IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Keen v. The Owners, Strata Plan NW 2408,* 2026 BCSC 325

Date: 20260227
Docket: S243635
Registry: New Westminster

Between:

Carrie Ann Keen and Mladen Miholjcic

Petitioners

And

The Owners, Strata Plan NW 2408

Respondent

- and -

Docket: S257831
Registry: New Westminster

Between:

Michael Proniuk and Lisa Daum

Petitioners

And

The Owners, Strata Plan NW 2408, Carrie Ann Keen and Mladen Miholjcic

Respondents

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

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Place and Dates of Hearing:	New Westminster, B.C. February 3-4, 2026
Place and Date of Judgment:	New Westminster, B.C. February 27, 2026

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I. INTRODUCTION

[1] Before the Court are two petitions, both arising from a dispute between two neighbours who own adjacent townhouses in a residential strata complex located at 9000 Ash Grove Crescent in Burnaby, British Columbia, known as “Ashbrook Place”.

[2] At issue in both petitions is whether the owners of unit 30 (Carrie Ann Keen and Mladen Miholjcic—the “Unit 30 Owners”) should be allowed to install a window on one of their exterior walls, in order to bring natural light into their interior stairwell. Their plan to do so is opposed by their neighbours in unit 31 (Michael Proniuk and Lisa Daum—the “Unit 31 Owners”), whose bedroom window overlooks that wall.

[3] The Unit 30 Owners filed their petition (the “Unit 30 Petition”) after the strata council determined that the proposed window installation would amount to a “significant change” or “significant alteration” in the use or appearance of common property within the meaning of s. 71 of the *Strata Property Act*, S.B.C. 1998, c.43 [*SPA*] and a parallel bylaw enacted by the strata corporation. The effect of that conclusion was to trigger the need to put the proposal to a vote requiring the approval of three quarters of the owners. In the resulting vote, the proposal failed to achieve the required majority. The Unit 30 Petition sought relief from this court aimed at reversing that outcome and allowing the Unit 30 Owners to proceed with the proposed installation.

[4] Before the Unit 30 Petition was heard, the Unit 30 Owners reached a settlement with the strata council. As part of the settlement, the strata council agreed that, provided the window conformed to certain specified criteria, its installation would no longer be considered to be a “significant change” and, on that basis, could proceed without the need for another vote of the owners and regardless of the result of the earlier one.

[5] When they learned of the settlement, the Unit 31 Owners filed their own petition (the “Unit 31 Petition”), seeking to prevent it from being implemented. They disagree with the strata council’s recent conclusion that the criteria stipulated in the settlement changed the nature of the proposal enough to eliminate the need for a

vote of the owners. Accordingly, they say that the Unit 30 Owners and the strata council remain bound by the result of the earlier vote rejecting the proposal, or alternatively, are required to submit the proposal to another vote before the proposed alteration can properly proceed.

[6] For the reasons that follow, I have concluded that the Unit 31 Petition should be allowed and the Unit 30 Petition dismissed.

II. BACKGROUND

A. Bylaw 14(9) and the CCPC

[7] Ashbrook Place consists of 71 residential townhouse-style strata lots. It is administered pursuant to the *SPA* by a strata corporation known as "The Owners, Strata Plan NW 2408" (the "Corporation"), represented by an elected council (the "Council").

[8] The Corporation has enacted Bylaw 14, which, among other things, sets out the steps owners must follow in seeking permission to alter common property. In this case, the most important provision is Bylaw 14(9), which states as follows:

> If an application is accepted by Council and the proposed alteration or change to the common property is considered "significant", the application will be referred to the strata corporation for approval, by ¾ majority vote, at the next annual general meeting or special general meeting. In this bylaw, "significant" means any change that represents a change in the appearance of the common property from what is typical or a change that negatively impacts adjoining strata lots. Whether or not the change negatively impacts an adjacent strata lot will be determined by Council, in mandatory consultation with the adjacent strata lots.

[9] In or about 1995, the Council struck a committee consisting of two or three Council members, to deal with requests by owners to alter common property (the "Change to Common Property Committee" or "CCPC"). Owners wishing to make such an alteration begin the process by approaching the CCPC chair or point person. After ensuring that the application is in order, the CCPC presents it to the Council for a vote.

B. Events Leading to the Unit 30 Petition

[10] The Unit 31 Owners purchased unit 31 in October 1988. The Unit 30 Owners purchased unit 30 in January 2005.

[11] Units 30 and 31 are three-storey townhouses that share a common wall. They also share a common exterior courtyard, which they face in a perpendicular orientation to one another.

[12] The Unit 30 Owners have been wanting to bring natural light into their stairwell for many years. On February 24, 2021, they sent the CCPC an email indicating that they had engaged a contractor to install two windows on the south-facing exterior wall enclosing that stairwell, including a square window on the main floor and a rectangular window on the second floor. According to the email, the Unit 30 Owners had sent the same drawings to the CCPC several years before that. They sought permission from the Council to proceed with the installation of the two windows.

[13] By October 2021, the plan had changed. The new request was for permission to install only one window. The attributes of the new window were clarified in subsequent correspondence between the Unit 30 Owners and the CCPC, as follows:

a) it was to be located on the exterior (south-facing) wall of the second floor of the unit 30 stairwell, with its bottom edge eight feet above the floor of the landing;

b) it was to be 36” wide and 54” tall; and

c) it was to be a picture window that could not be opened.

[14] The upstairs master bedroom window in unit 31 faces west and is often left open. It is located at roughly the same level and just a few feet away from the proposed location of the new south-facing window in unit 30.

[15] By letter dated November 25, 2021, the Unit 30 Owners advised the Unit 31 Owners of their plan to seek permission from the Council to install the new window.

[16] At a meeting on January 19, 2022, the Council initially voted to permit the Unit 30 Owners to proceed with the installation. The minutes of that meeting contain the following entry:

> f) Change Common Property Committee - Unit 30 - Window Installation
>
> It was:
>
> MOVED/SECONDED.
>
> To approve the request from Unit 30 to install a window for light on the stairs. The window will be 8 feet from the floor and will not create any inconvenience for the neighbors, as the Owners will not be able to look through the window and the only purpose of the window is to bring light into the stairs.
>
> CARRIED

[17] Before providing its official approval in writing to the Unit 30 Owners, the Council received a letter dated January 28, 2022 from the Unit 31 Owners. In that letter, the Unit 31 Owners complained that:

a) they had not been formally notified that the Council was considering the matter;

b) the Council had therefore failed to comply with the process stipulated in Bylaw 14(9), which expressly made consultation with the Unit 31 Owners mandatory before such an approval could properly be granted; and

c) the proposed window installation amounted to a significant change in the use or appearance of common property, inasmuch as it “negatively impacts [the Unit 31 Owners’] privacy and view”.

[18] The letter requested a meeting with the Council to discuss the issue. That meeting occurred on February 17, 2022. After the meeting, the Council investigated the matter further and sought additional information about the proposed new window from the Unit 30 Owners.

[19] The Council met again on March 7, 2022 to consider the issue in light of the additional information received. Due to a miscommunication, the Unit 30 Owners had not received advance notice of that meeting and were able to join only while it was already underway. Nevertheless, they were given an opportunity to make submissions in support of their application.

[20] Following the meeting, the Council concluded that the proposed new window would amount to a significant change or alteration requiring a three-quarters vote of the owners after all. The matter was accordingly placed on the agenda at the annual general meeting ("AGM") held on May 25, 2022. At that time, the motion was defeated by a vote of 19 in favour, 22 opposed, and 3 abstentions.

[21] In the meantime, on April 6, 2022, the Unit 30 Owners filed the Unit 30 Petition, naming the Corporation as the sole respondent. The relief sought therein included:

a) a declaration that the proposed new window installation did not amount to a significant change or alteration; and

b) an order allowing them to proceed with it on that basis, without the need for a three-quarters vote of the owners.

C. The Settlement

[22] On August 19, 2024, before the Unit 30 Petition was heard, the Unit 30 Owners and the Corporation reached a tentative settlement on the following terms:

a) the Unit 30 Owners would be permitted to install a new window having dimensions of 36" x 54", on the following additional terms:

i. if the window is installed such that the bottom of the window is no less than seven feet above the landing, the window can be all clear glass; or

ii. if the window is installed such that the bottom of the window is less than seven feet from the landing, the window to be installed will be a privacy window made completely of one continuous sheet of architectural privacy glass that provides privacy from both sides of the window;

b) in order to comply with Bylaw 14(9), the Council will hear and consider any new objections raised by the Unit 31 Owners (the main objection previously raised was, in Council's view, adequately addressed by the new terms set out in the previous sub-paragraph);

c) in exchange, the Unit 30 Owners would do the following:

i. complete an updated alteration and indemnity agreement in the appropriate form, attaching drawings setting out full details of the window dimensions, installation and specifications; and

ii. agree to a consent dismissal order in relation to the Unit 30 Petition and execute a release in favour of the Corporation.

[23] Although the Unit 30 Owners initially opted for the privacy glass option, they were unable to reach an agreement with the Council on the specifications of the privacy glass to be used. The settlement was therefore finalised on April 28, 2025, based on the other option contemplated by the terms of the tentative settlement (namely, that the new window would have clear glass and be installed at least seven feet above the landing).

D. Events Leading to the Unit 31 Petition

[24] The Council's consultation with the Unit 31 Owners concerning the proposal endorsed in the settlement began with a letter to them from the Corporation's property manager dated September 25, 2024, stating as follows:

> Council is advising you that after a long negotiation with the owners of Strata Lot #30, the owners have modified their request. They are now requesting the installation of the same size window in the same location but using

> architectural privacy glass rather than standard glass. Using architectural privacy glass is intended to deal with the privacy concerns you raised.

[25] The letter invited the Unit 31 Owners to provide their comments on that proposal. An identical letter was sent the following day (September 26, 2024), adding only that any comments they had were to be provided within seven days.

[26] The Unit 31 Owners responded by letter dated October 2, 2024, in which they complained about the process and reiterated their earlier objections to the proposal. They expressed their expectation that the Council would comply with the result of the earlier vote of the owners or, failing that, put the matter to a new vote of the owners.

[27] The property manager responded by email November 13, 2024, stating as follows:

> Council was able to move forward with this matter without going back to the owners as they have dealt with your issue of privacy. Other windows in the complex have been added as changes to common property as they were not impeding the privacy of others. Thereby making them not a significant change to common property. As part of the new window installation negotiations for #30 the glass will have to be opaque as to not allow the owner to see out of the window. This will then not impede your right to privacy. Council has taken direction on this matter from legal counsel and have taken your privacy issue into consideration at every step. This changes the significance of the change to common property. Council, in its purview can decide if a request is considered a significant change to common property by reviewing a set of criteria set out in the SPA and the Regulations. We do so when considering every change to common property.
>
> As to your issues about noise. You have not provided any evidence that noise transmission would increase to an unreasonable level. If the noise does increase and you have proof that the noise is intolerable it is within your purview to file a bylaw complaint with the property manager.
>
> As noted above, the parameters of the decision of the resolution of May 22, 2022, have changed thereby making it not a significant change to common property. Therefore, we are not compelled to take this new change to the owners for a ¾ vote approval. This decision has also been vetted by legal counsel.

[28] The Unit 31 Owners were not consulted when the settlement was finalised on April 28, 2025, on the basis that the window would be clear glass after all.

[29] Two days later, on April 30, 2025, the Unit 31 Owners filed an application in the Unit 30 Petition proceeding seeking an order adding them as respondents in that proceeding. That order was granted on June 19, 2025.

[30] They filed the Unit 31 Petition on May 12, 2025.

III. THE APPROPRIATE FORUM

[31] The combined effect of s. 16.1(1)(b) and s. 121(1) of the *Civil Resolution Tribunal Act,* S.B.C. 2012, c. 25 [*CRTA*], is to require this court to dismiss the Unit 30 Petition and the Unit 31 Petition, so that the matter can proceed instead before the Civil Resolution Tribunal (the "CRT"), unless the court determines that it is not in the interests of justice and fairness for the matter to proceed before the CRT.

[32] The Unit 31 Owners have applied in both proceedings for orders under s. 16.2(1)(b) of the *CRTA* that the CRT not adjudicate the claims so that they can proceed instead in this court. I granted those orders at the outset of the hearing before me. I did so on the basis that the parties agreed that it would not be in the interests of justice and fairness to dismiss these proceedings and remit the matter to the CRT at this stage, given that they are now ripe for determination in this court. I agreed with the parties that, having regard to the factors set out in s. 16.3 of the *CRTA*, requiring them to begin again before the CRT at this stage would serve no useful purpose and would only lead to more delay and additional cost.

IV. DISCUSSION

A. Would installation of the new window on the terms agreed upon in the settlement of April 28, 2025 amount to a "significant change" or a "significant alteration" in the use or appearance of common property?

[33] It is not disputed that because the boundary of unit 30 extends only to the mid-point of the wall on which the new window would be installed, the exterior façade of that wall is common property and the installation of a new window in that location would amount to a change or alteration in the use or appearance of that

common property. What is disputed is whether that change or alteration would be a "significant" one within the meaning of s. 71 of the *SPA* and Bylaw 14(9).

[34] On its face, s. 71 of the *SPA* prohibits strata corporations from making significant changes in the use or appearance of common property except in certain limited circumstances. The only exception applicable here is where three quarters of the owners have voted in favour of a resolution at an annual or special general meeting approving the proposed change. The CRT has held that s. 71 also prohibits strata corporations from permitting individual owners to make such changes unless one of those exceptions applies: *Cromie v. The Owners, Strata Plan VR 1103*, 2024 BCCRT 1050.

[35] The factors to be considered in deciding whether a change or alteration is "significant" for this purpose were set out by this court in the leading case of *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at para. 19, and are therefore known eponymously as the "*Foley* factors". They include the following:

a) the degree of visibility or non-visibility to residents and the general public of the change;

b) its effect on the use or enjoyment of a unit or a number of units or an existing benefit of a unit or units;

c) is there a direct interference or disruption as a result of the change;

d) the impact the change will have on the marketability or value of the unit;

e) the number of units in the strata corporation, and their general use; and

f) past governance in allowing or disallowing previous requests for changes to common property.

[36] The Unit 31 Owners rely on several of the *Foley* factors in arguing that the proposed change or alteration in issue here would be a significant one.

[37] First, they say that the proposed new window would be highly visible, at least to them. Although they also argue that it will also be visible to others, that is less than entirely clear on the evidence. There is no opposition from anyone else, other than the general vote of the owners on May 25, 2022 defeating the proposal.

[38] The Unit 31 Owners' primary complaint is that the proposed new window would adversely affect their use and enjoyment of their own bedroom window, insofar as it will lead to a loss of privacy, increased light and noise transmission into their bedroom, and consequently a reduction in the overall value of their unit.

[39] The Corporation and the Unit 30 Owners respond that the Unit 31 Owners have failed to adduce any evidence to support these allegations. In fact, neither side has adduced particularly compelling evidence to support their respective positions. Both sides rely heavily on their own subjective assertions, or, in some cases, hearsay assertions attributed to others.

[40] Nevertheless, I am satisfied on the evidence before me that installation of the proposed new window on the terms agreed upon in the settlement of April 28, 2025 would adversely impact the Unit 31 Owners, in at least some of the ways they allege.

[41] First, a photograph taken from the existing bedroom window in unit 31 shows that, given its proximity, the proposed new window would occupy a significant part of the right-hand field of view from there. Unless at least one of those windows was covered by a curtain or blinds, the Unit 31 Owners would be able to look directly into unit 30 through their bedroom window. Artificial light from the stairwell in unit 30 would shine into unit 31's bedroom.

[42] I disagree with the Corporation's submission that the terms of the April 28, 2025 settlement adequately addressed the privacy concerns raised by the Unit 31 Owners. That submission rests to a significant extent on a series of photographs taken of a window installed in a similar location in unit 51. In one of those photographs, the photographer was standing inside unit 51, looking straight out

through the window from the top of the staircase. It is true that, from that vantage point in that unit, one cannot see the bedroom window in unit 52, the unit in the comparable position to unit 31.

[43] However, units 51 and 52 belong to a different phase of the development. One important architectural difference between the two phases is that the roofline is significantly higher in units 51 and 52 than it is in units 30 and 31. Moreover, the window installed in unit 51 does not share the same dimensions as the window that is proposed to be installed in unit 30. Although the proposed new window in unit 30 would be installed at least seven feet above the floor of the landing, it may still be possible for someone descending the stairs down to the landing in unit 30 to see directly into unit 31 through the new window, particularly if they descend those stairs along the right-hand side wall. In any event, regardless of the likelihood of that possibility, the associated loss of privacy would stem from more than just the creation of new sight lines into unit 31.

[44] The Unit 30 Owners and the Corporation argue that the pre-eminent factor in this case is the Council's prior history of routinely allowing individual owners to make changes to the common property, including by installing new exterior windows, without the need for a three-quarters vote of the owners. In their submission, that history weighs heavily against a finding that installing the proposed new window in issue here would amount to a significant change.

[45] The reasoning of the CRT in *Richardson v. Simmons*, 2020 BCCRT 241 is helpful on this point. In that case, the CRT held that the replacement of an existing window with a larger one did not amount to a significant change, partly because the larger window was in the same location and therefore did not increase visibility into the neighbouring unit. Nevertheless, the adjudicator would still have found that and the other proposed changes to be significant had it not been for "the long pattern of other owners making significant changes to common property without proper strata approval" (para. 91).

[46] This case is distinguishable from *Richardson* in several important ways.

[47] First, the proposed new window in issue here would indeed make it possible for the occupants of one unit to see into the interior of the neighbouring one. That possibility does not currently exist at all.

[48] Second, there is no similar historical pattern in evidence here. In *Richardson*, the adjudicator helpfully listed a number of considerations to bear in mind when weighing the element of past governance against the other *Foley* factors, stating as follows:

> 58. I find that the Court in *Foley* included the last factor to guard against the potential significant unfairness if the strata treated some owners differently than others. That said, it is only one factor and is not determinative. I find that the weight to be given this factor will depend on context. For example, the following issues may be relevant to determining how much weight to give this factor:
>
> a. Did an owner make the change with the strata's approval or did the strata make the change?
>
> b. How similar is the change to previous changes?
>
> c. How often has the strata allowed similar changes in the past?
>
> d. How long ago did the strata allow a similar change?
>
> e. Did the owner specifically base the change on past changes?
>
> f. Does the strata generally follow the procedures in the SPA and bylaws?

[49] In this case, the evidence of past governance history is equivocal, at best. A longstanding member of the CCPC has deposed that the Council has generally approved requests to alter common property without the need for a three-quarters vote of the owners unless an exception applies, such as where the proposed alteration “negatively impacts a neighbour based on a reasonable concern”. There is no previous history of approving the installation of a new window in the face of reasonable opposition from a neighbour, and none involving units configured like units 30 and 31.

[50] This was not the first time that a neighbour’s objection to a proposed change to common property has led the Council to treat the proposed change as significant. On another such occasion, the Council determined that the proposed installation of a new patio deck amounted to a significant change because a neighbour complained

about the associated loss of privacy. The Council changed its mind and allowed the project to proceed on the basis that it was no longer a significant change only after the objecting neighbour sold their unit and the new owner voiced no objection.

[51] It follows that past governance history has created an expectation that the Council will comply with Bylaw 14(9). A neighbour's objection, without more, will not necessarily be enough for the Council to treat the proposed alteration as significant. However, if the objection is seen to have a reasonable basis, then it may.

[52] In this case, the Council found the Unit 31 Owners' objections, once they were heard, to be reasonable, at least in part, and, on that basis, concluded that the proposed alteration would be a significant one. That conclusion triggered a vote of the owners in which the proposal was defeated. All of this was consistent with Bylaw 14(9) and the prior governance history. There is no precedent for the Council to reverse itself after such a vote and to conclude, with no real change in the surrounding circumstances, that the same proposed alteration would not be a significant one after all.

[53] In view of the adverse impacts on the Unit 31 Owners and the equivocal nature of the governance history, I have concluded that the *Foley* factors weigh in favour of a finding that the proposed change or alteration in issue here would indeed be a significant one.

B. Has there been significant unfairness?

[54] The Unit 30 Owners and the Unit 31 Owners both seek relief under ss. 164 and 165 of the *SPA*, which state as follows:

> Preventing or remedying unfair acts
>
> 164 (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair
>
> (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or

> (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
>
> (2) For the purposes of subsection (1), the court may
>
> (a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,
>
> (b) vary a transaction or resolution, and
>
> (c) regulate the conduct of the strata corporation's future affairs.
>
> Other court remedies
>
> 165 On application of an owner, tenant, mortgagee of a strata lot or interested person, the Supreme Court may do one or more of the following:
>
> (a) order the strata corporation to perform a duty it is required to perform under this Act, the bylaws or the rules;
>
> (b) order the strata corporation to stop contravening this Act, the regulations, the bylaws or the rules;
>
> (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

[55] The leading case on the interpretation of s. 164 is *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, leave to appeal to SCC ref'd [2012] S.C.C.A. No. 141. At para. 30 of *Dollan*, Garson J.A., writing for the majority, distilled the applicable test down to the following questions:

a) Examined objectively, does the evidence support the asserted reasonable expectations of the petitioner?

b) Does the evidence establish that the reasonable expectation of the petitioner was violated by action that was significantly unfair?

[56] Both the majority and the dissenting appellate judgments in *Dollan* endorsed the *dicta* of Ryan J.A. in *Reid v. The Owners, Strata Plan LMS 2503*, 2003 BCCA 126, as to the meaning of the term "significantly unfair" in this context. An act of a strata corporation can be said to be "significantly unfair" for this purpose when it is "oppressive and unfairly prejudicial": *Reid* at para. 26. In addition, the requirement to show that the unfairness complained of is "significant" means that the court "should

not interfere with the actions of a strata council unless those actions result in something more than mere prejudice or trifling unfairness": *Reid* at para. 27.

[57] In this case, the Unit 30 Owners and the Unit 31 Owners complain about different actions by the Council and the Corporation.

[58] The Council first determined that installation of the proposed new window would not amount to a significant change (at the Council meeting on January 19, 2022), then that it would (following the Council meeting on March 7, 2022), only later to revert to the position that it would not (in the settlement of April 28, 2025).

[59] There is support in the jurisprudence for the proposition that a strata council is not bound by its previous decisions and may therefore change its mind: *Reid v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 1061, at para. 34. What is in issue here is whether one or more of the Council's reversals led to a significantly unfair result.

[60] I disagree with the Unit 30 Owners' submission that the Council was bound by its initial decision of January 19, 2022 to allow the proposed window installation to proceed on the basis that it would not amount to a significant change. The Council made that determination before it had engaged in the "mandatory consultation" with the Unit 31 Owners required by Bylaw 14(9). The parties had a reasonable expectation that the Council would comply with Bylaw 14(9) in making such a determination.

[61] After hearing from the Unit 31 Owners as Bylaw 14(9) required, the Council concluded that the Unit 31 Owners had a reasonable basis for complaining about the adverse impacts of the proposed window installation on them, so as to render the proposed change a significant one. This led to the vote of the owners defeating the proposal at the May 25, 2022 AGM.

[62] The Council later reversed itself again when it settled with the Unit 30 Owners on April 28, 2025. Had the settlement proceeded on the basis of the privacy glass option, the reversal might have been justified on the basis that the proposal was different than the one previously defeated. However, that is not what occurred.

[63] Instead, the Council entered into a settlement allowing the Unit 30 Owners to proceed with a proposal that:

a) the Council had previously determined would amount to a significant change, based on the concerns expressed by the Unit 31 Owners; and

b) on that basis, had been put to a vote of the owners at an AGM, in which it was defeated.

[64] That process did not conform to the requirements of Bylaw 14(9), contrary to the reasonable expectations of the Unit 31 Owners. The resulting unfairness was compounded when, in finalising the settlement, the Council consulted the Unit 31 Owners only on the privacy glass option, which is not the one that it ultimately endorsed in the settlement.

[65] All of this led to a result that was significantly unfair to the Unit 31 Owners. I have therefore concluded that they are entitled to at least some of the relief they are seeking to remedy that significant unfairness.

[66] I have reached the opposite conclusion on the Unit 30 Petition.

[67] Although the Unit 30 Owners have settled their complaints as against the Corporation, the Unit 31 Owners successfully applied since then to be added as respondents in the Unit 30 Petition and have sought relief in the Unit 31 Petition that undermines the basis for the settlement. I have now decided to grant that relief, at least in part. It is therefore necessary to consider the complaints advanced by the Unit 30 Owners in the Unit 30 Petition, despite the settlement.

[68] I have already rejected the main complaint advanced by the Unit 30 Owners in the Unit 30 Petition, namely, that the Council wrongly concluded, following the meeting of March 7, 2022, that the proposed new window installation would amount to a significant change in the use or appearance of common property. Instead, I have found that the Council arrived at the correct conclusion on that occasion.

[69] I have also rejected the Unit 30 Owners' complaint that it was significantly unfair or otherwise improper for the Council to have reversed itself in doing so, having previously determined at its meeting on January 19, 2022, that the proposed new window installation would not amount to a significant change. As I noted above, that earlier determination was reached in violation of Bylaw 14(9), for want of the requisite "mandatory consultation" with the Unit 31 Owners.

[70] The Unit 30 Owners also complain about the process followed at the meeting on March 7, 2022, insofar as they did not receive advance notice of that meeting. I am not persuaded that the process was, for that reason, significantly unfair to the Unit 30 Owners, inasmuch as they were able to present their case at that meeting, despite having joined it late. In any event, they had another opportunity to present their case at the AGM on May 25, 2022, of which they had adequate notice.

[71] Turning from the process to the substance of the decision of the owners at the May 25, 2022 AGM to refuse the Unit 30 Owners' application, the Unit 30 Owners complain that the decision itself was oppressive and unfairly prejudicial to them.

[72] In advancing that complaint, they rely heavily on *Dollan*. In that case, the petitioners wanted to replace an opaque spandrel glass window in their unit with a new window made with clear glass, in order to avail themselves of the impressive exterior view that a clear glass window would give them. The strata corporation concluded that the proposed change would be a significant one, and on that basis, remitted the application to a three-quarters vote by the owners, in which the proposal was defeated.

[73] The petitioners were successful before L. Loo J. in obtaining relief under s. 164 of the *SPA*, reversing the owners' decision on the basis that it was significantly unfair to the petitioners. Her decision was subsequently upheld on appeal, with Garson J.A. and Hall J.A. concurring in that result and D. Smith J.A. dissenting.

[74] Central to the decisions in this court and in the majority judgments in the Court of Appeal was the fact that the developer had promised the petitioners (and the other owners who had purchased the so-called “01 units” in which the opaque spandrel glass was installed), before they purchased their units, that they would have a clear glass window in that space. When the building was completed, the developer instead installed opaque spandrel glass in the 01 units, without notice to them, in order to protect the privacy of the neighbouring units (i.e., the so-called “02 units”), who received the clear glass windows as promised.

[75] Both Garson J.A. and Hall J.A. upheld the conclusion of L. Loo J. that it was significantly unfair for the majority owners of the 02 units to use their majority voting power to prevent the petitioners from reverting to a clear glass window as promised. In her dissenting judgment, D. Smith J.A. held that the acknowledged unfairness of that result should have been treated as an issue between the petitioners and the developer, rather than as one falling to the strata corporation to resolve.

[76] In explaining that result, Garson J.A. wrote as follows, at para. 37:

> … If the owners of 02 units wish privacy at times, they could install and close blinds in their own windows. It is burdensome (and that is my interpretation of the chambers judge’s decision) to expect the owners of 01 units to entirely lose their view in order to afford occasional privacy to certain 02 units. The chambers judge found that this transferring of the burden was significantly unfair and I see no error in her conclusion …

[77] Relying on that passage, the Unit 30 Owners argue that the Unit 31 Owners, if they wish to have privacy at times, can, like the 02 unit owners in *Dollan*, install and close blinds on their own window. Their ability to do so reduces the weight that their desire for privacy should be given, just as it did in *Dollan*, according to the Unit 30 Owners.

[78] I do not find that argument persuasive. The observation of Garson J.A. about the availability of blinds as a solution for the unit 02 owners must be understood in the unusual factual context presented by that case. That reasoning does not apply with the same force in this case.

[79] Here, the Unit 30 Owners complain about the lack of natural light in their stairwell. Their desire to install a window to bring natural light into that space is understandable. However, the benefit to them that would flow from making that change must be weighed against the competing interest of the Unit 31 Owners in maintaining the more private view they currently enjoy from their bedroom window. On the facts of this case, it is no answer to say that the Unit 31 Owners can, if they wish, maintain their privacy, at the expense of their view, simply by keeping their blinds closed.

[80] The perceived unfairness that drove the result in *Dollan* is absent here. In this case, both sets of owners purchased their respective units knowing there was no window in the south wall of unit 30. Unlike in *Dollan*, the reasonable expectations of the owners when they purchased their respective units were consistent with the *status quo*. Another reasonable expectation that can fairly be attributed to them, given the terms of s. 71 of the *SPA* and Bylaw 14(9), was that that *status quo* could only be changed if the owners agreed to change it by way of a three-quarters vote.

[81] Given those reasonable expectations, I have concluded that the decision of the owners at the May 25, 2022 AGM to refuse the application of the Unit 30 Owners to install the window on the terms proposed was not, in its substance, significantly unfair to them.

[82] Having found no significant unfairness in either the process or the substance of the Corporation's decision to refuse the Unit 30 Owners' application, I am dismissing the Unit 30 Petition.

C. What is the appropriate remedy?

[83] I have found that that the decision of the Council refusing to treat the proposed new window installation agreed upon in the April 28, 2025 settlement as a significant change, was significantly unfair to the Unit 31 Owners.

[84] To remedy that significant unfairness, I am granting them the following relief:

a) a declaration that:

i. the proposed installation of a window in unit 30, on the terms agreed upon between the Unit 30 Owners and the Corporation on April 28, 2025, would amount to a significant change in the use and appearance of common property within the meaning of s. 71 of the *SPA* and Bylaw 14(9), necessitating a three-quarters vote of the owners before it could properly proceed; and

ii. that proposal has already been defeated by the vote of the owners that took place at the May 25, 2022 AGM; and

b) an order setting aside:

i. the settlement of April 28, 2025; and

ii. the Council's resulting determination that the proposed new window installation contemplated by that settlement would not be a significant change in the use and appearance of common property within the meaning of s. 71 of the *SPA* and Bylaw 14(9), necessitating a three-quarters vote of the owners before it could properly proceed.

V. SUMMARY AND DISPOSITION

[85] The Unit 31 Petition is allowed. To remedy the significant unfairness I have found, I am granting the relief set out in the previous paragraph.

[86] The Unit 30 Petition is dismissed.

[87] As the successful party, the Unit 31 Owners are entitled to their costs in both proceedings.

"Milman J."