CITATION: Marshall v. MTCC No. 1235, 2026 ONSC 882
COURT FILE NO.: CV-23-00708236-0000
DATE: 20260226

2026 ONSC 882 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
AMANDA MARSHALL Applicant	*Michael Spears and Natasha Mazzitelli*, for the Applicant
– and –	
METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 1235, CHRISTOPHER KAPCHES, HEATHER BOON, ERICA REDDY-CHOQUETTE, TRISTAN TENG, JEFFREY COLEMAN and CIE PROPERTY MANAGEMENT & CONSULTING INC. Respondents	*Dean Melamed*, for the Respondents
	HEARD: January 27, 2026

LEIPER J.

APPLICATION UNDER Sections 17(3), 37(1), 37(3), 38(2), 98 and 135 of the *Condominium Act*, 1998, c.19, as amended

REASONS FOR DECISION

INTRODUCTION

[1] The Applicant, Amanda Marshall (the "Applicant") applies for relief pursuant to section 135 of the *Condominium Act, 1998* S.O. c. 19, (the "*Act*") declarations that the individual Respondents breached their roles as directors of MTCC 1235, compensation pursuant to s. 135 in the amount of $500,000 for loss of enjoyment of her unit and for the oppressive conduct of the Respondents, compensation in exemplary damages or damages of

$100,000 for breach of fiduciary duty, and "abusive and egregious" conduct by the Respondents, interest and costs.

[2] At the heart of the Application is whether the Respondents breached s. 135 of the *Act* in approving the owner of unit 704 to start roof deck unit renovations without requiring all necessary permits to be in place, and without consulting in advance with the Applicant. This led to a renovation and a removal of those renovations that interfered with the Applicant's use and enjoyment of her space. The renovation was ordered to be demolished after it was built and after 704's application for a variance and appeals were dismissed.

[3] These events were set in motion in April of 2021 when the Board approved a rooftop renovation by the owner of unit 704, who has exclusive use of a rooftop terrace next to the Applicant's rooftop terrace. The renovation involved a common element, which means that the Board was required to consider s. 98 of the *Act.* Under s. 98, the Board was required to satisfy itself that the proposed addition to the common element: (among other items which are not at issue here):

i. would not have an adverse effect on units owned by other owners;

ii. would not affect the structural integrity of buildings on the property according to a certificate of an engineer, if the proposed addition, alteration or improvement involves a change to the structure of the buildings; and

iii. would not contravene the declaration or any prescribed requirements.

[4] The Declaration for MTCC 1235, requires that:

> 4.1(d) Each Roof-deck unit <u>shall only be used as a deck</u> in accordance with the Condominium rules, zoning by-laws, and government regulations. [Emphasis added.]

EVIDENCE TENDERED ON THE APPLICATION

[5] I received and reviewed evidence by way of affidavit and examinations from the following individuals:

i. The applicant, Ms. Marshall;

ii. Lisa Wilson, property manager from November 2016 until June 2022 when the roof membrane was repaired;

iii. Jennifer Beaver, with CIE property management, who oversaw the roof membrane repairs at MTCC 1235. Ms. Beaver assumed property management responsibilities at the building after Ms. Wilson left in 2022;

iv. Heather Boon, volunteer member of the Board of MTCC 1235 since 2018 and Board President during the relevant events;

2026 ONSC 882 (CanLII)

v. Andrew Poirier, a principal with Cion Corporation who assessed water leakage into units 704 and 705 and oversaw the design and repair to the condominium roof membrane in 2022;

vi. Christopher Kapches, President of the Board at the time of the events.

2026 ONSC 882 (CanLII)

SUMMARY OF FINDINGS

[6] For the reasons below, I find that MTCC 1235, in failing to give notice to the Applicant of the renovations to unit 704's common element roof deck area amounted to a breach of the Applicant's reasonable expectations and disregarded her interests. In doing so, I have considered s. 98 of the *Act*, the Declaration and the reasonably foreseeable impact on Ms. Marshall as the neighbouring unit holder. I find that in doing so, MTCC 1235 breached s. 135 of the *Act*. The Applicant is entitled to a remedy in damages in the amount of $45,000.

[7] The Applicant seeks findings that the Respondents breached s. 135 in eight additional ways. Counsel listed these alleged acts of oppression under s. 135 during his oral submissions. I will address some of these in summary fashion. Others, I have considered in greater detail below, as described in the following list of actions which the Applicant submits are oppressive:

i. The Respondents defended their decision to approve the renovation based on past precedent: The Respondents' choice to defend an oppression claim based on the Board's prior decisions does not on its own, constitute an act of oppression. The Applicant has provided no basis in law for a finding that taking a position in response to an application for oppression is itself oppressive conduct. I dismiss this aspect of the application.

ii. The Respondents allowed the roof drain that was a common element to be covered by the neighbour's construction: As discussed below, the covered roof drain was of concern to the Applicant, who believed that the construction caused leaks of water into her unit. The leaks were investigated and there is insufficient evidence before me to find that the renovation caused the leaks. I do not find that the covering of the drain was a separate act of oppression. Rather, it is part of the outcome of a flawed approval process. I have treated this evidence as context for the oppression findings.

iii. The Respondents failed to ensure that the wood from the Applicant's fence was preserved and reinstalled as promised: She was told that the original wooden fencing would be preserved. It was not. In submissions, counsel to MTCC 1235 invited me to look at the aged effect of similar wood fencing and conclude that it was at the end of its usable life. That is not the point. A promise was made and not kept. The failure of 704's private contractors to preserve and reinstall the wood fencing as part of the expectations set by MTCC 1235 is another outcome of the flawed approval process. While I would not characterize this act as a separate act of oppression by the

Respondents, I find that the Respondent MTCC 1235's failure to ensure that the private contractors preserved the wood from the Applicant's privacy fence should inform the damages analysis for the original act of oppression.

iv. The Respondents singled out the Applicant's lawsuit in its periodic information circular (PIC) and treated her lawsuit differently from a description of another, more expensive lawsuit which MTCC 1235 disclosed in a subsequent periodic information circular: The differing treatment in the two lawsuits is problematic, and MTCC 1235 ought to be consistent on how it reports to residents about legal proceedings affecting owners and the corporation. However, I find that the circular's content does not rise to the level of being oppressive, even if it could have been improved. I discuss this issue below.

v. The Respondents failed to remove a hard copy of the condominium corporation's letter describing this Application. That posting remained on the board for five days. The Applicant complained twice to building management, and the posting was taken down. I do not find that the posting or the delay in taking it down was oppressive conduct. The Respondents ought to have moved more swiftly, and it should not have required a second complaint from the Applicant.

vi. The Respondents improperly attempted to "shut down" debate on the community forum: My review of the posts on the community forum, and the communication to counsel by the building manager does not support a finding that this was an act of oppression. The Applicant was not prevented from posting her views on the community forum. There is no evidence of direct reprisal either on the community forum or otherwise directly to the Applicant. In her factum, the Applicant referred to the postings about her concern around non-permitted construction and counter-posts from a member of the Board as being "Other Relevant Actions of the Respondent" but does not in written argument submit that this is a separate breach of s. 135 of the *Act*. I do not find that it is a separate breach of s. 135, or that the discussion about the forum amounts to oppression.

vii. The Board changed the condominium's rules after approving 704's rooftop construction to require building permits in advance of construction, while representing that the new rule was addressing hours of work for renovation. I find that the problems which arose from the Board's flawed decision to permit the construction at issue here led the Board to appropriately re-consider and amend its rules concerning roof top renovations to the doghouses. There is no separate breach of s. 135 by virtue of the Board adopting new rules or in the way that it communicated to residents about the new rules.

2026 ONSC 882 (CanLII)

viii. The Respondents produced a redacted letter during litigation concerning indemnification of MTCC 1235 by 704. Counsel on request, produced this letter in an unredacted version. Counsel to the Respondents chose to initially redact the letter, but after discussions with the Applicant's lawyer, he supplied an unredacted version. This exchange does not constitute an act of oppression or a breach of s. 135 of the *Act*.

2026 ONSC 882 (CanLII)

BACKGROUND

[8] The Applicant owns condominium unit 705 at 90 Sumach Street, Toronto, Ontario and has lived there since 2000. The Respondent, Metropolitan Toronto Condominium Corporation No. 1235 ("MTCC 1235"), is the condominium corporation for that building. The Respondents, Heather Boon, Christopher Kapches, Erica Reddy-Choquette, Tristan Teng, and Jeffrey Coleman are current or former members of the Board of Directors of MTCC 1235 (the "Board"). The Respondent, CIE Property Management and Consulting Inc.("CIE") is the property management firm retained by MTCC 1235.

[9] The Applicant's unit is considered a penthouse unit. It has access to the roof area, along with the other 7th floor unit holders. These residents have areas that are either designated as common area, exclusive use or as ownership rooftop units. The corporation had privacy fences built between these rooftop areas, providing those residents with access to private open-air spaces, and covered structures for storage of items at their entry ways to the roof from their units, which they have called "doghouses."[1] The other residents have access to common areas in the centre of the roof.

[10] From time to time, some 7th floor owners obtained permission from the Board to renovate or alter their roof terrace doghouses. This dispute arose after the Board approved a renovation to a 704's doghouse immediately adjacent to the Applicant's doghouse and terrace area.

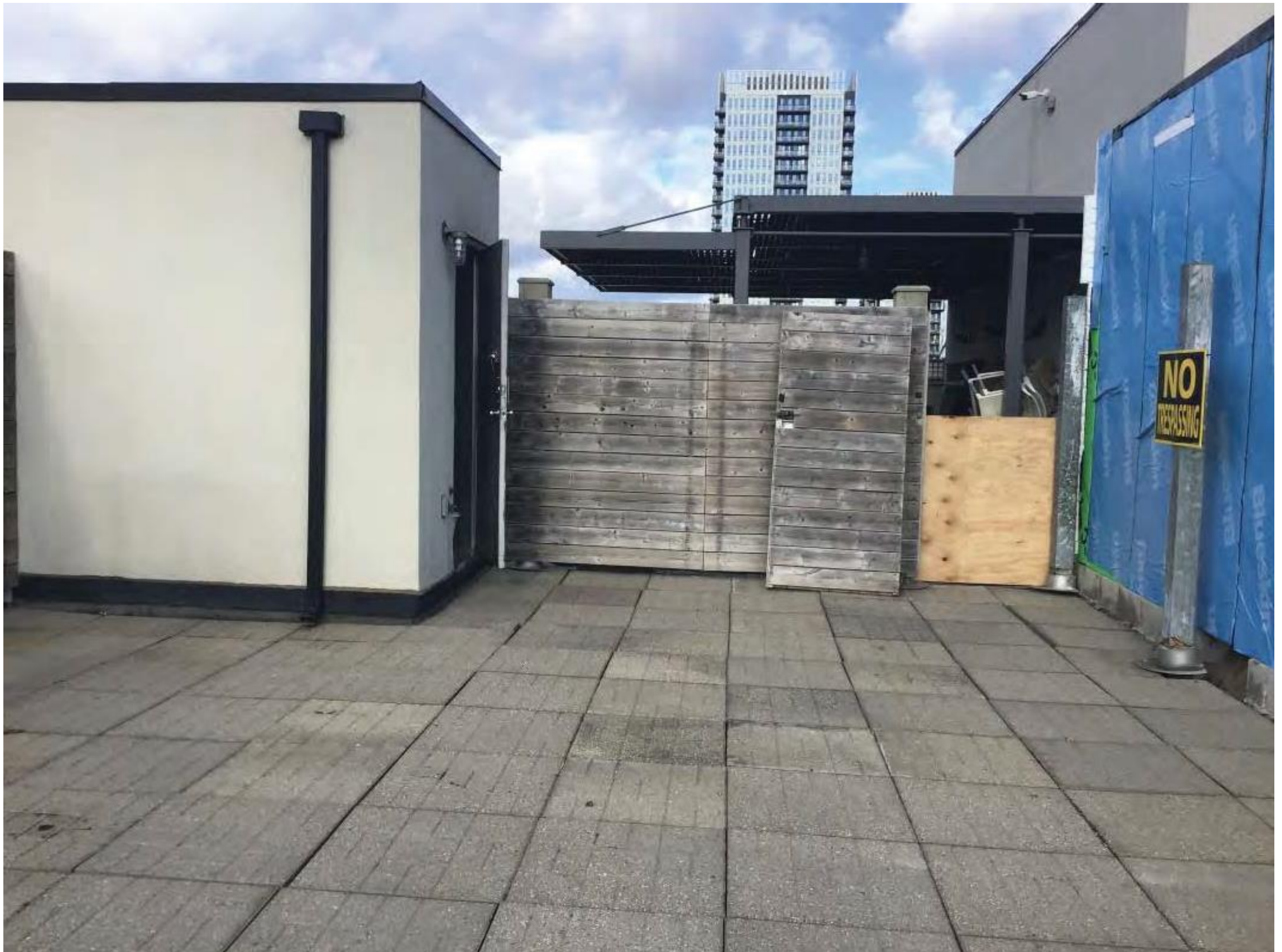
[11] In April of 2021, the Board granted Unit 704 permission to close in and enlarge its doghouse which is part of the common elements and over which Unit 704 has exclusive use. The Board had approved similar construction for Unit 703 in 2020, but construction had not begun as of April of 2021. The owners of 703 and 704 coordinated construction using with the same contractor, to start in September of 2021. The outcome of that construction was to create one large structure, with a wall between the two halves, providing each of 703 and 704 with a wholly enclosed living structure with a shed roof, higher than the previously existing privacy fences which separated the terraces from each other. According to the plans provided to the Board, these structures would increase the interior living spaces for both units 703 and 704. The new structure replaced the wooden fencing, which had been 6.5 feet high, with a 10-foot-tall concrete wall which became the new barrier between 704 and the Applicant's terraces.

[12] Photographs of the construction beside the Applicant's unit and 704 show the new

[1] This is the term used by the residents, perhaps to connote a covered structure with an opening not closed in by a door, as is commonly used for an exterior shelter for dogs. Given that it has a particular meaning to the parties, I will use the term in these reasons.

structure. "Photograph 1" shows the style and height of portions of the Applicant's undisturbed portions of her wooden fence. The building to the left side of the Photograph 1 is the Applicant's doghouse, which provided covered entry from her unit to the roof terrace deck. As the Applicant testified, on coming through the door from her doghouse to the terrace, she sees the wall of the new structure constructed by unit 704.

[13] The wall in Photograph 1 is covered with blue tarping and displays a "No Trespassing" sign on the fence post to the right side of the image. The Applicant's wooden fencing was previously attached to the wooden fence posts that are seen against the concrete wall. Photograph 1 is here:



[14] The next series of photographs ("Photographs 2 and 3") show the construction on unit 704's exclusive use common area, with the blue tarping as seen above, covering a concrete wall. The existing fence posts previously supported the gray wood fencing that 704's contractors removed. The new roof line is higher than the top of the fence posts. The new structure exceeded both density and height requirements in the City of Toronto's zoning by-law and for that reason, the owners of 704 and 703 were required to obtain a variance from the Committee of Adjustments for the construction to be permitted by the City.

2026 ONSC 882 (CanLII)

Photograph 2:

2026 ONSC 882 (CanLII)

Photograph 3:

2026 ONSC 882 (CanLII)

[15] The Board approved the construction of the units before the owners of 703 and 704 had obtained the necessary permits. That meeting took place on April 28, 2021. Present at the meeting were Chris Kapches, President; Heather Boon, Secretary; Jeff Coleman, Treasurer; Erica Reddy, Director; and Tristan Teng, Director. Also present at the meeting was Lisa Wilson, the property manager.

[16] The Board's approval of the 704 construction was recorded as being the mirror of another approval given for an owned (not a common element) unit on the other side of 704, unit 703. The in-camera section of the meeting minutes read as follows:

> **Renovation Requests**
> 704 – Doghouse Extension
>
> > The owners are looking to expand their doghouse to mirror the work in 703 previously approved. The board agreed in principle last meeting. The plans have now been provided and are attached.

703 was approved under the following conditions:

1. A section 98 agreement will be signed with regard to the roof area that will now be covered by the extended living space.

2. The building must not exceed the height of existing similar structures.

3. The exterior must be coloured and finished to match all other structures on the roof (i.e., earth tone stucco.)

4. No hvac or equipment of any kind is to be mounted on the roof of the structure.

5. All drainage must be directed within the terrace area or out to the building edge.

6. Final architect/engineer drawings to be submitted when available.

The board agreed that the owner of 704 could proceed under the same conditions as it had put in place for 703.

[17] The Board did not consult or advise the Applicant prior to issuing these approvals, nor was she provided with the plans by either the owner of 704, or the Board. The minutes do not record whether the Board considered whether the 704 approval, which was a common unit, ought to have been disclosed to the Applicant in advance to obtain her views, or whether the Board considered its responsibility under s. 98(2) and the factors listed there in relation to giving notice.

[18] The two board members who provided affidavit evidence, Ms. Boon and Mr. Kapches testified that they believed the renovations would not impact other units at the time that they voted to approve unit 704's renovations and that they made that decision in good faith. That reasoning is not apparent from the minutes of the meeting.

[19] Board member Ms. Boon gave evidence that the Board considered this application to be similar to other past approvals. Ms. Boon's evidence was that other residents had received approvals to renovate or alter their doghouses, and the Board felt the 704 request was like those which had been approved in prior years. There is no controversy that the Board did not require the owner of 704 to apply for and obtain a valid building permit before approving this renovation. Although it does appear that at least one other closed in unit was built without controversy, the size, scale and non-conforming characteristics of the 704 and 703 units together were unprecedented on this rooftop.

[20] At the same time that 704's construction was being considered, the Board approved replacement work on the building roof which overlapped with the construction of the structures. The parties agree that this work meant that the rooftop amenities were not open to residents between June of 2021 through to June of 2022. As such, as discussed below, the Applicant did not have access to her rooftop terrace during those months because of the roof repairs, and not only due to the disputed renovations to 704's doghouse. To some extent, this mitigated the impact on her use of her terrace, because she and other unitholders had to forego

2026 ONSC 882 (CanLII)

rooftop access during the much-needed replacement of the roof membrane.

[21] The Applicant knew informally that her neighbours were planning some kind of renovation to the doghouse on the roof. Her evidence was that the first formal notice she received from building management about 704's renovation was in an email from Lisa Wilson, the property manager, on August 26, 2021. The email read:

> As I am sure you are aware, your neighbours are building a doghouse extension that has been approved by the board. In order to complete this process, the common element fence between their terrace and yours will have to be removed and permission has been granted for this. We do recognize that you have your own wood on the fence which your neighbour's contractor will remove and restore carefully at their expense.
>
> If you wish to remove it yourself, you may also choose that option.
>
> This is a fortunate time to be doing this work as the roof replacement is going on and the roof area is out of bounds to all residents. It will also speed up the process for your terrace work when the time comes. The work is due to commence on September 7th with the fence removal and the fence will be down until approximately the first week in October. This should coincide with the estimated time that your terrace roof will be replaced.
>
> Please let us know if you will be removing your wood, or if you would like the contractors on the doghouse to do it at their expense and with care.
>
> Thank you for your cooperation and if you have any questions, please do not hesitate to contact me directly.

[22] The construction commenced, and when the Applicant was able to view the extent of the renovations, on being given rooftop access, she hired a lawyer. On October 28, 2021, the Applicant's lawyer sent a letter to the Board complaining about the process and the impact of the construction on her unit. The letter included the Applicant's complaints about water leakage from the construction, as well as cracking and chips to some of the surfaces in her unit.

[23] On November 2, 2021, Board passed a unanimous resolution that "no further structures shall be added to any private terrace" at the West end of the rooftop, limiting height restrictions on the permissible structures, and permitting only "gazebos and pergolas". The Board's resolution noted that it was doing so in the interest of no adverse effect to the common area terrace and preserving the enjoyment of the open space area."

[24] On November 3, 2021, the Board wrote to the owners of 703 and 704 advising that they must stop construction because the City had issued a stop work order. On November 4, 2021, counsel for the Board registered s. 98 agreements on title for units 703 and 704, reflecting the owners' indemnification responsibilities.

2026 ONSC 882 (CanLII)

[25] MTCC 1235 retained Cion Corporation, an engineering firm to assess the Applicant's leak complaints. Cion's report was issued on November 25, 2021. On the issue of leakage, the report finds:

> The review concluded that the most probable cause of prior water penetration was related to deficiencies in the roof membrane flashing surrounding a plumbing stack (related to the roof replacement work) and likely related to the face sealed EIFS assembly cladding the roof top entrance. 13. Contrary to the Applicant's allegations, Cion specifically noted that it was "highly unlikely" that the observed conditions in Unit 705 were related to the construction of the rooftop enclosure at Unit 704, as the roof membrane in that area had been replaced prior to the new structure's installation.

[26] The evidence shows that Cion's staff requested access to the Applicant's unit as well as the exterior rooftop above her unit to assess whether the wall and waterproofing transitions were a source of leaks into her unit. Cion confirmed that the Applicant declined to permit their staff to enter her unit.

[27] Cion's assessment of the leak complaints found that it was "highly unlikely" that any moisture entering the Applicant's unit was caused by unit 704's construction. The Applicant filed no expert evidence to the contrary on the source of leaks into her unit.

[28] In December of 2021, MTCC 1235 retained another consultant to assess ongoing complaints from the Applicant about the impact of the construction on her unit. The Applicant permitted a consulting engineer from AJW (the consulting firm) to enter her unit to assess those complaints.

[29] In its report of that assessment dated February 3, 2022, AJW concluded that 704's renovations, which the Applicant reported included drilling concrete, could have dislodged pieces of concrete in her unit. AJW did not report any evidence of harm to the structural integrity of the building. On the issue of water leaks, the consultant wrote: "water leak marks observed in a pipe at the south side the unit are also a building envelope issue that falls outside of the scope of this report and the expertise of the writer. As such, should the leak marks persist over time, it is recommended to engage the services of a building envelope specialist."

[30] On December 30, 2021, and January 4, 2022, the City Zoning Examiner issued letters confirming that 703/704's projects did not comply with the City of Toronto zoning bylaws. On January 11, 2022, the City of Toronto Building Inspector directed Units 703 and 704 to comply with the orders to comply, by no later than February 11, 2022.

[31] In February of 2022, the Board held a town hall meeting for residents to discuss the issues arising from the 703/704 construction. The Board members told residents that going forward, no construction would be approved unless permits had been obtained first.

[32] The unit owners of 703 and 704 applied to the City Committee of Adjustments to seek a variance. Those hearings took place in April of 2022. In May of 2022, the Committee denied the applications. The Committee denied the owners' requests for a variance because:

2026 ONSC 882 (CanLII)

i. The general intent and purpose of the Official Plan is not maintained;

ii. The general intent and purpose of the Zoning By-law is not maintained;

iii. The variance(s) is not considered desirable for the appropriate development of the land; and

iv. In the opinion of the Committee, the variance(s) is not minor.

[33] By May of 2022, the contractor retained by MTCC 1235, Nortex, had completed the work on the rooftop membranes

[34] The owners of 703/704 appealed the decision of the Committee of Adjustment to the Toronto Local Appeal Body. The Appeal Body denied that appeal for reasons given on December 1, 2022. The Applicant attended as did an expert witness for the owners of 703/704.

[35] In the reasons, the Appeal Body described the renovations in these terms: "The owner of each unit is essentially seeking permission to convert what was an existing "dog house" on the roof above their unit, to an enlarged residential space."

[36] The Appeal Body went on to describe the proposed renovations as:

> The "dog houses" in question were approximately 5.4m2. The conversions, if completed, would result in residential spaces of 33.4m2 and 28.0m2. The proposed residential spaces would be higher than the existing "dog houses". One of the proposed spaces would contain a washroom and living room to be accessed by an elevator. The other would be remain accessed by stairs and simply function as additional living space. The conversions of the two "dog houses" was partially completed when this hearing was held.

[37] The Appeal Body found that the proposed conversions would violate the general intention of the by-law that the roof should remain open rather than becoming a series of enclosed living spaces. The conversions did not fit within height restrictions or density restrictions. The by-law was intended to protect the open space character of the rooftop. Permitting the construction to remain would also set a precedent for additional enclosure.

[38] The owners of units 703 and 704 pursued a review from the decision of the Appeal Body. For reasons released on April 12, 2023, Vice Chair Bassios determined that there had not been any errors in law or in fact by the Appeal Body and upheld the decision to refuse the variance.

[39] In May of 2023, the Board wrote to the owners of 703 and 704 that they were required to remove the non-conforming structures within 30 days, and that MTCC 1235 would seek to be indemnified for any damages relative to the non-permitted construction.

[40] On May 31 and June 14, 2023, the City issued demolition permits to 703 and 704. There was a delay in demolition, because the Board had to receive and approve new plans for

2026 ONSC 882 (CanLII)

a compliant doghouse structure for each of 703 and 704, to replace the structures that had to be taken down.

[41] Meanwhile, the Board approved ongoing improvements to the Applicant's unit, including replacing windows in the unit on June 19, 2023, and September 26, 2023.

[42] By October of 2023, the owners of 703 and 704 had complied and removed the structures from the rooftop.

[43] On October 23, 2023, the Applicant issued this application. After that point, in response to complaints of ongoing leaks in the Notice of Application, the condominium property manager attempted to respond to the complaints of leaks. The Applicant refused access to her unit, citing six prior attendances (on the window replacement dates of visits), and her belief as set out in her affidavit, that there was no point if the source of the leak was not determined. The Applicant provided no independent engineering or consulting reports connecting the leaks to the construction done by 703 and 704.

[44] The Applicant was never provided with the wood that was taken down from her fencing to accommodate the construction of 703 or 704. A new fence was constructed, which the Applicant states does not match the rest of the fencing, although as counsel to MTCC 1235 submitted, it may be that with time that wood will "grey" to match. The Applicant also gave evidence that unlike other terraces, her terrace has not been fully restored to the condition that it was in before the construction.

[45] In MTCC 1235's January 2024 Q1 Periodic Information Certificate (PIC), the Board added a cover letter to residents that discussed Ms. Marshall's Application and additional details (in addition to those within the certificate itself) about her Application. Although MTCC 1235 had been named in another lawsuit one week prior to releasing the PIC, that action was not included either in the certification or in the cover letter. The Applicant submits that she was subjected to differential treatment, and that this act is another act of oppression.

[46] A copy of the January 2024 Q1 PIC cover letter that highlighted Ms. Marshall's application was posted to the Corporation's public bulletin board in the lobby and P2 entrance of the Property. This copy had the words "MARSHALL LAWSUIT – PLEASE READ" handwritten across the top in block letters. The Applicant complained to management about the posting. After five days, management staff removed the posting from the bulletin board.

[47] In its August 2024 PIC, MTCC 1235 notified residents of both this Application and the second lawsuit, although this time, neither were described in the cover letter, but only within the body of the certificate.

[48] I turn next to the issues, the legal framework and discussion of the issues.

2026 ONSC 882 (CanLII)

ISSUES ON THE APPLICATION

[49] The issues on this Application are:

i. Has the Applicant established that the Respondents breached s. 135 of the *Act*?

ii. Is a remedy in damages appropriate? If so, what is the quantum of damages that should be awarded to the Applicant?

2026 ONSC 882 (CanLII)

THE OPPRESSION REMEDY UNDER THE CONDOMINIUM ACT

[50] Section 135 of the *Act* was enacted to grant the court the jurisdiction to protect condominium owners, corporations, declarants, and mortgagees from unfair treatment. The section provides:

> 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.
>
> **Grounds for order**
>
> (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.
>
> **Contents of order**
>
> (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.

[51] The Applicant has the onus under s. 135 of the *Act*, to establish that the respondents breached her "reasonable expectations" and that the conduct amounts to "oppression, unfair prejudice, or unfair disregard of the relevant interests": *Mohamoud v. Carleton Condominium Corporation No. 25*, 2021 ONCA 191 at para. 8.

[52] An "oppression remedy" will include a remedy relative to the breach of a person's reasonable expectations that involves one of three elements: "oppression, unfair prejudice or unfair disregard of the relevant interests*: Hakim v. Toronto Standard Condominium 1737*, 2012 ONSC 404 at para. 32.

[53] In *Hakim*, O'Marra, J. discussed the meaning of each of these elements at paras. 33-35:

i. 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.

ii. Unfair prejudice has been found to mean a limitation on or injury to a complainant's rights or interests that is unfair or inequitable.

iii. Unfair disregard means to ignore or treat the interests of the complainant as being of no importance. *Niedermeier, supra*, at paras. 5-8.

[54] Unfair prejudice and unfair disregard are less rigorous tests than oppression. *Niedermeier v. York Condominium Corporation No. 50* (2006), 45 R.P.R. (4th) 182, at para. 4.

[55] Some degree of prejudice or disregard may be tolerated, because both are modified by "unfair": *Missal v. York Condominium Corporation No. 504*, 2023 ONSC 4908 at paras. 73 and 74.

[56] The legislative intent of the oppression remedy is to balance the interests of those claiming rights from the Corporation against the ability of management to conduct business in an efficient manner. *McKinistry v. York Condominium Corporation No. 472* (2003), 2003 CanLII 22436 (ON SC), 68 O.R. (3d) 557 (S.C.), at para. 31.

[57] Section 135 protects legitimate expectations and not "individual wish lists." The court must balance the objectively reasonable expectations of the owner with the condominium Board's duty to exercise judgment and secure the safety, security and welfare of all owners and the condominium's property assets. *McKinstry* at para. 33.

[58] Oppressive conduct contrary to s. 135 has been found in a range of circumstances including:

- On an oppression application the Court found that the Board falsified and back-dated a status certificate related to required repairs of the Applicant's common area, exclusive use solarium. The Court described this conduct as "among the most serious breaches that a corporation or its agents could commit. A unit owner is entitled to expect that the corporation and its agents will communicate truthfully and not alter documents to mislead owners regarding their rights and obligations: damages awarded of $75,000 to denounce the conduct of the respond. See *Gonzales v York Condominium Corporation No. 242*, 2024 ONSC 6372 at paras 56-78.

- Where the Board locked a unitholder out of their unit for 10 days due to unapproved renovations, by way of a "self-help" remedy which the court found should be sanctioned: damages of $10,000 in general damages and relief from the chargeback of the condominium corporation's legal fees in the

2026 ONSC 882 (CanLII)

amount of $7468.27. See *Polchil Homes Ltd. v. Peel Condominium Corporation No. 245*, 2023 ONSC 2364.

- A failure of the Condominium Corporation to deal adequately with noise and vibration complaints which affected the sleep of a unitholder for five years: $30,000 in damages awarded. See *Wu v. Peel Condominium Corp. No. 245*, 2015 ONSC 2801

2026 ONSC 882 (CanLII)

[59] The court considers a variety of factors in determining whether a respondent has breached the reasonable expectations of an applicant. The analysis is contextual These factors include:

i. the corporation's governing documents;

ii. past practice and the corporation's established decision-making processes;

iii. the nature of the condominium and its shared governance structure;

iv. the Board's statutory duties to consider the interests of all owners; and

v. the entire factual context, including whether expectations were objectively justified.

See: *Missal v. York Condominium Corporation No. 504*, 2023 ONSC 4908 at paras. 73 and 74.

[60] Directors, officers and management may be liable for the acts of condominium corporation. The court will look to the duties of officers and directors to act honestly and in good faith, and to exercise the case, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances: *Condominium Act*, s. 37.

[61] I turn then to an analysis of whether Ms. Marshall has established the basis for her claims for relief in oppression under s. 135 of the *Act*.

ANALYSIS OF THE ISSUES

[62] At the beginning of these reasons, I made several summary findings about whether the Applicant had made out the test for oppression. I analyze several of those issues here in to further explain the summary findings at the start of these reasons.

Has the Applicant established that the Respondents breached s. 135 of the Act?

[63] The Respondents submit that the Applicant has not met her burden to show that any of them acted contrary to s. 135. In their submission, the volunteer members of the Board decided, in good faith, to approve the rooftop renovations proposed by 704 because they felt this would not interfere with other unitholders, including the Applicant. If they had concluded that the construction would interfere with other unitholders, then they were required to consult under s. 98, extracted above.

[64] I disagree. I find that the Applicant's reasonable expectations, that she be notified and consulted prior to the Board approving the non-permitted construction to begin next to her roof top unit, amounted to an "unfair disregard" of her legitimate interests, as that term is used in condominium oppression jurisprudence. This is because the construction which the Board approved had three discrete impacts on the Applicant:

i. Construction was permitted to proceed prior to the full approval process by the City of the variances required to respond to the density and height breaches of the by-law posed by the construction. This meant that the Board, without consultation, put the Applicant to the risk of having construction, followed by demolition and new construction, take place next to her unit. That is objectively, an impact on the Applicant and a foreseeable risk of approving a non-conforming project.

ii. The construction required interference with the original fencing, which the record shows that the Applicant sought to retain. Although MTCC 1235 through its agents agreed to ensure that the fencing would be retained and reinstalled, the steps needed to carry through on this commitment were not taken.

iii. The photographs of the differences between outdoor terraces, and the height and bulk of the construction immediately adjacent to the Applicant's terrace can be seen to impact the character of her outdoor space. Replacing a wooden 6.5-foot-high fence with a 10 high concrete wall that extends beyond the immediate fence line is objectively an impact on the Applicant's use and enjoyment of our rooftop terrace, once she had regained access to the rooftop. The Board received the plans filed by the owners proposing the construction. The Board, and thus MTCC 1235, must be taken to have been aware of the scale of the planned renovations, which is relevant to the reasonable expectations of the Applicant as the neighbouring unit holder.

[65] Further, and although it appears that the Board may have approved prior renovations that closed in the rooftop doghouses, and thus tacitly ignored its own Declaration, the terms of the Declaration required the roof-deck units "shall only be used as a deck in accordance with the Condominium rules, zoning by-laws, and government regulations." These renovations, and the plans before the Board when it took its decision, emphatically were not a simple deck renovation.

[66] I find that the Board failed to consult the Applicant as required under s. 98, and this was an act of oppression as defined in s. 135 and the caselaw. I would make that finding against MTCC 1235 only and but not against any individual member of the Board or member of the management of the condominium. There was no evidence of personal animus or bias toward the Applicant.

[67] In the aftermath of the Board's decision to approve the renovation and following the Applicant's protests after discovering the extent of the construction right next to her terrace, the Board took several steps. It registered the s. 98 agreements on title. It changed its policies about renovations that would be permitted on the rooftop to fall in line with the Declaration, and recognized in its November 2, 2021 resolution that structures such as those involved here could have an adverse impact on other residents. The Board also required that any such

2026 ONSC 882 (CanLII)

renovations would need to have all city permits in place, and that owners must display those permits. These were positive, responsible decisions that flowed from the problems arising from the Board's approval of the unit 704 renovations.

[68] In relation to the unit 704 renovations, the Board monitored and followed up with the outcome of the appeals and required the units to be demolished once the permits were received and the new plans for conforming doghouses were in place.

[69] As I have stated above, in my summary of findings, several of the Applicant's other alleged acts of oppression do not have merit. I will only discuss one of those here in greater detail, that being the treatment of this lawsuit in the PIC, and in the Board's cover letter. The Board approved a letter which singled out this Application in the January 2024 PIC, having received a second, and larger claim one week prior to the PIC's release. While the Board explained that there had not been time to include the other lawsuit in the PIC, it ought to have considered whether this could appear to be differential treatment of the Applicant, given the timing and the choice in August to use a form cover letter without reference to either of the actions. I accept the explanation that the timing did not permit the second lawsuit to be included in the first PIC but the Board could have chosen a more consistent method of informing owners of this Application and the second action (which did not involve this Applicant).

[70] This led to another problematic event in which a copy of the letter attached to the January 2024 PIC that described this Application was posted on a public bulletin board, and defaced. The Applicant sent two separate emails of complaint to building management to have it taken down. However, given that it appears a resident was responsible for the posting, and that management took down the letter within five days, I do not find that this was an act of oppression. Nevertheless, management could have responded faster given the obvious sensitivity. This is another unfortunate outcome of the Board's original, poorly considered decision to grant the approval.

[71] As for the other events that flowed from the approval decision, including the unauthorized disposal of the wood from the Applicant's unit, I treat these as factors which inform the compensation analysis. I turn to that issue next.

Is a remedy in damages appropriate and if so, what quantum of damages should be awarded?

[72] Awards of damages have been made to compensate unitholders whose rights have been impacted by breaches of s. 135 of the *Act* in a range of situations. Compensation awards have been used to sanction "shocking" conduct such as the falsification of condominium records in *Gonzalez.* I would not characterize the oppression in this case as being analogous to that in *Gonzalez*, nor would I describe the Board's decision as "shocking." However, I do find that it is deserving of compensation.

[73] I say this because the wrongful act occurred in the context of the Board failing to devote an appropriate lack of attention to the Applicant's reasonably held rights and expectations. The Applicant experienced an impact from the Board's flawed decision making

2026 ONSC 882 (CanLII)

that lasted for months.

[74] The Board may have been lulled into a sense of security due to prior non-contentious rooftop renovations that were outside what was permitted by the Declaration. However, the Board failed to appreciate how approving this particular structure, which did not conform to the zoning by-law and where the owner of 704 had not obtained the necessary permission, could affect the Applicant. The minutes from the meeting in April of 2021 simply repeated the terms that were applied to 703's adjoining construction, without acknowledging that 704 was a common, exclusive use area, or that the Board was required to consider s. 98. While I have not found bad faith or that any Board member should be held personally liable, I find that the Board did not live up to its duties under the *Act*, the Declaration and to Ms. Marshall.

[75] That casualness appears to have continued during the construction (which coincided with the roof repairs, which explains why the structure were up and partly complete before the Applicant was able to see them and take action), when the fencing on the Applicant's side of the terrace was torn down and apparently disposed of despite the Applicant's request that it be preserved and reinstalled after the construction was complete.

[76] The Board's sudden change in approach coincided with the Applicant retaining counsel and sending a letter objecting to the construction and pointing out her concerns with the impact on her use, her unit and structural concerns. It was after that letter that the Board registered the s. 98 agreement, altered the practices for approving construction on the rooftop and required construction on unit 704's rooftop to stop pending the approvals and in compliance with the City's order to comply. As I describe above, the Board hired engineers and consultants to investigate the impact to the structural integrity of the building and look into the cause of the leaks that the Applicant connected to the construction. It was at this point that the Board appeared to appreciate the consequences of the April 2021 decision.

[77] From there, the Applicant was affected by the decision in several ways. She did not have the use of her rooftop area, as before, once the roof membrane repairs were finished in May of 2022, until October of 2023 when the construction was removed and the conforming doghouses for 703 and 704 were reinstalled. The fencing was not replaced to its prior character, although new fencing was installed.

[78] The Applicant's allegations of water leaks into her unit because of the construction were not substantiated by evidence. There is some suggestion from the AJW report that vibrations or drilling from the construction could have dislodged some concrete into her unit, but I am not able to find that this possibility, more likely than not, resulted from the construction.

[79] I also find that the Applicant suffered stress, concern and a feeling that her rights were disregarded by this process. This could only have been exacerbated by the construction project being permitted to begin and then remaining in place during the months of appeals. As a result, the Applicant was restricted in the use of her rooftop terrace for a prolonged period, although some of this was attenuated by the time required for the rooftop repairs for the benefit of all residents to be completed. While the Respondents suggested that during the winter months, the Applicant used the space minimally and including to take her pets outside,

2026 ONSC 882 (CanLII)

that position does not respect the fact that the Applicant is entitled to have full access and use of this as part of her unit. I do not accept the Respondents' argument that any impact on her was minimal.

[80] I have considered the nature of the oppressive act, the impact on the Applicant and the caselaw in the area. I do not characterize the Board's conduct as "shocking. Nor would I use the terms urged by the Applicant in her material, that this was "egregious" or "abusive." However, I do find that the Board's treatment of the Applicant was disrespectful and inconsistent with the duties that it owed to her. The entire saga was also, sadly, preventable. This decision was the first domino to fall in a series of events, which led to additional expense for those involved, as well as frustration and tensions among the condominium community as revealed by several community postings that were included in the record. The Applicant suffered the impact of having her legitimate interests ignored in the decision making, and the direct impact of her use of her terrace. I find that the Applicant has shown that she is entitled to compensation that recognizes the impact of this decision on her, and to encourage condominium corporations and their boards to carry out their responsibilities in accordance with the relevant law and Declarations.

[81] The Applicant seeks a large quantum of damages, in part based on the many allegations of oppressive acts she has alleged. I have found one, significant act of oppression, which led to the aggravating effects on the Applicant. Although the Respondents submit that the impact was minimal, I do not agree. There were practical effects, including her lack of access to her terrace for months, and the loss of a wooden fence which she preferred. There is the less tangible but equally important impact of feeling disrespected by the entire process and treated as if her views were unimportant. The Applicant was also put to the time and effort to protect and preserve the qualities of the rooftop, including retaining counsel and making a complaint before the Board clarified its approach to maintaining the character of the rooftop with a new set of rules.

[82] While I conclude that the conduct here is not as serious as that found in *Gonzalez* decision ($75,000), the effect of the conduct on the Applicant had greater impact than that in *Polchil* ($10,000). Compensation should reflect the circumstances of each case, and any relevant factors. Here the most important factors are the impact on the Applicant of the construction and demolition, the failure of the Board of MTCC 1235 to reasonably consider the impact on the Applicant of approving the non-permitted construction, and the absence of any justification in the Board's minutes, or indication that it had considered its duties under s.98.

[83] I find that by way of some mitigation of its conduct, the Board of MTCC 1235 investigated the Applicant's complaints of water leaking, reconsidered and revised its policies on rooftop renovations and ensured that the unitholders of 703 and 704 complied with the City's orders. As of October of 2021, I find that the Board demonstrated that it was paying closer attention to its responsibilities around the rooftop and to the Applicant's concerns.

[84] Having said that, MTCC 1235 could have managed the PIC communications more consistently. Management could have responded faster to the posting on the bulletin board. The Applicant should not have had to send two emails to have the defaced posting removed.

2026 ONSC 882 (CanLII)

However, I have not found these issues amounted to acts of oppression.

[85] I have taken all of these factors into account. I find that a reasonable award of compensation under s. 135 to the Applicant, payable by MTCC 1235 to the Applicant, is $45,000. I decline to make any orders against Board members individually, or to management company, CIE Property Management and Consulting.

[86] I encourage the parties to agree as to costs. If they are unable to do so, they may make brief written submissions (maximum 3 pages) via my judicial assistant on or before March 12, 2026.

2026 ONSC 882 (CanLII)

Leiper, J

Date: February 26, 2026

CITATION: Marshall v. MTCC No. 1235, 2026 ONSC 882
COURT FILE NO.: CV-23-00708236-0000
DATE: 20260226

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

AMANDA MARSHALL

Applicant

– and –

METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 1235, CHRISTOPHER KAPCHES, HEATHER BOON, ERICA REDDY-CHOQUETTE, TRISTAN TENG, JEFFREY COLEMAN and CIE PROPERTY MANAGEMENT & CONSULTING INC.

Respondents

REASONS FOR DECISION

Leiper J.

Released: February 26, 2026

2026 ONSC 882 (CanLII)