Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Allard v. The Owners, Strata Plan VIS 962*, 2017 BCCRT 111

BETWEEN:

James Allard

APPLICANT

AND:

The Owners, Strata Plan VIS 962

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Patrick Williams

INTRODUCTION

1) The respondent strata corporation, The Owners, Strata Plan VIS 962 (strata), comprises 57 strata lots, with an address of 1234 Wharf Street, Victoria, BC. A number of the strata lots are part of a rental pool operating as the Victoria Regent Hotel. The remainder are used as residential strata lots and occupied by

residential owners. The strata is represented by a lawyer, Cora D. Wilson (Ms. Wilson) of Wilson McCormack.

2) The applicant, James Allard (owner), and other members of his family (Allard family) own 5 strata lots all of which share in the rental pool (Allard units). The owner purchased strata lot 54 (Unit 801) on June 30, 2000. Unit 801 included a solarium (solarium) constructed on the balcony of Unit 801. The owner is represented by a lawyer, Cheryl L. Vickers (Ms. Vickers) of Lex Pacifica Law Corporation.

3) The strata has entered into a renewal project of its building, which includes the replacement of windows and frames. The dispute is whether the strata must include the solarium in the renewal project and replace windows and frames, or alternatively whether the strata must enter into negotiations with the owner about other solutions.

4) The owner asks the Civil Resolution Tribunal (tribunal) for 4 orders.

   a) A declaration that the strata is responsible for repair and maintenance of the solarium.

   b) An order that the strata must include the solarium in the renewal project and replace windows and frames, or alternatively that the strata must enter into negotiations with the owner about other solutions.

   c) An order that the strata pay the owner's expenses totaling $33,249.63.

   d) An order that the strata pay the $225.00 tribunal fees paid by the owner.

5) The strata opposes the owner's requests and seeks 5 orders.

   a) An order that the solarium is governed by the terms and conditions of council approval in or about 1996.

   b) An order that the strata is not responsible to repair and maintain the solarium.

c) An order that the owner reimburse the strata for the costs of the expert report prepared by Mr. Liang, architect.

d) An order that the claim of the owner be dismissed.

e) Alternatively, if an order is given that the strata is responsible to repair and maintain the solarium pursuant to the 2015 bylaws, then a further order be given that no actions is required because no repair or maintenance is necessary at this time.

JURISDICTION AND PROCEDURE

6) These are the tribunal's formal written reasons. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness. It must also recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

7) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find there are no significant issues of credibility or other reasons that might require an oral hearing.

8) The tribunal may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask the parties and witnesses questions and obtain information in any other way it considers appropriate.

9) The applicable tribunal rules are those that were in place at the time this dispute was commenced.

10) Under section 48.1 of the Act and tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, pay money or

make an order that in includes terms or conditions the tribunal considers appropriate.

ISSUES

11) The issues in this dispute are:

a) Is the strata responsible for the repair and maintenance of the solarium?

b) Must the strata include the solarium in its renewal project and replace windows and frames?

c) In the alternative, must the strata enter into negotiations with the owner about other solutions addressing repairs and maintenance of the solarium?

d) Must the strata pay the owner his expenses totaling $33,249.63?

e) Must the owner pay the strata its expenses totaling $5,990.00?

BACKGROUND AND EVIDENCE

12) In 1986, the owner purchased his first strata lot in the strata and served on the strata council from 1987 to 1990. From time to time the Allard family has owned 7 strata lots. The owner sold 2 strata lots in 2016 and one strata lot in 2017. When the owner purchased Unit 801 on June 30, 2000, the solarium had already been constructed by the previous owner in accordance with a building permit (the permit) approved by the City of Victoria (the City) on November 4, 1997.

Council Granting Approval for Solarium for Unit 801

13) Brian Ross (Mr. Ross), the current president of the strata council and a council member from 1994 – 2017, states that council approved solariums for Unit 801 and unit 803 in or about 1996. He submitted a statement with respect to what took place at the council meeting that approved the solarium. His evidence is uncontroverted. Mr. Ross stated the terms and conditions included:

a) units 801 and 803 owners were bound by the same conditions of approval;

b) the solaria could not impact the view from any other deck;

c) proper plans would be provided to council and a building permit obtained before work commenced;

d) units 801 and 803 owners would construct identical solariums to ensure that the external appearance of the building was consistent;

e) the cost to install the solaria would be borne by the suite owners; and

f) future repair, maintenance and insurance costs for the solaria would be borne by the unit owners at the time.

14) The evidence of what took place at the council meeting with respect to the strata council approving the construction of the solarium is uncontroverted. There were 6 council members present at that meeting. Two council members, in addition to Mr. Ross, and the widows of two council members provided statements. All their evidence supported Mr. Ross's recollection of the council meeting.

15) The strata witnesses state that the approval of two solaria for 2 of the 4 penthouse units was a "hot topic" at the time, one that was a political issue with many owners. The owners of units 801 and 803 were granted approval based upon a number of conditions and agreed that they would be responsible for any future repair and maintenance of the solaria.

16) The owner states that the installation of the solaria was not a "hot topic" at the time. He stated that the copies of minutes of meetings from 1995 to 1997 in his possession make no mention of solaria. The owner provided copies of the minutes of many council meetings held between 1995 and 1997. He provided no minutes of any council meetings held in 1996.

17) Mr. Ross says that all council members intended to make future owners on title to units 801 and 803 responsible for the solaria. Dorothy Keyzer (Ms. Keyzer) is the

current owner of unit 803 and the widow of one of the council members in 1996. Ms. Keyzer provided a statement that she and her husband Jack (Jack) knew that if she and Jack sold unit 803, the new owner would be required to take over responsibility. She says that the same conditions were imposed in 1996 on the owner of Unit 801.

18) Ms. Keyzer says that Jack was very concerned about getting input and consensus from the owners at the time of the solaria application. Ms. Keyzer stated that Jack wanted input from the owner due to the Allard family's substantial holdings and involvement in the strata. Ms. Keyzer recalls that there were no objections from anyone.

19) The previous owner of Unit 801 has not provided any statement.

20) No written agreements relating to the solaria were produced. There is no evidence that any such agreements were prepared or signed. Nobody has suggested that such agreements were prepared. The owner says that the first reference to alteration agreements are found in the minutes of January 27, 2017, but that past minutes do not reflect such a requirement as a historical practice. The owner referred to many alterations over the years by owners that did not require conditions be imposed, and submits that no written alteration or indemnity agreements existed.

21) The minutes of a council meeting with respect to the strata council approving the construction of the solarium were not produced. Mr. Ross states that he diligently searched for the minutes of the council meeting and, to the best of his knowledge, the minutes have been lost, are missing or were destroyed. That is not surprising since the meeting took place more than 20 years ago. Regulation 4.1(3) of the *Strata Property Act* (SPA) requires minutes to be kept a minimum of 6 years. Earl Wilde (Mr. Wilde) is the general manager of the rental pool of the Victoria Regent Waterfront Hotel & Suites and the strata manager. He provided a statement that he prepared minutes of the council meeting at which the solaria were approved.

He has also diligently searched for the minutes and agrees they have been lost, misplaced or destroyed.

22) The owner states that minutes of council meetings were not distributed to him unless he requested copies. He says the minutes were also not distributed to other owners until 2015.

Purchase of Unit 801 in June, 2000

23) The owner states that when he purchased Unit 801 in June, 2000, he was not advised that the previous owner had entered into any kind of alteration or indemnity agreement with the strata relating to the construction of the solarium. The owner says that he did not purchase Unit 801 subject to the terms of an alteration or indemnity agreement.

24) The *Condominium* Act section 36 certificate issued at the time the owner purchased Unit 801 was produced. It does not refer to any previous agreements; there was no requirement under the *Condominium Act* in force at the time, that such agreements be disclosed.

25) The owner states that following his purchase of Unit 801, he spent $50,000 to $60,000 on renovations that included repairs to windows and window seals. Mr. Wilde states that since June, 2000, when the owner purchased Unit 801, repairs to the solarium were conducted and paid by the Victoria Regent Hotel rental pool on behalf of the owner. He states that the strata did not conduct or pay for repairs to the solaria located in units 801 and 803. The owner agreed that until January 2015, the rental pool paid for any repairs to Unit 801.

Strata's Bylaws

26) The strata's bylaws were the Standard Bylaws to the SPA from July 1, 2000 until the strata amended its bylaws in 2003. Bylaw 2 was amended to provide that an owner must repair and maintain the owner's strata lot, limited common property and common property for which the owner had exclusive use. That included

windows, balconies and changes made by the owner to the original structure or exterior appearance. Bylaw 8 was amended to provide that the repair and maintenance to limited common property, including changes made by an owner to the original structure or exterior appearance, was the responsibility of an owner.

27) Mr. Ross states that the owner told him that the owner knew as owner of Unit 801 he would be responsible for the solarium. Regardless, the owner decided to pursue this dispute with the tribunal because the strata amended its bylaws in February, 2015. The owner interpreted the amended bylaws to mean the strata must rebuild his solarium to match the improvements made to the building's doors and windows.

28) The bylaws were amended in 2015. With the exception of the rental limitation bylaw, all previous bylaws were repealed and replaced with a complete set of bylaws passed January 31, 2015 and filed in the land title office February 23, 2015. These amended bylaws did not change the obligation of owners to repair and maintain alterations. Alterations continued to require the approval of council and if an owner failed to repair and maintain an alteration, the strata could do so and charge the related costs to an owner. Bylaw 8(d)(iii) states that the strata must maintain and repair a strata lot, restricted to among other things, balconies, exterior walls between the interior of a strata lot and the balcony and other things attached to the exterior of the building.

29) Bylaws 3 and 8 were again amended in 2016. Subsections (3) – (8) were added to Bylaw 3. Among other things, the amended bylaw provided:

    a) An owner shall repair and maintain an alteration to the common property, limited common property, strata lot or a fixture made by an owner or his or her predecessor no matter how often the repair or maintenance occurs; and

    b) This bylaw applies even if an alteration agreement does not exist.

30) Subsection 1(e) was added to Bylaw 8. It states that for greater certainty, an owner is required to repair and maintain an alteration to the common property, limited

common property, strata lot or fixture, including alterations conducted by that owner's predecessor.

The Renewal Project

31) In 2013, RDH Building Engineering Ltd. (RDH) provided a depreciation report (DR) to the strata. It is uncontroverted that the DR stated the strata would have to spend approximately $4,770,000 over the next 30 years for major maintenance and renewal, including $2,500,000 on the building enclosure involving replacing windows and sliding doors with new fibreglass framed windows and doors.

32) The owner states that many of the strata lots, particularly those not in the rental pool, had not been maintained to the same level as the Allard family units. The strata states that the windows and sliding glass doors were over 30 years old, including those in Unit 801, and had lived out their service life.

33) RDH conducted an investigation, including window tests, and recommended the windows and sliding glass doors were not providing adequate performance in resisting water penetration. RDH rejected maintenance as an option, stating that the window related building enclosure failures, the consequent experience of occupants, the level and type of maintenance the window system required, and the window system's age all indicated that it was appropriate to consider the renewal of the window and sliding glass door systems (the renewal project).

34) The DR was discussed at the annual general meeting (AGM) held January 25, 2014. Council confirmed at this AGM that it had asked RDH to conduct a brick cladding investigation and a design and cost study to replace and renew the windows and doors. The brick cladding report was received October 25, 2013. The design and cost study was received December 11, 2013.

35) The strata held a special general meeting (SGM) April 12, 2014 to approve the renewal program by a ¾ vote. It was defeated with 35 in favour and 14 opposed. The owner cast 4 votes in opposition. If the owner had voted in favour of the renewal program, it would have passed.

36) The council appointed a glazing committee (glazing committee) in April, 2014. The owner was a member of the glazing committee. The mandate of the glazing committee was to determine whether or not to proceed with renewing the glazing in the building, whether a short term maintenance plan was a viable option to extend the life of glazing, and how to alleviate concerns of owners respecting the exclusive use of RDH.

37) The glazing committee consulted John McMillan who prepared a glazing study dated August 11, 2014 (the McMillan report). The owner states that the McMillan report identified that many windows did not need replacing. The strata states that the McMillan report did not conclude that many of the windows did not need replacing.

38) The McMillan report states:

a) Generally the 45 series windows were functioning at an acceptable level.

b) There was a far greater percentage of failed or replaced IGU's (insulated glazing units) in the window system as compared with the door systems.

c) The exterior of the window frames were in fair to poor condition. The main problem was the paint.

d) The method used to install the window and door frames placed a heavy reliance on caulking to remain water and air tight. Eventually all caulking, regardless of quality, breaks down. Given the building's exposure, the integrity of the caulking requires extra attention.

e) A more aggressive, proactive and rigourous program of maintenance could improve the performance of the existing window and door systems. Current maintenance levels, which were likely complaint driven, were insufficient to combat 34 years of deterioration. All of the problems with a 34 year old system cannot be fully addressed with maintenance.

f) While the functioning of the window and door systems would always be limited by their design and installation, implementing a proactive maintenance system would enhance the performance and extend the life of the systems.

39) The McMillan report concluded that given the location and unique exposure of the building, any glazing system would need special attention and maintenance. The industry standard IGU warranty is 10 years. Manufacturers know that the IGU's will eventually fail. IGU's that experience more extreme exposure and weather are more likely to fail earlier. The existing window systems were 34 years old and would eventually need to be replaced. It is possible to delay renewal for an extended period of time through maintenance and repair.

40) Council at its August 26, 2014 meeting resolved to engage Mr. McMillan to assist in obtaining quotes for an initial maintenance program using the McMillan report, replacing 35 failed IGU's and if qualified, Mr. McMillan to assist in getting a quote on painting and caulking.

41) An information meeting (information meeting) was convened and the owners were presented with the McMillan report. Mr. McMillan did not attend. The evidence does not provide the date the information meeting was held, but I assume it was convened in the latter part of 2014.

42) RDH continued to be involved. The outcomes of the pre-construction design phase were presented to council on June 25, 2015. A design report was presented to the owners by RDH at an information meeting held October 7, 2015, prior to the SGM held October 28, 2015.

43) The owner states that the council offered to amend a lease between the strata and the owner's company for common area space subject to the owner voting in favour of the resolution to approve the renewal project at the SGM of the strata to be held October 28, 2015. The strata states that these facts are in dispute and the lease is not an issue before the tribunal. I agree that the lease is not an issue before the

tribunal and do not intend to render any finding of fact on this alleged exchange. A finding of fact is not necessary for me to render my decision.

44) At an SGM of the strata held October 28, 2015, the strata approved a special levy in the amount of $4,000,000 (the special levy) to pay for the renewal project including all related expenses to the renewal project. RDH had made a power point presentation to the owners at the information meeting held October 7, 2015. The minutes of the SGM depict that there were 44 votes in favour and 11 opposed. The owner cast his votes and those of the Allard family units in opposition. The minutes also include the remarks that the owner asked if the solaria of units 801 and 803 were included in the renewal project. The answer was that they had not been included in the estimates.

45) In an email exchange between Mr. Wilde and the owner in early March 2016, Mr. Wilde confirmed that he had been asked by the council to contact the owner with respect to the solarium. Mr. Wilde noted that the solarium would have to match the rest of the building, but since there were only 2 solaria, the cost of a renewal cannot be borne by all the owners. It would be the owner's choice whether to replace the glass and frames with the same material or have the frames painted in the same colour.

46) The owner responded to Mr. Wilde's email. The owner stated the issue was who, between the strata lot owner and the strata, had the obligation to repair and maintain the solarium. The owner stated that the bylaws made it clear that the strata must repair the exterior of the building including balconies and other things attached to the exterior. The solarium was attached to the exterior of the building. The owner communicated that he wished to discuss the issue at the March 16, 2016 council meeting.

47) The owner had a lawyer, Ian Cassie of Fasken Martineau, write a March 15, 2016 letter to the strata confirming that the cost of the renewal of the exterior portions of the solarium must be borne by the strata.

48) The owner and his wife attended before council at the council meeting held March 16, 2016. The owner asked to stay and observe the balance of the council meeting. Council denied the request in compliance with the strata's bylaws. The owner and his wife left the meeting and the council subsequently discussed the issue of the solaria of units 801 and 803.

49) The council determined that it needed to investigate further and to obtain an opinion from the strata lawyer, Ms. Wilson. The owner's lawyer, Ms. Vickers, by letter dated April 15, 2016, requested a copy of the opinion that the strata obtained from Ms. Wilson. The request was denied. The opinion was not produced as evidence. The owner has not requested a copy of the opinion as a remedy in this dispute. I find that the question of whether the opinion should have been provided is not before me.

50) In a council meeting held April 17, 2016, council resolved that the solarium would not be painted at the expense of the strata as the paint colour chosen for the building may not work with the tint of the solaria, to continue investigation through legal counsel and approach the owners of units 801 and 803 with a view to resolving the issue of who is responsible for ongoing repair and maintenance.

51) The strata held an SGM on April 30, 2016. The strata passed a ¾ vote resolution to increase the special levy fund by $265,000 to include expenditures for a balcony railing upgrade and changing the scope of work to exclude the new roof. The strata brought to my attention that the owner supported the resolution without objection even though the solarium was not included in the scope of work.

52) The renewal project was completed in December 2016. The owner states that the new windows and doors installed as part of the renewal project are different from the windows and frames previously in place and do not match the windows and frames of the solarium. The strata agrees that the installed windows and frames are different than what was previously in place but that the solaria blend in with the new windows and frames.

53) Photographs of the solaria and the adjacent windows and doors were presented in evidence. I agree that the installed windows and frames are different than what was previously in place. I also agree that the solaria blend in with the new windows and frames.

54) There were further email exchanges between members of council and the owner. The emails do not add anything to what has already been noted and I see no need to address the contents of those emails.

55) The council met August 9, 2016. The council resolved that the strata has no responsibility to repair and maintain owner constructed improvements on exterior balconies or decks. The owner states that the minutes of that meeting contained no reasons for that decision.

56) A May 10, 2017 opinion letter of Grant Laing (Mr. Laing), an architect with RDH, was produced as evidence (Laing report). Mr. Laing has been involved in the renewal project throughout. He noted the following with respect to the solarium:

a) Based upon the 1996 stamp on the spacer bar of the solarium, the solarium was constructed no earlier than 1996, 16 years after original construction.

b) Two window openings in the building exterior of Unit 801 were enclosed when the solarium was constructed. They remain in place with a third glazing unit removed to provide passage from the interior of Unit 801 to the solarium.

c) The solarium was installed with minimal disturbance to the existing building. The installation required little modification to the original building.

d) RDH did not include the solarium in the renewal project budget scope of work.

e) It was not necessary to remove the solarium in order to conduct the renewal project work. The initial design and cost study stated that it was anticipated that a glazing renewal project can be completed without disturbing the existing glazing enclosures or the original glazing within the enclosure.

f) He did not recommend remediation of the solarium with any windows and doors.

g) He observed no evidence of water ingress or penetration. Both sliding glass doors opened, closed and latched. The windows were operable, and the latches performed. It provided a comfortable, sheltered space with unobstructed views in all directions. Based upon his field observations, the solarium currently fulfills its original function without the need for any repair or renewal work.

57) The owner did not produce any expert report that recommended the solarium be included in the renewal project.

POSITION OF THE PARTIES.

58) The owner argues that the City would not have approved the permit without the consent of the strata council, despite the non-existence of minutes of the strata council approving the solarium. He states he was never provided with an indemnity agreement between the previous owners and the strata with respect to the solarium.

59) The owner argues that the *Condominium Act* equivalent of the now Form B certificate did not disclose any obligation on the part of the owner of Unit 801 with respect to the repair and maintenance of the solarium.

60) The owner argues that the minutes of council meetings were not distributed to owners until 2015. He argues that he would not have been aware of what took place at the 1996 council meeting in which the solarium was approved.

61) The owner and the strata agree that until 2015, the strata consistently took the position that owners were responsible for repair and maintenance of exterior windows in a strata lot, decks, balconies and balcony railings.

62) The strata argues that it consistently took the position that owners were responsible expressly or inferentially for repair and maintenance of alterations,

including the solaria; and owners and their successors were responsible to comply with the conditions set by council approval when approving alterations.

63) The owner argues that the McMillan report was never presented to the owners for consideration as an alternative to the renewal project. The owner states that although he was a member of the glazing committee, he never spoke to Mr. McMillan. The owner did not want to present the McMillan report to the owners because the owner was not a fenestration expert (the owner's words, meaning the arrangement of windows and doors on the elevation of a building). The owner states that he was told that the reason Mr. McMillan did not come to a meeting of owners and present his report was because council would not pay him to do so. The owner did not state who told him that. It could not have been Mr. McMillan, since the owner stated he had never spoken to Mr. McMillan.

64) The strata argues that council made all reports related to the renewal project available to the owners and the glazing committee. The strata states that Mr. McMillan was unavailable to make a presentation to the owners at the information meeting and council asked the owner, as the next most knowledgeable person, to make the presentation. The owner was present at the information meeting but declined to present the McMillan report. The McMillan report was made available to the owners at the information meeting, without a presentation.

65) The owner argues that much of the work proposed in the renewal project was not necessary for the Allard units given the repair and maintenance already undertaken. The Allard units were nevertheless assessed their share of the special levy. The strata argues that all of the windows in Unit 801 were over 30 years old, had lived out their service life and RDH had recommended replacement.

66) The owner argues that Mr. Laing is an architect and not an engineer qualified to provide an opinion on the necessity of repair or renewal work. The owner argues that regardless of the Laing report, the renewal project involved the replacement of all exterior windows and doors.

67) The strata argues that the owner paid his proportionate share of the special levy and benefitted from upgrades. Since the solaria in units 801 and 803 blended in with the renewal project, aesthetic changes such as painting were not required.

68) The owner argues that the solarium is a fixture that became part of the realty and therefore part of the strata lot and that the obligation of the strata with respect to the repair and maintenance of strata lots is governed by the strata's bylaws.

69) Before 2015, the bylaws provided that the owners were responsible for the repair and maintenance of their strata lots, including windows, balconies and balcony railings. The owner argues that the council realized that the bylaws would need to be amended in order to conduct the renewal project and levy the funds required. In 2015 the bylaws were amended so that the strata was responsible for repair and maintenance of windows, balconies and other things attached to the exterior of the building.

70) The strata argues that the 2015 bylaw amendments did not change the responsibility for alterations to a strata lot. The strata argues that the owner has the onus to prove the statutory test in s. 72(3) [the strata may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot] and that bylaw 8 does not refer to "additions to balconies". Express wording is not included in bylaw 8.

ANALYSIS

Is the strata responsible for the repair and maintenance of the solarium?

71) No written agreements with the owners of units 801 and 803 regarding their respective solaria were produced. There is no evidence that any such agreements were prepared or signed. Nobody has said that such agreements were prepared. Based upon the evidence before me, I find that, in 1996, the council approved the installation of the solarium by the owner of Unit 801, on conditions that included the owner at the time and all future owners of Unit 801 would be responsible for the repair and maintenance of the solarium.

72) The owner argues in support of his position that the *Condominium Act* equivalent of the now Form B certificate (section 36 certificate) did not disclose any obligation on the part of the owner of Unit 801 with respect to the repair and maintenance of the solarium. The section 36 certificate was produced as evidence. It does not disclose the existence of any agreement or requirement that the owner of Unit 801 must maintain or repair the solarium. That non-disclosure does not assist me. While there is a requirement under the SPA to disclose such agreements in a Form B certificate, that requirement did not exist under the *Condominium Act* in force in June, 2000, when the owner purchased Unit 801.

73) The owner states that he did not purchase Unit 801 subject to an alteration or indemnity agreement. I find that no such formal agreement existed.

74) I acknowledge the owner states that minutes were not distributed as a matter of course and that the approval of the solaria was not a hot topic. I am not aware whether the minutes were distributed; however, the owner produced copies of many minutes during that time. Based upon all the evidence produced, I am of the view that the approval of the solaria was indeed a “hot topic” at the time. I find that the owner, as the owner of other units in the strata, was aware of the conditions with respect to the installation of the solarium of Unit 801. Being aware of those conditions does not amount to accepting those conditions as a subsequent owner, in the absence of a written alteration or indemnity agreement.

75) Mr. Ross states that the owner told him that the owner knew as owner of Unit 801 he would be responsible for the solarium. Regardless, the owner decided to pursue this dispute with the tribunal because the strata amended its bylaws in February, 2015. The owner interpreted the amended bylaws to mean the strata must rebuild his solarium to match the improvements made to the building’s doors and windows.

76) I find that the owner did not accept the 1996 conditions of the approval of the solarium when the owner purchased Unit 801 and he has not accepted those conditions subsequent. I acknowledge that the owner over the years has been

responsible for repair and maintenance of the solarium (as performed by the rental pool), but that does not amount to agreeing to the conditions; it simply means that the owner was complying with the bylaws as they existed at the time.

77) The owner has argued that the council was not transparent in providing the option of sustained long term maintenance as opposed to renewal and replacement. There was no testimony from Mr. McMillan. The owner did not identify the person who presumably told the owner why Mr. McMillan did not make a presentation to the owners collectively. The owner refrained from making a presentation himself at the information meeting. The McMillan report was made available to the owners. The evidence given leads me to conclude that the strata was transparent and acted appropriately in considering long term sustained maintenance as opposed to renewal and replacement.

78) At its August 9, 2016 meeting, the council resolved that the strata had no responsibility to repair and maintain owner constructed improvements on exterior balconies or decks. The owner states that the minutes of that meeting contained no reasons for that decision. I acknowledge that no reasons were given. I find that reasons were unnecessary because the owner knew what the reasons were, namely that the strata was of the view that the approval for the solarium was granted on the basis that the owner and all successors in title would be responsible for the repair and maintenance of the solarium.

79) Both parties agree that the balconies are part of the strata lot. The owner argues that the solarium is a fixture that became part of the realty and therefore part of the strata lot. The owner states that bylaws 8(1)(d)(iii) and (v) apply – they were filed in the land title office Feb. 23, 2015. These bylaws state the strata must repair and maintain balconies and other things attached to the exterior of the building, and fences, railings and similar structures that enclose patios, balconies and yards.

80) Where the parties disagree is whether the solarium is attached to the exterior of the building. The owner argues that the solarium is an attachment to the exterior of the building. The strata argues that the solarium is not part of the structure and is

not required to support the building. It is simply an add-on post original construction. The strata has misstated the position of the owner. The owner has argued that the solarium is a fixture that has become part of the realty; he has not argued that the solarium is part of the structure of the building. I agree that the solarium is not part of the structure of the building. The solarium does not need to be part of the structure of the building to be the responsibility of the strata per bylaws 8(1)(d)(iii) and (v).

81) The strata argues that the owner has the onus to prove the statutory test in s. 72(3) [the strata may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot] and that bylaw 8 does not refer to “additions to balconies”. Express wording is not included in bylaw 8. In support of its argument, the strata cites *Buchbinder v. Strata Plan VR2096*, 1992 CanLII 5957. The BC Court of Appeal ruled that a free standing garden shed on a patio did not fall within the specific prohibitions because it was not an addition or an enclosure of limited common property – express wording stating no garden sheds would be needed. I decline to apply this decision. The solarium is not free standing. The Laing report noted that two building windows were enclosed and one glazing unit was removed to provide passage from the solarium to the interior of Unit 801.

82) The strata argues that test for section 72(2) of the SPA is quite different than the test for section 72(3). Section 72(2) of the SPA states that a strata bylaw can make an owner responsible for limited common property or, if the proper regulation is enacted (no such regulation has been enacted), common property. Section 72(3) addresses a strata lot. The strata states that the alteration bylaw 6 inferentially provides that the obligations for alterations is that of an owner. The requirement in section 72(3) has not been met and the owner remains responsible for the alteration. The strata argues that absence of express wording, combined with bylaw 6 governing alterations, leads to the conclusion that alterations were not to form the obligation of the strata. I cannot accept that reasoning. Bylaw 8 includes “attachments to the exterior” and bylaw 6 requires approval for alterations. The bylaw 6 approval may be granted on conditions. I have already found that the

owner did not accept the conditions placed upon the Unit 801 owner in 1996. Those conditions cannot be specifically placed on the owner now. Whether the adoption of a bylaw can result in the requirement of an owner to maintain and repair an alteration is a different matter.

83) The strata argues that the remedy sought by the owner is not "repair and maintenance". It would require full demolition and a rebuild of the solarium. While that argument is compelling since a solarium is essentially a glass structure (and glass and sliding glass doors comprise the renewal project), I am not persuaded. The SPA does not use the word "replace". For example, section 72(1) of the SPA requires a strata corporation to repair and maintain common property. By inference that must include "replace", otherwise the strata corporation could not replace any common property. It cannot possibly have been the intention of the legislature that repair and maintenance would exclude replacement, regardless whether it is common property or a strata lot with the Standard Bylaws.

84) The owner cites the decisions in *Guenther v. Owners, Strata Plan KAS431*, 2011 BCSC 119, and *Elahi v. Owners, Strata Plan VR* 1023, 2011 BCSC 1665, in support of his argument. The first decision involved the enclosures of balconies that were limited common property. The second decision involved a solarium within the boundaries of limited common property. The strata argues that neither decision should be followed because they involved limited common property. I agree with the strata. Although the bylaws were similar, I find that these decisions of little assistance. The owner's solarium is part of the strata lot owned by the owner. Limited common property, while designated for exclusive use, is owned by all the owners based upon their unit entitlement (section 66 of the SPA).

85) Until the adoption of the bylaws in 2015, the owners were responsible for the repair and maintenance of their strata lots. The bylaw amendment in November, 2016 made owners responsible for the repair and maintenance of alterations regardless whether there was a change in title or an alteration agreement existed. The owner argues that these bylaws were passed after he filed his dispute with the

tribunal, they were clearly enacted to frustrate the owner's claim and they cannot be enforced retroactively.

86) The owner argues that the November 2016 amendments were adopted to clarify the existing understanding of the interpretation of the 2015 bylaw 6 and 8 dealing with alterations and repair and maintenance.

87) The owner cites the decisions in *Strata Plan NW243 v. Hansen*, [1996] B.C.J. No. 2201, and *Strata Plan No. 51 v. Davies*, [1988] B.C.J. No. 1314, in support of his contention that the November 2016 bylaws cannot be applied retroactively. In *Hansen*, the court ruled that the adoption of a bylaw prohibiting hot tubs after a hot tub was installed could not be applied retroactively requiring the removal of the hot tub. In *Davies*, the court ruled that the adoption of a bylaw regulating the size of an outbuilding could not be applied retroactively to require the owner to limit the size of an outbuilding that was larger.

88) The strata argues that it is not relying on the retroactive application of the 2016 bylaws. It is relying on section 72(3) of the SPA and 2015 bylaws 6 and 8. The strata argues that the conditional grant of approval of the solarium applies and resolves the matter. I do not accept that argument. If section 72(3) of the SPA and 2015 bylaws 6 and 8 applied, then there would be no need to pass bylaws 3(3) – (8) and bylaw 8(1)(e). Moreover, I have already found that the conditions of the grant of approval of the solarium do not apply to the owner.

89) I find that the present situation of a November 2016 bylaw making an owner responsible for the repair and maintenance of an alteration different than a hot tub or outbuilding installation. In *Hansen* and *Davies*, the bylaws in question prohibited installations. In the present situation, the bylaw changes responsibility. Regardless, the November 2016 bylaw amendment was aimed directly at the owner and instituted after the owner commenced his claim before the tribunal. In those circumstances, I find that the November 2016 bylaw is retroactive as it pertains to the owner with respect to the present claim before the tribunal, and

cannot apply to require the owner to be responsible for the repair and maintenance of the solarium, for the purposes of this decision.

90) The repair and maintenance of the solarium for the purposes of this decision is governed by the February 2015 bylaws. The bylaws passed November 2016 are enforceable, but not with respect to repair and solarium when the renewal project was conducted. The solarium is an attachment. I therefore order that the strata was responsible for the repair and maintenance of the solarium when the renewal project was conducted. However, that does not necessarily lead to a conclusion that the solarium must at present be repaired.

91) I do wish to comment on a recent tribunal case, *Atlas v. The Owners, Strata Plan 991*, 2017 BCCRT 96. This decision was rendered October 17, 2017. Clearly neither party to this claim would have been aware of the decision. I acknowledge that tribunal decisions are not to be treated as precedents; however, I find the decision persuasive.

92) Ms. Atlas sought reimbursement for replacing the windows of two enclosed balconies that formed part of her strata lot. She purchased her strata lot in 2012 when the balconies had already been enclosed. The windows leaked. The strata refused to replace the windows, so Ms. Atlas replaced them. The tribunal found that Ms. Atlas was responsible for the cost of replacement.

93) In the *Atlas* case, bylaws passed in 2006 provided that once a balcony had been enclosed, the windows and doors were the owner's responsibility. The bylaws had been amended since that time, but at the time Ms. Atlas undertook repairs, the previous bylaws were in place. The balconies were enclosed before the 2006 bylaws were adopted. After the recent adoption of amended bylaws, the strata eliminated the balconies and made them part of the building. Hence the money spent by Ms. Atlas proved to be unnecessary. This was true for Ms. Atlas as well as other owners.

94) While I find this decision persuasive, there is a significant difference between the *Atlas* case and the present matter. In *Atlas*, the bylaw that applied was that bylaw in place when Ms. Atlas undertook the repair work for which she was seeking reimbursement. In this matter, the strata is relying, among other things, on the November 2016 bylaw amendments that were enacted after the owner commenced his claim before the tribunal. I have found that it is the obligation of the strata to repair and maintain the solarium for the purposes of the tribunal claim.

Must the strata include the solarium in its renewal project and replace windows and frames?

95) I have reviewed a photograph of the solarium after the adjacent Unit 801 window and sliding door were replaced as part of the renewal project. I agree that the windows and doors are different. I find that despite that difference, the solarium blends in with the new windows and frames and aesthetic changes such as painting were not, and are not, necessary.

96) The strata brought to my attention that the owner supported the resolution passed April 30, 2016 to increase the special levy fund by $265,000 without objection even though the solarium was not included in the scope of work of the renewal project. I find that this does not support the strata's position that the repair and maintenance of the solarium is the obligation of the owner. It simply reflects that the owner was in favour of the railing upgrade and excluding the new roof.

97) The strata has received and produced the expert opinion of Mr. Laing. I accept the conclusions of the Laing report. I find that the solarium was not included in the renewal project and that is was reasonable that the solarium not be included. The solarium is not in need of repair, maintenance or replacement. The solarium was installed 16 years after the construction of the building.

98) I acknowledge the owner has argued that other windows and doors in the Allard Units did not need renewal. The owner has cited *Mott v. The Owners, Leasehold Strata Plan LMS 2185 UBC Properties Inc.*, 1998 Can LII 3972 in support of the argument that the duty to repair and maintain be interpreted broadly. I find that this

decision does not assist. The strata has an obligation to repair and maintain the building. It can interpret that obligation as it sees fit, subject to a claim of unfairness. The strata determined that the solarium need not be part of the renewal project. It made that determination with the assistance of the professionals the strata had retained. The owner has provided no expert evidence that other windows and doors of the Allard units did not need renewal. The owner has provided no expert evidence that the windows and doors of the solarium needed renewal.

99) I order that the strata need not include the solarium in its renewal project and replace windows and frames. I rely upon the Laing report, my review of a photograph of the solarium taken after the completion of the renewal project, and other evidence provided in making that finding.

100) The owner has claimed significant unfairness. Since I have found that the strata has an obligation to repair the solarium, any argument of significant unfairness does not apply with respect to that issue. I have found that the solarium should not be a part of the renewal project. Does that amount to significant unfairness?

101) In the recent decision in *The Owners, Strata Plan BCS 1721 v. Watson,* 2017 BCSC 763, the court restated the test for determining significant unfairness as set out in *Dollan v. The Owners, Strata Plan BCS 1589,* 2012 BCCA 44. While that test was considered under section 164 of the SPA, I find it would equally apply to an analysis under section 48.1(2) of the Act. In particular, in *Watson* the court stated :

> The test under s. 164 of the [SPA] also involves objective assessment. [The *Dollan* decision] requires several questions to be answered in that regard:
>
> a) What is or was the expectation of the affected owner or tenant?
>
> b) Was that expectation on the part of the owner or tenant objectively reasonable?

c) If so, was that expectation violated by an action that was significantly unfair?

There is also the comments [at paragraph 21] in *Dollan*:

"There is no doubt that in making a decision the Strata Corporation must give consideration of the consequences of that decision. However, in my view, if the decision is made in good faith and on reasonable grounds, there is little room for a finding of significant unfairness merely because the decision adversely affects some owners to the benefit of others. …"

102) The owner argues that he had a reasonable expectation that the solarium should be included in the renewal project, and that reasonable expectation has been violated. The owner states that he could reasonably assume that the solarium had been constructed with the approval of the strata. It is clear that the solarium was constructed with the approval of the strata.

103) The strata argues that the owner did not have a reasonable expectation that the strata would be responsible to replace the solarium based on a thorough review of the factual matrix, customary historical practice of the strata regarding alterations, the expectations of the long standing owners and the wording of 2015 alteration bylaw 6.

104) I accept that the factual matrix and historical practice applies. More particularly, I have found that the owner was aware when he purchased Unit 801 in June, 2000 that the solarium was installed with conditions (paragraph 72 of this decision), which included the owner being responsible for the solarium. The design and cost study issued by RDH did not include the solaria because the solaria did not require renewal. I find that the evidence does not support the premise that the owner had a reasonable expectation that the strata would include the solarium in the renewal project. Therefore I find the strata's decision to exclude the replacement of the solarium in the renewal project does not amount to significant unfairness.

In the alternative, must the strata enter into negotiations about other solutions addressing repairs and maintenance of the solarium?

105) I have found that the strata has an obligation to repair and maintain the solarium. I have also found that the solarium need not be included in the renewal project. I do not find that the strata must enter into negotiations about other solutions, but I do recommend that dialogue take place.

106) The owner has claimed significant unfairness. Since I have found that the strata has an obligation to repair the solarium, any argument of significant unfairness does not apply. I have found there is no significant unfairness when the strata determined that the solarium should not be a part of the renewal project.

107) The owner has requested a declaration that the strata is responsible for future repair and maintenance under the bylaws in the absence of a written agreement to the contrary. The owner argues that should the solarium need to be removed prior to the end of its useful life in order for the strata to conduct repairs and maintenance within its responsibility, the costs of removing and replacing the solarium must be borne by the strata or compensated for its loss and for loss of use. The owner relies on *Baker v. The Owners, Strata Plan NW3304*, 2002 BCSC 1559.

108) The strata argues that the claim for this remedy should not be considered by the tribunal. The owner submits that this part of the owner's claim provides new evidence regarding the owner's intentions with respect to his vote during the renewal process and how this this tied into the solarium issue. The strata argues the new evidence should not be considered, as it is prejudicial and irregular.

109) The owner argues that he has not added a new claim. The owner argues that he has sought a declaration that if the bylaws are interpreted properly, the strata is responsible for the repair and maintenance of the solarium. I have made that declaration, based upon the bylaws in place when the owner filed his tribunal claim. The owner argues that if the solarium does not need repair now, a declaration that it is the strata's responsibility means that when it needs repair, that

repair will be the strata's responsibility. The owner argues that such a declaration implies potential future responsibility.

110) The owner states that he told Mr. Ross when the owner purchased Unit 801, he knew that the solarium was part of his strata lot and understood his responsibility for it flowed from the bylaws. The owner states that he did not understand any responsibility for the solarium to arise from an agreement with the previous owner. If the owner understood that his responsibility flowed from the bylaws, then it is consistent that the responsibility will continue to flow from the bylaws, including any future bylaws changes. For the owner to argue that responsibility flows from the bylaws and simultaneously that the tribunal declare future responsibility based upon past bylaws is inconsistent and contradictory.

111) I decline to make a declaration that the strata is responsible for future repair and maintenance under the bylaws in the absence of a written agreement to the contrary. I cannot predict what bylaws will govern the future repair of the strata. The strata may repeal current bylaws and adopt others. That is all subject to the passing of a ¾ vote resolution of the owners and any applications an owner opposed to such amendments may make. In the *Baker* case, the balcony enclosure had already been removed. I make no order that the owner be compensated should the solarium need to be removed prior to the end of its useful life in order for the strata to conduct repairs and maintenance within its responsibility.

112) The owner has not suggested that it would be unfair if the strata did not enter into negotiations about other solutions. If and when the solarium needs repair or maintenance, the strata will at that time have to review the bylaws in force and make a decision. The strata can communicate with the owner, or any successor of the owner, and reach consensus with respect to the best way to conduct the repair and maintenance of the solarium. The 2015 bylaws with respect to the solaria are no longer enforceable in view of the passage of the November 2016 bylaws.

Must the strata pay the owner his expenses totaling $33,249.63?

113) The owner seeks $33,249.63, the legal fees paid by him in connection with the dispute. The tribunal process encourages parties to refrain from involving lawyers in disputes. Indeed, the Act provides that lawyers shall not represent a party, unless a party is granted an exemption. Both the owner and the strata have been granted approval to be represented by a lawyer. That does not mean that either party is entitled to be reimbursed for the cost of that lawyer.

114) Both parties are represented by lawyers and both parties have submitted that costs be argued after I have rendered this decision. I acknowledge that both parties are legally represented and have agreed that any decision on costs be postponed until the parties have had the opportunity to review these reasons and make submissions.

115) An adjournment of a tribunal dispute must only be considered in exceptional circumstances due to the tribunal's mandate to be cost effective, efficient and expedient. Regardless of the parties' agreement to argue costs after a tribunal decision is rendered, I decline to postpone my decision on costs.

116) Rule 16 of the tribunal, in force at the time the dispute was issued, provides "Except in extraordinary cases, the tribunal will not order one party to pay to another party any fees charged by a lawyer or another representative." The owner argues that the conduct of the strata is deserving of reproof or rebuke. The owner provides numerous examples of conduct that he states is deriving of rebuke. The owner cites the case *Garcia v. Crestbrook Forest Industries Ltd.*, [1994] B.C.J. No. 2486 (BCCA), as the leading case in BC regarding special costs ordered by the court. I agree that Garcia is the leading case in BC with respect to special costs.

117) The owner was not completely successful. I shall not list the examples listed by the owner as amounting to reprehensible conduct deserving of reproof or rebuke. Essentially the conduct complained of has been reflected elsewhere in this decision. The owner argues that this matter has been complex and there is a significant volume of material. I acknowledge and agree that the matter has been complex and a large volume of material produced. I do not accept that the conduct

of the strata was deserving of reproof and rebuke. The *Garcia* decision does not apply. Being complex with a large volume of material is not sufficient to dictate that the legal fees incurred by a party should be awarded. The owner chose to be represented by a lawyer. The strata chose to be represented by a lawyer. Those were decisions they made. It does not lead me to conclude, even if either party was successful on all issues in the dispute before the tribunal, that they be reimbursed for legal fees incurred.

118) I find that the owner is not entitled to $33,249.63. This is not an extraordinary case as contemplated by tribunal rule 16 in force at the time the dispute was issued. I find that due to the mixed success of the parties, the owner is not entitled to any costs to reimburse him for his lawyer, the fees he paid to commence the tribunal proceeding, or the adjudication fee.

Must the owner pay the strata its expenses totaling $5,990.00?

119) The parties have not requested that I postpone my decision with respect to the expert report of Mr. Laing. The strata argues that under section 49 of the Act, the tribunal may order that a party pay to the other party reasonable expenses and charges that the tribunal considers directly relate to the conduct of the proceedings. The strata seeks an order for recovery of $5,990.00. I have reviewed the invoices. They total $5,945.00.

120) Tribunal rule 126, in force at the time the dispute was issued, provides:

> A final decision or order can also include a requirement for one party to pay to another party in the dispute some or all of
>
> a) any tribunal fees paid by the other party in relation in the dispute,
>
> b) any fees and expenses paid by a party in relation to witness fees and summonses, and
>
> c) any other reasonable expenses and charges that the tribunal considers directly related to the conduct of the tribunal dispute resolution process..

121) The strata argues that Mr. Laing's evidence was not only necessary; it was objective, independent, credible compelling, convincing and reliable.

122) The owner argues that the Laing report was not necessary to resolve the issue regarding the interpretation of bylaws to determine responsibility for the repair and maintenance of the solarium. I agree with the owner on this point. The owner argues that the question of whether the solarium needed to be removed to institute the renewal program was not relevant to the issue of who is responsible for its repair and maintenance. That issue was not before the tribunal.

123) The issue in dispute was whether the solarium should be included in the renewal project. The owner argues that whether RDH recommended remediation of the solarium is not relevant to the issue of who is responsible. I agree with the owner. However, the owner did not address in his response whether the solarium should be included in the renewal project.

124) I have found that the solarium should not have been included in the renewal project. In order to make that finding, I relied on the Laing report. The Laing report assisted me with the determination of this issue. No other report in opposing was produced. The invoices of Mr. Laing include site visits, reviewing existing documents, photographs and preparing the letter itself. Since Mr. Laing was already involved in the renewal project, I find that some of the work done was work that would have been necessary in any event. I find that some of the Laing report dealt with the structure of the solarium rather than its present status with respect to renewal. In the circumstances, I find that a reasonable amount directly related to the finding that the solarium did not need renewal is $3,000.00. I order that the owner must pay the strata $3,000 for reimbursement of the cost to obtain the Laing report.

DECISION AND ORDERS

125) In summary, I find as follows:

a) In 1996, the council approved the installation of the solarium by the owner of Unit 801, on conditions that included the owner at the time and all future owners of Unit 801 would be responsible for the repair and maintenance of the solarium.

b) The owner was aware of the conditions with respect to the installation of the solarium of Unit 801.

c) The owner did not accept the 1996 conditions of the approval of the solarium when the owner purchased Unit 801 and he has not accepted those conditions subsequent.

d) The November 2016 bylaw is retroactive as it pertains to the owner with respect to the present claim before the tribunal, and cannot apply to require the owner to be responsible for the repair and maintenance of the solarium, for the purposes of this decision.

e) The strata is not obligated to enter into negotiations about other solutions addressing repairs and maintenance of the solarium, but I do recommend that dialogue take place.

f) I decline to make a declaration that the strata is responsible for future repair and maintenance under the bylaws in the absence of a written agreement to the contrary.

126) I make the following orders:

a) I order that the strata, for the purposes of the renewal project, has an obligation to repair and maintain the solarium.

b) I order that the solarium shall not be included in the renewal project of the strata and windows and frames of the solarium need not be replaced.

c) I dismiss the claim that the strata must enter into negotiations about other solutions addressing repairs and maintenance of the solarium.

d) I dismiss the claim of the owner that he be reimbursed $33,249.63

e) I order that the owner must pay the strata $3,000 for reimbursement of the reasonable cost to obtain the Liang report.

127) Under section 49 of the Act, and tribunal rules 14 and 15, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. Since there has been mixed success, I make no order with respect to payment of tribunal fees.

128) Under section 167 of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to defending this claim are allocated to the owners.

129) The *Court Order Interest Act* applies to the tribunal and I must award pre-judgment interest to the strata. I calculate interest on $3,000.00 from June 7, 2017 (the date of the Laing report invoice) to the date of this order to be $8.92. Accordingly I order the owner to pay the strata $8.92 in pre-judgment interest.

130) The strata is also entitled to post-judgment interest under the *Court Order Interest Act*.

131) Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.3(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

132) Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently

$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia

Patrick Williams, Tribunal Member