

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 3

Date: **2026 01 06**
File No.: KBG-SA-01462-2025
Judicial Centre: Saskatoon

BETWEEN:

STEPHEN NORMAN MCLEOD

APPLICANT

- and -

MCAULEY COURT CONDOMINIUM CORPORATION

RESPONDENT

Appearances:

Taylor L. Wilcox
Dax Murdoch

for the applicant
for the respondent

JUDGMENT
January 6, 2026

SINCLAIR J.

INTRODUCTION

[1] This action is brought by way of originating application by Stephen Norman McLeod [Mr. McLeod] pursuant to s. 99.2 of *The Condominium Property Act, 1993*, SS 1993, c C-26.1 [*Condominium Property Act*], for the following relief:

- (a) An order declaring that the respondent has been oppressive, unfairly prejudicial or unfairly disregards the interests of the applicant by

unilaterally and arbitrarily withholding possession to the applicant's condominium unit [Unit];

- (b) An order declaring the respondent's writ of possession expired;
- (c) An order granting possession of the Unit to Mr. McLeod;
- (d) An order declaring that certain chargebacks to the Unit are improper and removing them from the ledger of the Unit;
- (e) Alternatively, an order for damages for the improperly charged amounts;
- (f) An order of damages for lost rents;
- (g) An order of damages for mortgage payments paid while without possession of the Unit; and
- (h) An order for costs for the application on a solicitor-client basis.

[2] For the reasons that follow, I am prepared to grant most of the relief sought by Mr. McLeod.

PROCEDURAL ISSUE

[3] Before delving into the crux of this decision, there was a procedural issue raised by counsel for Mr. McLeod at the outset of the oral argument on this matter. McCauley Court Condominium Corporation's [Condominium Corp.] materials and argument was advanced by Dax Murdoch [Mr. Murdoch], a non-lawyer. Mr. Murdoch is the president of the Condominium Corp. Counsel for Mr. McLeod took issue with Mr. Murdoch presenting oral argument in front of the Court, relying on Rule 2-34(2) of *The King's Bench Rules* which says that, unless the Court specifies otherwise, a corporation must be represented in a proceeding by a lawyer.

[4] I indicated to counsel for Mr. McLeod that I was concerned about proceeding in the absence of any oral representations from the Condominium Corp. Thus, to the extent that I did not allow Mr. Murdoch to make oral representations, I was inclined to adjourn the proceeding to allow the Condominium Corp. to retain legal counsel. Given the choice between an adjournment or allowing Mr. Murdoch to make oral representations on behalf of the Condominium Corp., counsel for the applicant preferred that Mr. Murdoch make oral representations.

[5] Ultimately, I allowed Mr. Murdoch to make oral representations. I did so having regard to the factors set out by Barrington-Foote J. (as he then was) in *Howden Bros. Construction Ltd. v Freshair Enterprises Ltd.*, 2014 SKQB 290. The factors that I found particularly germane were:

- (a) Mr. Murdoch is an owner of two units in the condominium and is the president of the Condominium Corp. Thus, he has an important connection to the corporation that he seeks to speak for;
- (b) Mr. Murdoch filed materials before the Court and made coherent arguments, even if there were evidentiary problems with the materials that he filed which will be canvassed later in this decision. I did not find that Mr. Murdoch's involvement, particularly in making oral arguments in chambers, would materially delay resolution of the proceeding;
- (c) There did not appear to be any prejudice to Mr. McLeod in allowing Mr. Murdoch to make oral arguments. By contrast, if the Condominium Corp. were obligated to retain counsel, a delay in the proceeding could have prejudiced Mr. McLeod; and
- (d) Not allowing any oral representations from the Condominium Corp., as suggested by Mr. McLeod's counsel, would raise concerns with

procedural fairness.

[6] As a result of these considerations, I permitted Mr. Murdoch to make oral argument on behalf of the Condominium Corp.

EVIDENTIARY CONCERNS

[7] There are some problems with the Condominium Corp.'s evidence filed on this application. In particular, the affidavit of Mr. Murdoch, sworn December 15, 2025, is replete with hearsay and argument. A few examples are:

- (a) Exhibit C are emails from another resident in the corporation about her complaints about Mr. McLeod's prior tenant. The emails are unsworn, out-of-court statements being proffered for the truth of their contents. The exhibit is accordingly hearsay;
- (b) Likewise, exhibits F to J are statements from other residents with complaints about Mr. McLeod's tenant and the corresponding problems caused directly or indirectly by that tenant. Again, these statements are hearsay;
- (c) Exhibit P is an unsworn statement and supporting materials from another resident. Again, the material is hearsay;
- (d) Paragraphs 17-21 of the affidavit are statements by Mr. Murdoch about what someone else reported to him. The paragraphs are hearsay;
- (e) Exhibit O is a letter from Mr. Murdoch's professional regulator dismissing a complaint lodged against him. This exhibit is irrelevant to the matters before the Court; and
- (f) Paragraphs 26, 32, 35 and 37-40 of Mr. Murdoch's affidavit contain

arguments or opinions by Mr. Murdoch. Those paragraphs, thus, are not evidence and should not be contained in an affidavit. The paragraphs could be contained in a brief of law or raised in oral argument;

[Impugned Evidence].

[8] That said, the affidavit by Mr. McLeod dated December 1, 2025 is not without issue either. For instance, paragraphs 37 to 42 and 57 contain Mr. McLeod's beliefs about his legal position and his interpretation of legislation.

[9] I have considered whether, in light of these evidentiary concerns, the application should be adjourned to allow the Condominium Corp. to remedy the problems with the affidavit that it filed. I conclude though that such adjournment is unnecessary because, even if the Impugned Evidence were accepted by the Court, it would not impact the most significant issue on this application – whether the Condominium Corp. is entitled to retain possession of the Unit. Likewise, the problems identified above with Mr. McLeod's affidavit do not affect the outcome of the application.

[10] As a result, I have disregarded the Impugned Evidence and the paragraphs identified from Mr. McLeod's affidavit.

FACTS

[11] Mr. McLeod is an owner of the Unit in the condominium building operated by the Condominium Corp. He has owned his condominium since 2020.

[12] On or about January 1, 2025, Mr. McLeod rented the Unit to a tenant. Concerns were raised shortly thereafter by the Condominium Corp. about the tenant to Mr. McLeod. Further concerns were raised by the Condominium Corp. to Mr. McLeod in February 2025.

[13] On March 17, 2025, Mr. Murdoch personally attended at the Unit to discuss the problems with the tenant. There was a physical altercation between Mr. Murdoch and the tenant which resulted in a mirrored door being broken. A police report was filed.

[14] On May 10, 2025, the Condominium Corp.'s building manager, Blue Marble Agencies, operated by Mr. Murdoch, advised tenants at the condominium that the locks to the building would be changed.

[15] As a result of the Condominium Corp.'s issues with the tenant, the Condominium Corp. brought applications with the Office of Residential Tenancies [ORT] seeking to remove the tenant from the condominium. The first application was heard on June 4, 2025 and dismissed on June 9, 2025 for technical deficiencies with the Condominium Corp.'s materials. The second application was heard on June 26, 2025. The decision on the second application is dated June 27, 2025 (2025 SKORT 1672) [ORT Decision]. The Condominium Corp.'s application was successful. The *ORT Decision* indicates that:

- (a) The application was brought pursuant to s. 80 of the *Condominium Property Act* and ss. 68 and 70 of *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001[RTA]; and
- (b) The Condominium Corp. alleged, among other things, that (1) the tenant had allowed homeless individuals into the building; (2) there was drug use in and possible drug distribution from the Unit; (3) there were safety concerns related to the various individuals who were allowed access to the building; (4) there was loud noises and arguing at all hours of the day and night emanating from the Unit; (5) there was a physical altercation between the property manager (Mr. Murdoch) and the tenant.

[16] The hearing officer ultimately determined that there was scant evidence that the tenant was responsible for the presence of homeless individuals in the building or that the tenant uses or traffics in drugs. However, the hearing officer found that the tenant assaulted Mr. Murdoch on March 17, 2025 by spitting on him. The hearing officer concluded that the evidence persuaded him that it would be unreasonable to wait for the lease to expire and that a writ of possession was necessary to remove the tenant.

[17] A writ of possession was accordingly issued on June 27, 2025 putting Blue Marble Agencies into possession of the Unit. The writ of possession indicates that it expires 30 days after the date on which it was ordered.

[18] The tenant appealed the *ORT Decision*, but the appeal was abandoned when the tenant did not appear for the appeal.

[19] On July 22, 2025, the sheriff effected the eviction. Locks to the Unit were changed.

[20] On July 23, 2025, Mr. McLeod asked to obtain the new keys to the Unit to clean the property. In a reply email, Blue Marble Agencies said that legal possession of the Unit rested with Blue Marble Agencies and that Mr. McLeod no longer had access to the Unit at that time. Blue Marble Agencies' email further indicated that, if Mr. McLeod wanted to access the Unit or discuss next steps, he had to submit his request in writing with a plan. Any request for access to the Unit would be subject to board review and legal considerations.

[21] On August 4, 2025, Mr. McLeod emailed Blue Marble Agencies again asking that the Unit be returned to him. He indicated that his plan was to prepare the Unit for sale and then list it. On August 5, 2025, Blue Marble Agencies indicated that it could not return the keys without board approval. Until the board made a determination, no access to the Unit would be granted.

[22] On August 10, 2025, Blue Marble Agencies sent an email to Mr. McLeod of its inspection findings and steps necessary for immediate remediation. The inspection found the following issues in the Unit:

- (a) Accumulated garbage and spoiled food;
- (b) Piles of bagged debris;
- (c) Multiple bicycles, furniture and electronics in disarray;
- (d) Evidence of insect infestation, including cockroaches and maggots; and
- (e) Possible bedbug presence.

[23] Blue Marble Agencies indicated that it would remediate the problems in the Unit at Mr. McLeod's expense.

[24] On August 26, 2025, counsel for Mr. McLeod wrote to Blue Marble Agencies asking that possession of the Unit be returned to Mr. McLeod for the purpose of listing and selling of the Unit.

[25] On August 26, 2025, Blue Marble Agencies, on behalf of the Condominium Corp., indicated in an email that possession of the Unit would not be released until condominium arrears had been paid in full. The email indicates that a formal demand letter was served on Mr. McLeod by the Condominium Corp. for payment of \$9,266.89 within 15 days. The email further indicated that additional costs of \$1,050 had been added to the ledger with Mr. McLeod now owing \$10,316.89. The email indicated that no access to the Unit would be provided until the arrears were settled.

[26] On September 9, 2025, counsel for Mr. McLeod wrote to the Condominium Corp. indicating that (1) the Condominium Corp. was unlawfully

withholding access to the Unit; (2) the writ of possession had expired; (3) many of the expenses levied against the Unit were baseless; (4) a court action may be commenced if Mr. McLeod was not put into possession of the Unit.

[27] On September 10, 2025, Blue Marble Agencies, on behalf of the Condominium Corp., emailed counsel for Mr. McLeod indicating that (1) a lien was registered for \$10,316.89; and (2) the Condominium Corp. would retain possession of the Unit until the arrears were paid in full.

[28] A further email was sent by Blue Marble Agencies on September 10, 2025, which indicated:

- (a) Returning the Unit prematurely would expose members to unnecessary risk such as Mr. McLeod re-tenanting the Unit, contesting the lien or delaying repayment;
- (b) The Condominium Corp. would consider releasing the Unit if Blue Marble Agencies was formally engaged as the listing brokerage; and
- (c) If Mr. McLeod disagrees with the Condominium Corp.'s position, he is welcome to bring an application to the Court.

[29] A further email was sent by Mr. McLeod to the Condominium Corp. on September 22, 2025 asking for possession of the Unit for the purpose of having the Unit cleaned and listed for sale.

[30] On September 29, 2025, the Condominium Corp. sent an email to Mr. McLeod indicating that the Condominium Corp. held lawful possession of the Unit and that returning possession would be premature before "arrears" were resolved. The Condominium Corp. indicated that it was prepared to allow access to the Unit for sale-related purposes. Possession of the Unit though would remain with the Corporation

until arrears were satisfied or arrangements were made to ensure that the lien was paid from the sale proceeds. Mr. McLeod was asked to provide details of the realtor or brokerage so that appropriate access arrangements could be coordinated.

[31] Further email correspondence occurred in November 2025, with no resolution to the issues in this litigation being reached.

ISSUES

[32] The issues on this application are:

1. Can this matter be decided based on the affidavit evidence?
2. Does the Condominium Corp. have an ongoing right of possession of the Unit under the *Condominium Property Act* and the *RTA*?
3. Are the chargebacks to the Unit appropriate?
4. Has the Condominium Corp. acted oppressively to, been unfairly prejudicial to or unfairly disregarded Mr. McLeod's interests?
5. If Mr. McLeod has been oppressed, what remedies is Mr. McLeod entitled to?
6. What costs, if any, is Mr. McLeod entitled to against the Condominium Corp.?

ANALYSIS

1. Can this matter be decided based on the affidavit evidence?

[33] Rule 3-49 of *The King's Bench Rules* allows certain types of proceedings to be commenced by originating application. Central to this particular application,

Rules 3-49(2) and 3-49(3) indicate, among other things, that an action may be started by originating application if an enactment requires an application or provides for a remedy without describing the procedure to obtain the remedy. In this case, s. 99.2 of the *Condominium Property Act* allows an owner, a developer, a tenant, a mortgagee of a unit or other interested person to apply to the Court for an oppression remedy. The section does not specify the procedure to obtain relief from the Court. Accordingly, Rule 3-49 permits this action to have been commenced by originating application.

[34] The next question is whether the affidavit materials allow the Court to decide this case in the absence of *viva voce* evidence and the full battery of procedures associated with an action commenced by statement of claim.

[35] In *Dyck v JCL Property Management Ltd.*, 2014 SKQB 274, Wilkinson J. determined that she was prepared to decide issues summarily on an originating application because the facts were not contentious and there were no significant credibility issues.

[36] In determining whether to decide a case summarily, the Court of Appeal in *Canadian Pacific Railway Company v Kelly Panteluk Construction Ltd.*, 2020 SKCA 123, indicated:

[169] ... It will be up to the court in each case to determine if the matter can truly proceed summarily or if contentious facts material to the issues should be tried on *viva voce* evidence and if the full battery of procedures associated with a statement of claim should be available to the parties. Indeed Rule 3-53 makes it clear that the court may direct that all the rules respecting an action started by statement of claim may apply to an action started by an O/A.

[37] In this case, I find that the evidence material to the matters in dispute are uncontroversial. Much of the dispute relates to interpreting the *Condominium Property Act*, the *RTA* and the writ of possession obtained by the Condominium Corp. None of

those issues need additional evidence. The necessity for the various chargebacks by the Condominium Corp. can be resolved by the admissible evidence on this application.

[38] As a result, I find that I am able to decide the issues in this application on a summary basis.

2. Does the Condominium Corp. have an ongoing right of possession of the Unit under the *Condominium Property Act* and the *RTA*?

[39] The central dispute in this matter is the parties' differing interpretations of the provisions of the *Condominium Property Act* and the *RTA*, which connect to the writ of possession.

[40] Section 80 of the *Condominium Property Act* allows a condominium corporation to apply to the ORT for possession of a rented condominium in certain circumstances. Section 80(3) notes that the provisions of the *RTA* on such an application apply with any necessary modifications.

[41] Section 68 of the *RTA* allows a landlord to apply to the ORT for an order of possession of a property before the natural end of the tenancy. This is an exceptional remedy only to be used in certain exigent circumstances specified in s. 68(2) of the *RTA*.

[42] In this case, the Condominium Corp. obtained an order from the ORT under s. 80 of the *Condominium Property Act* and s. 68 of the *RTA* to gain possession of the Unit. A writ of possession was issued which indicates that Blue Marble Agencies was put into possession of the Unit, with the writ to expire after 30 days.

[43] The Condominium Corp. takes the position that the *ORT Decision* gives possession of the Unit to the Condominium Corp. and that the writ of possession's expiry after 30 days is irrelevant because, once enforced, possession of the Unit vested

in the Condominium Corp. under s. 80 of the *Condominium Property Act* and the Condominium Corp.'s bylaws. I infer from the Condominium Corp.'s position that the Condominium Corp. believes that the Condominium Corp. can retain possession of the Unit indefinitely or, at least, until the Condominium Corp., in its discretion (or until court order), decides that Mr. McLeod has a sufficient plan to re-enter the Unit.

[44] Section 80 of the *Condominium Property Act* has not been judicially considered. The section appears to be somewhat unique compared to other provincial legislation in that it gives “possession” of a condominium unit to the condominium corporation. Other provinces’ legislation appears to allow a condominium corporation to take steps to terminate a tenancy and require the tenant to give up possession of the unit, but it does not grant possession of the unit to the condominium corporation. Examples of this include:

- (a) *The Condominium Act*, CCSM c C170 at 205;
- (b) *Strata Property Act*, SBC 1998, c 43 at 138;
- (c) *Condominium Property Act*, RSA 2000, c C-22 at 54; and
- (d) *Condominium Act, 1998*, SO 1998, c 19 at 134.

[45] It is unclear why the legislative provision is drafted as it is. However, s. 80(3) of the *Condominium Property Act* indicates that the provisions of the *RTA* apply to an order for possession of rented premises. Section 70(13) of the *RTA* allows an ORT hearing officer to order a writ of possession in the “prescribed form”. Section 10 of *The Residential Tenancies Regulations, 2007*, RRS c R-22.0001 Reg 1 [*RTA Regulations*] indicates that a writ of possession expires 30 days from the date on which it is ordered or on any other date that the hearing officer may specify.

[46] The net effect of s. 80(3) of the *Condominium Property Act*, s. 70(13) of

the *RTA* and s. 10 of the *RTA Regulations* is that a condominium corporation obtaining an order for possession of a condominium unit has possession of the unit for a period of 30 days or such other period specified by the ORT hearing officer. Here, the hearing officer did not expressly indicate the length of the writ of possession. As a result, by virtue of s. 10(2)(a) of the *RTA Regulations*, the Condominium Corp. was entitled to remain in possession of the Unit for a period of 30 days.

[47] The Condominium Corp. has now had possession of the Unit for nearly 6 months (the locks having been changed by the Condominium Corp. in July 2025). The Condominium Corp. has no right to continue possessing the Unit.

3. Are the chargebacks to the Unit appropriate?

[48] The Condominium Corp. has charged back to Mr. McLeod an amount that the Condominium Corp. labels as “arrears” in the sum of \$11,574.97. The charges consist of:

- (a) Locks and keys - \$244.20
- (b) Labour and materials – installed steel flat bar adjacent to door - \$161.00;
- (c) Security services for the month of March 2025 - \$3,735.27;
- (d) 24 hours security services – April 1 and 2, 2025 - \$679.14;
- (e) Carpet stain steam clean, sanitized - \$367.50;
- (f) Labour and materials – locks and keys - \$1,925.85;
- (g) ORT fee - \$50.00;
- (h) Possession hearing for June 9, 2025 - \$367.50;

- (i) ORT fee - \$50.00;
 - (j) Possession hearing for June 26, 2025 - \$262.50;
 - (k) Sheriff fee to enforce ORT order - \$167.50;
 - (l) Carpet steam cleaned all halls and stairs, removed stain - \$698.25;
 - (m) Security services - \$239.43;
 - (n) ORT section 68 services (charges by Blue Marble Agencies) - \$236.25;
 - (o) Hauling services - \$1,050.00;
 - (p) Suite buzzer station speaker damaged and removed from the wall - \$419.33;
 - (q) ISC lien - \$55.00;
 - (r) Elite facility solutions - \$498.75;
 - (s) Bye Bye Bugs treatment - \$367.50;
- [Chargebacks].

[49] Mr. McLeod, in his affidavit, sought to remove the following Chargebacks from the ledger for his Unit: (a), (b), (c), (d), (f), (g), (h), (l), and (m). It does not appear that items (n) to (s) were known to Mr. McLeod when he filed his affidavit. I infer that Mr. McLeod also seeks to remove items (n) to (s) from the Unit ledger.

[50] The Condominium Corp. indicates that these charges are lawful pursuant to s. 63 of the *Condominium Property Act*. Section 63 of the *Condominium Property Act* indicates that a corporation can register a lien against title of a unit for an unpaid

contribution to the common expenses fund or the reserve fund. The Condominium Corp. does not specify in its materials whether the Chargebacks applied to Mr. McLeod's Unit are for unpaid contributions to the common expenses fund or the reserve fund.

[51] Regardless, the Condominium Corp.'s reliance on s. 63 of the *Condominium Property Act* to justify the Chargebacks is misplaced. Section 63 of the *Condominium Property Act* only provides a method of enforcement of unpaid contributions to the common expenses fund or the reserve fund; it does not authorize what can be charged back to a unitholder.

[52] There is also question as to whether the Condominium Corp. can lien Mr. McLeod for the Chargebacks given that the Chargebacks appear to be in the nature of, as of yet, disputed tortious claims: see *Goertz v The Owners Condominium Plan No. 98SA12401*, 2018 SKCA 41 at paras 116 to 119 [*Goertz*]. There is also the question of whether the bylaws permit such Chargebacks to be levied. Given that this issue was not fully canvassed by the parties, I am not making any specific determinations in this regard.

[53] The Condominium Corp.'s affidavit evidence does not attempt to justify these expenses other than to offer its opinion that the charges are "lawful" and supported by documentation. I take no issue with the documentation, which supports that expenses were incurred by the Condominium Corp. However, the Condominium Corp.'s evidence does not establish that any of the disputed expenses are attributable to Mr. McLeod and are properly chargeable against the Unit. I note also that the *ORT Decision* does not support that these expenses were caused by Mr. McLeod or his tenant's conduct. The *ORT Decision* is not binding upon me in this regard and, if I had been provided appropriate evidence, I could find that Mr. McLeod or his tenant was responsible for such expenses. However, the Condominium Corp. did not supply such

properly sworn evidence in this hearing.

[54] As a result, I agree with Mr. McLeod that the following Chargebacks are improperly charged against the Unit: (a) to (d), (f) to (h), (l) to (s).

[55] Nothing in this decision binds a future decision-maker if the Condominium Corp. decided to bring action seeking damages from Mr. McLeod, including seeking remedies under ss. 98, 99 or 99.2 of the *Condominium Property Act*.

4. Has the Condominium Corp. acted oppressively to, been unfairly prejudicial to or unfairly disregarded Mr. McLeod's interests?

[56] Section 99.2 of the *Condominium Property Act* allows an owner, a corporation, a developer, a tenant, a mortgagee of a unit or other interested person to apply to the Court to remedy oppression, unfairly prejudicial conduct or conduct that unfairly disregards the interests of the applicant.

[57] *Goertz* is the leading case in Saskatchewan defining the terms in s. 99.2 of the *Condominium Property Act*. Ottenbreit J.A., in that case, indicated:

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[78] Oppressive conduct is coercive, harsh, harmful, or an abuse of power. Unfairly prejudicial conduct is conduct that adversely affects the claimant and treats him or her unfairly or inequitably from others similarly situated. Unfair disregard means to ignore or treat the interests of the complainant as being of no importance [citations omitted].

[79] In *Walla Properties Ltd. v. York Condominium Corporation No. 478*, *supra* [[2007] OJ No. 3032], at paras. 23-24, Justice Harvison Young described conduct that falls within the oppression remedy of the *Condominium Act, 1988* [SO 1998 c 19] as follows:

23. In the corporate law context, oppressive conduct requires a finding of bad faith, while conduct that is unfairly prejudicial or that unfairly disregards the

interests of the applicant does not: see *Brant Investments v. Keeprite Inc.* (1991), 3 O.R. (3d) 289 (C.A.) at 305-306. Oppressive conduct has been described as conduct that is burdensome, harsh and wrongful. Unfair prejudice has been held to mean a limitation on or injury to a complainant's rights or interests that is unfair or inequitable. Unfair disregard means to unjustly ignore or treat the interests of the complainant as being of no importance: see *Niedermeier, supra* [(2006), 45 RPR (4th) 182], and *Consolidated Enfield Corp. v. Blair* (1994), 47 A.C.W.S. (3d) 728, [1994] O.J. No. 850 (Gen. Div.) at para. 80. Loeb suggests that in the context of condominium law:

... "unfairly prejudicial" more appropriately describes deception, or different treatment for what may seem to be similar categories, whether financial or otherwise. "Unfairly disregards," however, may more accurately describe an alleged failure to take into account a legitimate minority interest or viewpoint: see Audrey M. Loeb, *Condominium Law and Administration*, looseleaf (Scarborough, Ontario: Thomson Carswell, 1998) at 23-23.

24. When determining whether conduct falls within the meaning of s. 135, the court must be mindful that the oppression remedy protects the reasonable expectations of shareholders or unit owners. Reasonable expectations should be determined according to the arrangements that existed between the shareholders or unit owners of a corporation: see *Nanef v. Con-Crete Holdings Ltd.* (1995), 23 O.R. (3d) 481 (C.A.). In addition, the court must examine the cumulative effect of the conduct complained of.

[58] The Supreme Court of Canada in *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69, analyzed the oppression remedy in a corporate context. The Supreme Court found that the oppression remedy is to be used to ensure fairness and equity. What is fair and equitable depends on an applicant's reasonable expectations, viewed objectively. Not every breach of a party's reasonable expectations is oppressive. The

Court must go further and determine whether the impugned conduct is oppressive, unfairly prejudicial or unfairly disregards the interests of the applicant.

[59] Mr. McLeod indicates that his expectation was that he would have access to the Unit, as the legal owner, so that he can exercise his ownership rights. Those ownership rights include, but are not limited to, the ability to use the Unit and sell it, if he so chooses.

[60] In addition to seeking remedies associated with gaining access to the Unit, Mr. McLeod seeks remedies to remove the disputed Chargebacks from the Unit ledger. From this, I infer that Mr. McLeod's expectation is that charges to the Unit would be reasonable and attributable to his or his tenant's actions.

[61] I find that Mr. McLeod's expectations are reasonable. The expectation to have access to the Unit is consistent with the general rights associated with owning real property. The expectation to be dealt with fairly regarding charges assessed against the Unit is consistent with the expectation of any condominium property owner.

[62] The next question is whether Mr. McLeod's expectations have been violated by the Condominium Corp. I find that Mr. McLeod's expectations have been violated. The Condominium Corp., for several months, has, without lawful authority, prevented Mr. McLeod from having access to the Unit. Still today, the Condominium Corp. indicates that it will only allow Mr. McLeod limited and controlled use of the Unit, without legal authority to do so. In addition, the Condominium Corp. has assessed charges against the Unit which the Condominium Corp. has failed to establish related to Mr. McLeod or his tenant's conduct.

[63] The final question is whether the Condominium Corp. has been oppressive, unfairly prejudicial or unfairly disregarded the interests of Mr. McLeod. I find that the Condominium Corp. has been oppressive, unfairly prejudicial and unfairly

disregarded the interests of Mr. McLeod. I do so because:

- (a) The Condominium Corp. has for months prevented Mr. McLeod from accessing the Unit despite multiple requests. The Condominium Corp.'s actions have unfairly disregarded Mr. McLeod's interests as a unitholder and caused him to incur costs with paying for his mortgage and condominium fees, without having any rights associated with the Unit;
- (b) The Condominium Corp. initially indicated that Mr. McLeod could only access his Unit if he used Blue Marble Agencies as his realtor. This condition was oppressive in that it attempted to coerce Mr. McLeod into using a realtor connected with the president of the Condominium Corp. I recognize that the Condominium Corp. later changed its position regarding the choice of realtor, but the Condominium Corp. should have understood the problematic nature of its position at the time;
- (c) The Condominium Corp. has indicated that Mr. McLeod cannot access his Unit until he has paid the Chargebacks. Nothing in the *Condominium Property Act* allows the Condominium Corp. to impose conditions related to condominium fees on an owner's ability to access his or her unit. In other words, the Condominium Corp. is abusing its power by refusing Mr. McLeod access to his Unit in order to force him to pay disputed chargebacks. This is oppressive conduct; and
- (d) The Condominium Corp. has arbitrarily assessed charges against the Unit without establishing that the charges are caused by Mr. McLeod or his tenant. The Condominium Corp. went further and filed a lien related to the disputed Chargebacks. This conduct was unfairly prejudicial to Mr. McLeod.

[64] As a result, I find that Mr. McLeod has established that the Condominium Corp. has acted oppressively to, been unfairly prejudicial to and unfairly disregarded Mr. McLeod and his interests.

5. What remedies is Mr. McLeod entitled to?

[65] I find that Mr. McLeod is entitled to:

- (a) Immediate, unconditional access to the Unit;
- (b) Rectification of the ledger for the Unit to remove the inappropriate Chargebacks, as will be discussed below; and
- (c) Damages for lost rent.

[66] On the first of these remedies, I wish to make clear that the Condominium Corp. has no right to impose conditions on Mr. McLeod's access to his Unit. Subject to any provisions of the bylaws indicating otherwise, he is entitled to lease his Unit; he is allowed to sell his Unit; he is entitled to keys to his Unit and to the building. Mr. McLeod is entitled to be treated in the same manner as every other unitholder.

[67] On the second of these remedies, I find that the following Chargebacks listed at paragraph 48 of this decision are to be removed from the Unit ledger given the Condominium Corp.'s failure to file evidence to support that the charges are connected to Mr. McLeod or his tenant's actions: Chargebacks (a) to (d), (f) to (h), (l) to (s) [Disputed Chargebacks].

[68] In addition to the failure by the Condominium Corp. to file salient evidence, I also note that some of the Disputed Chargebacks are inherently questionable, such as:

- (a) In relation to the exterminator cost, it appears that the building had

cockroach problems in more than just the Unit, given that there was an account balance of \$735.00 (which is the amount for two units). It is not clear from the evidence whether this is a building-wide problem or caused by Mr. McLeod or his tenant;

- (b) The costs from Elite Facility Solutions Inc. and Len's Hauling Ltd. are presumably to clean the Unit and remove items. However, Mr. McLeod had previously asked to attend at the Unit to clean it, which offer was refused. I am, thus, not prepared to charge those costs to Mr. McLeod;
- (c) The ISC cost for the lien is inappropriate to charge against the Unit, given that most of the charges against the Unit were improper;
- (d) I am not prepared to require that Mr. McLeod pay for Mr. Murdoch's attendances at the ORT hearings;
- (e) Many of the other costs such as for security services, building-wide cleaning, changes of building locks, and the change to the buzzers are not obviously connected to Mr. McLeod or his tenant; and
- (f) I am not prepared to order that Mr. McLeod pay for the Condominium Corp.'s initial failed attempt to seek an ORT order.

[69] In relation to the third remedy, I am prepared to order that Mr. McLeod receive damages for lost rent. The evidence is that Mr. McLeod has rented the Unit for \$1,500 per month. The Condominium Corp. should have turned over the Unit to Mr. McLeod in July 2025. Accordingly, Mr. McLeod has been without rent for August 2025 to January 2026. This equates to lost rent of \$9,000 (\$1,500 x 6 months). I order that the Condominium Corp. pay Mr. McLeod that lost rent.

[70] I am not prepared to also order that the Condominium Corp. pay for Mr. McLeod's mortgage and condominium fees. Mr. McLeod would presumably have paid the mortgage and condominium fees from the rental income generated by the Unit. Given that I am already ordering that the Condominium Corp. pay lost rent, there would effectively be double-dipping if also ordered that the condominium fees and mortgage payment be paid by the Condominium Corp.

6. What costs, if any, is Mr. McLeod entitled to against the Condominium Corp.?

[71] Mr. McLeod seeks solicitor-client costs against the Condominium Corp. As noted in *Tofin Estate v Galbraith*, 2019 SKCA 35 [*Tofin*], these costs are exceptional to censure conduct in relation to the litigation.

[72] I am not prepared to grant solicitor-client costs, as I do not find that the Condominium Corp.'s actions in conducting this litigation were scandalous, outrageous or reprehensible. While the Condominium Corp. did not comply with the rules respecting filing briefs of law and deadlines for its affidavit, and filed inadmissible materials, I do not find that these actions needlessly increased the cost of or delayed the litigation.

[73] The tariff of costs provides a range of fees of \$2,000 (Column 1) for the originating application, affidavit, brief of law and attendance on application to \$8,000 (Column 3).

[74] I would characterize this application as being moderately complex, which would justify column 2 costs of \$4,000. However, I find that enhanced costs are appropriate.

[75] In finding that enhanced costs are appropriate, I have considered the factors set out at Rule 11-2 and the Court of Appeal's direction in *Tofin*. In particular,

I find that the Condominium Corp.'s positions have been completely devoid of merit and that it needlessly forced Mr. McLeod to bring this application by withholding access to the Unit until Mr. McLeod complied with the Condominium Corp.'s demands. The Condominium Corp. told Mr. McLeod that it was incumbent on him to start legal proceedings to challenge the Condominium Corp.'s unilateral actions in barring him from the Unit and arbitrarily charging amounts against the Unit's ledger. The Condominium's actions were capricious and unreasonable.

[76] As a result, I order fixed costs of \$7,500 against the Condominium Corp.

CONCLUSION

[77] In summary, I have made the following determinations under s. 99.2 of the *Condominium Property Act*:

- (a) The Condominium Corp. has been oppressive, unfairly prejudicial, or unfairly disregarded the interests of Mr. McLeod by:
 - i. Preventing him from having access to his Unit.
 - ii. Arbitrarily charging amounts against the Unit's ledger.
- (b) As a result, the Condominium Corp. shall:
 - i. Immediately allow Mr. McLeod access to the Unit, including by providing him with keys to the Unit and the building. Mr. McLeod's access to the Unit is unconditional.
 - ii. Amend the ledger for the Unit by removing the Disputed Chargebacks.

- iii. Pay damages to Mr. McLeod in the sum of \$9,000, representing unpaid rent for the months of August 2025 to January 2026.
- iv. Pay costs to Mr. McLeod in the sum of \$7,500.

J.
S.M. SINCLAIR