



Civil Resolution Tribunal

Date Issued: December 6, 2017

File: ST-2016-00510

Type: Strata

Civil Resolution Tribunal

Indexed as: *Thölin v. The Owners, Strata Plan VR419 et al*, 2017 BCCRT 131

B E T W E E N :

Mats Thölin

APPLICANT

A N D :

The Owners, Strata Plan VR419, and Patricia C. Conti

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Angus M. Gunn

INTRODUCTION

1. The Owners, Leasehold Strata Plan VR419 is located in the False Creek area of Vancouver, British Columbia ("Strata Corporation"). Known colloquially as Heather Point, the Strata Corporation is comprised of 48 strata lots. The applicant Dr. Mats Thölin owns strata lots 31 and 32. The respondent Patricia C. Conti owns strata lot 8.

2. At the center of the present dispute are two parking stalls that form part of the Strata Corporation's common property: stalls 12 and 13. Dr. Thölin contends that a special resolution adopted by the Strata Corporation forty years ago continues to allocate to lot 31 the exclusive use of those stalls. The Strata Corporation maintains that the resolution no longer determines who is entitled to use stalls 12 and 13 and advances several arguments in support of that position.
3. Dr. Thölin seeks (a) the immediate physical return of parking stalls 12 and 13 for his exclusive use; (b) compensation for his lost access to a second parking stall since 1985; (c) a written, public apology by the Strata Corporation for the treatment to which it has subjected him; and (d) recovery of his expenses and Civil Resolution Tribunal ("Tribunal") fees in connection with this case.
4. The Dispute Notice issued by Dr. Thölin named the Strata Corporation as the only respondent. The parking stalls at issue in this case are (and for some decades have been) used by the current and former owners of strata lot 8. As Dr. Thölin did not name Ms. Conti (the current owner of strata lot 8) as a respondent, the Tribunal ordered that she be added as a respondent. She provided further evidence and agreed generally with the Strata Corporation's position in this matter.

JURISDICTION AND PROCEDURE

5. 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 Tribunal Act*, S.B.C. 2012, c. 25 ("CRT Act"). Paragraph 48.1(1)(c) of the CRT Act provides that in resolving a strata property claim, the Tribunal may make an order requiring a party to do (or refrain from doing) something. The CRT Act defines "party" in section 1 to mean "an initiating party or a responding party". I am satisfied that the Tribunal's jurisdiction in strata property claims extends to disputes between owners and is not restricted to disputes between owners and strata corporations.
6. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

7. Under the CRT Act, the Tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The Tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUES

8. The parties' submissions raise numerous issues for consideration, and I have concluded that answers to the following questions are sufficient for the proper disposition of this case:
 - a. Is any part of Dr. Thölin's claim out of time under the *Limitation Act*, or its predecessor legislation?
 - b. If not, has Dr. Thölin acquiesced and abandoned his claim?
 - c. If not, do the parking stall allocations reflected in the 1977 Special Resolution remain in force?
 - d. If so, was the right to exclusive use conferred by the 1977 Special Resolution limited to Dr. Thölin's predecessor on title?
 - e. If not, is Dr. Thölin's claim defeated by the Strata Corporation's duty to control, manage, and administer common property for the benefit of all owners?
 - f. Is Dr. Thölin entitled to a written apology and has the Strata Corporation breached its obligations under the *Strata Property Act*, S.B.C. 1998, c. 43 (the "SPA"), and shown significant unfairness towards Dr. Thölin?

BACKGROUND AND EVIDENCE

9. The evidence in this case consisted entirely of documents provided by Dr. Thölin, the Strata Corporation, and Ms. Conti. The facts underlying this dispute are generally uncontested, and I will summarize them below.

The Strata Corporation

10. The Strata Corporation's strata plan was deposited at the Land Title Office on March 7, 1977, thereby establishing the Strata Corporation. The Strata Corporation was established as what is today called a leasehold strata plan, meaning that the land shown on the strata plan is subject to a ground lease. The Strata Corporation is comprised of 48 strata lots. A brochure created at the time of Heather Point's development listed the townhouses' "Feature Specifications" as including "1 parking space per unit" with "[a]dditional parking space available at extra cost."
11. The strata plan shows the complex as having 63 parking stalls falling into two categories:
 - 44 common property parking stalls located within the boundaries of the strata plan (the "Common Property Parking Stalls"); and
 - 19 common asset parking stalls located in an adjacent underground parking facility that is (a) attached to the common property parking garage; (b) located outside of the strata plan on Lot 44, False Creek Plan 17320; and (c) leased from the City of Vancouver (the "Common Asset Parking Stalls").
12. Lot 44 was created on July 5, 1978, by a deposit of a subdivision comprised of a portion of the remainder Lot 31 and a portion of Lot 9, False Creek Group 1, with title to both parcels being held by the City of Vancouver. The Strata Corporation's developer leased Lot 44 from the City through an undersurface lease dated as of October 1, 1976, and registered in the Land Title Office on July 5, 1981. The lease was assigned to the Strata Corporation on October 22, 1984, and the assignment

registered at the Land Title Office. As a result, control of the Common Asset Parking Stalls remained with the developer until 1984.

13. The standard bylaws to the *Strata Titles Act*, S.B.C. 1974, c. 89 (“STA”), were the initial bylaws of the Strata Corporation. Section 3(f) of the standard bylaws gave the Strata Corporation the power to “grant to an owner the right to exclusive use and enjoyment of the common property ... the grant to be determinable on reasonable notice, unless the strata corporation by unanimous resolution otherwise resolves.”¹ Subsection 29(2) of the STA allowed for the resolution granting exclusive use to be filed in the Land Title Registry, but only if accompanied by an appropriate sketch plan.
14. In addition to the option of granting rights of exclusive use of common property, subsection 29(1) of the STA would have allowed the Strata Corporation to designate the Common Property Parking Stalls as limited common property. It does not appear that the Strata Corporation ever did so.

1977 Special Resolution

15. An extraordinary special general meeting of the Strata Corporation occurred on November 3, 1977. At that meeting, the owner developer passed a special resolution titled “Grant of Exclusive Use Pursuant to By-law 3(f) Over Portions of the Common Property as Provided by Section 29(2) of the *Strata Titles Act*” (the “1977 Special Resolution”).² The grant of exclusive use extended to both the Common Property Parking Stalls and the Common Asset Parking Stalls.

¹Although the Strata Corporation would have been able to modify this standard bylaw, there is no evidence that it did so before adoption of the 1977 Special Resolution.

²The minutes of the extraordinary general meeting at which the 1977 Special Resolution was adopted do not indicate how many owners were represented at the meeting or the breakdown of the vote. In the absence of evidence to the contrary, I will assume that the 1977 Special Resolution was passed in accordance with the STA’s requirements.

16. The 1977 Special Resolution stated in relevant part that:

- “It is desirable and necessary that each of the Lessees of the Strata Lots shown on the Strata Plan should have the exclusive right to use and enjoy certain parking spaces, lockers, decks and patios without molestation, hindrance or interruption from others.”
- “The Strata Corporation has agreed to grant to such Lessees pursuant to By-Law 3(f) of the By-Laws of the Strata Corporation the exclusive right to use and enjoy such areas for those purposes.”
- “IT IS UNANIMOUSLY RESOLVED that the Strata Corporation doth grant and does hereby grant to the respective Lessees of the Strata Lots herein referred to, their respective heirs, executors, administrators, successors and assigns, for a term expiring on the day the Strata Lot Lease respecting same expires, the exclusive right to use and enjoy those portions of the common property shown on the Strata Plan for the purposes mentioned as follows.”
- “Parking Spaces: Each Strata Lot shall have the exclusive use of the parking space or spaces as shown on Schedule “A” attached hereto, the number of the space or spaces described on said Schedule “A” corresponding to the number of the Strata Lot.”
- “AND IT IS UNANIMOUSLY RESOLVED that the aforesaid grants of rights of exclusive use and enjoyment shall be determinable on three (3) months’ notice, if the Strata Lot Lessee in question is in breach of the by-laws, rules and regulations of the Strata Corporation uniformly applicable to all lessees of Strata Lots shown on the Strata Plan, and such breach is not cured or remedied within the same three (3) month period.”
- “AND IT IS UNANIMOUSLY RESOLVED that the aforesaid resolutions shall not be added to, amended or altered save and except by a unanimous resolution of the Strata Corporation.”

17. Attached to the 1977 Special Resolution was Schedule “A”, labelled “Allocation of Parking & Locker Spaces.” The parking stalls were numbered by reference to their associated strata lot number. Schedule “A” addressed both the Common Property

Parking Stalls and the Common Asset Parking Stalls. It allocated to strata lot 31 two of the Common Property Parking Stalls that would later be assigned stall numbers 12 and 13.

18. The 1977 Special Resolution did not expressly set out a method for terminating the exclusive use of parking spaces aside from situations where a strata lot lessee is in breach of the Strata Corporation's bylaws.
19. The Land Title Office registrations in connection with the 1977 Special Resolution were registered by the law firm acting for the developer.
20. Neither Dr. Thölin nor the Strata Corporation challenges the validity of the parking stall allocations reflected in the 1977 Special Resolution at the time of its adoption.
21. On July 5, 1978, several months after adoption of the 1977 Special Resolution, the creation of title to Lot 44 was registered.

Dr. Thölin's Purchase of Strata Lot 31 and Assignment of Parking Stalls 4 and 5

22. On December 4, 1980, Dr. Thölin purchased strata lot 31³ after arriving in Canada two months earlier. According to Dr. Thölin, both the seller and the realtor indicated that two parking stalls were included with the strata lot but did not indicate which ones. Dr. Thölin remembers the realtor referring to a "registered document on file." Dr. Thölin understood that document to be something kept on file by the Strata Corporation as opposed to something filed with the Land Title Office.
23. Upon moving in, Dr. Thölin asked the president of the strata council where his two parking stalls were situated. Dr. Thölin was directed to park in stalls 4 and 5, which he considered to be in a very satisfactory location. Dr. Thölin recalls parking stall 12 being used by a former owner of strata lot 8 to park a large truck.

³ As the Strata Corporation is a leasehold strata, Dr. Thölin in fact became the leasehold tenant of strata lot 31. For convenience, and since section 1(1) of the *Strata Property Act* includes a leasehold tenant within the definition of "owner", these reasons will refer to Dr. Thölin as the owner of strata lot 31.

Parking Lot Survey and Registration of Explanatory Plan

24. The minutes of a strata council meeting on January 27, 1981, indicate that surveys of the parking lot had been prepared by the City and a private firm “for the purposes of providing leasehold documents”.
25. On July 27, 1983, an explanatory plan document was prepared that identified all of the parking stalls that were Limited Common Property and which were Common Property. The plan noted that leases over parking stalls were being granted to certain strata lots, but the actual leases themselves were not put into evidence. Parking stalls 4, 12, 13, and 14 all show as Common Property. The explanatory plan differed from the 1977 Special Resolution in that the parking stalls were numbered sequentially rather than by strata lot.

The 1984 Extraordinary General Meeting

26. On February 28, 1984, the Strata Corporation held an extraordinary general meeting. A quorum of owners attended the meeting representing 28 of the complex’s 48 strata lots. The minutes of the meeting record the following special resolution (the “1984 Special Resolution”) as having carried:

Special Resolution for [the Strata Corporation] to assign to [the developer] sub-leases for the following 8 underground parkade stalls #5, 12, 25, 26, 40, 41, 51, and 57. Such assignment will be concurrent to the assignment of the City of Vancouver undersurface Lease for Lot #44 and Greenchain Road from [the developer] to [the Strata Corporation]. [The developer] undertakes to sell and assign the 8 parking stalls noted to Owners within [the Strata Corporation].

27. The Strata Corporation maintains that the 1984 Special Resolution accorded with the sketch plan dated July 27, 1983, and registered as the Explanatory Plan to various sub-leases of the Common Asset Parking Stalls.
28. Dr. Thölin disputes the validity of the 1984 Special Resolution. Although he did not say so explicitly, Dr. Thölin apparently considers the 1984 Special Resolution to be invalid on the basis that since it was not passed by a unanimous vote of the

owners it could not validly alter the parking stall allocations reflected in Schedule “A” to the 1977 Special Resolution.

29. The minutes of meeting state that “an information sheet regarding strata parking lots” had been distributed in advance of the meeting. The minutes also state that “[t]he ownership of unclaimed parking lots is a matter to be settled between applicants with letters on file with [the developer].” A strata council member also indicated that “changes in location of parking lots could be arranged at this time if two parties agreed to the change.” These minutes would have been distributed to all owners.
30. The Land Title Office registrations in connection with the 1984 Extraordinary General Meeting were again registered by the law firm acting for the developer.
31. The minutes of the strata council meeting on December 17, 1984, state that “[t]he legal documentation of our parking lots has been finalized. Registration of individual lots is not essential, but if this is desired, contact [strata council member] regarding forms and procedure.” The minutes do not specify what the “legal documentation” consisted of.
32. The minutes of the strata council meeting on February 18, 1985, state that “[a]ll legalities regarding [parking stalls] have been settled.”

Parking Space Reallocations After 1984 Special Resolution

33. Dr. Thölin states that in 1985 he was directed to vacate parking stall 5, as it now belonged to another owner in the complex. On several occasions, Dr. Thölin asked the then-president of the strata council and another council member for a copy of the “registered document on file” showing parking space allocations. According to Dr. Thölin, both strata council representatives denied the existence of such a record. Dr. Thölin believed that statement and put his pursuit of a second parking stall “on hold”. Dr. Thölin says that he did so because at the time he and his wife had only one vehicle, he was working heavy shift work, his wife was pregnant, and

she was pursuing a nursing degree. These interactions between Dr. Thölin and the strata council representatives are undocumented.

34. The earliest record of parking stall usage after adoption of the 1984 Special Resolution appears to be a “registry” prepared by the Strata Corporation in March 1988. Appendix “A” to these reasons summarizes how the parking stall allocations reflected in the 1977 Special Resolution differed from those in the 1988 registry:
 - (a) 30 strata lots saw no change in their parking stall allocations;
 - (b) 3 strata lots maintained their allocations of one parking stall but were assigned different stall numbers;
 - (c) 7 strata lots saw their parking stall allocations increase from one to two;
 - (d) 1 strata lot saw its parking stall allocations increase from one to three;
 - (e) 6 strata lots (including Dr. Thölin’s strata lot 31) saw their parking stall allocations decrease from two to one; and
 - (f) 1 strata lot saw its parking stall allocation decrease from two to zero.
35. The 1998 registry showed strata lot 31 using parking stall 4 and strata lot 8 using parking stalls 12 and 13. The minutes of a strata council meeting on February 29, 1988, indicate that the registry would be distributed to all owners. The Strata Corporation describes this March 1988 registry as the basis of all parking at the Strata Corporation ever since – a claim supported by the fact that subsequent registries prepared in 2003, October 2005, October 2012, January 2013, April 2015, May 2015, and 2016 reflected the same allocation of parking stalls 4, 12, and 13.
36. The minutes of a strata council meeting on January 16, 1989, record Ms. Conti requesting a sub-lease for parking stall 13. The minutes indicate that Ms. Conti would be notified that no sub-lease was available.

37. The minutes of a strata council meeting on November 27, 1989, record Dr. Thölin indicating a need for two adjacent parking spots to store a canoe. Dr. Thölin subsequently wrote to the strata council on April 2, 1990, to clarify that although he owned two parking stalls, they were not adjacent and that this would have to change. Dr. Thölin was apparently referring to parking stall 4 allocated to his strata lot 31 and parking stall 14 allocated to his strata lot 32.
38. There was also evidence that from 1993 until 2013 Dr. Thölin traded the exclusive use of parking stall 14 (assigned to his strata lot) for the exclusive use of another parking stall assigned to a different strata lot. This trade was apparently not documented.
39. In 1995 the Strata Corporation had an unrelated (non-parking) dispute proceed to arbitration. The arbitrator's award dated November 30, 1995, refers to certain portions of the 1977 Special Resolution, although only two pages of the award were put into evidence in this case. (Dr. Thölin indicated that he did not have copies of the other pages.) It is unclear from those pages what significance the arbitrator attached to the 1977 Special Resolution.
40. On July 17, 2002, the Strata Corporation adopted new bylaws. Bylaw 8(1) provided that "[p]arking spaces assigned to a strata lot shall not be rented or leased to non-residents until offered first to other strata members." Bylaw 8(2) provided that "[a] resident shall use the parking space which has been specifically assigned to his strata lot."

Changes to Content of Form B Information Certificate

41. In 2011 the Government of British Columbia announced changes to the content of Form B, the Strata Corporation Information Certificate, to come into effect in January 2014. The changes required strata corporations to identify and document the process by which parking space(s) are allocated to each strata lot.
42. To enable the Strata Corporation to comply with the new Form B requirements, in March 2012 the strata council directed the Strata Corporation's management

company to retrieve documents from the Land Title Office relating to parking stall allocations. This inquiry resulted in the re-discovery of the 1977 Special Resolution and the Schedule “A” parking stall allocations. Dr. Thölin states that once the 1977 Special Resolution resurfaced, “it all started to unravel” and he “restarted [his] pursuit of justice.”

43. In November 2012 the strata council distributed to all owners a package containing copies of the 1977 Special Resolution plus a schedule of current usage of the parking stalls. The current usage did not match the allocations reflected in the 1977 Special Resolution.
44. In January 2013 the strata council discussed comments from owners regarding the 1977 Special Resolution and current usage.
45. On February 17, 2013, Dr. Thölin wrote to Ms. Conti, referred to the package of documents previously circulated, indicated an intention to start parking in stalls 12 and 13 effective April 1, 2013, and recognized the “domino effect” that would ensue from “this long overdue correction.” The letter received no response and Dr. Thölin wrote to Ms. Conti again on April 5, 2013, noting that parking stalls 12 and 13 had not been vacated. He asked Ms. Conti to stop parking in those stalls and to remove all loose items. He added that “[i]t would be really helpful if you would recognize the new state of affairs so we can avoid further discussions.”
46. At an annual general meeting on February 26, 2013, the Strata Corporation amended Bylaw 8(1) to provide that “[p]arking spaces assigned to a strata lot shall be used only by the residents of the assigned strata lot unless rented or leased to another resident and shall not be rented or leased to non-residents.”
47. On April 29, 2013, Dr. Thölin again wrote to Ms. Conti, declaring an intention to start using parking stalls 12 and 13 on May 2, 2013, and demanding that the owner’s vehicle and other items be removed. Dr. Thölin expressed a willingness “to involve all the legally available enforcing methods and authorities in our society”, starting with a request that the Strata Corporation enforce its by-laws.

48. On May 1, 2013, Ms. Conti wrote to the strata council, rejecting Dr. Thölin's alleged entitlement to the exclusive use of parking stalls 12 and 13, stating that her family had been parking in the same stalls for at least 30 years, and describing them as limited common property for her exclusive use. She added that, when she bought strata lot 8, she assumed that the limited common property and all other property assigned to it had been approved by the strata council and adopted at an annual general meeting. Ms. Conti affirmed this position in a subsequent email dated May 21, 2013.

Attempts to Resolve Parking Dispute

49. The balance of the evidence relates to the various attempts that were made between 2013 and now to resolve the parking stall dispute. Although that evidence does not assist in resolving the parking stall dispute itself, it does relate to Dr. Thölin's concern that the Strata Corporation has not fulfilled its obligations under the SPA.
50. In August 2013 the Strata Corporation received a legal opinion in relation to the parking stall dispute. The Strata Corporation placed that letter into evidence in this case, waiving any privilege in respect of it.
51. The strata council convened a special general meeting on December 3, 2013, to consider a 3/4 vote resolution that the Strata Corporation "retain the services of a professional mediator ... to investigate and report to the Strata Corporation on current usage and entitlement to the parking spaces in the control of the Strata Corporation and recommend a resolution for consideration by the Owners at a future general meeting, to be held as soon as possible." A motion to amend this resolution to replace the word "mediator" with "consultant" and to insert "legal status and" before the phrase "current usage" was defeated by a vote of 20-14. The resolution as originally worded then went to a vote and failed by a vote of 21-10. The minutes indicated that the strata council would go back and explore a new proposal for ownership to consider in the near future. The minutes also attach a

sketch of the parking area, with a request that owners indicate the parking stall(s) they were currently using.

52. Although the minutes of the strata council meeting on April 24, 2014, were not placed into evidence, Dr. Thölin quotes them as establishing the following “plan” for dealing with the parking stall dispute: “i) take no further action and allow the disputing owners [to] resolve themselves; ii) respond to legal action when brought up by a challenging party; iii) re-try mediation resolution again; and/or iv) apply for administrator via the Supreme Court of British Columbia.”
53. The minutes of a strata council meeting on May 21, 2014, indicate that the strata council “agreed to seek owners’ approval for preservation of the current parking allocation.”
54. In 2014, Dr. Thölin attempted to sell the second strata lot he owns in the Strata Corporation (strata lot 32). The Strata Corporation issued a Form B on May 27, 2014, in respect of that prospective sale. In answer to questions about the allocation of parking stalls to the strata lot, the Form B stated that “[a]llotment of parking stall is currently under dispute. Usage of stall may change when dispute resolves in the future. The owner has had a private arrangement ... before to use stall #1. It is our understanding such arrangement is reverst [*sic*] recently.” Dr. Thölin stated that the Form B’s content resulted in the strata lot failing to sell.
55. In September 2014 the Strata Corporation received a further legal opinion in relation to the parking stall dispute. Again, the Strata Corporation placed that letter into evidence in this case.
56. On January 21, 2015, the Strata Corporation held an information meeting to discuss the parking stall dispute. The lawyer who prepared the legal opinions attended as well.
57. At its annual general meeting on February 18, 2015, the Strata Corporation approved a 3/4 vote resolution to adopt new bylaw 8(10) requiring each owner to

inform the strata corporation of the number of the parking space(s) that the owner is using (by a vote of 31-0).

58. Ms. Conti responded to new bylaw 8(10) by providing a copy of the 1988 parking stall registry and stating that parking stalls 12 and 13 had been registered to strata lot 8.
59. The minutes of a strata council meeting on April 26, 2015, indicate that the strata council resolved to present a resolution at a special general meeting near the end of May 2015 that the owners adopt “the current ‘Status Quo’ owner parking allocation.” The minutes also note that “[t]he ‘Status Quo’ resolution will not validate Form B, which will be valid only when the one outstanding issue, where two owners have made a claim on the same two parking spaces, is resolved.” The strata council also recognized “that these parking claims are the result of strata decisions made in the past and that both parties['] position should be taken into consideration in seeking a resolution.”
60. The special general meeting planned for the end of May 2015 was postponed to allow sufficient time for legal counsel to prepare an opinion regarding the planned resolutions.
61. At a meeting on June 16, 2015, the strata council met with legal counsel to discuss options to resolve the parking stall dispute.
62. The minutes of a strata council meeting on August 18, 2015, indicate that legal counsel would be asked to obtain current title searches for the leased parking stalls to review who the legal owners are. Legal counsel would also be asked to review the planned resolutions for approval at a general meeting. The strata council also intended to obtain a working copy of the master list of parking allocations from a past strata council member so that any necessary changes could be made.

63. By letter dated August 26, 2015, the Strata Corporation confirmed to Dr. Thölin that it had “no knowledge of any formal documents that are legally valid, registered lease documents, which have been presented by the Owner of Strata Lot 8.”
64. The minutes of a strata council meeting on December 15, 2015, indicate that the strata council conducted a Land Title Office search and obtained a copy of the 1977 Special Resolution. The strata council also obtained a list of the sub-leased parking spaces and the names of the present lessees of those spaces. The strata council decided to hold an information meeting on January 5, 2016, to obtain owners’ input on how to go about having the parking stall dispute settled.
65. On December 29, 2015, Ms. Conti wrote to the strata council objecting to the strata council’s suggestion that the parking stall dispute may have resulted from incorrect or misguided decisions by past strata councils. Ms. Conti described the 1988 parking stall registry as the “Form B of the day”, and repeated that strata lot 8 had been using stalls 12 and 13 for 34 years.
66. On January 5, 2016, the planned information meeting occurred to discuss the parking stall dispute. The lawyer who prepared the legal opinions attended again.
67. At the annual general meeting held on February 23, 2016, a 3/4 resolution was put to the owners “as a means for resolving the respective claims of the owners of Strata lot 31 and Strata lot 8.” One of the Common Property Parking Stalls (parking stall 1) had never been assigned to a strata lot and instead had been used to make parking available for one of the Strata Corporation’s commercial tenants. The resolution proposed that “upon conclusion of the current lease term and any renewal thereof provided for in the lease [of parking stall 1], allocate the parking space provided for in the lease to Strata Lot 31 in return for a release in a form acceptable to the Strata Corporation from the owner of Strata 31 from any further claim or right to a parking allocation other than as provided in the attached VR419 Parking Allocation 2016.” The resolution failed by a vote of 6 in favour, 28 opposed, 1 abstention.

68. By letter dated June 28, 2016, Dr. Thölin expressed concern that the Strata Corporation had not responded to his earlier letters of March 21, 2016, and June 14, 2016. (Neither of those letters was put into evidence in this case.) Dr. Thölin asked for a formal hearing with the strata council within 28 days. The letter added that “[a]s much as it would have preferable to solve this in a conciliatory fashion, such attempt seem[s] to have been derailed by the Ownership.”
69. On July 20, 2016, Dr. Thölin’s hearing with the strata council occurred. Dr. Thölin attended to discuss the parking stall dispute. Although the minutes of that meeting were not placed into evidence, Dr. Thölin’s written “talking points” were.
70. On July 21, 2016, the strata council wrote to Dr. Thölin, thanking him for his thoughtful presentation. The strata council acknowledged that “the parking dispute had gone on for far too long and the process has been stressful for [Dr. Thölin].” The strata council noted that the Strata Corporation’s owners had rejected all of the strata council’s attempts to resolve the dispute so that all parties involved could participate in an amicable solution. The strata council indicated that “we do not have the legal expertise to be able to determine if the 1977 resolution, which is the basis for your claim, would hold up in a court of law today, given that a previous Strata Council altered the parking assignments. ... The action Council is willing to undertake is to begin the process of applying to the Tribunal to seek a decision on this parking dispute.”
71. The minutes of a strata council meeting on September 27, 2016, indicate that the strata council looked into the process for initiating a claim before the Tribunal and concluded that only an owner (and not the Strata Corporation or strata council) could initiate such a claim. The Strata Corporation wrote to Dr. Thölin and Ms. Conti, indicating that it was prepared to defend a legal claim but felt that only an owner could initiate the claim.
72. The Strata Corporation reports that the parking stall allocation dispute has been the dominant issue confronting the Strata Corporation for years and has been

discussed in great detail at 43 of the 50 strata council meetings during the period from June 2012 until May 2017.

POSITION OF THE PARTIES

73. Dr. Thölin argues that:

- The 1977 Special Resolution is a legally valid, duly registered instrument that gives the owner of strata lot 31 the exclusive right to use parking stalls 12 and 13.
- The 1977 Special Resolution was never changed by a unanimous vote and therefore remains in force.
- The Strata Corporation is required to preserve pertinent records and keep them available. The Strata Corporation's denial in 1985 of the existence of the 1977 Special Resolution amounts to "clear misrepresentation."
- His claim is properly brought against the Strata Corporation in light of its responsibility to validate conclusively the legal status of the 1977 Special Resolution, including its attached Schedule "A".
- Ms. Conti, who is currently occupying parking stalls 12 and 13, has not produced any legally valid documentation to justify any right to park in those stalls.
- The fact that an arbitrator in 1995 "used" the 1977 Special Resolution in her award "makes it extremely likely to be valid, especially because of [the arbitrator's] recognized strata lot expertise."
- The various parking stall registries over the years that allocate parking stalls 12 and 13 to strata lot 8 were not legal or official documents, and none constituted proof of ownership or entitlement. Dr. Thölin maintains that all of the registries are incorrect and that "squatter's rights" do not prevail.

- The other owner's occupation of parking stalls 12 and 13 offends section 3 of the SPA, which requires an owner not to use "the common property ... in a way that causes a nuisance or hazard ... [or] unreasonably interfered with the rights of other persons to use and enjoy the common property ... [or] is contrary to a purpose for which the ... common property is intended as shown expressly or by necessary implication on or by the strata plan."
- The SPA requires the Strata Corporation to act honestly and in good faith (section 31) and requires the strata council to exercise the Strata Corporation's duties, including the enforcement of bylaws and rules (section 26).
- By failing to enforce its bylaws, by failing to inform the owner of strata lot 8 to stop using parking stall 13 when the owner requested a sub-lease for it in 1989, and by failing to satisfy the law that took effect on January 1, 2014, the Strata Corporation has breached its obligations under the SPA and shown significant unfairness towards Dr. Thölin. Instead, the Strata Corporation has engaged in delaying tactics and hostility, to the detriment of all owners.
- Dr. Thölin seeks (a) the immediate physical return of parking stalls 12 and 13 for his exclusive use as owner of strata lot 31; (b) \$125.00 per month as compensation for his lost access to a second parking stall; (c) a written, public apology by the Strata Corporation for the treatment to which it has subjected Dr. Thölin; (d) to recover the expense of \$151.54 incurred to obtain documents from the Land Title Office; and (e) payment of Tribunal fees totaling \$225.00 (being the \$125.00 application fee and the \$100.00 tribunal decision fee).

74. The Strata Corporation argues that:

- Dr. Thölin bears the burden of proof and has not identified any documents, subleases, or other legal documents from the time that he purchased strata lot 31 that refer to an exclusive right to use parking stalls 12 and 13.

- The original sub-lease agreement required an assignment of the sublease for parking stalls 12 and 13 to Dr. Thölin as the incoming purchaser of strata lot 31, but he did not request the strata council's permission to reassign the subleases to him.
- The 1984 Special Resolution superseded the 1977 Special Resolution, and demonstrates that a significant majority of the owners and the developer felt that the 1977 Special Resolution could be modified. The 1984 Special Resolution also shows that the developer, who would have been well aware of the 1977 Special Resolution, was still involved in the control of the common property parking at that time. An information sheet had been provided to all owners as part of the notice package. One of the parking stalls that Dr. Thölin now claims (parking stall 5) was among the 8 parking stalls re-allocated. There is no record of any owner objecting at that time to the change in parking stall allocations, or at any other time over the next 30 years. It was left open for other owners to switch their parking stalls by consent. There were also a number of "unclaimed" parking stalls still controlled by the developer.
- Dr. Thölin has been aware of the 1977 Special Resolution and its content since at least 1985.
- If Dr. Thölin felt that the 1984 reallocation of parking stalls was unfair to him, the time to dispute it was at the time and not 30 years later. Dr. Thölin's silence suggests that he did not at the time consider that he had a permanent right to the exclusive use of two parking stalls.
- Dr. Thölin has not identified any documents that corroborate his evidence as to why he first came to use parking stalls 4 and 5 or his being ordered to vacate parking stall 5.
- If when Dr. Thölin bought strata lot 31 he believed that "a registered document on file" entitled that strata lot to the exclusive use of two parking

stalls, it is unclear why he did not resist the request in 1985 that he vacate one of them.

- Dr. Thölin describes the demand in 1985 that he vacate the second parking stall allocated to strata lot 31 as the moment or event where the injustice occurred and is the basis for his complaint in this dispute.
- The strata councils from time to time have never been convinced, despite endless research and discussion, that Dr. Thölin has sufficient evidence to make a valid claim to parking stalls 12 and 13.
- Despite not having what they have considered sufficient evidence to act on Dr. Thölin's claim, various strata councils have worked very hard to resolve the dispute and have given Dr. Thölin every opportunity to prove the validity of his claim.
- Dr. Thölin himself showed a "casual disregard" of exclusive rights of use by trading the exclusive use of his parking stall 14 for the exclusive use of a different parking stall, without any documentation. (Dr. Thölin denied the relevance of this history, submitting that once the bylaw took effect that required owners to report usage of parking stalls the exclusive use of the parking stalls reverted to the "official stalls".)
- It has not breached any of its obligations, failed to produce a tangible result, or caused significant unfairness to Dr. Thölin in its handling of the parking stall dispute.
- Dr. Thölin's true dispute is with Ms. Conti, not with the Strata Corporation. As only Dr. Thölin was claiming an injustice, only he could initiate legal proceedings – whether with the courts or the Tribunal. The Strata Corporation itself had no claim to make.
- To effect the changes that Dr. Thölin now requests would require the 1984 Special Resolution to be overturned, which would affect the owners of at

least seven other strata lots, create chaos for the Strata Corporation, and expose it to tens of thousands of dollars in costs. If Dr. Thölin is entitled to rely on the 1977 Special Resolution, then all owners are. Such a conclusion could result in claims by multiple owners for different or additional parking stalls that could affect the interests of owners unrepresented in this claim. The Strata Corporation of today cannot possibly answer claims of “incorrect information” supplied by the Strata Corporation in 1980.

- Dr. Thölin’s claim should be rejected because (a) he has acquiesced to the current parking stall allocations and abandoned his claim to any other allocations; (b) the 1977 Special Resolution no longer remains in force; (c) the Strata Corporation must control, manage, and administer the common property for the greatest good of the greatest number; (d) the right of exclusive use conferred by the 1977 Special Resolution did not carry forward from the first owner of strata lot 31 to Dr. Thölin; and (e) Dr. Thölin’s claim is subject to a six-year limitation period and is now out of time.
- The Strata Corporation will comply with the Tribunal outcomes or recommendations, which will enable the Strata Corporation to have a “clean” Form B and to end the “extraordinary amount of time” it has spent on this issue.
- If the Tribunal rules in favour of the Strata Corporation, Dr. Thölin “should pay all costs.” Dr. Thölin agreed with that submission.

75. Ms. Conti argues that:

- The developer originally provided each strata lot with only one parking stall.
- The 1984 Special Resolution clearly indicates how owners obtained additional parking stalls. The annual general meeting at which the 1984 Special Resolution passed had quorum, the minutes of the meeting would have been posted and circulated to all owners, and they received no challenges or objections.

- The various parking stall registries since 1988 show that strata lot 8 has never been assigned any parking stalls other than numbers 12 and 13.
- The parking stall registries also demonstrate that there is no necessary relationship between the location of a strata lot and its assigned parking stall(s).

ANALYSIS

76. Of the various issues raised by the parties, I consider that answers to the following questions are sufficient for the proper disposition of this case:

- a) Is any part of Dr. Thölin's claim out of time under the *Limitation Act*, or its predecessor legislation?
- b) If not, has Dr. Thölin acquiesced and abandoned his claim?
- c) If not, do the parking stall allocations reflected in the 1977 Special Resolution remain in force?
- d) If so, was the right to exclusive use conferred by the 1977 Special Resolution limited to Dr. Thölin's predecessor on title?
- e) If not, is Dr. Thölin's claim defeated by the Strata Corporation's duty to control, manage, and administer common property for the benefit of all owners?
- f) Is Dr. Thölin entitled to a written apology and has the Strata Corporation breached its obligations under the SPA and shown significant unfairness towards Dr. Thölin?

77. In his reply submissions, Dr. Thölin set out a settlement proposal that that he felt could be "a radical community re-building act" if accepted. The Strata Corporation and Ms. Conti have not indicated an interest in accepting that proposal. I therefore will consider the issues in this case without reference to it.

Is any part of Dr. Thölin's claim out of time under the *Limitation Act*?

78. Dr. Thölin contends that “[t]he primary purpose of this ... case ... is to ascertain the validity of the [1977 Special Resolution].” Before that issue can be approached, though, it must be determined whether Dr. Thölin's claim is out of time. Section 13 of the CRT Act confirms that the *Limitation Act* applies to claims under the CRT Act.
79. Although the *Limitation Act* came into force on June 1, 2013, the key events in this case occurred many years earlier. Section 30 of the *Limitation Act* deals with a “pre-existing claim”, which is defined in subsection 30(1) to mean a claim (a) that is based on an act or omission that took place before June 1, 2013; and (b) with respect to which no court proceeding had been commenced before that date.
80. The core of Dr. Thölin's claim is a “pre-existing claim” within this definition – namely, his claim to the immediate physical return of parking stalls 12 and 13 for his exclusive use. The legal foundation for this claim is the parking stall allocations reflected in the 1977 Special Resolution. Dr. Thölin maintains that he is entitled to the exclusive use of those two parking stalls, which Schedule “A” to that resolution gives to strata lot 31.
81. The act or omission, to which Dr. Thölin objects, therefore, is the Strata Corporation's allocation of parking spots other than in compliance with Schedule “A” to the 1977 Special Resolution. When did that act or omission occur? It is unclear whether, in fact, strata lot 31 ever enjoyed exclusive use of parking stalls 12 and 13. When Dr. Thölin purchased strata lot 31 in 1980, the seller and the realtor indicated that two parking stalls were included with it but did not specify which ones. It does not appear as though any members of the Strata Corporation were aware of the parking stall allocations reflected in the 1977 Special Resolution. The president of the strata council at the time directed Dr. Thölin to park in stalls 4 and 5, which he did for several years.
82. In 1985, just a few months after the Strata Corporation adopted the 1984 Special Resolution, Dr. Thölin was directed to vacate parking stall 5 as it now belonged to

another owner in the complex. Dr. Thölin complied with the request. As he remained unaware of the 1977 Special Resolution and its Schedule “A”, he had no reason or basis upon which to refuse the request. In hindsight, Dr. Thölin now describes the demand that he vacate parking stall 5 as the basis for his complaint.

83. For these reasons, I am satisfied that Dr. Thölin’s claim is based on an act or omission that took place before June 1, 2013, and it therefore satisfies the first branch of the definition of “pre-existing claim” under the *Limitation Act*. The second branch of the definition is also satisfied, as there was no indication that Dr. Thölin commenced a court proceeding before June 1, 2013, with respect to the issues in this case. Accordingly, Dr. Thölin’s claim is a “pre-existing” claim under the *Limitation Act* and the next question is when he discovered it.
84. Section 8 of the *Limitation Act* provides that a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:
- a) that injury, loss, or damage had occurred;
 - b) that the injury, loss or damage was caused by or contributed to by an act or omission;
 - c) that the act or omission was that of the person against whom the claim is or may be made; and
 - d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.
85. The Strata Corporation contends that Dr. Thölin discovered his claim in 1985, when he was ordered to vacate parking stall 5. It relies on Dr. Thölin’s statement that the demand that he vacate parking stall 5 created the basis for his claim. The present claim does not, however, assert an entitlement to a second parking space generally or to parking stall 5 in particular. Rather, it asserts a specific entitlement to the exclusive use of parking stalls 12 and 13. While it is true that Dr. Thölin

today alleges that the 1984 Special Resolution invalidly purported to amend the 1977 Special Resolution, it was not until the re-discovery of the 1977 Special Resolution's existence that Dr. Thölin could have known (or reasonably ought to have known) of the alleged loss of parking stalls 12 and 13. Dr. Thölin would have become aware of the 1977 Special Resolution no later than November 2012, when copies of it were distributed to all owners. Accordingly, Dr. Thölin discovered the present claim in or about November 2012 and therefore (under subsection 30(3) of the *Limitation Act*) the six-year limitation period established by the former *Limitation Act* applies to Dr. Thölin's claim as if the right to bring an action occurred in November 2012. Because Dr. Thölin began his claim for the exclusive use of parking stalls 12 and 13 before November 2018, that portion of his claim is not out of time.

86. The balance of Dr. Thölin's claim asserts that the Strata Corporation has breached its duties under the SPA and treated Dr. Thölin significantly unfairly. Most or all of the acts or omissions on which Dr. Thölin bases this portion of his claim occurred after June 1, 2013. They are therefore not "pre-existing claims" as defined by subsection 30(1) of the *Limitation Act*. As a result, this portion of Dr. Thölin's claim is subject to the two-year limitation period established by subsection 6(1) of the *Limitation Act*.
87. Dr. Thölin commenced this claim by submitting a dispute notice on November 8, 2016. In light of the two-year limitation period that applied to Dr. Thölin's allegation that the Strata Corporation breached the SPA, that portion of the claim was out of time in respect of acts or omissions before November 8, 2014. As a practical matter, though, most of the acts or omissions on which Dr. Thölin bases this portion of his claim also occurred after November 2014. This portion of Dr. Thölin's claim is also not out of time.
88. I conclude that no part of Dr. Thölin's claim is out of time under the *Limitation Act*.

If not, has Dr. Thölin acquiesced and abandoned his claim?

89. The Strata Corporation next argues that Dr. Thölin has acquiesced his rights of use due to the passage of time. The Strata Corporation emphasizes that in 1984 or 1985 Dr. Thölin went from being assigned two parking spaces to one. There is no evidence that Dr. Thölin contested, wrote a letter about, or discussed that re-assignment with the Strata Corporation until 2012. During these years when Dr. Thölin “stood silent”, he served on the strata council, he made many presentations to the strata council on other matters, and many strata lots have been bought and sold based on the parking allocations reflected in at least eight parking plans over the years. The Strata Corporation emphasizes that allowing Dr. Thölin’s claim would have significant repercussions beyond him and Ms. Conti, and would require that the parking stalls for all owners be reallocated back to that reflected in the 1977 Special Resolution.
90. I understand the Strata Corporation’s argument on this point to engage the equitable doctrine of laches. Where that doctrine applies, it enables a defendant to resist a plaintiff’s equitable (although not a legal) claim. The onus is on the defendant to prove the doctrine’s application, and the defendant must show that the plaintiff, by delaying the institution or prosecution of his or her case, has either (a) acquiesced in the defendant’s conduct or (b) caused the defendant to alter its position in reasonable reliance on the plaintiff’s acceptance of the *status quo*, or otherwise permitted a situation to arise that it would be unjust to disturb: see generally *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6 at 77-78. Mere delay does not trigger laches. Instead, the question is whether the plaintiff’s delay constitutes acquiescence or gives rise to circumstances that would make prosecution of the plaintiff’s claim unreasonable.
91. I am not persuaded that the Strata Corporation has proven that the doctrine of laches applies in the present case. Again, Dr. Thölin does not claim a second parking stall generally or seek to recover the parking stall 5 that he lost in 1985. Rather, Dr. Thölin asserts a legal entitlement to parking stalls 12 and 13. I do not see how Dr. Thölin could be expected to have made that claim before November

2012, when the existence of the 1977 Special Resolution was re-discovered. Dr. Thölin cannot be said to have acquiesced his rights of use to parking stalls 12 and 13 since that time. Furthermore, Dr. Thölin asserts a legal entitlement to those parking stalls, not an equitable entitlement, and the Strata Corporation has not established that the doctrine provides a defence to a claim of that type.

92. As for the second branch of laches, the Strata Corporation has not demonstrated how it (or anyone else) has altered its position in reasonable reliance on Dr. Thölin's acceptance of the *status quo*. Since 2012 or 2013 the Strata Corporation has been aware that Dr. Thölin alleged an entitlement to the exclusive use of parking stalls 12 and 13. Before 2012, the only *status quo* that Dr. Thölin might have accepted was the loss of parking stall 5 in 1985. The present claim does not involve parking stall 5, though. The 1977 Special Resolution did not allocate parking stall 5 to strata lot 31, and Dr. Thölin does not claim an entitlement to the exclusive use of parking stall 5. In short, Dr. Thölin does not seek to upset any *status quo* that he might be said to have accepted, and the Strata Corporation has not indicated any position that has been altered in reasonable reliance on any such supposed acceptance.
93. I conclude that Dr. Thölin's claim is not barred by the doctrines of laches, acquiescence, or abandonment.

If not, do the parking stall allocations reflected in the 1977 Special Resolution remain in force?

94. The Strata Corporation next argues that the parking stall allocations reflected in the 1977 Special Resolution no longer remain in force, either because (a) on its face the 1977 Special Resolution permitted the Strata Corporation to terminate its parking stall allocations on reasonable notice; or (b) the 1984 Special Resolution altered the parking stall allocations reflected in the 1977 Special Resolution.
95. The parties disagree on who bears the burden of proof on this point. According to Dr. Thölin, the onus is on the Strata Corporation to clarify legal dilemmas. He says that this is especially true as of January 1, 2014, when the law changed to require the Strata Corporation to issue Form B information certificates that identify the

parking stall(s) allocated to the relevant strata lot. By contrast, the Strata Corporation contends that the burden of proof is on Dr. Thölin to provide evidence sufficient to demonstrate that the 1977 Special Resolution is still in force, that it should still be in force, and that the Strata Corporation improperly revoked his right to the exclusive use of parking stalls 12 and 13.

96. Whether the Strata Corporation has discharged its obligations under the SPA is a distinct question from which party in a legal proceeding bears the legal burden of proof on a given issue. Dr. Thölin is the applicant in this proceeding. As such, he bears the burden of proving his case on a balance of probabilities – including his claim that the parking stall allocations reflected in the 1977 Special Resolution remain in force.
97. In submitting that those allocations do not remain in force, the Strata Corporation first argues that the allocations were terminable on reasonable notice. To support this argument, the Strata Corporation relies on the following portion of the 1977 Special Resolution:

AND IT IS UNANIMOUSLY RESOLVED that the aforesaid grants of rights of exclusive use and enjoyment shall be determinable on three (3) months' notice, if the Strata Lot Lessee in question is in breach of the by-laws, rules and regulations of the Strata Corporation uniformly applicable to all Lessees of Strata Lots shown on the Strata Plan, and such breach is not cured or remedied within the said three (3) month period

98. I do not read this provision as giving the Strata Corporation a general power to terminate parking stall allocations on reasonable notice. Rather, the power to terminate a right of exclusive use and enjoyment arises only in the face of an owner's breach of the Strata Corporation's by-laws, rules, or regulations. No such breach by Dr. Thölin has been alleged, and therefore the Strata Corporation could not terminate the parking stall allocations reflected in the 1977 Special Resolution simply by giving reasonable notice.
99. The second argument requires a fuller analysis. The 1977 Special Resolution provided in part that its parking stall allocations "shall not be added to, amended or altered save and except by a unanimous resolution of the Strata Corporation"

(underlining added). The 1984 Special Resolution (as evidenced by the 1988 parking registry summarized in Appendix “A” to these reasons) did purport to alter the allocation of parking spaces reflected in the 1977 Special Resolution. The 1984 Special Resolution was not, however, approved by a unanimous vote, which was defined at the time to mean “a resolution unanimously passed at a properly convened general meeting ... at which all persons entitled to vote thereon ... are present in person or by proxy at the time the resolution is passed.”⁴ Of the Strata Corporation’s 48 strata lots, only 28 were represented at the special general meeting that adopted the 1984 Special Resolution. Therefore, even if the 1984 Special Resolution passed unanimously (and the meeting minutes are silent on that point), the special general meeting did not have “all persons entitled to vote” present in person or by proxy. Does that fact invalidate the parking space allocations reflected in the 1984 Special Resolution?

100. The answer depends on whether the STA permitted strata corporations to compel a unanimous vote to revoke a grant of exclusive use. Certainly section 3(f) of the standard bylaws permitted the Strata Corporation to grant an owner the right to exclusive use and enjoyment of common property. Section 3(f) also allowed the Strata Corporation to resolve, by unanimous resolution, that the grant of that right would not be determinable on reasonable notice. The STA does not, however, state that a strata corporation could insist upon a unanimous vote to revoke the grant of exclusive use.
101. There are several considerations that suggest the STA did not intend to allow for effectively perpetual grants of exclusive use. First, the STA also allowed the strata corporation to approve by special resolution⁵ the designation of common property as limited common property (LCP) – and permitted that designation to be terminated by special resolution. Because the grant of a right to exclusive use is similar in practical effect to a designation of common property as LCP, if the STA intended to permit strata corporations to make it significantly more difficult to

⁴ STA, section 1, “unanimous vote”.

⁵ Defined in section 1 of the STA as “a resolution passed at a properly convened general meeting ... by a majority of not less than three-fourths of all persons entitled to vote thereon ... who may vote on the resolution in person or by proxy.”

terminate grants of exclusive use than LCP designations one would expect the STA to say so expressly. Because the STA does not do so, it is reasonable to interpret the STA as not intending to permit a strata corporation to require more than a special resolution to terminate either a grant of exclusive use or a designation of LCP.

102. Second, such an interpretation would be consistent with the fact that section 3(f) of the standard bylaws gave the Strata Corporation the power to grant rights of exclusive use to an owner/lessee (rather than to the strata lot itself), which implies that the right is personal to an individual and would not “run” with the strata lot to future owners. It would also be consistent with how the STA’s successor legislation deals with grants of exclusive use. Section 76 of the SPA continues to allow for grants of exclusive use of common property, but the grant is now made by the strata council, is revocable on reasonable notice, and is limited to a maximum duration of one year (although it can be renewed).
103. Third, although subsection 29(2) of the standard bylaws to the STA permitted strata corporations to file in the Land Title Office a copy of the resolution granting exclusive use, it was not mandatory to do so. It would therefore be possible for a strata corporation to grant exclusive use of a potentially significant portion of common property without future owners having a means of discovering the grant. It would be particularly problematic if the STA contemplated strata corporations allowing that situation to continue effectively forever by precluding revocation of the grant of exclusive use absent a unanimous vote. Section 3(f) of the standard bylaws to the STA did permit a strata corporation to provide that a grant of exclusive would not be terminable on reasonable notice – but the intention was probably so that the grant could instead be made for a fixed term rather than an indefinite period terminable on reasonable notice. Such an interpretation of section 3(f) would again be consistent with the way in which the SPA deals with grants of exclusive use today.
104. For these reasons, I find it probable that the STA did not permit strata corporations to make grants of exclusive rights of use that were terminable only by unanimous

resolution. Properly interpreted, the STA impliedly intended any grant of an exclusive right of use to be terminable by way of special resolution – which still required a 3/4 vote to carry, but not a unanimous vote.

105. The 1984 Special Resolution therefore could and did alter the parking stall allocations reflected in the 1977 Special Resolution. In particular, the 1984 Special Resolution expressly assigned the sub-lease for parking stall 12 to the developer, who undertook to sell and assign that stall (and seven others) to owners within the Strata Corporation. Dr. Thölin has not demonstrated that Ms. Conti acquired the right to exclusive use of parking stall 12 other than in compliance with the 1984 Special Resolution. Nor has Dr. Thölin established how effect could be given to the 1977 Special Resolution without undoing the 1984 Special Resolution. Without deciding the point, section 48.1 of the CRT Act does not on its face appear to permit the Tribunal to make an order rescinding a special resolution validly passed by the Strata Corporation.
106. While this is a sufficient basis upon which to conclude that the parking stall allocations reflected in the 1977 Special Resolution no longer remain in force, another aspect of the 1977 Special Resolution deserves mention. On its face, the 1977 Special Resolution purported to assign rights of exclusive use only to “parking spaces ... shown on Leasehold Strata Plan VR 419”, and yet Schedule “A” to the 1977 Special Resolution deals not only with the Common Property Parking Stalls (located within the Strata Corporation) but also the Common Asset Parking Stalls (located on the adjacent Lot 44 that belongs to the City of Vancouver). As noted, rights to the Common Asset Parking Stalls were conferred by the City of Vancouver to the developer via an undersurface lease. Although the lease was made “as of” October 1, 1976, it does not appear to have been signed until many years later or to have been registered against title to Lot 44 until May 1981. Nor does the Strata Corporation appear to have assumed the lease from the developer until some years after adoption the 1977 Special Resolution. If this chronology is correct, then it is unclear whether the Strata Corporation had the lawful authority at the time of the 1977 Special Resolution to grant rights of exclusive use to the Common Asset Parking Stalls. Although parking stalls 12 and

13 are among the Common Property Parking Stalls, and therefore would have been ones over which the Strata Corporation had lawful authority in 1977, if the Common Asset Parking Stalls were allocated without lawful authority then it is unclear that piecemeal effect could be given to the parking stall allocations reflected in Schedule "A". As additional evidence would be needed to decide that the issue with certainty, I do not make a finding either way on this point.

107. I do not consider that the reference to the 1977 Special Resolution in the arbitrator's award dated November 30, 1995, alters the analysis. Only a few pages of the award have been placed into evidence. The issue being arbitrated did not relate to parking, and it is unclear what significance the arbitrator attached to the 1977 Special Resolution. Even if the arbitrator did treat the 1977 Special Resolution as "a legally valid document," this would not necessarily mean that the parking stall allocations remained in force since the 1977 Special Resolution dealt with a number of other matters as well.

108. I conclude that Dr. Thölin has not demonstrated on a balance of probabilities that the parking stall allocations reflected in the 1977 Special Resolution remain in force. Dr. Thölin is therefore not entitled to the exclusive use of parking stalls 12 and 13. This conclusion disposes of Dr. Thölin's claim for the immediate physical return of parking stalls 12 and 13 for his exclusive use and his compensation for his lost access to a second parking stall since 1985. In case I am wrong in reaching this conclusion, I will briefly consider several other issues raised in this case.

If so, was the right to exclusive use conferred by the 1977 Special Resolution limited to Dr. Thölin's predecessor on title?

109. Section 3(f) of the standard bylaws gave the Strata Corporation the power to grant rights of exclusive use to an owner (or lessee). The fact that the right is associated with the owner rather than the strata lot implies that it is personal to the individual owner and would not "run" with the strata lot to future owners. If the rights of exclusive use conferred by the 1977 Special Resolution were personal to the

owners at the time of its adoption, then those rights in respect of strata lot 31 would not have transferred to Dr. Thölin upon his purchase of strata lot 31 in 1980.

110. The parties did not develop this point in any detail in their submissions. In light of that, and in light of my conclusion that the parking stall allocations reflected in the 1977 Special Resolution do not remain in force, I will not decide this issue. A successful claim by Dr. Thölin would, however, have required him to establish on a balance of probabilities that the usage rights conferred by the 1977 Special Resolution transferred to him in 1980.

If not, is Dr. Thölin's claim defeated by the Strata Corporation's duty to control, manage, and administer common property for the benefit of all owners?

111. The Strata Corporation emphasizes the strata council's duty to control, manage, and administer the common property for the benefit of all: "the greatest good for the greatest number." The Strata Corporation notes that parking stalls 12 and 13 are designated common property, and emphasizes that the SPA no longer recognizes grants of exclusive use of common property that are unregistered with the Land Title Office. This argument paraphrases the language of sections 3 and 26 of the SPA.

112. I am not persuaded that the obligations created by these sections of the SPA can defeat an otherwise valid legal claim to the exclusive use of common property. I have, for other reasons, concluded that the parking stall allocations reflected in the 1977 Special Resolution are no longer in force. Had I concluded otherwise, though, I do not consider that sections 3 and 26 of the SPA would have permitted me to disregard the legal effect of the 1977 Special Resolution.

Is Dr. Thölin entitled to a written apology and has the Strata Corporation breached its obligations under the SPA and shown significant unfairness towards Dr. Thölin?

113. I will consider these two issues together given their overlap. Both involve allegations that the Strata Corporation has dealt with Dr. Thölin unfairly. They appear to focus on the Strata Corporation's conduct after late 2012, when the Strata Corporation re-discovered the existence of the 1977 Special Resolution.

114. Dr. Thölin emphasizes that “there has been no tangible action that could have [led] to a positive result by the Strata Corporation.” Dr. Thölin does “recognize a lot of effort by the Strata Corporation over the six years, but when you have legal obligations – only results count!” Elsewhere he expresses this concern as “[w]hat counts ... would ... be conclusive results based on mandatory pursuit of legal obligations – not perceived effort!”
115. Dr. Thölin notes that although legal counsel offered the concrete suggestion of seeking a decision from the Supreme Court of British Columbia, the strata council maintained the plan first expressed in April 2014 of doing nothing and allowing the disputing owners to resolve the matter themselves.
116. Dr. Thölin also pointed to a “failed opportunity to sell” his other strata lot in 2014 as another consequence of the strata council’s lack of conclusive results.
117. I do not consider that the manner in which the Strata Corporation has handled the dispute over parking stall allocation has been unfair to Dr. Thölin or calls for an apology. While it is true that the Strata Corporation did not identify a resolution acceptable to all parties, it was not for a lack of effort. The Strata Corporation retained legal counsel and obtained two opinions concerning the dispute. It sought authority to retain a mediator to recommend a resolution to the dispute, but the owners refused to give that authority. It held multiple owner information meetings to consult with the ownership regarding the dispute. It put forward a resolution to resolve the claim, but the owners defeated it at the 2016 Annual General Meeting. It has met with Dr. Thölin in an effort to resolve the dispute. The strata council has discussed the dispute at the vast majority of its meetings since 2012. The Strata Corporation never commenced legal proceedings to obtain a resolution of the dispute, but I do not consider that it was required to do so – particularly given its view that Dr. Thölin had no valid claim.
118. I consider that the Strata Corporation has acted conscientiously to do what it could to resolve the parking stall dispute. The Strata Corporation cannot be faulted for

the fact that no solution was achieved. It was the owners who refused to approve resolutions put forward by the Strata Corporation to deal with the issue.

119. Dr. Thölin also seeks an apology from the Strata Corporation, which he believes has smeared his reputation in the course of dealing with the parking stall dispute. He refers in particular to the Strata Corporation's suggestion that Dr. Thölin may have sold parking stall 12 or 13, a suggestion that he believes implies possible impropriety on his part. Dr. Thölin acknowledged that the Tribunal could not order the Strata Corporation to issue an apology, and describes this request as being more directed to the Strata Corporation than the Tribunal. I decline to order the Strata Corporation to issue an apology to Dr. Thölin.

Costs

120. The Strata Corporation maintained that, should the Tribunal rule in favour of the Strata Corporation, Dr. Thölin should "pay all costs." Neither the Strata Corporation nor Ms. Conti itemized their costs. As I have concluded that Dr. Thölin's claims should be dismissed, the respondents are entitled to their costs. If one or both of the respondents wish to pursue their entitlement to costs in this proceeding, they may within 30 days of the date of this decision provide evidence of what those costs are. I will remain involved in this proceeding to the extent of dealing with the respondents' costs claims if pursued.

DECISION AND ORDERS

121. All of Dr. Thölin's claims are dismissed. I order that the respondents may within 30 days of the date of this decision provide evidence of their costs in this proceeding. If one or both of the respondents provides such evidence, I will assess the amount of costs to which each respondent is entitled. If the respondents do not provide such evidence within 30 days, then the respondents' claim for costs will be dismissed.
122. Under section 57 of the CRT Act, the respondents may enforce this final Tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the

Order that is attached to this decision. The Order may be filed only if, among other things, the time for an appeal under subsection 56.5(3) of the CRT Act has expired and leave to appeal has not been sought or consented to.

123. Once filed, a Tribunal Order has the same force and effect as if it were a judgment of the Supreme Court of British Columbia.

Angus M. Gunn, Tribunal Member

APPENDIX “A”

COMPARISON OF PARKING STALL ALLOCATIONS REFLECTED IN 1977 SPECIAL RESOLUTION AND 1988 PARKING REGISTRY (Differences Highlighted in Red)

Strata Lot Number	1977 Special Resolution		1988 Parking Registry	
	First Parking Stall	Second Parking Stall	First Parking Stall	Second Parking Stall
1	26	37	37	
2	35	36	35	36
3	38	45	38	
4	39	40	39	
5	41		45	
6	43	44	43	44
7	42		42	
8	46		12	13
9	47		47	
10	48		48	
11	49		49	
12	50	51	50	
13	52		52	
14	54		54	55
15	53		53	
16	56	57	56	57
17	58		31	
18	59		41	59
19	60		60	
20	61		40	61
21	62	63	62	63
22	2		2	5
23	3		3	
24	4	5	58	
25	6		6	
26	7		7	
27	8		8	
28	9		9	
29	10		10	
30	11		11	
31	12	13	4	
32	14		14	
33	15		15	
34	16		16	51
35	17		17	

Strata Lot Number

1977 Special Resolution	
First Parking Stall	Second Parking Stall

1988 Parking Registry	
First Parking Stall	Second Parking Stall

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32	33 (and 34)