

# **A GUIDE FOR DIRECTORS AND MEMBERS:**

## **TERMINATION OF MEMBERSHIP AND OCCUPANCY RIGHTS IN ALBERTA HOUSING COOPERATIVES**

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HOUSING COOPERATIVES**

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**A. INTRODUCTION AND DISCLAIMER**

Although the Boards and Members of Housing Cooperatives have the legal authority to terminate membership, the right to do so is limited by the provisions of the *Cooperatives Act* and may only be enforced by a Court order.

The *Cooperatives Act* limits the grounds which membership and occupancy rights may be terminated. Court orders will only be granted if the termination procedure set forth in the *Cooperatives Act* (Alberta) has been followed, and if the Cooperative's Board and Membership have afforded the terminated member a "fair hearing" in making the decision to terminate.

The objective of this Guide is to provide a general description of termination grounds and procedure. The actual procedure to be followed in a specific case will depend on the facts and circumstances of that case.

Cooperative Boards and Members should seek appropriate legal advice on a case-by-case basis. The Northern Alberta Cooperative Housing Association (NACHA), The Southern Alberta Cooperative Housing Association (SACHA), the authors of this Guide, and Miller Thomson LLP will not be liable to anyone for any claims made in reliance on the statements made in, or the forms attached to, this Guide.

## **B. OVERVIEW**

### **1. Cooperatives Act (Alberta) and Cooperatives Regulations**

#### **1.1 The Act:**

The *Cooperatives Act*, R.S.A. 2000, c. C-28.1 (the “Act”), is relatively new legislation that came into force on April 1, 2002, replacing the *Cooperative Associations Act*, which had been in effect since 1946 (the “Old Act”).

#### **1.2 The Regulations:**

The Cooperatives Regulation, A.R. 55/2002 (the “Regulations”) deals with a number of matters not covered by the Act, including comprehensive provisions concerning the conduct of the meetings of members of Cooperatives. There are no provisions in the Regulations relating specifically to termination proceedings.

### **2. Articles of Incorporation**

#### **2.1 General Requirements**

Articles of Incorporation (the “Articles”) must be developed as part of the incorporation process. The Articles outline the basic rules under which a cooperative is to operate. The Act sets out what must be included in the Articles. Articles usually do not contain specific provisions relating to terminations.

#### **2.2 Housing Cooperatives**

The Articles of a Housing Cooperative must provide that the primary object of the cooperative is to carry on business as a “non-profit continuing housing cooperative” or a “non-profit home ownership cooperative” and to provide housing or housing-related facilities to its members together with ancillary services and facilities (Act, Section 388).

### **3. Bylaws**

#### **3.1 Binding**

The bylaws (“Bylaws”) are binding on the cooperative and all of its members (Act, Section 13(1)).

#### **3.2 Breach Grounds for Termination**

Membership rights and obligations are governed by the bylaws of the Cooperative. Breach of the Bylaws may also be grounds to terminate membership (Act, Sections 395(1) and 404(1) and (2)).

#### **3.3 Contents of Bylaws**

The Act and the Regulation identify what must be included in Bylaws.

#### **3.4 Precedence of Act, Regulations and Articles over Bylaws**

The Act, the Regulation and the Articles take precedence over Bylaws to the extent of any conflict or inconsistency.

#### **3.5 Non-Profit Continuing Housing Cooperatives**

The Bylaws must, among other things, contain provisions which:

- (a) Mediation and Dispute Resolution: Govern the procedure for determining disputes between members and the cooperative and the requirement for a mediation process (Section 392(2)(b));
- (b) Termination Procedure: Govern the manner by which the membership of a member may be terminated (Act, Section 392(2)(c));
- (c) Occupation Rules: Govern the rules for occupation of member units by non-members (Act, Section 392(2)(k));

- (d) Lease Requirements: Provide for the cooperative's requirements regarding lease or rental of a housing unit occupied by a member (Act, Section 392(2)(l)).

### **3.6 Non-profit Home Ownership Cooperatives:**

The Bylaws must, among other things, contain provisions which:

- (a) Mediation and Dispute Resolution: Govern the procedure for determining disputes between members and the cooperative and the requirement for a mediation process (Act, Section 402(2)(b));
- (b) Termination: Govern the manner by which the membership of a member may be terminated (Act, Section 402(2)(c));
- (c) Calculation of Member Equity: Govern the method by which a member's equity will be determined upon withdrawal or termination of membership or dissolution of the cooperative (Act, Section 402(2)(d));
- (d) Lease Requirements: Provide for the cooperative's requirements regarding lease or rental of a housing unit owned by a member (Act, Section 402(2)(f)).

## **4. Membership Applications and Occupancy Agreements**

### **4.1 Applications for Membership**

Under s. 33 of the Act, to be a member of a cooperative, a person must:

- (a) Apply for membership in accordance with the bylaws;
- (b) Have the application approved by the directors;
- (c) Comply with the membership provisions of the bylaws.

## 4.2 Occupancy Agreements

Housing Cooperatives frequently use Occupancy Agreements which may be part of membership Applications. Breach of Occupancy Agreements may be grounds to terminate membership (Act, Sections 395(1)(a) and 404(1) and (2)).

*Comments: The wording and content of Articles of Incorporation, Bylaws, Membership and Occupancy Agreements are very important. Good templates have been developed and should be considered. Review by a qualified and knowledgeable draftsman is strongly recommended for these documents and all amendments to them. In order to determine the termination requirements which apply, Cooperatives must not only consider the provisions of the Act, but also the Bylaws, which may contain additional requirements in connection with termination procedure, and mediation or other alternate dispute resolution requirements.*

## C. THE COOPERATIVES ACT: MEMBERSHIP TERMINATION PROVISIONS

### 1. Termination Provisions in the Act

Sections 38 to 46 of the Act contain general provisions governing the termination of membership in all types of cooperatives [TAB 1]. These sections will apply with respect to issues not specifically governed by s. 18 of the Act, which contains specific provisions relating to Housing Cooperatives.

Section 46 of the Act provides:

#### **Non-profit housing cooperatives**

46 If the membership of a person in a non-profit housing cooperative is terminated, any right of the person to possession or occupancy of residential premises acquired by virtue of membership in the cooperative is subject to Part 18, Division 1.

Part 18 of the Act contains specific provisions relating to Housing Cooperatives, which were not present under the Old Act [TAB 1].

### 2. Types of Housing Cooperatives:

The Act provides for two types of Housing Cooperatives:

- (a) “non-profit continuing housing Cooperatives”, in which members have no interest in Cooperative property and can gain no interest in Cooperative property (Section 389); and
- (b) “non-profit home ownership Cooperatives”, in which members may have an ownership interest in the unit they are occupying (Section 402).

### **3. Non-Profit Continuing Housing Cooperatives**

#### **3.1 Not a Lease:**

The *Residential Tenancies Act* does not apply to non-profit continuing housing Cooperatives except to the extent their Bylaws expressly so provide (Act, Section 393)

#### **3.2 Occupancy Rights:**

The right to occupy a non-profit continuing housing Cooperative unit ends when the member ceases to be a member (Sections 46 and 394). Occupancy rights are automatically lost when membership is terminated.

#### **3.3 Grounds for Termination:**

The grounds for termination of membership in a non-profit continuing housing Cooperative are set out in Section 395 of the *Act*:

##### **Termination of Membership**

395(1) A non-profit continuing housing cooperative may terminate the membership of a member only if, in the opinion of the directors,

- (a) the member has either breached a condition of an agreement between the member and the cooperative or contravened a bylaw respecting
  - (i) possession or occupancy of the housing unit, or
  - (ii) the use of the property connected to the housing unit

and has failed to remedy the breach or contravention within a reasonable time of receiving a written notice from the cooperative to do so;

- (b) the member has caused significant problems in the shared housing unit;



(c) the member has, on more than one occasion, contravened the bylaws of the cooperative and the contraventions have continued to occur after written notice of the contraventions has been given to the member by the cooperative.

#### **4. Termination Procedure:**

The procedural requirements for termination of membership in a non-profit continuing housing Cooperative are set out in Sections 396 to 401 of the *Act*:

(a) Directors Meeting/Hearing: If the directors propose to terminate the membership of a member, the directors must do so by resolution passed by a vote of at least three quarters of the directors at a meeting of the Board of directors called for the purpose of considering the resolution (Section 396);

(b) Notice Requirements: The Board must give the member notice of the meeting. The notice must contain:

(i) The resolution to be considered at the meeting;

(ii) The statement of the grounds for termination of the membership;

(iii) A statement of the right of appeal of the member to the membership (Section 396(2));

(iv) Any additional information stipulated by the bylaws.

(c) No Withdrawal: The notice may not be withdrawn (Section 396(3));

(d) Notice Period Where There is no Right of Appeal: The notice period is 3 days, and there is no right of appeal to the members, if the resolution being considered is that the member:

(i) Failed to pay housing charges or other money due to the Cooperative;

(ii) Vandalized or destroyed property belonging to the Cooperative;

(iii) Used the housing unit for activities contrary to law;

(iv) Threatened the safety of members of the Cooperative;

(v) Is a physical danger to the members of the Cooperative or the residents; or

(vi) Contravened a bylaw regulating the leasing of a self-contained housing unit to a non-member.

(e) Notice Period in Other Cases: In all other cases, the notice period is 14 days and the member has a right of appeal (Section 396(1)).

(f) Right to Legal Counsel: The member may appear personally or by agent or counsel at the director's meeting (Section 396(3)).

(g) Eviction Notice: If the resolution is passed, the cooperative must give notice of termination within 7 days from the date the resolution has been passed.

(h) Reasons: Section 38(2) of the Act which sets out termination procedures for all types of Cooperatives, requires the Board too provide written reasons within 10 days. This requirement applies to continuing Housing Cooperatives, and should be followed.

(h) Appeal to Members: If the member is entitled to appeal:

(i) A member may appeal by filing a Notice of Appeal with the Cooperative within 7 days after receipt of the notice of termination;

(ii) The members may, by ordinary resolution, confirm or quash the board's termination of membership (Section 397).

(i) Compensation and Arrears:

The Cooperative is entitled to payment of arrears and compensation under Section 399 of the Act for:

(i) Occupation of the unit by the member following termination;

- (ii) Unpaid housing charges and unpaid utilities;
- (iii) Damages to the unit;
- (iv) Costs associated with obtaining vacant possession of the unit, including legal costs.

(j) Writ of Possession Required: Possession of a unit which remains occupied following termination may only be regained by obtaining a Writ of Possession (Section 400).

(k) Court Application: The Cooperative may apply on 4 days' notice under Section 401 for an Order:

- (i) Declaring that a person's membership and occupancy rights are terminated;
- (ii) A Writ of Possession;
- (iii) Directions for the payment of compensation pursuant to Section 399;
- (iv) Costs;
- (v) Any other matter the Court sees fit.

#### **4. Non-Profit Home Ownership Cooperatives:**

##### **4.1 Grounds and Procedure for Termination:**

Section 404 of the Act provides as follows with respect to grounds and termination procedure for non-profit home ownership Cooperatives:

###### **Termination of Membership**

404(1) No non-profit home ownership cooperative shall terminate the membership of a member from the cooperative unless that member breaches or repeatedly contravenes the share subscription agreement, the articles, the bylaws or the policies of the cooperative or any agreements between the member and the cooperative.

(2) The members of a non-profit home ownership cooperative may terminate the membership of a member on the grounds provided for in subsection (1) by a resolution passed by a vote of at least  $\frac{3}{4}$  of the members present at a meeting called for the purpose of considering the resolution.

(3) A meeting under subsection (2) must have a quorum of at least 70% of the members throughout the meeting.

(4) The directors of the non-profit home ownership cooperative must give a member whose membership may be terminated pursuant to a proposed resolution under subsection (2) a notice in writing at least 14 days before the meeting at which the resolution is to be considered, and the notice must contain

- (a) the resolution to be considered at the meeting, and
- (b) a statement of the grounds for termination of the membership.

(5) A member may appear personally or by agent or counsel to make submissions at the meeting referred to in subsection (2).

#### **4.2 Court Application for Possession**

Section 401 of the Act, which allows non-profit continuing housing cooperatives to apply for a Writ of Possession, does not apply to non-profit home ownership cooperatives. A Court Order is nevertheless required to legally take possession of a non-profit home ownership unit, if the former member remains in possession following termination. A Court application for a Declaration that membership has been validly terminated, and an Order “ejecting” the member from the unit is the recommended procedure.

### **5. Redemption of Member Shares and Repayment of Member Loans Following Termination**

#### **5.1 Redemption of Shares and Repayment of Loans:**

All Shares must be redeemed and all loans made by the Member to the cooperative must be repaid no later than 1 year following termination (Act, Section 41(1)). Payment may be delayed if the directors, on reasonable grounds, believe that making payment would render the Cooperative insolvent (Act, Section 41(2)). Bylaws often contain provisions which require payment to be made earlier than 1 year.

## **5.2 Debts Due by the Member to the Cooperative**

Termination does not release the Member from debts due by the Member to the Cooperative (Act, Section 42).

## **D. TERMINATION OF MEMBERSHIP – STEP BY STEP PROCEDURE**

*Comment and Warning: The Notices attached to this paper are samples only and may not be suitable for a specific termination proceeding. It is recommended that you consult with legal counsel to ensure all notices are properly drafted.*

*Comment: Maintaining a file which documents potential breaches is very important. All relevant documents such as notices, memos, statements, complaints and photographs would typically be included in this file. It is also important that Cooperative boards keep accurate minutes and record motions confirming that they have taken the procedural steps required for termination. These records may be important if termination is challenged in Court.*

### **1. Step 1: Identification of the Breach, Notice to Remedy Breach and Notice of Contravention**

#### **1.1 Breach of By-laws or an Agreement Required**

Membership in a Continuing Housing Cooperative, and an Ownership Housing Cooperative may only be terminated if the member has breached a Bylaw or an agreement with the Cooperative. A Notice to Remedy the Breach or a Notice of Contravention may be required before the breach will give grounds to terminate. Different requirements apply to “shared housing units”.

#### **1.2 Non-Profit Continuing Housing Cooperatives**

Under s. 395 of the Act, the Cooperative may terminate membership only if, in the opinion of the directors:

(a) The Member has breached a condition of an agreement between the Member and the Cooperative or a bylaw of the Cooperative respecting:

- (i) possession or occupancy of the housing unit, or
- (ii) the use of the property connected to the housing unit

*and the Member has not remedied the breach within a reasonable time of receiving notice from the Cooperative to do so; [TAB 2: Sample Notice to Remedy Breach]*

(b) The Member has caused significant problems in a shared housing unit (e.g. a housing unit where the living, kitchen and washroom facilities may be shared by more than one household (Act, Section 385(j)); or

(c) The Member has on more than one occasion, contravened the bylaws of the Cooperative and the contraventions have continued to occur *after the Member has received written notice of the contraventions from the Cooperative.* [TAB 3: Sample Notice of Contravention]

### **1.3 Non-Profit Home Ownership Cooperative**

Membership can only be terminated if the Member breaches or repeatedly contravenes the share subscription agreement, the Articles, the bylaws or the policies of the Cooperative, or any agreement between the Member and the Cooperative (Act, Sections 404(1) and (2)). [TAB 3: Sample Notice of Contravention]

**2. Step 2: Resolution to Hold a Meeting to Hear the Matter**

**2.1 Non-Profit Continuing Housing Cooperative**

The directors must pass a resolution to hold a directors meeting to consider whether the membership of the member should be terminated (Act, Section 396(2)).

**2.2 Non-Profit Home Ownership Cooperatives**

The directors must pass a resolution to hold a meeting of the members to consider whether to terminate the membership of the member (Act, Section 402(2)).

**3. Step 3: Notice to the Member of the “Termination Meeting”**

**3.1 Non-Profit Continuing Housing Cooperatives**

**3.1.1** Under Section 396 of the Act, all notices must contain:

- (i) the Resolution to be considered at the Hearing;
- (ii) the grounds for termination of membership;
- (iii) a statement of whether there is a right to appeal.

**3.1.2** The Bylaws may contain additional information which must be included in the notice.

**3.1.3** There is no right to appeal to the members from termination on the following grounds (Act, Section 398):

- (i) Failure to pay charges or money due to the cooperative in respect of self-contained housing units;
- (ii) Vandalizing or destroying property belonging to the Cooperative;
- (iii) Using the housing unit for activities contrary to law;

- (iv) Threatening the safety of members of the Cooperative;
- (v) Being a physical danger to members of the Cooperative or other residents;
- (vi) Contravening a bylaw regulating the leasing of a self-contained housing unit to a non-member.

**3.1.4** The directors must give the Member 3 days' notice of a Hearing in respect of a non-appealable breach (Act, Section 398). **[TAB 4: Sample Notice of Hearing – No Appeal]**

**3.1.5** For all other breaches, the Member has a right of appeal to the Members in the event of termination, and the directors must give the Member 14 days' notice of the Hearing (Act, Section 396). **[TAB 5: Sample Notice of Hearing – Right of Appeal]**

## **3.2 Non-Profit Home Ownership Cooperatives**

**3.2.1** The Member must be given 14 days' notice of the Hearing, and the Notice must contain the Resolution to be considered and the grounds for termination of membership. **[TAB 6: Sample Notice of Hearing – Ownership Cooperatives]**

*Comment: It is recommended that all documents, statements and other records the Board or Membership intends to consider be provided to the member with the meeting notice, so that the member has the opportunity to know the case against him or her. Although this is not a requirement which is stipulated by the Act, it may be necessary to do so to comply with the common law legal requirement that the member receive a "fair hearing". Creating and providing this "record" also helps the Board or members to focus on the issues and the evidence which should be considered, and (together with the transcript and other evidence presented at the Board hearing) will form part of the formal Court record which the Board or members may use to justify its decision, if Court proceedings are required.*



**4. Step 4: The Hearing**

**4.1** Termination Meetings should be conducted like the hearings before a tribunal. In each case the Board (or the Members in the case of an Ownership Housing Cooperative) should consider all the relevant “evidence” which will usually consist of:

- Documents; and
- Unsworn statements of those who have direct knowledge of the contravention or breach,

and decide the following issues:

- Whether adequate notice has been provided;
- Whether there has been a contravention of Bylaws or a breach of an agreement;
- In the case of non-profit continuing housing cooperatives, whether notice has been provided and the breach has been remedied within a reasonable time after a Notice to Remedy Breach (for a breach under Section 395(1)(a)) or the contravention has continued after a Notice of Contravention has been given (for a breach under (Section 395 (1)(b)).
- In the case of non-profit home ownership cooperatives, whether the member breaches or repeatedly contravenes the share subscription agreement, the Articles, the bylaws or the policies of the Cooperative or any agreements between the member and the Cooperative (Section 404(1) and (2)).
- If the above three conditions have been satisfied, whether the breach or contravention warrants termination.

**4.2** The Member may appear personally or by agent or counsel (Act, Sections 396(4) and 404(5)).

**4.3** Member must receive a “fair” Hearing:

- 4.3.1** The Member must be provided with prior notice of the case against him/her. The Act requires notice of the text of the proposed resolution. It is also recommended that copies of all documents which are going to be considered be provided to the member with the hearing notice. The Member should be given adequate opportunity to question the “witnesses” and to respond and present his or her case.
- 4.3.2** Evidence irrelevant to the issues should not be considered or discussed.
- 4.3.3** The decision to terminate must be “reasonable”.
- 4.3.4** An adequate record of the Hearing must be made. The Hearing may be recorded. In any event detailed notes should be taken of the Hearing, and Minutes should be made and signed in the event they are required for a future Court Application.
- 4.3.5** 3/4 of the directors must vote in favour of a resolution to terminate membership in a Continuing Housing Cooperative (Act, Section 396(1)). The Act is not completely clear as to whether 3/4 of all directors or 3/4 of a quorum of directors must vote in favour. Our view is that 3/4 of a quorum is likely sufficient (Act, Section 73). *Recommendation: that all directors be present for these hearings, if possible.*
- 4.3.6** 3/4 of a quorum of at least 70% of the members of a Home Ownership Cooperative must vote in favour of termination (Act, Section 404 (2) and (3)).
- 4.3.7** A formal termination resolution should be made and recorded in the Board’s Minutes.

**4.3.8** The Board of a continuing housing cooperative is likely required to provide written reasons for its decision within 10 days (Act, Section 38(2)). Providing written reasons is likely a requirement at common law in any event. These reasons should summarize each of the issues considered by the Board, the evidence considered by the Board with respect to these issues, and the Board's decision with respect to both the evidence and issues.

*Recommendation: The Board should consider having their legal counsel present to assist the Board/Members and to ensure all persons hearing the matter understand their obligations with respect to procedural matters and the conduct of a fair hearing. A sample "Confidential Memorandum" for a continuing housing cooperative prepared by the author for the purpose of briefing boards of continuing housing cooperatives on termination procedure in a sample case is attached for illustration purposes [TAB 7 – Sample Memorandum – Procedure at Director's Termination Hearing]. The recommended procedure may vary from case to case. The author prepares similar memorandums for members in the event there is an appeal of a Board decision to members, and for the members of home ownership cooperatives, where the decision is made by the members, rather than a Board.*

**5. Step 5: Notice to the Member of the Outcome of the Hearing**

**5.1** The Member of a Continuing Housing Cooperative must be notified of the termination of membership within 7 days of the passage of the Resolution (Act, Section 396(5)). [TAB 8: Sample Notice of Termination of Membership and Rights of Occupancy]

**5.2** There is no requirement in the Act that a member of a Home Ownership Cooperative be given notice of the termination. It is nevertheless recommended that the notice be given, that reasons be provided, and that the Member be advised that proceedings will be taken to evict the Member if the Member does not vacate by the date specified in the resolution.

**6. Step 6: Appeal to Members**

**6.1** Where members of a Continuing Housing Cooperative have a right of appeal, the appeal must be held at the next meeting of the membership (Act, Section 397(1)). A special meeting may be called. The Board's decision can be affirmed or quashed by an ordinary resolution of the members.

**6.2** The Act does not provide for a right of appeal from the termination decision of the Members of a Home Ownership Cooperative.

**7. Step 7: Application for Court Order – Continuing Housing Cooperative**

**7.1** A continuing housing cooperative can apply for an Order by Originating Notice:

- (i) Declaring that the Member's membership and occupancy rights are terminated;
- (ii) Directing that a Writ of Possession to be issued;
- (iii) Directing the Member to compensate the Cooperative for:
  - (A) continued occupation of the housing unit after termination of membership,
  - (B) unpaid housing charges and utilities;
  - (C) damage to the housing unit; and
  - (D) costs associated with obtaining vacant possession of the housing unit, including legal costs.

**7.2** Notice of the application must be served on the Member at least 4 days before the date of the application. The Notice must contain:

- (i) A statement of the procedure for disputing the application; and

- (ii) A summary of the order requested if the application is not disputed.

**[TAB 9: Sample Originating Notice and Order]**

**7.3** Evidence to be considered in the Court application must be put forth in the form of an Affidavit which is usually sworn by one of the Board Members. The Affidavit should include the documents considered by the Board/Members and a record of the “hearing” before the Board or Membership.

**8. Step 7: Application for Court Order – Home Ownership Cooperatives**

**8.1** The Act does not provide a specific court procedure for the eviction of members of non-profit home ownership Cooperatives. These Cooperatives should take care to ensure that issues related to the termination of occupancy rights and the disposition of owned units, following termination are fully dealt with in their Bylaws and occupancy agreements. The Rules of Court and other statutes contain provisions which may be used, to evict or “eject” members who no longer have a legal right to occupy their units. These proceedings may also be commenced on Originating Notice. At least 10 days notice is likely required.

**E. JUDICIAL REVIEW**

The decision of Boards and Members may also be subject to a court application for judicial review by terminated members. Canadian case law from other provinces suggests that judicial review may not be available if a statute provides a mechanism for review of a termination decision – as is the case under the Alberta Act for non-profit continuing housing cooperatives.

*Comment: The possibility of judicial review is another reason why Boards and Members must follow the procedure under the Act, and afford members a fair hearing.]*

## **F. STANDARD BY WHICH COURTS WILL REVIEW THE TERMINATION DECISIONS OF BOARDS AND MEMBERS**

An important issue for Housing Cooperatives is the “deference” Courts will afford with respect to the decisions of Cooperative Boards and members to terminate membership.

There is very little Alberta case law which applies specifically to housing Cooperatives on this point.

In a 2002 Alberta Court of Appeal decision (*Wcislo v. Ramsay Heights Co-operative Housing Ltd.*, 2002 ABCA 268 para. 5) which considered the old Act, a Justice of the Alberta Court of Appeal stated:

The authorities clearly indicate that the Courts ought not likely interfere with decisions of tribunals such as the Board of this Co-operative Housing Association.

In a recent unreported decision (*Heritage Hills Housing Cooperative Ltd. v. Wendy Hart*, May 5, 2009), a Queen’s Bench Master commented:

Mr. Kaliel provided me with three cases: one from our Court of Appeal, one from Ontario, and one from B.C.; all of which indicate judicial deference should be given to the decision of the board and the membership committee [sic].

It is not for this Court to go behind what those two bodies decided...

There are a good number of cases from other provinces, as well as cases concerning the decisions of other types of boards. The following statement by an Ontario Judge (in *Ryegate (Tecumseh) Co-Operative Homes Inc. v. Stallard et al*, 194 D.L.R. (4<sup>th</sup>) 363):

This is a convenient place to note the classic “Wednesbury reasonableness” standard for the judicial review of any democratic body. Absent bad faith, dishonesty, reliance on a matter outside the proper scope of consideration, failure to consider some controlling issue, or some egregious breach of public policy, it is not for the court to substitute its own view of what is reasonable for the view of those who have democratically agreed to live together under a common set of mutual obligations. As the Master of the Rolls said in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp* (1947), 1 K.B. 223 (Eng. C.a.) at p. 230:

It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is quite right; but to prove a case of that kind would require something overwhelming,

and, in this case, the facts do not come anywhere near anything of that kind.

*Comment: It is essential that Cooperative Boards and Cooperative members follow the procedure stipulated by the Act and their bylaws. It is also essential that they afford members a fair hearing, and that they maintain records and provide written reasons which permit them to demonstrate to the Court that they have done so. If these requirements are met, the author's view is that Courts will likely not interfere, and will enforce, their termination decisions.*