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**SUPERIOR COURT OF
 JUSTICE**

JUDGES' CHAMBERS

ATTENTION

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Fax

To: Mark H. Arnold **From:** The Hon. Mr. Justice P.H. Howden

Fax: (416) 363-8451 **Date:** April 9, 2009

To: Sonja Hodis

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Pages: 2

Re: Nipissing Condominium Corporation No. 4.
 v. Simard et all - Transcription of **CC:**
 Endorsement

Operator: Kim Hunter, Judges' Secretary

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

•Comments:

A transcription of Mr. Justice P.H. Howden's endorsement dated April 8, 2009 is attached.

NIPISSING C.C. #4 v SIMARD ET AL.

Transcript of Endorsement by Howden J. dated April 8, 2009

This motion under rule 21 is dismissed on the following grounds:

- (i) this case involves intertwined issues under the Condominium Act and the Condominium Declaration that go beyond the owners of the units and the Corporation, who are the only parties referred to in the requirement of mediation-arbitration in s. 132(4) and (1); and
- (ii) there is no appellant authority accepting Justice Juriensz's "generous interpretation" of "disagreement between the parties" as including validity and interpretation as a matter of law. In my view, this application is proceeding to a hearing at this stage without significant factual disputes and the sole issue comes down - not to factual and behavioural issues, perception of those issues by the parties and the meaning of rules or a Declaration provision (such as pet rules or unreasonable noise) as in the cases cited involving only the unit owner and the corporation - but to the validity in law of the family provision in the Declaration as well as whether reasonable steps have been taken by the Respondent unit owner. Even the latter must give way to the prime issue of validity in law. Unlike *Peng*, this is not, as far as I can see, a case involving issues of conduct and use and gradations thereof, but to whether a unit owner is bound by what he alleges to be a provision in violation of the Ontario Human Rights Code and is discriminatory.

Finally, all the issues in this case should be determined on the whole record in the Application proceeding and not on a summary motion like this involving sectioning off the unit owner and proceeding only against the resp. tenants.

Costs are left to the judge hearing the application, fixed at \$6000.

(signed) P.H. Howden J.