

**CITATION:** Middlesex Condo. Corp. v. Middlesex Condo. Corp., 2012 ONSC 4819  
**COURT FILE NO.:** 6738-12 (London)  
**DATE:** 20121009

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
Middlesex Condominium Corporation No.	)	
232	)	Robert W. Dowhan, for the Applicant
	)	
Applicant	)	
	)	
<b>-- and --</b>	)	
	)	Joe Hoffer, for the Respondents
Middlesex Condominium Corporation No.	)	
232 (Owners and Mortgagees of)	)	
	)	
Respondents	)	
	)	
	)	
	)	<b>HEARD:</b> August 17, 2012

**REASONS FOR JUDGMENT**

**CAREY J.:**

**Overview**

- [1] This is another case illustrating the disputes and divisions that can arise out of that unique type of home ownership – the condominium.
- [2] The applicant Board of Directors (the “Board”) Middlesex Condominium Corporation No. 232 (“MCC No. 232”) seeks an order appointing an administrator pursuant to s.131 of the *Condominium Act, 1998*, S.O. 19 (the “Act”). The Board asserts the administrator would be in the best interests of the condominium as the Board is unable to govern because of significant interference by a “small group of owners” who have “misled the owners causing a poisoned atmosphere in which no board of directors can properly manage the condominium’s affairs”.
- [3] In contrast, the respondents state that they represent a majority of the unit holders and have been frustrated in their attempts to raise reasonable questions and concerns about proposed repairs. They say they have now legitimately formed a new board capable of governing the affairs of MMC 232.

- [4] The respondents maintain the applicant has manufactured a crisis for the purpose of thwarting the legitimate aims of the majority and preventing them from electing a new board.

### Background

- [5] For some years going back to 2007, there have been problems with exterior water entry at this 98 unit, 10 floor high condominium apartment building. Various solutions were tried and found wanting. In September of 2011, the Board received a report from Enerplan Building Consultants addressing the condition of the building envelope and balconies. A plan was proposed that would cost an estimated \$1.6 million. Due to cost concerns the Board requested and received further reports and eventually four options for repairs.
- [6] After an informational meeting for the owners, held on January 25, 2011, the Board chose to proceed with an option estimated to cost \$755,000. As there was only \$143,000 in the MCC 232 reserve fund, the Board prepared a borrowing bylaw to authorize a \$600,000 loan to MCC 232. It scheduled this matter to be voted on at the Annual General Meeting ("AGM") of April 16, 2012.
- [7] Before the meeting, some residents, concerned about the cost and other aspects of the proposal requested copies of documents, including the Enerplan report, and some time to review them. They wanted the Board to suspend contract negotiations for the work for a short period. They had also asked for permission to post a notice regarding the plans in the condominium building.
- [8] Supervised access to some documents was offered by the Board's lawyer but the other requests were refused by the Board.
- [9] Following an exchange of requests the respondents' representative prepared a requisition pursuant to s. 46 of the Act for a meeting concurrent with the AGM, to defer the vote on the bylaw to September 2012. If that motion failed, there was a further motion to remove the Board and replace it with a new one. Two of the five Board members were already up for re-election at the AGM.
- [10] At the meeting, which went ahead following what might be described as strategic attempts to prevent a quorum and lively interaction from the floor, the bylaw motion supported by the Board was defeated. At that point the Board ended the meeting before the scheduled election and respondents' requisition motion to remove the Board could be voted upon.
- [11] The Board subsequently brought this motion to appoint an administrator and a subsequent injunction application preventing the respondents' requisition meeting from occurring before this motion was heard. The requisition meeting was eventually scheduled for August 8, 2012 and the injunction application was heard August 3, 2012 by Bryant J. His decision denying the injunction was released August 10, 2012, two days after the meeting was held and a new Board voted in.

- [12] Two separate groups now claim to be the legitimate Board for MCC No. 232. The applicant's position is that the meeting was invalid. The respondents say that a new board was duly elected at the meeting duly called for August 8, 2012.

### Issues

- [13] The issues here are:
- 1) Is this a proper case for appointing an administrator under the *Condominium Act*?
  - 2) Was there a valid requisition meeting held that resulted in the election of a new board?
  - 3) If the answer to 2) is yes, are there still concerns about the corporation's governability that require the appointment of an administrator?

### Analysis

- [14] The vote scheduled for the AGM of April 16, 2012 did not give the owners a choice as to the repairs being done as proposed. The Board had decided on that course they say, pursuant to their maintenance obligations under s. 97(1) of the Act. The bylaw was to decide whether to borrow the money for the work or assess the owners for the costs. The Official Notice of the Meeting provided in bold type "**If the 51% vote required is not received, all units will be special assessed for their portion of the project funding without the loan option.**" (Application Record, Tab 4)
- [15] There are 98 units in the condominium and the estimated project cost was \$755,000. This translated into a one-time assessment of \$5,665 for one bedroom units and \$8,195 for two bedroom units. I accept that this is not a luxury building and that these assessments would be significant ones to most owners.
- [16] The Act provides in s. 89 that the corporation has a duty to repair the common elements in the condominium after damage subject to s. 91 and s. 123. Neither party has argued that either s. 91 (altering the obligation to repair) or s. 123 (termination of the Act's governance after substantial damage) apply in this case. The applicant relies on s. 97(1) of the Act which provides that repairs to common elements may be made without notice to the unit holders.
- [17] While the applicants are correct that s. 97(1) of the Act allows for maintenance work to the common elements where there is an obligation to repair, there may not always be a consensus among owners as to when proposed construction constitutes "repairs" and when it is an "addition, alteration, improvement or change" under s. 97(2) or (3). If it is an "alteration, improvement, etc.", unless the proposed work is: a) necessary to comply with a s. 113 Mutual Use Agreement; b) necessary for safety, security or to prevent imminent damage to the property; or c) costs no more than the greater of \$1,000 and one percent of the annual budgeted common expenses, the corporation can only make additions, alterations or improvements to the common elements upon notice to the owners under s. 97(3). That notice must describe the proposed work, outline the

estimated cost and include a copy of s. 46 of the Act along with notification that the owners have the right within 30 days of receiving the notice, to requisition a meeting of owners. The work can only proceed if no s. 46 meeting has been requisitioned or if a meeting was called, the proposed work has not been voted down. This scheme for "non repair" construction reflects the Act's general democratic approach to expensive projects.

[18] While it is open to boards to make expensive decisions about what they regard as pursuant to their obligation to repair without several quotes and full disclosure to owners and without a voted mandate, they do so at the risk that the response will be exactly as it was here.

[19] A condominium Board is ceded a lot of power over the condominium by the Act. This shift in power from individuals to a board is addressed in at least two ways. One was described recently by Mr. Robert Mullin, one of the respondents' counsel, in an article in a magazine for the Condominium Management Industry on s. 55 of the Act.

To level this imbalance, Ontario's condominium legislation has always granted unit owners a broad right to review and/or receive copies of a condominium's records. . . The courts have ruled that condominiums must run like "an open book", . . . (Respondents' Application Record, Tab 1(I))

This is a correct summary of the current state of the law.

[20] A second way that the imbalance in the Act is addressed is by the inclusion of s. 46 of the Act. While a board can say to unit holders "this is our decision and that decision is final," s. 46 provides residents with a remedy. Essentially residents are put in the same position as electors in jurisdictions that provide for "recall votes".

[21] Section 46 reads as follows:

Requisition for meeting

46. (1) A requisition for a meeting of owners may be made by those owners who at the time the board receives the requisition, own at least 15 per cent of the units, are listed in the record maintained by the corporation under subsection 47 (2) and are entitled to vote. 1998, c. 19, s. 46 (1).

Form of requisition

(2) The requisition shall,

(a) be in writing and be signed by the requisitionists;

(b) state the nature of the business to be presented at the meeting; and

(c) be delivered personally or by registered mail to the president or secretary of the board or deposited at the address for service of the corporation. 1998, c. 19, s. 46 (2).

Same, removal of directors

(3) If the nature of the business to be presented at the meeting includes the removal of one or more of the directors, the requisition shall state, for each director who is proposed to be removed, the name of the director, the reasons for the removal and whether the director occupies a position on the board that under subsection 51 (6) is reserved for voting by owners of owner-occupied units. 1998, c. 19, s. 46 (3).

Duty of board

(4) Upon receiving a requisition mentioned in subsection (1), the board shall,

(a) if the requisitionists so request in the requisition or consent in writing, add the business to be presented at the meeting to the agenda of items for the next annual general meeting; or

(b) otherwise call and hold a meeting of owners within 35 days. 1998, c. 19, s. 46 (4).

Non-compliance

(5) If the board does not comply with subsection (4), a requisitionist may call a meeting of owners which shall be held within 45 days of the day on which the meeting is called. 1998, c. 19, s. 46 (5).

Reimbursement of cost

(6) Upon request, the corporation shall reimburse a requisitionist who calls a meeting under subsection (5) for the reasonable costs incurred in calling the meeting. 1998, c. 19, s. 46 (6).

[22] Section 46 is a significant remedy for unit holders convinced they are being governed arbitrarily, their money is being spent unwisely or are otherwise dissatisfied. Section 46(3) requires that reasons for the removal request be stated in the requisition. There is no requirement in the section as to the type of reasons for the removal although I accept that the reasons given cannot be misleading. (See *Perper v. York Region Condominium No. 860*, 2012 O.J. No. 2594 at para. 40)

[23] This Board should not have been surprised that these proposed repairs were controversial. The original quote ranged from \$750,000 - \$1.6 million. Further, in their letter sent just prior to the April AGM, blame for the need for expensive repairs was laid squarely on previous boards and property management that had been replaced in 2010. Owners were advised that civil action against those previous parties was being considered. This letter may have stirred up old divisions and encouraged the unit holders to question the judgment not of previous boards, but of the current one.

- [24] The respondent group initially was asking for more information, then for a deferral of the spending decision for a few months. This was stated to allow for more information and opinions from other experts in the area on what needed to be done to repair this building. On April 2, a letter was sent to the Board under the signature of Jay Mohammed and Angel Nakevski.

**Reference: Building Envelope Restoration Plan**

Dear Board Members,

We would like to inform you that a tremendous number of owners of 95 Base Line Rd W, London ON, have expressed their concerns regarding the project mentioned above. In this regard, we are asking for the detailed information, which should be readily available to us under the Condominium Act.

The following is the list of the expected documents and information:

- Request for Proposals including scopes, capacities costs
- Detailed Engineering Report, designs drawings, estimates, cost analysis etc.
- Requests for quotes, bid packages and offers
- Contractors prequalification screening, tendering participation and process
- Company history, background, competency
- Any other possible solutions and options explored
- Technical report of cladding sample testing and data analysis
- Contingency and business plans to deal with extras to contract, beyond \$755,000
- Contractual agreements with Enerplan and A1 restoration, scope, capacity, cost etc.

Furthermore, we are asking you to immediately discontinue any negotiations, renewal of and further signing of any and all contracts, unless and until the requested information is provided to us within 7 days, and further to allow 7 days for us to properly review the information and reply.

Without prejudice, please note that we have already secured support and signatures from over 51% of the owners in the complex. We are expecting your full and professional cooperation to avoid further escalation.

Owner's Representatives

Jay Mohammed # 602

Angel Nakevski #403

(Application Record of Respondents, Tab H)

- [25] The following day, the same individuals requested permission to post a notice to residents reproduced below:

### BUILDING RESTORATION PLAN

Dear Residents,

Over the weekend we successfully gained the support and signatures of over 51% of the residents and that number continues to grow. We have forwarded our request for detailed information to the board and the secondary parties.

Many thanks to those who believe in the purpose and who signed in the support of this action. To our neighbours who declined to participate, we respect your decision and we would like you to know that it does not and will not interfere with our neighbourly relationship.

To residents who are unaware of the upcoming financial burden and who wish to voice their concerns and / or participate, you may contact:

Angel Nakevski, unit 403

Jay Mohammed, unit 602,

(Application Record of Respondents, Tab J)

- [26] In my view, neither of these communications can be described as "misleading" or contributing to a "poisoned atmosphere".
- [27] In response to the request of Mr. Nakevski and Mr. Mohammed, the Board chose to reply through their solicitor Mr. Mullin. In his letter of April 4, 2012, he requested that all further correspondence with the Board go through him. While agreeing to the examination and copying of documents at a reasonable fee, Mr. Mullin rejected the request for other information:

However, in keeping with attending case law (*York Condominium Corporation No. 60 v. Brown* (2001) CarswellOnt 3470, a condominium is not required to respond to questions or participate in the reply to interrogatories. Unit owners are entitled to review records and arrive at their own conclusions thereafter. As a result, the Condominium would be

pleased to assist in any record review/copying, but shall not enter into a series of questions and answers.

- [28] As well, the request for a suspension of negotiations and signing of contracts while the material was reviewed was rejected out of hand.

**Respectfully, maintenance and repair obligations are the sole purview of the Board of Directors to decide upon.** (Emphasis added) The matters pertaining to the building envelope restoration activities have been explained in detail to the unit owners. This occurred on January 25<sup>th</sup>, 2012, at the Hillside Church of London, in which all attending unit owners were able to listen and make inquiries of both the Board of Directors and the Corporation's Engineer. Despite the comment of having secured support and signatures from over 51% of the owners in the complex, the Condominium is charged with these duties and shall continue to fulfill them.

Respectfully, if every condominium board of directors received letter such as yours, indicating that all work should stop, effecting condominium widespread business would be impossible.

Finally, it is understood that you have also recently asked Mr. Sean Eglinton to post a notice to all unit owners, drafted by yourselves and referred to as "Building Restoration Plan". Such permissions has been denied.

Please follow-up with me directly should you wish to conduct a review of the Condominium's records pertaining to the Building Envelope Restoration, at your convenience.

(Application Record of Respondents, Tab L)

- [29] This response created an escalation of the situation in several ways. First of all, the Board removed themselves from direct conversation with non confrontational representatives who purported to represent a majority of those residents and inserted their lawyer. Secondly, any discussion about the records and how the decision was arrived at and what alternatives were sought has been dismissed as not required — with the legalistic "in keeping with attending case law". While repair decisions may be generally left to the board to decide, there is nothing that prohibits their wide consultation and input seeking from owners. Finally, "[r]espectfully, if every condominium board of directors received letters such as yours, indicating that all work should stop, effecting condominium widespread business would be impossible" is unhelpful at best and at worst can be interpreted as patronizing and dismissive.
- [30] Clearly getting more information as requested would be pointless if the Board went ahead and signed contracts while the information was being reviewed.

[31] Following the requests to the Board, one of the Board members Neil McQuarrie wrote to his fellow board members and the property manager on April 4, having reviewed Mr. Mullin's proposed letter to Mr. Nakevski and Mr. Mohammed. His letter (Application Record of the Respondents, Tab 1(K)) reports on running into Mr. Nakevski, "I had the good fortune to ride the elevator with Angel" and inviting him into his apartment where they spent 30 minutes discussing the letter.

[32] Mr. McQuarrie writes in his e-mail:

I am concerned always about good communication in the building. He is concerned about the envelope restoration plan and the significant costs. He just wants to take time to learn more.

I told him that we felt that our communication had been significant, he simply had missed it.

He contends there are many owners that are upset about not enough information and not enough understanding (despite our efforts).

In the e-mail he says that he told Mr. Nakevski that the Board were the owner's representatives but that he personally was impressed with Nakevski's concerns as an owner and that he told him that he wished all others were as concerned. He writes:

*I personally think that it is one of those times that we consider making lemonade as the situation has presented us with lemons.*

*I would suggest that we did our duties, but, this might be one of those times that a general meeting could be held after the AGM. – Near future-to further explain the process, board's efforts, decisions and certainly explain the plan as required. (We would have to field a few questions I am sure)*

*I said I would be willing to personally support having that meeting, but, could not speak for the board--only as an individual director.*

Communication is the key. We have tried, but, more is needed.

(Application Record of Respondents, Tab K)

[33] Mr. Nakevski was copied with the letter which ends with "*Then I read R. Mullen's suggested reply (2 hours later)*". (Emphasis his)

[34] Mr. McQuarrie's e-mail is thoughtful, reasonable and proposes a sharing of information to address the concerns raised by Mr. Nakevski and Mr. Mohammed. It stands in sharp contrast to the dismissive and legalistic position reflected in Mr. Mullin's letter.

[35] Given the rigidity demonstrated by the applicant Board and their rejection outright that some time be taken and further information gathered, the respondents' alternative motion try to get a board more receptive to their position, was entirely understandable and reasonable it is a remedy provided for under the Act. The reason given for removal is "we believe that they are not acting in good faith and the best interests of the residents" seems an honest reaction to the Board's response to the residents' reasonable requests. Good

faith has been defined amongst other definitions as “faithfulness to one’s duty or obligation” (Black’s Law Dictionary (2009) West, 9<sup>th</sup> Ed.). To the extent that some residents felt the refusal of the board to provide more information and refrain from signing a contract while this was reviewed was unreasonable and contrary to the best interests of the residents, this characterization cannot be described as “misleading”.

- [36] The subsequent events pointed to by the applicant in their material are indicia of democracy at work, not anarchy. Anarchists are opposed to governance and government. The respondents, in contrast, have scrupulously followed the provisions of the Act and in fact are prepared to govern in the place of the applicant. The meeting that I find the applicant arbitrarily aborted, was, until that point, demonstrative of democracy as well. Non attendance at a meeting or legislature to prevent a quorum is a time honoured parliamentary strategy. Heckling and interrupting, although often unhelpful, are part of the sometimes messy functioning of democratic bodies. The televised proceedings of the House of Commons of Provincial Legislature Question Period or local council debates illustrate the rambunctiousness that frequently accompanies democratic functioning. The noisy AGM was functional, not dysfunctional and not analogous to the armed storming of Parliament. The requisition was brought according to the governing Act. Elected boards can be unelected and replaced by other representatives who then continue their governance responsibilities. That reflects the democratic theme of the Act.
- [37] In rejecting the Board’s injunction application, Bryant J. found it had been brought “for the sole purpose of preventing the owners from exercising their rights to hold a requisition meeting to remove the Board members from office and preventing their right to elect a new Board”. He also found the owners were entitled to exercise their statutory duty, that there was no urgency to appoint an administrator and “the balance of convenience favours holding the meeting as soon as possible.” (Bryant J.’s decision, August 10, 2012, Supplementary Application Record of the Respondents, Tab 2(A))
- [38] The applicant relies on much of the same material that was before Bryant J. on the injunction application as well as supplementary material including a new affidavit of Sean Eglinton, the condominium manager, sworn after the August 8 meeting. In it, he states in a section headed “Uncertainty and Chaos” that the fact that the old Board did not recognize the new Board “has significantly increased the confusion amongst the owners” and, as a result, the Condominium is ungovernable”. He states that without an independent third party administrator “the condominium will continue to see-saw back and forth as each group requisitions meetings to remove the other group”. He also expresses the concern that the assessment for \$20,000 in legal bills occasioned by the Board “working their way through, in the best interests of all owners, this unfortunate mess” will not be paid by the new Board. Finally, he expresses fear that further building deterioration will occur if the building repairs are not completed and injuries may occur from falling bricks.
- [39] Ms. Zammit, a board member, states in her affidavit (Application Record, Tab 3, paras. 6-8) that she has reviewed the reports and that it concludes that “wing-walls at the sides of the balconies are deteriorating at such a rate that significant damage to the building and injury to the occupants will occur if the work is not completed in a timely fashion.”

- [40] The Enerplan report (Application Record, Tab 2(B)) says that “[t]he exterior walls at the building are at a critical stage in their life cycle.” It concludes that while it is not necessary to discontinue use of balconies and collapse is not imminent, it does warn of the “potential for delaminations that exist and/or are forming to break away and fall to the ground and the potential liability this poses to the Corporation” referring to both personal injury or property damage. The report does not state that significant damage to the building and injury to occupants will occur if work is not completed in a timely fashion.
- [41] The respondents say that they can and will address the maintenance issue and have consulted a local engineering firm, Concentric Associates, with experience with this type of work, with the intention of having them review the Enerplan Report and provide an assessment of the condition of the building. They believe, based on speaking to people who have employed them, that Concentric could do the work needed at considerably less cost.
- [42] Concern over disintegrating concrete could easily be addressed by temporary fencing while alternatives are considered.
- [43] The expressed concern of Mr. Eglinton over the legal fees assessment is puzzling. It is understandable that some residents would feel resentment in having to pay the legal fees associated with the Board’s response to the respondent owners. This issue is clearly one that the elected board will have to deal with. It may require a review of those expenses by the board. There may be a difference of opinion about this issue. But neither this issue or speculation about further requisitions being brought are reasons to suspend the democratic functioning of this condominium community. Perhaps the results of the litigation to date will help the building move forward in a more cohesive fashion.
- [44] Nothing in the applicant’s material or supplementary material supports the submission that this building is stumbling into the “abyss” in “chaos” and cannot be governed. Anarchy is the absence of government, lawlessness (Black’s Law Dictionary (2009) West, 9<sup>th</sup> Ed., and The Dictionary of Canadian Law). The language used in the applicant’s material is in turn hyperbolic, exaggerated and alarmist.

#### **Applicability of the Law to the Issues**

##### **1) Is the appointment of an administrator necessary in these circumstances?**

- [45] The governing test for appointing an administrator is set out in s. 131(2): “if the court is of the opinion that it would be just and convenient having regard to the scheme and intent of this act and the best interests of the owners.”
- [46] The scheme of the Act contemplates that the unit holders will govern themselves through an elected Board.
- [47] The appointment of an administrator should be a last resort (see *Bahadoor v. York Condominium Corp. No. 82*, 2006 CarswellOnt 7608 (Ont. S.C.J.), at para. 26: Tab 1, Respondent Book of Authorities.

When a court is considering either the appointment or termination of an administrator, good reason must be shown why unit owners should not manage their corporation's affairs through an elected board of directors. Self-governance is the norm; administrators are the exception. Or, as put by Huddart J. in *Cook v. Strata Plan N-50*, [1995] B.C.J. No. 2882 (B.C. S.C.): '...the democratic government of the strata community should not be overridden by the Court except where absolutely necessary.'

- [48] A number of factors may be considered by a court in determining whether the appointment of an administrator, even for a short term as urged by the applicant, is in the best interests of the condominium corporation.
- [49] They include factors not applicable in this case — a demonstrated inability to manage the corporation, and demonstrated mismanagement or misconduct of the corporation affairs.
- [50] What are relevant considerations outlined in the case law are: a) whether there is a struggle between competing groups that prevents proper governments of the condominium; b) whether appointing an administrator is necessary to bring order to the condominium governance; and c) only an administrator has any reasonable prospect of bringing order. Cost of an administrator is also a relevant consideration.

(See *Skyline Executive Properties Inc. v. Metropolitan Toronto Condominium Corp. No. 1385*, 2002 CarswellOnt 5670 at paras. 26-28 (Ont. S.C.J.); aff'd 2003 CarswellOnt 5050 (Ont. C.A.))

- [51] In applying these factors to the facts here, it is necessary to answer issue 2) regarding the validity of the requisition meeting that elected a new board.

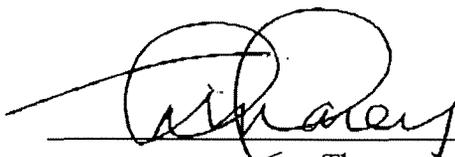
## 2) Was the election of a new Board valid?

- [52] The respondents argue that the only logical inference that can be drawn from the fact that no injunction was granted prior to August 8 is that Bryant J. intended the meeting to be held. The Board disagrees. In my view, the inference argued by the Board would render Bryant J.'s decision meaningless and in effect result in the Board having succeeded in delaying the vote despite Bryant J.'s clear rejection of their argument and pointed conclusions as to the Board's ulterior motive.
- [53] It is clear that the date of the August 8 meeting was in the material before Bryant J. on August 1, 2012.
- [54] Had Bryant J. intended to issue an injunction it was a simple matter to issue a "one liner". It is also clear that had the injunction been granted, any purported meeting would indeed be invalid.
- [55] On all of the evidence there is no reason to consider the meeting invalid as it was duly called and notice was given pursuant to the Act. The solicitors for the Board chose to advise all the unit holders not to go to the meeting and took the position with counsel for the respondents that an earlier ruling had enjoined the meeting from taking place until the

ruling was issued. There is nothing whatsoever in the record that could be taken as supporting this position. If owners missed the meeting it was due to the questionable advice in the letter they were sent. It was not due to any action of the respondent group. The meeting and the election of a new board were valid.

**2) With a new board elected is an administrator necessary?**

- [56] I am not bound by Bryant J.'s findings but they are in my view sound and firmly founded on the evidence. I agree with Bryant J.'s conclusion that the facts in this case are dissimilar to the facts in the case law cited by the applicant. There is no urgency in the need for a solution to the building's envelope issue that would justify the appointment of an administrator.
- [57] Contrary to the submissions of the applicant that "anarchy" and "chaos" are leading the Condominium to the "abyss", I find the owners very capable of governing themselves without an administrator. If there is confusion as Mr. Eglinton states, it has been caused by the Board's immovable positions, their stand that the August 8 election was invalid, and their determination to thwart those opposed to their view of what needed to be done.
- [58] Section 131 was designed as a last resort for condominiums in perilous circumstances. It was not intended to be used to allow a board which has lost the confidence of the majority of owners to get their way regardless of the democratic will of the owners. Applying the case law as reviewed, there is no reason demonstrated for the appointment of an administrator, even on a short term basis. No valid reason existed for this application even before the election of a new board on August 8. This condominium corporation is clearly able to govern itself and the differences of opinion over the type of repairs that are required are all capable of being resolved within the democratic framework of the corporation. I reject any suggestion in the applicant's material that this group of owners is ungovernable.
- [59] For all of these reasons the application is dismissed with costs to the respondents.
- [60] If the parties cannot agree on costs I will receive written submission within ten days of this decision.

  
Thomas J. Carey  
Justice