

Ontario Court of Appeal Recognizes that “Business Judgment Rule” Applies to Condominium Board Decisions

In a couple of prior blog posts, we blogged about a case ([3716724 Canada Inc. v. CCC No. 375](#)), where the Ontario Superior Court of Justice found that a condominium corporation had unfairly disregarded the interests of a commercial parking unit owner. The board had refused to allow the owner to make changes to the common elements to accommodate “pay and display” parking unless the unit owner hired a full-time security guard or attendant. The Court also ordered that the unit owner was able to make changes to the common elements to accommodate the “pay and display” parking without approval of the unit owners, even though those changes constituted substantial changes under [section 97\(4\) of the Condominium Act, 1998](#) (the “Act”). There was no dispute as to the unit owner’s entitlement to operate a commercial parking business and to convert the parking units from monthly parking spaces to hourly spaces. This was clearly permitted by the condominium declaration.

The Ontario Court of Appeal [recently overturned the lower court decision](#) and concluded that the condominium board did not unfairly disregard the interests of the parking unit owner.

The Court of Appeal determined that the condominium board had acted honestly and in good faith and that the board’s requirement for a security guard was reasonable in view of the fact that the condominium was located in an area with a high crime rate and a significant transient population. In this case the board had to balance the financial interests of the parking unit owner with the personal safety interests of the condominium residents.

“And as the deemed occupier of the common elements of the condominium, it was also entitled to consider the security implications for users of the common elements. It did not ignore or treat the interests of the respondent as being of no importance. It simply – in good faith and after a fair process – determined that legitimate and reasonable competing interests were more important. Its decision not to approve the requested changes to the common elements unless the respondent hired a security guard was within a range of reasonable choices.”

In reaching its decision, the Court of Appeal reviewed the case law on oppression in the corporate law context, and in particular, the “business judgment rule”, which recognizes that the decisions of boards should be shown some deference. The Court of Appeal concluded that the “business judgment rule should also apply to condominium boards.

“Therefore, to summarize, the first question for a court reviewing a condominium board’s decision is whether the directors acted honestly and in good faith and exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. If they did, then the board’s balancing of the interests of a complainant under section 135 of the Act against competing concerns should be accorded deference. The question in such circumstances is not whether a reviewing court would have reached the same decision as the board. Rather, it is whether the board reached a decision that was within a range of reasonable choices. If it did, then it cannot be said to have unfairly disregarded the interests of a complainant.”

By giving deference to the board decision, the Court of Appeal recognized that the condominium board elected by the unit owners was in a better position to fairly balance the competing interests in the condominium community than a judge.

Since the Court of Appeal concluded that the condominium board had not unfairly disregarded the interests of the parking unit owner, there was no need for the Court to consider the lower court's decision to allow the substantial changes to the common elements to be made without the consent of the owners, which is a specific requirement under the Act.

While the decision in this case will give some comfort to condominium directors that their decisions will not ordinarily be "second-guessed" in court, directors must remember that they do have to comply with the standard of care set out in Section 37 of the Act – they must act honestly and in good faith, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.