the board (over 17 years) given what the applicant alleges to be Ms. Baker's lack of competence in that role.

> Your partner is not an owner of the unit therefore they cannot bring their pet on the property service animal or not. As far as your pet being a service animal, I require proper medical documentation. The note from your Doctor you provided is not sufficient documentation to support your claim of your pet being a service dog.

[15] The applicant says that this email (which she describes in her reply affidavit as "fueled by ignorance") and other "stressful interactions" with the corporation increased her anxiety and "triggered severe and frequent panic attacks and constant vaginal bleeding."[3]

[16] On March 20, 2023, the applicant says that she was advised by the property manager that Mr. Bohnert suspected that there was a water leak coming from the applicant's apartment and that he could hear water dripping. The applicant says that she "immediately complied and invited [Ms. Cormier] to come and inspect my unit." Ms. Cormier came with a plumber, who identified a leak in the applicant's shower. The applicant says that she immediately complied with the recommendation that the shower be replaced.

[17] The applicant says that because of "the severity of [her] panic attacks and the constant bleeding" she decided that it would be better if Mr. Murphy communicated with the corporation on her behalf. By email dated March 26, 2023, the applicant wrote to Sanderson to advise that she was appointing Mr. Murphy as her proxy in all matters relating to the condominium and her unit. She also wrote as follows:

> I have recently undergone surgery and the frustration and anxiety caused by my numerous interactions with Sanderson Property Management most likely played a part in the setback in my recovery. I will need to convalesce and avoid future distressful dealings, until further notice.
>
> It has been especially frustrating to have to argue repeatedly with Sanderson Management to simply exercise the rights that I know that I have.

[3] The applicant reports that on February 14, 2023, she had surgery to investigate indications that she may have cervical cancer. Although not express in the documents, I assume that the bleeding she described is related to that surgery.

[18] The applicant then referred to the corporation's by-laws and the various pieces of provincial legislation which define her rights.

[19] Notwithstanding the applicant's request that the corporation communicate with her through Mr. Murphy, she received a call directly from Sanderson on March 27, 2023. In an email sent later that day, Mr. Murphy wrote to Sanderson and reported that he and the applicant were "deeply disappointed" that the applicant's request that Mr. Murphy be her proxy had been "ignored". He said that the telephone call had left the applicant "visibly distressed and unable to finish her workday." Although it is not clear from the applicant's affidavit, it seems from Mr. Murphy's email that the telephone call had something to do with the leak coming from the applicant's bathroom. Mr. Murphy wrote that they had complied with the earlier recommendations from the corporation's plumber but added as follows:

> It now seems that we are back at square one despite [Sanderson] confirming that the water was no longer visible/audible following the repair.
>
> I am sure you can appreciate that we will need absolute, concrete proof this time before taking on any additional costs. That is not to say that we will not be cooperative.

[20] Mr. Murphy reiterated that he would be the point of contact with Sanderson going forward, although Sanderson was welcome to "cc Claudia on email correspondence to me." He closed by saying that "we are always willing to cooperate but not at the expense of Claudia's health."

[21] Ms. Cormier responded, saying that Sanderson had not ignored the applicant's request that Mr. Murphy be her proxy, and advising that they were working with counsel to determine what "we are permitted to do without you being on title." In her affidavit, the applicant describes this email as "astonishing" and evidence that the property manager "continued to torment me."

[22] Despite that description, Mr. Murphy replied by email, writing: "We completely understand the position of the Corporation, go ahead and contact [the applicant] directly." He said, however, that he would respond on her behalf. He added that he was concerned that the corporation was not taking the applicant's condition seriously. He said that the applicant "is facing a potential life-

threatening condition and she needs everyone's understanding." Although the email is not clear on this point, the applicant's affidavit suggests that the condition to which Mr. Murphy referred was the applicant's then recent surgery relating to a possible cancer diagnosis, not to her anxiety disorder.

[23] On April 20, 2023, the applicant wrote to the board of the corporation and made a formal request for accommodation for her anxiety disorder in the form of permission to install a washer and dryer in her unit. She explained that her condition makes her vulnerable to sensory overload and that the noise and bright lights in the condominium's common laundry room had triggered severe panic attacks. The applicant's letter set out her plan for the installation of the washer and dryer and closed by saying that she was "willing to discuss any concerns you may have" respecting that plan.

[24] During this time, the corporation's board received noise complaints from Mr. Bohnert, relating to the dogs in the applicant's unit. Mr. Bohnert claimed that there were multiple dogs in the unit. According to Ms. Baker, because of the various issues involving the applicant, and because Mr. Bohnert was the complainant and had recused himself, the decision was made to engage the corporation's counsel "for assistance navigating these matters." In cross-examination, she added that retaining counsel was the "best route" to achieve the board's "attempt to remain neutral," and that because the board had never encountered an issue with service dogs before, "we required legal advice."

[25] On May 4, 2023, the corporation's counsel, Christopher Mendes, sent a letter (the "May 4 letter") to the applicant in which he raised concerns about the number of dogs in her unit, the noise they were making, and the medical documentation which the board required to approve the accommodations which were sought by the applicant. The applicant describes the May 4 letter as heavy-handed, accusatory and threatening.[4] It launched a torrent of correspondence between the

[4] In her supplementary affidavit, the applicant says that the various letters from the corporation's counsel, including but not limited to the May 4 letter, "showed absolutely no intent on the part of the Corporation to engage in a respectful accommodation process, in good faith, absolutely no respect to my and my partner's needs. They were full of false

parties respecting the issues raised by the applicant's requests for accommodation, the complaints made about the applicant, and the condominiums responses to both the requests and the complaints. In his affidavit, Mr. Murphy says that since May of 2023 he and the applicant have been "constantly harassed" by the corporation. Matters became so unpleasant that at one point the applicant and Mr. Murphy temporarily moved out of their unit. And, as I have said, five separate proceedings were commenced.

[26] In addition to this oppression application, the proceedings are as follows: (i) the corporation launched an application to the Condominium Appeal Tribunal (the "CAT") to consider issues relating to the service dogs; (ii) the corporation applied to this court because the applicant would not permit the corporation to enter her unit to attend to plumbing and noise issues (the "entry application"); (iii) the applicant applied pursuant to the *Human Rights Code*, R.S.O. 1990, c. H.19 (the "Code") to the Human Rights Tribunal of Ontario ("HRTO") for relief relating to her request for an in-unit washer and dryer; and (iv) the applicant has sued a former member of the corporation's board and his wife in Small Claims Court for defamation.

[27] I turn now to the evidence respecting the main issues which caused friction at the condominium in the months which followed the May 4 letter. It should be noted, however, that it is simply not possible, and it is not necessary, to deal with every one of the many complaints that have been raised by the applicant, or every morsel of evidence respecting those complaints (especially those not explored in cross-examination of the corporation's witnesses). The summaries which follow capture the essential nature of the disputes and the relationships of the parties.

2.2 The service dogs

[28] The May 4 letter set out the corporation's understanding that the applicant had 3 or 4 dogs in her unit. The letter notes that the by-laws permit one dog or cat per unit as long as it is "of a size that can easily be carried", acknowledges that the applicant had provided a letter from her

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accusations meant to intimidate me and make me and my partner acquiesce… With every letter my anxiety was significantly enhanced."

physician respecting her need for a service dog, and asked the applicant to "kindly remove all but one" of the dogs from her unit by no later than May 26, 2023. If the remaining dog was one larger than could be easily carried, the corporation would require further medical evidence establishing the need for a large dog. The May 4 letter also asked the applicant to provide further information respecting Mr. Murphy's need for a service dog.

[29] The May 4 letter also advised the applicant that the corporation had been in receipt of numerous complaints about excessive barking from the dogs in the applicant's unit.[5] She was advised that such noise must "cease and desist immediately."

[30] Failing compliance with these various directions, so the May 4 letter advised, the corporation would be required to consider all options, including an application to the CAT. For reasons unexplained in the body of the May 4 letter, it enclosed two photographs of the applicant walking her small dog.[6]

[31] The applicant says that the May 4 letter "accused" her of having 3 or 4 dogs; that the letter "distorted the truth" about the condominium's by-laws respecting the weight of dogs permitted in the units, and that no-one from the board communicated with her prior to this sending of the May 4 letter for her version of events. She deposes in her affidavit that the May 4 letter's "unfounded harsh accusations … would intimidate most people, let alone someone who suffered from severe anxiety."

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[5] The applicant complains that affidavits filed in the various proceedings and other statements made by the corporation have asserted or implied that there were multiple complaints from various residents about the dogs barking when, in fact, all the complaints came from a single source, Mr. Bohnert, the occupant of the unit below the applicant. In addition, she asserts that since June 1, 2023 she has been asking the corporation to supply her with all records relating to noise complaints made about her unit and that she has never been provided with any such records. The applicant accuses Ms. Beauchesne of "blatant dishonesty" and of lying about this issue. While it may be that the complaints all came from a single source, although this is far from certain, the record does not establish that Ms. Beauchesne was "lying under oath" as the applicant suggests.

[6] These photos were apparently taken by Ms. Huff in the company of Mr. Bohnert. They prove nothing other than that the applicant was walking a dog. In her supplementary affidavit, the applicant writes that she should be able to "feel comfortable" using the outdoor space at the condominium, "not secretly watched and photographed … where I often walk around with my service dog and try to relax and clear my head."

[32] With respect to the issues relating to the dogs, the applicant responded to the May 4 letter by letter dated May 24, 2023. The applicant wrote that the claim that she had three or four dogs was "**unfounded** and **unsubstantiated**" [emphasis in the original]. She said that there were two service dogs in her unit, including her small dog and Mr. Murphy's medium sized dog. The applicant pointed out that she had advised the property manager on March 20, 2023, that Mr. Murphy had a service dog that documentation was available respecting his need for such a dog. She said as follows:

> Had the corporation requested a medical note to prove Mr. Murphy had a disability that required a service animal, as the law permits, instead of resorting to offensive remarks [in the May 4 letter] … such medical note would have been promptly provided.

[33] The applicant then went on to accuse the corporation of failing in its duty to provide procedural fairness and of making accusations without having conducted a thorough and impartial investigation, which investigation would have established the "absurdity and maliciousness" of the allegations, which she suspected all came from the same person who was also the person who took the photographs enclosed with the May 4 letter.

[34] The applicant described the noise complaints related to barking as "highly questionable", denied that the dogs bark excessively, and asserted that she had cameras installed in every room of her unit which cameras were equipped with AI technology to register every time that the dogs make any noise, including barking. She said that she would have provided that data to the corporation had it asked and that such evidence would be led before the CAT if necessary. Those data would show that the dogs do not bark excessively.

[35] The applicant said that the corporation's rules did not put any restriction on the size of dogs allowed in the condominium units[7] and that, in any case, provincial legislation would override such a restriction. She further accused the corporation of enforcing the one pet rule unevenly.

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[7] In this respect, the applicant was correct. Part 7 of the corporation's rules governs pets at the condominium. It provides, among other things, that residents may have one cat or one dog; that no pet which the board deems to be a

[36] Attached to the applicant's response to the May 4 letter was a letter from Mr. Murphy's psychiatrist indicating that she "fully support[s] his request for a service dog."

[37] In cross-examination, the applicant denied that there was anything "confrontational" about her May 24 letter.

[38] Mr. Mendes responded by letter dated June 16, 2023. He thanked the applicant for having confirmed that there were just two dogs in the unit,[8] but asked for further information respecting Mr. Murphy's need for a service dog. In reference to the note from Mr. Murphy's psychiatrist, Mr. Mendes wrote as follows:

> Please note that such a letter does not establish: (i) the existence and nature of a disability as enumerated by the Code; (ii) the medical need for accommodation; or (iii) the nexus/link between the enumerated disability and the medical need for a dog.

[39] Mr. Mendes said that such information was "required to properly assess the circumstances" and was required by the relevant provincial legislation as interpreted by the courts.

[40] On June 20, 2023, the applicant replied. She alleged that the corporation had failed to enforce the one-pet rule and warned that if it did attempt to enforce the rule it would have to "be very careful and **enforce the rule uniformly**" [emphasis in the original]. Otherwise, she would "not hesitate to **file an oppression claim**" [emphasis in the original]. The applicant said that there was "**no reasonable basis to question the legitimacy of Mr. Murphy's request for**

"nuisance" or "aggressive" shall be kept in any unit; that the board may require the removal of a pet after notice has been given of any problem relating to a pet "such as noise" and after a reasonable period of time has been given "for the problem to be corrected"; that visitors were not permitted to bring pets onto the premises; and that the rules respecting pets were subject to exceptions for service animals where sufficient medical evidence was presented, although even service dogs "must be kept under reasonable control and not cause any undue disturbance or annoyance". The rules which were operative at all relevant times do not restrict the size or weight of any dog kept on the premises. It may be that earlier versions of the rules did restrict the size of dogs to those which could easily be carried. Ms. Baker testified on cross-examination that this was her understanding of the relevant rule.

[8] In her affidavit, the applicant wrote as follows about this letter: "It 'thanked' us for confirming that there were 2 dogs in our unity and not 4, as if the Corporation had asked to confirm, not falsely accused us of breaking the rules, with absolutely no proof."

accommodation or a need for additional information" [emphasis in the original] and asked the corporation to justify its request for such further information.

[41] On June 29, 2023, Mr. Mendes responded. He invited the applicant to report to him any instances of other residents of the condominium who were violating the one pet rule. He repeated the reasons for requesting more information respecting Mr. Murphy's request for accommodation that he had set out in his letter of June 16, explained how, in the corporation's view, the medical note respecting Mr. Murphy was deficient, and cited authority for that proposition. He asked again that the information he had requested be provided.

[42] By letter dated July 13, 2023, the applicant supplied to the corporation a further letter from Mr. Murphy's psychiatrist. In it, she assured the reader that Mr. Murphy has a disability as that term is defined in the Code (but did not reveal her diagnosis of Mr. Murphy) and said that his service dog was "necessary in order to alleviate his symptoms and help him live an independent life." Having supplied this letter, the applicant wrote that she considered the matter closed.

[43] Mr. Mendes disagreed. In his letter of August 9, 2023, he wrote that the additional letter from Mr. Murphy's physician did not provide all the information which the corporation required. He asked again that the applicant supply that information, failing which, the corporation would consider commencing an application at the CAT.

[44] On August 17, 2023, the applicant wrote to the corporation's counsel declining to provide further information respecting Mr. Murphy's need for a service animal. The applicant made a legal argument in favour of that position and accused the board of having "continuously acted **dishonestly** and in **bad faith**" [emphasis in the original]. She suggested that too much money had been spent on "trivial personal vendettas and vexatious litigation" caused by lawyers who "write heavy-handed letters full of false, unverified accusations meant to intimidate people with disabilities."

[45] On February 13, 2024, counsel to the corporation wrote again to the applicant, again requesting more information. In this letter, the fact of Mr. Murphy's disability was accepted, but

what was sought was more information respecting the nature of the disability and his need for accommodation, so that the parties could "engage in productive and respectful discussions" respecting accommodation. The letter repeated the assertion that the corporation was in receipt of "numerous complaints of excessive noise emanating from your unit, namely, dog barking." It was pointed out that it was the applicant's obligation under the Act and the corporation's rules to prevent excessive noise.

[46] The corporation launched its CAT application on October 17, 2023. The applicant says that the corporation's position on that application was a moving target, and it does appear that the position of the corporation evolved over time. In the end, the corporation accepted that the applicant and Mr. Murphy had proven that they lived with disabilities but disputed the need for two dogs in the unit and the level of noise coming from the applicant's unit. On this latter point, the applicant says that the noise complaints all came from the same person, Mr. Bohnert, and did not establish that there was excessive noise coming from her unit. At the CAT, among other evidence, the applicant presented logs from her in-unit security cameras to establish that the dogs bark very little. By contrast, she says that the corporation provided only two emails from Mr. Bohnert, Mr. Bohnert's log of dates on which says he heard excessive noise (not just from dogs) coming from the applicant's unit, and an affidavit from Mr. Bohnert in which he further describes the various noises coming from the applicant's unit, including barking "at all times of the day and night."

[47] In her supplementary affidavit, the applicant writes of Mr Bohnert's noise log that "the first thing that came to mind was, this is the log of an unreasonable, intolerant person with extremely high propensity for exaggeration."

[48] With respect to the conduct of the CAT application, the applicant writes in her supplementary affidavit that the corporation's "approach [was] clearly an attempt to make a mockery of our judicial system and shows absolutely no respect and compassion for some of the most vulnerable members of our society, the mentally disabled." She described the corporation's factum before the CAT as "pure discrimination unfolding right before the tribunal's eyes."

[49] The issues respecting the service dogs were eventually litigated before the CAT. The corporation's application in that matter was dismissed by the CAT on August 26, 2024, in reasons found at 2024 ONCAT 131. Vice-Chair McQuaid concluded that the corporation had failed to establish that the dogs in the applicant's unit were causing excessive noise and that Mr. Murphy, who was an intervenor on the application, had provided sufficient information to support the request for relief from the condominium's one dog per unit rule. The first conclusion is put as follows in her reasons (at para. 23):

> The onus is on WNCC 37 to establish, on a balance of probabilities, that the noise from the dogs' barking is unreasonable and creating a nuisance. It has failed to do so. It has relied to a significant extent on the evidence of Mr. Bohnert which is somewhat at odds even with the evidence of Ms. Huff [the property administrator] and certainly with that of the neighbour across the hall. He is the only one who seems to have presumed the dogs to be aggressive; the video stills submitted by WNCC 37 of Mr. Murphy and the dogs which purport to suggest aggressive behavior do the contrary. I do not accept the assertion that there are others who are disturbed but will not come forward in the absence of any supporting evidence in that regard. What the evidence suggests is that one individual has complained about the dogs. It is possible that others may have been prompted to comment about the barking when specifically asked by management, but there is no evidence before me of other complaints. The dogs do bark at times – Ms. Baha and Mr. Murphy do not dispute that; however, there is a lack of compelling evidence to support a conclusion that Ms. Baha and Mr. Murphy are permitting unreasonable noise in their unit.

[50] With respect to the second issue, the corporation argued that it accepted that Mr. Murphy has a disability, but simply required more information on the question of whether that disability might be accommodated by some means other than by having a second dog in the applicant's unit. Vice-Chair McQuaid acknowledged that there was prior CAT authority for the propositions advanced by the corporation but concluded as follows (at paras. 29 – 32, footnote omitted):

> A clear point from these contrasting decisions is that it is not self-evident that the desire for a particular service animal, as opposed to just any service animal, is necessarily a mere issue of preference. [… Where] opinions provided by qualified medical professionals support the position that the particular animal is the appropriate accommodation, it is not appropriate for the condominium's board or counsel, or the Tribunal, to disregard those opinions and assume that some other animal would suffice.

> Mr. Murphy's physicians have clearly identified Rylie, his existing service dog, as the appropriate accommodation to meet his specific needs. Nevertheless, WNCC 37 submits that it needs further information to be able to propose other potential accommodation methods – in other words, to substitute its opinion for that of the medical professionals, as alluded to in WNCC 37's counsel's letter of February 13, 2024. One such proposal made in submissions was that one dog may be sufficient – that is, that Ms. Baha and Mr. Murphy share a service dog, thereby bringing themselves into compliance with the one-pet rule. As stated in *Vokrri* [2024 ONCAT 78], dogs are not widgets, and even less so when considering service dogs which serve an individual's specific needs.
>
> The remaining issue is whether such an accommodation reaches the point of undue hardship. It is well settled that the party who received a request to accommodate a disability is obliged to do so to the point of undue hardship. There is no compelling evidence before me that allowing Rylie to remain in the unit, as the second dog in the unit, would cause any undue hardship to WNCC 37. Rules 7.06 and 7.08 contemplate circumstances where more than one dog may be in a unit; WNCC 37 failed to reasonably exercise its discretion when applying these rules, and this failure has had negative repercussions on Ms. Baha and Mr. Murphy as the evidence showed – they have moved out of their home. And importantly, I have found that there is no compelling evidence to support a finding that the presence of the dogs is creating a nuisance or disturbing the comfort and quiet enjoyment of other residents.
>
> For the reasons set out above, I find that Mr. Murphy is entitled to keep Rylie in the unit as an accommodation under the Code.

[51] Vice-Chair McQuaid declined to make a declaration that the corporation and its directors had discriminated against and harassed the applicant and Mr. Murphy. She also declined to award costs to the corporation, finding as follows (at para. 37):

> It appears to me that in its handling of this case, WNCC 37 became too entrenched in its position, too focussed on enforcement of the strict letter of its rules without due regard to the Code accommodation principles. The result was that the matter was propelled forward when a resolution ought to have been achieved. Its flawed perception of this case is highlighted in WNCC 37's closing submission that the Respondent and Intervenor "have not provided adequate evidence to justify preferencing their private interests over that of the entire community by providing them with an exemption to the Condominium's Rules to keep *two* dogs in their Unit." (emphasis in the original) It is a significant mischaracterization of a request for accommodation due to disability to describe it as a "private interest". Indeed, to the contrary, it is in the interest of all owners

> and residents of a condominium community that individuals with disabilities are not subjected to discriminatory treatment under their rules.

[52] Vice-Chair McQuaid also ordered that the corporation pay damages to the applicant in the amount of $15,000.00, given the corporation's "failure to comply with its duties under [its] Rules … to reasonably exercise its discretion in assessing the Code accommodation request, which, as a consequence, led to [the applicant's] and Mr. Murphy's departure from their home": para. 48.

[53] The corporation's appeal to the Divisional Court was dismissed in reasons found at 2025 ONSC 4449. Backhouse J., writing for the court, rejected the condominium's submissions that the CAT had erred in law respecting the framework for determining eligibility for accommodations and in finding that the applicant and Mr. Murphy ought to be allowed to keep a second dog in the applicant's unit. She also rejected the arguments that the CAT had failed to provide procedural fairness to the corporation and had erred by awarding damages to the applicant.

[54] In a separate ruling, the Divisional Court addressed the issue of costs, rejecting the applicant's request for full indemnity costs, noting that the corporation had a statutory right of appeal and that bringing such an appeal could not reasonably be described as "negligence or [a] wrongful act or omission": 2024 ONSC 4449.

2.3 The washer and dryer

[55] The May 4 letter acknowledged the applicant's request for accommodation in the form of allowing her to install laundry facilities in her unit. It pointed out that such facilities were prohibited by the condominium rules, but that the corporation "takes all requests for accommodation seriously." Counsel asked the applicant to supply further evidence establishing her need for the requested accommodation, which the corporation would then assess. With respect to this issue, the applicant replied to the May 4 letter by email dated May 18, 2023. She provided a letter from her physician and noted that the common laundry room's bright lights, loud machines, and strong scents "trigger sensory overload which leads to panic attacks."

[56] After the corporation received the applicant's request for the installation of a washer and dryer in her unit, it retained the services of an engineering firm, Pretium Engineering ("Pretium") to determine whether the building's infrastructure could support that installation. Ms. Baker described this decision in her affidavit as follows:

> In consultation with the Condominium's legal counsel, we engaged Pretium … to obtain an opinion on any potential impact of allowing Ms. Baha to install in-unit laundry facilities. As with the noise issue, myself and the other members of the Board of Directors hoped that an opinion from an objective third-party professional would be determinative of the issue either way.

[57] Pretium produced a report dated June 15, 2023, in which it noted that the condominium building, constructed in or about 1972, was not designed for, or built with, laundry facilities in each suite. The addition of such facilities would place demands on the building's drainage system which it was not designed to carry and would lead to various problems, including problems with flow and blockage in the existing pipe system, problems with sanitary drain stacks (with which the building had previously had issues when "some units did install laundry facilities in the past"[9]), reduced water pressure and availability of hot water, and mold or mildew growth. In the result, Pretium concluded as follows: "We would recommend against the general installation of in suite laundry facilities at this site…"

[58] Ms. Baker says that the board reviewed the Pretium report and decided that laundry facilities could not be permitted in the applicant's unit. On the advice of counsel, it was decided to propose other means of accommodating the applicant's disability and to invite the applicant to make other suggestions.

[59] Mr. Mendes enclosed a copy of the Pretium report in his June 16, 2023 letter to the applicant. He noted that Pretium's conclusion was that the installation of in-unit laundry facilities "represents a danger to the property." Mr. Mendes said, therefore, that the applicant's request to install an in-unit washer and dryer was denied, but he suggested that there were "multiple avenues"

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[9] The Pretium report also notes that this led to the change to the corporation's rules to "clarify that laundry facilities were not permitted in the suites."

for the accommodation of the applicant's disability, including permitting her to use the common laundry room alone at designated times and softening the lighting conditions. Mr. Mendes invited the applicant's comments respecting same.

[60] In her June 20, 2023 letter, the applicant wrote that she was "extremely disappointed" with the corporation's response to her request for accommodation in the form of in-unit laundry facilities. Among other things, she said that the corporation's "proposed solution" shows "absolutely **no respect for my dignity**" [emphasis in the original] and amounted to a request from the corporation that her "**disability be turned into a pubic spectacle**" [emphasis in the original]. She further alleged that it was "**very concerning**" the corporation had "the audacity to **grossly misrepresent the information in the engineering report**" [emphasis in the original]. In particular, the applicant complained that the Pretium report's conclusion was that the installation of in-unit laundry facilities in all the buildings' units could pose a danger to the property, not that the installation of such facilities in one unit would do so.[10] The report was, therefore, "**completely irrelevant, I would go as far as to say that providing this report in support of the argument of danger to property is a mockery**" [emphasis in the original].[11] The applicant reiterated her request for accommodation and demanded that Mr. Bohnert recuse himself from any consideration of that request.

[61] The applicant took the position that installation of laundry facilities in her own unit was the only solution to the problem created by the noise and lighting in the common laundry room.

[62] In his June 29, 2023, letter, Mr. Mendes reiterated that the installation of in-unit laundry facilities was prohibited by the corporation's rules because of the danger of damage to the property. He continued, however, by offering the corporation's collaboration with the applicant to fashion a means to accommodate her medical needs and expressed the hope that she would participate in

[10] In oral argument, the applicant said that the corporation had "deliberately asked the wrong question. That is bad faith."
[11] In her reply affidavit, the applicant adds the criticism that this report was based on hearsay and not on a site review. She complains that the "Corporation did not even have the decency to conduct a site inspection."

such a collaboration, in which the corporation would be willing to consider alternatives that did not threaten the security of the property.

[63] In her letter dated July 13, 2023, the applicant declined to accept the corporation's alternative proposals and again did not offer any of her own. She said that there were no such alternatives and that the corporation's proposal showed "absolutely **no respect for my dignity**" [emphasis in the original]. She reiterated her demand to be permitted to install laundry facilities in her unit and made a series of demands for information and other things from the corporation.

[64] The corporation's counsel did not respond promptly enough for the applicant so she wrote again on August 4, 2023, opening her letter as follows: "The Corporation's lack of response, acknowledgement etc. is extremely disrespectful to my condition." She threatened to file a complaint with the HRTO, but before doing so set out her argument in favour of her request for in-unit laundry facilities, noting that she and Mr. Murphy had reviewed the Pretium report and addition: "I would like to remind the Corporation that my partner is an engineer by trade."

[65] On August 9, 2023, Mr. Mendes wrote again and asked the applicant to discuss with the corporation means of accommodating her disability other than the installation of a washer in her unit. He added that, should the applicant launch proceedings at the HRTO, his office would accept service of her application.

[66] On August 10, 2023, the applicant launched proceedings in the HRTO.

2.4 The request to enter the applicant's unit

[67] On September 10, 2023, the corporation received a report of a significant water leak from the applicant's unit which leak caused damage in other units.[12] Ms. Baker testified, in answer to the applicant's questions, that it was a Sunday, and that no staff were on site, so when Mr. Bohnert

[12] In her supplementary affidavit, the applicant accuses the corporation of falsely claiming that multiple units were damaged by this leak and asserts that only Mr. Bohnert's unit was damaged. She further says that there is no evidence that the leak originated in her unit.

reported the leak to Sanderson, Sanderson called her. She described what happened next as follows:

> Sanderson … asked me to go and knock on your door to find out if you were aware that you had a leak coming from your unit. I knocked on your door quite hard and several times. I - you did not answer, although I did hear some noise behind the door. So there was no point in sending the plumber if you would not let him in, so we had to wait until the next day. However, had it - it could have been much worse than it was, but that is the process. There's no point in paying a plumber to come out if they're not admitted to the unit.
>
> […]
>
> There was no point in investigating if I can't get into your unit. You were – there was someone home because the leak stopped when a shut off was – it must have been in your bathroom. I don't know.

[68] On September 11, 2023, on an emergency basis, a plumber from Dietrich Plumbing and Heating ("Dietrich"), entered the applicant's unit to investigate. Sanderson says that the applicant denied the plumber access to the entirety of her unit, so he was unable to determine the source of the leak. The applicant denies this claim and says that the plumber checked the plumbing in the bathroom and "said everything was ok in our unit."

[69] Later that day, Mr. Murphy went to the property manager's office to ask if the plumber would be returning. For reasons which are unclear to me, Mr. Murphy recorded this conversation with Ms. Huff, apparently surreptitiously. In any case, Ms. Huff said that the plumber was done in their unit for the day. Mr. Murphy and Ms. Huff discussed the leak and agreed that it had involved "a lot of water." Then, after some irrelevant small talk about Mr. Murphy's dog, who was present, they return to the topic of the leak and discussed the possibility that water was "running down the vent … into the bedroom." Mr. Murphy said he would check with the applicant to see if she had been washing clothes in the sink or bathtub at the time of the leak.[13]

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[13] The applicant takes the position that this transcript shows both that Ms. Huff was lying when she said that the applicant had refused access to her unit and that there was no evidence that the leak came from the applicant's unit. In my view, the transcript does not establish either point. It establishes only that at the moment she was speaking to Mr. Murphy, she did not know the source of the leak and that she believed the plumber was done for the day. The

[70] Dietrich advised the corporation that the amount of water which had leaked was consistent with an increased use of water in the applicant's unit and the leak might have been the result of a general increased usage, or of alterations to the plumbing in the unit and/or the installation of a washing machine or similar appliance. The corporation also received noise complaints from other residents who could hear large rushes of water coming from the applicant's unit.

[71] The corporation hired another engineering firm, HGC Engineering ("HGC"), to conduct a noise study. Ms. Baker said as follows in her affidavit:

> When the Board of Directors has received noise complaints in the past, typically the individual who is the subject of those complaints will agree to take measures to decrease or dampen the noise and such agreement resolves the matter. However, in this case, Ms. Baha denied any excessive noise and did not offer solutions to reduce any noise.
>
> The Board of Directors at the time, aside from Mr. Bohnert, who recused himself, discussed this matter at length. Our goal was to resolve the issue.
>
> The Board of Directors, without Mr. Bohnert, determined that a noise study from a third-party expert would conclusively determine whether there was any noise emanating from Ms. Baha's unit that exceeded normal tolerances.[14] Our expectation was that such a study would be determinative of the issue. Either the sound engineer would determine that the noise levels are excessive and Ms. Baha would be required to decrease and/or dampen the noise or the noise levels would be within normal tolerances and Mr. Bohnert would have to find strategies to tolerate the noise.
>
> The Board of Directors – myself included – did not take sides in the dispute between Ms. Baha and Mr. Bohnert. We wanted the issue to be resolved.

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transcript certainly reveals, however, that Mr. Murphy thought the leak could have come from the unit he shared with the applicant.

[14] In her reply affidavit, the applicant describes this portion of Ms. Baker's affidavit as "pure non-sense" and "extremely insulting." It seems that the applicant believes that a noise study would serve no purpose because the corporation told her that she had the option to be present or absent while it was conducted. From this, she concludes that the sound study would be useless because it could not measure the sound she was making if she was not present. When she put this point to Ms. Baker in cross-examination, Ms. Baker responded as follows: "I am not a sound engineer, this is their business, and this is how we're going to resolve the noise level coming from your unit. You don't have to be making the noise yourself. They brought the equipment to … simulate noise, different levels, different volumes, different durations."

[72] Ms. Baker gave similar evidence on cross-examination. For example, when asked what assignment the sound engineer had been given, Ms. Baker said:

> … to do a sound study in your unit so we could determine, "we" meaning the corporation, the board, whether the noise coming from you unit was out of acceptable range. As I've already said, neither you nor Mr. Bohnert were budging from your positions. He said there was noise coming from your unit, you said there was not unacceptable noise coming from your - from your unit. We had to resolve the issue. How did we do that? Because there was no compromise on either side, so we have to prove one way or the other, whether or not noise coming from your unit is travelling beyond what the range is.

[73] On September 18, 2023, the corporation advised the applicant by email that HGC would require access to her unit for three hours to complete the noise study. On September 19 and 20, 2023, the applicant and Sanderson employees exchanged emails. The applicant asked for details about the reason for and scope of the proposed noise study. The applicant says that the replies she received were "evasive" and "curt" and that the corporation "refused to provide any explanation." Ms. Huff responded by saying that the "sound study is being conducted as there have been complaints about sound transfer between units. The board in discussion with legal has agreed to complete the study to determine if there are any issues." In the applicant's responding email, she asked whether the sound study was specific to her unit or part of a larger assessment of the building. She continued as follows [emphasis in the original]:

> If this is specific to my unit, the result of noise complaints, I am confused as to why this was not thoroughly investigated, a thorough noise investigation does require both parties to be heard. If there was suspicion that the noise was emanating from my unit, it was **deliberate and not a consequence of activities of daily living**. I should have been give the opportunity to respond to such allegations. I would need to understand what is the nature of the noise that allegedly emanates form my unit, when it happened etc. Shouldn't a noise study by the last step in the process?
>
> As always, I will happily cooperate, but I need more context.

[74] Ms. Beauchesne replied to the applicant, writing that access to her unit was required to conduct the noise study, that the applicant had been provided with adequate notice of the need to

access her unit, and that the corporation would cooperate to find a time and day for that access that was convenient to the applicant.

[75] The applicant's response reads as follows [emphasis in the original]:

> The provision in the declaration is not there to give you and the Corporation carte blanche to enter my unit for unsubstantiated reasons. I have the right to know what the issue at hand is, telling me this is an investigation essentially gives you and the Corporation license to do anything, **this is an abuse of power**. Will we have an investigation every week? This just is not how our society works.
>
> You have not adequately established that there is a need to access my unit. This is MY HOME: everyone has the right to defend their home; you cannot just walk in whenever you feel like. **Just to be clear I am not refusing entry, I am willing to provide entry, if an adequate explanation is provided, I will not unreasonably restrict access**.
>
> This is just another example of how the Corporation feels it can bully the residents and exert ultimate power.

[76] On September 20, 2023, Ms. Huff advised the applicant that Ms. Beauchesne was away and not available to answer the applicant's email. Ms. Huff asked for a date for the inspections that would work for the applicant and said that Ms. Beauchesne would address the applicant's concerns when she returned to work. The applicant replied, saying that there was "no point in rescheduling this since I am not agreeing to such 'noise study'". The applicant then proceeded to provide detailed reasons for her opinion that the "noise study will not provide any relevant information and will accomplish nothing but spend more of the community money for frivolous allegations." The applicant said that the noise study was "nothing but another attempt to intimidate and harass us". She wrote further as follows:

> If the Corporation continues with unsubstantiated allegations and frivolous requests meant to intimidate us, we will be left with no other choice but to file an oppression claim and, we trust that when presented with all the proof that we have gathered in the 9 months we have been living here, no tribunal will see our claim as vexatious. This letter serves as final notice to cease and desist this intimidation campaign. The Corporation has been informed that I am suffering from severe anxiety, and yet it continues to fail in exercising its duty of care and torment me for no legitimate reason.

[77] The applicant added that she would permit access to her unit in cases of genuine emergency and regularly scheduled inspections of common element, "but you will stop interfering with the enjoyment of our unit for trivial, unsubstantiated allegations. … This conversation is now closed!"

[78] On September 21, 2023, Sanderson sent a copy of the email exchange of September 18 – 20, 2023, to its counsel, Mr. Mendes, asking simply that he "please advise the next steps we should take."

[79] The next piece of correspondence came from Mr. Mendes, on November 2, 2023. He wrote to request convenient dates for entry into the applicant's unit. He referred to the water leak from that unit on September 10, 2023 and Dietrich's opinion that the leak might have been the result of increased water usage, or of alterations to the plumbing in the unit, including the possibility that a washing machine or similar appliance had been installed. Mr. Mendes said that the corporation required access to the applicant's unit to investigate the cause of the leak, the plumbing, and any appliances.

[80] Mr. Mendes continued, noting that there had also been complaints about noise emanating from the applicant's unit, and that the corporation had decided to conduct a noise study for which access to the unit would also be required.[15] Mr. Mendes said that he understood the applicant to have refused entry, but asked her to provide five dates upon which the applicant would permit entry to her unit. Mr. Mendes said that the corporation would be compelled to apply to this court should the applicant hinder or prevent access to her unit.

[15] The applicant says that board minutes from October 4, 2023, show that Mr. Bohnert did not recuse himself from the approval of the sound study. In my view, while it is possible that the applicant is correct, the minutes themselves are not conclusive on this point, and this issue was not put to Ms. Baker in cross-examination. The weight of the evidence is that on all issues relating to leaks and noise complaints coming from the applicant's unit, Mr. Bohnert recused himself from the board's decisions.

[81] The applicant's affidavit refers to Mr. Mendes' letter as "another heavy-handed lawyer letter" which failed to provide particulars of the type of noise complained of and which "accused [her] of having installed a washer and dryer in [her] unit."

[82] The applicant responded to Mr. Mendes by email on November 2, 2023. She opened her email by saying that the corporation's "false accusations have just gone too far." She advised that she denied access to her unit to investigate a water leak since it had not been "established that the leak was caused by issues in our unit and it appears to be one-off occurrence, so there is no emergency". The applicant also advised that access to her unit to conduct a noise study was also denied because the corporation "has failed to properly investigate any alleged noise complaints." The applicant closed her email as follows:

> This is a clear case of oppression. You are invited to take all further concerns to the tribunal/court of your choice. No further correspondence pertaining to these topics will be accepted.

[83] On November 7, 2023, counsel to the corporation wrote again to the applicant. He set out the corporation's authority to enter her unit under s. 19 of the Act and asked her to supply 5 dates upon which HGC and Dietrich could enter the unit and do their work. Mr. Mendes noted that the applicant had already twice refused the corporation entry to her unit, and that an emergency was not a precondition to the corporation's authority to enter the unit. Mr. Mendes wrote that, should the applicant again refuse the corporation entry, it would be required to commence an application in this court for an order granting the corporation authority to enter.

[84] By email dated November 9, 2023, the applicant replied. The email is rude and sarcastic. In it, the applicant tells Mr. Mendes that his communications are not welcome and that she will no longer reply to him. She accuses Mr. Mendes of being "confused" about the law and claims that the corporation's demand for entry to her unit is "outrageous." She described the "accusation" that she had a washer in her unit as "ridiculous" given that the corporation ought to have known that she had not installed laundry facilities in her apartment at this time because she had applied

for interim relief from the HRTO to install one.[16] She asked Mr. Mendes if he was drawing "inspiration" from *The Trial*, by Franz Kafka. She closed with "We will see you in court!"

[85] The applicant says that the corporation knew that the conflict between them was affecting the applicant's mental health. She says that on January 12, 2024, she filed a letter from her doctor in the CAT proceedings. In that letter, the applicant's physician writes that the applicant was under significant stress given the conflict and given the then recent illness of her mother. She said that the applicant had been "having difficulty focusing, heart palpitations, insomnia and lots of panic attacks." The applicant says that she also started attending therapy because of the stress. Mr. Murphy's affidavit indicates that "the constant false accusations made by the Corporation" had a significant impact on his mental health and that of the applicant.

[86] On January 23, 2024, the corporation launched an application in this court (pursuant to s. 134 of the Act) seeking an order permitting access to the applicant's unit.

[87] In an email to the corporation's board, dated February 6, 2024, after the applicant had been served with the corporation's entry application, she sarcastically thanked the board for having served her, accused them of pursuing a "tactic" to "deter" her from pursuing her rights, threatened that they would be personally liable, accused them of "bad faith" and of having acted unreasonably.[17]

[88] On February 8, 2024, the applicant wrote to the corporation by email. She said that the corporation's access application was "unnecessary" because "I have never denied access to my unit." Instead, according to the applicant, all that she had done was to ask basic questions about

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[16] In this email the applicant says that her request for interim relief was filed "almost 2 weeks ago", but the notice to the corporation from the HRTO respecting this application is dated November 8, 2023 and that is the date upon which Ms. Beauchesne says she became aware of it. The applicant says in her affidavit, however, that the corporation also could have verified that she was using the common laundry facilities (and not an illicit washer in her own unit) by looking at the recordings created by the surveillance camera in the common laundry room. The applicant says that she told the corporation to do so. In her supplementary affidavit, the applicant leads evidence of her bank statements showing regular payments to Coinmatic, the provider of the condominium's laundry machines.

[17] In her reply affidavit, the applicant acknowledges that this email was "sarcastic" and that she might have responded more professionally, but she said by way of explanation that she was "very upset" and "exhausted".

the sound study before allowing the corporation to enter her unit for the purpose. As she had not received satisfactory answers to those questions, her refusal to allow entry was reasonable, especially given that she "was already falsely accused of having 4 dogs in [her] unit."

[89] The applicant then said that she had no washing machine in her unit, asserted that some of the board members had seen her in the common laundry room, and reminded them that they could check the security camera logs to confirm that she uses the common laundry room. The applicant closed her letter by suggesting if the corporation answered her simple questions, she would have no issue granting access to her unit.

[90] In her affidavit, the applicant sets out the reasons for having sent her February 8 email respecting her "extremely reasonable questions":

> After all the abuse I had to endure, I was afraid that a noise study would accomplish nothing but to perpetuate the abuse. I would be forced to make costly, unnecessary changes to my unit, that no other owner was asked to make to completely eliminate any possible noise transfer.

[91] Mr. Ruhl, who is from the same firm as Mr. Mendes, responded on February 8, 2024. He wrote simply that the corporation's application was necessary because the applicant had refused to allow the plumber and the engineer to enter her unit as required under the Act.

[92] The applicant responded by email that same evening. She complained that none of her "VERY REASONABLE QUESTIONS" [all caps in the original] had been answered and offered the view that "you cannot fabricate accusations and then search my home." She asked, sarcastically, whether the corporation would next want to check if she had buried a body in the walls of her unit, or had cocaine hidden in her toilet. She accused counsel of bringing "a bazooka to a knife fight" and said that counsel's firm was "perpetuating" the litigation. By this time, the applicant had been elected to the corporation's board. She wrote that it was her duty as a board member to advise the condominium community about how their money was being spent and that she would be telling her story in an open letter to that community. She said that she would share

all the letters received from counsel's firm so that members of the community "can judge for themselves."

[93] In her affidavit filed on the entry application, Ms. Beauchesne wrote that while awaiting the hearing of the entry application she continued to receive complaints respecting noise from the applicant's unit, including barking and large rushes of water.

[94] The applicant launched this oppression application on February 19, 2024. A motion brought by the applicant to consolidate the oppression application and the entry application was dismissed by Braid J. on May 23, 2024.

[95] The entry application was heard by McArthur J. In an endorsement dated August 14, 2024, he granted the relief sought by the corporation and rejected the applicant's argument that the corporation had acted capriciously and unreasonably. On the contrary, while acknowledging the "personal animosities" between the parties, McArthur J. concluded that the corporation's response to the complaints of a water leak and noise from the applicant's unit had been "reasonable and proportionate."

2.5 The applicant's election to – and removal from – the corporation's board

[96] On November 28, 2023, at the corporation's annual general meeting, in the midst of the rancour between the applicant and the corporation, the applicant was elected to the corporation's board.

[97] On February 15, 2024, one of the unit owners, Victor Vanderheyden, wrote to Ms. Beauchesne to advise that he wished to requisition a meeting of the unit owners "to discuss the financial health of our corporation, the integrity of our leadership, and ownership displeasure with our property management services." He attached to the email a portion of the standard

Condominium Authority of Ontario ("CAO") form for requisitioning meetings. That portion bore the signatures of unit owners, including the applicant, who supported the requisition.[18]

[98] Later that day, the applicant wrote to Ms. Beauchesne and the board to ask to be excused from delivering the complete CAO form, although she said she would be willing to deliver it in person if necessary. Ms. Beauchesne advised that the complete form was required and says that the applicant delivered it on February 16, 2024.[19] The form states that the proposed topics for the requisitioned meeting included the removal of three board members for "breach in duty of care."

[99] On February 20, 2024, Ms. Beauchesne sent a notice of the requisitioned meeting to all unit owners. The next day, documents were left at the door of each unit in the condominium. The documents sought to encourage unit owners to give their proxy for the meeting to Mr. Vanderheyden. The letter included in the documents alleged that the board was in a state of "chaos" and that it was time to remove the directors (other than the applicant) in order to restore confidence in the governance of the corporation. The letter purported to be from "The Coalition for Accountability and Transparency."

[100] On February 25, 2024, another document was left for all residents. It was in the form of a one-page newsletter and bore the masthead *Bluevale Tower Tribune*. Without naming the applicant and Mr. Murphy, the newsletter tells the story of the conflict between them and the corporation from their point of view. It accuses Sanderson and the board of many failings, including trying to "scare and intimidate" them, and includes a photograph of Mr. Murphy's service dog in a mock police mug shot. The applicant later acknowledged having distributed the newsletter. She said in her supplementary affidavit that she hoped this newsletter would allow the condominium community to "understand their elected Board does not have the skills and the integrity" necessary to represent the interests of owners, especially those who are disabled.

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[18] In her supplementary affidavit, the applicant says that she supported this requisition because the corporation's board did "not have the skills, experience, and integrity to manage our building's affairs."
[19] The applicant denies that it was she who delivered the document.

[101] After the delivery of the newsletter, Sanderson started to receive complaints from residents that they were being contacted to the point of harassment with respect to the requisitioned meeting.[20] Flyers, calls, door to door canvassing and Facebook messages were being used to engage residents in discussions about the meeting and the topics to be aired at it.

[102] On February 29, 2024, Sanderson received a second requisition for a meeting of unit owners. This requisition, signed by various owners, sought the removal of the applicant from the board. It alleged that the applicant ought to be removed because "she is unfit to be on the board as she is legally involved with the corporation … as well as giving false information to owners on corporation matters." That day, Ms. Beauchesne supplied a copy of the second requisition to the board, including the applicant, and advised that it would be added to the agenda for the approaching meeting of owners. By email, the applicant responded as follows: "This is actually hilarious. You kill my cat; I kill your dog. I hope everyone sees the humour in this, I certainly do."

[103] On March 5, 2024, Ms. Beauchesne sent a notice of a meeting of owners which would consider both the first and second requisitions. The meeting was set for March 20, 2024 (the "requisitioned meeting").

[104] On March 7, 2024, the applicant wrote to Ms. Beauchesne by email. She alleged that second requisition had called her a "liar" and was defamatory. She demanded that she be "given a platform" to respond in the form of access to the corporation's portal by which she intended to send "an open letter to the community." The applicant instructed Ms. Beauchesne not to "engage in back-and-forth useless conversations around this, I have a right to reply." She said "I will send my letter to you, and I will need you to send it to the community. Ms. Beauchesne did not comply with this request.

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[20] In support of this claim, Ms. Beauchesne attaches to her affidavit an email from a unit owner who complained that flyers, Facebook messages and calls, including from Mr. Murphy, were "disruptive and harassing." In her reply affidavit, the applicant says that any claim of harassment is false or overblown and that the comments of the writer of the email were "unjustified." The applicant goes further and asserts that the writer of the email "does not really understand the meaning of the word harassment."

[105] In a flyer apparently delivered to unit owners on or about March 18, 2024, the board and Sanderson were criticized for various financial decisions alleged to have caused harm to the corporation and the value of the units at the condominium. The flyer alleged on the part of Sanderson and the Board "lack of business acumen," "incompetence", the lack of "skills or inclination to engage owners, properly investigate issues and resolve conflicts amicably", that they acted as "secret society failing to provide the duty of care" required. A letter accompanying the flyer, dated March 11, 2024, and signed by Mr. Vanderheyden, repeated and expanded upon the topics addressed in the flyer.

[106] On March 19, 2024, the applicant sent her own letter to the residents of the corporation. She complained of the alleged defamation against her. She said that she had joined the board in order to "prevent abuse such as the one that me and my family have experienced." The applicant alleged that the corporation was being financially mismanaged and that all the litigation and legal expenses the corporation had incurred was "completely unnecessary and could have been entirely avoided had the Board exercised their duty of care." She alleged that "I was found guilty without a trial!" and urged residents to vote to remove the three other board members.

[107] On March 20, 2024, at the requisitioned meeting, the applicant was removed from the board by a vote of the unit holders. The other members of the board were not removed. Another board member was elected to fill the spot vacated by the applicant.

[108] In her affidavit, Ms. Beauchesne says that the applicant spoke at the well-attended requisitioned meeting and "made many inflammatory statements" respecting the management of the corporation and about the ongoing litigation between her and the corporation. The applicant and Mr. Murphy are said to have interjected while others were speaking, and at one point the applicant "attempted to take the microphone away from the chair of the meeting (an independent lawyer retained to chair the requisitioned meeting) in order to speak for her fourth or fifth time."

The applicant says that when she tried to speak at the requisitioned meeting she was shouted down and falsely blamed for the large legal bills which all the various pieces of litigation had generated.[21]

[109] The applicant alleges that Bonnie Brunet, and her husband Pierre Brunet, initiated the applicant's removal from the board and made false statements about her both before and during the requisitioned meeting. Later, the applicant demanded an apology from Mr. Brunet. He did not respond. Feeling humiliated and unwelcome, according to the applicant, it was at this point that she felt the need to leave the condominium. She says that she "relocated" on March 29, 2024. She sued the Brunet's in Small Claims Court by way of a claim dated June 5, 2024.

[110] I note here than neither the applicant's removal from the board, nor the alleged defamation of her, were acts of the corporation or its board. The former was the result of the democratic process within the condominium and the latter was based on statements alleged to have been made by members of that community.

2.6 The applicant's impact on the board, the corporation and the community

[111] In her affidavit, Ms. Beauchesne says that after the applicant's election to the board, she was routinely "argumentative, accusatory and rude" to Ms. Beauchesne and to members of the board, and engaged in unpleasant email communication with them. Further, Ms. Beauchesne says that the "Condominium community is experiencing significant unrest and division. Ms. Baha is a disruptive presence at the Condominium Property and her actions have increased tensions amongst the owners and the Board of Directors."

[112] Ms. Baker similarly describes matters as follows:

> During Ms. Baha's time as a member of the Board of Directors, she was very combative, confrontational, and impeded progress and decision making at our Board meetings.

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[21] There are minutes of this meeting in the record, but they do not reveal the acrimony which is described by these witnesses. In her reply affidavit, the applicant says that she reviewed a video recording of the meeting but that recording has not been included in the record. In any case, the applicant says that the video shows that she was repeatedly interrupted and that she was treated disrespectfully. She acknowledges that she "possibly" was sarcastic during the meeting.

> Once Ms. Baha joined the Board of Directors, I felt very on edge during our Board meetings, given the various legal proceedings ongoing between the Condominium and Ms. Baha. However, myself and the other members of the Board of Directors tried the best we could to carry out the general business of the Condominium.
>
> […]
>
> Ms. Baha would frequently provide countering opinions to numerous topics raised during Board meetings. Our Board of Directors typically makes decisions based on a consensus, but Ms. Baha routinely refused to agree with the will of the rest of the Board and insisted that we act on the basis of her opinion alone. Ms. Baha was certain she knew better, even when her perspective conflicted with the information and other opinions present.
>
> […]
>
> With Ms. Baha's election to the Board of Directors, our meetings were extremely unpleasant, tensions in the community were increased, and the business of the Board of Directors was stymied. During Ms. Baha's time as a member of the Board of Directors, two other members of the Board of Directors resigned, citing that the position had become too stressful.
>
> Even now that Ms. Baha is no longer a member of the Board of Directors, I feel very on edge around her.[22] I am scared that she will target me with frivolous litigation or some other form of reprisal due to the fact that I am a member of the Condominium's Board of Directors.
>
> The Condominium is my home and I have been a longstanding member of the Condominium's Board of Directors to try to do good for my community. I am hopeful that the resolution of the various ongoing matters between the Condominium and Ms. Baha will ease the current tensions in the community and we can all carry on with life as usual.

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[22] In her reply affidavit, the applicant suggests that Ms. Baker was "on edge" around the applicant because "she had to face the person she harassed for months, for absolutely no reason, out of pure callousness." Indeed, the latter portion of the reply affidavit criticizes Ms. Baker at length. It is dismissive of Ms. Baker's long tenure on the board, accused Ms. Baker of being condescending, of giving Mr. Bohnert's complaints preferential treatment, of not being a "good neighbour", of being "insulting", of "ignorance", of having "learned nothing", of acting with "maliciousness and … bad faith", of lacking "decency", of having "harassed" the applicant, and of cyber-stalking the applicant, among many other allegations. She also said that she did not want to be in the same room as Ms. Baker. In her reply affidavit, the applicant referred to the members of the corporation's board as "my harassers." I note that during her own cross-examination, the applicant claimed both that "I am probably the most honest person there is"; and that she does not "bear any personal animosity towards members of the board."

[113] For her part, the applicant says that other board members and corporation's counsel engaged in bullying of her by excluding her from important board discussions, an allegation they deny (except to the extent that the applicant was excluded from discussions about litigation she had against the corporation). During cross-examination, the applicant was asked to describe her focus when she was on the board, and how that differed from the focus of the other members of the board. She answered as follows:

> I guess same thing, it just in a different manner. Their approach was very aggressive, whereas mine was as part of my platform when I ran for the board, I - I came there to change that aggressive behaviour and I tried to advocate for a more inclusive community. A community where owners do not receive threatening lawyer letters and owners - where a board engages in conversations with the owners and tries to get their input. Because I believe that everyone's - everybody has something to teach and everybody has something to learn, so that was my platform, and that's what I tried.

[114] In her supplementary affidavit, the applicant writes that the corporation had long been aware of her disability, "yet for 18 months they continued to send harsh letters full of false accusations, they continued to harass me and my family." She says that the corporation's actions have had a "devastating" impact on her health and that her "symptoms are so severe that I am unable to function at work or in my personal life." In her reply affidavit, the applicant says that the corporation's representatives have shown "absolutely no trace of humanity and compassion" to her during this process. She challenges Ms. Baker's description of her conduct while she was a board member. She asserts that she did her job as a board member well, challenged the *status quo* and "group thinking", and "tried to modernize a stale board" and hold it accountable.

2.7 The status certificate

[115] The applicant closed on the purchase of her unit on January 9, 2023. While she was considering that purchase, pursuant to s. 76(1) of the Act, the corporation supplied a status

certificate to the applicant. The certificate was dated November 1, 2022, and was received by the applicant on November 15, 2022.

[116] Among other statements, the following assertions were made in the certificate:

> 12. The Corporation has no knowledge of any circumstance that may result in an increase in the common expenses for the unit.
>
> […]
>
> 14. The most recent reserve fund study conducted by the board was an Update Based On Site Inspection (Class 2) dated April 22, 2020 and prepared by PRETIUM ENGINEERING INC. The next reserve fund study will be conducted before April 22, 2023.
>
> […]
>
> 17. There are no plans to increase the reserve fund under a plan proposed by the board under subsection 94(8) of the [Act], for the future funding of the reserve fund.

[117] The April 2020 reserve fund recommended 26.5% increases in contributions to the reserve fund for each of the fiscal years 2021, 2022, and 2023. Notice of these increases was provided to unit holders on June 2, 2020, which increases are also reflected in the corporation's budgets for those years. The share of these common expenses attributable to the unit which the applicant bought, based on the 2020 reserve fund study and the corporations budgets, was reflected in the status certificate delivered to the applicant.

[118] The reserve fund study that was expected before April 22, 2023, was delivered in draft form on May 3, 2022, and was finalized on February 20, 2024. In the draft, a 21.68% increase in contributions to the reserve fund was recommended for the 2023-2024 fiscal year, which commenced June 1, 2023. That recommendation was incorporated into the board's budget for that year. The final version of the reserve fund study recommended further increases for the following three fiscal years. Notice of these increases was provided on February 22, 2024.

[119] The applicant says that the status certificate failed to disclose a loan that the corporation had been contemplating since least August of 2022, as board minutes from that year show. The board's October 4, 2022, minutes read as follows:

> The board and management discussed moving forward with the loan. It was noted that a borrowing bylaw will need to be passed before any loan can be obtained. Management suggested that the board request owners approve a $10 Million-dollar general by-law as this would give the board room to move forward with projects not yet determined such as the boilers, roof, hallway upgrades. Management to reach out to R. Griffiths at CWB Maximum and provide the approved work to date. The board agreed to move forward with the by-law at this year's AGM for owners to pass. **UPDATE:** The board agreed to move forward with R. Griffiths of CWB. Management to obtain the updated proposal and schedule a meeting with patties [*sic*] to review. It was agreed to have a separate meeting in early 2024 to pass the required borrowing by-law and discuss with owners what work will be done.

[120] Ms. Beauchesne testified on cross-examination that, ultimately, the board decided not to pursue the loan described in the minutes.

3. Positions of the parties

[121] The applicant argues that the corporation acted oppressively by falsely claiming that she had four dogs in her unit, by falsely claiming that the two dogs in her unit made excessive noise, and that one of the dogs exceeded the corporation's size limit on dogs, which limit did not exist. She further alleges that the corporation's claims respecting her proposed washer and dryer were unsubstantiated; that the corporation made false claims before the CAT about the applicant's alleged lack of co-operation; that the corporation made false claims in affidavits filed in this court; that there has been "perjury" from the corporation's witnesses in this court; that the noise study was unjustified; that she has been ridiculed and belittled by members of the corporation's board, and that she has been treated more harshly than any other unit owner. She says that the corporation's correspondence to her, including especially through counsel, has been high-handed and threatening, and that its conduct of litigation has exacerbated the oppression she has experienced. The applicant accuses the corporation of "intentional infliction of mental suffering." The applicant seeks damages, including aggravated damages, for all this mistreatment.

[122] Further, the applicant says that the status certificate supplied to her before she purchased her unit was deficient because it failed to disclose that the corporation's reserve fund was, to the corporation's knowledge since at least August of 2022, underfunded. In her factum, the applicant submits that the failure to make proper financial disclosure was oppressive. The applicant's amended notice of application asks for a declaration respecting the status certificate, including that she be exempted from any increases in contributions to the reserve fund not disclosed in the status certificate and that she be credited for any overpayment she has made.

[123] The corporation takes the position that it acted reasonably and in good faith at all times, treating the applicant "with respect and civility, even as her rhetoric became increasingly aggressive." The corporation says that it reasonably relied on professionals who were appropriately retained to assist its lay board. The oppression application should be dismissed.

[124] The corporation further submits that the status certificate supplied to the applicant was neither false nor incomplete. No declaration should be made respecting the status certificate.

4. Discussion

4.1 Oppression under the Act

[125] The foundation for the oppression remedy sought by the applicant is s. 135 of the Act, which reads as follows:

> 135 (1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section.
>
> (2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.
>
> (3) On an application, the judge may make any order the judge deems proper including,
>
> (a) an order prohibiting the conduct referred to in the application; and
>
> (b) an order requiring the payment of compensation.

[126] This section of the Act has been the subject of considerable judicial interpretation. The law in this regard is summarized in the judgment of the Court of Appeal in *Noguera v. Muskoka Condominium Corporation No. 22*, 2020 ONCA 46, as follows (at paras. 17 and 18; emphasis added):

> The test for oppression under s. 135 mirrors that for oppression in corporate law generally: *Metropolitan Toronto Condominium Corp. No. 1272 v. Beach Development (Phase II) Corporation*, 2011 ONCA 667, 285 O.A.C. 372, at paras. 5-6. In *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, the Supreme Court described the two-part test for oppression. First the claimant must establish that there has been a breach of reasonable expectations and second, the conduct must be oppressive, unfairly prejudicial or unfairly disregard the interests of the claimant. The subjective expectation of the claimant is not conclusive; rather the question is "whether the expectation is reasonable having regard to the facts of the specific case, the relationship at issue, and the entire context, including the fact that there may be conflicting claims and expectations": *BCE*, at para. 62. The availability of the oppression remedy largely turns on a factual analysis.
>
> At its heart, the oppression remedy is equitable in nature and seeks to ensure what is "just and equitable": *BCE*, at para. 58. In a case such as this one, relevant considerations include the board's statutory duties and the conduct of the parties.

[127] Before applying the two-part test, it is necessary to discuss and draw conclusions from the evidence.

4.2 Factual conclusions

4.2.1 Credibility and tone

[128] As noted in the passage quoted above from *Noguera*, whether the oppression remedy should be granted "largely turns on a factual analysis." Part and parcel of such a factual analysis are assessments of credibility and the nature of the relationships and interactions of the relevant parties. This is especially important given that, on an oppression application under the Act, "the conduct of the corporation must be viewed in light of the behaviour of the applicant: *Hakim v. Toronto Standard Condominium 1737*, 2012 ONSC 404, at para. 40.

[129] In my view, it is impossible to read the extensive record compiled for this application and come to any conclusion other than that there is no merit to the applicant's submission that the corporation and its representatives have acted in bad faith, without integrity, dishonestly, and with the intention to harm the applicant. The corporation has made mistakes, to be sure, and some of those mistakes are important (and will be discussed below), but there is in my view no merit to the applicant's claim that the corporation, its board of laypeople, or its counsel, have been motivated by callousness or have engaged in perjury, among other similarly serious claims. Nor does the evidence establish that the applicant was regularly ridiculed or belittled.

[130] Put another way, the applicant's claims that the corporation has acted in bad faith, without integrity, dishonestly, and with the intention to harm the applicant, are not credible. Further, the applicant's claims that she "was never the aggressor" (as she put it in oral argument), and that it was the corporation which escalated matters unnecessarily, that the corporation was the party which communicated in an abusive manner, and that it was the corporation which belittled and bullied her, are difficult to credit when one reads the entirety of the record. Instead, the reader comes away from a review of that record left with no available conclusion other than that the applicant was routinely rude, aggressive, sarcastic and insulting to those with whom she communicated or otherwise interacted. The applicant's own correspondence (not to mention the materials she has filed on this application) offers strong corroboration for the claim of the corporation's witnesses that the applicant was rude and aggressive with them, including during her tenure on the corporation's board where she was said to be a corrosive force, and at the requisitioned meeting to consider board membership.

[131] The corporation's responses, certainly compared to the applicant's communications, are civil and polite, even if they are direct, firmly express opposition to the applicant's views, or are occasionally curt. In particular, I have reviewed carefully correspondence sent to the applicant from the corporation's lawyers. I acknowledge that, for the average layperson (and even more for a person who suffers from anxiety), receiving a letter from a lawyer can be an intimidating event. However, there is nothing uncivil or otherwise unprofessional about the lawyers' letters sent in this case, and there is certainly no evidence, as the applicant claimed in her newsletter to the entire condominium community, that these letters were "clearly intended to scare and intimidate." The

point at this stage is not whether the positions taken in those letters were correct or incorrect, it is simply that the letters, while firm, were polite and professional. They could have generated similarly polite yet firm responses. There was, quite simply, no call for the excessive language and the all too quick jump to allegations of bad faith repeatedly made in the applicant's communications.

[132] In another unfortunate case of "a horrendous escalation of hostilities," Myers J. wrote in *Couture, v. TSCC No. 2187*, 2015 ONSC 7596, that the correspondence in that case brought to mind "the ancient legal expression 'it takes two to tango.'" As in that case, the allegations of bad faith and dishonesty made by the applicant in response to the letters from the corporation's counsel, "did not demonstrate good faith, reasonable, or neighbourly conduct…": paras. 53 and 54.

[133] A significant part of the applicant's complaints about the correspondence from counsel in this matter relates to what she regards as unfounded "accusations" contained in the letters from counsel. She asserts repeatedly that such accusations were made even before she had been asked to comment, or before an adequate investigation had been conducted. It is true that the letters sometimes do set out what the corporation understands or believes to be the case, for example, that there were three or four dogs in the applicant's unit, and that they were making excessive noise. But the letters themselves provided an opportunity for the applicant to respond and set the record straight. And indeed, for example, when the applicant explained that there were only two dogs in her unit, the corporation accepted that fact.[23] Moreover, some of the letters are expressly about the need for the corporation to have more information (for example, by investigating a leak, or conducting a sound study) before a decision about a course of action could be made.

[134] I note also that there was nothing wrong with the board retaining counsel to address the various issues which had arisen, and then continued, between the applicant and the corporation. First, as a general matter, members of boards of not-for-profit corporations, often comprised of laypeople, are properly encouraged to secure legal advice to assist them in their work. This is very

[23] During her cross-examination, Ms. Baker said that one of the purposes of the May 4 letter was to find out how many dogs were in the unit because the board did not know.

much in everyone's interests. It is not by itself oppressive to hire counsel, or to instruct them to communicate with a resident.

[135] Second, in the specific circumstances of this case, it made sense for the board to retain counsel. The complaints which had been made were made by a member of the board who was recused from the resolution of those complaints. Seeking counsel would assist the board in its neutral assessment of the issues. I accept as credible and reasonable the evidence of Ms. Baker in this regard.

[136] Moreover, even before the May 4 letter was sent, relations between the relevant players had become strained. This was true no later than the applicant's email of March 26, 2023, where she appointed Mr. Murphy as her proxy for communications with the corporation because of "the frustration and anxiety caused by [her] numerous interactions with Sanderson." In that same email, the applicant referred to the "frustrating" experience of arguing with Sanderson about her rights, before listing the statutes upon which she relied. In all these circumstances, the board's decision to retain counsel made perfect sense. Animosity was already in the air.

[137] The applicant, however, claims to harbour no animosity to members of the corporation's board. I do not accept this evidence. The applicant's correspondence, multiple affidavits, factum and oral submissions all repeatedly attack the integrity, honesty, competence, and intelligence of those board members.[24] Moreover, while she criticizes those whom she believes to have been insensitive to her needs and those of Mr. Murphy, she dismisses out of hand Mr. Bohnert's noise complaints (which were about more than dogs barking) as those of "an unreasonable, intolerant person with extremely high propensity for exaggeration."[25] While she complains of harassment, she dismisses the harassment claim of a fellow condominium resident, apparently intimidated by

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[24] See footnote 22, above. Relatedly, and by contrast, the applicant's materials repeatedly comment on and tout her own integrity, honesty, competence and intelligence. For example, in her reply affidavit, immediately after a passage in which she criticizes the conduct and competence of members of the board, she says this about herself by way of contrast: "I am a professional who understands their responsibilities and obligations as Board member and am quite skilled at deescalating conflict, I manage very diverse teams and am able to interact with people at all levels."

[25] See para. 47, above. In this respect, I note that in one of the cases cited by the applicant's factum, the condominium corporation was found to have engaged in oppressive conduct because it failed to address a unit owner's legitimate complaints about noise: *Dyke v. Metropolitan Toronto Condominium Corporation No. 972*, 2013 ONSC 463.

the campaigning prior to the requisitioned meeting, as the claim of a person who "does not really understand the meaning of harassment."[26]

[138] The applicant is right to insist on her rights. She is right to do so vigorously. But the other residents of the condominium are also entitled to dignity, respect and neighbourly conduct, not to be accused of bad faith at the least provocation, or to have their concerns dismissed out of hand.

[139] I close this portion of my reasons by saying that I find that there is no evidence that any of the corporation's witnesses has committed perjury, or otherwise lied, as the applicant has alleged in several places in this record. There is, of course, a wide gap between perjury and lying, on the one hand, and failing to prove an assertion, being mistaken about an assertion, or even offering a one-sided account,[27] on the other. I recognize that the applicant is a layperson representing herself in the courts, but these very serious allegations of perjury and other forms of dishonesty were unworthy and should not have been made.

4.2.2 The service dogs

4.2.2.1 The significance of the CAT decision

[140] Having made these initial observations, it is important to observe that I generally agree with the observations and conclusions of Vice-Chair McQuaid on the CAT application, which were not disturbed on appeal. That application should not have dragged on as long as it did, and the parties ought to have been able to settle. The applicant and Mr. Murphy established that they were disabled and that the dogs were essential to the management of those disabilities. The board ought to have acquiesced to the request for accommodation much earlier than it did.

[141] However, I hasten to add that Vice-Chair McQuaid played a role on the CAT application that is separate and distinct from the role of the court on this application. The records before us

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[26] See footnote 20, above.

[27] The *Bluevale Tower Tribune*, distributed by the applicant, offers a good example of a one-sided account. By my estimation, it makes no attempt to be fair to those people it criticizes, omits important facts, and is incorrect about other facts. It is not, however, positively dishonest.

are not identical. Moreover, given the jurisdiction of the CAT, she expressly declined to consider part of the record that was presented to her. She wrote as follows in her decision (at para. 4):

> Before addressing the issues, I do note that the presence of two dogs in Ms. Baha's unit is not the only matter causing strife between the parties. The issue of whether Ms. Baha is permitted to install a washer-dryer in her unit and issues around board governance were also referenced in the parties' evidence and submissions. These are not matters which the Tribunal has jurisdiction to determine, and I have not considered these in making my decision.

[142] By contrast, on this application it is my obligation to consider – as a whole – the facts touching on all the various issues which divide the parties. So, while I accept the conclusions of the CAT proceedings, I am not bound by them (as the applicant conceded in oral argument), and they do not necessarily preordain any conclusion I might make in this case.

[143] Having made these introductory observations, I turn to my conclusions respecting the issues relating to the service dogs.

4.2.2.2 Communications

[144] As I have found, it was not unreasonable for the corporation to retain counsel and to direct that all communications flow through counsel. While the May 4 letter was definitely not well-received by the applicant, again as I have already found, it was professional. It might have been more gently written, but it was not uncivil. While the applicant reacts to the accusations made in the letter, the applicant had every opportunity to respond to the contents of the letter and took those opportunities in the period following the May 4 letter. Some of her communications were successful: she was able to satisfy the corporation that there were two dogs in her unit, not more, and was apparently successful in pointing out that the corporation's rules did not include a size or weight restriction on dogs allowed in the units as the May 4 letter had incorrectly asserted.

[145] I do have one criticism of that letter, however. It should not have included the photographs taken, apparently surreptitiously, of the applicant walking her dog. I have already found (at footnote 6) that the photos prove nothing. The applicant's submission that she should be able to

walk around the grounds of the condominium without being worried that she is under surveillance, is well-founded. The taking of the photos was not neighbourly, nor was the corporation's reliance on them.

[146] I have also already concluded, however, that the applicant's contributions to the correspondence between the parties did not raise the level of discourse. Indeed, it lowered it. There was no cause to allege dishonesty and bad faith, either against the board or the person who had complained about the dogs' barking.

[147] Again, I do not criticize the applicant for asserting her rights (and those of Mr. Murphy) and advocating vigorously for her position. Indeed, her position was correct, in my view (and in the view of the CAT), and ought to have been accepted by the corporation. But the fact that it was not accepted was not evidence that the complainant, the board and its counsel were acting in bad faith, as she has repeatedly alleged, including in correspondence. In this regard, I have in mind, in particular, the applicant's letter of August 17, 2023.[28]

4.2.2.3 The requests for further medical information

[148] I agree with the applicant that by no later than July 13, 2023, the applicant and Mr. Murphy had supplied sufficient medical information to the corporation to justify their right to have two service dogs in their unit. The board ought to have acquiesced to their request for accommodation at that time – but did not. I agree with Vice-Chair McQuaid that the position advanced by the corporation gave insufficient weight to the medical evidence provided by the applicant and Mr. Murphy and too much weight to concerns about the noise created by the dogs.

4.2.2.4 The fact of the CAT application

[149] While I am of the view that the CAT application ought to have been unnecessary, and that the corporation ought to have accommodated the request for service dogs before it was launched, I note that CAT exists precisely to resolve disputes which arise within condominiums: the Act, s.

[28] See para. 44, above.

1.36. On an application to CAT, typically one side will prevail, and the other will not. The party which does not prevail has not necessarily done something wrong by insisting on an airing of its position.

[150] In this case, I do not regard the corporation's decision to launch the CAT application as unreasonable. It had on its hands a dispute between two unit-owners. It had noise rules and rules respecting animals which rules it was obliged to uphold, albeit subject to legitimate requests for accommodation. It could point to authorities in favour of its positions. And it was getting legal advice which supported the bringing of the application. The application was not launched for any improper purpose: *Hakim*, at para. 60.

[151] I do not read in Vice-Chair McQuaid's reasons as criticism of the fact that the CAT application was launched, only that it ought to have been handled better and resolved sooner. Irrespective of her conclusions, however, I am not of the view that the corporation can be faulted for resorting to the CAT to assist in the resolution of a dispute.

4.2.2.5 The handling of the CAT application

[152] I accept the conclusions of Vice-Chair McQuaid (at para. 37 of her reasons) that the corporation became "too entrenched in its position, too focussed on enforcement of the strict letter of its rules without due regard to the Code accommodation principles." The effect of these failures was that the opportunity to resolve the matter was lost. It was also very unfortunate that the corporation cast the case as a clash of private interests, rather than as request for accommodation of a disability, the proper consideration of which is in the interests of everyone who lives at the condominium.

[153] But I do not share the view of the applicant that the corporation was engaged in anything untoward by attempting to prove, but failing to prove, that the dogs bark excessively and that there were complaints to that effect. That was its position, it was entitled to take it, and the fact that the evidence was not sufficient in the eyes of Vice-Chair McQuaid does not demand the conclusion that anyone was lying or doing anything in bad faith, as the applicant claims. As Vice-Chair McQuaid said in her reasons (at para. 23), it is "possible" that there were complainants other than

Mr. Bohnert, but the evidence did not allow her to draw that conclusion. I would take the same view on the basis of the evidence tendered on this application. It is also possible, although it was not proven, that the dogs make excessive noise. The failure to prove as much does not mean that the corporation's witnesses have perjured themselves.

[154] I also do not accept the applicant's submission that the corporation's final submissions were offensive. It is true, as Vice-Chair McQuaid observed, that a portion of those submissions mischaracterized the nature of the applicant's and Mr. Murphy's requests for accommodation, but the submissions as a whole do not reveal a corporation completely insensitive to the applicant's needs, making frivolous or vexatious legal arguments, or engaging in an abuse of process. The submissions are measured and respectful. They refer to relevant authority. They do not deny the applicant's or Mr. Murphy's disabilities. They simply lay out an argument in favour of the corporation's position. The fact that that argument was not accepted does not mean that it was an offensive argument.

[155] Last under this heading, as noted above at para. 46, the applicant complains that the corporation's case on the CAT application was a moving target. The shift in positions led the applicant to conclude that the corporation had "lied" in its original application. I do not read the documents before me that way. It is not uncommon in litigation that positions will change as parties discover new facts, come to new understandings of the evidence in their possession, review and reconsider the law, and consider the positions of parties opposite. That is what happened here. In fact, the narrowing and refinement of positions on both the facts and the law is to be encouraged in litigation, as it fosters settlement and the efficient use of court time, and focuses the attention of all involved on the issues that actually matter. The party whose position has evolved is not necessarily doing anything dishonest and the corporation did not do so in this case.

4.2.2.6 The appeal to the Divisional Court

[156] I do not regard the corporation's decision to appeal to the Divisional Court as unreasonable. The corporation had a statutory right of appeal, and advanced arguments that were not frivolous or vexatious or an abuse of process. As the Divisional Court found in its costs decision (see para. 54, above), in which it awarded the applicant and Mr. Murphy only partial indemnity costs and

rejected their request for full indemnity costs, the decision to appeal cannot be described as negligent, or as a wrongful act or omission, even if it was unsuccessful.

4.2.3 The washer and dryer

[157] When the applicant made her request for permission to install laundry facilities in her unit because she could not use the common laundry room, the board did the sensible thing and sought expert assistance in determining whether that permission could be granted. It commissioned an engineering report and relied on its conclusions. Based on the report, the board formed the view that in-unit laundry facilities, for which the building was not designed, posed a danger to the structure.

[158] Counsel forwarded the Pretium report to the applicant by way of letter dated June 16, 2023. That letter is not improper in any way. It set out the board's position, proposed other means of accommodating the applicant's needs, and invited discussion on the topic. In response, the applicant chose to attack, alleging bad faith and misrepresentation of the contents of the Pretium report. Subsequent communication between the parties on this topic was similar in nature.

[159] It is not for me to determine whether the applicant should be permitted to have in-unit laundry facilities. That is a matter for the HRTO.

[160] I do observe, however, that it seems to me that the course taken by the board has been reasonable. It has a duty to protect the integrity of the building (*Hakim*, at para. 38) and sought expert advice on that very point. While the applicant has made detailed criticisms of the Pretium report, and in this respect relies on the fact that Mr. Murphy is an engineer, those criticisms do not allow me to reject the Pretium report which, on its face, appears to be professional. There is no expert opinion to the contrary before me and the fact that Mr. Murphy is or may be an engineer is irrelevant. The affidavits filed by Mr. Murphy say nothing about the Pretium report. They do not even identify him as an engineer.[29] Moreover, in correspondence between the parties about

[29] In is affidavit, Mr. Murphy identifies himself as "an executive in [a] prominent high tech corporation."

renovations in the applicant's unit, the corporation noted that Mr. Murphy did not appear to be registered as a professional engineer.

[161] I do not agree with the applicant that the counsel's characterization of the Pretium report was a gross misrepresentation, or that the Pretium report is completely irrelevant, as also alleged by the applicant.[30] It seems to me that the characterization was fair and that the report is clearly relevant, even if it might not be dispositive. The report referred to problems created by in-unit laundry facilities which had been installed at the building in the past. This was directly relevant to the question in issue. In any case, by providing her with a copy of the report, the corporation was permitting the applicant to read it for herself and take any position she wanted about it.

[162] I do not want to be taken as having decided that the applicant should not have in-unit laundry facilities. It may be that she should because the alleged harm is overstated. It may be that such installation amounts to undue hardship to the corporation because the risk of harm is real and significant. It may be that the applicant's disability can be accommodated in another way. It may be that it cannot. The record before me does not allow me to decide these issues, even if it were for me to do so.

[163] I emphasize again, that the applicant is right to insist on her rights, and it may be that her position on the laundry facilities is the correct one while the corporation's alternative suggestions are unworkable or insufficient. But nothing in the record allows me to find that the corporation (including its board and counsel) has "no respect for [the applicant's] dignity" as the applicant accused in her letter of June 20, 2023.[31] The letters from the corporation's counsel are polite and respectful, make good faith proposals, and invite dialogue. They are not disrespectful of the applicant's dignity.

4.2.4 The entry application

[30] See para. 60, above.
[31] See para. 60, above.

[164] Given that McArthur J. granted the corporation's entry application, I need say little more about it, other than that the application should not have been necessary. The corporation's request to enter the applicant's unit for the purposes of conducting a noise study and investigating the plumbing was, as McArthur J. found, "reasonable and proportionate." It was not an abuse of power. It was not an attempt to intimidate. Counsel's correspondence respecting it was not heavy-handed.

[165] While the applicant complains that the corporation accused her without first conducting a fair investigation, the whole point of going into the applicant's unit was to investigate and, as Ms. Baker testified, to resolve issues of dispute between unit owners. Although the applicant complains that she was given an inadequate explanation for the need to enter her unit, as McArthur J. found, the request was fully justified. The applicant knew that there were complaints about noise and water leaks, and she knew that the purpose of entering was to investigate those two issues. She had all the information she needed.

[166] The applicant's own opinions about the value of a sound study[32] may be right, or they may not. She is not an expert, and she has led no expert evidence. The board, however, hired an expert and was acting reasonably when it commissioned the sound study in the interests of coming to a fair resolution of the issues.[33]

[167] The applicant should have agreed to the request for entry at the outset. Instead, she hindered the investigation, engaged in excessive rhetoric, made allegations of bad faith and dishonesty, and forced the corporation to go to the cost of bringing the entry application.

4.3 Applying the test for oppression

4.3.1 Reasonable expectations

[32] See footnote 14, above.
[33] In cross-examination, Ms. Baker testified that she hoped the noise study would provide "a resolution" to the issues between Mr. Bohnert and the applicant. She continued as follows: "…it will either be you are right or Mr. Bohnert is right. … one way or the other, one of you is not going to be happy."

[168] The first step in the application of the test for oppression is to identify the reasonable expectations which the applicant claims have not been met by the corporation and its board members.

[169] In her amended notice of application, the applicant lists those reasonable expectations as follows:

- The opportunity to present her case and her evidence.
- The impartiality of the board of the corporation.
- To receive a reasonable explanation for a reasonable explanation for the corporation's requests to be granted access to her home.

[170] In her factum, the applicant describes her reasonable expectations as follows:

- That the corporation would deal with her lawfully, in good faith, and in a neighbourly manner.
- That the corporation would follow due process in investigating complaints pertaining to her unit.
- That the corporation would engage respectfully and honestly in the accommodation process.
- That the corporation would be mindful of the applicant's mental health condition and would not deliberately cause her emotional and financial harm.

[171] I accept that all these somewhat overlapping expectations are reasonable.[34] The corporation does not resist that conclusion and some or all of these expectations are subsumed in

[34] In *Hakim v. Toronto Standard Condominium 1737*, 2012 ONSC 404 (at para. 43), O'Marra J. wrote as follows: "The concept of reasonable expectations is objective and contextual. The actual expectation of a particular stakeholder is not conclusive. In the context of whether it would be "just and equitable" to grant a remedy, the question is whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue and the entire context, including the fact that there may be conflicting claims and expectations."

the board's statutory duty of board members to "act honestly and in good faith" and to exercise reasonable "care, diligence and skill" when caring out their duties: the Act, s. 37(1).[35]

[172] I am of the view, however, that with one exception, these expectations have been met.

[173] At every turn, the applicant has had – and has taken – her opportunity to express her opinion, to present her position, and to provide evidence to the board. She has done so in correspondence, by running for and being elected to the board, by defending her position on the board when her removal was sought (and by seeking the removal of others), both in writing and at the requisitioned meeting, by launching and prosecuting proceedings, and by responding to proceedings launched and prosecuted by the board.

[174] To the extent that the applicant's position that her reasonable expectations have been breached because she was the subject of "accusations" made in lawyer's letters before she had a chance to present her position (in other words, that there was a failure of due process), such an accusation or expression of suspicion is not oppressive: *Weir v. Peel Condominium Corporation No. 485*, 2017 ONSC 6265, at para. 153. Moreover, as I have already found, even if those letters presented some contentious points as conclusions, the letters themselves offered to the applicant the opportunity to respond – which she did energetically. Further, some of the steps taken by the corporation were expressly for the purpose of assessing whether there were issues (for example, a sound problem, or a leak) and whether they could be addressed.

[175] I am also of the view that the board has acted impartially. I accept the evidence of Ms. Baker that the board wanted to remain neutral as between Mr. Bohnert and the applicant, and was especially careful in that regard given that Mr. Bohnert was a board member, and that the board

[35] They are also consistent with the reasonable expectations described by Myers J. in *Couture* (at para. 61): "In my view, the applicant had a reasonable expectation that the respondents would deal with her lawfully, in good faith, in a neighbourly manner, commensurate with living in a condominium community, and in accordance with the terms of the constating documents of the condominium corporation."

engaged counsel to assist in that regard, and that Mr. Bohnert recused himself from the board's consideration of the issues in which he had a direct personal interest.

[176] To the extent that the applicant alleges that the corporation has failed to act fairly and impartially because it has enforced its rules unevenly, that is, selectively against her and not at all against other unit owners, the applicant has failed to establish any such uneven treatment. On the record before me, there is no satisfactory evidentiary basis to make such a finding given that examples to which the applicant points rest largely on hearsay evidence that, in any case, does not allow for meaningful comparison. The fact that the corporation has not previously carried out a sound study does not lead necessarily to the conclusion that the applicant is being unfairly singled out, as she alleges.

[177] With respect to the corporation's request for entry into the applicant's unit, that request was proper and reasonable (as McArthur J. concluded), and, as I have already found, the applicant was given all the information she needed to assess the request for access to the unit. She ought to have agreed to allow such access instead of requiring the corporation to launch the entry application. The corporation has a duty to enforce its rules and to ensure the safety and security of all residents of the condominium: *Hakim*, at paras. 37 – 41; *Hawkins v. TSCC 1696*, 2019 ONSC 2560, at para. 39. The entry application was reasonably designed to achieve those goals in the face of the applicant's failure to cooperate: *Hawkins*, at para. 40.

[178] I have already found that the corporation, its board and its counsel have engaged with the applicant respectfully and honestly in their communications and other interactions with the applicant. While they often disagreed with the assertions of the applicant, good faith disagreements are not evidence of a breach of reasonable expectations or of oppression: *Hakim*, at para. 54. I see nothing in the record respecting this application that counsel for the corporation have engaged in misconduct or sharp practice. I reject the applicant's assertions to the contrary.

[179] Subject to the following paragraph, I am also of the view that the corporation has not engaged with the applicant in a way that was disrespectful of her disability. Certainly, there is no merit to the applicant's submission that the corporation and its board wilfully inflicted harm on

her. While the corporation's communications have at times been firm, as I have already found, the decision to engage and communicate through counsel was reasonable in the circumstances of this case. Relations between the relevant players were already strained and the board reasonably sought legal advice on issues relating to accommodation. The fact of disagreement about the need for, or means of, accommodation is not by itself evidence of a lack of respect for the applicant's disability: *Hakim*, para. 54. Counsel's letters were expressly sent in an effort to resolve issues of accommodation, and repeatedly invited discussion.

[180] The one exception to which I have referred relates to the applicant's and Mr. Murphy's request to be permitted to have their service dogs in the applicant's unit. As I have found above, as did the CAT, that was a request to which the corporation ought to have been acceded. As Vice-Chair McQuaid found, the corporation became too entrenched in its position and gave too little weight to the evidence and argument presented by the applicant. There was a breach of her reasonable expectation that the corporation would engage reasonably in the accommodation process.

4.3.2 Did the corporation engage in oppression?

[181] The next question in the analysis, then, is whether the breach of the applicant's reasonable expectation which I have described amounts to oppression or some other form of mistreatment under the Act.

[182] The remedies provided for in s. 135 of the Act may be ordered where the corporation "is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant." These three distinct bases for making an order under s. 135 were described by O'Marra J. in *Hakim* as follows (at paras. 32 – 36; emphasis in the original; citations omitted):

> The courts have not drawn clear lines between any of the three statutory tests and have often found that conduct may fit into one or more of the categories. Unfair prejudice and unfair disregard are less rigorous tests than oppression.

> *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 rights or interests that is unfair or inequitable.
>
> *Unfair Disregard* means to ignore or treat the interests of the complainant as being of no importance.
>
> 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 provided it is not unfair.

See also *Polchil Homes Ltd. v. Peel Condominium Corporation No. 245*, 2023 ONSC 2364, at paras. 37 – 39; *Ballingall v. Carleton Condominium Corporation No. 111*, 2025 ONSC 2484, at paras. 91 – 97. In *Gonzalez v. York Condominium Corporation No. 242*, 2024 ONSC 6372, at para. 51, Centa J. noted that oppression "requires a finding of bad faith."

[183] I do not regard the corporation's failure to acquiesce to the applicant's and Mr. Murphy's request to have their service dogs with them at the condominium to be "burdensome, harsh and wrongful, or an abuse of process." As I have said repeatedly, I do not regard the corporation's conduct to have been wilfully prejudicial to the applicant's interests, or that it acted dishonestly or in bad faith. Rather, the corporation's failure is better described as a having resulted in unfair prejudice to the applicant because the corporation did not pay sufficient regard to the request for accommodation and paid too much regard to the strict enforcement of the letter of its own rules. This was unfair in the sense that it was not within the range of "acceptable" prejudice or disregard. It was an unacceptable failure.

4.3.3 Remedies

[184] The applicant seeks a declaration that there has been a violation of ss. 35 and 137 of the Act, and an order for compensation, which is provided for pursuant to s. 137(3) of the Act.

[185] Given the conclusions which I have already stated, a declaration will be made that the corporation has engaged in conduct which unfairly prejudiced and unfairly disregarded the interests of the applicant.

[186] With respect to compensation, in the applicant's factum she seeks $20,000 for oppression and $5,000 for aggravated damages.

[187] In the absence of a finding of bad faith, dishonesty or abuse of process, or similarly aggravating conduct, there is no basis for ordering aggravated damages.

[188] As the applicant has failed to establish oppression and has established on the lesser forms of mistreatment listed in s. 135, any compensation award should be less than the $20,000 sought in her factum. In addition, however, I am of the view that the applicant has already been compensated for the wrongs of the corporation in connection with the request for permission to have the service dogs in the applicant's unit.

[189] As noted above, Vice-Chair McQuaid ordered damages payable to the applicant in the amount of $15,000 resulting from its failure to accommodate the applicant and Mr. Murphy. That failure to accommodate was found on essentially the same grounds as I have found in this case. Vice-Chair McQuaid found (at para. 46 of her reasons), however, that evidence of the costs associated with the applicant's therapy and opportunity costs in connection with her employment had not been adequately established on the record before her. She did accept, however, that the corporation's failure had led to the applicant's decision to vacate her unit and live elsewhere, for which costs damages were payable: para. 47.

[190] There is no new evidence before me (medical, financial or otherwise) of damages suffered by the applicant relating to the corporation's failure to acquiesce to the applicant's request relating to the service dogs. To award compensation now, then, would be to order double payment for the harm suffered by the applicant which has already been compensated for by order of the CAT. Moreover, to the extent that the claim for compensation before me relates to the unfortunate body

of unpleasant correspondence and other communication between the parties, the applicant bears her own significant portion of the responsibility for that unpleasantness.

[191] For all these reasons, I make no order for compensation.

4.4 The status certificate

[192] The applicant argues that the status certificate provided to her before she purchased her unit was deficient because it did not refer to a loan contemplated as early as August of 2022. She submits that the fact that a loan was being discussed establishes that the board knew that the reserve fund was underfunded and could not finance all planned capital projects. The applicant put her position as follows in her reply affidavit:

> The Corporation was aware that not enough funds to finance the capital projects contemplated by the Board were available, since they were contemplating a 5-million-dollar loan as early as August 2022. The Corporation had the obligation to disclose the loan as soon as it was contemplated. Such disclosure would have flagged to me, a potential buyer, that the reserve fund was underfunded, and more increases were expected. Had I known this I wouldn't have purchased a unit… Any buyer would expect increases of 3-5% to keep up with inflation, but not 30% in less than 2 years.

[193] Given the allegedly deficient status certificate, the applicant submits that she should be exempt from the increases to the reserve fund contribution recommended in the 2023 reserve fund study.

[194] The applicant relies on the judgment of Gibson J. in *Bruce v. Waterloo North Condominium Corporation No. 26*, 2023 ONSC 2995, where the condominium was aware of the necessity of expensive repairs to its water main, and the necessity of a special assessment to unit owners and/or a loan to pay for those repairs, yet failed to disclose those facts in the status certificate issued to Mr. Bruce. After Mr. Bruce purchased his unit, he became aware that the condominium corporation was planning a special assessment or to borrow $2.5 million to cover the cost of the repairs.

[195] Gibson J. found that the fact of the need to repair the water main and the likelihood of a special assessment to fund was well-known to the corporation it ought to have been disclosed in the status certificate in the circumstances of that case: paras. 36 – 41. He exempted Mr. Bruce from the costs of a loan or special assessment "for the period of time he continues to own the unit." The exemption was to cease if and when the unit was sold, and any new buyer would be subject to a pro-rated portion of the special assessment thereafter: paras. 43 – 44.

[196] In the present case, the corporation submits that the status certificate contained no false or incomplete information. The status certificate advised the applicant that a new reserve fund study was required and expected to be delivered in April of 2024, and that is effectively what happened, albeit a little late. In November of 2022 the corporation did not know what the recommended increase to the reserve fund contribution would be, that recommendation was to be prepared by an independent firm of engineers. Further, no special assessment has been levied and no loan has been approved or taken out. Indeed, the decision has been made not to obtain a loan.

[197] The corporation also points out that the increase to the contributions to the reserve fund was unexpected, and related to increased construction costs, not to projects which had already been contemplated. In the reserve fund study, the following appears in the executive summary (emphasis added):

> The higher-than-expected increases in the Reserve Fund contribution is primarily related to the rapid increase in construction costs since the beginning of 2020. The Construction Price Index (similar to the Consumer Price Index but for the construction field) has increased approximately 50% over the same period for Southern Ontario.

[198] On the body of evidence before me, I am unable to conclude that the status certificate contains false or incomplete information. There is very little evidence in the record about the contemplated loan, its precise purpose, or the knowledge of the board at the time that it was contemplated. The October 4, 2022, minutes vaguely refer to a loan for the purpose of "projects not yet determined," before listing some possibilities. Ms. Beauchesne was very clear on cross-examination, however, that, in the end, it was decided to not to secure a loan.

[199] Importantly, there is no evidence that the increase to the reserve fund contributions was intended to take the place of any contemplated loan or special assessment. The only evidence I have to explain the "higher-than-expected" increase in the reserve fund contribution, then, is the one set out in the reserve fund report relating to increased construction costs during the pandemic. There is no evidence from which I could conclude that the board knew, or ought to have expected, that there would be such an unexpected increase recommended by the independent engineers it had retained to conduct the study.

[200] In all these circumstances, the applicant has failed to establish that the status certificate contained any material misstatement or omission. The request for orders related to a breach of s. 76 of the Act is therefore dismissed.

5. Conclusion and Costs

[201] For the foregoing reasons, I conclude as follows:

(a) The applicant is granted to the extent that I find that the corporation has engaged in conduct which unfairly prejudiced and unfairly disregarded the interests of the applicant in connection with her request for permission to have two service dogs in her unit. A declaration will go to this effect.

(b) No other remedy is ordered, and the application is otherwise dismissed.

[202] If the parties cannot agree on costs, the corporation may serve and file brief written submissions respecting costs by January 8, 2026, directed to my attention by email to my judicial assistant at mona.goodwin@ontario.ca and Kitchener.SCJJA@ontario.ca. The applicant may serve and file brief responding submissions within 7 days thereafter; and the corporation its reply within 3 days thereafter.

I.R. Smith J.

Released: December 18, 2025

CITATION: Baha v. Waterloo North Condominium Corporation No. 37, 2025 ONSC 7043
COURT FILE NO.: CV-24-373
DATE: 2025/12/18

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ANTOANETA CLAUDIA BAHA

Applicant

– and –

WATERLOO NORTH CONDOMINIUM CORPORATION NO. 37

Respondent

REASONS FOR JUDGMENT

I.R. Smith J.

Released: December 18, 2025