IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tran v. The Owners, Strata Plan EPS 5568,* 2025 BCSC 111

Date: 20240106
Docket: S238506
Registry: Vancouver

Between:

Huong Tran and Shea Coulson

Petitioners

And

The Owners, Strata Plan EPS 5568 and Christopher Jones

Respondents

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for Petitioners:	G. Trotter
Counsel for Respondents:	E.T. McCormack
Place and Date of Hearing:	Vancouver, B.C. January 6, 2025
Place and Date of Judgment:	Vancouver, B.C. January 6, 2025

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[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition. In this respect, there is a five-day hearing of this petition scheduled for February 2025. I am giving these reasons on an urgent basis given that the outcome will guide the parties' preparation for that hearing. As such, the reasons are less articulate than I would otherwise like them to be, particularly given some of the arguments made, including as to this being an order largely of first instance given the manner in which it is being sought.

[2] Specifically, the application before the court today is to obtain document disclosure, limited interrogatories, and an affidavit of documents pursuant to R. 16-18 and R. 22-1(4)(c) of the *Rules of Court*.

[3] What appears to be the more unusual factor of this application is that the petitioners, the applicants, are not seeking an order that the matter be converted to an action or referred to the trial list or that certain rules specifically apply, but rather are seeking very discreet orders for the disclosure of enumerated classes of documents, interrogatories in a form already provided and attached to the application, and a limited affidavit in that regard. Such orders are typically made when an application is brought for the matter to be referred to the trial list, usually as an alternative measure given the utility of resolving matters in a summary way whenever possible.

Background

[4] By way of background, the petition, which was originally filed December 14, 2023 and amended on August 22, 2024, involves various disputes between the strata owners of a small strata located in Vancouver. The strata property is comprised of four units, three of which are in one building ("Building 1") and one of which is in a separate building ("Building 2"), with Building 2 also having common and limited common property, including garage space for the use of other strata owners.

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[5] The petitioners are the owners of the strata lot in Building 2. The respondents are the Strata Corporation itself, and Christopher Jones ("Dr. Jones") who is another strata owner and was, during much of the relevant time period, the president of the Strata Corporation.

[6] In what is likely an oversimplification of the claims being advanced by the petitioners, they include that the Strata is being operated in an unfair manner, with emphasis being placed on the duties of the other owners and council members to act honestly and in good faith and not to further their own interests. The petition specifically relies upon ss. 164 and 165 of the *Strata Property Act*, S.B.C. 1998, c. 43 (the "*SPA*") as to the court's jurisdiction to "prevent or remedy a significantly unfair" action or decision of the strata or council.

[7] Some of the alleged unfair actions include:

a) Complaints of "harassment" and intimidation by Dr. Jones as against Ms. Tran which they say contravene the bylaws.

[8] I will pause to note that issue was taken by the Strata Corporation's counsel as to the use of the word "harassment", with submissions being made that there is no common law tort of harassment. The claim itself is based on a breach of s. 3 of the standard bylaws as scheduled to the *SPA* which govern the use or prohibited use of strata property, including in a way that "unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot." I may, for the purpose of these reasons, also use the term "harassment", although do so as a general term for the conduct that interferes or allegedly interferes with the petitioner's use and enjoyment of the property within that context. I do so without making any finding that there is or is not a common law tort of harassment, or is or is not one being pled.

b) Further to the allegations of harassment, an allegation by the petitioners that a complaint they made regarding the alleged harassment was dismissed by the Strata Corporation without due and proper consideration.

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c) An issue with the removal by the Strata Corporation of cameras that were installed by the petitioners on the outside of Building 2, which the petitioners argue was done to prevent the alleged harassment and other inappropriate conduct by the Strata members.

d) Issues with the Strata Corporation's dealings with the Strata's insurers and coverage, including an allegation that the Strata Corporation failed to fully and properly seek recourse to warranty coverage in respect of water damage to the petitioners' unit in Building 2.

e) A failure to comply with a waiver and indemnity agreement that was originally signed by all the owners, excluding Dr. Jones, but later signed by Dr. Jones and ratified by the Strata Corporation at a special general meeting held on July 11, 2023. That waiver and indemnity agreement, among other things, addressed maintenance costs as between the two buildings. Under that agreement, the petitioners agreed to solely pay for the costs for remediation of the water damage and other maintenance and similar fees in respect of Building 2 in anticipation of an expected sectioning of the strata property to divide the two buildings, in exchange for which they would not be obligated to pay for costs incurred in respect of Building 1. The petitioners argue that by virtue of the ratification of the indemnity agreement at the special general meeting, it is now an agreement and an obligation of the Strata Corporation itself. The petitioners also argue that in breach of that agreement the Strata Corporation improperly sought indemnification from them for costs incurred in respect of Building 1 without giving them the full credit for the entirety of the costs that they have paid in respect of Building 2.

f) From a governance perspective, the petitioners allege that there has been incomplete disclosure and lack of a full and proper transparency in respect of the Strata Corporation's operations and business dealings, including in respect of the above noted insurance claim arising from water damage to

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> Building 2. In general, this involves a claim that the full coverage under the warranty was not pursued and that there was some interference by the Strata Corporation with the petitioner's ability to deal directly with the insurer themselves to address matters. As to why this is an issue, it is alleged that there is mold in the attic which, although is common property, has not been addressed under the insurance coverage and ought to have been, and that the failure of the Strata Corporation to fully pursue that has resulted in damage to the unit itself.

[9] The above is an incomplete summary, intended to provide context only.

[10] The relief being sought in the petition includes declarations as to the states of those issues and whether or not they are breaches of the *SPA*, specific performance of the indemnity agreement, appointment of an administrator for the Strata, and other ancillary orders.

Preliminary Issues

[11] Procedural issues were raised at the commencement of this application, including that from the Strata Corporation's perspective the notice of application was insufficient. I am satisfied that the notice of application, although not as concise as it could have been, is not one lacking of the necessary specifics such that the respondents did not know the order that was being sought or the basis for it.

[12] Similarly, the applicants took issue with the Strata Corporation's response materials, suggesting that the only affidavit being relied upon specific to this application was that of a paralegal in counsel's office; however, I note that nine binders were put before the court containing a number of affidavits sworn by the parties, which included affidavits that go to and refute the substance of the claims being advanced in these proceedings and filed in support of and in response to the petition. While the exhibits to the affidavits where excerpted, the full text of those affidavits was before the court. The notice of application set out the nature of the claim, with reference to the petition.

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[13] I am satisfied as to the adequacy of the court record for this application which is, notably, an interlocutory one.

[14] In addition, as a result of Strata Corporation's general objections on procedural grounds as to whether the application was properly brought, I initially questioned the appropriateness of seeking an application for production of enumerated documents, what is typically a second tier of disclosure, when there has been no first-tier disclosure to date, given these are petition proceedings. I inquired as to whether the parties thought that the more appropriate order would be, for example, that Rule 7-1 apply to these proceedings given that the basis for the application is R. 16-1(18) which provides:

> (18) Without limiting the court's right under Rule 22-1 (7) (d) to transfer the proceeding referred to in this rule to the trial list, the court may, whether or not on the application of a party, apply any other of these Supreme Court Civil Rules to a proceeding referred to in this rule.
>
> [emphasis added]

[15] Specifically, the order would then be that R. 7-1 applies, such that the parties would then exchange lists of documents and, if necessary, advance to the second tier of document discovery for specific enumerated documents.

[16] The response from counsel for the petitioners was that he preferred to tailor the pre-trial processes given that starting point of any petition proceeding is that it will be a summary process. Counsel for the Strata Corporation, despite raising some preliminary concerns as to the relief sought, did not suggest that a tailored approach could not be taken, but rather than it did not circumvent a robust consideration of the factors in the same manner as would be done if the application was one for a referral to the trial list, as I will further address.

[17] As neither party took the position that this proceeding ought to be referred to the trial list, I proceeded on the basis as set out in the notice of application, on the basis that if any order were to be made it would and could be limited to tailored pre-trial processes.

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Analysis

[18] Both parties advised the court that they were unable to locate any case law that specifically addressed the considerations for the court in making an order under R-16-1(18) for specific pre-trial processes where neither party seeks to have the matter referred to the trial list.

[19] Both parties referred to the Court to *Cepuran v. Carlton*, 2022 BCCA 76, where the Court of Appeal considered pretrial discovery processes, albeit in the context of what is that usual scenario where one party seeks to have a matter referred to the trial list with the Court preferring the less cumbersome order that specific pretrial procedures to be undertaken. At para. 158 the Court noted that:

> [158] It should be kept in mind that the starting point for those matters that are properly brought by way of a petition is that the *Rules* contemplate that a summary procedure will be appropriate…. There should be good reason for dispensing with a petition's summary procedure in favour of an action. The mere fact that there is a triable issue is no longer a good reason.

[20] As noted by the Court in *Cepuran*, at para. 159, the modern approach to civil procedure is to specifically *allow* parties and the courts to tailor the pretrial and trial procedures to a given case in the interests of proportionality and access to justice while preserving the court's ability to determine a case on the merits, and that R. 16-1(18) and R. 22-1(4) work to reflect this modern approach within a petition proceeding.

[21] The example used by the Court in *Cepuran* at para. 160 is that:

> … the judge may decide that <u>some limited discovery</u> of documents or cross-examination on affidavits will provide an opportunity to investigate or challenge the triable issue sufficiently to allow it to be fairly determined by the court within the petition proceeding, without the need to convert the proceeding to an action and refer it to trial.
>
> [emphasis added]

[22] Based on the Court's comments, I am satisfied that a tailored approach to the pre-trial processes is not only available, but preferred. In short, it is not necessary for

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either party to seek that the matter be referred to the trial list, in order to seek to have tailored pre-trial processes apply.

Triable Issue

[23] However, that leads to the threshold issue raised by the Strata Corporation: despite that the applicant is not seeking a referral to the trial list preferring to tailor its application, whether the applicant must still establish that there is in fact a triable issue.

[24] I am satisfied, as argued by the Strata Corporation, that that threshold must be met even when bringing a more tailored application such as this. There must be a triable issue, the resolution of which will be aided by the pre-trial processes being sought.

[25] In that context, a party may establish that there is a triable issue if there is a dispute as to the facts or law which suggests that there is a defence that deserves to be tried. The threshold for that determination being more akin to one on an application for summary judgment, namely that the defendant is not bound to lose: *British Columbia (Milk Marketing Board) v. Saputo Products Canada G.P./Saputo Produits Laitiers Canada S.E.N.C.,* 2017 BCCA 247, at paras. 43 and 44.

[26] I am satisfied, notwithstanding that the starting point in this matter is that this is a summary process, that a triable issue has been raised.

[27] Specifically, it is clear on the materials before the court, including the voluminous affidavit evidence, that there are significant factual issues in dispute, many of which raise issues as to credibility, particularly the harassment allegations.

[28] In addition, the petition materials include allegations of being treated in a substantially unfair manner. Resolving those allegations will require an understanding of the considerations given by the Strata Corporation, and members of the Strata Council itself, which led to the final decisions they made, including in respect of the decision to dismiss the harassment complaint, the manner in which

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they dealt with the indemnity agreement, their negotiations with the insurers, and the decisions made as to sectioning of the strata, as raised in the petition.

[29] In particular, the affidavit of Dr. Jones, which is contained in the application record, as well as others, do raise conflicts in the evidence of those particular points, particularly the allegations as to harassment.

[30] The argument of the Strata Corporation was that a triable issue was not established because the petitioners did not set out their full argument as to the merits of their petition proceedings with direct reference to the *SPA*, and relief being sought thereunder. Specifically, among other things, the Strata corporation argued the petitioners did not set out in the notice of application, or provide sufficient evidence, to show that the conduct complained of is potentially oppressive conduct, and satisfy the court as to the merits of its case, or that the documents being sought would in fact, particularly the emails between council members, would assist in the resolution.

[31] In my view, this argument would not only raise the threshold of what constitutes a triable issue, but would also require the court to enter into a lengthy analysis of the merits which is contrary to the objectives of the *Rules* for an efficient and timely resolution of disputes, an integral part of which is the timely and efficient resolution of interlocutory applications. Such an approach would unnecessarily encumber and bog down an already overburdened Chambers. This application already took a full day given the preliminary arguments being raised which, in my view, was longer than an application of this nature ought to have taken.

[32] I also note how close the Strata Corporation’s argument was to becoming circular in that the position was that there was insufficient evidence to establish that a triable issue exists to make an order for disclosure of the very documents that might constitute that evidence.

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Scope of Pre-Trial Processes

[33] A finding that there is a triable issue does not, however, equate to a finding that pre-trial discovery processes ought to be available. Once there is a finding of a triable issue the court must then consider whether any such order is appropriate and what limits or scope there should be to such processes.

[34] I agree with the Strata Corporation that, given that the starting point is that these matters are to be done on a summary basis, there must be some evidence to establish that the pretrial discovery procedures sought to be ordered will assist with a timely resolution. To put that another way, the processes should be limited in scope so as to answer specifically the triable issue that has been relied upon in making that application.

[35] In addition, I have regard to the concept of proportionality as an objective under the *Rules*. While these claims may not give rise to significant monetary orders, the issues as to the overall use and enjoyment of one's own property are important ones. The courts have long recognized the significance of property rights. As such, these issues are of significant importance to the parties. It is unfortunate that they have found themselves in the position that they are unable to live in any harmony. That this litigation calls into question all of the parties' property rights in that respect is all the more reason that the hearing of the petition be one that is on a full record so that it can be fully determined on its merits.

[36] By considering appropriate limits based on the triable issue raised, the overall objective of a timely resolution on the merits can be met, while still safeguarding parties from unwarranted fishing expeditions and excessive pre-trial obligations that are contrary to the summary process contemplated.

[37] In support of their argument that the court should not set the scope of available processes unduly low, counsel for the petitioners referenced *Beedie (Keefer Street) Holdings Ltd. v. Vancouver (City)*, 2021 BCCA 160 where, at para. 88 the Court cited *Canada Metal Co. Ltd. v. Heap*, (1975) 7 O.R. (2d) 185 (C.A.), a decision of the Ontario Court of Appeal for the proposition that:

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> … an applicant for judicial review:
>
> > … should not have to prove his or her case before securing access to the very process designed by the Rules of Civil Procedure to adduce evidence. It is also my view that to pitch the test so high in a case such as the present one would be inimical to the inherent power of judicial review and the importance of having a full and accurate record of what transpired before the decision-maker. To fulfill their constitutionally protected mandate of ensuring that statutory procedures are followed in a matter that accords with the principles of natural justice, the superior courts must afford litigants adequate procedures to ensure that all relevant facts are presented.

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[38] While this matter before the court is not a judicial review, the allegations being raised include allegations as to the manner in which decisions of the Strata Corporation were made, including in respect of the harassment allegations, which do raise similar issues relating to the considerations that went into such decisions being made, which would ordinarily define the scope of disclosure.

[39] I will address each of the pre-trial processes being sought in turn.

Document Disclosure

[40] The Strata Corporation argues any order as to document disclosure must be consistent with ss. 35 and 36 of the *SPA*, which sets out what records must be kept by a Strata Corporation, and therefore what “Strata Records” are, and who is entitled to see such records.

[41] In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, the Court considered the scope of production that was required for documents being disclosed under ss. 35 and 36 of the *SPA,* specifically. The Strata Corporation takes no issue with there being an obligation to produce the documents that fall within those categories to the plaintiffs. In fact, at the commencement of this application the Strata Corporation put forward a draft order that they suggested struck the balance of what is required to be produced having regard to ss. 35 and 36 of the *SPA*, and obligations to produce under the *Rules*; however, that draft only related to those documents that fell solely under the *SPA*.

[42] In *Kayne,* as is the case here, the court was being asked to consider disclosure of emails between the Strata members. The Court noted at para. 21:

> It is important to note that the strata corporation is a different legal entity from the members of the corporation and the council is set up as a body that acts in the name of the corporation. The *Act* refers to correspondence to the council or by the council, which I take to mean correspondence by an officer that is authorized by council to be sent on behalf of council or by an officer who has been delegated by council the power to deal with a matter.

[43] Counsel for the Strata Corporation relies upon *Kayne* as authority that emails between strata members are not producible under ss. 35 or 36 of the *SPA*.

[44] At para. 22 in *Kayne*, the Court also went on to say that:

> … it would be stretching the language of the *Act* far beyond what was intended to suggest that it includes all correspondence between individual members of council that may or may not relate to the business of the council…

[45] From the Strata Corporation's perspective, that is what is being sought, correspondence between the members, some of which are family, which clearly will not relate to the business of the council and as such raise privacy concerns. From the petitioners' perspective, any order that is made that limits it to documents that the Strata Corporation is entitled to interpret as being a document that falls under s. 35 will be so narrowly interpreted to result in no disclosure of what is relevant to the issue of the deliberation and consideration put into the decisions made. In short, they have no trust of the Strata Corporation or its members.

[46] Having regard to proportionality, with the additional factor that the starting point is a summary determination that ought to proceed on a timely and efficient basis, I agree that limits on the scope of document disclosure should be imposed to ensure that some of the Strata Corporation's concerns, particularly as to privacy, are addressed, and strata members, in their personal capacities, are not adversely affected. However, they cannot use their personal status as a shield from relevant disclosure of the deliberative process undertaken by them in their capacity as council members.

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[47] In addition, some communications may be subject to privilege, for example if the members discussed this litigation, or in anticipation of it. In this respect, in the affidavit of Dr. Jones that was filed in this matter, he swore that an email was sent to him that, on November 24, 2021, the council was informed by Mr. Coulson that he and Ms. Tran had "retained legal counsel to represent them in all Strata matters." That email, and chain arising from it, may be subject to privilege if it was in anticipation of this litigation.

[48] I make the order as sought under para. 1 of the notice of application with the following revisions:

a) paragraph 1(a), will end after the words "respecting the following topics:" as drafted, and instead the following words will be added "excluding any communication which is privileged, with liberty to redact communications that are otherwise included in communications between the members in their role as council members to remove any such privilege or irrelevant content";

b) sub-paragraphs 1(a)(i) through to (xi); and

c) paragraphs 1(b) and (c) have been complied with, so no order is made in respect of paragraphs 1(b) and (c).

Affidavit of Documents

[49] The parties did not fully argue this aspect of the application, however the relevant considerations of the court in making such an order were contained in the application materials.

[50] I am not prepared to make an order for affidavit of documents. In order to compel a party to deliver an affidavit of documents the Court must be satisfied that there is a dilatory or lackadaisical approach to the obligations to produce documents. That has not been shown here. In fact, given that it is a petition proceeding there is currently no obligation to produce a document at all.

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[51] I dismiss para. 2.

Interrogatories

[52] The proposed form of interrogatories are, generally, narrow in scope, with only four questions:

> 1. Generally, since it was established in June 2024, which council member checks the shared EPS 5568 strata council e-mail address council@thecarolina.online (the "Council E-mail Address") and responds on behalf of the strata council? If this responsibility is shared, which council member most commonly plays this role?
>
> 2. Who wrote the e-mails on behalf of the strata council sent from the Council E-mail Address for the following e-mails?
>
> (a) The e-mail to WBI sent on or about June 12, 2023 directing WBI to communicate with the strata council instead of with the petitioners regarding the building 2 roof claims over which the petitioners previously had conduct;
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> (b) To the insurer on August 26, 2024 regarding Fairlane's work in June 2024;
>
> (c) To WBI on July 17, 2024 re: fire safety; and
>
> (d) The e-mail of September 28, 2023 in response to the petitioners' lawyer's letter regarding decision of the Harassment Meeting, as defined below.
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> 3. Who drafted the minutes of the following strata council meetings/hearings:
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> (a) August 24, 2023 – revisions to motion re: governance;
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> (b) September 9, 2023 re: Harassment Complaint ("Harassment Meeting"); and
>
> (c) December 5, 2023 re: petitioners' security cameras ("Cameras Meeting");
>
> 4. Which vendors were told by the strata corporation not to provide information to the petitioners; for each, specify who gave this direction on behalf of the strata, and when.

[53] Rather than seek examinations for discovery, the petitioners have sought interrogatories. Given the limited scope, I agree that they will help narrow and focus the issues, consistent with the objectives for interrogatories as noted in *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473. In addition, given the scope, I am satisfied that they are proportional to the issues in dispute.

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[54] In particular, the first two questions stem from the Strata Corporation's decision to create an email account that all the council members use: council@thecarolina.online. The communications that have come from that email address which are in the materials have had a generic signature line that references only the council, without indicating who the individual author of the email. Given some of the allegations, specifically with respect to Dr. Jones, the identity of who sent the emails that are relevant to this matter ought to be disclosed, particularly with respect to the warranty issues.

[55] I grant the order in para. 3, with respect to questions 1 and 2 on Schedule "A". However, with respect to question 3 on Schedule "A" as to who drafted the minutes of the meeting, I am not sure that the drafter of the minutes is relevant. Ultimately, they are approved by the council. I do not grant the order in respect of question 3. Similarly, I dismiss the order with respect to question 4. While question 4 deals with the vendors, which may have some relevance, the wording as it exists is much too broad and presumes a fact that has not yet been determined; namely, that the vendors were told not to deal with the petitioners. While I could try to redraft that to a more appropriate question, that is not the role of the Court, and I decline to do so.

[56] I will hear very quick submissions as to costs.

Clarifications

[57] CNSL G. TROTTER: Just some clarifications. I think we will need time for compliance. And I propose that we would exclude any documents where my own clients were the sender or recipient so we don't have the issue of…

[58] THE COURT: Yes. Correct. Thank you.

[59] CNSL G. TROTTER: And, lastly, whether there was an obligation to list privileged documents or not.

[60] I am not making an order that privileged documents be produced, or a list of documents over which privilege is being claimed be produced. To do so would cross

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the line of proportionality, particularly where there is no indication of the scope of documents over which privilege may be claimed. I also note that it was not in your Notice of Application.

[61] CNSL G. TROTTER: No, but it arose. It arose as a result.

[62] THE COURT: I am not going to make that order. What is the turnaround time that you are suggesting for production of these? What is –

[63] CNSL G. TROTTER: I mean I had in mind two weeks. I extended it slightly over the break but I – [indiscernible – dropped voice] my friend needs.

[64] CNSL E. McCORMACK: Your honour, if it's gonna be useful before the hearing, I would suggest that it has to be before - It has to be by January 20, 2025, I would guess. Now, I don't have a calendar in front of me, so.

[65] THE COURT: January 20, 2025 is a Monday. So, yes, let us make it January 20, 2025 as the deadline for the documents to be produced under paragraph 1.

[66] CNSL G. TROTTER: All right.

[67] THE COURT: And for the interrogatories for that matter.

[68] CNSL G. TROTTER: And then can we add that no need to include documents on which my clients [indiscernible – speakers overlapping] – and that'll --

[69] THE COURT: Right. And the order – in addition to the exclusion language regarding privilege, the exclusion in paragraph 1 shall include: Or any documents to which the petitioners are recipients or authors.

[70] CNSL E. McCORMACK: And, Your Honour, I'm going to request – and be quite honest I'm not sure I followed what was happening with the wording in 1 and (a), and I'm just wondering if you could clarify because I'm concerned even if I ask for a transcript I'm not going to understand.

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[71] THE COURT: If you are looking at 1(a) you get to the end of paragraph – the – respecting the following topics: Do a colon. Take out the rest of the words at the end.

[72] CNSL G. TROTTER: And then you said –

[73] CNSL E. McCORMACK: Okay.

[74] CNSL G. TROTTER: -- after respecting the following topics then we would just get rid of the rest of –

[75] THE COURT: Yes. So then there would be a colon. As to the sub-paragraphs they are largely the same. However, there is no order as to paragraphs 1(b) and (c) because those have been dealt with. Actually subparagraph 1(a)(iv) can be deleted in the order as well, for the same reason.

[76] CNSL G. TROTTER: Correct.

[77] THE COURT: Then we would add to what is the end of paragraph 1 "excluding any documents that are subject to privilege or to which the petitioners were a recipient or author/sender," giving liberty to make redactions of privileged or irrelevant materials for privacy, and of course we are changing the time for such production from December 31, 2024 to January 20, 2025.

Costs and Conclusion

[78] CNSL G. TROTTER: In terms of costs, much as I would like to, I'm willing to stay with the position in my reply, which was costs to be determined by court after the merits. If it can be decided now, then I would seek costs.

[79] CNSL E. McCORMACK: Your Honour, I have listened to your submissions. My view is that this could not have been done in regular chambers based on how this played out, in the Notice of Application, and what was at stake. But I'm satisfied with my friend's view about having it dealt with at the petition.

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[80] THE COURT: Okay. Costs will be determined at the hearing of the petition or by other agreement of the parties.

[81] THE COURT: Okay. Anything else?

[82] CNSL G. TROTTER: Nothing for me. Thank you, Your Honour.

[83] CNSL E. McCORMACK: Thank you.

[84] THE CLERK: Order in Chambers. Chambers adjourned.

"Associate Judge Robertson"

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