

CITATION: Carleton Condominium Corporation No. 26 (Re) , 2010 ONCA 80
DATE: 20100129
DOCKET: C50555

COURT OF APPEAL FOR ONTARIO

Moldaver, MacPherson and LaForme JJ.A.

BETWEEN:

Carleton Condominium Corporation No. 26

Applicant /Respondents

and

The Unit Owners and Mortgagees Listed in the Record of the Condominium Corporation
Maintained under Subsection 47(2) of the Condominium Act as at the 30th Day before the
Date of Issuance of the Application, set forth in the Attached Schedule “A”

Respondents /Appellants

Derek G. Nicholson, for the appellants

Christy J. Allen, for the respondents

Heard and endorsed: January 28, 2010

On appeal from the order of Justice Power of the Superior Court of Justice dated May 5,
2009.

APPEAL BOOK ENDORSEMENT

[1] The fundamental issue on this appeal is whether the amendments to the declaration
alter the substantive rights of the units owners or merely clarify existing rights.

[2] Justice Power found that the purpose and effect of the amendments was to remove inconsistencies that constituted ambiguities in respect of repair obligations “arising out of the carrying out of the intent and purpose of the declaration” (s. 109(3) of the *Condominium Act*). In so finding, he said that “the requested amendments reflect a 34year history of agreement between the condominium corporation and the unit owners as to how the Declaration, in the present form, has been consistently interpreted.”

[3] In our view, that finding was open to the application judge on this record and supports his conclusion that the impugned amendments were not substantive but simply clarified existing rights

[4] In the result, despite Mr. Nicholson’s able submissions, the appeal is dismissed.

[5] Costs to the respondent for this appeal fixed at \$5,000 inclusive of GST and disbursements.