

COURT OF APPEAL FOR ONTARIO

CITATION: Baig v. Thunder Bay Vacant Land Condominium Corporation No. 39,
2026 ONCA 547
DATE: 20260729
DOCKET: COA-25-CV-0677

van Rensburg, Paciocco and Thorburn JJ.A.

BETWEEN

Dianne Pettit Baig

Applicant (Appellant)

and

Thunder Bay Vacant Land Condominium Corporation No. 39,
Leslie Benson and Judith Deschamps

Respondents (Respondents)

Jonathan Laxer, for the appellant

Graham W. Sanson and Dawson Somerville, for the respondent Thunder Bay
Vacant Land Condominium Corporation No. 39

Matthew R. Smiley and Stefanie Bernier, for the respondents Leslie Benson and
Judith Deschamps

Heard: January 12, 2026

On appeal from the order of Justice James A. Ramsay of the Superior Court of
Justice, dated March 24, 2025, with reasons at 2025 ONSC 1756.

van Rensburg J.A.:

Overview

[1] The appellant, who is an owner in a vacant land condominium, commenced
an application seeking compliance orders, oppression remedies and other relief,

against the owners of an adjoining unit in relation to their construction of a home, and against the condominium corporation for its failure to enforce the condominium's declaration (the "Declaration") and other legal requirements. Before the application judge, the appellant was at least partially successful. However, she is dissatisfied with the relief granted. She asserts that, despite making findings of fact that supported her claims for oppression remedies, the application judge erred in failing to adjudicate those claims, or in dismissing them without explanation. The appellant seeks remedies for oppression in addition to the relief that was granted by the application judge on other bases. She also contends that the application judge erred in determining the costs of the application without bills of costs or submissions from the parties.

[2] For the reasons that follow, I conclude that the application judge failed to determine the appellant's oppression claims, and that, based on the application judge's findings of fact, the respondents engaged in oppressive conduct within the meaning of s. 135 of the *Condominium Act, 1998*, S.O. 1998, c. 19 (the "*Condominium Act*" or the "Act"). That is, their conduct was unfairly prejudicial to the appellant and unfairly disregarded her interests. I conclude however that, other than a declaration to that effect, no remedy other than what was granted by the application judge against the respondents Benson and Deschamps is warranted in respect of their oppressive conduct. Specifically, the main relief sought by the appellant in the court below (which would require Benson and Deschamps to

remediate the grading of their unit so that it strictly complies with the requirements of the Declaration) was considered and properly refused by the application judge. I would therefore decline to order such relief as an additional remedy for oppression. With respect to the Corporation's oppression of the appellant, I would grant the appellant a declaration and an order requiring the Corporation to have proper regard for her interests in any further review or approval of the development of the adjoining unit. This remedy is required in the circumstances of this case having regard to certain positions taken by the Corporation in this appeal.

[3] As for the costs appeal, I agree with the appellant that the application judge erred in determining costs of the application without affording the parties the opportunity to provide bills of costs and submissions. I would direct the parties, in the absence of an agreement, to provide their submissions on costs in the court below to this court for determination.

Facts

[4] The appellant, Diane Pettit Baig, is the owner of one unit (lot 3) and co-owner of two other units (lots 2 and 4)¹ in a freehold vacant land condominium corporation, the respondent Thunder Bay Vacant Land Corporation No. 39 (the "Corporation"). The Corporation is controlled by a Board of Directors comprised of

¹ Lot 2 is jointly owned by Ms. Baig and her daughter Laurel Baig, while lot 4 is jointly owned with her son Jeremy Baig.

unit owners within the condominium (the “Board”). In 2006, Ms. Baig built a home on lot 3. Lots 2 and 4, which adjoin lot 3, remain vacant.

[5] Ms. Baig’s property is part of a 29-lot residential development on the shores of Lake Superior in the Township of Shuniah, near Thunder Bay. The development is adjacent to the Silver Harbour Conservation Area and emphasizes preservation of the natural environment. To ensure that the development does not disrupt the natural beauty of the area, the Declaration contains a number of conditions that must be complied with during construction. Among other conditions, the Declaration stipulates that:

- House and landscape plans for each unit are to be approved by the Board prior to submission to the Township of Shuniah. Construction will not proceed unless approvals have been received from both the Board and the Township of Shuniah;
- During construction, the Board may, at any time, inspect the construction to ensure the plans and building information is being adhered to. Any changes found which have not been agreed to in writing will deem this an unapproved change and allow the Board to halt construction until either the change is approved in writing or the change is removed and replaced by the original plan approved;
- The architectural design should take into consideration the environmental, topographical features and views of the unit and the neighbouring properties;
- Buildings on the site are to appear as part of the natural landscape rather than to visually dominate it. Residents are encouraged to take advantage of existing vegetation to frame and soften the visual effect of the building from the lake, and take advantage of existing topography to ‘ground’ and enhance any buildings;

- The front yard is intended to act as a visual buffer between the waterfront and any proposed building. There is to be only very selective cutting or removal of any existing vegetation to improve waterfront views from the dwelling. These removals must be approved at the site plan stage. The minimum setback of any development from the lakefront is to be 22 m;
- The rear yard is intended to act as a visual buffer between the street and any proposed development with the intent that only very filtered views of buildings are provided while on the street. There is to be no removal of existing vegetation in this zone other than for the construction of the driveway, and to remove standing dead timber. The minimum setback for building development should be 10 m;
- The side yard is intended to act as a visual buffer between units to ensure a level of privacy between sites. There is to be no removal of existing vegetation in this zone other than for the construction of the driveway, and to remove standing dead timber. The minimum setback for building development should be 5 m. This may be reduced if existing site vegetation and topography provide the necessary buffering from adjacent sites; and
- Existing site drainage patterns are to be maintained. With the exception of the driveway construction there is to be no alteration of the existing grades within the setback zones. Unit grading is to follow the natural slope of the land.

[6] All of these conditions are subject to the Board's right to grant a "reasonable variance or adjustment [...] in order to overcome practical difficulties, to accept pre-existing conditions and, to prevent unnecessary hardship arising by reason of the application of the restrictions". Such variances must be authorized by a two thirds majority vote of the Board.

[7] In February 2024, the respondents Leslie Benson and Judith Deschamps ("Benson and Deschamps"), purchased lot 5, a vacant lot bordering on Ms. Baig's vacant lot 4, with the intention of building a home on the property.

[8] On May 28, 2024, Benson and Deschamps submitted a site plan to the Board for approval. The Board reviewed the plan and conducted a site visit but did not approve the plan. Despite this, Benson and Deschamps moved forward, on July 27, with clearing lot 5 of all vegetation between the planned site of the house and the lake in preparation for construction. Some vegetation was also mistakenly removed from the adjoining properties – lots 4 and 6.

[9] These actions quickly generated concern from the owners of the neighbouring properties, including Ms. Baig. On August 5, 2024, Ms. Baig wrote to the Board seeking immediate enforcement of the Declaration and asking the Board to halt any further development on lot 5 until Benson and Deschamps agreed to follow the Declaration and remedy the damage already done. The Board declined to issue a halt work order and responded that they would investigate the issue further. Meetings were held between the Board and Benson and Deschamps and between Ms. Baig and Benson and Deschamps. No resolution was reached and approval remained outstanding.

[10] Notwithstanding the lack of approval, Benson and Deschamps continued to move forward with the construction of their home. By the end of August, they had imported an eight-foot-high mound of fill, thereby changing the grade of the lot. This caused further concern within the community and requests were again made to the Board, urging it to halt construction on lot 5.

[11] During this period, and unknown to Ms. Baig, the president of the Board, Anthony Gazzola, who had been actively involved in mediating the dispute over the development of lot 5, was in a conflict of interest. He had been hired by Benson and Deschamps to install their septic system. On August 30, he resigned from the Board. That same day, the Board issued a halt work order in relation to lot 5. The halt work order recited that multiple concerns had been brought forward in regard to the construction on lot 5, largely relating to the landscaping and grading that had already been carried out, and that landscape and drainage plans had yet to be provided for review. The order required Benson and Deschamps to stop all construction until the proper plans were approved by the Board and the concerns of the condominium ownership were addressed or remedied.

[12] Benson and Deschamps responded through legal counsel, on September 18, 2024, by stating that the halt work order was unenforceable and threatening to sue and bring complaints to various condominium authorities if they were prevented from continuing their work. Around the same time, the Corporation retained its own legal counsel who threatened legal action in the Superior Court if the halt work order was not respected. Although objecting to the validity of the halt work order, Benson and Deschamps submitted two landscape plans which were rejected by the Corporation. There were also communications between the lawyers with a view to addressing the Corporation's concerns and ultimately approving the development of lot 5, including its landscaping. In the meantime, Benson and

Deschamps continued construction: by November 14, their contractors had filled a drainage pond, delivered heavy rocks, and were preparing to install a concrete pad for the foundation of the house.

[13] Ms. Baig continued to ask the Board to take legal action against Benson and Deschamps. On November 11, she requisitioned an owners' meeting (which was held on December 3) and, on November 15, she brought a motion in writing in the Superior Court without notice, for an emergency injunction to stop construction on lot 5. The court ordered Ms. Baig to serve the motion on Benson and Deschamps and adjourned the application to November 21.

[14] On November 16, Ms. Baig was informed that the Board had reached an agreement with Benson and Deschamps and that the halt work order would be lifted. The agreement (the "Commitment Agreement") is dated November 18, 2024. Among other terms, the parties agreed that Benson and Deschamps would submit an updated landscape plan and commence their landscaping remediation the following spring, which would include restoration of any vegetation that they or their contractors had improperly removed from lots 4, 6, and the five-metre sideyard setback zones of lot 5, and terracing of their patio "to achieve an initial drop of approximately four feet". They also agreed to withdraw all complaints filed or alleged to have been filed with the condominium authorities. Upon submission of an updated landscape plan on November 20, the halt work order was lifted and Benson and Deschamps were allowed to resume development on their lot. The

Corporation had previously promised Ms. Baig and the owners of lot 6 that they would have the opportunity to review the landscape plan before approval by the Board. They were not, however, given this opportunity.

[15] On November 21, Ms. Baig's motion was dismissed without prejudice for non-compliance with the *Rules of Civil Procedure*. On December 2, she brought an application against the respondents in the Superior Court pursuant to r. 14.05(2) of the *Rules of Civil Procedure* and ss. 134 and 135 of the *Condominium Act*. The application sought declarations, compliance orders, damages, and injunctive relief.

[16] On January 10, 2025, Rasaiah J. granted an interlocutory injunction in the application, prohibiting further construction and/or development on lot 5 pending further order of the court.

Decision of the Application Judge

[17] Ms. Baig's application proceeded to a hearing on March 21, 2025. According to the application judge's reasons, Ms. Baig made three complaints: (1) that the Declaration was contravened in that the approval process was violated; (2) that the lot grading on lot 5 was not compliant with the Declaration; and (3) that removal of vegetation was not compliant with the Declaration.

[18] With respect to Ms. Baig's first complaint, the application judge found that Benson and Deschamps "undoubtedly breached the approval process." Although they had submitted plans to the Board, the plans had never been approved.

Rather, the Board maintained that the construction could proceed if certain conditions were met, and rejected the plans a number of times. According to the application judge, there was never anything that could be described as an approval until the Commitment Agreement. The application judge rejected Benson and Deschamps' argument that the halt work order was unenforceable, and he observed that they had "no business defying it". He also found that the Board's failure to promptly stop work until the approval process was complete was a violation of the Declaration: "[i]t did not have the right to condone a clear breach of the Declaration".

[19] With respect to Ms. Baig's second complaint, the application judge rejected her argument that the grading of lot 5 was not compliant with the Declaration. After noting that the Board has the right to settle litigation and to interpret the Declaration, as long as its interpretation is reasonably available, he stated:

After Gazzola resigned, the new leadership of the Board was faced with a *fait accompli*. They were under pressure from all sides. They determined that the construction complied with the guidelines, as far as possible given the layout of the lot. The guidelines allow for a certain amount of leeway. As far as I can tell, the Board acted with a 2/3 majority or greater. They made significant demands as a term of settlement in the face of bullying from the Benson's and Deschamps' lawyer. [emphasis added.]

[20] Although the Commitment Agreement had been reached a few days before Ms. Baig's application for an injunction was scheduled to be heard and shortly

before a meeting of the owners, and “was made, admittedly, for reasons which are extraneous to the building guidelines”, the application judge found that the Board had not acted in bad faith in settling with Benson and Deschamps.

[21] With respect to Ms. Baig’s third complaint, the application judge concluded that, while it was not clear whether Benson and Deschamps’ removal of vegetation encroached on the buffer zones on their own property, it did encroach on lot 4 “to some extent”, which violated the Declaration.

[22] The application judge thus found two breaches of the Declaration: the approval process was not followed, and vegetation was removed from Ms. Baig’s lot. He concluded that there was no need for an order against the Corporation, as it was under new leadership. He replaced the interim injunction with an order requiring Benson and Deschamps to “complete their building project in accordance with any directions of the Board of the Corporation and [to] stop work whenever ordered by the Board to do so.” He also ordered that Benson and Deschamps pay \$5,000 in damages to Ms. Baig and that they not re-commence building until payment of this amount and any order to pay costs was satisfied.

[23] With respect to the costs of the application, the application judge noted that he did not have bills of costs from the parties. However, as Ms. Baig was the successful party, “albeit not as successful as she no doubt would have liked”, he awarded her \$10,000 in costs, which he characterized as “an amount that would

have reasonably been contemplated as partial indemnity [...] reduced to reflect the divided success.” He made this order against Benson and Deschamps. No costs order was made against or in favour of the Corporation.

Issues

[24] Ms. Baig raises the following issues on this appeal:

- (1) Did the application judge err by dismissing and/or failing to adjudicate the s. 135 oppression claims against Benson and Deschamps?
- (2) Did the application judge err by dismissing and/or failing to adjudicate the s. 135 oppression claims against the Corporation?
- (3) Did the application judge err in ruling on costs without giving Ms. Baig the opportunity to make submissions or to file a bill of costs?

Positions of the Parties

[25] Ms. Baig submits that the application judge erred in law in failing to adjudicate or to provide reasons for not granting her oppression claims against the respondents. She does not seek to impugn the application judge’s findings of fact, but argues that they support the conclusion that Benson and Deschamps and the Corporation violated her reasonable expectations, that their conduct was oppressive and unfairly prejudicial to her, and that it unfairly disregarded her interests. Ms. Baig asks this court to award, as remedies for oppression, certain relief that was not granted in the court below: declarations that Benson and

Deschamps and the Corporation acted oppressively; an order requiring Benson and Deschamps to reinstate the grading and landscaping of lot 5; and further damages. She also seeks additional costs of the application and an exemption from costs incurred by the Corporation in relation to this matter.

[26] The respondents each take different positions with respect to the decision of the application judge. Benson and Deschamps submit that the application judge did, in fact, adjudicate the oppression claim against them and awarded oppression remedies. They agree with Ms. Baig that the application judge's findings reflect that, by not following the approval process and removing vegetation from lot 4, Ms. Baig's reasonable expectations were violated, and her interests were unfairly disregarded. Benson and Deschamps assert that, although the application judge did not explicitly set out the test for oppression, his conclusions demonstrate that he was familiar with, and applied, the oppression test. They contend that the remedies ordered were granted under both ss. 134 and 135 of the *Condominium Act*, which provide two different routes to the same remedies, and that there is no basis for any additional remedy to be granted against them.

[27] The Corporation submits that the application judge considered and dismissed the oppression claim against it and provided sufficient reasons for doing so. The Corporation argues that, other than in respect of the Board's failure to act more quickly to stop work until the approval process was complete, the application judge found that the Board's conduct fell within a range of reasonable choices, and

that it acted reasonably in listening to Ms. Baig's concerns, actively attempting to resolve them, issuing the halt work order, and then ensuring, through settlement, that Benson and Deschamps would comply with the Declaration. As a result, there was no breach of Ms. Baig's reasonable expectations and no oppression, unfair prejudice, or unfair disregard of her interests. The application judge thus did not err in declining to order any remedy against the Corporation.

[28] On the issue of costs, the respondents assert that the application judge was entitled, in his discretion, to determine costs without hearing from the parties, and that the costs order was fair and reasonable.

Discussion

[29] There are three parts to each of the first two grounds of appeal: first, to determine whether the application judge failed to deal with Ms. Baig's oppression claims against Benson and Deschamps and against the Corporation; second, if the application judge did not rule on an oppression claim, to assess whether there was oppression; and third, if there was oppression, to decide whether a remedy other than what was granted by the application judge in respect of the appellant's other claims is warranted.

[30] In addressing these grounds of appeal, it is important to consider the application judge's reasons in the context of the specific relief that was sought by Ms. Baig and the evidence and arguments that were before him.

[31] Ms. Baig's application sought declarations with respect to breaches of the *Condominium Act* and the Declaration by the respondents, and specific orders to comply with the Act and the Declaration, pursuant to ss. 134 and 135 of the *Condominium Act*. Specifically in relation to s. 135, the application sought declarations, as well as an order prohibiting the Corporation from conducting itself in a manner that is or threatens to be oppressive within the meaning of s. 135.

[32] Section 134 provides for the court to grant an order enforcing compliance with, among other things, any provision of the Act and a condominium's declaration. The relevant parts of s. 134 are as follows:

134(1) [...] an owner [...] of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act [or] the declaration [...]

[...]

(3) On an application, the court may [...],

(a) grant the order applied for;

(b) require the persons named in the order to pay,

(i) the damages incurred by the applicant as a result of the acts of non-compliance, and

(ii) the costs incurred by the applicant in obtaining the order; or

(c) grant such other relief as is fair and equitable in the circumstances.

[33] Section 135 authorizes claims for oppression. It states, in relevant part:

135(1) An owner [...] may make an application to the Superior Court of Justice for an order under this section.

(2) On an application, if the court determines that the conduct of an owner [or] a corporation [...] is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.

(3) On an application, the judge may make any order the judge deems proper including,

(a) an order prohibiting the conduct referred to in the application; and

(b) an order requiring the payment of compensation.

[34] Section 135 is engaged where: (1) there has been a breach of the claimant's objectively reasonable expectations; and (2) considered in context, the conduct complained of amounts to "oppression", "unfair prejudice" or "unfair disregard": *Noguera v. Muskoka Condominium Corporation No. 22*, 2020 ONCA 46, 10 R.P.R. (6th) 1, at para. 17.

[35] The purpose of a s. 135 remedy is to "rectify the matter": s. 135(2). Oppression remedies are intended to be corrective, not punitive. They should go no further than necessary to correct the injustice or unfairness between the parties: *Nanef v. Con-Crete Holdings Ltd.* (1998), 23 O.R. (3d) 481 (C.A.), at p. 488; *Wilson v. Alharayeri*, 2017 SCC 39, [2017] 1 S.C.R. 1037, at para. 27.

Ms. Baig's Oppression Claim against Benson and Deschamps

[36] I agree with Ms. Baig that there is nothing in the application judge's reasons to suggest that her oppression claim against Benson and Deschamps was

considered. Although he began his reasons by noting that Ms. Baig had applied for orders under ss. 134 and 135 and setting out these provisions, the application judge did not make reference to the oppression claim in the rest of his reasons, except to say that Ms. Baig complained of oppression by the Board, and that s. 132 of the Act (requiring mediation of certain disputes) did not apply to an application for oppression.

[37] I also agree with Ms. Baig that the factual findings of the application judge establish that the legal test for oppression was met. He found that Benson and Deschamps had breached the Declaration and the Act over several months, and that they had proceeded in contravention of the halt work order. As an owner in the condominium, Ms. Baig had a reasonable expectation that the development of a lot, and in particular one that was adjacent to her own, would comply with the terms of the Declaration, the required approval process, and any halt work order that was issued by the Corporation. The conduct of Benson and Deschamps in breaching the terms of the Declaration and continuing their work notwithstanding the halt work order was unfairly prejudicial to Ms. Baig and unfairly disregarded her interests. Ms. Baig is entitled to a declaration to that effect.

[38] As I have already noted, Benson and Deschamps do not contest that Ms. Baig was entitled to a finding of oppression against them. They say, however, that no remedy is warranted, other than the relief that was ordered by the application judge in respect of the other grounds supporting her application.

[39] In my view, other than a declaration that Benson and Deschamps have acted oppressively towards Ms. Baig, no further remedy is required. The harm stemming from the oppressive conduct of Benson and Deschamps has already been adequately addressed through the application judge's remedies under s. 134.

[40] Ms. Baig's application sought declarations that Benson and Deschamps were in breach of various sections of the *Condominium Act* and the Declaration, including that they contravened the Declaration by clearing lot 5, altering its natural landscape and topography, and building a dwelling there that did not comply with the Declaration. She also sought an order requiring them to comply with the Act and the Declaration, including that they amend their plans to comply with the Declaration, rectify their non-compliance, and repair any damages to lot 4.

[41] The application judge found that Benson and Deschamps had breached the Declaration by not following the approval process and removing vegetation from Ms. Baig's lot. In granting a remedy, he noted that Benson and Deschamps should be required to follow the approval process and to compensate Ms. Baig for trespassing. His order requires Benson and Deschamps to complete their building project in accordance with any directions of the Board and to stop work whenever ordered by the Board to do so.

[42] Ms. Baig asserts that, as an additional remedy for oppression, she is entitled to an order requiring Benson and Deschamps to restore the grading and

landscaping on lot 5 to comply with the Declaration. I disagree. This relief, albeit in the context of the request for a compliance order to the same effect, was considered and rejected by the application judge.

[43] Ms. Baig's concerns about the lot grading were squarely before the application judge, including her view that the lowering of the patio by approximately four feet, as required by the Commitment Agreement, was only a minimal improvement. The position of Benson and Deschamps was that, due to the composition and configuration of lot 5, the large quantity of fill they brought onto the site was required in order to build their slab-on-grade house. There was considerable evidence before the court on this issue, including a surveyor's map commissioned by Ms. Baig and an affidavit from Benson and Deschamps' contractor.

[44] Under the heading "Compliance with building guidelines", the application judge noted that the Board had the right to settle litigation and to interpret its Declaration as long as its interpretation was reasonably available. He noted that the Board "determined that the construction complied with the guidelines, as far as possible given the layout of the lot" and that "[t]he guidelines allow for a certain amount of leeway." As noted above, the Declaration permits the Board to grant a "reasonable variance or adjustment [...] in order to overcome practical difficulties, to accept pre-existing conditions and, to prevent unnecessary hardship arising by reason of the application of the restrictions".

[45] The application judge recognized that the Board did not keep its promise to review the landscape plan with Ms. Baig and the owners of lot 6 prior to approval, that the settlement was made a few days before a court application and a meeting of the owners, and that the settlement was made for reasons extraneous to the building guidelines. However, he concluded that the Board's conduct in settling fell short of bad faith. In other words, the Commitment Agreement was legal and binding. This meant that, contrary to the position taken by Ms. Baig, the Corporation was entitled to accept what had taken place on lot 5 up to that point in exchange for the commitments provided by Benson and Deschamps. In view of the application judge's conclusions, there is no basis for an order against Benson and Deschamps requiring the restoration of their lot to its previous condition or for an order requiring strict compliance with the Declaration with respect to the grading of lot 5.

[46] The application judge's decision to grant an order requiring Benson and Deschamps to follow the directions of the Board and to stop work when ordered to do so was appropriate, in light of the history of the matter, and the application judge's findings against Benson and Deschamps with respect to the enforceability of the Declaration and the halt work order.

[47] As for damages, there is nothing in the record that would support a claim by Ms. Baig against Benson and Deschamps, other than for what was awarded: nominal damages of \$5,000 for the act of trespass on her property. Pursuant to

the Commitment Agreement, Benson and Deschamps were already required to restore the vegetation that was removed from lot 4, and they are required to continue to follow the Board's ongoing directions.

Ms. Baig's Oppression Claim against the Corporation

[48] Ms. Baig asserts that the application judge erred in failing to adjudicate or to provide reasons for his dismissal of her oppression claim against the Corporation. She contends that the application judge's findings support the conclusion that the Corporation breached the Declaration and the Act, contrary to her reasonable expectations, and that its conduct was both unfairly prejudicial to her and unfairly disregarded her interests. On appeal, the remedies she seeks against the Corporation are declaratory relief, an order that the Corporation comply with the Declaration by requiring remedial action from Benson and Deschamps (including in particular removal of the fill hill), and damages.

[49] The Corporation submits that the application judge adjudicated, and properly dismissed, Ms. Baig's oppression claim against it. The Corporation contends that, while the application judge found that the approval process in the Declaration was not followed, he accepted that it had acted reasonably and, as a result, ordered no remedy against it. The Corporation argues that Ms. Baig's expectations were not reasonable, that its conduct did not breach her reasonable expectations, and that there was no unfair prejudice or unfair disregard of her interests. The Corporation submits that it had the right to interpret the Declaration, and the obligation to

mediate between various interests, including Ms. Baig's. It argues that Ms. Baig had no more of an interest in enforcing the Declaration than any other owner. The Corporation also, surprisingly, contends that Mr. Gazzolo resigned from the Board, not because of a conflict of interest, but because of intimidation and stress caused by Ms. Baig.

[50] I disagree with the Corporation that the application judge adjudicated Ms. Baig's oppression claim when he concluded that no remedy against the Corporation was required.

[51] The application judge, in identifying Ms. Baig's complaints, referred to her argument that "by approving or condoning [Benson and Deschamps'] breaches of the Declaration and the Act, the Board ha[d] acted oppressively and unfairly to her". He also identified the Corporation's position: that "it took reasonable steps to enforce the law and the Declaration and that its decisions are due deference." He did not, however, make any determination that the Board had acted reasonably throughout. To the contrary, he made a number of findings which indicate that the Board had acted unreasonably. He stated, at para. 20, that the Corporation was required by s. 17(3) of the Act to take all reasonable steps to enforce the Act and the Declaration and that "[e]arly on, it should have stopped work until the approval process was complete. It did not have the right to condone a clear breach of the Declaration." He also found that Mr. Gazzola had a conflict of interest and that the halt work order was not issued until after he had resigned from the Board. Finally,

he found that, while the Board promised to review the landscape plan with Ms. Baig and the owners of lot 6 before approval, it did not do so. Although he found that this and the Board's other conduct (settling with Benson and Deschamps a few days before a court application and shortly before a meeting of owners and for reasons extraneous to the building guidelines) fell short of bad faith, this was not a complete endorsement of the Board's actions or a finding that it had acted reasonably throughout.

[52] In my view, the application judge's findings in respect of the Corporation's conduct are sufficient to support a conclusion that the test for oppression has been met. The main problem with its actions is what was identified by the application judge at para. 20 of his reasons: the Corporation did not comply with s. 17(3) of the Act to take all reasonable steps to enforce the Act and the Declaration; it should have ordered the work on lot 5 to stop until the approval process was complete; and it did not have the right to condone a clear breach of the Declaration.

[53] While the application judge found that, at the time of entering into the Commitment Agreement, the Corporation had "determined that the construction complied with the guidelines, as far as possible given the layout of the lot", this did not change the fact that Ms. Baig's reasonable expectations were not respected and that she was treated unfairly by the Corporation. Her unfair treatment was exacerbated by the fact that the Board's president, who was directly involved in mediating the dispute, had a conflict of interest. Although the application judge

concluded that the Board was authorized to enter into the Commitment Agreement, he also noted that, at the time it was negotiated, the Board was confronted with a *fait accompli*.

[54] Having concluded that the oppression claim against the Corporation was not adjudicated and that, based on the findings of the application judge, there was oppression, the remaining question is whether any remedy against the Corporation is required.

[55] A central issue raised by Ms. Baig on appeal is whether, in dealing with this matter in the future, the Corporation must address her ongoing complaints about the grading of lot 5. Ms. Baig points to certain statements in the application judge's reasons which she says indicate that the application judge found the grading of lot 5 to be non-compliant with the Declaration. She argues that the Corporation is required to enforce the Declaration with respect to grading – which would entail remedial measures to be taken by Benson and Deschamps.

[56] I disagree. As I have already explained, Ms. Baig is not entitled to an order requiring Benson and Deschamps to restore the grading on their property. Nor is there a basis for an order that the Corporation require Benson and Deschamps to do so. To the contrary, the application judge accepted that, at the time of the settlement, what had already occurred on lot 5 was approved by the Board, subject

to the requirements of the Commitment Agreement. The purpose of the settlement was to provide a path forward.

[57] There is also no basis for an award of damages against the Corporation – this argument was not pressed by Ms. Baig, and she has not provided any evidence to support such a claim.

[58] Finally, Ms. Baig contends that there is another concern that is not addressed by the application judge's remedies: while Benson and Deschamps are required to follow the directions of the Board in completing their building project, there is nothing to require the Corporation to comply with the Declaration, and nothing that precludes the Corporation from continuing to unfairly disregard her interests in connection with the development of lot 5.

[59] While the application judge directed Benson and Deschamps to comply with the Corporation's directions and any halt work order, he did not provide any direction to the Corporation about how it should conduct itself in the future with respect to the review and approval of the development of lot 5. Having noted that once Mr. Gazzola resigned from the Board, a halt work order followed, and the Commitment Agreement was then negotiated, the application judge may reasonably have concluded that there would be no further issues with respect to the Corporation's future compliance with the approval process and regard for Ms.

Baig's interests. Indeed, he stated that "[t]here is no need for an order against the Corporation now that it is under new leadership".

[60] In the unusual circumstances of this case, however, as a remedy for oppression, I would grant a declaration that the Corporation engaged in conduct that was unfairly prejudicial to Ms. Baig and unfairly disregarded her interests in respect of the approval process for the development of lot 5, as well as an order that the Corporation give due and proper regard to her interests in its further review and approval of the development of lot 5. This is required in my view because of the Corporation's positions before this court with respect to some of the issues: first, in refusing to acknowledge that Mr. Gazzolo had a conflict of interest, and continuing to blame Ms. Baig for his resignation from the Board; second, in asserting that Ms. Baig's expectations were unreasonable because she had no greater interest than any other unit holder in Benson and Deschamps' compliance with the approval process and the Declaration; and third, in suggesting that it was sufficient for the Corporation to mediate the interests of unit holders rather than enforcing the Declaration.

The Application Judge's Costs Order Reflects Error and Must Be Corrected

[61] Ms. Baig submits that the application judge erred in making a costs award before receiving any bills of costs or submissions. Ms. Baig points out that r. 57.01(5) of the *Rules of Civil Procedure* only requires that bills of costs be served after the hearing of an application and she argues that she was therefore entitled

to serve and file a bill of costs after release of the application judge's reasons. She argues that, in the absence of bills of costs and submissions, the application judge could not evaluate many of the factors relevant to a costs award under r. 57.01(1) and that his failure to hear from the parties on this issue constituted a breach of procedural fairness, relying on *Afolabi v. Law Society of Ontario*, 2025 ONCA 257, 510 D.L.R. (4th) 424, at paras. 109-111, leave to appeal refused, [2025] S.C.C.A. No. 203.

[62] Ms. Baig asserts that she should have been awarded a greater amount in costs against Benson and Deschamps. She also seeks costs of the application against the Corporation if she is successful against it in the appeal.

[63] Finally, Ms. Baig contends that she was denied the opportunity to include in her costs submissions a request for an order exempting her from paying her share of the Corporation's legal expenses in relation to the proceedings in this court and in the court below.

[64] The respondents submit that, although bills of costs and submissions may be helpful, they are not required. The rules direct judges to "devise and adopt the simplest, least expensive and most expeditious process for fixing costs": r. 57.01(7). And that is what the application judge did here. Bills of costs and submissions would not have altered the application judge's ability to fix a fair and

reasonable amount for costs and his decision not to receive them does not justify interfering with his discretion.

[65] An appellate court may set aside a costs award only if the judge made an error in principle or if the costs award is plainly wrong: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9, [2005] 1 S.C.R. 303, at para. 27.

[66] I agree with Ms. Baig that there was a reversible error in the application judge's costs award. The requirement that the court "devise and adopt the simplest, least expensive and most expeditious process for fixing costs" under r. 57.01(7) does not justify the denial of procedural fairness. Indeed, that rule continues, "without limiting the generality of the foregoing, costs may be fixed after receiving written submissions, without the attendance of the parties". Parties are entitled to put their positions respecting costs to the court for proper consideration: they have a right to be "heard", even if the hearing is through written submissions.

[67] The *Rules of Civil Procedure* anticipate that parties will have the opportunity to be heard on costs. It was wrong for the application judge, after noting that bills of costs had not been filed, to determine costs without affording the parties an opportunity to file bills of costs and to make submissions. Rule 57.01(5) provides that "[a]fter a trial, the hearing of a motion that disposes of a proceeding or the hearing of an application, a party who is awarded costs shall serve a bill of costs (Form 57A) on the other parties and shall file it, with proof of service." In other

words, it is anticipated that the parties will have the opportunity, after a trial, application or motion that disposes of a proceeding, to provide bills of costs. For a judge to proceed in the absence of bills of costs is to invite speculation about the legal services provided and disbursements incurred in the course of what may have been a lengthy proceeding, based only on the parties' attendance at the dispositive hearing.

[68] In this case, the hearing was adjourned without receiving the parties' bills of costs, costs outlines, or submissions on costs. It was reasonable for the parties to assume that they would have the opportunity to address costs once the application had been determined. This was a relatively complicated matter that had been litigated for several months. The application judge should not have determined costs without seeking submissions from the parties. This was a denial of procedural fairness: *Afolabi*, at para. 111.

[69] Ms. Baig submits that if this court agrees that the application judge erred in determining costs without hearing from the parties, the parties should have the opportunity to come to an agreement on costs of the application, including whether she should be exempt from contributing to all or part of the Corporation's legal expenses in connection with this matter,² and that in the absence of an agreement, this court should determine costs on the basis of written submissions. I agree.

² Ms. Baig's position is that she had sought such relief in the court below. There is nothing in the record before this court with respect to such a request, other than in her supplementary notice of appeal. Ms. Baig

[70] I would allow the costs appeal and direct that, if the parties are unable to reach an agreement with respect to costs of the application, as well as any request by Ms. Baig that she be exempted from payment of all or part of the Corporation's legal expenses in relation to this matter, they provide, within 20 days, their bills of costs and written submissions limited to three pages each, so that this court may fix the costs in the court below and determine Ms. Baig's exemption request.

Disposition

[71] For these reasons, I would allow the appeal in the terms set out above but would otherwise dismiss the appeal. I would allow the costs appeal. Because of the divided success, I would award no costs on the appeal.

Released: July 29, 2026 "K.M.v.R."

"K. van Rensburg J.A."
"I agree. David M. Paciocco J.A."
"I agree. Thorburn J.A."

also argues that, had she been given the opportunity to make arguments on costs, she would have raised this as a matter relevant to the question of costs pursuant to r. 57.01(1)(i). Absent agreement, whether such relief is available and should be granted in respect of costs can be addressed by the parties in their submissions to this court.