# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1289083 B.C. Ltd. v. Owners, Strata Plan BCS3215,* 2025 BCSC 76

Date: 20250117
Docket: S241628
Registry: Vancouver

Between:

**1289083 B.C. Ltd.**

Petitioner

And

**The Owners, Strata Plan BCS3215**

Respondent

Before: The Honourable Justice Branch

## Reasons for Judgment

| | |
|---|---|
| Counsel for the Petitioner: | P. Mendes<br>A.J. Chang |
| Counsel for the Respondent: | V. Franco |
| Place and Date of Hearing: | Vancouver, B.C.<br>November 21-22, 2024 |
| Place and Date of Judgment: | Vancouver, B.C.<br>January 17, 2025 |

## I. INTRODUCTION

[1] This is an application by the respondent asking that the Court decline jurisdiction over this petition, and instead direct that the matter be heard by the Civil Resolution Tribunal ("CRT").

[2] For the reasons expressed below, I agree that the Court should defer this matter to the CRT's jurisdiction.

## II. BACKGROUND

[3] The respondent strata corporation (the "Strata") consists of 73 residential strata lots and two commercial strata lots located in a high-rise tower. The two commercial lots are lots 74 and 75, which are located at street level.

[4] The petitioner became the owner of strata lot 75 ("SL75") on October 19, 2021. The Petitioner's principal is Dr. Edmund Wong. Dr. Wong has been a dentist for 30 years and is in the business of buying, building and leasing dental offices to other dentists. The petitioner corporation was formed by Dr. Wong for the purpose of purchasing SL75 and converting it into a dental office.

[5] Soon after purchasing the property, the petitioner complained to the Strata that SL75 lacked sufficient drainage to serve as a dental office. Correcting the problem would require coring into the concrete floor slab.

[6] The petitioner pointed out that Strata lot 74 ("SL74") has been used as a dentist's office for the past 15 years, and that there were apparently already more than 50 holes in the concrete slab facilitating drainage from that unit.

[7] The petitioner concedes that the Strata must grant written approval for the proposed coring, as the work would involve alterations to common property under the Strata's Bylaw 8.1. The Strata's bylaw language in this respect mirrors the language of Standard Bylaw 6(1) found in the Schedule of Standard Bylaws under the *Strata Property Act,* S.B.C. 1998, c. 43 [*SPA*]. The Standard Bylaws are the default bylaws for a strata corporation under s. 120 of the *SPA*.

[8] The Strata also has several non-standard bylaws relevant to this petition. They provide that when applying to alter common property, an owner must "submit, in writing, detailed plans and descriptions of intended alterations": Bylaw 8.2(a). Bylaw 50.2(b) goes on to say that:

> … the strata corporation will do no act nor pass any bylaw or rule or regulation which would have the effect of prohibiting, preventing or impairing the owners of strata lots 74 and from fully utilizing those strata lots for commercial purposes in accordance with the applicable zoning bylaws and rules and regulations for the City of Vancouver in effect from time to time

[9] Note that Bylaw 50.2(b) does not mention SL75, which the petitioner says is an "obvious typo" since it does say "lots 74 and …" and all the references to strata lots in the section are plural.

[10] On January 24, 2022, the petitioner emailed the Strata requesting permission to present its renovation request at the next Strata Council ("Council") meeting. Dr. Wong attended the February 10, 2022, Council meeting. The meeting notes indicate that Dr. Wong was advised that the Council had not yet received documents related to the request and that he should first submit the appropriate documentation.

[11] On March 31, 2022, the petitioner submitted a written alteration request (the "First Request"). Further correspondence followed between Dr. Wong and the Strata. On May 19, 2022, Dr. Wong requested to meet with the Council president. On October 3, 2022, Dr. Wong provided further details and documents regarding the First Request and offered to attend the next Council meeting if the Strata would find it helpful. The Strata advised Dr. Wong they would consider the First Request at its November 24, 2022 Council meeting, and that Dr. Wong's presence was not necessary.

[12] On November 24, 2022, the Council denied the First Request. In a letter dated November 28, 2022, the Strata advised Dr. Wong that the First Request had been denied "in accordance with the Bylaws of the Strata, and specifically Bylaw 8". No other reasons were provided.

[13] On May 9, 2023, the petitioner submitted a second alteration request (the "Second Request") and again asked for a hearing. Dr. Wong attended a hearing with the Council on May 26, 2023. On June 2, 2023, the Strata wrote to the petitioner advising that it had rejected the Second Request due to concerns "about modifications to the concrete floor and slabs and damage to the post-tensioning cables."

[14] Subsequently, the petitioner consulted with a structural engineer specializing in construction using post-tension cabling. The structural engineer advised that post-tension cables would not normally be in a ground-floor concrete slab and confirmed specifically that there are no post-tensioned cables in the ground-floor slab beneath SL75.

[15] Sometime between September 29 and October 5, 2023, the petitioner's lawyer forwarded the structural engineer's letter to the Strata and requested that the Strata reconsider its decision (the "Third Request"). On October 12, 2023, the Strata's lawyer advised the petitioner's lawyer that they were reviewing the request. The Strata subsequently consulted with its own engineer. Their engineer confirmed that there were no post-tensioned cables in the floor but concluded risks were involved in the coring, and that "[w]e can definitely argue that cutting … through the slab is not acceptable without proper slab modelling and additional slab calculations". On December 21, 2023, the Strata denied the Third Request.

[16] On January 11, 2024, the Strata's lawyer wrote to the petitioner's lawyer and advised as follows:

> Coring work alterations can result in significant damage to the building, including the structure of the building, which is a common property that the Strata Corporation repairs and maintains. Again, the strata council is prepared to consider a revised alteration application from your client that would not require coring work for the strata council's further review.

[17] The petitioner alleges that the Strata has not provided adequate evidence that coring poses a risk of damage. However, the Strata has stood by its decision. Hence, the present petition.

[18] The key issue raised by the petition is whether the Strata acted in a significantly unfair manner by not granting written approval to the petitioner to alter the common property, as well as its own strata lot. The petition relies on s. 164 of the *SPA*, which allows a strata owner to bring a proceeding where it believes they have been treated in a significantly unfair manner. The petitioner seeks a declaration that the Strata has conducted itself significantly unfairly towards the petitioner, general and aggravated damages, or alternatively special damages.

[19] In terms of its damages, the petitioner says that it has:

a) been unable to renovate the office for use as a dental office;

b) been unable to conduct the business for which SL75 was purchased;

c) been unable to earn the estimated triple net rent, including improvements of $78,240/month (based on $60 per square foot x 1304 square feet) to which it would have been entitled had a dental practice been allowed to move in; and

d) suffered losses of $280,393 as of January 31, 2024, which losses continue to mount.

[20] The Strata argues that the CRT should properly hear this claim given that it is over common property held by a strata corporation.

## III. ANALYSIS

### A. Statutory Provisions

[21] The relevant statutory provisions of the *Civil Resolution Tribunal Act*, S.B.C. 2012 c. 25, [*CRTA*] are ss.16.1, 16.3, 121 and 123 (1)-(2):

> **Court must stay or dismiss certain proceedings**
>
> 16.1(1) Subject to subsection (2) and section 16.4 (1) and (2) [*bringing or continuing claim in court*], if, in a court proceeding, the court determines that all matters are within the jurisdiction of the tribunal, the court must,

> (a) in the case of a claim within the exclusive jurisdiction of the tribunal, dismiss the proceeding,
>
> (b) in the case of a claim in respect of which the tribunal is to be considered to have specialized expertise, dismiss the proceeding unless it is not in the interests of justice and fairness for the tribunal to adjudicate the claim, or
>
> (c) in any other case, stay or dismiss the proceeding, as the court considers appropriate, unless it is not in the interests of justice and fairness for the tribunal to adjudicate the claim.

…

**Considerations in the interest of justice and fairness**

16.3 (1) For the purposes of sections 16.1 (1) and 16.2 (1), when deciding whether it is in the interests of justice and fairness for the tribunal to adjudicate a claim, the court may consider the following:

> (a) whether an issue raised by the claim or dispute is of such importance that the claim or dispute would benefit from being adjudicated by that court to establish a precedent;
>
> (b) whether an issue raised by the claim or dispute relates to a constitutional question or the *Human Rights Code*;
>
> (c) whether an issue raised by the claim or dispute is sufficiently complex to benefit from being adjudicated by that court;
>
> (d) whether all of the parties to the claim or dispute agree that the claim or dispute should not be adjudicated by the tribunal;
>
> (e) whether the claim or dispute should be heard together with a claim or dispute currently before that court;
>
> (f) whether the use of electronic communication tools in the adjudication process of the tribunal would be unfair to a party in a way that cannot be accommodated by the tribunal.

(2) For the purposes of section 16.1 (2), when deciding whether it is in the interests of justice and fairness for the tribunal to make the determination referred to in that subsection, the court may consider the principle of proportionality.

…

**Claims within jurisdiction of tribunal for strata property claims**

121(1) Except as otherwise provided in section 113 [*restricted authority of tribunal*] or in this Division, the tribunal has jurisdiction over a claim, in respect of the *Strata Property Act*, concerning one or more of the following:

> (a) the interpretation or application of the *Strata Property Act* or a regulation, bylaw or rule under that Act;
>
> (b) the common property or common assets of a strata corporation;
>
> (c) the use or enjoyment of a strata lot;

> (d) money owing, including money owing as a fine, under the *Strata Property Act* or a regulation, bylaw or rule under that Act;
>
> (e) an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant;
>
> (f) a decision of a strata corporation, including the council, in relation to an owner or tenant;
>
> (g) the 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 this Act, the tribunal is to be considered to have specialized expertise in respect of claims within the jurisdiction of the tribunal under this Division.
>
> …
>
> **Orders available in strata property claims**
>
> 123 (1) In resolving a strata property claim, the tribunal may make one or more of the following orders:
>
> (a) an order requiring a party to do something;
>
> (b) an order requiring a party to refrain from doing something;
>
> (c) an order requiring a party to pay money.
>
> (2) In resolving a strata property claim described in section 121 (1) (e) to (g), the tribunal may make an order directed at the strata corporation, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.

[22] The provision of the *SPA* relied upon by the petitioner is s. 164:

> 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.

### B. Are the Claims Within the Jurisdiction of the *CRT*?

[23] The Strata argues that the issues raised in the petition fall within s. 121of the *CRTA*. Specifically, the issues relate to:

a) the interpretation of the *SPA* and Strata's Bylaws (*CRTA,* s. 121(a));

b) the common property of the Strata (*CRTA*, s. 121(b));

c) the use and enjoyment of a strata lot (*CRTA*, s. 121(c)); and

d) the actions and decisions of the Strata Council in relation to the petitioner (*CRTA*, s. 121(e) and (f)).

[24] The Strata argues that since the CRT has specialized expertise in relation to strata property claims under s. 121(2) of the *CRTA*, this Court must stay or dismiss the petition unless "it is not in the interests of justice and fairness for the [CRT] to adjudicate the claim": s.16.1(1)(b).

[25] The petitioner responds that its claims are not within the scope of ss. 121 and 123 of the *CRTA* because they are advanced under s. 164 of the *SPA*.

[26] The fact that claims can be advanced under s. 164 of the *SPA* does not necessarily mean that they are not also matters within the jurisdiction of the CRT.

[27] I conclude that the matters raised in the petition could be pursued either before the Court or the CRT. Both s. 164 of the *CPA* and ss. 121-123 of the *CRTA* allow the relevant body to determine whether a strata corporation has acted in a significantly unfair manner. Both statutes allow for a monetary award to be issued if such a finding is made.[1]

[28] Courts have treated the test for significant unfairness under the two statutes as functionally equivalent. In *Time Share Section of The Owners Strata Plan N 50 v. Residential Section of The Owners Strata Plan N 50*, 2021 BCSC 486 [*Time Share*], the Court stated:

> [113] The provisions of the legislation are clear. The Supreme Court has jurisdiction under s. 164 of the *SPA*, to remedy actions or threatened actions that are significantly unfair. The CRT has the authority to consider whether an action enumerated under s. 121(e)-(g) is significantly unfair.

[1] Section 164(2) includes broad remedial powers which (while not directly outlined in the section) can include a monetary award: *Radcliffe v. The Owners, Strata Plan KAS1436*, 2015 BCCA 448; *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753 at para. 89.

[29] In *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, the Court held:

> [52] Turning to the case at bar, I accept that it is one that can be said to fall generally under the concurrent jurisdiction of the Tribunal and the Court, notwithstanding the fact it is a s. 121 CRTA strata property claim. While the Tribunal may have special expertise regarding such claims, it does not have exclusive jurisdiction over them: *West v. The Owners, Strata Plan BCS* 2637, 2021 BCSC 824 at para. 36. Indeed, Ms. Dolnik could have tried to bring her claim before this Court had she wished to do so. Admittedly, she would then have run up against ss. 16.1, 16.3 and 16.4 of the CRTA which effectively impose a rebuttable presumption that the claim should be dismissed by the Court so that it can be heard by the Tribunal instead, unless it is not in the interests of justice and fairness for the Tribunal to do so. Nevertheless, the legislation does allow for the possibility that specific legal issues in the *SPA* may be adjudicated at first instance by both the Tribunal and the Court.
>
> …
>
> [83] Our Court of Appeal's decision in *Dollan* is indeed the leading case that has considered s. 164 of the SPA, and it is evident that the interpretive principles set out for s. 164 of the SPA apply equally to s. 123(2) of the CRTA. …

[30] The petitioner relies on two decisions to support its position that only the Court has jurisdiction over s.164 claims, but I find that both cases are distinguishable. *Time Share* involved a judicial review and, as such, did not face the jurisdictional question squarely. Furthermore, the *Time Share* decision only considered whether the CRT has the power to apply s. 164. It clearly does not, as the Court in *Time Share* concluded at para. 115. But this looks at the issue from the wrong end of the telescope for present purposes. The issue here is whether the claims presently advanced under s. 164 of the *SPA* could also be advanced under ss. 121 and 123.

[31] Similarly, *The Owners, Strata Plan VR 778*, 2023 BCSC 552 at paras. 210-216 ("*VR 778*") does not assist the petitioner. *VR 778* concerned a dispute regarding the replacement of a strata's roof. The main petition involved the strata's effort to impose a level to fund the repairs. The petition was dismissed due to procedural irregularities. Section 164 only arose in the context of an application brought by one of the owners. The application sought disclosure and directions regarding the strata's legal expenses. The Court found that such relief was outside the scope of

the main petition and hence was not properly brought as a cross-application. As such, any comments about the s.121 jurisdictional question were clearly *obiter*. But even these comments were limited in scope. The application regarding the legal expenses purported to rely, in part, on ss. 164-165 of the *SPA.* In resisting the application, the strata argued that any such application should have been brought before the CRT. The Court acknowledged that "neither party had a well-developed argument in relation to whether this Court had jurisdiction" but concluded that, based on the manner in which the applicant had framed the relief sought in relation to legal fee disclosure issues, "the orders [fell] outside the scope of s. 121 and s. 122 of the *CRT Act*": paras. 215-216. Hence the circumstances and findings on this point in *VR 778* were unique, *obiter* and limited.

[32] The petitioner also says that the CRT cannot grant the declaratory relief sought in the petition, and hence the Court must retain jurisdiction. I disagree. In *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379 at para. 67, the CRT held that "the tribunal may be able to make a declaratory order if such an order is incidental to a claim for relief in which the tribunal has jurisdiction". In this case, the petitioner's core claim is that the Strata conducted itself in a significantly unfair manner. This parallels the declaratory relief sought, which is for a declaration that the Strata "has conducted itself significantly unfairly towards the Petitioner". Such declaratory relief is purely incidental to the core significant unfairness claim. Indeed, the declaratory relief is arguably less than incidental – it is redundant.

**C. The Interests of Justice and Fairness**

[33] Given that the claims could be advanced under either statute, and the CRT is a specialized tribunal in relation to such claims, the matter must be dismissed pursuant to s.16.1(1)(b) of the *CRTA* "unless it is not in the interest of justice and fairness" for the CRT to adjudicate the claim.

[34] Section 16.3 of the *CRTA* sets out factors that a court may consider as part of this evaluation. These factors are non-mandatory and non-exhaustive: *Canadian*

*Ramgarhia Society v. Panesar*, 2022 BCSC 751 at para. 31. I apply the factors most applicable to the present fact pattern below.

***1. Is There an Issue of Such Importance that it Would Benefit from a Court Decision in Order to Establish a Precedent?***

[35] In *Downing v. Strata Plan VR2356*, 2019 BCSC 1745 [*Downing BCSC*], Justice Crerar provided the following comments on this factor:

> [42] First, as per s. 16.3(1)(a), the petitioner argues that the dispute is of great importance not only to the petitioner, but to other strata owners in her complex, and strata owners generally: when may a strata corporation enter and physically alter a strata unit? While this may be an important issue, I find that it falls squarely within the CRT's statutorily recognized area of expertise, and will likely turn entirely or substantially on an interpretation of the SPA as well as the applicable bylaws of the individual strata corporation. Further, while precedential value is a stated reason that the court may elect to adjudicate a given strata dispute, precedent is not entirely a monopoly of the courts: the reasons of the BCCRT are publicly available online and would provide persuasive, albeit not binding, authority and guidance for future similar disputes. Finally, this dispute will largely turn on the individual facts: whether the specific words constituted an authorization, and what degree of dismantling was necessary or appropriate given the specific water damage.

[36] Similar to the situation in *Downing,* I recognize that while assessing significant unfairness is an important issue: (1) it is clearly already within the CRT's specialized jurisdiction, (2) "precedent is not entirely a monopoly of the courts", and (3) this particular dispute will largely turn on its individual facts, thereby weakening any precedential value.

[37] The petitioner suggests that the following points raise issues of precedential value:

> a. The extent to which principles of natural justice and procedural fairness apply to a strata corporation reviewing alteration requests. The Court has suggested that such principles, which typically apply in the context of administrative law, may apply to strata council decisions about how bylaw violations are investigated and punished but has not said to what extent they apply and given no guidance on how they apply in the context of alteration requests. *Chorney v. Strata Plan VIS770*, 2016 BCSC 148 at 17 and 52
>
> b. If common law rules apply, is any discretion granted under the bylaw of no force to the extent that they contradict common law rules of principles of natural justice and procedural fairness under s. 121 of the *SPA*? Section 121

provides that a bylaw is not enforceable to the extent that it contravenes "this Act, the regulations, the *Human Rights Code* or any other enactment or law". The Court has not definitively decided if the reference to "law" in s. 121 includes the common law. Strata Plan LMS 1590 v Yip, 2018 BCSC 2185; *Kunzler*, *supra*

c. The extent to which a strata corporation must give reasons for denying an alteration request. The Respondent claims that not providing reasons for denying the Petitioner's request is not significantly unfair, citing *Simon Fraser University Foundation v Strata Plan BCS 1345*, 2021 BCSC 360, where an owner made alterations without permission in breach of the bylaw. The decision is easily distinguishable and of limited precedential value because the owner, in that case, was asking for forgiveness for a breach and not permission. This Court should set a precedent for whether it is significantly or procedurally unfair to not give any reasons to an owner who comes to the strata council seeking permission with "clean hands". Response to Petition, para 77

d. The interpretation of the strata council's discretion under the bylaws. The Respondent argues in their Response to Petition that because Bylaw 8 does not include the words "the strata corporation must not unreasonably withhold its approval," which is contained in Bylaw 7, this is a "strong indication that the owners wanted the strata corporation to have broad discretion when considering applications to alter the common property". The Respondent cites only CRT cases for this interpretation. As noted above, bylaws 7 and 8 mirror the language of the Standard Bylaws under the SPA, making their interpretation broadly applicable and important. Response to Petition, para 72

e. The extent to which the strata council's discretion under the Standard Bylaws is affected by bylaws 8.2 and 50.2. It is not uncommon for strata corporations to supplement the Standard Bylaws with other bylaws that create a process or impact their discretion. A precedent should be set for how such bylaws interact with the Standard Bylaws.

f. Given the obvious typo in bylaw 50.2, it would be beneficial for the court to set a precedent for how bylaws with such typos should be interpreted.

[Emphasis in original.]

[38] This recitation of the issues overstates the potential precedential value of this case:

a) The content of the principles of natural justice that should have been invoked is likely to depend highly on the facts: *Chorney v. The Owners, Strata Plan VIS 770*, 2016 BCSC 148 at para. 52.

b) There is a potential issue of wider implication created by the fact that the court has not yet definitively decided whether the reference to “law” in

s. 121 includes common law principles. That said, even the petitioner acknowledges that the Court of Appeal's reasons in *Kunzler* v*. The Owners, Strata Plan EPS 1433,* 2021 BCCA 173 [*Kunzler BCCA*] "strongly imply that they do". Further, s. 121 relates to the enforceability of bylaws. As the Strata notes, the petitioner has not challenged the bylaws. At its core, the petitioner's challenge is not to the Strata's bylaws *per se*, but more to their interpretation and application to the facts of this case.

c) In terms of the alleged duty to give comprehensive and clear reasons for a refusal to allow alterations, this issue was previously considered by the Court in *Simon Fraser University Foundation*. Even though there was also a "clean hands" issue in that case, this did not appear to have been a key driver in the Court's conclusions on the appropriate content of the duty: at paras. 55-62.

d) The assessment of the exercise of a strata's discretion is again going to be highly fact-specific: *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 at para. 88. However, it is true that this point does embed one issue of potential broader application, being the effect of Bylaw 8 not containing the words "the strata corporation must not unreasonably withhold its approval". In this respect, the Strata's bylaws mirror the Standard Bylaws.

e) In terms of the proper interpretation of Bylaw 50.2, this issue is unique to this Strata's bylaws, particularly given that it is the presence and effect of a unique typographical error that would need to be considered.

[39] Finally, it should be noted that the CRT has already resolved many disputes raising the question of alleged significant unfairness in the context of alteration requests: see *Melnyk v. The Owners, Strata Plan LMS 4379*, 2024 BCCRT 291; *Reeves v. The Owners, Strata Plan BCS 2235*, 2023 BCCRT 189; *Garrows v. The Owners, Strata Plan LMS 445*, 2023 BCCRT 52; *Rasmussen v. The Owners, Strata Plan VIS 1611*, 2022 BCCRT 711.

***2. Is the Case Complex?***

[40] This claim would be on the complex end of the range of cases considered by the CRT, particularly in relation to the damages and mitigation issues.

[41] In terms of the CRT's ability to consider complex claims, courts have expressed concern about the extent of procedural protections available at the CRT. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100 [*Downing BCCA*], the Court of Appeal remarked as follows in *obiter*:

> [8] While the chambers judge correctly observed that the CRT frequently adjudicates disputes where there are conflicts in the evidence and adjudicators may exercise a discretion to convene an in-person hearing with oral testimony, a chambers judge hearing a s.121 application should, in my view, pay close attention to the fact that there are limited procedural safeguards at the CRT. In cases involving significant sums or other important issues, the potential limitation on a party's procedural rights before the CRT may militate against the referral.
>
> [Emphasis added]

[42] I will obviously follow that direction. However, that said, there are tools available at the CRT which could be invoked to make the process more proportionate and responsive to a complex fact pattern and larger damages claim such as this. For example:

a) The CRT case manager may direct any or all parties to provide evidence respecting a matter that is relevant to an issue in the dispute, including requiring the evidence to be provided on oath, affirmation, or in a manner authorized under the CRT Rules: *CRTA* s. 32.

b) Section 33 of the *CRTA* permits a party to serve a summons to require other persons to provide evidence.

c) Section 34 of the *CRTA* permits the CRT to require a person to provide evidence.

d) CRT Standard Rule 8.8 sets out a procedure for orders to produce evidence.

e) The CRT can order an oral hearing. If an oral hearing is ordered, CRT Rule 8.7 provides for the following:

   i. If the tribunal orders an oral hearing, the party produces a witness list containing the names of the witnesses that the party intends to use to provide evidence at the oral hearing, and any other information the tribunal requires about the witnesses.

   ii. Each party is given 7 days to provide their witness list to the tribunal.

   iii. Every witness may be required to make a solemn affirmation before giving evidence at an oral hearing.

f) If there is an oral hearing, witnesses may be cross-examined: *1028677 B.C. Ltd. v. The Owners, Strata Plan LMS 1083*, 2024 BCSC 578 at para. 20.

g) While written arguments before the CRT are subject to character count limits, the CRT Rules allow a party to request that the limit be increased: CRT Rules 1.2(2) and 7.3(8).

h) More generally, the CRT has wide discretion over its own procedure: *CRTA*, s. 42; *Time Share* at paras.13-14.

[43] Thus, while this claim is reasonably complex and deserving of appropriate procedural safeguards, safeguards are available at the CRT, although generally requiring an exercise of the CRT's discretion.

***3. Are the Parties Agreed that the Matter Should be Heard by the Court?***

[44] There is no agreement that this matter should be heard by the Court, negating a factor in favour of the Court retaining jurisdiction.

### *4. Will the Electronic Communication Tools used in the CRT Adjudication Process be Unfair to the Petitioner?*

[45] I do not see that there would be a material disadvantage to the petitioner in having to engage in the electronic communication tools used by the CRT.

### *5. Which Decision-Maker's Process is More Proportional to the Issues?*

[46] The principle of proportionality is a factor in deciding whether it is in the interests of justice and fairness for the CRT to adjudicate this claim.

[47] In *Allard v. The Owners, Strata Plan VIS 962*, 2019 BCCA 45 at paras. 30-33, the Court of Appeal recognized that the procedural flexibility of the CRT accords respect for proportionality.

[48] As noted above, this matter involves a large claim for damages, larger than those normally considered by the CRT. However, it should be noted that the CRT has no monetary limit for strata claims. In *Yas v. Pope*, 2018 BCSC 282, Justice Baird noted that by not including a monetary limit for strata claims, "[t]he legislature by necessary inference has mandated that the CRT should handle strata claims in any amount, large or small": para. 14. In *Yas*, the Court referred a claim to the CRT which involved crossclaims for damages of $185,395 and $200,000, respectively.

[49] The petitioner notes that *Yas* was decided prior to the Court of Appeal's decision in *Downing BCCA*, whose *obiter* comments about the importance of procedural fairness are noted above. I have considered the Court of Appeal's comments. Notwithstanding the general restrictions on the process before the CRT, the CRT has many powers to enhance its processes to reflect the increased importance of the issues, as noted above. I have confidence that the CRT will fairly consider whether it should enhance its processes, although I obviously have no power to direct that this occur. But if the CRT fails to grant adequate procedural protections, the petitioner may be able to correct such an error through judicial review.

[50] Finally on the question of proportionality, I note that the CRT has adjudicated strata claims in the six-figure range: see, for example *James MacArthur v. The Owners, Strata Plan K588*, 2016 BCCRT 2; *Trinden Enterprises Ltd. v. The Owners, Strata Plan NW 2406*, 2020 BCCRT 807; and *Garrows v. The Owners, Strata Plan LMS 445*, 2023 BCCRT 52.

### *6. Case Law Guidance*

[51] To assist in determining where the present case should be heard, I review the authorities most pertinent to the present facts to determine if any helpful patterns exist

#### *Claim Maintained in Court*

[52] In *The Owners, Strata Plan VR 855 v. Shawn Oaks Holdings Ltd*., 2018 BCSC 1162 [*Shawn Oaks*], the Court had two petitions before it. The case involved the enforcement of a rental bylaw against the developer, who still owned strata lots in the strata corporation. The matter required a review of whether the rental bylaw was enforceable, enforcement of those bylaws, and consideration of the ability of a corporation to rent a strata lot. In concluding that it was in the interest of justice and fairness for the CRT not to resolve the dispute, the Court noted as follows:

> [56] … counsel argued that their clients both consented to and wanted the petitions heard in the Supreme Court. They argued this was beyond the intended scope of the CRT and not a dispute between a single owner or owners and a strata corporation where there was a complaint about a rental that was interfering with the day-to-day use and enjoyment of property. They argued this is a complex dispute between a developer and Strata Corporation in the context of the potential redevelopment and future winding up of a strata corporation. Further, counsel argued that the 2016 amendments to the SPA relaxing the threshold requirements for voluntary winding up of corporations, along with increasing property values, have created increased activity by developers. Rather than obtaining the agreement of all owners to wind up, developers are purchasing enough units to control votes. Counsel argued there would be benefit from a decision by the Supreme Court on the issues raised. Although ultimately I did not find it necessary to decide those issues, they were argued before me. Concern was also expressed regarding how the CRT process would accommodate another 27 potential parties if they had chosen to appear.
>
> [57] I agree that this is not the typical situation where the CRT dispute resolution process is being used to mediate, and ultimately rule if necessary

> on a dispute, so that present and future life at the strata property can continue in a harmonious manner…

[53] The decision in *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576 involved the strata corporation's passing of a bylaw preventing the petitioner's planned construction and operation of a licensed cannabis production facility. The allegation was that the passing of such a bylaw represented a significantly unfair action. The petition also required the Court to review whether one of the named respondents had standing before the Court as they were not a tenant. The parties consented to the matter being heard by the court rather than the CRT. The Court agreed with the parties that it was not in the interest of justice and fairness for the CRT to hear the matter. The Court determined that it should assume jurisdiction because the issues were complex, might have precedential value, and counsel both wished to make full oral arguments on the issues: para. 9.

[54] *Strata Plan VR 2213 v. Schappert,* 2023 BCSC 2080 was a subrogation claim brought by the strata's insurers seeking a determination as to whether the insurer's claim against the defendant was barred by either the common law "no subrogation" rule or the strata's covenant to obtain insurance and waive liability. The Court was required to interpret both the *SPA* and the strata's bylaws. The Court determined it was not in the interest of justice and fairness to have the CRT adjudicate the claim. The Court noted that counsel agreed that the matter should be heard by the court as the issues raised were legally complex and of sufficient importance, and there was a benefit to adjudicating them in person. An added factor was that the proceeding was brought as a special case, and resolving it would resolve the entire dispute, which was viewed as preferable to "leaving residual issues for the CRT": paras. 13-15.

[55] *356 Cathedral Ventures Ltd. v. Owners of Strata Plan BCS3598*, 2020 BCSC 1583 was a dispute regarding the strata's allocation of parking spaces. The petitioner also sought an order requiring the strata to hold a special general meeting and to remove a sign. The Court found that it was not in the interest of justice and fairness for the CRT to adjudicate the claim. This was based on the parties' agreement that the Court should hear the dispute, the complexity of the issues, and

the potential precedential value given the uncertainty in the test to be applied for significant unfairness under s. 164: paras. 4-10. It should be noted that this case was decided before recent Court of Appeal decisions that have solidified the proper significant unfairness test: *King Day Holdings Ltd*.; *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

[56] In *The Owners, Strata Plan VIS 1210 v. Ngai Estate*, 2024 BCSC 2232 [*Ngai Estate*], the strata sued the former owner developers of a ten-lot strata for failing to fulfill various statutory and fiduciary obligations. The strata corporation alleged that the defendants failed to hold a proper first AGM, properly estimate operating expenses and make appropriate payments during the interim budget period, properly establish and fund the contingency reserve fund, or obtain proper insurance. The Court agreed to hear the matter stating:

> [47] The Strata Corporation has advanced a complex and interrelated series of claims stretching back to 1989 and straddling two different statutory regimes (one of which, as noted, is not part of a "claim category" in respect of which the CRT has been granted jurisdiction). The claims also involve numerous allegations against multiple different players who, at one time or another, exercised control over, and are alleged to have owed obligations to, the Strata Corporation. Unlike in *Downing*, or *Yas* or the more recent case of *Majithia v. The Owners, Strata Plan EPS 2884*, 2024 BCSC 1519, the background to the present claim does not arise from a discrete incident or source of complaint with relatively simple facts. Based on my assessment of the factual and legal background to this matter, I am satisfied the Strata Corporation's claim is "sufficiently complex" that it would benefit from being adjudicated by the Court (CRTA s. 16.3(1)(c)).
>
> [48] I am also satisfied the Strata Corporation has raised several issues of sufficient importance to warrant adjudication by the Court (CRTA s. 16.3(1)(a)). In particular, as noted above, there are three areas where the Strata Corporation is asking the Court to make new law. In *Strata Plan VR2213 v. Schappert*, 2023 BCSC 2080 [Schappert] at para. 14, Justice Coval held that the question of whether a subrogated claim was barred in the circumstances of that case was legally complex and of sufficient importance to warrant the Court assuming jurisdiction. The Court reached a similar conclusion at para. 9 of *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576, finding there might be precedential value in deciding if the passage of bylaws preventing construction and operation of a cannabis production facility was significantly unfair under the SPA.

***Claims Referred to the CRT***

[57] In *Majithia v. The Owners, Strata Plan EPS 2884*, 2024 BCSC 1519, the Court referred the case before it back to the CRT. The matter involved a refusal to allow major alterations to three units. The strata initially approved the alterations, but then later changed its mind (which the petitioner argued raised a matter of precedential interest). There was also an allegation that the strata's decisions were driven by the developer who was in a conflict of interest. The Court found that urgency did not justify a court hearing the matter as there was no evidence that the matter would be heard more quickly in court. The matter was not unduly complex, particularly given that the CRT routinely had to resolve similar factual disputes. Further, there had already been decisions considering the alleged "flip flop" precedential issue. The Court concluded:

> [33] I agree with the respondent that the question of whether and when reasonable expectations will have arisen turns largely on the facts. While a body of case law will be of assistance to future owners in determining whether a reasonable expectation can be said to arise on the particular facts of their own case, no single case is likely to set the parameters on that issue. The CRT is well positioned to develop that body of case law. As noted by this Court in *Downing* at para. 42, the CRTs decisions are publicly available online and will provide persuasive guidance to future would-be litigants.

[58] In *Yas*, the Court referred the matter back to the CRT even though the petitioner argued that it was complex because it involved (a) a privity of contract issue, (b) noise complaints, (c) a large amount of money, (d) procedural fairness concerns, and (e) and potential bias on the part of a CRT facilitator. The Court found that the merits issues were well within the purview of the CRT to decide.

[59] In *Nwabuikwu v. Remi Realty Inc.*, 2024 BCSC 1371, the plaintiff made various claims against the strata, a corporation, and three former strata council members. The claims included defamation, discrimination, harassment, bullying, intimidation, threats, strata bylaw interpretation, and claims based on various statutes, including the *SPA* and *Human Rights Code.* The defendants applied to dismiss the proceeding in favour of the CRT. Justice Doyle held that those claims within the CRT's jurisdiction should be deferred to the CRT but that the defamation

claim would proceed in Supreme Court. While this would create some duplication between the Court and CRT, Justice Doyle noted that the dismissed strata property and human rights claims were "of a nature that the CRT process was designed to address in a timely and efficient manner, absent some of the strictures of a proceeding in this Court": at para. 63. Further, the underlying factual dispute was not complex, and the CRT was well-equipped to address any conflicts in the evidence: paras. 58-65.

[60] In *Downing BCSC,* the owner alleged that the strata had illegally entered her unit to effect repairs which delayed the sale of her property. The strata successfully applied to dismiss the petition in favor of adjudication by the CRT. The chambers judge agreed, and his reasoning was later summarized as follows in *Downing BCCA*:

> [7] He considered but rejected five arguments advanced by the appellant in support of her position that the dispute should be allowed to proceed in the Supreme Court rather than the CRT:
>
> > a) the question of when a strata corporation may enter and physically alter a strata unit is of great importance not only to the petitioner, but to other strata owners (finding that question falls squarely within the CRT's statutorily recognized area of expertise);
> >
> > b) trespass of a person's residence is such an assault on personal dignity and safety as to be analogous to a constitutional or human rights claim (finding that the question whether a strata corporation or another party is authorized to enter a strata unit for repairs or otherwise, is an issue that arises frequently in residential strata disputes and given that no one was present or lived in the suite at the time of the alleged trespasses, the analogy was inapt);
> >
> > c) the amount claimed, which could well exceed $100,000, and the potential complexity of evidence concerning lost sales opportunities and the falling real estate market made the dispute more complicated than the typical strata dispute heard by the CRT (noting that in *Yas v. Pope*, 2018 BCSC 282 at para. 14 the Court concluded: "the legislature … has mandated that the CRT should handle strata claims in any amount, large or small");
> >
> > d) the procedural limitations of the CRT — the presumptive mode of a written electronic hearing rather than oral testimony would not adequately resolve the credibility dispute as to whether the petitioner's realtor authorized the Strata to enter and dismantle the unit (noting that the CRT "frequently adjudicates disputes where there are conflicts in the evidence", and "ss. 39 to 42 of the [CRT] Act permit the

> CRT to question parties and witnesses, and to convene an in-person hearing with oral testimony if appropriate"); and
>
> e) the appellant would be at a procedural disadvantage in prosecuting these important claims if she were required to continue in the CRT rather than the Supreme Court, because her rights of appeal would be drastically limited by the onerous, patently unreasonable standard of review (finding that this procedure represents a policy decision of efficiency and finality).

### *7. Final Assessment*

[61] The following factors favour this matter being heard by the Court:

a) The matter qualifies as somewhat complex; and

b) The claim includes a demand for a large sum of damages.

[62] On the other hand, the following factors militate in favour of the matter being heard by the CRT:

a) The parties do not consent to the matter being heard by the Court (unlike most of the cases above that maintained the matter in court, save *Ngai Estate*);

b) There are only two parties involved (unlike *Shawn Oaks*);

c) There are no issues of standing (unlike *Kunzler*);

d) The case does not raise any particularly compelling issues of precedential value (unlike *Schappert* and *356 Cathedral Ventures Ltd*);

e) The matter does not involve a "series of interrelated claims" (unlike *Ngai Estate*);

f) Since all the claims are within the jurisdiction of the CRT, there will be no duplication between the work of the tribunal and the Court if the matter is referred to the CRT, and

g) The CRT has previously dealt with claims involving large amounts.

[63] In terms of case law guidance, this situation is most similar to the situation in *Majithia*, where the Court was comfortable referring the matter back to the CRT.

[64] Considering that the petitioner effectively has the burden of providing a basis for maintaining the matter in court, I find that they have not established that the CRT should not resolve these claims in the interest of justice and fairness.

## IV. CONCLUSION

[65] For the reasons expressed above, I grant the application and dismiss the petition in favour of the matter being put before CRT. Unless the parties apply to make further submissions, the respondent Strata shall have its costs of the proceeding at Scale B since this outcome effectively ends the petition.

"The Honourable Mr. Justice Branch"