

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tran v. The Owners, Strata Plan NW468*,
2026 BCSC 1350

Date: 20260720
Docket: S255978
Registry: Vancouver

Between:

Cao Tran

Petitioner

And

**The Owners, Strata Plan NW468 and
Civil Resolution Tribunal**

Respondents

Before: The Honourable Justice Kirchner

On judicial review from: An order of the Civil Resolution Tribunal, dated
June 29, 2025 (*Tran v. The Owners, Strata Plan NW468*, 2025 BCCRT 834).

Reasons for Judgment

Representative for the Petitioner:

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Strata Plan NW468:

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No other appearances

Place and Dates of Hearing:

Vancouver, B.C.
May 28-29, 2026

Place and Date of Judgment:

Vancouver, B.C.
July 20, 2026

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I. Introduction

[1] The petitioner, Cao Tran, seeks judicial review of a decision of the Civil Resolution Tribunal (the “Tribunal”) which dismissed her claim against the respondent, The Owners, Strata Plan NW468 (the “Strata”) and ordered that the Strata recover its legal costs against Ms. Tran. Ms. Tran was seeking an order under s. 72 of the *Strata Property Act*, S.B.C. 1998, c. 43 [SPA] that the Strata must make repairs to its exterior drainage system which she alleged caused her basement to flood. Specifically, she wanted the Strata to install cove piping outside her unit as it had done in 2022 for two neighbouring units to address flooding concerns there. She also sought damages for the loss of use of her strata unit due to the flood damage and an order under s. 36(1)(a) of the SPA that the Strata produce documents relating to its inspection, repair, and maintenance of its perimeter drainage works.

[2] The Strata declined to install cove piping outside Ms. Tran’s unit despite its drainage contractor recommending it. Initially, the Strata took the position that the flooding in Ms. Tran’s unit was caused by her removal of a sump pump, allegedly without the Strata’s authorization. However, once it became apparent from Ms. Tran’s evidence that a sump pump would not have prevented the flooding, the Strata offered other reasons for its refusal, including that it did not believe the cove piping would address the problem and the cost of installing the piping was too much for the Strata to bear given the uncertain result. The Strata maintained that regular clean-out of the perimeter drains would address the problem.

[3] The Tribunal held that Ms. Tran did not establish that installation of the cove piping was necessary to address the flooding issue and accepted that the Strata had taken a reasonable alternative approach to managing the problem. He found those measures had been effective because there has not been another flood complaint since they were implemented. The Tribunal Member also found that the Strata had a reasonable basis to conclude that the cove piping may not be effective and rejected evidence of the Strata’s drainage contractor that it was necessary.

[4] The Tribunal Member dismissed Ms. Tran's loss of use claim for a lack of evidence that the basement of her unit was uninhabitable and because her insurer agreed to restore the basement. He also dismissed her claim that the Strata provide documents because he found the Strata had made the requested documents available for Ms. Tran to inspect and she failed to specify what further documents ought to have been produced.

[5] Ms. Tran raises several issues on this judicial review, both procedural and substantive. She argues the hearing was procedurally unfair because the Tribunal permitted the Strata to raise defences that were not in its original response, which focused solely on the sump pump removal; the Tribunal declined to accept some of Ms. Tran's reply evidence, despite permitting the Strata to raise new arguments that were not in its response; and the Strata did not follow the Tribunal's rules for formatting submissions, making those submissions hard to follow. Substantively, Ms. Tran argues the decision is patently unreasonable because of how the Tribunal Member considered, or failed to consider, material evidence and for several findings of fact which Ms. Tran argues are not supported by evidence.

[6] Ms. Tran was self-represented but she was unable to attend the hearing and asked that her former spouse, Adem Aggoune, be permitted to speak for her. Mr. Aggoune used to live in the unit with Ms. Tran and their child and was involved in most of the events at issue, so I permitted him to speak on Ms. Tran's behalf.

II. Background

[7] Ms. Tran is the co-owner of strata lot 9 ("SL9") in an older 40-unit strata townhouse complex in Burnaby. In 2021 and 2022, two strata units in a neighbouring building of the same strata, SL7 and SL8, experienced flooding in their basements. The Strata's professional drainage contractor, Top Gun Drainage Experts, recommended the installation of cove piping outside both those units. Cove piping directs water away from the building foundation to prevent basement floods. The Strata approved that work at a cost of \$21,000.

[8] In December 2022 and on January 2, 2023, Ms. Cao's basement flooded from water that backed up from the Strata's perimeter storm drainage system (not the sewer drains). Ms. Tran reported this to the Strata which arranged for its handyman, Farley Chang of KT Maintenance and Repairs, to attend on January 9, 2023 to inspect. Mr. Chang tried to auger the downspout connected to the perimeter drain at SL9 but it was clogged. The Strata contacted Top Gun to address the problem. It removed a tree root from the Strata's perimeter drain outside SL9 and recommended that cove piping be installed outside SL9 to prevent future flooding. In February 2023, Top Gun provided a quote of \$25,200 for that cove piping work.

[9] On February 6, 2023, Ms. Tran reported that her basement was again having the same flooding issues. The Strata again had Top Gun attend and clear the drain.

[10] Ms. Tran asked the Strata to proceed with the cove piping work as recommended by Top Gun, but it declined to do so. It took the position that SL9 flooded because Ms. Tran had removed a sump pump during renovations. In an email to Ms. Tran dated March 6, 2023, the Strata council president said there had been no flooding complaints from the previous owner while the sump pump was in place and alleged that Ms. Tran removed the pump without the Strata's consent. He purported to absolve the Strata of any responsibility for the flooding because of that unauthorized removal. He stated that the Strata would do no further work on the exterior drainage until the sump pump was reinstalled.

[11] The Tribunal Member found that Ms. Tran removed the sump pump without the Strata's authorization, but he also found the pump would not have prevented the flooding in any event. Much time was spent at the hearing of this judicial review on whether it was patently unreasonable for the Tribunal Member to find that Ms. Tran removed the pump without authorization. However, since the pump would not have prevented the flooding, it is irrelevant whether it was removed with or without the Strata's approval. Thus, I need not address that issue further.

[12] Ms. Tran asserted that she experienced further basement flooding on February 13, March 26, October 21, November 13, December 4, and December 25,

2023, and January 26, 2024, but the Tribunal Member found the evidence of these floods was lacking. He noted that there were no photos or complaints about these floods, that Ms. Tran did not report them to the Strata, and there is no reference to them in Ms. Tran's insurance documents. He concluded that they either did not happen or, if they did, they were minor.

[13] On January 26, 2024, a year after the initial flooding report, a plumber hired by Ms. Tran inspected her basement and reported water and dirt around the basement drain and suggested the exterior drains were likely blocked. The plumber also said a sump pump would not solve the problem. The strata hired Top Gun to clear the drains in the fall of 2024 and in an email dated February 19, 2025, Top Gun confirmed that the perimeter drains were free-flowing after they were cleared in September 2024.

III. The Tribunal Decision

[14] The Tribunal Member began his decision by addressing several procedural and evidentiary issues, including the format of the Strata's response submissions, an objection to Ms. Tran's reply submissions, and Ms. Tran's compliance (or non-compliance) with a document production order. Ms. Tran challenges his conclusions on these points and I will summarize his analysis as I address each of them.

[15] As to Ms. Tran's primary claim that the Strata must install cove piping as part of its obligation to maintain the strata property, the Tribunal Member considered s. 72 of the SPA and s. 11.1 of the Strata's bylaws, both of which require that the Strata repair and maintain common property which includes the perimeter drains. He referred to this Court's decision in *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113 at para. 69 where Justice Brongers observed that strata councils are entitled to deference in how they choose to fulfill their duties under s. 72 and a strata's actions are assessed on a reasonableness standard. As Brongers J. said, selecting a "good" solution over the best solution may be, particularly in the context of determining what the strata owners can afford.

[16] The Tribunal Member found the Strata had a reasonable basis for declining to implement Top Gun's recommendation to install cove piping outside SL 9. He found it was reasonable for the Strata to accept the advice of its handyperson, Mr. Chang, who is an electrician but has experience managing strata complexes and monitoring their drainage systems. Mr. Chang's view was that cove piping would not address the flooding problem for SL9 because the water was backing up from the perimeter drain and the cove piping would increase the volume of water flowing to the perimeter drain. In his opinion, the solution was regular clearing of the perimeter drain.

[17] The Tribunal Member also found the Strata reasonably relied on the opinion of its council president, Bryce McGowan, who is a professional engineer with 30 years experience in the design and construction of wastewater infrastructure. Mr. McGowan was also of the view that cove piping would not stop the perimeter drain from backing up.

[18] The Tribunal Member found that the installation of cove piping in SL8 had not fully alleviated the flooding risk in that unit and the Strata reasonably did not wish to subject its owners to the \$25,100 cost of installing cove piping for SL9 when its effectiveness was uncertain. He also accepted that the Strata owners had voted to list the entire Strata for sale and the council determined it would be imprudent to incur a significant capital improvement cost when the property might be sold for redevelopment in the near future.

[19] The Tribunal Member held that the Strata reasonably decided that the less expensive option of having Top Gun clear the perimeter drains every two years and the catch basins annually in November would adequately manage the flood risk to SL9. He found this was a good solution because the perimeter drains were free-flowing after this work was completed in September 2024 and there were no backups in any of the strata units during an atmospheric river the following month. Further, Ms. Tran has reported no flooding problem to the Strata since April 2023.

[20] The Tribunal Member considered the evidence of Welduluel Berhe, one of the partners in Top Gun, who had provided a written statement to Ms. Tran for use as evidence for her claim. Mr. Berhe confirmed it was Top Gun's recommendation to install the cove piping and he states that he still considers this work to be necessary. However, the Tribunal Member found Mr. Berhe's evidence was unreliable because, in the Tribunal Member's view, Ms. Tran had improperly influenced him.

[21] The Tribunal Member dismissed Ms. Tran's damages claim for loss of use of her strata unit. He held that since the Strata had not acted negligently in refusing to install the cove piping, it could not be liable for Ms. Tran's loss of use. He further found that Ms. Tran failed to establish any loss because she did not prove her unit (or the basement) was uninhabitable. Further, her insurer was prepared to repair the damage by the fall of 2023 and she would have no claim for loss of use after that.

[22] The Tribunal Member dismissed Ms. Tran's document request under s. 36(1)(a) of the *SPA* because he found the Strata had made the requested documents available to Ms. Tran and she did not establish that additional unproduced documents existed.

[23] The Tribunal Member ordered that Ms. Tran pay the Strata's legal fees in the amount of \$6,982.08. Under Rule 9.5(3) of the Civil Resolution Tribunal's Rules, costs are not to be ordered against a party unless there are extraordinary circumstances. The Tribunal Member noted that the test for extraordinary circumstances follows the test for an award of special costs in the Supreme Court. He found there were extraordinary circumstances because in a previous proceeding involving the same parties, the Tribunal found that Ms. Tran had made multiple unfounded allegations of fraud and bad faith against the Strata, but it declined to make a costs order because she held a "misguided but genuine belief" that the Strata had not fulfilled its legal duties. In this case, the Tribunal Member found that Ms. Tran again made "meritless allegations against the strata that went far beyond what was reasonable in the circumstances." He found that Ms. Tran should not "receive the benefit of the doubt a second time." He also found that Ms. Tran failed

to comply with a document production order and made improper statements to Mr. Berhe when obtaining his evidence. He found all this conduct was deserving of rebuke such that extraordinary circumstances existed that justified a costs award.

IV. Issues

[24] Ms. Tran's application for judicial review raises a host of issues, some relating to procedural fairness and others that are substantive. She argues the Tribunal's process was unfair in that:

- a) the Tribunal Member found in favour of the Strata based on an argument that was not cited in the Strata's Response to Ms. Tran's Dispute Notice;
- b) the Tribunal Member refused to consider certain of Ms. Tran's reply submissions after considering an objection notice filed by the Strata which was not disclosed to Ms. Tran; and
- c) the Strata's response submissions were formatted in a confusing manner that did not accord with the Tribunal's rules and practices.

[25] On the substantive issues, Ms. Tran argues the Tribunal Member made patently unreasonable errors of fact based on misapprehensions of and failures to consider important evidence. She challenges his findings that:

- a) Mr. Berhe's evidence was unreliable;
- b) cove piping was not effective in preventing flooding in other units;
- c) additional floods she claimed happened in her basement did not occur or were minor;
- d) her basement was uninhabitable; and
- e) Ms. Tran failed to properly disclose her insurance documents.

[26] Ms. Tran also argues the Tribunal Member's finding that she failed to identify documents that the Strata had not produced is patently unreasonable because she cannot be expected to know what documents the Strata has in its possession.

[27] Finally, she argues the Tribunal Member's cost order is patently unreasonable.

V. Standard of Review

[28] The *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25, s. 56.7(2) stipulates that, on questions of fact or an exercise of discretion, the Tribunal's decisions are reviewed on a standard of patent unreasonable. On matters of procedural fairness the standard is whether, in all the circumstances, the tribunal acted fairly. On all other matters, its decisions are reviewed for correctness.

[29] A patently unreasonable decision is one that is "openly, clearly, evidently unreasonable" or "so flawed that no amount of curial deference can justify letting it stand": *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52.

[30] With regard to fairness, the Court of Appeal has held that the Civil Resolution Tribunal is held to a relatively high standard of procedural fairness, "closer to the trial model", given that its determinations resemble judicial decision making: *Downing v. Strata Plan V2356*, 2023 BCCA 100 at para. 36.

VI. Analysis

A. Procedural Fairness Issues

1. *The Strata's Alternate Theory of the Case*

[31] Ms. Tran argues that the Tribunal Member unfairly considered arguments made by the Strata that were not identified in its Response to her claim. The only defence the Strata raised in its Response to Ms. Tran's claims respecting the flooding was that it was caused by Ms. Tran's unauthorized removal of the sump pump. Ms. Tran says it was only after she filed her evidence that showed the pump

would not have made a difference that the Strata changed gears and put forward its alternative arguments that it did not believe the cove piping would be effective and the cost was too much to bear, particularly in light of the anticipated sale of the strata. Neither of these arguments were identified in the Strata's Response to her claim.

[32] The Response document in the Civil Resolution Tribunal process is akin to a pleading. It is the respondent's initial response to the claimant's Dispute Notice, which is also like a pleading. The Dispute Notice is a short-form document that initiates and briefly describes the claim without referring to evidence. The Response is a short-form document that identifies the respondent's position on each claim in the Dispute Notice, also without referring to evidence. Once the Dispute Notice and the Response are filed, the claimant submits their evidence in support of the claim and the respondent submits their evidence in response. Each party may then submit their arguments in writing.

[33] In this case, the only defence raised in the Strata's Response was that a sump pump would have prevented the flooding. Ms. Tran did not have notice of the alternative responses that the Strata would later put forward its evidence. Thus, the Strata's responsive evidence went well beyond the scope of the "pleading".

[34] If matters had ended there, Ms. Tran might have an argument to say the process was procedurally unfair. However, the Tribunal gave Ms. Tran leave to file an unusually long reply, which she did. She fully addressed the Strata's alternative theories in that reply. Thus, any prejudice that Ms. Tran might have suffered from the Strata's failure to plead its alternative theory in its Response was alleviated by her opportunity to file a comprehensive and extensive reply, and the potential unfairness to Ms. Tran was averted. I would not give effect to this ground for judicial review.

2. Denial of Reply Submissions

[35] Ms. Tran argues she was denied procedural fairness because the Tribunal Member rejected some of her reply submissions based on an objection notice filed by the Strata that was not provided to her. The Strata's objection notice took issue

with Ms. Tran's comprehensive reply submissions and offered the Strata's own sur-reply submissions to them. Neither the Strata nor the Tribunal provided Ms. Tran with a copy of its objection notice. The Tribunal Member received and considered the objection notice and, in his reasons for decision, held that Ms. Tran's reply in three areas was improper and declined to consider those parts of the reply. He considered the balance of the reply as indicated by his references to it throughout his reasons (see, for example, para. 23). He declined to consider the Strata's sur-reply submissions.

[36] There can be no doubt that Ms. Tran's rights of procedural fairness were breached by the failure to provide her with a copy of the objection notice. The Tribunal cannot make a decision adverse to Ms. Tran based on an objection notice that was not given to Ms. Tran and that she had no opportunity to respond to.

[37] However, I find this breach did not affect the outcome of the case. The Tribunal Member declined to consider only three relatively short parts of Ms. Tran's 27-page reply. Those were: a brief section that concerned the Strata's insurance coverage for flood repairs; an allegation that the Strata breached the *Privacy Act*, R.S.B.C. 1996, c. 373; and the Strata's actions at the 2025 annual general meeting. He found these were new issues raised for the first time in reply and were improper reply. In my view, the Tribunal Member reached the correct conclusion on the three areas of reply submissions, but even if he had considered them, it would not have changed the result.

[38] Ms. Tran's "reply" submissions on the Strata's flood insurance coverage is a single paragraph that takes up about a third of a page in the 27-page reply. It alleges the Strata failed to produce records of any attempts by the Strata council to make an insurance claim to cover the cost of the cove piping. This relates to the relief Ms. Tran sought under s. 36 of the *SPA*. The specific request for these insurance documents was raised for the first time in reply, which is improper reply.

[39] Regardless, the issue of whether Strata made or considered an insurance claim to pay for the work Ms. Tran wished to have done is not relevant to the

dispute. The question is whether the Strata was obligated to install the cove piping as Ms. Tran requested or whether its decision not to install the piping was reasonable in the circumstances. The Strata determined that cove piping was unlikely to address the flooding issue and the expense was too much for an uncertain result when other solutions seemed to manage the problem. Having reached that conclusion, it does not matter whether the Strata explored a potential insurance claim to cover the work. Essentially, the Strata would be asking the insurance company to fund work that the Strata itself had determined was unnecessary. The Tribunal Member found the Strata had acted reasonably in deciding the cove piping was unnecessary. Thus, even if he had considered this part of Ms. Tran's reply evidence, it could not have changed the result.

[40] The second category of reply submissions the Tribunal Member declined to consider were Mr. Tran's submissions that the Strata breached the *Privacy Act* when it "unlawfully unredacted and used personal information despite admitting its irrelevance". This too was raised for the first time in reply. I agree with the Tribunal Member that this alleged breach was entirely new and, in any event, does not relate to the issues of whether the Strata is obligated to do the requested work or produce the requested documents under s. 36. Consideration of this argument would not have changed the result.

[41] The third category of disallowed reply submissions concerns an allegation that the Strata ought to have proposed a special levy at its annual general meeting in 2025 to cover the cost of "necessary drain repairs". This issue was not raised in Ms. Tran's primary submission. Nor is it relevant to the Strata's decision a year earlier not to do the work Ms. Tran had requested. As I have outlined above, the Strata determined that the cove piping work was an unnecessary expense that would have uncertain results. There would be no point in pursuing a special levy for work the Strata had reasonably determined was unnecessary.

[42] For those reasons, I am satisfied that the Tribunal Member's decision to disregard certain parts of the reply submissions, while made through an unfair

process in which Ms. Tran had no notice of the objection to the reply, ultimately did not affect the outcome of the case. Even if the Tribunal Member had considered those points, it could not have changed the result. I would not give effect to this ground of judicial review.

3. *Format of the Strata's Submissions*

[43] Ms. Tran argues the Tribunal's process was procedurally unfair because it accepted the Strata's filed submissions in a format that does not conform with the one prescribed by the Tribunal.

[44] The Tribunal receives materials electronically. The parties' submissions are entered into text boxes on the Tribunal's web portal. There is a separate text box for each issue that is to be addressed. There is also a limit on the amount of text that can be entered into each box. Only a certain number of typographical characters may be entered in each box. If a party wishes to exceed the prescribed character limit, it must seek leave from the Tribunal.

[45] Ms. Tran followed this format requirement with her primary submissions but the Strata took a different approach. Rather than break its submissions down issue-by-issue and deal with them separately in each text box, it filed a single submission that was responsive to all issues and it entered that in a single text box. In the other text boxes the Strata cross-referenced to its main submission. This meant that the main submission exceeded single-text-box character limit but the cumulative character limit for all the available test boxes would not have been exceeded had the submission been broken down issue-by-issue.

[46] The Strata's approach also made its Response somewhat challenging to read. While the original submission was written in numbered paragraphs with headings to identify each issue, that formatting is lost when the text is uploaded to a text box on the Tribunal's portal. The paragraph numbers are still visible but the paragraph breaks disappear and the text appears as a single long paragraph.

[47] Ms. Tran argued before the Tribunal that its process was procedurally unfair to the extent it permitted the Strata to file its submissions in this way. She complained the Strata's submission was difficult to follow and argued that the Strata ought to have addressed each issue separately within its own text box. She said in her reply that she was only going to address the entries in each issue-specific text box. Thus, if the Strata's response on the issue specific to a text box was not found in that text box but rather was contained in its comprehensive submission in a different text box, she would not reply to that issue.

[48] The Tribunal Member rejected Ms. Tran's argument that the formatting made the process unfair. He said the Strata's submissions had clear headings and the opening paragraph set out the paragraph number where each issue is addressed. He noted that Ms. Tran provided extensive reply submissions and was able to address everything in the Strata's response.

[49] On judicial review, Ms. Tran maintained that this formatting irregularity was procedurally unfair. I accept that it is somewhat challenging to read the Strata's submissions in this format. It might have been better if the Strata had provided Ms. Tran with a separate document so that she could see the text properly formatted and broken down into their numbered paragraphs with breaks as would appear in conventional document. Nevertheless, the paragraph breaks are discernable by their numbers and I agree with the Tribunal Member that Ms. Tran was able to comprehend the submission given her thorough reply to it. She was clearly aware of the issues and could navigate through the Strata's argument. To the extent she did not reply to something because it was not in the correct text box, that is a risk that Ms. Tran chose to take. As the Tribunal Member held, she could readily identify where each issue was addressed in the main submission from the headings and the opening paragraph of the Strata's submissions. I find the inconvenience to Ms. Tran does not rise to the level of procedural unfairness.

B. Substantive Issues Regarding the Claim for Cove Piping**1. Rejection of Top Gun evidence**

[50] Ms. Tran argues it was patently unreasonable for the Tribunal Member to reject Mr. Berhe's evidence as unreliable. Mr. Berhe had provided Ms. Tran with a statement confirming his opinion that the cove piping is necessary to address the flood problem. She argues the Tribunal Member's finding that Ms. Tran's communications with Mr. Berhe amounted to a "threat to force [Mr. Berhe] to give evidence at an oral hearing if [he] did not provide the evidence Mrs. Tran wanted" misinterprets her communication with Mr. Berhe. She argues that the Strata's dealings with Mr. Berhe are no better than hers given that in an October 1, 2024 email, the Strata president put a series of propositions to Mr. Berhe from a conversation they had and asked him to "confirm this is the conversation we had or are there any edits required?" He went on to state in the email, "I am just looking for a Yes or a Yes with edits" and did not give him the option of disagreeing with the propositions.

[51] Weighing of the evidence is firmly within the domain of the fact finder and those findings are given considerable deference on appeal (reviewable only for a palpable and overriding error) and on judicial review (reviewable only for patent unreasonableness, at least for this tribunal). The question is generally whether there was some evidence upon which the decision maker could have relied to reach the conclusion: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 1. In the administrative law context where the standard of review is patent unreasonableness, the factual conclusion must be openly, clearly, evidently unreasonable: *Southam Inc.*

[52] Ms. Tran argues her communication with Mr. Berhe was in no way "threatening". Mr. Berhe and his late business partner in Top Gun, Lance Stephens, had opined in 2023 that the cove piping was necessary. Thus, Ms. Tran argues she was not urging Mr. Berhe to give particular evidence but was asking him if he was willing to put his previously stated opinion into an evidence statement she could use

for her claim. If he was willing, it would be unnecessary for him to respond to a summons she sent to him earlier.

[53] Ms. Tran's communications to Mr. Berhe are found in an email of August 15, 2024, which states:

Please see attached to this email Summons from the Tribunal.

The printed version of the summons which we served onto you last Monday might be a bit difficult to read so I asked tribunal member (Bill Cheung) to send us a clear version for your records and review.

Adem told me that you are being honest about this situation and that you would tell the truth about the repairs needed to the cove and the gravel so we can stop getting floods and mold [sic] inside our home.

Would you have some time to speak on the phone tomorrow Friday so we can explain what is needed to put an end to this?

If you prefer to deal directly with the tribunal you can contact the Tribunal member Bill Cheung at [email address] or by phone at [phone number].

I would rather not involve you in this, especially since we now have confirmation that the sump pump was illegally installed by the previous owners, without permits from the city and without strata approval, the situation can be resolved without having tribunal as long as you confirm the repairs needed [sic] the cove when you came onsite on January 20 2023.

[54] The Tribunal Member interpreted this as a threat that "unless you confirm the repairs are needed, we will force you to testify".

[55] The Tribunal Member also referred to a subsequent email Ms. Tran sent to Mr. Berhe a week later, on August 22, 2024, after she had received a report about mould in her basement. She suggested this mould report created some urgency to deal with the issue. She wrote this to Mr. Berhe:

I really hope you will do the honourable thing and just tell the truth so we can finally live in healthy conditions. I trust you will do the right thing Weldu, I have a 4 year old child which I need to keep safe.

Did you receive confirmation that you can respond to the summons? If not I have to ask the Tribunal to Order you to testify Weldu. I hope you understand my situation.

The Tribunal Member read this passage as putting pressure on Mr. Berhe to give the evidence that Ms. Tran wanted.

[56] These communications may be open to less sinister interpretations than the Tribunal Member gave them, but it was open to him as the trier of fact to analyze the evidence in the way he did. Although I might have given Ms. Tran's language a milder interpretation, the one placed on it by the Tribunal Member is not openly, clearly, evidently unreasonable.

[57] The Tribunal Member also found that recordings of phone conversations between Mr. Berhe and Ms. Tran's former spouse were unreliable evidence because the former spouse asked leading questions of Mr. Berhe who answered them "vaguely without referencing any documents or notes." He also noted that in one of these conversations Mr. Berhe spoke of lowering pipes as an alternative solution to the flooding issues, but that option was not explored. Another recording inexplicably cut off. Again, I find it was open to the Tribunal Member to assess this evidence in the way that he did.

[58] Ms. Tran points out that the Strata council also asked Mr. Behre leading questions following a conversation its president had with him. The email sought to confirm the contents of the conversation in writing and stated several points to Mr. Behre that were favourable to the Strata's position. Purportedly, these were points that Mr. Behre had made during the conversation. In Mr. McGowan's email of October 1, 2024, he asked Mr. Behre to confirm the points of their earlier conversation, "just looking for a Yes or a Yes, with edits" but not offering an option to disagree with any of the points. I agree with Ms. Tran that this is a form of leading, even if it was purporting to confirm points from an earlier conversation. I also agree with Ms. Tran that Mr. Behre may have felt pressure to co-operate with the Strata since it was Top Gun's customer. However, since the Tribunal Member did not rely on any of Mr. Behre's evidence, it is ultimately irrelevant to the substantive issues in this case that the Strata obtained this evidence through leading questions.

[59] Further, the Tribunal Member's finding that Mr. Berhe's evidence was unreliable ultimately had no bearing on the substantive conclusion that the Strata was not obligated to accept Top Gun's recommendations. The Tribunal Member

found it was reasonable for the Strata to accept the advice of its handyperson, Mr. Chang, and the strata council president, Mr. McGowan over Top Gun's recommendations. He explained his reasons for this conclusion, pointing to Mr. Chang's experience with Strata drainage systems and Mr. McGowan's experience as an engineer who dealt with wastewater treatment works. No issue is taken with the Tribunal Member's legal analysis, relying on *Dolnik* at para. 69, that the Strata's choice about how to fulfill its obligation under s. 72 of the *SPA* is entitled to deference and selecting a "good" solution over the best solution may be reasonable.

[60] The evidence of Mr. Chang and Mr. McGowan's experience was a sufficient basis on which the Tribunal Member could determine that the Strata acted reasonably in preferring their advice over Top Gun's. Contrary to Ms. Tran's submission, the Tribunal Member had no legal obligation to prefer the evidence of Mr. Berhe or his late partner, Mr. Stephens, over Messrs. Chang and McGowan simply because Mr. Berhe and Mr. Stephens worked in the professional drainage business. Weighing that competing evidence is firmly within the Tribunal Member's role as a fact-finder and his explanation for why he found it was reasonable for the Strata to prefer Messrs. Chang and McGowan's advice is rationally explained in his reasons.

[61] The reasonableness of the Strata's choice not to install cove piping outside SL9 was further supported by the Tribunal Member's findings that cove piping had not been fully effective for SL8 and there had not been any flooding complaints since the perimeter drains were properly cleaned out.

[62] The issue is not whether I agree with the Tribunal Member's assessment of the evidence or the reliability of Mr. Behre's evidence, but rather whether the Tribunal Member has provided a logical and intelligible explanation for his conclusions that is not patently unreasonable. In my view he has.

[63] Further, in light of the Tribunal Member's findings that the less expensive solution chosen by the Strata was reasonable and sufficiently effective to address the flooding concerns, it does not matter whether Mr. Berhe's evidence that cove

piping is necessary is reliable or not. Even if the Tribunal Member had found Mr. Berhe's evidence was reliable and had accepted that Mr. Berhe's genuinely and reasonably held belief was that cove piping was necessary, that does not mean the Strata (or the Tribunal Member) had to accept that advice as representing the only reasonable solution to the flooding issue. As Brongers J. held in *Dolnik*, it is open to a strata to accept a "good" solution at a lower cost even if a superior but more expensive solution was available. Having found that the less expensive route chosen by the Strata was reasonable and effective, it does not matter if Top Gun's more expensive solution is better.

[64] Finally on this point, Ms. Tran argues that the Strata has not proceeded with the sale of the strata property and has evidently delayed it indefinitely. She argues this removes the rationale for not proceeding with the cove piping expense and thus the Strata's decision can no longer stand. I disagree. The Tribunal Member found the solution adopted by the Strata was a reasonable one that was effective to manage the flood risk. That makes the cove piping expenditure unnecessary, whether the sale of the strata property happens now or at some indefinite point in the future.

2. The cove piping at other units

[65] Ms. Tran argues the Tribunal Member's conclusion that cove piping was not effective in SL8 is patently unreasonable because it is not supported by evidence. I disagree. Mr. Chang gave evidence about continued water back-ups in the SL8 drainage pipes even after cove piping was installed. It was open to the Tribunal Member to accept that evidence in support of his conclusion that cove piping was no guarantee that back-ups would stop in SL9.

[66] Mr. Chang's evidence was that even after the cove piping was installed, SL8 would still have experienced flooding were it not for a transfer pump in that unit that diverted water out of the furnace drain and into the laundry drain. The furnace drain feeds into the Strata's perimeter drain and ultimately into the municipal storm drains whereas the laundry drain feeds into the municipal sewer drain. Thus, the transfer

pump moves excess water out of the perimeter drain system and into the separate sewer drain system. Mr. Chang's evidence on this point was as follows:

Date: January 12, 2022

Weather: Heavy rainfall for several days

...

After the new cove pipe was installed, I noticed that there was still water in the furnace drain pipe [of SL8], I mentioned it to Lance, the owner of Top Gun, and his explanation was the pipe in the furnace room has settled lower than the outside perimeter drain, so there will always be water pipe but the water is not a problem.

...

Date: December 4, 2022

Weather: Heavy Rainfall

SL8 requested a service call, the transfer pump was coming on and off for several minutes, indicating water was backing up the furnace drain pipe. After my investigation, there was no water ingress in the basement, but water level in the pipe was higher than usual. I manually started the pump to confirm the water was being transferred out of the drain pipe, I tested the high/low probe and everything was working correctly. My conclusion was that despite the new cove piping, heavy rainfall caused the water to backup and rise in the furnace drain pipe. In my opinion, if the transfer pump was not installed the water would have flooded the basement again. I explained to the SL8 owners that the pump was working correctly. There has not been anymore flooding in SL8 to date but the pump has started one other time during heavy rainfall.

[Emphasis added]

Mr. Chang added that cove piping could make things worse because it would send more water into the perimeter drain pipe.

[67] It was open to the Tribunal Member to accept this evidence and it clearly provides an evidentiary basis for his conclusion that cove piping was not fully effective for SL8. That conclusion helped to inform his conclusion that the Strata reasonably determined it should not expose the Strata owners to the expense of installing cove piping at SL9 when its effectiveness to manage the flooding problem was uncertain.

[68] Ms. Tran also argues that the Tribunal Member disregarded evidence that cove piping repairs had also been done outside of SL 7 and 13 with no subsequent

flooding. However, the Tribunal Member addressed this issue at para. 33 and found that while cove piping was installed at SL 7, the evidence supporting the installation of cove piping at SL13 was based on Mr. Behre's evidence which was not reliable. Again, it was open to the Tribunal Member to reach that conclusion. Regardless, the fact that there might have been no further flooding at SL13 after cove piping was installed does not necessarily mean that it was the cove piping that prevented further flooding. The evidence does not provide a detailed history of the flooding at SL13 or an analysis of its potential causes.

[69] I find nothing patently unreasonable in how the Tribunal Member addressed the effectiveness or ineffectiveness of cove piping in other units.

3. Other Floods

[70] Ms. Tran argues the Tribunal Member's rejection of her assertion that there were further flood events in SL9 is patently unreasonable. The Tribunal Member found the evidence was lacking for the flooding events that Ms. Tran claimed happened on February 13, March 26, October 21, November 13, December 4, December 25, 2023 and January 26, 2024. He concluded they either did not happen or were minor.

[71] With respect to the assertions about February 13 and March 21, 2023, the Tribunal Member said at para. 37:

Mrs. Tran and her former spouse sent the strata photos of the first two floods, however, the only evidence of the next two floods are statements in emails from Mrs. Tran or her former spouse. There are no photos or references to these floods in the insurance documents. Given the lack of supporting evidence, I find that the February 13 and March 21, 2023 floods either did not happen or were minor.

[72] On judicial review, Ms. Tran argued that she provided photos of interior damage caused by flooding and these photos were referred to in her submissions concerning the additional floods. However, none of these photos are dated and I see nothing in the evidence that connects them with alleged flooding that occurred on February 13 or March 21, 2023. Ms. Tran has not persuaded me that the Tribunal

Member made any error in finding a lack of evidence about these two claimed flooding incidents.

[73] The Tribunal Member also found there was “very little evidence” of floods said to have happened on October 21, November 13, December 4 and December 25 of 2023 and January 26, 2024. He concluded that these floods “either did not happen or were minor.” Ms. Tran argues that she did not report these floods to the Strata because it had already made it clear that it would not make any repairs and she had started her proceedings before the Tribunal. However, that does not explain why there is a lack of evidence to support these flooding incidents. If the matter was already the subject of a claim, one would expect that Ms. Tran would document continuing flooding events as that would further support her case. She has not persuaded me that the Tribunal Member’s assessment of the evidence (or lack of evidence) for these purported additional flooding events is patently unreasonable.

C. Substantive Issues Regarding the Loss of Use Claim

1. Failure to prove the basement was uninhabitable

[74] Ms. Tran argues it was patently unreasonable for the Tribunal Member to dismiss her damages claim for loss of use on the basis that she failed to prove that her basement was uninhabitable after the flood. The Tribunal Member stated at para. 73 that the photos Ms. Tran provided of the basement are not dated and show some mould that could be easily cleaned and some other minor damage not obviously related to the flood. He was not satisfied that these demonstrated the basement was not habitable.

[75] The Tribunal Member further stated that a mould remediation estimate Ms. Tran provided does not say that anyone inspected the home in person or that there is currently mould in the basement. Ms. Tran says this is a patently unreasonable in that the correspondence with the mould inspector clearly shows he attended the home in person. The Strata concedes the evidence confirms that in-person attendance.

[76] In view of that correspondence and the Strata's concession, the Tribunal Member's finding that the mould remediation inspector did not attend to inspect the damage is patently unreasonable. Moreover, I find it is patently unreasonable for the Tribunal Member to have found that the mould "could be easily cleaned". That is not stated in the mould inspector's report and there is no evidence to say that the mould could be safely cleaned in this way.

[77] Nevertheless, these errors do not detract from the Tribunal Member's basic factual conclusion that the mould remediation report does not establish that the unit or the basement is uninhabitable. Obviously, the mould should be remediated but the inspector's report does not say it is unsafe to be in the unit or the basement specifically. It is a reasonable to infer that if it was unsafe to be present in the basement the mould inspector would have said so. Moreover, I agree with the Tribunal Member that the photographs tendered by Ms. Tran do not establish the basement is uninhabitable.

2. Ms. Tran's delay in remediating the basement

[78] A further reason the Tribunal Member gave for rejecting Ms. Tran's loss of use claim was that she could have had the basement restored by the fall of 2023 but opted not to. He pointed out that her insurer was willing to pay for the restoration work and a restoration company had provided a quote for the work. However, Ms. Tran opted to delay that work while she pursued her claim to compel the Strata to install the cove piping. She reasoned that there was no point in restoring the basement before the flood risk was addressed.

[79] I find nothing unreasonable in the Tribunal Member's conclusion that Ms. Tran's loss of use claim is significantly diminished by the fact that she could have had the basement restored by September 2023. Having found that the Strata acted reasonably and did not need to install the cove piping, it cannot be held liable for Ms. Tran's own decision to delay the restoration work while she pursued her claim.

3 Redactions from the insurance quote

[80] A further reason that the Tribunal Member dismissed Ms. Tran's loss of use claim, and ordered that she pay the Strata's costs, was that she improperly redacted information from her insurer's quote of the cost of repairs needed to restore the basement. The background to this issue is as follows.

[81] In an interlocutory ruling made by a Tribunal Vice Chair, Ms. Tran was ordered to produce "[a]ll documents and correspondence with [her] insurers that address the cause of the flooding, and the water damage repairs completed to date in SL9." [my emphasis]. The Vice Chair stated the rationale for this order as follows:

I find the status of any repairs is relevant to the applicant's claim that she has been unable to use half of her strata lot. I agree with the strata that the applicant's insurer may have investigated the cause of the water damage, and that the reason for halting repairs is relevant to the issues in this dispute.

[82] In response to this, Ms. Tran produced her insurer's written estimate of the work required to restore her basement from the flood damage. The estimate listed each item of work that needed to be done and the total estimated cost of each item, line by line. However, Ms. Tran redacted the estimated cost for each of these items before producing the document. The redactions were not ultimately effective because counsel for the Strata was able to remove the redactions in the electronic copy of the document he received. Thus, the Strata ultimately saw the cost estimates.

[83] Despite that, the Tribunal Member found that Ms. Tran's redactions were serious because they were contrary to the order made by the Tribunal Vice Chair. In the Tribunal Member's view, the cost estimates were relevant because they "directly address[] the scope of the water damage in Mrs. Tran's strata lot and the strata's proposed repairs" [para. 20]. He found these redactions were particularly egregious because they were made after the Tribunal had specifically ordered disclosure of insurance information.

[84] Ms. Tran argued before the Tribunal that she had a good faith understanding that she only needed to disclose evidence related specifically to the cause of the

flooding and completed water damage repairs. However, the Tribunal Member rejected that, suggesting that as a person with paralegal training she ought to have known the importance of making full disclosure.

[85] Ms. Tran argues the Tribunal Member's assessment of her disclosure obligation under the Vice Chair's order is patently unreasonable because the redacted text in the insurance quote says nothing about the cause of the flood and, since she did not have any of the water damage remediated before the Tribunal process concluded, it was not evidence of "repairs completed to date." She says she was forthright in her reply that she had not had any repairs done because she was waiting for a resolution on the cove piping issue. Thus, the redacted information is the insurer's estimate of the cost of the work that would have to be done but was not yet done.

[86] The Tribunal Member acknowledged Ms. Tran's reply that no restoration work had been done but said that assertion is not confirmed anywhere in the documents she disclosed. He noted that Ms. Tran "did not disclose any correspondence or documents which show how her insurer resolved her claim" [para. 22]. He said there was "no objective evidence about what the insurer repaired, paid out in settlement of the claim, or refused to repair" [para. 23]. He said the "lack of disclosure on this point is particularly troubling because Mrs. Tran's largest damages claim is for the alleged loss of use of her strata lot" [para. 23].

[87] I agree with Ms. Tran's submission that the insurer's cost estimates do not pertain to "water damage repairs completed to date" as stated in the Vice Chair's order. Nor do they cast light on the cause of the flood. The Vice Chair order for document production was directed at these two points. Thus, the redactions, though perhaps ill-advised, cannot be said to have contravened the Vice Chair's order. The Tribunal Member may be correct to say that Ms. Tran had a more general obligation to produce an unredacted copy of the insurance document under the Tribunal Rules, but his conclusion that the redactions contravened the Vice Chair's order is clearly incorrect and patently unreasonable.

[88] That said, I fail to understand why Ms. Tran found it necessary to redact this information. She was claiming compensation for loss of use of her basement and I can think of no reason why she would redact information from the very insurance document that outlined what had to be done to make her basement livable again. Nevertheless, she was not claiming the repair costs against the Strata so I cannot think of what advantage she might have gained by redacting the estimated repair costs. The Strata has pointed to no real relevance of the redacted information. Thus, the redactions were harmless to the case, other than that they understandably raised suspicion about whether Ms. Tran was attempting to conceal something harmful to her, even though she was not.

[89] The Tribunal Member makes fair point that Ms. Tran claimed significant compensation for loss of use yet produced no documents to indicate how her insurance claim was resolved or when the insurer was prepared to pay to have the basement restored. That information would certainly have been relevant to the loss of use claim in that it would show when the basement could have been restored, but that is not the information she redacted. The cost estimate information that she inexplicably redacted is not probative of that issue.

[90] Thus, while I find there was a reasonable basis to conclude that Ms. Tran's loss of use claim was not made out, it was patently unreasonable to find that her redactions of the insurance document breached the Vice Chair's disclosure order. That has no bearing on the loss of use claim but it is relevant to the costs issue I will discuss later.

D. Substantive Issues regarding the Document Request

[91] Ms. Tran sought an order under s. 36(1) of the *SPA* for production of documents from the Strata relating to the Strata's inspection, repair, and maintenance of its perimeter drainage works.

[92] A request for documents under s. 36(1) of the *SPA* is not a request for documents that should be produced as part of the Tribunal proceeding. Under Rule 8.1 of the Civil Resolution Tribunal's Standard Rules, a party must disclose all

relevant evidence in their possession that may prove or disprove an issue in dispute, even if the evidence does not support that party's position. Section 36(1) of the *SPA* requires a strata corporation to make available to its members documents that are specified in s. 35. That is a general obligation of the strata corporation unrelated to any legal process. A failure of a strata corporation to comply with its obligation under s. 36(1) can be the subject of a claim before the Tribunal and, in that case, the claimant seeks production of the specified documents as a final remedy under s. 36(1). It is not an interlocutory procedural order under Rule 8.1. Ms. Tran also made a document production application under Rule 8.1, and that application was dismissed by a Tribunal Vice Chair as being a "fishing expedition", but here we are concerned with her s. 36(1) request, not her Rule 8.1 request.

[93] The Tribunal Member dismissed the s. 36(1) claim on the basis that the Strata had made the documents Ms. Tran requested available for her to inspect and that she did not establish that further, unproduced, documents existed. He compared her request to the "fishing expedition" that was dismissed by the Vice Chair.

[94] Ms. Tran argues this decision is patently unreasonable because strata owners cannot be expected to identify with precision the specific documents they seek when they do not know what documents the strata corporation has. In this sense, she suggests the Tribunal Member's reasons are circular. She requested documents of a particular class and provided some particulars as to the nature of the documents she was requesting but argues she could not reasonably provide more specificity.

[95] Ms. Tran's point is a logical one, but I do not read the Tribunal Member's decision as requiring her to identify the requested documents with the level of precision that she suggests. Nor, for that matter, do I read the Vice Chair's dismissal of her Rule 8.1 document request that way. All the Tribunal Member and the Vice Chair were suggesting is that once the Strata has claimed to have produced all the documents it has within the scope of Ms. Tran's request, it falls to her to show some basis to suggest that production is incomplete. That might be done, for example, by

pointing to the kind of documents that one would reasonably expect the Strata to have but were not produced. In my view, the Tribunal Member reasonably concluded that Ms. Tran failed to meet this minimal standard.

[96] Ms. Tran points to the Strata's email response to her s. 36(1) document request to show that the Tribunal Member was clearly wrong to find the Strata had made all the documents it was required to produce available to her. In that email, the Strata's property manager provides a specific response to each element of Ms. Tran's document request. In one entry, the manager states, "I know there is a rapid pipe schedule but I do not have the signed contract, council will have this and I will ask them." Ms. Tran claims this signed contract was never produced.

[97] Ms. Tran's representative did not direct me to any follow-up correspondence where this specific document was sought. On her behalf, he made further document requests of the Strata but those do not question whether the Rapid Pipe contract has been located. The email correspondence shows that the property manager made documents relating to each of Ms. Tran's requests available for inspection but neither Ms. Tran nor her representative attended to look at the documents.

[98] Ms. Tran has not persuaded me that the Tribunal Member made any error in his conclusions about the s. 36(1) document request and certainly nothing to suggest his conclusion is patently unreasonable.

E. The Legal Costs Order

[99] Ms. Tran argues it was patently unreasonable for the Tribunal Member to make the "extraordinary" costs order against her. She argues it was founded on the patently unreasonable finding that she had contravened the Vice Chair's document production order by redacting the insurance document and on what she suggested was the patently unreasonable finding that she had unduly influenced Mr. Berhe's evidence. She also argues it was patently unreasonable to rely on the earlier Tribunal decision where the Tribunal Member stopped short of ordering costs against her, despite her having made unproven allegations of fraud and bad faith, because she had a "misguided but genuine belief" that the strata had not fulfilled its

legal duties. She argued it was unreasonable for the Tribunal Member to rely on that earlier case because it was under judicial review.

[100] The award of costs is a matter of discretion which is reviewed on a patently unreasonable standard under s. 56.7(2) of the *Civil Resolution Tribunal Act*. The Tribunal Member made the order in this case due to the cumulation of many aspects of Ms. Tran's conduct of this proceeding. I have found the Tribunal Member's conclusion on one key aspect of her conduct – his finding that Ms. Tran's redactions contravened the Vice Chair's document production order – to be patently unreasonable.

[101] I disagree with Ms. Tran that it was unreasonable for the Tribunal Member to refer to the earlier proceeding where she narrowly avoided a costs order. The proceedings were between the same parties, and it was reasonable for the Tribunal Member to find Ms. Tran's continued use "improper statements" and "meritless allegations" in this proceeding contributed to the overall conduct that was potentially deserving of rebuke. In this respect I note that in her reply submissions she alleged that Mr. Chang's report was "designed to misrepresent the state of the exterior drainage system and mislead the CRT regarding the necessary repairs" [emphasis added]. That is a very serious and wholly unfounded allegation against a witness.

[102] However, I am unable to say whether the Tribunal Member would have reached the same conclusion on costs were it not for his finding that Ms. Tran's redaction of the insurance document was a breach of the Vice Chair's document production order. Since that finding is patently unreasonable, it should not be factored into the assessment of whether Ms. Tran's overall conduct is deserving of rebuke. For that reason, I would remit the question of costs back to the Tribunal to reconsider in light of these reasons.

[103] I would add that while I have doubts that Ms. Tran's email to Mr. Berhe is "threatening" (another contributing factor to the costs award), I found it was open for the Tribunal Member to interpret the emails in the manner he did and I cannot say that finding is patently unreasonable. However, I would say that while the Strata's

own communications with Mr. Berhe are certainly not threatening, its email asking him to confirm or confirm with comments the propositions the Strata put to him is undoubtedly leading. I leave it to the Tribunal Member to decide whether that is a factor that might be taken into account in the reconsideration of the costs issue.

VII. Conclusion and Costs

[104] For these reasons, I would dismiss Ms. Tran’s application for judicial review except as to the Tribunal’s order that she pay the Strata’s legal fees. I would remit the question of the legal fees back to the Tribunal to reconsider in light of these reasons.

[105] Despite her success on the legal fees issue, Ms. Tran was otherwise unsuccessful on this judicial review. I find that the Strata was substantially successful and I would order that it receive its costs for this judicial review from Ms. Tran at Scale B. No order for costs is made for or against the Tribunal.

“Kirchner J.”