QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2010 SKQB 53**

Date: **2010 02 05**
Docket: Q.B.G. No. 1373 of 2009
Judicial Centre: Saskatoon

IN THE MATTER OF JUDICIAL REVIEW PURSUANT TO
PART FIFTY-TWO OF *THE QUEEN'S BENCH RULES*

BETWEEN:

ANDRES ANDERSON AND SHIRLEY ANDERSON

APPLICANTS

- and -

OWNERS: CONDOMINIUM PLAN NO. 99SA34021

RESPONDENT

Counsel:

Davin R. Burlingham — for the applicants
Ashley M. Smith — for the respondent

JUDGMENT — GOLDENBERG J.
February 5, 2010

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[1] The applicants apply by motion for the following relief:-

1. An order pursuant to Rule 664(2)(b) of the *Queen's Bench Rules* (hereinafter the *Rules*), or an order in the nature of *mandamus* pursuant to Rule 664(1) of the *Rules*, directing the Respondent to remove or cause to be removed the satellite dish on the roof of condominium unit #103 [Note: the matter was argued on the basis that the reference here was to unit #104] at 835 Heritage Green, in the City of Saskatoon, Saskatchewan; or in the alternative,

> 2. An order pursuant to Rule 664(2)(b) of *Rules*, or an order in the nature of *mandamus* pursuant to Rule 664(1) of the *Rules*, directing the Respondent to move or caused [sic] to be moved the said satellite dish from the front portion of the condominium unit to the rear, above the unit's garage.
>
> [Emphasis added]

The application for an order pursuant to Rule 664(2)(b)

[2] Rule 664 of *The Queen's Bench Rules* provides in part as follows:-

> (1) An application for judicial review by way of *mandamus*, . . . may be commenced by notice of motion.
>
> (2) In an application for judicial review, ... an applicant may claim:
> ...
> (b) an injunction ... as collateral relief.
>
> [Emphasis added]

[3] At the outset of the application I enquired of applicant's counsel, who confirmed that Rule 664(2)(b) relief was being sought independent of relief in the nature of *mandamus* pursuant to Rule 664(1).

[4] In *Pradzynski v. The City of Prince Albert*, [1985] S.J. No. 573, Q.B. No. 804, A.D. 1985, J.C.P.A., July 18, 1985, I held:–

> 2 An application for an . . . injunction cannot exist in a vacuum. There must be a base from which to proceed. This base may be established by notice of motion under Rule 664(1) seeking relief as set out in 664(1), with an injunction as collateral relief thereto. Once the base has been established, an application for an . . . injunction can be brought.
>
> 3 In the matter before me, there is simply the . . . injunction application and no more. This is not enough. The application must fail. . . .

[Emphasis added]

[5] In the matter before me, the injunctive relief is brought independent of the *mandamus* application. As I said in *Pradzynski*, and as I say now. This is not enough. The application in that regard must fail.

[6] The motion sets out the following grounds:-

> 1. The Respondent has constructed or caused or permitted to be constructed a satellite dish with connecting wire on unit 104 without having formally granted the condominium Board's permission, as is required pursuant to bylaws 4(p) and (q) and 5(e) of the Bylaws of the Corporation.
>
> 2. The Respondent has constructed or caused or permitted to be constructed a satellite dish with connecting wire on unit 104 without first obtaining the signed approval of the Applicant as an owner whose enjoyment of the property would be adversely and directly affected by the satellite dish and wire;
>
> 3. The Respondent is a Corporate body incorporated pursuant to s. 34 of *The Condominium Property Act, 1993* and is bound by its own bylaws pursuant to section 44(3) of the *Act*.

The application for an order in the nature of *mandamus* pursuant to Rule 664(1)

[7] The following facts are to be gathered from the various affidavits filed.

> 1) The Applicants are the owners of Unit #103-835 Heritage Green, in the Highland Place Condominium Complex ("Highland Place").
>
> 2) The Respondent is the Condo Association for Highland Place.
>
> *Satellites at Highland Place*

3) The Condo Association was formed in the early 2000's and its Bylaws were passed on May 1, 2001: . . .

4) There were four satellite dishes installed on Units in Highland Place before the Condominium Association was formed. These satellite dishes were put up with either the permission of the builder, Northridge Developments or with no permission from anyone: . . .

5) Unit #101 was the first Unit to put up a satellite dish and it was placed on the front of their home: . . .

6) Unit #107 and Unit #116 also put up satellite dishes, which were placed on the rear of their homes: . . .

7) Unit #113 placed a satellite dish on the side of their home: . . .

8) The satellite dishes on Units #107, #113 and #116 were put up by previous owners of these Units: . . .

9) Satellite dishes were verbally discussed at meetings during the first couple of years of the Condo Association. It was believed by the members of the Condo Association that this decision had been "grandfathered" in. The Condo Association did decide however, that satellite dishes had to be placed at the rear of the home and not installed at the front of the home like Unit #101. This decision was never recorded in the Minutes: . . .

10) In order for the Condo Association to be able to control the position of future satellites, the following was placed in the Condo Association Bylaws under section 4, "Duties of an Owner":

> An owner shall:
>
> (q) not erect or fasten television antennae, satellite dishes, mobile telephone or radio antennae, towers or similar structure or appurtenances to his Unit without prior approval from the Board;

11) No requests to install a satellite dish occurred until 2006: . . .

12) On September 26, 2006, Unit #104 received permission to install a satellite dish on their Unit: . . .

13) In October 2009, Unit #105 was given written permission by the Condominium Association to put up a satellite dish on their Unit: . . .

Satellite Dish Installed on Unit #104

14) In 2006, it was verbally requested by the Owners of Unit #104 that the Condo Association consider whether they could put up a satellite dish on their Unit: . . .

15) On September 26, 2006, Jack Tait, President of the Condo Association, wrote a letter expressing to the owners of Unit #104 that they had permission from the Condo Association to put up a satellite dish: . . .

16) The satellite dish was installed in October 2006: . . .

17) Beginning in late 2006 and early 2007, the Andersons began to complain about their neighbour's satellite dish. Mr. Anderson began to write letters and bring up the satellite dish at every Condo Association meeting that he could: . . .

Andersons' Complaints about the Satellite Dish Installed on Unit #104

18) On March 4, 2007, the Condo Association Minutes indicate that the satellite issue was discussed: . . .

19) On March 30, 2007, Mr. Anderson wrote a letter to the Condo Association claiming that he wanted to make a motion at the next board meeting to have satellite dishes removed: . . .

20) On April 26, 2007, a Condo Association meeting was held and the satellite dish issue was discussed. Since the official decision to allow satellite dishes at Highland Place had not been formally documented in the Minutes of a Condo Association meeting, it was voted that the Condo Association would accept as valid, any decisions that had not been recorded in the minutes, but could be verified by two former executive members who were present at the time the decision was made: . . .

21) On May 21, 2007, the Andersons again wrote a letter to the Condo Association, addressed to Present Mr. Harold Lejbak, asking for the removal of the satellite dish on Unit #104. In this letter, they threatened legal action if their requests were not heeded: . . .

22) On July 25, 2007, the Condo Association Minutes indicate a discussion took place in relation to the satellite dishes. A ruling was made that the current satellite dishes be kept in place but that

any damage caused by them would be the responsibility of the Unit owner. A memo attached to the Minutes was a signed statement by Jack Tait, Roman Borysko and Harold Lejbak indicating that they decided to allow satellite dishes on the exterior of a Unit as long as it was on the back of the property and hidden as much as possible: . . .

23) On October 1, 2007, the Condo Association Minutes indicate a discussion of the satellite dish issue. As a follow up after the meeting, Mr. Jack Tait wrote a note indicating that the initial board of directors of the Condo Association had verbally discussed the installation of satellite dishes in the complex as long as they were on the rear/backside of the units: . . .

24) On December 11, 2007, the Condo Association Minutes indicate that there was again a discussion of the Highland Place Bylaws: . . .

25) In order to remedy the Andersons' concerns about non-compliance with the Bylaws in relation to the permission given to mount satellites at Highland Place, Harold Lejbak, Roman Boysho (now deceased) and Jack Tait all swore formal affidavits on January 30, 2008, indicating the decision of the Condo Association to allow satellite dishes on the Units at the rear. The Affidavits were passed on February 4, 2008 at the 2008 Annual General Meeting of the Condo Association, with 17 'for' votes and two 'against' votes. Mr. Anderson and a proxy vote he had were the 'against' votes: . . .

26) In a Letter dated December 18, 2008, the Andersons threatened legal action if the satellite dish was not moved: . . .

27) On December 26, 2008, Mr. Jack Tait wrote a letter to the Andersons stating that the satellite dish matter was resolved with his, Mr. Harold Lejbak and Mr. Roman Borysko's Affidavits: . . .

28) A letter was also written on January 9, 2009 by Roman Borysko to the Andersons, which indicated that the satellite dish on Unit #104 was installed with the proper procedures followed by the Condo Association: . . .

29) On January 12, 2009, a letter was written by Mr. Harold Lejbak in response to the Anderson's December 18, 2008 letter. Mr. Lejbak indicates that the satellite dish situation had been resolved and would not be discussed at future board meetings, nor would it be a subject at the 2009 Annual General Meeting: . . .

30) However, the Andersons continued to write letters and discuss the satellite dish on Unit #104 at Condo Association meetings, including at the 2009 Annual General Meeting: . . .

31) On February 2, 2009, the 2009 Annual General Meeting was held for the Condo Association. At that meeting, an amendment was made to the 2008 Annual General Meeting Minutes to indicate that 17 had voted 'for' and 2 'against' the passing of the affidavits of Mr. Harold Lejbak, Mr. Roman Borysko and Mr. Jack Tait in relation to accepting the installation of the satellite dishes, as long as they were at the back or rear of the Units: . . .

32) On March 28, 2009, the Andersons requested that the President of the Condo Association, Mr. Glen Sorestad, meet with them to discuss the satellite issue. Mr. Sorestad and Mr. Brent Kelly, Secretary of the Condo Association agreed to meet with the Andersons: . . .

33) On March 30, 2009, Mr. Sorestad and Mr. Kelly met with the Andersons about the satellite issue. However, they did not feel that the Anderson's presented anything new and did not see any outstanding issues that the Board had not already dealt with. It was at this meeting that Mr. Anderson indicated that although he could not see the satellite dish on Unit #104 from his Unit, without leaning over his deck substantially, he "could always see it in his head": . . .

34) On September 26, 2009, the Andersons placed their Unit up for sale: . . .

35) The Andersons have moved out of Unit #103 and into a rented apartment in Lawson Heights: . . .

Personal Relationship between the Andersons and the Hayes

36) The Andersons moved into Unit #103, Highland Place in September 2000: . . .

37) The Hayes moved into Unit #104, Highland Place in June 2001.

38) The Andersons and the Hayes share a wall between their two units, living in a duplex style home: . . .

39) Early in their relationship, the Hayes made a request that the Andersons not slam the fire door to their garage, as it would reverberate throughout the entire unit. This request was met with louder and more frequent slamming of the fire door by Mr. Anderson. Several other examples of incidents that took place

> between the Andersons and Hayes are explained below, but are not inclusive: . . .
>
> 40) For several winters, Mr. Anderson was paid by the Condo Association to clear snow from the driveways and sidewalks of all of the Units in the complex. In the winter of 2006/2007, things got heated between Mr. Anderson and Mr. Hayes. Mr. Anderson did not clear the driveways or sidewalks of the Hayes' Unit, but would clean all 19 other Units' driveways and sidewalks. Mr. Hayes even threatened to stop his condo fees because he was not receiving the same services as the other Units: . . .
>
> 41) There was also an altercation between Mr. Anderson and Mr. Hayes in the Summer of 2008. Mr. Anderson and Mr. Hayes had a disagreement over the downspout between their Units and the placement of a large City of Saskatoon garbage can. Mr. Hayes was hit from behind with a pail swung by Mr. Anderson. The impact broke his glasses and cut his forehead. The police were called and a complaint was laid. The police investigated, but Mr. Hayes decided not to proceed with charges: . . .
>
> 42) The Andersons and the Hayes no longer speak with one another.

[8] A number of issues arise in the consideration of the application.

Is judicial review available for a condominium association decision?

[9] At the outset both counsel advised that they have been unable to locate any judgments involving the judicial review of a condominium association decision. While the absence of authority is not determinative of the matter, the lack of authority would appear to be an accurate statement of the state of the law.

[10] It is common ground that for judicial review to lie there must be an owed statutory or public duty.

Public duty

[11] In *Koshurba v. Rural Municipality of North Kildonan* (1965), 52 D.L.R. (2d) 84, at page 87, Dickson J. (as he then was) said:-

> What is "a public duty or authority"? A public duty is, in my view, one in the discharge of which the public, the community at large, has an interest, as affecting their legal rights or liabilities. . . .

[12] Condominium associations are not corporations like corporations under *The Business Corporations Act*, R.S.S. 1978, c. B-10, and *The Non-profit Corporations Act, 1995*, S.S. 1995, c. N-4.2, as outlined in ss. 34(1)(6) of *The Condominium Property Act, 1993*, S.S. 1993, c. C-26.1 (the "Act").

[13] In *Condominium Plan No. 0020701 v. Investplan Properties Inc.*, 2006 ABQB 224, [2006] A.J. No. 368 (QL), Martin J. at para. 5 said:–

> 5 The powers of the Corporation and its relationship with unit owners are governed by the *Condo Act*. Under s. 25(2), a condominium corporation consists of all those persons who are the owners of units in the parcel to which the condominium plan applies or who are entitled to the parcel when the condominium arrangement is terminated pursuant to legislation. That corporation is a creature of the *Condo Act*, is unknown to the common law, and is unlike other corporations. A condominium corporation is the statutory manager of the common property, which belongs to the individual owners.

And at para. 26:-

> 26 The *Condo Act* creates a statutory regime to regulate the unique property law issues associated with condominiums. It allows private ownership of individual units and shared ownership of common property. Common property is owned by the unit holders as tenants in common and is managed by a condominium corporation. The condominium corporation is the body authorized to act on behalf of a group of individuals in relation to certain matters.

Accordingly, a condominium association does not meet the definition of a body which owes a public duty.

Statutory duty

[14] *Black's Law Dictionary*, 8th ed. (Toronto: Thomson West, 2004) defines statutory obligation as:-

> An obligation – whether to pay money, perform certain acts, or discharge duties – that is created by or arises out of a statute, rather than based on an independent contractual or legal relationship.

[15] There are statutory duties owed by a condominium association to unit owners under the Act. However there is no statutory duty corresponding to the issue the applicants seek to have judicially reviewed.

[16] As one of the grounds for the application, the applicants say that the condominium association is a corporate body incorporated pursuant to s. 34 of the Act and is bound by its own bylaws pursuant to s. 44(3) of the Act. That is certainly correct. However that is not the end of the matter.

[17] On an application for judicial review as sought here, the court must look to the statutory duties placed upon a condominium association by the Act. These are found in s. 35 of the Act and are as follows:-

> **35**(1) A corporation is responsible for the enforcement of its bylaws and the control, management and administration of the units, and of the common property and common facilities.
>
> (2) Without restricting subsection (1), the duties of a corporation include the following:
>
> (a) to keep the common property and common facilities in a state of good and serviceable repair and to maintain them properly;
> (b) to comply with notices or orders by the local authority or any other public authority requiring repairs to the buildings or work to be done with respect to the parcel; and
> (c) to comply with any reasonable request for the names and

addresses of the persons who are members of the board.

[18] The condominium association complied with the bylaws when it gave unit #104 written permission to mount its satellite dish. The applicants allege that the condominium association breached the following bylaws, which are as follows:–

(a) Bylaw 4(p):

> (p) not permit, erect or hang over or from or cause to be erected or to remain outside any deck or door or any other part of a Unit or on the Common Property, clothes lines, laundry, garbage disposal equipment, recreational or athletic equipment, fences, hedges, barriers, partitions, awnings, shades or screens or any other matter or thing without the prior consent in writing of the Board.

(b) Bylaw 4(q):

> (q) not erect or fasten television antennae, satellite dishes, mobile telephone or radio antennae, towers or similar structure or appurtenances to his Unit without prior approval from the Board

(c) Bylaw 5(e):

> (e) not construct or cause to be constructed any new additions (trees, shrubs and general landscaping excepted) on the Common Property without the signed approval of any Owner whose enjoyment of the Common Property would be adversely and directly affected by the new addition.

[19] There has been no violation of bylaw 4(p). A satellite dish and its corresponding cord are not listed in this bylaw. Nor is it encompassed in any of the described items in the bylaw. Further, with the specific enumeration of bylaw 4(q), it cannot be said that a satellite dish and its corresponding cord are encompassed in the wording " or any other matter or thing" as contained in bylaw 4(p).

[20] In any event, when the condominium association gave written permission for the placement of a satellite dish on unit #104, it must be taken as an indication that the satellite dish was allowed under and in compliance with all the bylaws. If the condominium association had any problem with the satellite's placement, the condominium association could have remedied that under the bylaws. However, no violation of the bylaws was found by the condominium association after the satellite dish was installed.

[21] As to bylaw 4(q), the condominium association complied with this bylaw. The September 26, 2006 letter from Jack Tait to unit #104 gave the Hayes permission to put up their satellite dish. This satellite dish was put up in accordance with the requirements set out in the letter, namely that the dish be installed at the rear of the home in the least conspicuous place without compromising quality of reception. Again, if the condominium association had any problem with the placement of the satellite dish's placement, they could remedy that under the bylaws. However, no violation of the bylaws was found by the condominium association after the satellite dish for unit #104 was installed.

[22] Bylaw 5(e) deals with Common Property. Common Property is defined in s. 1(e) of the bylaws as:–

> . . . so much of the parcel as is not comprised in any Unit shown in the condominium plan.

A violation of this bylaw is not made out. The satellite dish is on unit #104's side of the roof. Additionally, the Andersons cannot see the satellite dish or its cord from their unit, unless they lean substantially over their unit's deck. Mr. Anderson can only " see [the satellite] in his head". Accordingly it cannot be said that the satellite dish on unit #104 adversely or directly affects the Andersons at all.

[23] The condominium association has a statutory duty to enforce its bylaws, which it clearly did in this situation. That statutory duty does not extend to the appeasement of the whims of a single unit holder when the unit holder disagrees with a discretionary decision of the condominium association in relation to whether the condominium association allows the placement of a satellite dish on a unit in the complex.

[24] The applicants do not desire to judicially review the enforcement of the bylaws, as they were enforced, but rather the discretionary decision of the condominium assocation to allow the installation of the satellite dish on unit #104. This is not judically reviewable, as there is no statutory duty owed to the applicants to not have a satellite dish placed on their neighbour's unit. The allowance of satellite dishes with written permission arises out of the condominium association's bylaws and not out of statute.

[25] The application for judicial review is therefore dismissed, as judicial review is inapplicable to a condominium association decision.

Is the application time barred ?

[26] Having determined that judicial review does not lie, *The Limitations Act, 2004*, S.S. 2004, c. L-16.1, is no longer inapplicable under ss. 3(2)(b) of that Act.

[27] Section 5 of that Act provides that no proceeding shall be commenced after two years from the day on which the claim was discovered.

[28] On September 26, 2006 the condominium association gave permission for

the installation of the satellite dish. The dish was placed on unit #104 in October 2006.

[29] Mr. Anderson in his December 18 letter to Messrs. Lejbak, Tait and Borysko made it clear that he had a problem with the satellite dish and it was "brought to the attention of President Jack Tait the day the dish was installed". Also, in para. 3 of his affidavit, Mr. Anderson deposes that the satellite dish on unit #104 went up in October 2006.

[30] Over three years have passed since the condominium assocaition gave permission to unit #104 to put up their satellite dish and since the satellite dish was placed on unit #104.

[31] Accordingly, the application is time barred under *The Limitations Act, 2004.*

If judical review is available, what is the standard of review?

[32] If judicial review has application, then the standard of review is "what is reasonable [for the condominium association] in carrying out its statutory duty": *Buskell v. Linden Real Estate Services Inc.*, 2003 MBQB 211, [2004] 4 W.W.R. 366, at para. 19; *Baliwalla v. York Condominium Corp. No. 438*, [2007] O.J. No. 1673, at para. 15; and *Devlin v. Condominium Plan No. 9612647,* 2002 ABQB 358, 318 A.R. 386, at para. 3.

[33] A court ought not lightly to interfere in the decisions of a democratically elected board of directors acting within its jurisdiction. *Desjardins v. Winnipeg Condominium Corp. No. 75*, [1991] 2 W.W.R. 193 (Man. Q.B.), at para. 6. The court should defer to duly elected condominium boards, and only if the court is satisfied of

improper conduct should they direct and/or grant any remedies. *934859 Alberta Inc. v. Condominium Corporation No. 0312180*, 2007 ABQB 640, 434 A.R. 41, at paras. 54-55.

If judical review is available, is it barred by the adequate alternate remedy principle?

[34] In *Commandant v. Wahta Mohawks First Nation*, 2007 F.C. 692, 315 F.T.R. 82, Teitelbaum D.J., para. 17, said:–

> 17 The doctrine of adequate alternate remedy will usually bar relief in judicial review if an applicant failed to pursue a statutory remedy that is considered to be an adequate alternative to judicial review (Donald J.M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, (Toronto: Canvasback Publishing, 2004) [s] 3:2100). In *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3 at para. 37, the Supreme Court of Canada held that:
>
> > ...a variety of factors should be considered by courts in determining whether they should enter into judicial review, or alternatively should require an applicant to proceed through a statutory appeal procedure. These factors include: the convenience of the alternative remedy, the nature of the error, and the nature of the appellate body (i.e., its investigatory, decision-making and remedial capacities). I do not believe that the category of factors should be closed, as it is for courts in particular circumstances to isolate and balance the factors which are relevant.

[35] Section 100 of *The Condominium Property Act* provides as follows:-

> **100**(1) Where there is a dispute between owners or between the corporation and one or more owners respecting any matter relating to the corporation, the parties to the dispute may agree in writing to submit the dispute to arbitration in accordance with this section.
>
> (2) The parties to the dispute shall appoint a single arbitrator.
>
> (3) The decision of an arbitrator pursuant to this section is final and binding.

> (4) The costs of an arbitration pursuant to this section are to be shared equally between the parties, and an interest may be registered against the title to a unit for the amount of the owner's share of the costs that is unpaid.
>
> (5) *The Arbitration Act, 1992* applies to arbitrations pursuant to this section.

[36] Arbitration is more convenient and cost effective for the parties. Arbitration does not necessarily entail legal counsel and a final decision would have been obtained.

[37] Mr. Anderson served on the condominium association for many years. There is nothing to suggest that he was not familiar with the fact that the condominium association was subject to the Act, or that he had never perused the Act. There is no reason why Mr. Anderson would not be aware of his opportunity to pursue arbitration to solve his problem with the condominium association. The Act has the Andersons only dispute mechanism, as the bylaws do not indicate any dispute mechanisms for unit owners, only dispute mechanisms for the condominium association.

[38] Given that a condominium association is a very small body with responsibilities to a small subset of people, as opposed to a federal tribunal or a large administrative body, there is no reason why this matter could not have been handled on a smaller scale through arbitration.

[39] A condominium association under the Act only has arbitration, small claims court and the appointment of an administrator available as resolution options. It is clear that affordable, cost effective options are the intention of the legislation for dispute resolution for both condominium associations and unit owners.

[40] The Andersons should have pursued arbitration before taking the

condominium association to the Court of Queen's Bench on such a costly and unnecessary application. This is an additional ground for the dismissal of the application.

Is *mandamus* available to the applicants?

[41] In *Kuzminski v. Regina (City)*, 2000 SKQB 317, 196 Sask. R. 229, Gunn J. at paras. 9 and 10, said:–

> 9 Mandamus lies to compel the performance of a statutory or public duty by a statutory delegate where the delegate refuses to exercise power it is compelled to use. In *Pevech v. LaRonge (Town)* (1995), 130 Sask. R. 115 (Sask. Q.B.) at p. 127 Rothery J. outlined the prerequisites for the issuance of an order of mandamus:
>
> > . . . The requirements, as outlined by Evans, Janisch, Mullan and Risk, Administrative Law (3rd Ed.) pp. 876-878, are:
> >
> > 1. A clear legal right to have the thing done by the persons sought to be compelled. . .
> >
> > 2. A legal duty must lie upon the person sought to be compelled. . .
> >
> > 3. The duty must be a mandatory duty established by law, rather than a discretion accorded to the person sought to be compelled.
> >
> > 4. There must be a demand and a refusal to perform the legal duty.
>
> 10 Mandamus may lie to compel the performance of a public duty that does not involve the exercise of discretion and is not a remedy to alter a decision arrived at through the proper exercise of discretion. (*Re Ridge et al. and Council of Saskatchewan Association of Architects* (1979), 108 D.L.R. (3d) 441 (Sask. C.A.)).

[42] The Andersons have no legal right to have a satellite dish either removed or moved to a different place on a unit. Nor does the condominium association have a legal right to the Andersons to remove the satellite dish or have it moved to another part

of the unit. This is especially so as the satellite dish is not breaking any of the bylaws, or affecting any property other than unit #104 whose side of the roof it is on.

[43] The satellite dish decision was a discretionary decision by the condominium association which was made in compliance with the bylaws of the condominium association.

[44] With no legal duty, there is no need to look at whether the duty was demanded and refused.

[45] Where a statutory duty exists to enforce the law, only complete inaction in this respect can give rise to a judicial remedy. The court cannot determine the manner of enforcement: *Northern Lights Fitness Products Inc. v. Canada (Minister of National Health and Welfare)* (1994), 75 F.T.R. 111.

[46] Accordingly, *mandamus* cannot be granted in the present circumstances.

Do the applicants have a sufficient interest to bring this application, as per Rule 665?

[47] In *Shiell v. Saskatchewan (Minister of the Environment)* (1987), 64 Sask. R. 34 (Q.B.), McLellan J. at pages 36-37, quoted with approval from the decision of Barclay J., 58 Sask. R. 141 (Q.B.), as follows:–

> In the case of *Australian Conservation Foundation Inc. v. Commonwealth of Australia*, [1980] 28 A.L.R. 257 which is a decision of the High Court of Australia and which was adopted by the Supreme Court of Canada in *Finlay, supra* [[1987] 1 W.W.R. 604 (S.C.C.)], the court set out the requirements of a personal interest in the outcome of the litigation at p. 270 as follows:
>
> > "A person is not interested within the meaning of the above rule, unless he is likely to gain some advantage other than the

> satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of grievance or a debt for costs, if his action fails."

[48] Since September 26, 2009, the Andersons have had their unit #103 up for sale and listed on the multiple listing service. They no longer reside in their unit and have taken up residence in an apartment in Lawson Heights.

[49] When a court looks at whether it will grant a discretionary declaratory action, the two main considerations are: whether the remedy will be useful and whether it will settle the question at issue between the parties. A court will not however, grant declaratory relief if a dispute is over or has become academic: *Canada v. Solosky*, [1980] 1 S.C.R. 821. Given the removal of the Andersons and the listing of the unit, I consider the dispute to be academic. Relief should not be granted.

[50] I am in substantial agreement with the respondent's submission and have used the same as the basis of my judgment. Having made my determinations herein it is not necessary to deal with all the matters raised by the respondent.

Should solicitor-client costs be granted?

[51] As well as requesting costs in the matter, the respondent also requests costs on a solicitor-client basis as per Rule 565, given the "mootness, vindictiveness and unnecessary nature of the application." I am unable to agree with such a request. I have found against the applicants on the application. However given the wording of the bylaws in issue and particularly the wording of bylaw 5(e), I am not prepared to say that the application was brought completely without merit, that there was no legal issue to be

determined.

[52] The application is dismissed with costs, which I fix at $500.00.

_____ J.
I. GOLDENBERG