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COURT OF APPEAL FILE NO. CA50335
Song Li. v. The Owners, Strata Plan BCS 2884
Respondent's Factum

COURT OF APPEAL

ON APPEAL FROM the order of Justice Stephens of the Supreme Court of B.C.
pronounced on the 21st of November 2024.

BETWEEN:

**SONG LI, KWUN LOK CHAN, NANHUI YAO, JUN HE, DANYING WANG,
MAN-NA TSENG, DAN HE, LIMING HE, SHI ZHUANG CHEN, YUN ZHANG,
XIAOGANG DONG, PING HUANG, BAO ZHU WANG, YUGUAN PENG, YAN WU, JIN
JI, XIAO TONG ZHANG, MINJIE WANG, HAIYUAN LI, AI DONG XIE, YIWEI ZHANG,
KAM CHAU KWOK, ANI QI, YING LI, MING ZHAO, ZHINING WANG, ZHENDE LI,
PING HUANG, WEI ZHOU, NAN MA, LILI LI, TIMOTHY OSIOWY,
SHARON SUN SHIH-HUA WEI, YI LAW CHEN**

APPELLANTS
(Respondents)

AND:

The Owners, Strata Plan BCS 2884

RESPONDENT
(Petitioner)

RESPONDENT'S APPEAL BOOK

The Owners, Strata Plan BCS 2884

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The Owners, Strata Plan BCS 2884

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No. S234862
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**RE: THE OWNERS, STRATA PLAN BCS 2884
IN THE MATTER OF SECTION 173 OF THE STRATA PROPERTY ACT**

BETWEEN:

THE OWNERS, STRATA PLAN BCS 2884

PETITIONER

AND:

**THE REGISTERED OWNERS OF EACH STRATA LOT IN
THE OWNERS, STRATA PLAN BCS 2884**

RESPONDENTS

SUBMISSIONS OF THE PETITIONER: THE OWNERS, STRATA PLAN BCS 2884

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PART I: OVERVIEW

1. The Owners, Strata Plan BCS 2884 (the “Strata Corporation”), petition the court for the approval of a special levy to fund the necessary repairs of its common property and common assets. These repairs, identified by qualified engineers, are required to address life safety issues, avoid future increased costs of necessary work, and ensure the maintenance and safety of the property for all residents and visitors.
2. The Strata Corporation is established pursuant to the *Strata Property Act*¹ (“SPA”). The common property and common assets of the Strata Corporation consist of three buildings, each of which has 16 stories, known collectively as “The Lotus.” The Lotus has civic addresses of 5700, 7371 and 7373 Westminster Highway and 5900 Alderbridge Way in Richmond, British Columbia (“Tower A”, “Tower B” and “Tower C” respectively, collectively the “Strata Property”). The Strata Property, completed around 2008, comprises 286 strata lots and is now over 15 years old.
3. The Strata Property has significant issues with efflorescence, concrete wall cracking, and detaching elastomeric coating. Efflorescence indicates that moisture is permeating the concrete, which leads to water ingress issues. Areas of concern with respect to the Strata Property’s building envelope include at:
 - (a) exterior walls and penetrations thereto;
 - (b) balconies and concrete eyebrows;
 - (c) decks;
 - (d) roofs;
 - (e) the water feature; and
 - (f) the parking garage.²
4. As set out in section 3 of the SPA, the Strata Corporation “is responsible for managing and maintaining the common property and common assets of the strata corporation for

¹ SBC 1998, c 43 [SPA] (Book of Authorities (“BoA”) Tab 10)

² Exhibit “B” to Affidavit #1 of C. Black at tab 3, pp 10-81.

the benefit of the owners.”³ The *SPA* further sets out that the Strata Corporation “must repair and maintain common property and common assets.”⁴

5. The Strata Corporation's essential repair and maintenance duty is to uphold the integrity of the building envelope. This is crucial because water leakage can rapidly render strata lots uninhabitable or unusable and lead to substantial consequential damages, which worsen over time if the water ingress is not addressed promptly.
6. The orders sought at this hearing are:
 - (1) A declaration that the special levy identified as “¾ Vote Resolution Full Building Enclosure Rehabilitation Project (Funded by Special Levy)”, in the amount of \$3,925,670.00, put forward at the petitioner’s April 13, 2023 Special General Meeting (the “¾ Vote Resolution”) is to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise;
 - (2) An order under section 173(4) of the Strata Property Act, S.B.C. 1998, c. 43, as amended (the “Act”) that the ¾ Vote Resolution is approved and that the petitioner may proceed as if the ¾ Vote Resolution had been passed under section 108(2)(a) of the Act; and
 - (3) An order for costs payable by any owner or other person opposing the foregoing relief.
7. By approving the orders sought in this petition, allowing the Strata Corporation to raise money from the owners through a special levy to fund the repair of the Strata Property, the Strata Corporation will be able to discharge its statutory duty and comply with the *SPA*.

³ *SPA*, *supra* note 1 s 3 (BoA Tab 10).

⁴ *Ibid* at s 72 (BoA Tab 10).

8. The statutory language of the section of the *SPA* under which such an order can be made, reads as follows:

173 (1) On application by the strata corporation, the Supreme Court may do one or more of the following:

(2) If, under section 108 (2) (a),

(a) a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and

(b) the number of votes cast in favour of the resolution is more than 1/2 of the votes cast on the resolution but less than the 3/4 vote required under section 108

(2) (a),

the strata corporation may apply to the Supreme Court, on such notice as the court may require, for an order under subsection (4) of this section.

(2.1) Section 171 (2) does not apply to an application under subsection (2).

(3) An application under subsection (2) must be made within 90 days after the vote referred to in that subsection.

(4) On an application under subsection (2), the court may make an order approving the resolution and, in that event, the strata corporation may proceed as if the resolution had been passed under section 108 (2) (a).⁵

9. Accordingly, this Court must determine if the special levy proposed is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise.

PART II: BACKGROUND

10. The history of the Strata Property, as it relates to investigations, and ongoing repair and maintenance projects, will assist in establishing that the Strata Property has identified issues with common property since at least 2015, some of which have been the subject of targeted repair projects and the remaining issues are those that are subject of this petition proceeding.

11. In 2015, the Strata Corporation retained engineering firm RDH Building Engineering Ltd. ("RDH") to conduct a depreciation report (the "2015 DR") "estimating the repair and replacement cost for major items in the strata corporation and the expected life of those

⁵ *Ibid* at s 173 (BoA Tab 10).

items” pursuant to section 94 of the *SPA*.⁶ The 2015 DR noted several observations regarding the Strata Property’s building enclosure, including:

- (a) localized organic growth on its urethane concrete eyebrows;
- (b) delamination of the coating on concrete walls at various locations; and
- (c) localized deterioration of the traffic-bearing membrane in the parkade.⁷

12. The 2015 DR set out several maintenance projects with respect to the Strata Property’s building enclosure. Such projects are categorized as either “major maintenance” or “condition-based renewals.” The 2015 DR defines major maintenance projects as being “intended to preserve the assets to achieve their full design life, and typically occur on a regular, predictable basis.”⁸ Major maintenance projects set out in the 2015 DR include the following:

- (a) repair and recoating of concrete walls;
- (b) reapplication of urethane top coats to balconies and eyebrows;
- (c) replacement of sealant, as required;
- (d) commissioning of a 10-year warranty review; and
- (e) commissioning of a building enclosure condition assessment (“BECA”) focusing on the condition of coatings and sealant as the next step in the planning process.⁹

13. As an alternative to major maintenance projects, condition-based renewal projects apply only to those assets which are intended to be kept in service as long as possible but are to be replaced before they fail.¹⁰ Among several recommended condition-based renewals is the localized replacement of traffic-bearing membrane in the parkade.¹¹

14. In advance of the Strata Property’s 10-year common property warranty coverage expiry, and per the recommendation in the 2015 DR, the engineering firm Read Jones Christoffersen Ltd. (“RJC”) was retained to conduct a 10-year warranty review of the

⁶ *Ibid* at s 94 (BoA Tab 10).

⁷ Exhibit “D” to Affidavit #1 of C. Jang at tab 2, p 384.

⁸ *Ibid* at p 390.

⁹ *Ibid*.

¹⁰ *Ibid*.

¹¹ *Ibid*.

Strata Property (the “Warranty Review”). The Warranty Review was completed on June 4, 2018, and set out identified defects at the Strata Property, including the following:

- (a) the urethane balcony waterproofing membrane does not cover all of the concrete and the sealant is not installed continuously adjacent to the window wall assembly;¹²
- (b) localized areas on the exterior of the building were missing or had inadequate elastomeric coating on the concrete, such as the top of the eyebrow located on the 12th level and south elevation of Tower A. We recommend applying and recoating the concrete at these areas;¹³
- (c) hairline cracks were observed on the underside of the concrete eyebrows at various locations;¹⁴
- (d) sealant was generally found to be in fair condition, but the original sealant is nearing the end of its expected service life. We recommend planning for a sealant replacement project for the whole complex in the next 3 – 5 years;¹⁵
- (e) efflorescence and cracks were observed at the eyebrows on the main roofs of each tower;¹⁶
- (f) localized concrete delamination or spalling of concrete was observed in parking areas. This is to be expected in a structure of this age. ... We recommend undertaking a more extensive survey of concrete deamination and repairing as required¹⁷; and
- (g) cracks were observed on the slab-on-grade within the parkade.¹⁸

15. The Warranty Report identified certain defects that were fixed under the Strata Corporation's warranty by the warranty provider in collaboration with the developer. However, several of the noted defects were not considered warrantable because they fell outside the coverage terms and scope.

¹² Exhibit “E” to Affidavit #1 of C. Jang at tab 2, p 487.

¹³ *Ibid* at p 497.

¹⁴ *Ibid*.

¹⁵ *Ibid*.

¹⁶ *Ibid*.

¹⁷ *Ibid*.

¹⁸ *Ibid*.

16. As a result, between 2019 and 2020 the Strata Corporation undertook a project to recoat the upper concrete eyebrows and repaint various surfaces. The scope of the work was described as “recoating of the upper concrete eyebrows (i.e. above the penthouse Suites, and above the upper roofs respectively) of all three buildings at the Strata Property and repainting of the vertical concrete surfaces, glass canopies, townhouse entrance doors, and recoating of concrete eyebrows at townhouse units” at the Strata Property (“Recoating of Upper Concrete Eyebrows and Localized Repainting Project”).¹⁹ The Recoating of Upper Concrete Eyebrows and Localized Repainting Project was required to address unwarrantable repairs considered to be urgent at that time.
17. In February of 2020, the Strata Corporation retained LDR Engineering Group (“LDR”) to review both the remaining warranty-related items and other projected non-annual maintenance renewal needs.
18. Between December 2021 and February 2022, the Strata Corporation undertook a project to re-roof Tower C. This was a targeted re-roofing project required due to ongoing water ingress to the penthouse-level units at Tower C.²⁰
19. The Strata Corporation retained LDR to conduct a building enclosure condition assessment (the “BECA”) based on its inspections of the Strata Property on April 1, 2021, and June 3, 2021. The BECA, dated October 27, 2021, resulted in LDR providing 22 recommendations regarding a building envelope renewal project.²¹
20. For the preparation of the BECA, LDR conducted a building envelope assessment at the Strata Property to identify maintenance sites and deficiencies that needed to be addressed in order to avoid the premature failure of the Strata Property’s envelope. This included in-depth investigations of the following areas:
- (a) interiors of the Strata Property;
 - (b) exterior walls and penetrations thereto;
 - (c) balconies and concrete eyebrows;

¹⁹ Exhibit “F” to Affidavit #1 of C. Jang at tab 2, p 552.

²⁰ Exhibit “H” to Affidavit #1 of C. Jang at tab 2.

²¹ Exhibit “B” to Affidavit #1 of C. Black at tab 3.

- (d) decks;
- (e) roofs;
- (f) the water feature;
- (g) the podium; and
- (h) the parking garage of the Strata Property.²²

21. In the BECA, LDR indicates that the elastomeric coating on the Strata Property is missing, detaching, or failing in numerous areas around the Strata Property, including at the podiums and parking garage exterior walls.²³

22. In the BECA, LDR indicates that the concrete walls of Strata Property are cracking in numerous areas around the Strata Property, including at the exterior and interior of the parking garage walls.²⁴

23. In the BECA, LDR indicates that the polyurethane vehicular traffic coating membrane (the “Membrane”) is missing, detaching or damaged in numerous areas in the parking garage of the Strata Property (the “Parking Garage”), including:

- (a) around drains;
- (b) on the third floor of the Parking Garage;
- (c) in the ramp connecting the second and third floors of the Parking Garage;
- (d) in the mechanical room on the first floor of the Parking Garage.
- (e) at various parking stalls and driving lanes, such as:
 - i. stall 279;
 - ii. stall 293; and
 - iii. the driving lane on the second floor of the Parking Garage.

24. The BECA includes a building envelope report of the Strata Property (the “Envelope Report”) by Bungee Holdings Ltd. (“Bungee”), a rope access and building envelope inspection company. Bungee conducted a visual inspection of the exterior of the Strata Property via rope access drops on April 1, 2021, and the Envelope Report was issued

²² *Ibid* at pp 10-81.

²³ *Ibid* at pp 82-83.

²⁴ *Ibid* at p 18.

on April 8, 2021. The Envelope Report contains photographs of numerous areas of the exteriors of the Strata Property where the elastomeric coating is missing, detaching, or failing, and the concrete on the exterior of the Strata Property is cracking.²⁵

25. In the BECA, LDR recommended the following repairs, among other ongoing maintenance recommendations. It is these repairs that then become the subject matter of the Maintenance Project (further referred to below):

- (a) renewing the elastomeric coating throughout the exterior of the Strata Property where it has not already been renewed; improving detailing, including at all concrete construction joints; routing and sealing remaining cracks and joints; repairing concrete where needed;²⁶
- (b) conducting targeted sealant renewal at window perimeters, where it has failed. This work is to be conducted alongside elastomeric coating renewal (i.e. Recommendation (a) above). Alternatively, when performing the elastomeric coating renewal, the Owners may elect to replace all sealant at the window perimeters, as access will be available at that time;²⁷
- (c) installing sealant where missing and replace where failed at miscellaneous wall penetrations throughout the complex;²⁸
- (d) at balconies and eyebrows, remove and replace the polyurethane membrane at the slab edges with a new liquid applied polyurethane membrane system of appropriate thickness, and incorporating improved detailing, such as at balcony / eyebrow to concrete wall saddle interfaces; renew the polyurethane membrane on the balcony and concrete eyebrow top of the slab surface; at the eyebrows, where the membrane on the top of the slab surface is in poor condition, remove and replace the membrane;²⁹
- (e) re-roofing where the roofing membrane has failed;³⁰
- (f) installing liquid applied polyurethane membrane at the top surfaces of planter

²⁵ *Ibid* at pp 99-229.

²⁶ *Ibid* at p 82 [BECA Recommendation #2].

²⁷ *Ibid* [BECA Recommendation #3].

²⁸ *Ibid* [BECA Recommendation #6].

²⁹ *Ibid* [BECA Recommendation #8].

³⁰ *Ibid* at p 83 [BECA Recommendation #11].

walls and concrete stairs parapet walls;³¹

(g) installing a new liquid-applied polyurethane topcoat in the mechanical room on the first floor of the Parking Garage;³² and

(h) installing waterproofing where the slab-on-grade is partially below the exterior finished grade of the Parking Garage.³³

26. Pursuant to section 94 of the *SPA*, the Strata Corporation retained LDR in 2022 to prepare a depreciation report (the “2022 DR”).³⁴ On or around February 25, 2022, the 2022 DR was delivered to the Strata Corporation.³⁵

27. Some significant findings of the 2022 DR include that:

(a) the elastomeric coating throughout the complex has a service life of 10 years and has an estimated remaining life of 2 years. As such, renewal dates are recommended for 2023, 2033, and 2043;³⁶

(b) the exterior sealant throughout the complex has a service life of 10 years and has an estimated remaining life of 2 years. As such, renewal dates are recommended for 2023, 2033, and 2043;³⁷

(c) the waterproofing at balconies and concrete eyebrows throughout the building have a service life of 15 years and has an estimated remaining life of 2 years. As such, renewal dates are recommended for 2023 and a full renewal for 2038;³⁸

(d) the roofing at Towers A, B, and C have a typical service life of 25 and, accordingly, has an estimated remaining life of 12 years. However, LDR notes that “At the time of ... [their] review, localized waterproofing membrane replacement was being conducted at Building C main roof above Suite 1805 due to water ingress issues. The renewal budget includes for waterproofing membrane replacement at all areas to benefit from uniformity of the work and

³¹ *Ibid* at p 84 [BECA Recommendation #18].

³² *Ibid* [BECA Recommendation #20].

³³ *Ibid* [BECA Recommendation #21].

³⁴ *SPA*, *supra* note 1 s 94 (BoA Tab 10).

³⁵ Exhibit “A” to Affidavit #3 of C. Black at tab 5.

³⁶ *Ibid* at p 40.

³⁷ *Ibid* at p 41.

³⁸ *Ibid* at p 48.

- comprehensive warranty coverage”;³⁹
- (e) the concrete planter walls have a typical service life of 40 years, with an adjusted service life at 15-year cycles. LDR estimates 2 years of remaining life. As such, renewal dates are recommended for 2023 and a full renewal for 2038⁴⁰
 - (f) the parkade suspended slab traffic coating at parkade levels 2 and 3 has a typical service life of ten years and an estimated remaining life of 2 years. As such, renewal dates are recommended for 2023, 2033, and 2043 due to the observed failing polyurethane traffic coating membrane installed on the surface of the parkade suspended slabs; and⁴¹
 - (g) with respect to the slab on grade at parkade level 1, LDR noted that “The concrete slab on grade is a relatively thin wear surface. The underlying subgrade typically will move slightly over the years, the movement of the underlying soil will typically lead to cracks and deterioration of the slab surface over time. Minor concrete cracks that develop over time should be sealed with a polysulphide sealant to prevent rainwater brought in from the cars from entering the sub-base, crack sealing could be conduct [*sic*] on an as-needed basis and be funded through the operating budget.”⁴²

28. The Strata Corporation then worked with LDR to focus on a scope of work identified as “2023 Building Enclosure Maintenance Repairs” (the “Maintenance Project”). LDR notes that the Maintenance Project’s scope is based on eight BECA Recommendations: Recommendations 2, 3, 6, 8, 11, 18, 19, and 21.⁴³

29. LDR issued an invitation to tender to obtain formal bids on the Maintenance Project (the “Tender Documents”).⁴⁴ Four qualified bids were submitted.⁴⁵ LDR summarized those bids for the Strata Corporation to review and select to award the Maintenance Project.⁴⁶

³⁹ *Ibid* at p 49.

⁴⁰ *Ibid* at p 90.

⁴¹ *Ibid* at p 35.

⁴² *Ibid* at p 36.

⁴³ Exhibit “H” to Affidavit #1 of C. Black at tab 3, p 499.

⁴⁴ Exhibit “D” to Affidavit #1 of C. Black at tab 3, pp 248-481.

⁴⁵ Exhibit “E” to Affidavit #2 of C. Black at tab 4, pp 482-486.

⁴⁶ Exhibit “E” to Affidavit #1 of C. Black at tab 3, pp 482-486.

30. The Strata ultimately decided that Remdal Painting & Restoration Inc. (“Remdal”) was the best candidate out of the four bids submitted. Remdal’s bid was the second lowest and adequately addressed all areas within the Maintenance Project.⁴⁷
31. On or about March 9, 2023, a notice was posted to the owners to inform them that a townhall would be held on March 16, 2023, to discuss the Maintenance Project (the “First Townhall”)⁴⁸. On or about March 14, 2023, LDR authored a summary of the scope of work being proposed for the Project (the “Scope Summary”). The Scope Summary was distributed to all owners and translated into Chinese.⁴⁹
32. At the First Townhall, the owners were provided with information regarding the work that would be included in the proposed Maintenance Project and the approximate cost of a special levy to finance the Maintenance Project.⁵⁰
33. Since a Chinese translator could not be secured for the First Townhall, a further townhall was scheduled with a Chinese-speaking translator. On March 30, 2023 a notice was posted in Chinese informing owners that an additional townhall would be held on April 4th to discuss the recommended repairs and the upcoming SGM (the “Second Townhall”).⁵¹ The Second Townhall proceeded on April 4, 2023, in the same manner as the First Townhall.
34. On or about March 21, 2023, the Strata Corporation provided a notice to the owners regarding a Special General Meeting to be held on April 13, 2023 (the “SGM”). This notice also provided a copy of the “ $\frac{3}{4}$ Vote Resolution Full Building Enclosure Rehabilitation Project (Funded by Special Levy)” (the “ $\frac{3}{4}$ Vote Resolution”), which set out

⁴⁷ Exhibit “J” to Affidavit #1 of C. Jang at tab 2; Affidavit #1 of C. Jang at tab 2, at paras 31-32.

⁴⁸ Exhibit “L” to Affidavit #1 of C. Jang at tab 2.

⁴⁹ Exhibit “M” to Affidavit #1 of C. Jang at tab 2.

⁵⁰ Exhibit “N” to Affidavit #1 of C. Jang at tab 2, pp 822-824.

⁵¹ Exhibit “O” to Affidavit #1 of C. Jang at tab 2, p 825.

the total cost of the Project, \$3,925,670.⁵² The notice also set out the applicable fee schedule for each unit of the Strata Corporation based on unit entitlement.⁵³

35. Despite efforts by strata council members to explain that this funding is essential for the Strata Corporation to meet its legal obligations to maintain the integrity of the Strata Property and the building envelope, the $\frac{3}{4}$ Vote Resolution was defeated. There were 65 votes in favour, 58 opposed, and one abstention.⁵⁴ As such, the $\frac{3}{4}$ Vote Resolution received 53% support.

36. The elected Council then resolved by a majority vote, on or about April 21, 2023, to proceed to court with this petition for court approval of the special levy, $\frac{3}{4}$ Vote Resolution as contemplated by the *SPA*. As such, the Strata Corporation filed this petition on July 10, 2023, in the matter of section 173(2) of the *SPA* (the "Petition").

Opposition to the Petition:

37. On February 7, 2024, Zhen Cao, the owner of strata lot 111 in the Strata Property, filed a response to the Petition in opposition to the approval of the special levy on the basis that they were not convinced of the cost-effectiveness or necessity of the Maintenance Project.⁵⁵ As such, Mr. Cao, along with a group of owners in opposition to the Maintenance Project, retained the engineering firm Tri-Can Consulting Ltd. ("Tri-Can") to prepare a review of the Maintenance Project (the "Second Opinion").⁵⁶

38. On May 14, 2024, "Unit owners of Strata Plan BCS 2884 as set out in Appendix A" (the "Respondents") filed a response to the Petition in opposition of the approval of the special levy. The Respondents represent 43 strata lot owners (or approximately 15%) of the Strata Corporation, including Mr. Cao.⁵⁷

⁵² Exhibit "P" to Affidavit #1 of C. Jang at tab 2, p 834.

⁵³ *Ibid* at pp 836-842.

⁵⁴ Exhibit "Q" to Affidavit #1 of C. Jang at tab 2, p 846.

⁵⁵ Affidavit #1 of Z. Cao at tab 7.

⁵⁶ *Ibid*, at paras 19 and 22.

⁵⁷ Appendix "A" to Response to Petition filed May 14, 2024 at tab 8.

39. In their response, the Respondents provided the Second Opinion authored by Tri-Can. In formulating the Second Opinion, Tri-Can visually reviewed the Strata Property, concentrating on individual maintenance items identified in the scope of work as set out in the Tender Documents.⁵⁸ Tri-Can notes that:

The review locations were randomly selected to provide a representation based on the work scope listed in the tender documents. No destructive openings of building assemblies were conducted. The visual review was limited to areas accessible by the building tenants or areas provided by the property manager, i.e., balconies, roofs, parkades, courtyards, and sidewalks. Areas with no access were reviewed visually at a distance.⁵⁹

40. The Second Opinion states that much of the maintenance work is necessary to prevent premature deterioration of the Strata Property and should be repaired within one year, while other items should be monitored and replaced or renewed within five years.⁶⁰ The Second Opinion identifies *Painting, Sealant, Adding pedestrian traffic coating on planter walls*, and the *replacement of door hardware* as maintenance items that need to be replaced in the future.⁶¹ The Second Opinion questions why eyebrow renewal is included in the Maintenance Project, as they appear to have been renewed in the last five years.⁶²

41. Further, the Second Opinion indicates that there are no maintenance items that require immediate action to protect life and safety and that several items need further investigation.⁶³

42. The Second Opinion refers to the Tender Documents and a limited review of the BECA, in addition to Tri-Can's own visual assessments, as informing its assessment.

43. The BECA includes an Envelope Report, which is a thorough visual inspection of the exterior of the Strata Property. This inspection was carried out using rope access drops

⁵⁸ Exhibit "B" to Affidavit #1 of W. Chen at tab 11, p 14.

⁵⁹ *Ibid* at p 5.

⁶⁰ *Ibid* at pp 9-12.

⁶¹ *Ibid* at pp 11-12.

⁶² *Ibid* at p 36.

⁶³ *Ibid* at p 9.

by Bungee, a third-party company. The Envelope Report contains photographs of various areas of the exterior where the coating is missing, detaching, or failing, and where the concrete is cracking.⁶⁴ The Second Opinion makes no reference to the Envelope Report.

Response to the Opposition:

44. In a report dated July 3, 2024, LDR prepared a responding review of the Second Opinion (the “Responding Review”), which identifies numerous limitations of the Second Opinion.⁶⁵

45. The Responding Review states that the Second Opinion’s purpose is to assess the priority of the listed scope of work items in reference to the LDR tender documents and that the areas reviewed were focused on the building envelope items identified in the tender.⁶⁶ The Responding Review further notes that the Second Opinion refers to the BECA in its review but is not identified as a document used to support its opinion in its opening statement.⁶⁷

46. With respect to Tri-Can’s method of summarising the scope of work included in the Maintenance Project, the Responding Review found that:

TCC [“Tri-Can”] attempted to summarize the scope of work within the tender documents, reorganizing it into their format, not per the organization within the tender documents (i.e. 01 11 00 Summary of Work). **Their summary is inaccurate and/or unclear in the following ways:**

- Item 1c: It is indicated “Remove, install waterproofing, and reinstall all roof anchors as shown in drawings.” Removal and reinstallation of the roof anchors are limited to the targeted roof repairs to facilitate the scope of work, not for the entire complex.
- Item 1: There is no reference to structural repairs of the window wall screen at Towers A or B.
- Items 3 and 5: Their summary does not clarify that work was already completed in previous phases (i.e. Recoating of the concrete eyebrows at the tower roofs, above the penthouse

⁶⁴ Exhibit “B” to Affidavit #1 of C. Black at tab 3, pp 99-229.

⁶⁵ Exhibit “B” to Affidavit #3 of C. Black at tab 5.

⁶⁶ *Ibid* at p 110.

⁶⁷ *Ibid*.

suites, and the townhouses. Repainting the architectural concrete walls at the tower roofs, townhouses, and building entrances to Towers A and B). Their summary incorrectly implies the scope includes the entire complex.

- Item 4: Not all sealant was to be replaced in the base scope of work. In fact, the following separate prices were sought: “Remove and replace all sealant at jamb of the window wall system (i.e. concrete to window wall system).”, “Remove and replace all sealant at head of the window wall system (i.e. concrete to window wall system).”, and “Remove and replace all sealant at interfaces of curtain wall system (i.e. head, jamb and sill).” Separate Prices are not included in the Total Bid Price; the Owner can choose to include these items in the scope of work or not.
- Item 5b: Shot blasting is indicated. However, this is limited to surface preparation work within the parking garage, and is not intended to be performed on concrete eyebrows or balconies.
- Item 5e: Additional sloping of concrete eyebrows and balconies is to be completed on a unit price basis.
- Item 6e: Additional sloping of concrete eyebrows and balconies is to be completed on a unit price basis.
- Item 8: It is indicated that dampproofing is to be installed along the entire perimeter of the entire complex. However, such work is limited to the north and east elevations only.⁶⁸

47. Accordingly, LDR notes that the recoating of the concrete eyebrows proposed in the Tender Documents is not for the entire Strata Property and clarifies that “the work included in previous phases is **not included** in the scope of work in the Tender Document.”⁶⁹

48. The Responding Review considers concrete spalling a life safety issue and, therefore, an immediate action item.

49. Further, LDR considers the attachment of the window wall screen to wood instead of concrete in a non-combustible construction a life safety issue on the basis of a structural investigation conducted by a third-party engineering firm on December 2, 2021. As recommended by Kunimoto Engineering (1995) Limited:

We could not review the condition of the plywood liner in all areas since the flashing was not removed in all areas and the waterproof membrane was still installed. However, the windows were not correctly installed. The high rise tower is supposed to be non-combustible construction.

⁶⁸ *Ibid* at pp 110-111.

⁶⁹ *Ibid* at p 112 [emphasis added].

Non-combustible construction does permit a limited amount of wood to be used however, the wood is only permitted for shimming and spacers. Elements of the building cannot be anchored to the wood in non-combustible construction. These windows should have been anchored to the concrete up-stand wall and not anchored to the plywood liner.⁷⁰

This issue forms part of the scope of work as per BECA Recommendation #11.

50. With respect to the items categorized as requiring further investigation per the Second Opinion, the Reviewing Report found that:

- TCC indicates “Based on the documents provided, it appears the roof A & B were not reviewed in detail, TCC recommends those areas be investigated first before a complete re-roofing/upgrade.” **As noted above, further investigation was performed on the window wall screens. The Tender Documents reflect the conclusions of this investigation.**
- TCC indicates “Damp proofing on the foundation around the entire perimeter which requires removal of hard and soft landscaping needs further review before the best opinion can be presented. Furthermore, if the issue is isolated to one location, consider only targeted repair to that area.” Note that work is being proposed at only the north and east elevations, not the entire perimeter. It is unclear what further investigation is required and/or how targeted repairs can be completed, since water ingress was noted at multiple locations along the base of wall on the north and east elevations. Currently no dampproofing or waterproofing is installed. As such, we confirm that the Tender Document should reflect the recommendations from the LDR Targeted BECA “Along the north and east elevations, and any other similar location where the slab-on-grade is partially below the exterior finished grade, install below grade waterproofing with adequate detailing for protection against water ingress.”⁷¹

51. The Second opinion recommends rewaterproofing as a second priority, to be completed within the next 5 years. However, the Responding Review writes:

TCC indicates for “*Scope #2, Concrete Repair. Items 2a, b, c, and d. “all items such as damaged concrete, delaminated or spalled concrete should be repaired soon.” We agree, and it should be addressed as soon as possible.* Much of the delaminated or spalling concrete, or the potential for delaminated or spalling concrete, occurs along the edges of the concrete eyebrows and balconies. **In order to conduct this work, the waterproofing on these surfaces needs to be removed, otherwise, it will be difficult to determine the extent of the damage**

⁷⁰ *Ibid* at p 111.

⁷¹ *Ibid*.

and complete the repairs in a cost effective manner (i.e. due to economies of scale, access is already provided, and delaying the remaining work will likely result in more damage and increased costs, plus inflation). **However, TCC is recommending rewaterproofing as a second priority, to be completed in the next 5 years, except for some targeted locations they identified. Further to this, TCC should have referred to our Targeted BECA to understand the extent of the issue, including numerous photographs taken from a boatswain chair, instead of only relying on their limited observations.**⁷²

52. In summary, LDR states that the Second Opinion “does not consider construction efficiencies, economies of scale, the services lives of the components and systems, and a comprehensive long term maintenance strategy for the complex, all of which were considered when we [LDR] developed the scope of work in the Tender Documents.” LDR further notes that “[i]t is not realistic to view each building enclosure component in isolation when planning a repair strategy.”⁷³

53. In further, in reply to the Responding Opinion, Tri-Can has issued a further report, dated October 4, 2024 (the “Final Reply”).⁷⁴ In its Final Reply, Tri-Can analyzes of each LDR’s comments from the Responding Review and provides its comments. TCC appears to clarify its Second Opinion report by stating that it “focused on assessing the current condition of the building envelope for life safety concerns. Design factors like access and cost were not the primary focus.”⁷⁵ TCC’s confirmation that their review was restrained to deal with considering life safety concerns is, by its own evidence, confirmation that it did not consider whether the repair was required to prevent “safety concerns” or to “prevent significant loss or damage” as required by the section 173(2). TCC also confirms, “[r]elevant documents were referenced, but not analyzed in detail”.

54. TCC appears to revise its position on several points or appears to agree with LDR’s comments. For example, with respect to item 3.3.2, TCC confirms, “[t]he areas identified by TCC were not characterized as immediate life and safety issues; but are important and require repair in a timely manner.”⁷⁶

⁷² *Ibid* at pp 111-112.

⁷³ *Ibid* at p 115.

⁷⁴ Exhibit “A” to Affidavit of Wei Chen, filed October 11, 2024.

⁷⁵ *Ibid* at p 4.

⁷⁶ *Ibid* at p 7.

PART III: LAW & AUTHORITIES

The Legal Framework:

55. Section 72 of the *SPA* requires the Strata Corporation to repair and maintain the common property.⁷⁷ The Strata Corporation's essential repair and maintenance duty is to uphold the integrity of the building envelope. This is crucial because water leakage can rapidly render strata lots uninhabitable or unusable and lead to substantial consequential damages, which worsen over time if the water ingress is not addressed promptly.
56. The Strata Corporation can and must raise funds to maintain and repair common property either by way of annual contributions to the Contingency Reserve Fund ("CRF") or by way of special levy under section 108 of the *SPA*. CRF expenditures and special levy resolutions require a $\frac{3}{4}$ vote.⁷⁸ As explained by the Supreme Court of British Columbia (the "BCSC"):
- Irrespective of whether there has been dissension among owners with respect to proceeding with the repair, the strata corporation's obligation to maintain the common property continues...
- The failure of the respondent strata corporation here is not due to any neglect on its part. That failure results from the refusal of the respondent owners to authorize the work, and the special assessment necessary to carry it out. But it remains, so far as the petitioners are concerned, a failure to fulfill a clear statutory obligation.⁷⁹
57. Section 173 of the *SPA* empowers the court, on a petition by the Strata Corporation filed within 90 days of the resolution receiving more than 50% but less than the required 75% votes in favour, to order that the resolution is approved, where the proposed special levy is necessary for the maintenance or repair of common property or common assets to ensure safety or to prevent significant loss or damage, whether physical or otherwise.
58. In *Thurlow & Alberni Projects v VR 2213*,⁸⁰ the Court of Appeal for British Columbia (the

⁷⁷ *SPA*, *supra* note 1 s 72 (BoA Tab 10).

⁷⁸ *SPA*, *supra* note 1 ss 96(b)(i)(B), 108(2)(a) (BoA Tab 10).

⁷⁹ *Davis v The Owners, Strata Plan NW 3411*, 2020 BCSC 1434 at para 17 (BoA Tab 1).

⁸⁰ 2022 BCCA 257 [*Thurlow*] (BoA Tab 9).

“BCCA” or “Court of Appeal”) set out the leading authority for how this court is to approach an application made under section 173(2) of the *SPA*. In allowing an appeal from a chambers judgment which had denied a Strata Corporation a section 173(2) order, the BCCA held that:

... the starting point for the analysis should be deference to the decision made by the strata council, approved by the majority of owners...

... [the section] should be read in a manner that permits the Strata Corporation to determine the timing and method of repair ... [and] is not intended to place the court in the position of overseeing or managing repairs but, rather, to afford a tool to break a deadlock and permit a simple majority to resolve to effect necessary repairs. It would be contrary to the remedial intention of the provisions to require the court to intensively analyse the scope of the work the strata corporation proposes to do. Doing so will only increase costs to owners and fail to address the deadlock the legislature clearly intended to resolve.

... the Strata Corporation is “entitled to rely on the professional advice it has received”⁸¹ ...

It permits the court to authorize special levies to effect repairs that are necessary, but does not require that the repairs be immediately necessary or that the proposed repair be the minimum necessary to address the problem.⁸²

59. The Court of Appeal also affirmed that potentially greater repair costs of the work are a form of economic loss or damage which justifies approving a special levy under section 173(2).⁸³
60. The Court stated that: “If the evidence established the existence of a safety risk, and that one reasonable way to deal with that risk was to do work as extensive as that proposed by the Strata Corporation, then the threshold for making a s. 173(2) order was overcome.”⁸⁴ While it was the “safety” branch which was engaged in that case, the same must, of course, equally be true where the evidence establishes a risk of “significant loss or damage, whether financial or otherwise,” which is the other alternative branch of section 173(2).

⁸¹ See also para 117 (BoA Tab 1).

⁸² *Ibid* at paras 86-92 [emphasis added] (BoA Tab 9).

⁸³ *Ibid* at paras 114, 116 (BoA Tab 9).

⁸⁴ *Ibid* at para 99; See also comments at para 117 (BoA Tab 9).

61. The Court of Appeal further held:

That being the case, the judge should have considered factors going to the exercise of her discretion to approve the special resolution, including:

- (a) whether the Strata Corporation acted in good faith;
- (b) whether there were procedural irregularities in the manner in which the resolution was proposed and passed by a majority of the votes cast at its special or annual general meeting;
- (c) whether the Strata Corporation acted reasonably on the strength of professional advice in seeking to impose the special levy; and
- (d) whether court approval of the resolution would unfairly prejudice the owners in the minority.⁸⁵

62. It is submitted that if this court finds that the Strata Corporation has satisfied the “threshold” requirement in section 173(2) about the work being “necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise”, that it will be generally entitled to an order approving the special levy unless there is some extenuating circumstance which disentitles it from such an order, the burden of proof of which is on a Respondent opposing the petition. This was the approach in *The Owners, Strata Plan LMS 1383*⁸⁶ (a decision of which the Court of Appeal generally approved in *Thurlow*⁸⁷), where the court described the task as determining “whether on the evidence ... there has been any conduct on the part of the strata council that would lead the Court to exercise its discretion against granting the relief sought even if the statutory conditions of section 173 were met.”⁸⁸ The court’s conclusion on that issue of that case was that it was: “not persuaded that there was any conduct on the part of the strata council that was in bad faith or so unreasonable as to warrant the Court exercising its discretion against granting the relief sought on ... [that] application.”⁸⁹

63. An overarching theme set out by the BCCA in *Thurlow* is that of deference to the democratic decisions of the Strata Corporation. The Court of Appeal speaks of “deference to the decision made by the strata council, approved by the majority of owners” and that the

⁸⁵ *Ibid* at para 100 (BoA Tab 9).

⁸⁶ 2015 BCSC 1816 [*LMS 1383*] (BoA Tab 6).

⁸⁷ *Thurlow*, *supra* note 77 at paras 88, 92 (BoA Tab 9).

⁸⁸ *LMS 1383*, *supra* note 83 at para 35 (BoA Tab 6).

⁸⁹ *Ibid* at para 66 (BoA Tab 6).

Strata Corporation is “entitled to rely on the professional advice it has received” and will generally receive its order if its proposal is “one reasonable way” of addressing the section 72 issue.⁹⁰ This is language reminiscent of the reasonableness standard in judicial reviews. It is not the court’s role to determine whether the Strata Corporation’s proposal or a proposal preferred by a Respondent opposing the court approval is correct. Provided the Strata Corporation’s approach is one reasonable proposal, the special levy should be approved by this court.

64. To resolve this section 173 petition pursuant to *Thurlow*, it is necessary to ask:

(a) Is the Maintenance Project necessary to ensure safety or prevent significant loss or damage?⁹¹

(b) Should the court exercise its discretion to approve the special levy?⁹²

Analysis:

A: The Maintenance Project is necessary to ensure safety or prevent significant loss or damage.

65. The Second Opinion obtained by the Respondents, as well as the Final Reply, does not dispute the necessity of the Maintenance Project to ensure safety or prevent significant loss or damage other than those which are fully considered and addressed in the Reviewing Report. What is at the heart of the Respondent’s dispute is the timing and the scope of the Maintenance Project.

66. However, the BCCA in *Thurlow* held that it is the Strata Corporation’s responsibility to exercise “discretion to determine the timing and scope of repairs”, and that “[i]t would be unworkable to leave such matters in the hands of the courts.”⁹³ According to *Thurlow*, the Respondent’s intensive analysis of the scope of work proposed by the Strata Corporation increases the costs to be borne by owners and fails to address the deadlock

⁹⁰ *Thurlow*, *supra* note 77 at paras 87-98, 99 (BoA Tab 9).

⁹¹ *Ibid* at para 86 (BoA Tab 9).

⁹² *Ibid* at para 100 (BoA Tab 9).

⁹³ *Ibid* at para 86 (BoA Tab 9).

that the legislature clearly intended to resolve.⁹⁴

67. As previously mentioned, the Court of Appeal in *Thurlow* stated that section 173(2) repairs need not be immediately necessary, rather, the decision must be put to a vote pursuant to the process set out in the *SPA*.

68. Of greatest significance in establishing that the requirements of section 173(2) are satisfied derive from the above-mentioned quote from the Court in *Thurlow*: “If the evidence established the existence of a safety risk, and that one reasonable way to deal with that risk was to do work as extensive as that proposed by the Strata Corporation, then the threshold for making a s. 173(2) order was overcome.”⁹⁵ In the case at hand, LDR has identified two life safety issues:

- (a) the attachment of the window wall screen to wood instead of concrete in a non-combustible construction; and
- (b) the concrete spalling.⁹⁶

69. Additionally, this statement in *Thurlow* suggests that the same must be true in the case of preventing significant loss or damage, whether financial or otherwise, which is the other branch of section 173(2). Christopher Black, Engineer and Senior Building Science Consultant at LDR provided a letter to the Strata dated April 25, 2023, writing that “the need for the repairs is indicated in the BECA, and not implementing such maintenance repairs is likely to result in further damage in the future.”⁹⁷

70. Since LDR has identified that the Maintenance Project addresses life safety risks, and prevents significant loss or damage, whether financial or otherwise, it follows that the threshold for this court making a section 173(2) order is overcome.

⁹⁴ *Ibid* at para 92 (BoA Tab 9).

⁹⁵ *Ibid* at para 99; See also comments at para 117 (BoA Tab 9).

⁹⁶ Exhibit “B” to Affidavit #3 of C. Black at tab 5, p 110.

⁹⁷ Exhibit “H” to Affidavit #1 of C. Black at tab 3, p 500.

B: *The Court should exercise its discretion.*

71. Although the threshold for a section 173(2) order is met, this Court shall consider the following factors in deciding whether to exercise its discretion. Factors informing the Court's exercise of discretion include:

- (a) whether the Strata Corporation acted in good faith;
- (b) whether there were procedural irregularities in the manner in which the resolution was proposed and passed by a majority of the votes cast at its special or annual general meeting;
- (c) whether the Strata Corporation acted reasonably on the strength of professional advice in seeking to impose the special levy; and
- (d) whether court approval of the resolution would unfairly prejudice the owners in the minority.

72. The Respondents point to two of the above-listed factors for this Court to consider and that are at issue, namely:

- (a) whether the Strata Corporation acted in good faith; and
- (c) whether the Strata Corporation acted reasonably on the strength of professional advice in seeking to impose the special levy.

73. The Strata Corporation submits that with respect to the other two listed factors, that:

- (a) There were no procedural irregularities in the manner in which the resolution was proposed and passed by a majority of the votes cast at its special general meeting; and
- (b) There is no evidence that would support a finding that court approval of the resolution would unfairly prejudice the owners in the minority.

i. *The Strata Corporation acted in good faith in seeking to impose the special levy.*

74. The Respondent's claim that the Strata Corporation withheld key documentation, withheld the complete scope of the Maintenance Project, made exaggerated communications on negative outcomes if the special levy failed, and attempted to punish

unit owners who spoke out against the special levy, and as such, acted in bad faith.⁹⁸

75. The court in Thurlow does not set out how to determine whether a Strata Corporation has acted in good faith in seeking to impose the special levy in the context of a section 173 application. As such, the statute may assist this Court in this analysis. Section 31 of the *SPA* provides:

- 31 In exercising the powers and performing the duties of the strata corporation, each council member must
- (a) act honestly and **in good faith with a view to the best interests of the strata corporation**⁹⁹

76. It is the Respondents who bear the burden of proof on their allegation that the strata council majority breached its statutory duty of good faith under section 31 of the *SPA*. The law presumes good faith unless the contrary is proven.¹⁰⁰

77. The Respondents have not pointed to any evidence that suggests that the strata council's actions were not in good faith with a view to the best interests of the Strata Corporation pursuant to section 31(a). The Strata Corporation's statements were informed by the professional advice received from engineers, to ensure safety and prevent significant loss or damage to the Strata Property and its assets. As such, the Strata Corporation submits that any statements made with respect to the Maintenance Project were in good faith with a view to the best interests of the Strata Corporation. Any statements made ought to be considered in their full context.

78. In considering the numerous allegations of the Respondents, addressed in the affidavit material, the Strata Corporation submits that the court should keep in mind this court's comments in *Slosar v KAS 2846*¹⁰¹ (also about a Strata Corporation's compliance with its duty to repair and maintain common property under section 72 of the *SPA*) to the effect that:

[66] The standard against which the Strata's actions are to be measured in assessing its duty under s. 72 of the *SPA* is objective reasonableness, which requires, among other things, balancing interests

⁹⁸ Petition Response filed May 14, 2024, by the Respondents at tab 8, para 26.

⁹⁹ *SPA*, *supra* note 1 s 31 (BoA Tab 10).

¹⁰⁰ See e.g. *Dockside Brewing Co Ltd v Strata Plan LMS 3837*, 2007 BCCA 183 at para 156 (BoA Tab 2).

¹⁰¹ 2021 BCSC 1174 (BoA Tab 4).

to achieve the greatest good for the greatest number given budget constraints. Contrary to the petitioner's arguments, there is no requirement that repairs be performed immediately or perfectly ... Steps required to be taken are dictated by the circumstances at the time. The standard is not perfection nor is it to be judged with the benefit of hindsight.

[67] It must be remembered that Strata councils are made up of lay volunteers and that mistakes and missteps will doubtlessly occur from time-to-time. Council members are not to be expected to have expertise in the subject matter of their decisions. Accordingly, latitude is justified when a strata council's conduct is being scrutinized...¹⁰²

79. These words echo those of the Court of Appeal in *Dockside Brewing Co Ltd v Strata Plan LMS 3837*¹⁰³, addressed further below, where the Court of Appeal confirmed that "directors and officers will not be held in breach of the[ir statutory] duty of care... if they act prudently and on a reasonably informed basis... it is worth repeating that perfection is not demanded."¹⁰⁴

80. The Strata Corporation maintains the position that it has acted in good faith and in the best interest of all owners throughout all of its dealings. The Strata Corporation denies the intentional withholding of documentation and never made attempts to punish unit owners who voted against the special levy. Further, the Strata Corporations submits that it has followed its statutory duties with respect to the information set out in the resolution for the special levy pursuant to section 108(3) of the *SPA* which provides that:

- 108 (1) The strata corporation may raise money from the owners by means of a special levy.
- (2) The strata corporation must calculate each strata lot's share of a special levy
 - (a) in accordance with section 99, 100 or 195, in which case the levy must be approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or
 - (b) in another way that establishes a fair division of expenses for that particular levy, in which case the levy must be approved by a resolution passed by a unanimous vote at an annual or special general meeting.

¹⁰² *Ibid* at paras 66-67 [emphasis added] (BoA Tab 4).

¹⁰³ 2007 BCCA 183 (BoA Tab 2).

¹⁰⁴ *Ibid* at para. 56, as cited in *Peoples Department Stores Inc (Trustee of) v Wise*, 2004 SCC 68 (BoA Tabs 2 and 3).

- (3) The resolution to approve a special levy must set out all of the following:
- (a) the purpose of the levy;
 - (b) the total amount of the levy;
 - (c) the method used to determine each strata lot's share of the levy;
 - (d) the amount of each strata lot's share of the levy;
 - (e) the date by which the levy is to be paid or, if the levy is payable in instalments, the dates by which the instalments are to be paid.¹⁰⁵

81. With respect to the Respondents' claim of intentionally withholding key documentation, the Respondents point to no evidence of requesting such documentation from the Strata Corporation. Further, as noted above, section 108 does not require that the Strata Corporation provide owners with extensive documents explaining the nature of the work the special levy is intended to fund, and as such, the Strata Corporation has not acted in bad faith as there is no evidence showing that the strata withheld documentation from owners.

82. With respect to the Respondents' claim that the Strata Corporation's lack of disclosure that certain documents from LDR were prepared by a previous strata council president, Christopher Black, the Strata submits that there is no conflict of interest or bias resulting from Mr. Black's involvement in the BECA as a result of his previous role as the strata council president.

83. Mr. Black never personally owned a strata lot in the Lotus but was eligible to serve as a council member because his spouse was an owner of a strata lot from early 2010 to the sale of the strata lot in or around 2017.¹⁰⁶ Mr. Black served as a council member from October 7, 2010 to 2017, with a brief break from September 23, 2012 to November 7, 2013.¹⁰⁷

84. Mr. Black began working for the Strata Corporation as a professional engineer in or around 2019, two years after departing from the Strata Corporation's council.¹⁰⁸ While

¹⁰⁵ SPA, *supra* note 1 s 108.

¹⁰⁶ Affidavit #3 of C. Black at tab 5, para 3.

¹⁰⁷ Affidavit #3 of C. Black at tab 5, para 4.

¹⁰⁸ Affidavit #3 of C. Black at tab 5, para 2.

working for the Strata Corporation since 2019, Mr. Black has done so wholly in his professional capacity as an engineer and has not had any association with the Strata Corporation as a council member, owner or spouse of an owner in that time.¹⁰⁹

85. With respect to the Respondents' claim that the council president referred to a group of owners as a "[l]ynch mob", the Strata Corporation submits these comments do not show that the Strata Corporation acted in bad faith with respect to the steps it took to prepare the special levy. In fact, the message sent by the council president was sent *after* the vote for the special levy had already taken place, and as such does not reflect on the Strata's actions when preparing for and *seeking to impose* the special levy.¹¹⁰

86. Further, the Strata Corporation submits that the council president's comment was reasonable as it was based on previous communications of owners who had indeed accused the council president of embezzlement and stealing from the Strata Corporation.¹¹¹

87. The Strata Corporation expects the Respondents to argue that the council president's communication to owners that in the "worst case scenario" failing to pass the special levy could result in a building collapse situation is evidence of the Strata Corporation's bad faith. The Strata Corporation submits that the message in question does not prove the Strata Corporation acted in bad faith because the message was framed within the context of a "worst case scenario" of failing to pass the special levy, and the message included other comments such as a "best case" scenario.¹¹²

88. The Strata Corporation submits that these comments were reasonable given the context of "worst case scenario" provided in the message, and the inclusion of other scenarios that were not as dire.

89. The Respondent has claimed that the council president's complaint to the Association of

¹⁰⁹ Affidavit #3 of C. Black at tab 5, para 5.

¹¹⁰ Exhibit C and para 17 of Affidavit #1 of S. Li at tab 10, p 8.

¹¹¹ Exhibit A to Affidavit #2 of C. Jang at tab 13, pp 2-6.

¹¹² Exhibit B to Affidavit #1 of S. Li at tab 10, p 7.

Professional Engineers and Geoscientists of the Province of BC against Zhen Cao (the "Complaint") is evidence of the Strata's bad faith. In response, the Strata submits the Complaint was filed after the special levy vote, and as such does not reflect on the Strata's actions when preparing for and *seeking to impose* the special levy.

90. The Strata Corporation further submits that the Complaint was reasonable given that at the SGM, Zhen Cao opined on the repairs to be funded by the special levy in his capacity as a condominium engineer despite the fact that he had not consulted with the Strata on the matter previously. Further, at the SGM Mr. Cao communicated a number of assertions to owners that were contrary to previous reports from LDR and RDH.¹¹³

91. The comments made by Mr. Cao included that:

- (a) the repairs were not required;
- (b) there was no risk to the Lotus' building envelopes in the future;
- (c) the proposed price of the repairs was too high;
- (d) the council president had an interest in the repairs as a penthouse unit owner;
- and
- (e) if there was a leak from the exterior into a strata lot, only the strata lot owner would be liable to pay for the repairs.¹¹⁴

92. The Strata submits that it was reasonable for the council president to file the complaint on the basis that Mr. Cao used his professional status as an engineer to communicate his opinion to other owners at the SGM, where his opinion was contrary to advice the Strata had received from two different engineering firms.

93. The Strata Corporation asserts that the grounds of opposition raised by the Respondents are either irrelevant to the matters at issue in this proceeding or are fully answered in the evidence, such that they should not pose any impediment to the order sought.

¹¹³ Affidavit #2 of C. Jang at tab 13, paras 3-8.

¹¹⁴ Affidavit #2 of C. Jang at tab 13, paras 4-7.

ii. The Strata Corporation reasonably relied on the strength of professional advice in seeking to impose the special levy.

94. It is understood that the Respondent's position is that the Stata Corporation acted unreasonably on the strength of its professional advice because the proposed work exceeds what was recommended in the BECA.

95. The BECA was prepared by LDR and is dated October 27, 2021. The 2023 Building Enclosure Maintenance Repairs ("BEMR") document, prepared by LDR and dated January 24, 2023, clarifies the necessity of the proposed Maintenance Project. The BEMR states that the proposed work for the Maintenance Project is informed by LDR's previous work at the Strata Property, including but not limited to the:

- (a) Recoating of Upper Concrete Eyebrows and Localized Repainting Project (2019 and 2020),
- (b) BECA (2021)
- (c) 2022 DR; and
- (d) targeted re-roofing at Tower C (2021)."¹¹⁵

96. Accordingly, the Maintenance Project is based on the work recommended within the BECA and Depreciation Report prepared in 2022. As such, it is the Strata Corporations position that they have acted reasonably in reliance of the advice received by a qualified engineering firm with extensive experience servicing the Strata Property.

97. Even if the scope of work was beyond that set out in the BECA and 2022 Depreciation Report, it is the Strata Corporation's position that it would not be unreasonable to rely on the advice of its engineer as case law has made clear that it is entitled to do so, and such reliance is not unreasonable.¹¹⁶

¹¹⁵ Exhibit "C" to Affidavit #1 of C. Black at tab 3, p 231.

¹¹⁶ *Thurlow*, *supra* note 77 at para 88, as cited in *LMS 1383*, *supra* note 83 at paras 58-59 (BoA Tabs 9, 6).

PART IV: CONCLUSION

98. The Strata Corporation submits that this court ought to grant the court for the approval of a special levy to fund the Maintenance Project because:

- (a) The Strata Corporation must fulfil its statutory duties with respect to the repair and maintenance of the Strata Property pursuant to section 72 of the *SPA*; ¹¹⁷
- (b) the threshold for a section 173(2) order is met because the Maintenance Project is necessary to ensure safety and prevent significant loss or damage, whether financial or otherwise;
- (c) in exercising its discretion, this Court shall approve the special levy because:
 - i. the Strata Corporation acted in good faith in seeking to impose the special levy; and
 - ii. the Strata Corporation reasonably relied on the strength of professional advice in seeking to impose the special levy.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Date: October 22, 2024

Kathrine Uppal

K. Kathrine Uppal
lawyer for the petitioner

¹¹⁷ *SPA*, *supra* note 1 s 72 (BoA Tab 10).

COURT OF APPEAL

ON APPEAL FROM the order of the Honourable Justice Stephens of the Supreme Court of British Columbia pronounced on the 21st of November 2024

BETWEEN:

**Song Li, Kwun Lok Chan, Nanhui Yao, Jun He, Danying Wang,
Man-Na Tseng, Dan He, Liming He, Shi Zhuang Chen, Yun Zhang,
Xiaogang Dong, Ping Huang, Bao Zhu Wang, Yuguan Peng, Yan Wu,
Jin Ji, Xiao Tong Zhang, Minjie Wang, Haiyuan Li, Ai Dong Xie,
Yiwei Zhang, Kam Chau Kwok, Ani Qi, Ying Li, Ming Zhao, Zhining Wang, Zhende Li,
Ping Huang, Wei Zhou, Nan Ma, Lili Li, Timothy Osiowy,
Sharon Sun Shih-Hua Wei, and Yi Law Chen**

APPELLANTS
(Respondents)

AND:

The Owners, Strata Plan BCS 2884

RESPONDENT
(Petitioner)

LOWER COURT TRANSCRIPT

Supreme Court Proceedings at Chambers

Volume 1 (Pages 1 to 107)

Song Li and others, as listed in Appendix A to a petition response filed May 14, 2024, Appellants

The Owners, Strata Plan BCS 2884, Respondent

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K. Uppal

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No. S-234862
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE JUSTICE STEPHENS)

Vancouver, B.C.
October 22, 2024

RE: THE OWNERS, STRATA PLAN BCS 2884
IN THE MATTER OF SECTION 173 (2) OF THE STRATA PROPERTY ACT

PROCEEDINGS IN CHAMBERS

Appearances:

Counsel for the Petitioner, The Owners, Strata
Plan BCS 2884

K. Uppal

Counsel for the Respondents listed in Appendix
A to a petition response filed May 14, 2024

C. Wong

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Song Li (A) v. The Owners, Strata Plan BCS 2884

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EXHIBITS ENTERED OR MARKED FOR IDENTIFICATION

No.	DESCRIPTION	PAGE
	None	

RULINGS

Day/Date	PAGE
	None

1

Proceedings

October 22, 2024
Vancouver, B.C.

(CHAMBERS COMMENCED AT 10:01 A.M.)

THE CLERK: In the Supreme Court of British Columbia
on this 22nd day of October 20-- 2024, in the
matter of The Owners, Strata Plan BCS 2884 versus
the registered owners of each strata lot in
The Owners, Strata Plan BCS 2884 --

THE COURT: All right.

THE CLERK: -- Justice Stephens.

THE COURT: Just one moment. Just one moment. I
guess ...

Yes. Yes.

CNSL K. UPPAL: Justice Stephens, for the record, last
name Uppal, spelt U-p-p-a-l, first initial K.,
pronouns she/her, counsel for the petitioner,
The Owners, Strata Plan BCS 2884.

CNSL C. WONG: Mr. Justice, for the record,
Chris Wong, last name spelt W-o-n-g, first
initial C., appearing as counsel for the
respondents, the -- the individual owners of the
strata as identified in Appendix A of the
petition response.

THE COURT: And does that include -- does that include
the separately filed response? So, there's two
petition responses --

CNSL C. WONG: Yes.

THE COURT: -- of -- there's one with the Appendix A
that you mentioned --

CNSL C. WONG: Yes.

THE COURT: -- and then there's one -- another one of
Zhen Cao individually. So, is that one of the --

CNSL C. WONG: That is one of the --

THE COURT: -- Appendix A --

CNSL C. WONG: Well, there is -- there is some --
there is a little bit of an issue here. So --

THE COURT: I -- and I don't -- I'm not trying --
asking to draw you into something. If there's an
issue, I just want to know who you represent.
Are you representing that ...

CNSL C. WONG: I am representing the owners in
Appendix A of the second petition response. I --
that originally also included Mr. Zhen Cao,
however, I understand that Mr. Cao has sold his
unit on or about March this year.

Proceedings
 Submissions for the Petitioner by Cnsl K. Uppal

1 THE COURT: Okay.
 2 CNSL C. WONG: So, I have reached out to my friend
 3 about, like, potentially withdrawing Mr. Cao's
 4 response or Mr. Cao's -- potentially withdrawing
 5 Mr. Cao's response without, like, impacting the
 6 other owners' response. We haven't really
 7 discussed this matter.
 8 THE COURT: All right.
 9 CNSL C. WONG: Yeah, so that is [indiscernible/
 10 overlapping speakers]
 11 THE COURT: So -- so, is Mr. Cao's -- it's Mr. Cao, is
 12 it?
 13 CNSL C. WONG: Mr. "Ts'ao".
 14 THE COURT: Mr. -- pardon me.
 15 CNSL C. WONG: Yeah, it's -- it's fine either way.
 16 THE COURT: Mr. "Tao"?
 17 CNSL C. WONG: "Ts'ao", yeah.
 18 THE COURT: "Ts'ao", is not one of the Appendix A --
 19 CNSL C. WONG: Not anymore. He --
 20 THE COURT: -- respondents?
 21 CNSL C. WONG: -- he's still -- he's still on the
 22 record there as, but, like, he has since sold his
 23 unit.
 24 THE COURT: Okay. All right. And that may be more
 25 than I needed to inquire at this point, but I
 26 just --
 27 CNSL C. WONG: Okay.
 28 THE COURT: -- wanted to clarify that. And if there's
 29 anything further, you can --
 30 CNSL C. WONG: Okay. Thank you.
 31 THE COURT: -- let me know.
 32 All right. So, this is a one day petition
 33 with respect to a proposed special levy, as I
 34 understand it.
 35
 36 **SUBMISSIONS FOR THE PETITIONER BY CNSL K. UPPAL:**
 37
 38 CNSL K. UPPAL: That's correct, Justice.
 39 THE COURT: Okay.
 40 CNSL K. UPPAL: I do have a copy of the petitioner's
 41 written submissions I am --
 42 THE COURT: Okay.
 43 CNSL K. UPPAL: -- prepared to hand up, as well as the
 44 joint book of authorities.
 45 THE COURT: All right.
 46 CNSL K. UPPAL: Thank you.
 47 THE COURT: All right. All right.

Submissions for the Petitioner by Cnsl K. Uppal

1 CNSL K. UPPAL: Okay. Mr. Justice, we're here this
2 morning on behalf of the petitioner, which is the
3 Strata Corporation of a property located in
4 Richmond, British Columbia, referred to commonly
5 as the "Lotus", to seek a court -- court approval
6 essentially of a special levy that obtained
7 53 percent of the vote but not the requisite
8 75 percent of the -- of the vote. There is a
9 provision in the *Strata Property Act* that allows
10 the court to step in and make that --
11 THE COURT: 108 sub (2).
12 CNSL K. UPPAL: -- order. Correct. Correct.
13 THE COURT: Mm-hmm.
14 CNSL K. UPPAL: So, we're talking here about three
15 towers -Tower A, Tower B and Tower C is how
16 they're referred to - that compromise [sic] 286
17 strata lots. The property was completed around
18 2008 --
19 THE COURT: So, 286 -- and I'm going to ask you a
20 couple questions even though you're probably
21 going to get to it --
22 CNSL K. UPPAL: That's okay.
23 THE COURT: -- but just so I understand.
24 CNSL K. UPPAL: Yes.
25 THE COURT: This is a proposed 3.7 million dollar
26 levy? Do I have --
27 CNSL K. UPPAL: I believe it's 3.9.
28 THE COURT: 3.9 million dollar levy.
29 CNSL K. UPPAL: Correct.
30 THE COURT: And there are 286 units?
31 CNSL K. UPPAL: Correct.
32 THE COURT: And so that's about \$15,000 a unit?
33 CNSL K. UPPAL: Somewhere between 14- and 18,000 --
34 THE COURT: All right.
35 CNSL K. UPPAL: -- depending on unit entitlement, yes.
36 THE COURT: Oh, I see. So, it's -- it's prorated in
37 some way?
38 CNSL K. UPPAL: Yes, it's --
39 THE COURT: All right.
40 CNSL K. UPPAL: -- charged to strata lot owners in
41 proportion to their unit entitlement.
42 THE COURT: Okay. All right. Okay. All right.
43 Thank you. And the -- and, again, just -- I know
44 you'll get to this, but just so I -- some basic
45 factual background, the vote on April 13th, 2023
46 was 65 for, 58 against?
47 CNSL K. UPPAL: I believe that's --

Submissions for the Petitioner by Cnsl K. Uppal

1 THE COURT: That's -- or something like --
2 CNSL K. UPPAL: -- correct. From my calculation, it
3 was 53 percent in favour. So, we -- we hit that
4 just over the majority there.
5 THE COURT: With a little less than half voting?
6 CNSL K. UPPAL: Correct. Yeah.
7 THE COURT: Okay.
8 CNSL K. UPPAL: So, the -- the --
9 THE COURT: Okay.
10 CNSL K. UPPAL: -- percentage is counted from the
11 quorum of who --
12 THE COURT: Yes.
13 CNSL K. UPPAL: -- attended the meeting. Yes.
14 THE COURT: And there was quorum, but it --
15 CNSL K. UPPAL: Correct.
16 THE COURT: -- reached 50 percent. Okay.
17 CNSL K. UPPAL: Yes. And from my calculation, the
18 respondents, who have opposed the petition, in
19 Appendix A, are about, I believe, 15 percent, but
20 I'll -- I'll get there --
21 THE COURT: All right.
22 CNSL K. UPPAL: -- in my -- in my --
23 THE COURT: All right. I just want --
24 CNSL K. UPPAL: -- submissions.
25 THE COURT: All right. Thank you. Yes.
26 And, now, so we have a day, and have you and
27 your friend talked about - I'm just looking at a
28 32 page argument here - just time allocation
29 to --
30 CNSL K. UPPAL: We have discussed that we think a day
31 would be sufficient.
32 THE COURT: Okay.
33 CNSL K. UPPAL: I personally don't intend to go over
34 the lunch hour.
35 THE COURT: Okay.
36 CNSL K. UPPAL: I can have that discussion with
37 Mr. Wong if -- if need be, but we -- we've
38 discussed that one day ought to be sufficient.
39 THE COURT: So -- so, to have it heard in a day and
40 splitting the time equally, if -- if you went
41 right to the lunch hour, Mr. Wong might have less
42 time than you than -- or if you took the same
43 amount of time, that might go right to the end of
44 the day without reply. So, just -- if you can
45 just think about that at the morning break --
46 CNSL K. UPPAL: Okay.
47 THE COURT: -- in terms of the time allocation.

Submissions for the Petitioner by Cnsl K. Uppal

1 Because I understand the parties would like to
2 have this heard in -- in the day. I just want to
3 try to see that counsel just think through their
4 time estimates. All right? Thank you.
5 CNSL K. UPPAL: Certainly.
6 THE COURT: All right. So, I am on page 3 of your
7 submission.
8 CNSL K. UPPAL: You're on page 3. I have just sort of
9 gone over paragraphs 1 and 2.
10 At paragraph 3 we just summarize essentially
11 the types of issues that we're seeing with
12 respect to exterior wall penetrations, balconies
13 and concrete eyebrows. I have learned concrete
14 eyebrows are those things that protrude beyond
15 the building. So, they're not protected by the
16 building but they protrude in some way, usually
17 above a balcony. Decks; roofs; the water
18 feature, and the parking garage.
19 Just very sort of summarily and as a basic,
20 section 3 of the *Strata Property Act* sets out a
21 strata corporation's responsibility for managing
22 and maintaining the common property and common
23 assets for the strata corporation for the benefit
24 of all owners. And at section 72 of that Act we
25 have the strata corporation's statutory
26 requirement to repair and maintain common
27 property.
28 The orders --
29 THE COURT: This is section 72. All right.
30 CNSL K. UPPAL: That's section 72 --
31 THE COURT: Mm-hmm.
32 CNSL K. UPPAL: -- correct.
33 The orders we're seeking this morning, or
34 today, are with respect to the special levy, so
35 they're more specific. They're at paragraph 6.
36 The first one is that 3.9 million dollar special
37 levy to raise money for the maintenance repair of
38 the common property that we say is necessary to
39 ensure safety or prevent significant loss or
40 damage. An order that essentially qualifies that
41 that special levy has -- has been passed as if it
42 was passed under section 108 sub (2) sub (a), and
43 an order for costs.
44 The sort of underlying --
45 THE COURT: And what is the -- just on the relief
46 sought. So, the --
47 CNSL K. UPPAL: Mm-hmm.

Submissions for the Petitioner by Cnsl K. Uppal

1 THE COURT: -- the relief sought under paragraph 2,
2 I -- I understand that's -- that's the
3 173 sub (4) relief. What's the -- the purpose of
4 relief number 1? What is that? That's simply
5 declaratory relief --
6 CNSL K. UPPAL: It's --
7 THE COURT: -- stating that the test has been met? I
8 should say I have reviewed portions of the
9 *Thurlow* decision, the Court --
10 CNSL K. UPPAL: Mm-hmm.
11 THE COURT: -- of Appeal decision.
12 CNSL K. UPPAL: Mm-hmm.
13 THE COURT: So, is -- is -- is what the petition is
14 seeking in that first paragraph declaratory
15 relief that the requisite test has been met for
16 engaging the court's powers?
17 CNSL K. UPPAL: Correct.
18 THE COURT: Okay. Thank you.
19 CNSL K. UPPAL: And I think that is just the one
20 that's more specific with respect to the date of
21 the previous resolution, the amount of the
22 resolution, and that that is exactly what -- what
23 we're declaring hopefully today that has been
24 met --
25 THE COURT: All right.
26 CNSL K. UPPAL: -- with respect to the test.
27 So, the underlying rationale from the
28 *Strata Corporation's* perspective is that this --
29 this is a necessary -- these are -- orders are
30 necessary to allow the *Strata Corporation* to
31 discharge its statutory duty to comply with the
32 *Strata Property Act*. So, I have reproduced
33 section 173 on the following page, page 5,
34 paragraph 8, that has the language of section
35 173.
36 THE COURT: Mm-hmm.
37 CNSL K. UPPAL: One -- 173 sub (2) goes through sort
38 of a three part analysis with respect to
39 considering the special levy and whether the test
40 has been met today.
41 THE COURT: Mm-hmm.
42 CNSL K. UPPAL: And so the first part is that the --
43
44 ... a resolution is proposed to approve a
45 special levy to raise money for the
46 maintenance or repair of common
47 property or common assets that is

Submissions for the Petitioner by Cnsl K. Uppal

1 necessary to ensure safety or ...
2 prevent significant loss or damage,
3 whether physical or otherwise
4
5 And -- and we say the special levy that was put
6 forward in April of 2023 is that special levy.
7 We'll get into really the merits of that test
8 in -- in my Legal Basis section of my submissions
9 as to whether it is necessary to ensure safety or
10 to prevent significant loss or damage, whether
11 physical or otherwise. That's really the crux, I
12 think, of the issue today.
13
14 ... the number of votes cast in favour
15 is ... more than 1/2 of the votes cast
16 on the resolution but less than the 3/4
17 vote required ...
18
19 It's my submission that that's not really in
20 dispute with my friend and I will easily be able
21 to demonstrate that that's been met.
22 And of course we're here under subsection
23 (2)(a) applying to the Supreme Court for an order
24 under subsection (4).
25 With respect to subsection (3) of that
26 section, so 173 subsection (3), I confirm that
27 the Petition was filed on January 10th of 2023,
28 so within the 90 days required by that section.
29 THE COURT: It was filed a while ago.
30 CNSL K. UPPAL: It was.
31 THE COURT: I mean, just in terms of the chronology --
32 CNSL K. UPPAL: So, we --
33 THE COURT: -- this --
34 CNSL K. UPPAL: -- completed service sometime in the
35 fall of 2023. So, service --
36 THE COURT: Mm.
37 CNSL K. UPPAL: -- included, of course, an alternative
38 service application --
39 THE COURT: Mm-hmm.
40 CNSL K. UPPAL: -- with respect to serving all owners,
41 posting notices, as well as doing some
42 physical --
43 THE COURT: Mm-hmm.
44 CNSL K. UPPAL: -- mailings to China, et cetera. We
45 did initially have this matter set down for I
46 believe it was May when we attended court, and
47 my -- my friend applied for an adjournment,

Submissions for the Petitioner by Cnsl K. Uppal

1 advising the Court that they would be seeking an
2 alternative engineering report. They were
3 successful in that adjournment application. We
4 came back to court again in August and
5 unfortunately there was no judge available to
6 hear the matter. So, we have made efforts to
7 have it heard a couple of times.

8 THE COURT: I had reviewed -- is there -- and you're
9 probably going to get into this, but is there
10 time sensitivity to this issue or?

11 CNSL K. UPPAL: My client is of the view that there
12 is. Of course if we are of the position that
13 this -- these repairs are necessary to prevent
14 further loss or damage --

15 THE COURT: Mm-hmm.

16 CNSL K. UPPAL: -- of course sooner the better. We
17 had previously made some submissions that of
18 course it would have been, you know, most
19 beneficial to have this heard in May, from my
20 client's perspective, because the work could have
21 potentially started in the summer, exterior work.
22 The rain in Vancouver is going to be a problem
23 now, but sooner rather than later is definitely
24 the position.

25 THE COURT: Mm-hmm. All right.

26 CNSL K. UPPAL: So, what I'll -- I'm going to get into
27 in my background, starting from paragraph 10, is
28 really this history of repair and maintenance of
29 the building, starting from about 2015 when these
30 sort of building envelope issues started to
31 arise. And so the first sort of report I'm going
32 to refer to is a 2015 depreciation report that
33 the Strata obtained from an engineering company
34 named RDH Engineering, and they conducted a
35 report estimating the repair and replacement
36 costs for major items in the Strata Corporation
37 and the expected lifespan of those items. In
38 2015 the depreciation report noted that there was
39 localized organic growth on its urethane concrete
40 eyebrows, that there was delamination of the
41 coating on concrete walls at various locations,
42 and that localized deterioration of the
43 traffic-bearing membrane in the parkade was also
44 observed.

45 The -- that depreciation report started to
46 set out sort of major maintenance projects and
47 they -- and it sort of divided items from major

Submissions for the Petitioner by Cnsl K. Uppal

1 maintenance projects to condition-based renewals.
2 And it found that major maintenance projects are
3 those that are intended to preserve the assets to
4 achieve their full design life and typically
5 occur on a regular, predictable basis. Those
6 include items such as: repair and recoating of
7 the concrete walls; reapplication of the urethane
8 top coats to balconies and eyebrows; replacement
9 of sealant as required; commissioning of a
10 10 year warranty review. So, in 2015 the
11 building was only about seven years old. The
12 warranty review, which -- which I'm going to
13 actually get to that was commissioned, occurred
14 in 2018, and that was part of the recommendation
15 in the depreciation report. And then
16 commissioning --
17 THE COURT: The building was built in when?
18 CNSL K. UPPAL: 2008 is when it had substantial
19 completion and --
20 THE COURT: All right.
21 CNSL K. UPPAL: -- commenced occupancy.
22 THE COURT: Okay.
23 CNSL K. UPPAL: And then subsection (e) under
24 paragraph 12 is with respect to commissioning a
25 Building Enclosure Condition Assessment, "BECA".
26 THE COURT: Right.
27 CNSL K. UPPAL: And this was considered to be the next
28 step in the planning process for maintenance
29 of -- of these types of --
30 THE COURT: And is it the BECA that is the work to
31 which the special levy relates?
32 CNSL K. UPPAL: Correct.
33 THE COURT: Okay. That's the 2021 BECA?
34 CNSL K. UPPAL: That's correct.
35 THE COURT: Okay.
36 CNSL K. UPPAL: And the 2021 BECA is tied to, which I
37 will get to, nine -- nine recommendations of the
38 BECA is what formed the scope of the work that
39 was proposed in the special levy. So, I raise
40 the 2015 depreciation report as just simply as a
41 starting point as to when the Strata Corporation
42 ought to have started to turn its mind to these
43 kinds of projects.
44 THE COURT: So, this is context you're -- you're
45 saying? Okay.
46 CNSL K. UPPAL: Context, yes. And -- and just to
47 build sort of a bit of, yeah, context to -- to

Submissions for the Petitioner by Cnsl K. Uppal

1 where we get the BECA.
2 THE COURT: Because it's not the work to which the
3 special levy relates? Nothing in the --
4 CNSL K. UPPAL: No, but it just says these are things
5 that are going to start happening. You're going
6 to start needing repair and recoating, you're
7 going to need to reapply top coats and sealants
8 because we're dealing with a concrete building
9 here, and -- and that's -- and we -- in the scope
10 of that we recommend you do a 10 year warranty
11 review and you do a BECA, and that is what
12 ultimately happened.
13 THE COURT: Mm-hmm.
14 CNSL K. UPPAL: The BECA -- or, sorry, this DR, the
15 2015 depreciation report, also discussed what
16 they referred to as condition-based renewal
17 projects, which are those assets which are
18 intended to be kept in service as long as
19 possible but must be replaced before they fail.
20 And that has some bearing on the traffic-bearing
21 membrane in the parkade that is part of the scope
22 of work. Again, that's going -- that's also in
23 the BECA, so we're going to get there.
24 So, in -- in advance of the strata
25 property's 10 year common property warranty
26 coverage expiry - so, they have a 2-5-10
27 warranty, just like any sort of residential
28 building - the 10 year warranty was coming to
29 expire in 2018, so another engineering firm, R--
30 engineering firm, RJC, Read, Jones,
31 Christoffersen, was --
32 THE COURT: Mm-hmm.
33 CNSL K. UPPAL: -- retained to conduct a 10 year
34 warranty review of the property. And the
35 findings of that warranty review are in the
36 material and I have just summarized what --
37 our -- our submission of the main points here on
38 page 7 of my submission.
39 THE COURT: Is -- is this controversial evidence or is
40 this contested evidence, to your knowledge, or?
41 CNSL K. UPPAL: I don't believe so.
42 THE COURT: Okay. All right. Mm-hmm.
43 CNSL K. UPPAL: So, again, it -- it starts to set out
44 the -- that the balcony waterproofing membrane
45 does not cover all of the concrete and the
46 sealant is not installed continuously to the
47 adjacent window wall assembly. There's localized

Submissions for the Petitioner by Cnsl K. Uppal

1 areas of the exterior that had inadequate
2 coating, such as the top of the eyebrows, and so
3 they recommend applying a recoating at those
4 areas. Hairline cracks along concrete eyebrows.
5 The ceiling was generally found to be in fair
6 condition, this is in 2018, but we recommend
7 planning for a sealant replacement project for
8 the whole project in the next three to five
9 years. Efflorescence and cracks were observed at
10 the eyebrows on the main roofs of each tower.
11 And then there's localized concrete delamination
12 in the parking areas. This is to be expected,
13 but there should be a more extensive survey on
14 that. And there was cracks in the parkade.
15 So, some of these issues -- overall some of
16 the issues in the warranty review were covered by
17 warranty, but there remained a number of items
18 that sort of became to the attention of the
19 Strata Council that needed to be addressed. And
20 so at paragraph 16 I talk about a previous
21 project that was undertaken in 2019 to 2020,
22 which was to recoat the upper concrete eyebrows.
23 And why I say that's important is because the
24 recoating was done above the penthouse units and
25 the upper roofs only. So, it was a targeted
26 project.
27 THE COURT: To warranty work?
28 CNSL K. UPPAL: This was done by -- it was out of the
29 scope of warranty.
30 THE COURT: Okay.
31 CNSL K. UPPAL: It was highlighted in the warranty
32 review, but it was done by the Strata Corporation
33 in 2019 and 2020.
34 THE COURT: Oh, I see. So -- all right. So, that
35 work was done in 2019.
36 CNSL K. UPPAL: That work was done. And so there is a
37 little summary at paragraph 16 of what the scope
38 of that work was, and it was to really deal with
39 those areas that were exposed to the elements or
40 the most urgent, urgent repairs at that time, and
41 that was the upper eyebrows and the recoating of
42 sort of these areas that were going to see water
43 more often.
44 And then in February of 2020, in between
45 February -- I have it more specific in my -- in
46 my material, but at some point water ingress
47 started to be noted at Tower C. So, there's

Submissions for the Petitioner by Cnsl K. Uppal

1 three towers, Tower A, B, and C. And in between
2 December 2021 and February 2022, the Strata
3 Corporation undertook a project to reroof Tower C
4 only. So, that was also a targeted repair
5 project. There was ongoing water ingress to the
6 penthouse level at Tower C and that was done.
7 The reason why I raise that is because the
8 special levy that is being sought at this hearing
9 deals with reroofing at Towers A and B, which
10 were not done previously.
11 THE COURT: For reroofing?
12 CNSL K. UPPAL: Reroofing at two --
13 THE COURT: Mm.
14 CNSL K. UPPAL: -- of the three towers --
15 THE COURT: Mm.
16 CNSL K. UPPAL: -- and the reroofing of Tower C was
17 done already.
18 THE COURT: All right.
19 CNSL K. UPPAL: So, at paragraph 19 is where we get
20 into the BECA report. The Strata Corporation
21 retained LDR to conduct a Building Enclosure
22 Condition Assessment based on its inspections of
23 the strata property on April 1st, 2021 and
24 June 3rd, 2021. The BECA resulted in LDR
25 providing 22 recommendations regarding a building
26 envelope renewal project.
27 So, it's probably a good time for us to --
28 to go to the BECA because it -- it helps
29 demonstrate some of the photographs, et cetera,
30 that I think are important.
31 THE COURT: So, 22 recommendations, you're saying nine
32 of them are the subject of the -- not to jump
33 ahead, but nine of them are the subject of a
34 special levy?
35 CNSL K. UPPAL: That's correct.
36 THE COURT: Okay. And that was in June.
37 CNSL K. UPPAL: I just want to make sure --
38 THE COURT: Yes.
39 CNSL K. UPPAL: -- I'm taking you to the correct place
40 because there's lots of material here, so just
41 give me one moment. Let's see. Tab 2. So, it's
42 in binder 2 of the petition record.
43 THE COURT: Mm-hmm. All right.
44 CNSL K. UPPAL: The affidavit there at paragraph --
45 sorry, at tab 3 is that of Christopher Black, the
46 engineer of -- of LDR. And at tab -- at tab B is
47 where you will find the BECA, the Building

Submissions for the Petitioner by Cnsl K. Uppal

1 Enclosure Condition Assessment.
2 THE COURT: All right.
3 CNSL K. UPPAL: And I'll just highlight a few things
4 that I think are important. If we go to page 10
5 of the BECA -- or 10 of that affidavit. So,
6 there's -- it has the pagination up at the top
7 there.
8 THE COURT: I'm with you, mm-hmm.
9 CNSL K. UPPAL: Half -- sort of three-quarters of the
10 way down the page I just wanted to confirm that
11 this BECA was conducted by fieldwork on
12 April 1st. They confirmed the --
13 THE COURT: So, where are you reading on page 10?
14 CNSL K. UPPAL: About three-quarters of the way down.
15 It says "Our initial fieldwork".
16 THE COURT: Okay. Mm-hmm.
17 CNSL K. UPPAL: And the reason why I wanted to
18 highlight that is on the same day Bungee Holdings
19 performed a total of three rope access drops, one
20 at each of the towers. And that's in -- in the
21 BECA as an appendix and I'll -- I'll likely take
22 you there in a moment.
23 And then there's a number of photographs
24 which we're going to see later in a more succinct
25 report, so I won't take you through each one just
26 yet, but what I will do is take you to just the
27 summary here. So, the recommendations are at
28 page 82 is where they -- they start. They go
29 from -- they go over sort of three pages and
30 there's 22 recommendations there.
31 THE COURT: Mm-hmm.
32 CNSL K. UPPAL: And they're going to be reproduced in
33 other documents as well, but essentially the
34 scope of work for the special levy is
35 recommendation number 2, number 3 --
36 THE COURT: Mm-hmm.
37 CNSL K. UPPAL: -- number 6 --
38 THE COURT: Mm-hmm.
39 CNSL K. UPPAL: -- number 8 --
40 THE COURT: Mm-hmm.
41 CNSL K. UPPAL: -- number 11 --
42 THE COURT: Mm-hmm.
43 CNSL K. UPPAL: -- number 18, 19, 20, 21 and 22. So,
44 18 to 22 on the following page. So, those were
45 the recommendations of the BECA that were in
46 consultation of the -- between the Strata Council
47 and LDR that were determined to be items that

Submissions for the Petitioner by Cnsl K. Uppal

1 were in need of repair. The other items,
2 you know, were recognized. Some of them required
3 further investigation. Some of them just had
4 suggestions for further regular maintenance. For
5 example, at -- at the summary of recommendation
6 at tab -- at number 4 there says, you know,
7 "Perform regular maintenance on the window and
8 sliding glass door assemblies," and explained how
9 to do that, but it wasn't recommended as sort of
10 a targeted repair. Whereas these nine that have
11 been selected have been selected because they --
12 they are -- are required to deal with what we say
13 is -- is repairs that must be undertaken to
14 prevent significant loss or damage.
15 THE COURT: All right.
16 CNSL K. UPPAL: And I think it's helpful to take you
17 to the -- the photographs from the Bungee report
18 just to see some of what -- what -- what is sort
19 of identified. So, towards the end of that
20 exhibit you'll see, for example, at page --
21 THE COURT: What page are you? Mm-hmm.
22 CNSL K. UPPAL: Page 110 --
23 THE COURT: Yeah.
24 CNSL K. UPPAL: -- you'll see a photo sample of
25 organic growth and staining observed at the
26 eyebrow slabs and slab edges at various
27 locations. The -- page 111 there, you'll see
28 "Non-uniform application of urethane coating was
29 noted at [the] balcony edge". Again, the next
30 page, 112, you'll see that again.
31 THE COURT: Mm-hmm.
32 CNSL K. UPPAL: On page 114, you'll see "Exposed peel
33 and stick membrane noted under floor level
34 flashing at the window wall". And sort of these
35 are the pages that really identify the issues.
36 So, page 116, "Non-uniform application of
37 elastomeric coating was noted at [the] concrete
38 parapet". And it sort of goes on. And if you
39 take a close look, the first sort of 10 pages are
40 for Building A, the next 10 pages are for
41 Building B, and it goes through sort of each of
42 the buildings in turn.
43 THE COURT: So, where did you want me to go now?
44 CNSL K. UPPAL: So, I -- I have sort of described
45 Building A. If you go to page 133, you see the
46 same thing at Building B, damage to urethane
47 coating was noted at eyebrow and --

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1 THE COURT: So, what --
2 CNSL K. UPPAL: -- upturn.
3 THE COURT: Not your fault, I just missed a page
4 reference. What was --
5 CNSL K. UPPAL: 133.
6 THE COURT: 133 --
7 CNSL K. UPPAL: My apologies.
8 THE COURT: -- okay. Oh, I see. All right. Mm-hmm.
9 CNSL K. UPPAL: And I'm just sort of putting this on
10 the record to say this is sort of in each tower.
11 And so we have got some at Tower A. This is at
12 Tower B. Damage to urethane coating was noted at
13 the edge of the eyebrow, on page 134. And I --
14 and I don't mean to be a broken record, but if
15 you go through the pages, it almost says the same
16 thing on every page, just with a different
17 example.
18 THE COURT: Mm-hmm.
19 CNSL K. UPPAL: Page 142 is a little bit different.
20 It demonstrates a damaged urethane coating at the
21 edge of a drip edge. So, you can kind of tell
22 that that's something that's not protected.
23 It's -- it's from level 17. So, you can see how
24 sort of bad the corrosion is on that photograph.
25 So, these are the -- the types of observations
26 from which the BECA was conducted. So, Bungee
27 drops to all of sort of the -- all of the three
28 towers to -- to demonstrate that this coating,
29 for example, the -- the traffic coating and the
30 elastomeric coating is -- is worn. I think one
31 that's really important to see is at page 136.
32 THE COURT: The traffic coating you're talking about
33 in the -- in the parkade?
34 CNSL K. UPPAL: They actually put traffic coating on
35 the balconies as well.
36 THE COURT: Oh, so foot traffic.
37 CNSL K. UPPAL: Yeah.
38 THE COURT: Okay. Hm.
39 CNSL K. UPPAL: Well, the -- the -- it's the same --
40 my understanding it's the same material that they
41 use in a parkade. They actually use it to
42 protect balconies as well.
43 THE COURT: All right. Mm-hmm. Okay.
44 CNSL K. UPPAL: So, I'll just go back to -- to
45 paragraph 25 of my written submission on --
46 THE COURT: Mm-hmm.
47 CNSL K. UPPAL: -- on page 10, which confirms that LDR

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1 recommended the following repairs among other
2 ongoing maintenance recommendations. So, there's
3 just a summary there of those nine items that I
4 have highlighted in the BECA.
5 THE COURT: And where is the reroofing? Oh, there is.
6 Number 30. Recommendation, okay.
7 CNSL K. UPPAL: Yes --
8 THE COURT: Mm-hmm.
9 CNSL K. UPPAL: -- (e), yeah. "[R]e-roofing where the
10 roofing membrane has failed". So, I will take
11 you to eventually my friend's engineering
12 affidavit to -- their expert engineer has said
13 more investigations are required or that it's not
14 clear which roofing membrane. So, I just make
15 the point it says only where it has been failed.
16 It's not a complete reroofing project.
17 Now, the Strata Corporation does the BECA
18 and says, okay, it's been seven years since we
19 did a depreciation report; we need to do another
20 one. So, in 2022 we have another depreciation
21 report. So, I think what's important for me to
22 highlight in that depreciation report is at --
23 THE COURT: The depreciation report was the first one,
24 the twenty --
25 CNSL K. UPPAL: This is another one, a second one.
26 THE COURT: But that was the 2015 one, yeah.
27 CNSL K. UPPAL: And now we're at the 2022 one.
28 THE COURT: Okay. So, there's a --
29 CNSL K. UPPAL: So, the Strata Corporation said, well,
30 we've got this BECA. We know we need to do a
31 bunch of building enclosure stuff, but we need to
32 do another depreciation report too because
33 it's -- it's sort of the -- the prudent thing to
34 do. It's going to highlight other things that we
35 may need to -- to pay attention to. And the
36 reason why I -- I highlight some points in the
37 2022 depreciation report is because it does a
38 good job of discussing service life of different
39 components. And in some places I'll take you to
40 a little bit later, the -- my friend's -- or the
41 respondents' expert states that, you know, these
42 should be replaced at the end of their service
43 life. And so part of my submission is that,
44 well, that's what's being proposed to happen
45 here. The DR does demonstrate that they're at
46 the end of their service life or close to.
47 So, some significant findings of the

17

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1 depreciation report are reproduced at paragraph
2 27 of -- of my submission.
3 THE COURT: Mm-hmm.
4 CNSL K. UPPAL: And it confirms that the elastometric
5 coating throughout the complex has a service life
6 of 10 years and has an estimated remaining life
7 of two years. As such, renewal dates are
8 recommended for 2023, and then it says every
9 10 years after that, so 2033 and 2043. So, this
10 project was proposed in 2023 for elastometric
11 coating.
12 Same thing --
13 THE COURT: And the building is '0-- the building is
14 '08, you said, '06?
15 CNSL K. UPPAL: Correct. '08.
16 THE COURT: '08. Okay.
17 CNSL K. UPPAL: So, presumably it -- it went a little
18 bit longer, the --
19 THE COURT: Mmm.
20 CNSL K. UPPAL: -- the service life.
21 The exterior sealant, same recommendation.
22 Has a service life of 10 years and has an
23 estimated remaining life of two years. As such,
24 renewal dates are recommended for 2023 and then
25 another -- every 10 years after that.
26 The waterproofing --
27 THE COURT: So, these with 10 year service lives,
28 they're five years over now?
29 CNSL K. UPPAL: That's correct --
30 THE COURT: Okay.
31 CNSL K. UPPAL: -- and -- and I -- I think,
32 you know --
33 THE COURT: Is --
34 CNSL K. UPPAL: -- I have to acknowledge that at that
35 time the DR could have said they have no more
36 service life. So, they did --
37 THE COURT: Mm-hmm.
38 CNSL K. UPPAL: -- they did assess the -- those
39 components as at the date of their -- I think
40 they -- they reviewed them all in 2021 and
41 produced the report in 2022. And so as such they
42 were -- they were recommending that those be
43 replaced in 2023.
44 And that is sort of the -- the point I want
45 to make throughout all of these sort of
46 subsections. So, the waterproofing of the
47 balconies has the same thing. They actually

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1 indicate there the service life was 15 years and
2 a has remaining life of two years, so it sounds
3 like that had a longer service life but it's
4 nearing the end of it.

5 And then the roofing at the towers does say
6 that they should have a typical service life of
7 25 years, however, at the time of the review
8 localized waterproofing membrane replacement was
9 being conducted at Building C main roof due to
10 water ingress issues, and the renewal budget
11 includes for waterproofing membrane replacement
12 at all areas to benefit from the uniformity of
13 the work and comprehensive warranty coverage.
14 So, it was recommending that those two towers
15 could benefit also from that.

16 It goes on, on the next page, page 12,
17 subsection (e), the concrete planter walls have a
18 typical service life of 40 years, with an
19 adjusted service life at 15 year cycles. So,
20 the -- it also recommended two years remaining.

21 And then the parkade similarly has two years
22 remaining for some of the suspended slab traffic
23 coating.

24 And with respect to the slab on grade at
25 parkade level 1, they noted that the concrete
26 slab on grade is a relatively thin wear surface.
27 The underlying subgrade, typically it will move
28 slightly over the years, and the moving of the
29 underlying soil will lead to cracks and
30 deterioration on the slab surface over time.
31 Minor concrete cracks will develop that need to
32 be sort of fixed on an as-needed basis, which is
33 what is being proposed, and should be funded, so.
34 So, that just sort of ties in the -- the 2022
35 depreciation report.

36 So, that led to what I have sort of alluded
37 to previously is -- is the Strata Corporation
38 working with LDR to focus on a scope of work
39 identified as the 2023 Building Enclosure
40 Maintenance Repair Project, and I am going to
41 refer to it just as the "Maintenance Project".
42 And -- and that project scope is based on the I
43 have written eight BECA recommendations and I
44 will have to clarify whether it's eight or nine.
45 I apologize.

46 THE COURT: I think he said 20 -- I thought you said
47 20 was covered as well. You said 18 to 20.

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1 CNSL K. UPPAL: Yeah, I think I missed one. So, it
2 should --
3 THE COURT: So --
4 CNSL K. UPPAL: -- be nine recommendations, my
5 apologies, and 20 is also one of them. And
6 I'll -- I'll confirm that at the morning break to
7 just make sure I have given you the right
8 information. Yeah, that sounds right.
9 So, LDR then was retained by the Strata
10 Corporation to issue a formal tender to obtain
11 formal bids on the Maintenance Project. The
12 tender documents are at tab D of the record.
13 Sorry, tab D of the -- Exhibit D to affidavit
14 number 1. So, that's in book 1.
15 THE COURT: Is it not -- I just turned up tab D of
16 book 2. That's Mr. Black's first affidavit and
17 that's got a ...
18 CNSL K. UPPAL: You have -- you have found it better
19 than I, Justice, that's right. So, if you turn
20 to page 301 there, just see -- I just want to
21 sort of build this continuity of --
22 THE COURT: So -- so, just so -- I'm at tab -- tab 3D.
23 CNSL K. UPPAL: Correct.
24 THE COURT: Okay.
25 CNSL K. UPPAL: And page 301 --
26 THE COURT: Yes.
27 CNSL K. UPPAL: -- is where we see a summary of the
28 work covered contract documents, and I propose
29 that's sort of the technical scope of work that
30 was put in the bidding -- bid documents. So, it
31 discusses -- and I don't intend to read it all
32 out, but it discusses repainting the concrete
33 surfaces, sealant, dealing with --
34 THE COURT: So -- so, where -- where are you -- and
35 just where are you directing me to?
36 CNSL K. UPPAL: Paragraph 1.1, so right at the top
37 there.
38 THE COURT: Okay.
39 CNSL K. UPPAL: The intent of the work is to
40 conduct -- conduct comprehensive building
41 enclosure maintenance repairs at three high-rise
42 towers. And then just at the third line, the
43 scope of work includes but is not limited to, and
44 then it -- it sort of summarizes all of those
45 repair issues that we have been talking about.
46 And, in fact, the next sort of three pages go
47 through them in more detail. I don't purport to

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1 understand what each of them means, but this is
2 based -- from LDR based on those nine
3 recommendations, this was what was put out to
4 tender.
5 THE COURT: So, this -- you're -- you're -- you're
6 saying this page 301 and following are -- are --
7 is work that flows from the -- the nine
8 recommendations?
9 CNSL K. UPPAL: Correct.
10 THE COURT: Okay.
11 CNSL K. UPPAL: These were put out to tender. In
12 response to -- to these -- this -- this bid for
13 tender, at the next -- tab E is where LDR
14 produces a Tender Results Summary for the Strata
15 Corporation.
16 THE COURT: So, sorry, what page is that?
17 CNSL K. UPPAL: Tab E, so the next --
18 THE COURT: Okay.
19 CNSL K. UPPAL: -- tab in --
20 THE COURT: Mm-hmm.
21 CNSL K. UPPAL: -- your affidavit.
22 THE COURT: Okay.
23 CNSL K. UPPAL: This is where LDR summarizes, on
24 March 9th, 2023, the -- the bids that were
25 received. So, four bidders submitted bids
26 electronically, and two -- two people did not.
27 So, we had four bids altogether. The lowest bid
28 was \$2.4 million, and the highest bid was
29 \$5 million. Excuse me.
30 THE COURT: Mm-hmm.
31 CNSL K. UPPAL: And in consultation with LDR, the
32 Strata Corporation decided that Remdal Painting &
33 Restoration -- if you just turn to tab F there,
34 there's a little summary of the four bids. It's
35 the 2023 Building Enclosure Maintenance Repairs
36 Tender Results Summary Table.
37 THE COURT: Mm-hmm.
38 CNSL K. UPPAL: You'll see the four contractors at the
39 top, Prostar, Remdal, Renewal Construction, and
40 Tatras Group.
41 THE COURT: Mm-hmm.
42 CNSL K. UPPAL: And the Strata Corporation chose
43 Remdal as their preferred contractor.
44 THE COURT: Remdal, okay.
45 CNSL K. UPPAL: Remdal Painting & Restoration, yes.
46 And so now I'll take you to the next tab, G,
47 and this is a document that was authored again by

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1 LDR but it was sent to all owners in advance of
2 the Special General Meeting.
3 THE COURT: Tab G. Okay. I should just say in my
4 tab G, I noticed that I have another tab B tucked
5 in behind it.
6 CNSL K. UPPAL: Oh.
7 THE COURT: I think it's just a -- a duplicate. I --
8 but I take it that's not in the original, so I
9 just thought I'd let you know.
10 CNSL K. UPPAL: Okay. Yeah, I -- I think that must
11 have been put in there inadvertently by --
12 THE COURT: All right.
13 CNSL K. UPPAL: -- my office.
14 THE COURT: So, tab -- tab G starts at page 494?
15 CNSL K. UPPAL: Correct.
16 THE COURT: Okay.
17 CNSL K. UPPAL: So, this is what LDR authored to send
18 out to all owners to assist in sort of
19 understanding the scope of work, and you can see
20 they have inserted some photographs there and
21 explained sort of what the -- the work is going
22 to be like. Their position is that sort of a --
23 a manageable, digestible, small sort of summary
24 was the way to go in terms of advising owners of
25 this, and then it was, of course, up to owners
26 to -- to seek additional documents if they were
27 interested in doing so.
28 So, on March 9th, 2023, a notice was posted
29 to the owners to inform them that a town hall
30 would be held on March 16th to discuss the
31 Maintenance Project.
32 THE COURT: Mm-hmm.
33 CNSL K. UPPAL: This is the scope summary that was
34 authored and distributed to all owners. The
35 scope summary is in this affidavit because it was
36 authored by LDR, but I will take you back to
37 binder 1, which is the Strata Corporation's
38 affidavit of their president, because it
39 demonstrates that this scope of work was also
40 translated into Chinese.
41 THE COURT: Binder 1.
42 CNSL K. UPPAL: Binder 1. I'll take you first to
43 Exhibit L.
44 THE COURT: So, tab 2 L. Okay.
45 CNSL K. UPPAL: Tab 2 L, correct.
46 THE COURT: Okay.
47 CNSL K. UPPAL: So, that's the notice about a

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1 town hall discussion that was going to be
2 conducted on March 16th. There was notice to the
3 residents on March 9th.

4 THE COURT: Mm-hmm.

5 CNSL K. UPPAL: And from my understanding that
6 town hall proceeded. I don't have much to say
7 about that, but that was when it was first sort
8 of brought to the attention of the owners to
9 discuss in advance of the Special General
10 Meeting.

11 That -- it was -- then also at tab O of the
12 record, you'll see a further town hall was then
13 going to take place on April 4th, and this is a
14 notice that's also been translated into Chinese.
15 So, in my submission, at paragraph 33 I -- I
16 advise the Court that a Chinese translator could
17 not be secured for the first town hall. A
18 further town hall was scheduled with a
19 Chinese-speaking translator. On March 30th a
20 notice was posted in Chinese informing owners
21 that an additional town hall would be held on
22 April 4th. And that proceeded on April 4th.

23 THE COURT: All right.

24 CNSL K. UPPAL: So, the Special General Meeting Notice
25 is in the next tab there at P of the record. P,
26 just in the same affidavit you're in, at tab 2.
27 And this is likely of interest to the Court
28 because you can see the special levy proposal at
29 page 834. So, the Full Building Enclosure
30 Rehabilitation Project is what they called it.
31 This is in the notice. And then in the following
32 pages, 336, three thirty--

33 THE COURT: So, sorry, I -- I think I've got the wrong
34 reference. So, are you back at tab 3?

35 CNSL K. UPPAL: I am still at tab 2, the affidavit of
36 Chris Jang.

37 THE COURT: Okay. And so what --

38 CNSL K. UPPAL: And if we're at tab P --

39 THE COURT: Yes.

40 CNSL K. UPPAL: -- page 834.

41 THE COURT: Okay, 834. I -- I misheard you.

42 CNSL K. UPPAL: My apologies.

43 THE COURT: So, page 834. Okay. Yes.

44 CNSL K. UPPAL: And that's the wording of the special
45 levy that was in the Special General Meeting
46 Notice.

47 THE COURT: This isn't the meeting -- this isn't

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1 the -- this isn't the April ...
2 CNSL K. UPPAL: This is -- this is just a notice. So,
3 first the --
4 THE COURT: Okay.
5 CNSL K. UPPAL: -- notice goes out, and then I'll take
6 you to the minutes in a moment.
7 THE COURT: Oh, I see.
8 CNSL K. UPPAL: The notice is important because the
9 notice is the place that you'll find the schedule
10 of each strata lot owner's contribution. So, in
11 the -- in the following --
12 THE COURT: Mm-hmm.
13 CNSL K. UPPAL: -- pages, 836 --
14 THE COURT: I see.
15 CNSL K. UPPAL: -- onwards you'll see these columns of
16 how much every strata lot has to pay. And, in
17 fact, they were proposing the payments be done in
18 three payments. So, that's the notice.
19 And then the following tab --
20 THE COURT: So, there is -- I think you might have
21 said 10 to fourteen thou-- or 14- to 18,000, but
22 the --
23 CNSL K. UPPAL: I think it's 14- to 18-.
24 THE COURT: -- but the range is -- is maybe more like
25 9 -- 9- to --
26 CNSL K. UPPAL: Yes.
27 THE COURT: -- 9- to 18- type of range.
28 CNSL K. UPPAL: Yes, I think the highest I see is 79-
29 so, yeah, just about 18,000, and the lowest
30 appears to be about 9500.
31 THE COURT: Okay.
32 CNSL K. UPPAL: Okay. And then the following exhibit
33 is the minutes of that Special General Meeting,
34 and that's important for the Court because it
35 tallies the vote. So, page 850 has a --
36 THE COURT: Just hang on --
37 CNSL K. UPPAL: -- a confirmation that --
38 THE COURT: Just hang on one second, please.
39 CNSL K. UPPAL: Yeah.
40 THE COURT: So, you're going to tab Q now?
41 CNSL K. UPPAL: Yes.
42 THE COURT: All right.
43 All right. Yes.
44 CNSL K. UPPAL: So, Q is the minutes of the special
45 levy where the resolution was defeated. It
46 confirms that the Annual General Meeting was held
47 on Thursday, April 13th, 2023. Page 850 is where

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1 you'll see those votes. 65 in favour, 58
2 opposed, and one abstained. And so from our
3 calculation, that's a total of a hundred and
4 twenty-three votes of the votes cast, 53 percent
5 in favour.
6 THE COURT: Mm-hmm. But there was quorum at the
7 meeting --
8 CNSL K. UPPAL: Correct.
9 THE COURT: -- was there? Okay.
10 CNSL K. UPPAL: Yeah. I believe that is confirmed in
11 the --
12 THE COURT: Mm-hmm.
13 CNSL K. UPPAL: -- preceding pages. Yeah. On
14 page 347 it confirms there was quorum. 96
15 eligible --
16 THE COURT: So, you said 347. That's sort of, again,
17 when --
18 CNSL K. UPPAL: Sorry, 847.
19 THE COURT: Okay, I --
20 CNSL K. UPPAL: If the -- my -- that must be my -- my
21 error because it looks like a 3. It's --
22 THE COURT: Oh, okay. All right.
23 CNSL K. UPPAL: -- not a full stamp, unfortunately.
24 THE COURT: I just wanted to make sure I was on the
25 same page, but. So, you were at 847. Okay.
26 CNSL K. UPPAL: Yes, 847 at the top there on the left
27 of the page, Quorum Status Report --
28 THE COURT: Okay.
29 CNSL K. UPPAL: -- and that confirms that the meeting
30 did have quorum, with a hundred and twenty-six
31 votes represented.
32 THE COURT: Okay. A hundred and twenty-six votes,
33 okay.
34 CNSL K. UPPAL: Which is interesting because the --
35 the counting of the votes is less than 126,
36 right? We have 123 votes cast. And what does
37 happen in some of these meetings that I have been
38 to is people will leave or not sort of actually
39 vote when they are required to vote. So --
40 THE COURT: All right.
41 CNSL K. UPPAL: -- based on registration there was
42 quorum.
43 THE COURT: Okay. All right.
44 CNSL K. UPPAL: But you'll note, yeah, there's less
45 votes cast.
46 So, that -- that takes us to about
47 paragraph 36 of my written submission, page 14.

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1 THE COURT: Page --
2 CNSL K. UPPAL: 14.
3 THE COURT: Page 14. Okay, yes, mm-hmm.
4 CNSL K. UPPAL: Okay. So, after the April 13th
5 special levy vote was defeated, the Strata
6 Corporation resolved by majority vote to commence
7 the petition, and this petition was filed on
8 July 10th, 2023.
9 On February 7th, the strata lot -- the
10 former now strata lot owner Mr. Cao filed a
11 response to the petition. And my friend and I
12 haven't really resolved where that petition ends
13 up given that he's no longer an owner, but I
14 don't think it's relevant for the purpose of
15 today. And then they did retain Tri-Can
16 Consulting to prepare a review of the Maintenance
17 Project.
18 THE COURT: You said "they". That is the Mr. --
19 CNSL K. UPPAL: The --
20 THE COURT: -- Mr. --
21 CNSL K. UPPAL: That is the --
22 THE COURT: Mr. Wong's clients.
23 CNSL K. UPPAL: Correct, yes. The "Appendix A owners"
24 I'll refer to them.
25 And there was one other affidavit -- or one
26 other document I wanted to take you to before I
27 go on to Mr. -- before I go to Tri-Can
28 Consulting's review and that's at -- I apologize
29 for taking you to binder 2 again, but binder 2,
30 tab 3, and it's the last exhibit, H. That was a
31 letter that --
32 THE COURT: Just --
33 CNSL K. UPPAL: -- LDR authored subsequent to the
34 vote.
35 THE COURT: Just -- sorry, just one moment. One
36 moment.
37 All right. That's found at tab H, 2H.
38 CNSL K. UPPAL: Yes. It's just a -- basically a one
39 and a half page letter from LDR, and they -- this
40 was a letter requested by the Strata Council in
41 considering whether to -- to proceed with the
42 petition. And the engineer says [as read], "We
43 are writing to you to clarify the necessity of
44 the proposed 2023 building enclosure maintenance
45 repairs as described in the LDR tender documents.
46 Based on our previous work of the complex,
47 including but not limited to ..., " and they talk

Submissions for the Petitioner by Cnsl K. Uppal

1 about the targeted concrete eyebrow work and the
2 building enclosure, the BECA report, the
3 depreciation report, and the reroofing of
4 Tower C. They go on then just to summarize the
5 scope of work, which we have -- we have gone
6 through a few times, Justice, but it's reproduced
7 once more there for you. And Mr. Black writes,
8 on the second page, page 2 of that letter, after
9 summarizing all of the recommendations [as read]:
10
11 As noted above, the need for the repairs as
12 indicated in the BECA and not
13 implementing -- implementing such
14 maintenance repairs is likely to result in
15 further damage of -- in the future. In some
16 cases, such as proposed reroofing work on
17 Towers A and B, will also help address
18 safety concerns.
19
20 That's, in my submission, sort of where the
21 evidence starts to build about the necessity of
22 the repairs, but I'm going to get into that in
23 greater detail.
24 So, with my -- with the respondents filing a
25 subsequent Response to Petition, they also filed
26 a -- a review of all of the documents, in their
27 view, that were -- were in the Petition. So, the
28 LDR documents, the depreciation report, the scope
29 of work, and they -- they --
30 THE COURT: So, just hang on one moment. I was
31 just --
32 CNSL K. UPPAL: Sure.
33 THE COURT: -- making a note. If you can just ...
34 CNSL K. UPPAL: Of course.
35 THE COURT: All right. So, if you could just start
36 that -- your point again --
37 CNSL K. UPPAL: Yes.
38 THE COURT: -- then, please.
39 CNSL K. UPPAL: I -- I think I'll actually rephrase
40 what I was about to say just to take you back so
41 we know we're sort of following my earlier line
42 of thought. On paragraph 38 is where I start
43 talking about the opposition to the Petition.
44 Paragraph 38 of my written submission.
45 THE COURT: Mm-hmm.
46 CNSL K. UPPAL: I confirm there that from the
47 May 14th, 2024 filed Response, the petition

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1 respondents represents 43 strata lot owners, or
2 approximately 15 percent of the Strata
3 Corporation.

4 THE COURT: And so that is ... So, sorry, that was at
5 paragraph?

6 CNSL K. UPPAL: 38.

7 THE COURT: 38. Oh, I see it here, mm-hmm.

8 CNSL K. UPPAL: And that's from the petition that's in
9 the record at tab 8 -- or, sorry, the petition
10 response of -- in the record at tab 8. I
11 recognize that Mr. Cao, who no longer -- who has
12 sold his unit, is -- is listed in that list, but
13 I don't think it changes anything from a material
14 perspective.

15 Tri-Can provides their -- it's -- it's
16 Mr. Chen, the engineer for Tri-Can, they provide
17 a second opinion. At paragraph 39 I note that
18 they confirmed that:

19
20 The review locations were randomly selected
21 to provide a representation based on the
22 work scope listed in the tender documents.
23 No destructive openings of building
24 assemblies were conducted. The visual review
25 was limited to areas accessible by the
26 building tenants or areas provided by the
27 property manager, [in other words],
28 balconies, roofs, parkades, courtyards, and
29 sidewalks. Areas with no access were
30 reviewed visually at a distance.
31

32 So, I highlight that just to confirm that the
33 BECA had sort of these descriptive photograph
34 taken by bungee drops around the building and,
35 alternatively, this was done sort of with some
36 what appears to be limited visual review.

37 The second opinion goes through --

38 THE COURT: So, sorry, so you're saying you're -- are
39 you contrasting the Tri-Can work with the LDR
40 work or?

41 CNSL K. UPPAL: My submission is that LDR's review of
42 the property was in much greater detail. It
43 actually encompasses several reports, the BECA
44 report, the DR report, previous projects they
45 have done at the building, in fact. So, just
46 simply that they have more knowledge of what's
47 going on. But if we limit it even just to the

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1 BECA, the BECA had some intensive sort of
2 investigations done, opposed to a limited visual
3 review.

4 THE COURT: I'll just ask you this now and you don't
5 have to answer it, but at some point I'll ask
6 your -- your friend, like, the same question. At
7 what point -- how deep does the court inquire
8 into the merit of the engineering reports and
9 recommendations that --

10 CNSL K. UPPAL: It's part of the court's discretion in
11 the test. So, when I go further to sort of the
12 legal basis of the test, it's one of the four
13 factors in which the court considers in
14 exercising its discretion.

15 THE COURT: Whether there's a reasonable reliance on
16 professional reports?

17 CNSL K. UPPAL: The -- and the necessity of the work
18 as indicated by engineering reports.

19 THE COURT: All right. Thank you.

20 CNSL K. UPPAL: And so really what we have is this
21 contrast. They have this -- LDR saying -- saying
22 that the work is necessary, it needs to be done,
23 and Tri-Can essentially saying that -- and when I
24 go through the report in more detail, which I'm
25 going to do, I'll just sort of give you my big
26 picture submission is that their view is that
27 either some of the locations require further
28 investigation or that they need to be done and
29 they refer to them as first priority and second
30 priority. And it seems to be a timing question
31 from their perspective. So, nothing they say is
32 a life safety issue. It's a timing issue as to
33 whether these -- the work should be done in one
34 year or in five years and that's how they've set
35 up their second opinion report. And I am going
36 to -- to explain, when I make my sort of legal
37 argument, that that's not the test. The test
38 doesn't require immediate life safety issues. It
39 simply requires that the work is significant
40 enough to merit attention.

41 THE COURT: All right.

42 CNSL K. UPPAL: So, I -- I actually think it would be
43 most helpful for me to go -- because what ends up
44 happening because of our timeline is Tri-Can
45 issues a second opinion. Before our August 22nd
46 date, my client's engineer issues a sort of
47 reviewing response. So, they look at the second

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1 opinion and tell us sort of their position on
2 some of it. And then what happened a week ago is
3 Tri-Can issues another response. So, we've got
4 these four sort of back to back opinions from
5 engineers. And what I am going to seek to
6 establish through my submission is that in my
7 view Tri-Can essentially ends up, I think -- or
8 I'll submit, agreeing with the strata's engineer
9 in some respects. I'm sure my friend will
10 disagree, but that's where I am eventually
11 intending to go with these submissions.

12 THE COURT: I guess my question was is this -- is the
13 court dealing with assessment -- on this type of
14 application does the court deal with an
15 assessment of expert reports or conflicting or
16 otherwise in the same way it would do in a trial
17 where it has to make findings of fact based on
18 expert opinion evidence or is there a different,
19 mmm, approach given this, and I just wonder if
20 you have a position on that.

21 CNSL K. UPPAL: Yeah. My -- my position is that of
22 course when there is conflicting expert evidence,
23 there is some degree of analysis that's going to
24 have to go into which evidence is sort of
25 preferred or given more weight. But -- but what
26 the case law also appears to suggest is that the
27 court's role is to essentially defer to the
28 Strata Corporation. If they have chosen a scope
29 of work and -- and the timing and the scope of
30 those repairs have been chosen by a group of
31 people who have this vested interest in the
32 building, the first place for the court to start
33 is to give deference to -- to those decisions.
34 And I do have some case law on that.

35 THE COURT: All right. Okay. Mm-hmm.

36 CNSL K. UPPAL: So, just a very brief summary of
37 Tri-Can's opinion is at paragraph 40 of my
38 submission. I -- it's -- it's our submission
39 that the second opinion states that much of the
40 maintenance work is necessary to prevent
41 premature deterioration and should be repaired
42 within one year. Other items should be monitored
43 and replaced or renewed within five years.

44 The second within identifies a few of the --
45 these scopes, such as painting, sealant, adding
46 pedestrian traffic coating, and replacement of
47 door hardware as maintenance items that need to

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1 be replaced in the future, and it questions why
 2 eyebrow renewal is included in the Maintenance
 3 Project.
 4 They -- I think what's most important to
 5 take from this is the second opinion indicates
 6 that there are no maintenance items that require
 7 immediate action to protect life and safety, and
 8 that several items need further investigation.
 9 And our position on that is that that is not the
 10 legal test --
 11 THE COURT: Your --
 12 CNSL K. UPPAL: -- with respect to --
 13 THE COURT: -- your submission is that's the test that
 14 was rejected by the Court of Appeal in the --
 15 CNSL K. UPPAL: Correct.
 16 THE COURT: -- *Thurlow* case? All right.
 17 CNSL K. UPPAL: And in doing that, they distinction
 18 section seventy-- section 98 of the Act that says
 19 the strata corporation can spend money if it's an
 20 emergency, which is in line with this life safety
 21 issue, but section 174 -- -3, my apologies,
 22 section 173 is to be read in a more remedial
 23 fashion.
 24 THE COURT: All right. Okay.
 25 CNSL K. UPPAL: So, LDR then prepares a responding
 26 review and notes that -- some of the sort of
 27 shortfalls of the Tri-Can opinion. So, at
 28 paragraph 46 I have reproduced sort of what LDR
 29 says about Tri-Can's second opinion. And they
 30 say:
 31
 32 TCC ["Tri-Can"] attempted to summarize the
 33 scope of work within the tender documents,
 34 reorganizing it into their format, not per
 35 the organization within the tender
 36 documents **Their summary is inaccurate**
 37 **and/or unclear in the following ways:**
 38
 39 And they go through where those inaccuracies
 40 occur. I don't intend to get into them into
 41 detail, but sort it's helpful, if you are
 42 evaluating the reports in that fashion, to see
 43 sort of what the opinion is. There are some
 44 assumptions from TCC, or Tri-Can, that sort of
 45 why are they going to do all of this work when
 46 they -- when everything is not at issue in terms
 47 of recoating the concrete eyebrows, for example.

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1 And so LDR notes that the recoating of the
2 concrete eyebrows is not for the entire strata
3 property. The work included in previous phases
4 is not included in the scope of work in the
5 tender document. So, that's why it was important
6 for me to go through some of those other projects
7 that had taken place over the years to identify
8 that the project being proposed now is to deal
9 with things that have of course not been -- been
10 completed before.

11 THE COURT: And so where were you -- where were you
12 reading from just then? That was paragraph --

13 CNSL K. UPPAL: Paragraph 47.

14 THE COURT: 47.

15 CNSL K. UPPAL: Yeah, I didn't go through each of
16 those --

17 THE COURT: Okay.

18 CNSL K. UPPAL: -- bulleted items. I -- I --

19 THE COURT: Okay.

20 CNSL K. UPPAL: -- they're really a copy and paste
21 from the responding review, but essentially
22 the -- the issue LDR sort of highlights is that
23 the summary or perhaps the understanding of
24 Tri-Can when evaluating this was not entirely
25 accurate and so LDR attempts to clarify some of
26 those inaccuracies.

27 THE COURT: All right.

28 CNSL K. UPPAL: The responding review highlights
29 concrete spalling as a life safety issue. And --
30 and I do recognize from -- a letter from my
31 friend the other day that was new in terms of
32 identifying it as a life safety issue. And so
33 Tri-Can responds to that in a further document
34 that we've -- we don't take issue with.

35 THE COURT: Sorry, that sentence is a little abstract,
36 so could you just anchor that to some context?
37 So, what -- what -- so, what is, "The Responding
38 Review considers concrete spalling a life safety
39 issue ..."?

40 CNSL K. UPPAL: Yeah. So, in --

41 THE COURT: So, that's the Tri-Can --

42 CNSL K. UPPAL: -- Tri-Can's report --

43 THE COURT: -- report.

44 CNSL K. UPPAL: -- they say it's not a life safety
45 issue, and LDR says it is.

46 THE COURT: I see.

47 CNSL K. UPPAL: So, it's a difference in their

Submissions for the Petitioner by Cnsl K. Uppal

1 opinions.

2 THE COURT: And concrete spalling is?

3 CNSL K. UPPAL: When the concretes are wearing down --

4 THE COURT: Okay.

5 CNSL K. UPPAL: -- and potentially you're -- you're --

6 the issue, from my understanding, is as the

7 concrete wears down, you're getting potentially

8 water into the structure, which then starts to

9 create a life safety issue.

10 THE COURT: Because of risk of collapse?

11 CNSL K. UPPAL: The risk of, yeah, deterioration and

12 eventual collapse, yeah.

13 THE COURT: Okay. Thank you.

14 CNSL K. UPPAL: And so, you know, paragraph 50 is sort

15 of a nice little summary as sort of one of the

16 issues that LDR has with the second opinion. So,

17 TCC says it appears roof A roof B were not

18 reviewed in detail. TCC recommends those areas

19 be investigated before completing a reroofing

20 upgrade. And LDR responds by saying, "As noted

21 above, further investigation was performed on

22 window wall screens." And, "The Tender Documents

23 reflect the conclusions of [that] investigation."

24 So, it was, in my view, helpful for LDR to sort

25 of go through and have some of these

26 clarifications.

27 The same thing with the next point at

28 paragraph 50, which is bullet number 2. TCC says

29 damp proofing is not sort of required around the

30 entire perimeter. "... if the issue is isolated

31 to one location, consider only targeted

32 repair ..." And LDR's response is sort of out of

33 the quotations there:

34

35 Note that work is being proposed at only the

36 north and east elevations, not the entire

37 perimeter. It is unclear [what --] what

38 further investigation is required [and] how

39 targeted repairs can be completed, since

40 water ingress was noted at multiple

41 [elevations] along the base of the wall on

42 the north and east elevations.

43

44 So, those are -- are sort of some of the examples

45 where LDR is able to then further evaluate that

46 second opinion, explain where information may be

47 sort of misexplained or misunderstood.

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TCC, in fact, says, in their original opinion - at paragraph 51 - "... for Scope #2, Concrete Repair," TCC says:

"all items such as damaged concrete, delaminated or spalled concrete should be repaired soon."

And LDR says:

We agree, ... it should be addressed as soon as possible. Much of the delaminated or spalling concrete, or the potential for [it] occurs along the edges of the concrete eyebrows and balconies. **In order to conduct this work, the waterproofing on these surfaces needs to be removed, otherwise, it will be difficult to determine the extent of the damage and complete the repairs in a cost effective manner ...**

And then LDR says, over to page 19 I have -- I won't read -- read everything to you, but I've underlined the part where:

... TCC should have referred to our Targeted BECA to understand the extent of the issue, including numerous photographs taken from a boatswain chair, instead of only relying on their limited observations.

LDR's position on the second opinion is that it "does not consider construction efficiencies, economies of scale, the services lives of the components and systems, and a comprehensive long term [repair] strategy for the complex, all of which were considered when we [LDR] developed the scope of work in the Tender Documents."

"It is not realistic to view each building enclosure component in isolation when planning a repair strategy."

So, I call LDR's sort of second look at the second opinion a responding review. So, we have the original sort of all of the documents I have taken Your Justice to --

THE COURT: Mm-hmm.

CNSL K. UPPAL: -- we have the second opinion, and

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1 then we have LDR authoring what I call a
2 responding review. What we received on
3 October 4th, 2024 is what I am going to refer as
4 a final reply. That is --
5 THE COURT: So -- so, I have the -- okay, mm-hmm.
6 CNSL K. UPPAL: That is the final document from
7 Tri-Can, which then essentially goes through each
8 of LDR's comments in the responding review and
9 provides its comments on those.
10 THE COURT: So -- so, you're just saying -- so,
11 there's the original documents, the BECA --
12 CNSL K. UPPAL: Depreciation report --
13 THE COURT: -- the depreciation, the 2022 --
14 CNSL K. UPPAL: -- tender documents. Yes.
15 THE COURT: And then there's the second opinion from
16 Tri-Can, and then LDR does a responding review.
17 And then Tri-Can does what you have called the
18 reply?
19 CNSL K. UPPAL: Final reply, yes.
20 THE COURT: Final, final reply.
21 CNSL K. UPPAL: That's what I refer to it as, as there
22 is nothing after that point.
23 THE COURT: Okay. Thank you.
24 CNSL K. UPPAL: So, I -- I start to talk about that at
25 paragraph 53 of my submission. And it's our
26 submission that in its final reply Tri-Can
27 appears to clarify its second opinion report by
28 stating that it focused on assessing the current
29 condition of the building envelope for life
30 safety concerns. Design factors, like access and
31 costs, are not the primary focus. And so we say
32 that by its own evidence Tri-Can has confirmed
33 that it did not consider whether the repair was
34 required to prevent safety concerns or to prevent
35 significant loss or damage. TCC also says in
36 their reply "[r]elevant documents were
37 referenced, but not analyzed in detail". And
38 that's at -- perhaps we can just go to it so I
39 can highlight some of this. That's going to be
40 in binder 3. Yes. Tab 14 of the record.
41 THE COURT: Tab -- binder 3, tab?
42 CNSL K. UPPAL: 14.
43 THE COURT: The last one?
44 CNSL K. UPPAL: Yes.
45 THE COURT: Oh, second last.
46 CNSL K. UPPAL: Second last one.
47 THE COURT: All right. Okay.

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1 CNSL K. UPPAL: So, I have just read it to you, but
2 I'll just take you to it in the document. On
3 page 4, at the very top, it's where TCC confirms
4 that the report focused on assessing the current
5 condition and -- and -- and essentially only life
6 safety concerns.
7 THE COURT: Hang on a second. Tab -- page 14, is that
8 where you're ...
9 CNSL K. UPPAL: Page 4.
10 THE COURT: Page 4, sorry.
11 CNSL K. UPPAL: I don't think there is a 14. Oh,
12 there is --
13 THE COURT: Yeah.
14 CNSL K. UPPAL: -- but page 4 is just the beginning of
15 the report. They refer to it --
16 THE COURT: Okay, I've got --
17 CNSL K. UPPAL: -- as their opening letter.
18 THE COURT: -- I'm on that page, and so where are you
19 referring to now?
20 CNSL K. UPPAL: The first sentence of -- under
21 "Opening letter statement".
22 THE COURT: Okay. All right. So, you're saying
23 that's a higher test, if you want to put it that
24 way, than the one that the statute contemplates?
25 CNSL K. UPPAL: Correct. And -- and I think what goes
26 again to my point about perhaps the weight of the
27 evidence or sort of the quality of the review is
28 at paragraph 2 where TCC says [as read],
29 "Relevant documents were referenced but not
30 analyzed in detail. Due to the low quality of
31 the photographs and scans, on site observations
32 are relied upon for the second opinion." And I
33 just simply raise that if there were low quality
34 photocopies and scans, those could have been
35 provided if that was part of the issue in
36 assessing -- in assessing the -- the work.
37 And then I'll just take you -- Your Justice
38 to a couple of places where I think the -- there
39 is some interesting sort of comments made. So,
40 on page 7 there is a bit of back and forth under
41 item 3.32. And it -- it talks about sort of -- I
42 think what the report tries to do is go back and
43 forth between LDR and TCC and LDR again. And so
44 T-- at the second line there, TCC identified some
45 isolated locations of delamination and spalling.
46 The locations noted were categorized as repair
47 within one year. "The areas identified by TCC

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1 were not characterized as immediate life and
2 safety issues but are important and require
3 repair in a timely manner." [as read] And so
4 there's a few places in this report where it
5 appears to me that the parties have some -- or
6 the engineers have some common opinions about the
7 repairs. There -- they go on to say [as read],
8 "LDR indicated there were other locations, but
9 those locations were not identified. Either
10 those locations were not accessible by TCC or may
11 have been addressed in a recently repaired area.
12 In either case we have no comment."

13 And then just to the top of page 9,
14 something else I wanted to point out is that TCC
15 sort of starts to make this confirmation that
16 kind of starts on page 9 and it goes on where
17 they say [as read], "TCC provided a second
18 opinion based on life and safety which was not
19 related to economies of scale."

20 THE COURT: Mm-hmm.

21 CNSL K. UPPAL: And so it's just an acknowledgement
22 that sort of perhaps the -- the full picture
23 was -- was not considered, and this -- this goes
24 on in -- in the following pages. At -- at
25 page 11, at the very bottom of the page, TCC says
26 [as read]:

27
28 TCC was requested to comment on life and
29 safety risks. Currently the condition of
30 the membrane installed at the majority of
31 the locations does not have an immediate
32 life and safety risk. As the membrane is
33 nearing the end of its lifespan, it should
34 be monitored and replaced or renewed within
35 five years.

36
37 So, I won't go through it, but there's other
38 places in there as well that those types of --

39 THE COURT: All right.

40 CNSL K. UPPAL: -- sort of admissions, I say, are made
41 by the second engineer.

42 THE COURT: Is this a good time to take the morning
43 recess?

44 CNSL K. UPPAL: Yes.

45 THE COURT: All right. Yes, and I just invite you to
46 confer with your friend about time estimates.

47 We'll take the morning recess. Thank you.

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1 THE CLERK: Order in chambers. This chambers is
2 adjourned for a break.
3

4 (CHAMBERS ADJOURNED FOR MORNING RECESS AT
5 11:14 A.M.)

6 (CHAMBERS RECONVENED AT 11:32 A.M.)
7

8 THE CLERK: We're back on the record.

9 THE COURT: All right. Thank you.
10 Yes.
11

12 **SUBMISSIONS FOR THE PETITIONER BY CNSL K. UPPAL**
13 **continuing:**
14

15 CNSL K. UPPAL: Justice, I'll just say quickly I do
16 have an electronic version of my submissions if
17 that would be helpful. I'm happy to hand those
18 up.

19 THE COURT: If you wish to hand it up, you may.

20 CNSL K. UPPAL: I just noticed your laptop and thought
21 you might.

22 THE COURT: Mm-hmm.

23 CNSL K. UPPAL: So, the -- the final part of my
24 submission is the legal framework under which the
25 section 173 test is considered and so I'll take
26 you to page 20 of my written submission. And I
27 go over --

28 THE COURT: Just a moment.

29 CNSL K. UPPAL: Yeah, I'll wait for you to get it.

30 THE COURT: All right. Yes.

31 CNSL K. UPPAL: I go --

32 THE COURT: Page 20, yes.

33 CNSL K. UPPAL: Page 20, and I went through this a
34 little bit in my opening, but essentially just
35 rooting the Strata Corporation's repair and
36 maintenance obligations in section 72. And it's
37 our submission that the Strata Corporation's sort
38 of repair and maintenance duty is essential in
39 their role as a Strata Corporation and upholding
40 the integrity of the building envelope is sort of
41 imperative to that. Once we get water leakage
42 and -- and water ingress, there would be
43 consequential and -- and further damages that
44 would worsen over time.

45 So, there's a couple of ways the Strata
46 Corporation raises money to pay for those types
47 of repairs and one is by CRF expenditures, an

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1 expenditure out of their contingency reserve
 2 fund, and one is out of -- is by raising a
 3 special levy, which is what we're seeking to do
 4 with this application.

5 I just sort of wanted to reiterate the words
 6 of the Supreme Court in the *Davis* decision from
 7 2020, where the court confirmed that:

8
 9 Irrespective of whether there [is]
 10 dissension among owners with respect to
 11 proceeding with the repair, the strata
 12 corporation's obligation to maintain
 13 the common property continues.

14
 15 And so it -- it -- you know, if there is an issue
 16 that needs to be repaired and maintained, that is
 17 the statutory obligation.

18 So, I have already gone through paragraph 57
 19 with respect to the -- the --

20 THE COURT: Is that relevant to the question before
 21 me, whether it's ... How is that relevant? I'm
 22 saying it's irrelevant, but where does it fit in?
 23 Are you trying -- or is this a good faith
 24 argument or?

25 CNSL K. UPPAL: There is part of the test -- part of
 26 the discretion of the court, there's four factors
 27 in the -- the discretion element, and one is --
 28 is about the potential bad faith and one is
 29 whether sort of the actions of the strata
 30 corporation have been reasonable. And so I'll
 31 sort of --

32 THE COURT: I see. All right.

33 CNSL K. UPPAL: -- tie that together.

34 THE COURT: Okay.

35 CNSL K. UPPAL: So, as Your Justice has already sort
 36 of recognized, the British Columbia Court of
 37 Appeal decision in the binder at -- in the book
 38 of authorities at tab 9, *Thurlow & Alberni v. The*
 39 *Owners, Strata Plan VR 2213*, sort of the
 40 overarching and leading authority on the
 41 application of a section 173 application.

42 THE COURT: Mm-hmm.

43 CNSL K. UPPAL: It was an appeal from a -- a chambers
 44 judgment which had denied the strata corporation
 45 the vote. And some of sort of the points I'll
 46 take Your Justice to are really in the -- in the
 47 decision. So, I'll take you first to paragraph

Submissions for the Petitioner by Cnsl K. Uppal

1 28.

2 THE COURT: Just give me the paragraph number.

3 CNSL K. UPPAL: Yes, paragraph 82.

4 THE COURT: All right. I'm with you.

5 CNSL K. UPPAL: Just recognizing that section 173 was
6 enacted in 2009 as an additional tool to enable
7 strata corporations to discharge their statutory
8 duties. She noted that sort of the -- the
9 statutory reason for -- for implementing this
10 amendment was discussed in -- and reported in the
11 Hansard Debates as enhancing consumer protection.

12
13 It gives owners, former owners and
14 potential purchasers greater rights to
15 access additional information. It
16 ensures that special levies can't be
17 mingled with other strata funds and are
18 [invested only when] appropriate ...

19
20 And it allows the courts -- the underline is
21 where I want to get here, is:

22
23 It allows the courts to break a
24 deadlock when the strata can't quite
25 get a three-quarter vote needed to make
26 a crucial repair via a special levy.

27
28 And then paragraph 83 is something we've
29 already touched on summarily, which is where,
30 "Justice Fitzpatrick, in the *VIS114* decision,
31 "rejected the submission that the court should
32 only exercise its discretion ... where the
33 engineering evidence clearly establishes that the
34 repairs are immediately necessary to ensure
35 safety or prevent significant loss or damage
36 She considered that argument to be a conflation
37 of the requirements under s. 173(2) with the
38 'almost identical' wording of s. 98(3) ..." So,
39 98 sub (3) is sort of the emergency spending
40 power of a strata corporation. And the Court of
41 Appeal confirms that, "She noted that the
42 authority to make unauthorized [expenditure] ...
43 was constrained by the requirement that the
44 expenditure not exceed the minimum amount needed
45 to ensure safety or prevent significant loss or
46 damage ..." And that's something different than
47 what we're grappling with under a section 173

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1 test.
2 THE COURT: Section 98 is not at issue on this
3 petition then?
4 CNSL K. UPPAL: It's not --
5 THE COURT: All right.
6 CNSL K. UPPAL: -- no, but I think it's important just
7 for that distinction, that 98 is there to spend
8 money when something is perhaps a life safety
9 issue, whereas 173 was enacted and intended to do
10 something different.
11 And then if we just go on to paragraph 86.
12 THE COURT: Mm-hmm.
13 CNSL K. UPPAL: And this is important. Halfway down
14 the page there, the court talks about, and I'll
15 read it from "Because the Act":
16
17 Because the Act gives the court the power to
18 approve a special resolution, rather than
19 the power to draft the resolution, it leaves
20 in the hands of the Strata Corporation the
21 responsibility for formulation of the
22 resolution and discretion to determine the
23 timing and scope of repairs. It would be
24 unworkable to leave such matters in the
25 hands of the [court].
26
27 And then further down at paragraph 87.
28
29 ... the starting point for the analysis
30 should be deference to the decision made by
31 the strata council, approved by the majority
32 of [the] owners: ...
33
34 And I think that's an important point here, that
35 we do have majority agreement with this -- with
36 this repair project and the scope.
37 THE COURT: But isn't that a reference -- perhaps I
38 misunderstood. I thought that voting to the --
39 of the Strata Council was perhaps by majority.
40 Is that what that was meaning?
41 CNSL K. UPPAL: I -- I read it as the -- the majority
42 of the owners agree with that resolution.
43 THE COURT: So -- so, in other words, you're into 173
44 if there has been more than 50 percent?
45 CNSL K. UPPAL: Correct.
46 THE COURT: I see. Okay. All right.
47 CNSL K. UPPAL: And essentially they have agreed with

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1 the majority of the Strata Council --
2 THE COURT: I see.
3 CNSL K. UPPAL: -- as well, so I guess you may have a
4 double majority there, but that's how I read that
5 section.
6 THE COURT: Okay.
7 CNSL K. UPPAL: And then at paragraph 88, the court --
8 THE COURT: So, where does -- where do you say
9 deference comes in? If there are two branches to
10 the test, broadly speaking --
11 CNSL K. UPPAL: Mm-hmm.
12 THE COURT: -- and perhaps you and your friend may
13 say -- might say that there's not two branches,
14 but if -- if I would -- if one would posit
15 there's two branches, one is it necessary within
16 the statutory definition, and then, secondly, if
17 so, should discretion should be exercised or
18 not --
19 CNSL K. UPPAL: Mm-hmm.
20 THE COURT: -- where does deference fit in, do you
21 say?
22 CNSL K. UPPAL: I would say it's to the -- it's sort
23 of the starting point of the analysis.
24 THE COURT: All right.
25 CNSL K. UPPAL: And so I think it would be, you know,
26 a -- maybe an acknowledgement that this is the
27 direction the Strata Council and the Strata
28 Corporation has gone by majority vote. And so
29 unless anything convinces the court in the
30 alternative, which will probably come up in
31 the -- in the four factors under the discretion,
32 I think that's the -- sort of the where the
33 analysis ought to begin.
34 THE COURT: All right.
35 CNSL K. UPPAL: At paragraph 88, the Court of Appeal
36 cites Justice Pearlman, "... where he concluded
37 that the strata corporation was entitled to rely
38 on the resolve advice it had received ...," and
39 then in that decision Justice Pearlman agreed
40 that the repair proposed was necessary.
41 So, those four factors in the exercise of
42 the court's discretion are highlighted at
43 paragraph a hundred of the decision, and they're:
44
45 ... whether the Strata Corporation acted in
46 good faith;
47

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1 ... whether there were procedural
2 irregularities in the manner in which the
3 resolution was proposed and passed by a
4 majority of the votes cast ...;
5
6 ... whether the Strata Corporation acted
7 reasonably on the strength of professional
8 advice in seeking to impose the special
9 levy; and
10
11 ... [whether court --] whether court
12 approval of the resolution would unfairly
13 prejudice the owners in the minority.
14
15 From my understanding, only two of those are at
16 issue and that is whether the strata corporation
17 acted in good faith and whether the strata
18 corporation acted reasonably on the strength of
19 the professional advice.
20 So, when we go to the sort of core of the
21 test, whether the strata has demonstrated that
22 the proposed work is necessary to prevent
23 significant loss or damage, I'll just take you to
24 what "significant loss or damage" means.
25 THE COURT: So, sorry, I was just making a note. If
26 you could -- so, you're going -- what paragraph
27 are you on?
28 CNSL K. UPPAL: I'm going to paragraph 114.
29 THE COURT: All right. Mm-hmm.
30 CNSL K. UPPAL: So, the first branch of the test -- or
31 the -- the first branch of the test is that --
32 it's -- it's a two part, whether there's life or
33 safety issues essentially, and whether the repair
34 work is necessary to prevent significant loss or
35 damage, whether physical or otherwise. And
36 paragraph --
37 THE COURT: Did you say life or safety issues?
38 CNSL K. UPPAL: Sorry, prevent -- I don't want to
39 misspeak. I keep thinking of "life and safety"
40 in that other ...
41 THE COURT: "Significant loss or damage, whether
42 physical or otherwise", is that ...
43 CNSL K. UPPAL: The first branch deals with addressing
44 safety concerns, I believe. I should have 108
45 right in front of me here. Oh, sorry, it's just
46 the branch of whether -- so, it's subsection --
47 under 173 subsection (2), if it is -- if the

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1 resolution is proposed to approve a special levy
2 to ensure safety, that's sort of one -- it's been
3 sort of interpreted as "to ensure safety" is sort
4 of one question, or to prevent significant loss
5 or damage, whether physical or otherwise. And
6 where I'm taking the Court is the -- the meaning
7 of "prevent significant loss or damage, whether
8 physical or otherwise".
9 THE COURT: And so you're -- all right. Mm-hmm.
10 Thank you.
11 CNSL K. UPPAL: So, I was at paragraph 93. My
12 apologies. I'll go to 114 in a moment, but
13 paragraph 93 --
14 THE COURT: Mm-hmm.
15 CNSL K. UPPAL: -- essentially confirms the chambers
16 judge's sort of application of that, where she
17 says:
18
19 ... "significant loss or damage" is that
20 which is considered to be "extensive or
21 important enough to merit attention" ...
22
23 THE COURT: Mm-hmm.
24 CNSL K. UPPAL: And -- and this is here where she
25 repeats:
26
27 It is not, however, necessary for the Strata
28 Corporation to establish that the work must
29 be done immediately, that there is an
30 imminent risk ... or that the work proposed
31 is the minimum necessary to [identify the]
32 risk.
33
34 And then just to round out the -- so,
35 we've -- I have established in that paragraph
36 that the question is whether the work is
37 extensive or important enough to merit attention.
38 And then I think the rest of that sentence says
39 "or otherwise". So, "prevent significant loss or
40 damage, whether physical or otherwise". And
41 paragraph 114 of the *Thurlow* decision confirms
42 what that means. So, paragraph 114 summarizes
43 another Supreme Court case where case authorities
44 have --
45 THE COURT: Just -- sorry, just --
46 CNSL K. UPPAL: Yeah.
47 THE COURT: -- I -- just let me turn forward to there,

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1 please. 114. All right. Okay.

2 CNSL K. UPPAL: "Case authorities have interpreted",
3 right at that reproduction of -- of paragraph
4 149 --

5 THE COURT: Mm-hmm.

6 CNSL K. UPPAL: -- under 114.

7
8 Case authorities have interpreted the
9 word "otherwise" in s. 173(2)(a) of the
10 Act to include loss of value to the
11 units, potential for waste of money if
12 only targeted repairs are done, and the
13 potential for increased costs when the
14 remediation does take place.

15
16 Those are my comments broadly on sort of
17 the -- the test and the way that it ought to be
18 considered in assessing this case.

19 The court also said, at paragraph 60 of my
20 written submission, the court stated that:

21
22 If the evidence established the existence of
23 a safety risk, and that one reasonable way
24 to deal with [the] risk was to do work as
25 extensive as that proposed by the Strata
26 Corporation, then the threshold for making a
27 s. 173(2) order was overcome.

28
29 And my submission on that point is simply to say
30 that *Thurlow* considered that -- that branch of
31 the test under safety, whether it was required
32 to -- to deal with a safety issue, and I say that
33 the same must, of course, equally be true where
34 the evidence established a risk of significant
35 loss or damage, whether financial or otherwise,
36 which is the other alternative branch of section
37 173 sub (2).

38 THE COURT: And so what are you -- what -- so, what
39 are you -- what's the point you're making then in
40 para. 60, that --

41 CNSL K. UPPAL: That --

42 THE COURT: -- for to establish on a --

43 CNSL K. UPPAL: -- the Strata Corporation has
44 established one reasonable way to deal with the
45 prevention of significant loss or damage. And so
46 the court said that that was good enough to
47 satisfy the test from the life safety

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1 perspective, and so we say that that ought to be
2 good enough to satisfy the test on the -- the
3 branch that we rely on. Because our submission
4 is that the -- the evidence establishes a risk of
5 significant loss or damage or otherwise, which
6 was part of the economic loss that LDR sort of
7 highlights --
8 THE COURT: Mm-hmm.
9 CNSL K. UPPAL: -- over and over again, that this
10 proposed scope is -- is -- part of the components
11 included in the proposed scope is because access
12 is already going to be obtained, economies of
13 scale, the sort of benefit to the Strata
14 Corporation of doing some of that work at the
15 same time.
16 THE COURT: And that's caught within the one
17 reasonable way of dealing with the ... So, I
18 just -- I just want to make sure I follow your
19 analysis, your submission. So ... I see. So,
20 you're -- you're breaking down that first branch
21 of the test then by saying is there -- does the
22 evidence establish that there is a safety risk or
23 a risk of significant loss or damage.
24 CNSL K. UPPAL: Yes.
25 THE COURT: And then, secondly, is it -- is the
26 work -- proposed work necessary. And asking
27 whether it's necessary, your submission is that
28 means is that a reasonable way of dealing with
29 it, is that what you're getting at?
30 CNSL K. UPPAL: I think that is where I am -- I am
31 establishing that the threshold requirement that
32 *Thurlo* talks about has been met. I think
33 there -- there is still -- we still have to
34 demonstrate that -- the actual portion of -- of
35 the test which requires that the work is
36 extensive or important enough to merit attention.
37 That is -- that is also part of that --
38 THE COURT: Mm-hmm.
39 CNSL K. UPPAL: -- analysis. But when I'm talking
40 about the -- the threshold question, I say that
41 once the threshold has been met, that we've --
42 we've determined one reasonable way to -- to deal
43 with the -- the issues, that we've met that
44 threshold. And that's sort of summarized at
45 paragraph 62 of the submission, where the
46 submission confirms that -- the court says you're
47 generally entitled to an order approving the

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1 special levy unless there is some extenuating
2 circumstance which disentitles it from such an
3 order once you've met that threshold question.
4 THE COURT: Okay. And you're -- that's at paragraph
5 60?
6 CNSL K. UPPAL: 62.
7 THE COURT: 62. So, that's the discretionary part, is
8 that what you're saying?
9 CNSL K. UPPAL: That's the -- the -- where the court
10 identified sort of this threshold question. Once
11 you have achieved that --
12 THE COURT: Mm.
13 CNSL K. UPPAL: -- I think that's before --
14 THE COURT: Mm-hmm.
15 CNSL K. UPPAL: -- the discretionary part. I think
16 that is when --
17 THE COURT: Okay.
18 CNSL K. UPPAL: -- you have sort of established
19 108 sub (2) either as something that ensures
20 safety or something that would prevent
21 significant loss or damage. That's where the
22 threshold question comes from, or it comes into
23 play. Once we have established that, the
24 question moves on to whether the court should
25 exercise its discretion not to approve the levy.
26 So, our submission on -- is that we've -- well,
27 I'm going to go on to the next page.
28 THE COURT: Okay.
29 CNSL K. UPPAL: I won't get too into it.
30 So -- so, essentially sort of there's
31 this -- these two parts. So, there is the test
32 in 108, whether the work is necessary to ensure
33 safety, or, in our view, we're going to be
34 relying on it's necessary to prevent significant
35 loss or damage, whether physical or otherwise,
36 the second branch of the test.
37 THE COURT: Mm-hmm.
38 CNSL K. UPPAL: And we say that threshold has been
39 met, and that would require the court then to
40 turn to its exercise of discretion.
41 I talk again at paragraph --
42 THE COURT: And -- and are you going to go to the
43 application of that? Because I -- I do have a
44 question. I just would want you to just refer me
45 to the evidence --
46 CNSL K. UPPAL: Okay.
47 THE COURT: -- of necessity of that. I know you've

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1 referred to the reports. But in terms of the
2 necessity of the work, is that in the letter, the
3 April 2023 letter from --
4 CNSL K. UPPAL: Yeah, it's -- it's in the letter, the
5 April 2023 letter. It's also in a few places in
6 the responding review. My -- LDR's responding
7 review where he goes through each of sort of the
8 scopes of work and says, well, if it's not done,
9 you're going to get further deterioration,
10 further delamination, and a chance of water
11 ingress.
12 THE COURT: And have you taken me to the sections of
13 the responding review that you want to rely --
14 CNSL K. UPPAL: I don't think I have taken you to a
15 specific section --
16 THE COURT: Okay.
17 CNSL K. UPPAL: -- so I can do that.
18 THE COURT: You don't have to do that now necessarily,
19 but I -- I will -- before you sit down, I am just
20 going to ask you --
21 CNSL K. UPPAL: Okay.
22 THE COURT: -- if -- because I know you have taken me
23 to evidence of the reports --
24 CNSL K. UPPAL: Mm-hmm.
25 THE COURT: -- the LDR reports. And then you did take
26 me to a letter was that written in around
27 April -- sometime --
28 CNSL K. UPPAL: 2023, yes.
29 THE COURT: -- April 2023 by LDR saying that their
30 view is that these were necessary or -- I'm
31 paraphrasing --
32 CNSL K. UPPAL: Correct.
33 THE COURT: -- but then you have just said that
34 there's -- there's some other evidence you want
35 to rely on for that. I don't think I have been
36 taken to that.
37 CNSL K. UPPAL: Yeah. And what I -- I'll say on that
38 point -- and that's sort of the next part of
39 my -- my submission. What I'll say on that point
40 is the submission is really it's the totality of
41 the evidence. The 2015 depreciation report, the
42 2022 depreciation report, really BECA that
43 confirms that all of these areas need some repair
44 and maintenance. Because of the wording of the
45 section, I think it's helpful for the Court that
46 some of that is written in black and white and so
47 I will take you to those sections.

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1 THE COURT: Okay. All right. So, I interrupted you
2 in your submissions. So, where -- where -- what
3 paragraph are you on?

4 CNSL K. UPPAL: Let's see. So, at paragraph 63 of my
5 submission I -- I talk about the deference to the
6 strata council, which I have taken you to that
7 provision, and that the Strata Corporation is
8 entitled to rely on the -- the advice it's
9 received. All I'll say in -- for that, sort of
10 just to round out that or complete that, those
11 comments, is that this language is reminiscent of
12 the reasonableness standard in judicial reviews.
13 It's not the court's -- it's my submission it's
14 not the court's role to determine whether the
15 Strata Corporation's proposal or a proposal
16 preferred by the respondent is -- is correct or
17 more referred. Provided the Strata Corporation's
18 approach is a reasonable one, a special levy
19 should be approved by the Court.

20 So, now I get into what you have just asked,
21 Justice, with respect to the Maintenance Project
22 is necessary to ensure safety or prevent
23 significant loss or damage. It's -- it's the
24 Strata Corporation's submission that the second
25 opinion offered by Tri-Can does -- does not
26 dispute the necessity of the Maintenance Project
27 to ensure safety or prevent significant loss or
28 damage. What appears to be at the heart of -- of
29 their position is that the timing is not now and
30 perhaps the scope. And on that point we say that
31 the court held in *Thurlow* that it's up to the
32 strata corporation to have the responsibility to
33 determine the timing and scope and it would be
34 unworkable to leave it in the hands -- in that
35 case they were talking in the hands of the court.
36 The respondents' intensive analysis of the scope
37 of work proposed by the Strata Corporation
38 increases the costs to be borne by owners and
39 fails to address the deadlock that the
40 legislature clearly intended to resolve.

41 There are two life safety issues that I have
42 highlighted throughout my submissions that have
43 sort of become apparent in these engineering
44 reports. So, at section [sic] 68 I highlight
45 those two life safety issues as -- as the
46 attachment of the window wall screen to wood
47 instead of concrete, and the concrete spalling is

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1 highlighted in the -- in the reports.
2 THE COURT: But the rest of them are not life safety
3 issues, they're significant loss issues, you say?
4 CNSL K. UPPAL: Correct.
5 THE COURT: Okay.
6 CNSL K. UPPAL: And then at paragraph 69 is where I
7 take Your -- Your Justice back to the letter
8 dated April 25, 2023, writing that "the need for
9 the repairs is indicated in the BECA, and not
10 implementing such maintenance repairs is likely
11 to result in further damage in the future". But
12 what I will do to sort of round out that
13 discussion is take you to affidavit number 3 of
14 Chris Black. That's at tab 5 in binder 3.
15 THE COURT: Binder 3, tab 5. Okay.
16 CNSL K. UPPAL: So, this is when LDR goes through sort
17 of each of the scopes sort of in big paragraphs
18 and -- and clarifies some of -- what was in the
19 second review, but then he also comments
20 specifically on what would happen if -- if the
21 work was delayed. So, if I go to page 111,
22 that's Exhibit B of the affidavit of Chris Black
23 number 3.
24 THE COURT: Just one second, please. So, tab B, page
25 111. Okay. So, this is the responding -- sorry,
26 the --
27 CNSL K. UPPAL: Reviewing report.
28 THE COURT: -- the reviewing report.
29 CNSL K. UPPAL: And if you go down, at the very
30 bottom, the very last sentence at the very end of
31 the page, where -- I'll just read from "delaying
32 the remaining work".
33 THE COURT: Just hang on a second. Bottom of the
34 page 111.
35 CNSL K. UPPAL: Yes.
36 THE COURT: And 3 point which?
37 CNSL K. UPPAL: 3.5.
38 THE COURT: Yeah.
39 CNSL K. UPPAL: At the bottom of that paragraph. I
40 won't read the whole paragraph, but he starts, at
41 the very last sentence at the bottom, "delaying
42 the remaining work". It's, like, the last three
43 words of the page.
44 THE COURT: I see. Okay.
45 CNSL K. UPPAL: Yeah.
46
47 ... delaying the remaining work will likely

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1 result in more damage and increased costs,
2 plus inflation).
3

4 So, that's where he's talking about re
5 waterproofing and dealing with the -- the spalled
6 concrete issue. And then if you go down 3.6
7 to -- in the second bullet. So, we have 3.6, the
8 second bullet, the very last sentence --

9 THE COURT: Yes.

10 CNSL K. UPPAL: -- "Further delaying this work could
11 result in damage to the remaining systems
12 (... require further removal of the base coat),
13 water ingress, deterioration to the suspended
14 slab, spalling concrete, and/or delaminating
15 concrete."

16 And then again at page 113, at the first
17 paragraph of the page again, halfway down the
18 paragraph, LDR's opinion states:
19

20 To avoid further damage to the remaining
21 base coat ... and to avoid water ingress
22 through the suspended parking garage slab
23 and possible deterioration, we do not
24 recommend delaying for 5 years. Rather we
25 recommend all this work be completed now, as
26 part of the first priority category, and as
27 part of the proposed scope of work.
28

29 At the bottom of -- at 3.7, first bullet,
30 last sentence --

31 THE COURT: Mm-hmm.

32 CNSL K. UPPAL: --
33

34 Further delaying this work could result in
35 water ingress, spalling concrete, and/or
36 delaminating concrete.
37

38 And then it's in that same binder at tab 4,
39 tab B is where we -- we have reproduced the
40 April 2023 letter.

41 THE COURT: Tab -- same binder, tab?

42 CNSL K. UPPAL: 4B. It's an earlier affidavit of
43 Chris Black.

44 THE COURT: I thought you had taken me to it somewhere
45 else in the record, but -- but --

46 CNSL K. UPPAL: I believe it's twice in the record --

47 THE COURT: Yeah.

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1 CNSL K. UPPAL: -- once to demonstrate it was sort of
2 sent to owners, and then it's there as well.
3 THE COURT: And -- and -- and I notice that that
4 letter didn't deal with recommendation 20, at the
5 end of the second paragraph. Is that covered off
6 in the responding report -- or the reviewing
7 report, pardon me?
8 CNSL K. UPPAL: I'll have to check on that for you.
9 And I'll just take you also to the text at -- at
10 the tab -- tab 4 affidavit. This affidavit was
11 prepared when we were contemplating the
12 adjournment of a previous date. And at page 2 of
13 the affidavit, paragraph 7 [as read], "If the
14 Strata were to delay carrying out repairs to 2025
15 due to lack of approval, it is my opinion and
16 belief that costs will increase for the same
17 scope of work in 2025. These costs are -- that
18 are likely to increase include soft costs, such
19 as ours at LDR, as well as hard costs, such as
20 those of the contractors retained." That's just
21 another place where the -- this idea of -- of
22 increased costs in the future, which is part of
23 the test under "physical or otherwise", is a
24 consideration of the court in meeting that branch
25 of the test.
26 THE COURT: The -- just the cost issues?
27 CNSL K. UPPAL: The cost issue is -- has been
28 confirmed that that is to be considered under the
29 "or otherwise" consideration of the test.
30 THE COURT: All right. Okay.
31 CNSL K. UPPAL: Okay. So, that would round out, at
32 paragraph 70 of my submissions, my submission on
33 meeting the branch of the test where there are
34 two life safety risks and that the remainder of
35 the scope of work is required to prevent
36 significant loss or damage, whether financial or
37 otherwise, and so it's our submission that the
38 threshold for this court making a section 173 sub
39 (2) order is overcome.
40 THE COURT: All right.
41 CNSL K. UPPAL: Now, the next part of my submission
42 we'll go through the two factors in which we say
43 the Court should exercise its discretion. At
44 paragraph 72 I confirm that the respondents point
45 to two of the above-listed factors for this Court
46 to consider and that are at issue, namely,
47 whether the Strata Corporation acted in good

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1 faith, and whether the Strata Corporation acted
2 reasonably on the strength of professional advice
3 in seeking to impose a special levy. We say that
4 there -- the other two factors are not at issue.
5 There's no procedural irregularities or issues
6 with the votes, and there's no evidence that
7 would support a finding that court approval would
8 unfairly prejudice the owners in the minority.
9 So, I haven't made -- I'm not making any
10 submissions on that.

11 THE COURT: So, which -- so, just on -- okay.
12 CNSL K. UPPAL: So, in the first branch, the
13 respondents' claim is that the Strata Corporation
14 withheld key documentation, withheld the complete
15 scope of the Maintenance Project, made
16 exaggerated communications on negative outcomes
17 if the special levy failed, and attempted to
18 punish unit owners who spoke out against the
19 special levy, and as such acted in bad faith.

20 The -- the court in *Thurlow* doesn't
21 determine -- or -- or sort of assist the
22 strata -- assist in making the determination
23 about whether a strata corporation has acted in
24 good faith or -- or not. And so I turned -- just
25 as sort of some helpful guidance perhaps, I have
26 quoted section 31 of the *Strata Property Act* that
27 confirms that:

28

29 In exercising the powers and performing the
30 duties of the strata corporation, each
31 council member must

32

33 ... act honestly and in good faith with
34 a view to the best interests of the
35 strata corporation

36

37 It's our submission that the respondents
38 bear the burden of proof on their allegation that
39 the Strata Council breached its statutory duty of
40 good faith, and the law presumes good faith
41 unless the contrary is proven. We say there is
42 not any evidence that suggests the Strata
43 Council's actions were not in good faith. All
44 statements made by the Strata Corporation have
45 been informed by professional advice received
46 from engineers to ensure safety and prevent
47 significant loss or damage to the strata property

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1 and its asset. As such, we submit that any
2 statements made with respect to the Maintenance
3 Project were in good faith, and any statements
4 made ought to be considered in their full
5 context.

6 In considering some of the allegations of
7 the respondents, I just highlight some comments
8 made by this court in *Slosar v. KAS 2846*. That
9 case also dealt with the strata corporation's
10 compliance with its duty to repair and maintain
11 common property. And the standard in assessing
12 that is reproduced there, but I think what was
13 more -- I wanted to point to is:

14
15 The standard is not perfection nor is it to
16 be judged with the benefit of hindsight.

17
18 It must be remembered that Strata councils
19 are made up of lay volunteers and that
20 mistakes and missteps will doubtlessly occur
21 from time-to-time. Council members are not
22 to be expected to have expertise in the
23 subject matter of their decisions.
24 Accordingly, latitude is justified when a
25 strata council's conduct is being
26 scrutinized: ...

27
28 I'll just go -- I have just cited some more
29 law there. I don't think it's necessary for me
30 to read it to the Court, but at paragraph 81 I
31 address the claim that the Strata Corporation
32 intentionally withheld key documents. There is
33 no evidence in the record in which it can be
34 determined that these -- any owner requested
35 documents and weren't provided those documents.
36 There is a document disclosure provision in the
37 *Strata Property Act* under sections 35 and 36.
38 From what I have reviewed or what is in the
39 record, there doesn't appear that any section 35
40 or 36 request was made. Section 108 doesn't
41 require some extensive document production. It
42 just really requires the minutes. And what --
43 what is true here, in my submission, is that the
44 Strata Corporation held two town halls, did its
45 best to sort of summarize the work. I
46 acknowledge that there's no evidence that,
47 you know, bid documents or -- or quotes were sent

Submissions for the Petitioner by Cnsl K. Uppal

1 to owners for review, but those are matters best
2 left in the hands of the Strata Council and,
3 nevertheless, nothing was requested by any owner
4 that was refused to be provided.
5 There is a claim by the respondents that the
6 Strata Corporation's --
7 THE COURT: What paragraph are you on?
8 CNSL K. UPPAL: Paragraph 82.
9 THE COURT: All right.
10 CNSL K. UPPAL: So, there is a claim from the -- the
11 respondents that Christopher Black, the engineer
12 here, is in a conflict of interest because he was
13 previously the Strata Council president. Now,
14 that true. The council president part, not the
15 vice part. At -- at the affidavit number 3 of
16 Christopher Black, which is at tab 5, Mr. Black
17 confirms that he started doing work on the
18 property in 2019. This is at paragraph 2.
19 THE COURT: All right.
20 CNSL K. UPPAL: His spouse was the owner of a
21 strata lot at the Strata from early 2010 until
22 the sale of that strata lot in 2017. Mr. Black
23 was a vice president between certain years, so
24 2010 and 2012, and again between 2013 and 2017,
25 however, it's clear that -- from this affidavit
26 that he ceased being in any governance of the
27 Strata Corporation in 2017, and then was retained
28 the first time by the Strata Corporation in 2019.
29 He says [as read], "While I was providing
30 professional engineering services to the strata,
31 I acted wholly in a professional capacity.
32 Further, during the time that I had been
33 providing professional engineering services, I
34 have -- I have had no with the strata as a
35 council member, owner or self as an owner."
36 THE COURT: Does he live in the strata?
37 CNSL K. UPPAL: Not after 2017.
38 THE COURT: I see.
39 CNSL K. UPPAL: So, there's a clear delineation
40 between when they sold their unit, his wife owned
41 the unit --
42 THE COURT: I see.
43 CNSL K. UPPAL: -- that entitled him to be on the
44 council; he was on the council, and then he left
45 the strata property in 2017.
46 THE COURT: All right.
47 CNSL K. UPPAL: That's summarized at paragraphs 83 and

Submissions for the Petitioner by Cnsl K. Uppal

1 84 of my submission.

2 There is going to be some evidence submitted
3 by my friend and I'll -- I'll touch on it
4 briefly. It's about this WeChat group that
5 owners frequently have discussions on. There is
6 a claim in my friend's response in his affidavit
7 materials that the council president referred to
8 a group of owners as a "lynch mob". The Strata
9 Corporation submits these documents do not show
10 that the Strata Corporation acted in bad faith
11 with respect to the steps it took to prepare for
12 the special levy. The message was sent by the
13 council president was sent after the vote for the
14 special levy already had taken place and as such
15 does not reflect on the Strata's actions when
16 preparing for and seeking to impose the special
17 levy. The -- the affidavit evidence will show
18 that the -- if you read the full context of the
19 communication and his affidavit in response, he
20 says it was based -- sort of it was a response
21 based on previous communications of owners who
22 had accused the council president of embezzlement
23 and stealing from the Strata Corporation.

24 There is some evidence in that WeChat group
25 about the council president making communication
26 about in the worst case scenario the building
27 could collapse. And the Strata Corporation again
28 submits that that message does not prove the
29 Strata Corporation acted in bad faith because the
30 message was framed within the context of a "worst
31 case scenario", and the message included other
32 comments, such as the "best case" scenario. So,
33 it was really just an opinion.

34 There is also, I think, the respondents take
35 issue with a complaint that was made by the
36 council president to the Association of
37 Professional Engineers and Geoscientists in the
38 province of B.C. against Zhen Cao as evidence of
39 the Strata's bad faith. So, what the -- my
40 submissions sort of summarize and what the
41 affidavit evidence demonstrates is that at the
42 special general meeting Zhen Cao opined on the
43 repairs to be funded by the special levy in his
44 capacity as a condominium engineer, despite the
45 fact that he had not consulted with the Strata on
46 the matter previously.

47 It's the Strata Corporation's view that

Submissions for the Petitioner by Cnsl K. Uppal

1 Mr. Cao communicated a number of assertions to
2 owners that were contrary to the reports that the
3 Strata Corporation was relying on. So, at
4 paragraph 91 I just summarize Mr. Cao's comments
5 that: the repairs were not required; there was
6 no risk to Lotus' building envelope; the proposed
7 prices of repairs was too high; the council
8 president had an interest in the repairs as a
9 penthouse owner, and there was -- if there was a
10 leak from the exterior into the strata lot, only
11 that strata lot owner would be liable to pay for
12 the repairs.

13 And so the council president deposes in his
14 affidavit that he made a complaint on the basis
15 that Mr. Cao used his professional status as an
16 engineer to communicate his opinion to other
17 owners at the SGM, where his opinion was contrary
18 to the advice the strata had received from --
19 from different engineering firms. Again, this is
20 an action of the Strata Corporation -- or of the
21 president and it's our submission that it was in
22 his capacity as an owner, but this was done after
23 the special levy vote. It's our view that none
24 of the allegations of bad faith point to anything
25 that was done before the vote that sought to --
26 to put the levy in play. So -- so, we say it's
27 essentially irrelevant.

28 And then the next portion of my submissions,
29 94 -- paragraphs 94 to 97, just confirm that it
30 acted reasonably on the strength of professional
31 advice, and, again, we highlight all of those
32 different projects that have been sort of in
33 place since 2015 or the different reports. And
34 it's our submission that the Strata Corporation
35 has acted reasonably in relying on the advice
36 received by qualified engineering firms over the
37 course of almost nine years from the first report
38 that highlighted that these issues were going to
39 come into play.

40 And the conclusion is there in my submission
41 as to what the -- the petitioner is seeking. It
42 is our view that the threshold for a section 173
43 order is met because the Maintenance Project is
44 necessary to ensure safety and prevent
45 significant loss or damage. And we say that
46 there is nothing in the court's exercising of its
47 discretion that should not approve the special

57

Submissions for the Petitioner by Cnsl K. Uppal
 Submissions for the Respondents listed in Appendix A of
 Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 levy. And those are the petitioner's submissions
 2 subject to your questions.
 3 THE COURT: Just returning to my question about
 4 recommendation 20. I take it even though that
 5 wasn't referred in the letter, your petition is
 6 that's bound up in the work plan that is the
 7 subject of Mr. Black's evidence?
 8 CNSL K. UPPAL: I'm going to clarify where I can find
 9 reference to that. I'd like to give you the most
 10 accurate information.
 11 THE COURT: Okay. All right. I'll just -- I'll leave
 12 that then.
 13 CNSL K. UPPAL: Thank you.
 14 THE COURT: All right. Yes, so, you have time to
 15 begin your submissions before the lunch break.
 16
 17 **SUBMISSIONS FOR THE RESPONDENTS LISTED IN APPENDIX A**
 18 **OF RESPONSE TO PETITION (FILED MAY 14, 2024) BY**
 19 **CNSL C. WONG:**
 20
 21 CNSL C. WONG: Yes. Apologies. I have to organize a
 22 little bit. There's several big binders here.
 23 THE COURT: Yes. Yes, there are several binders.
 24 CNSL C. WONG: Okay.
 25 So, well, it is afternoon, I just want to --
 26 good afternoon, Mr. Justice. My name is Chris
 27 Wong. I represent the individual respondents.
 28 So, we'll refer to them as the Appendix A owners
 29 of the strata in this case. And, again, I will
 30 just quickly point out that, like, while Mr. Cao
 31 is written as one of the owners, he has sold his
 32 unit and I don't believe he would be part of the
 33 Appendix A owners at this point, however, that
 34 is -- I don't -- I don't believe that is of key
 35 relevance to the hearing today.
 36 So, the central issues surrounding these
 37 proceedings is the section 172 application by the
 38 Strata to -- for a special -- to approve a
 39 special -- special levy to the amount of
 40 3,924,670, almost \$4 million for a large --
 41 THE COURT: And -- and you're going to --
 42 CNSL C. WONG: -- renovation.
 43 THE COURT: -- you're just going to be reading -- just
 44 so I can follow, you're in your Application
 45 Response, are you or?
 46 CNSL C. WONG: Sorry, I was just -- I was just laying
 47 out -- I was reading from my notes.

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 THE COURT: Just -- just from your notes, okay.
2 CNSL C. WONG: I was laying out some of the base
3 background that we have already covered. I could
4 refer to specific areas of the affidavit if
5 necessary, however --
6 THE COURT: Well, it's -- I -- I wanted -- if you were
7 reading from something before me, I wanted to
8 follow you. It sounds like you're reading of
9 your -- you're -- you're just going to be making
10 submissions off your notes and that's all right.
11 CNSL C. WONG: Yes.
12 THE COURT: I just wanted to make sure if there's
13 something I should follow along with you. I did.
14 And just with respect to Mr. -- Mr. "S'ao",
15 Mr. --
16 CNSL C. WONG: "Ts'ao", yeah, yeah.
17 THE COURT: -- "Ts'ao", so he is a -- he is -- he is
18 in Appendix A, I take it?
19 CNSL C. WONG: Yes, he is in Appendix A.
20 THE COURT: All right. So -- so, the submissions
21 being made include submissions on his behalf then
22 today.
23 CNSL C. WONG: Yes, I -- I -- uhh. We do acknowledge
24 that he might not have standing to be in
25 Appendix A -- be a respondent at this point,
26 however, we will be relying on affidavits
27 provided by Mr. Cao, as he was a unit owner at
28 the relevant times, during the two town hall
29 meetings and during the SGM and on the early
30 stages of the -- of the preparation of the
31 petition response. However, I don't believe he
32 has standing to be a party anymore, subject to
33 any rulings of this court.
34 THE COURT: All right. Is this an issue that's
35 contentious between the parties? I don't want to
36 belabour it if it's not.
37 CNSL C. WONG: I --
38 THE COURT: Is this ...
39 CNSL C. WONG: -- don't believe or ...
40 CNSL K. UPPAL: We started discussions on it, but we
41 didn't really make a finding. I think the only
42 place it would become relevant is if a costs
43 award is made. So, it may need to -- we may need
44 to address it at the lunch break and provide
45 some --
46 THE COURT: I just ask you to talk about that over the
47 lunch break and --

Submissions for the Respondents listed in Appendix A of Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 CNSL K. UPPAL: Yeah.
2 THE COURT: -- we can revisit it, all right?
3 CNSL C. WONG: Okay.
4 CNSL K. UPPAL: Thank you.
5 THE COURT: Thank you.
6 CNSL C. WONG: So, again, just in terms of general
7 background, the strata consists of three
8 buildings, with a total of 286 strata lots, and
9 is currently 16 years old, as the strata plan was
10 deposited in May 5, 2008. I believe this is
11 covered in the first affidavit of Mr. Jang on
12 tab 2, just in --
13 THE COURT: So, 286 units.
14 CNSL C. WONG: Yes.
15 THE COURT: Built in 20-- 2008.
16 CNSL C. WONG: Yeah. The strata -- the strata plan
17 was deposited in 2008.
18 THE COURT: All right.
19 CNSL C. WONG: Yeah. And the resolution itself was
20 brought forth and an SGM scheduled for
21 April 13th, 2023. And these details have already
22 been covered by my friend.
23 THE COURT: Yes.
24 CNSL C. WONG: So, unfortunately, like, it is the
25 respondents' position that from the very
26 beginning this resolution and the legal dispute
27 that stems from this resolution was characterized
28 by a lack of disclosure and communication from
29 the strata to the unit owners, as well as a
30 certain, let's just say, inappropriate behaviour
31 from the Strata Council towards -- towards
32 individual owners.
33 I would also like to point out that one key
34 fact that from the respondents' perspective
35 distinguishes this application from many of those
36 in the case law is that the resolution is not
37 for, in a sense, a single repair. The resolution
38 for eight repairs based on the eight
39 recommendations of the BECA rolled into one. So,
40 unlike the case as in *Thurlow* where what was
41 discussed was the wholesale repair of
42 waterproof -- exterior waterproofing, for
43 example, in this specific -- in this specific
44 resolution there is a multitude of repairs that
45 is being proposed at the same time and it is
46 everyone's position that -- that the scope of
47 these repairs are ill-defined and actually has

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 fluctuated throughout this petition,
2 throughout -- throughout the -- the litigation
3 process.

4 So, just in terms of the events leading up
5 to the lawsuit, as least from the perspective of
6 the individual owners, if I could bring,
7 Mr. Justice, your attention to the first
8 affidavit of Zhen Cao, which was sworn
9 February 6, 2024, book 3, tab 7.

10 THE COURT: All right. I am at book 3, tab 7.

11 CNSL C. WONG: Yeah. So, starting from paragraph 2
12 onwards to paragraph 6, Mr. Cao deposes that he
13 had no -- that he had no knowledge -- he first
14 found out about the proposed project on or
15 about -- on or about March 14th, 2023, when the
16 Strata Council gave a notice of a town hall
17 meeting. And at around that time he received a
18 short summary of the proposed work, which is
19 referred to as in Exhibit M of the first
20 affidavit of Mr. Jang and Exhibit G of the first
21 affidavit of Mr. Black. I believe those are the
22 one -- this document is the one that has the
23 multitude of pictures and the summary provided by
24 Mr. Black in preparation for the town hall
25 meeting. Would you like me to direct you to the
26 specific document?

27 THE COURT: I'll leave to you what -- what you wish to
28 take me to, but just if you don't take me to
29 something I -- I may -- don't -- don't rely on
30 the fact that I am going to necessarily review
31 things that you haven't taken me to, so.

32 CNSL C. WONG: Okay. I understand. And -- and at
33 that time Mr. Cao did receive a short summary of
34 the proposed work, however, he did not know what
35 the exact price of the proposed special levy was
36 until March 21st, 2023, when he received the
37 notice of the SGM. That -- and at that point he
38 found out that it would be nearly 4 million. And
39 in that sense Mr. Cao then deposes that he voted
40 against the special levy, as he was unconvinced
41 that the repairs were necessary, and -- and then
42 the resolution was defeated. This same process
43 was also reflected in the first affidavit of
44 Mr. Li, which is in tab 10 of book 3 --

45 THE COURT: All right.

46 CNSL C. WONG: -- who also -- that corroborates with
47 Mr. Cao's account in terms of when the individual

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 unit owners actually found out that they will be
2 facing a nearly 4 million dollar special levy.
3 That is roughly a month before the SGM was --
4 was -- that roughly a month before the SGM was
5 held. And more specifically, Mr. Li stresses,
6 and this will be from paragraphs 7 to 9, that
7 there was not enough information provided by the
8 Strata during the townhouse [sic] meeting or the
9 resolution to convince them that this large
10 special levy was necessary. And evidently Mr. Li
11 was not the only unit owner who was confused by
12 this expenditure, as there are other unit owners
13 who asked the Strata Council in the official
14 WhatsApp group on the details of the project,
15 what exactly this project entailed. And this is
16 in Exhibit B, page 7 of the exhibits of Mr. Li's
17 affidavit, in which --

18 THE COURT: Mm-hmm.

19 CNSL C. WONG: -- we have, like, the -- one of the
20 first summaries -- we have a summary of the
21 project provided by Mr. Jang, the Strata Council
22 president.

23 Now, I will just summarize what is said
24 here, but Mr. Jang responded in his -- and the
25 respondents submit that this will be in his
26 capacity as Strata Council president, that the
27 project is essentially a weather sealing project
28 to prevent water ingress and that not conducting
29 the repairs may lead to the building collapsing,
30 and the project is merely maintenance and not a
31 whole scale repair.

32 THE COURT: And so where are you reading from? I --
33 I --

34 CNSL C. WONG: I'm reading from page 7. This is
35 page 7.

36 THE COURT: No, but what -- like, where specifically?
37 So, because there's --

38 CNSL C. WONG: Specifically at the -- at the very --
39 at the third paragraph, I believe. "So -- so,
40 what this is, in layman's terms, is essentially
41 weather sealing our building exterior." [as read]

42 THE COURT: All right.

43 CNSL C. WONG: And then of course we move down a bit
44 further to the next paragraph. We come to
45 Mr. Cao's statement of [as read], "Worst case
46 scenario this leads to building collapsing like a
47 Miami condo collapse that killed a bunch of

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 people. In the best case scenario, the concrete
2 and rebar holds up and needs to be repaired, but
3 that is very obvious and costs more than -- than
4 maintenance, which this project is. We have some
5 areas that need to be repaired but not on a whole
6 scale basis."
7 And this should be then compared --
8 THE COURT: Are you providing me this for context or
9 is this going to one of the legal grounds?
10 CNSL C. WONG: This is -- this is for context.
11 THE COURT: Okay.
12 CNSL C. WONG: This is mainly for context.
13 THE COURT: Okay. All right.
14 CNSL C. WONG: And then -- and then if we compare
15 Mr. Cao's response on the WeChat platform, it
16 then contrasts with the work that was referred to
17 in the resolution, which is on -- apologies,
18 which is on Exhibit Q, the first affidavit of
19 Mr. Jang, tab 2. Apologies.
20 THE COURT: Sorry. So, that's Volume 1.
21 CNSL C. WONG: Yeah, Volume -- Volume 1, page 846.
22 THE COURT: All right. Okay. I'm --
23 CNSL C. WONG: 846 -- sorry, eight -- the -- the
24 description of the repairs is described on
25 page 848.
26 THE COURT: Okay.
27 CNSL C. WONG: Which -- which characterizes the repair
28 as remove and replace all exterior sealant and
29 waterproofing, recoat, paint, and waterproofing
30 due to for renewal and replacement of parkade
31 membrane. So, from the very get-go, from the
32 very start the unit owners were -- were given two
33 somewhat conflicting versions of what the exact
34 scope of work was. There -- either this project
35 was merely maintenance and not a whole scale --
36 whole scale repair or it is a remove and replace
37 all exterior sealant and waterproofing. So, it
38 either is an entire replacement or it is not,
39 however, they have been provided two conflicting
40 versions of what this repair actually is.
41 THE COURT: Although this is a somewhat official
42 notice in this one, I suppose. The other one was
43 a WeChat message, but.
44 CNSL C. WONG: Yes. Yes, I do -- yes, I --
45 THE COURT: And this is for the ... And what is this
46 that -- this is the minutes of the ...
47 CNSL C. WONG: It's -- I -- I believe this is the

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 notice -- yes, this is the minutes of the special
2 general meeting, but it does include the
3 resolution as provided.

4 THE COURT: Okay. All right.

5 CNSL C. WONG: And then of course the parties were
6 then also provided with Mr. Black's general
7 summary of what the work consists of.

8 And then as -- as it goes on, like, having
9 been given these versions of what the repair is,
10 we then move on to the townhouse meeting -- town
11 hall meeting, which is described in the second
12 affidavit of Mr. Cao on tab 9. Apologies for
13 moving back and forth so much.

14 THE COURT: So, we're at tab 9, Volume 3?

15 CNSL C. WONG: Yes.

16 THE COURT: Okay.

17 CNSL C. WONG: Mr. Cao then states that he believed
18 that the project was excessive. We're starting
19 at paragraph 6 -- sorry, paragraph 5. Where
20 Mr. Cao describes that -- that in addition to
21 what was set out in the work summary, the
22 proposed project also involved completely
23 removing all the pre-existing sealant,
24 waterproofing, and paint on all three towers of
25 the strata and replacing them with new ones. And
26 Mr. Cao expressed that he felt the project was
27 excessive and so openly questioned whether this
28 complete renewal was necessary during the
29 town hall meeting and asked the Strata Council
30 for an explanation.

31 And moving further down, on page 10, on
32 April 26, 2023 Mr. Cao deposes that after the
33 special levy resolution was defeated, he received
34 a communication from Engineers and Geoscientists
35 of B.C. informing him -- this will be the
36 professional regulatory body, informing him that
37 a complaint was being lodged against him by the
38 Strata Council president, Mr. Jang, claiming that
39 he has breached a code of ethics by providing
40 misleading information during a town hall
41 meeting. And as of the swearing of this
42 affidavit, which was in May 2024, the complaint
43 was still under review by the Engineering
44 Geoscientists -- by the regulatory -- regulating
45 body. And Mr. Jang of course claims that the
46 complaint was -- was issued due to -- the
47 complaint was issued due to Mr. Cao's behaviour

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 during the SGM rather than a town hall meeting
2 and this is where the two affidavits conflict
3 somewhat. It is the respondents' position
4 that -- that Mr. Jang's complaint was made in
5 response to Mr. Cao's behaviour during the town
6 hall meeting rather than during the SGM and so
7 occurs before the SGM vote was brought. And --
8 THE COURT: So, you're -- you're just going a little
9 quickly and I know -- I know you're trying to get
10 your submissions through, but I'm just trying to
11 understand your -- your point here. So, when was
12 the complaint made?
13 CNSL C. WONG: The complaint was communicated to --
14 the complaint was communicated to Mr. Cao on
15 April 26. We do -- like, Mr. Cao does not
16 exactly know when the complaint was made, but he
17 is under the impression that the complaint was
18 made due to his behaviour during the town hall
19 meeting rather than during the SGM.
20 THE COURT: Okay. And so you're asking the Court to
21 infer that it was -- that the complaint was made
22 before --
23 CNSL C. WONG: Before --
24 THE COURT: -- the special --
25 CNSL C. WONG: Yes.
26 THE COURT: And the -- but there's no evidence about
27 when it was made or not?
28 CNSL C. WONG: Unfortunately. This is -- this is part
29 of where the -- there is some conflicting
30 evidence and Mr. Cao wasn't given the exact date
31 of when the complaint was made either.
32 THE COURT: And Mr. -- Mr. Cao -- forgive me if -- if
33 I'm not pronouncing that right -- Mr. Cao is -- is
34 not -- well, you're going to talk your friend
35 about whether he's even a party, but he's not an
36 owner anymore?
37 CNSL C. WONG: He's not an owner anymore, but this
38 goes to the Strata's behaviour leading -- in the
39 time leading up to the SGM and during which time
40 Mr. Cao was an owner.
41 THE COURT: All right.
42 CNSL C. WONG: And --
43 THE COURT: Sorry, I interrupted you just with that
44 question. It's 12:30 now.
45 CNSL C. WONG: Yes.
46 THE COURT: Do you -- did you have one other point you
47 were going to make or is it a good time for a

65

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 break?
2 CNSL C. WONG: Just a -- just a very quick point --
3 THE COURT: Okay.
4 CNSL C. WONG: -- and then we can break. In terms of,
5 like, Mr. Jang's own affidavit, second affidavit,
6 which is on tab 13, paragraphs 3 to 7, which
7 specifically -- and this is in -- like, this is
8 to address the -- the Strata's position that the
9 complaint made by Mr. Jang was justified. In
10 that Mr. Cao when he brought up his objections,
11 he -- he did not bring them up as an engineer.
12 The fact that Mr. Cao was an engineer was not
13 even brought up until Mr. Jang specifically asked
14 him, "Are you an engineer," to which Mr. Cao then
15 responded, "Yes, I am," and then he -- he
16 proceeded to say what he -- say what he wanted to
17 say as a unit owner. So, this specific part, I
18 would say, like -- I would like to draw your
19 attention to this part just to address the -- the
20 Strata's claim that the complaint was justified
21 against Mr. Cao towards the regulatory body
22 and --
23 THE COURT: And I'm not going to be asked on this
24 petition, am I, to -- to make a finding about
25 whether the complaint is justified or not?
26 CNSL C. WONG: No.
27 THE COURT: Presumably that's a matter before another
28 regulatory body.
29 CNSL C. WONG: Yes. The whole -- yes. This only goes
30 towards whether the Court should exercise their
31 discretion and whether the strata has
32 demonstrated bad faith in -- in obtaining the --
33 the 50 percent vote --
34 THE COURT: Mm-hmm.
35 CNSL C. WONG: -- whether the Strata has acted in bad
36 faith in terms of the test for 1-- 108 and 172.
37 THE COURT: All right. All right. Well, we'll --
38 we'll take the afternoon recess and we'll return
39 at 2 o'clock. And I'll leave the two of you to
40 have a discussion with your friend, Ms. Uppal,
41 about the status of Mr. Cao. All right.
42 All right. We'll take the adjournment.
43 THE CLERK: Order in chambers. This chambers is
44 adjourned for lunch.
45

**(CHAMBERS ADJOURNED FOR NOON RECESS AT
12:33 P.M.)**

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 **(CHAMBERS RECONVENED AT 2:00 P.M.)**

2

3 THE CLERK: We're back on the record, sir.

4 THE COURT: All right. Thank you.

5 Yes.

6

7 **SUBMISSIONS FOR THE RESPONDENTS LISTED IN APPENDIX A**
8 **OF RESPONSE TO PETITION (FILED MAY 14, 2024) BY**
9 **CNSL C. WONG continuing:**

10

11 CNSL C. WONG: Good afternoon, Mr. Justice. So, just
12 to continue my submissions.

13 THE COURT: All right. And just give me one moment.

14 Yes.

15 CNSL C. WONG: So, to bring -- to bring, Mr. Justice,
16 your attention to Mr. Li's first affidavit on
17 tab 10.

18 THE COURT: And --

19 CNSL C. WONG: And --

20 THE COURT: -- did counsel -- yes? I just wanted to
21 return to the topic of Mr. "Dao", "Ch'ao",
22 Mr. "Kao".

23 CNSL C. WONG: "Ts'ao", yeah.

24 THE COURT: Yeah. Is your -- did counsel discuss that
25 or?

26 CNSL C. WONG: I believe my friend has --

27 THE COURT: Or do you propose to deal with that at
28 some -- I just thought that -- that should be
29 dealt with just now.

30 CNSL K. UPPAL: Yeah, we did have a discussion. My
31 friend's position is that the first petition
32 could perhaps be withdrawn but would be relying
33 on the affidavit evidence as witness statements.
34 In my view, that wouldn't satisfy my client
35 because the first petition of Mr. Zhen Cao only
36 makes reference to needing an adjournment, so
37 it's not really sort of -- it's not of benefit to
38 my client to make any concession on that at this
39 point, so I believe the agreement that we have
40 come to is simply that he'll remain a respondent.

41 THE COURT: Okay. Thank you.

42 CNSL K. UPPAL: Thank you.

43 THE COURT: Yes, Mr. Wong. So, you were directing me
44 to -- do you have anything to add on that or
45 should I just go to tab 10?

46 CNSL C. WONG: Just for the reference, like, the
47 context of the discussion is, like, I have made

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 an offer saying that Mr. Cao could withdraw as a
2 respondent, he would no longer be a respondent,
3 but we will be relying upon him as a witness.
4 And that of course that was my friend's response,
5 stating that basically I think -- I think my
6 friend may be seeking costs against Mr. Cao if
7 this matter goes the Strata's way.
8 THE COURT: Okay. All right. So, the -- Mr. Cao will
9 remain a respondent, as understand it.
10 CNSL C. WONG: Yes.
11 THE COURT: And I -- I have been asked to go to
12 tab 10, and I am there, Mr. Wong.
13 CNSL C. WONG: Yes, thank you.
14 So -- so, just for -- moving further down
15 the timeline in terms of what occurred. Shortly
16 after -- so, Mr. Song deposes after the SGM
17 resolution, I believe it's on page -- paragraph
18 17 onwards, Mr. Song deposes that shortly after
19 the resolution was defeated there was a period of
20 silence from the strata, with the exception of
21 the council president, Mr. Jang, openly
22 complaining on official channels that the
23 resolution failed due to, quote/unquote, "a lynch
24 mob" with the Chinese speakers. This is more for
25 context. And there were no further
26 communications from the Strata to the unit owners
27 regarding the proposed impairs until the
28 unit owners were informed of a lawsuit on
29 August 4th, 2023, when the petition materials
30 were served pursuant to an alternative service
31 order.
32 That is also when Mr. Li received the
33 majority of all the documents for the first time
34 regarding the proposed repairs. And as more
35 context, Mr. Li also deposes, on paragraph 5,
36 that as this lawsuit went on, Mr. Li discovered
37 that the engineer who prepared the LDR report,
38 Christopher Black, has -- Mr. Black has
39 previously been the Strata Council president for
40 the -- for the Lotus up until 2017 and had worked
41 closely with the current Strata Council
42 president, Mr. Jang, as -- respectively as
43 president and vice president. And this is --
44 this is established in Exhibit A, which -- of
45 the -- Mr. Li's affidavit, which sets out council
46 in attendance, which would be Mr. Black is
47 labeled as the president, while Mr. Jang is

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 labeled as the vice president.
2 THE COURT: In 2017?
3 CNSL C. WONG: In 2017, yes. This was -- this was
4 long ago.
5 THE COURT: Mm-hmm.
6 CNSL C. WONG: And I would also like to take the --
7 the opportunity to point out that since this
8 petition started there has been no evidence
9 indicating that the Strata has made any other
10 attempt to conduct any of the repairs, either by
11 passing the -- attending the resolution once
12 more, nor has the Strata suggested any
13 alternative options for the repairs. So, that is
14 more just in terms of context.
15 THE COURT: Okay.
16 CNSL C. WONG: So, this leads on to the documents that
17 were served within the initial petition, which
18 consists of a huge -- huge volume of documents,
19 most of which have not previously been disclosed.
20 But first I would like to draw, Mr. Justice, your
21 attention to Mr. Jang's affidavit on tab 2. I'd
22 like to draw your attention to --
23 THE COURT: Just let me turn that up. All right. I
24 am at tab 2.
25 CNSL C. WONG: And I would like to first draw your
26 attention to the 2015 depreciation report on
27 page 388.
28 THE COURT: And that's at tab D. Okay.
29 CNSL C. WONG: Yes. Specifically page 388.
30 THE COURT: All right.
31 CNSL C. WONG: And it sets out at that time a
32 strategic planning horizon that was -- that was
33 planned out in the 2015 depreciation report,
34 which sets out that sealant and concrete wall
35 maintenance, which forms a big chunk of the
36 proposed repairs, was to be scheduled for 2028,
37 and then further urethane membrane repairs were
38 to be scheduled for 2033. So, this was -- this
39 was included in the depreciation report.
40 THE COURT: 2028. Okay.
41 CNSL C. WONG: So, clearly the -- the BECA and the
42 proposals have moved the schedule up by quite a
43 lot in terms of some of the repairs that are
44 included. And, furthermore, in terms of the
45 asset inventory, on page 406 --
46 THE COURT: Mm-hmm.
47 CNSL C. WONG: -- there are a few numbers that I would

Submissions for the Respondents listed in Appendix A of Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 like to bring, Mr. Justice, your attention to and
2 just to note down. I will address them again
3 later.
4 THE COURT: Mm-hmm.
5 CNSL C. WONG: But in terms of just basically the --
6 at the bottom of page 406, the coated concrete
7 walls, it's labeled as the coating applied to
8 exterior concrete walls at Tower A, B, and C,
9 service life was determined to be 75 years. On
10 page 408 --
11 THE COURT: Mm-hmm.
12 CNSL C. WONG: -- the balcony urethane membranes were
13 determined to have a service life of 25 years.
14 THE COURT: So, sorry, just -- just direct me to that
15 again, the --
16 CNSL C. WONG: 408 --
17 THE COURT: Yes.
18 CNSL C. WONG: -- labeled in Encl 11 --
19 THE COURT: Okay.
20 CNSL C. WONG: -- balcony urethane membrane, with a
21 25 year service life. And on the next page,
22 page 409 --
23 THE COURT: Mm-hmm.
24 CNSL C. WONG: -- at the top, exposed urethane
25 membranes, with a service life of 25 years. At
26 the very top.
27 THE COURT: Mm-hmm. Okay.
28 CNSL C. WONG: And in regards to the parkade, enclosed
29 Encl 15, parking garage traffic membrane, which
30 is another one of the big items that are -- is
31 meant to be repaired. Service life, 75 years.
32 So, I would like to first just point out
33 these few numbers in Mr. Jang's affidavit.
34 THE COURT: And this is the -- is this the 2015
35 depreciation?
36 CNSL C. WONG: This is the 2015 depreciation report.
37 THE COURT: Okay.
38 CNSL C. WONG: And then I would like to bring,
39 Mr. Justice, your attention to the BECA, which is
40 in tab 3. I -- I believe it's page 4 of the
41 exhibits. Well, starting from page 4 of the
42 exhibits, apologies. So, that's Exhibit B of
43 Mr. Black's first affidavit. And just a few
44 things to point out.
45 THE COURT: 3B, yes, mm-hmm.
46 CNSL C. WONG: Yes. On page 9 of the B-E-C-A, of the
47 "BECA", there lists an Occupant Survey, where

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 they -- where LDR inquired the occupants on
2 whether they've had water leakage, whether they
3 had issues with their windows, areas that are
4 cold, et cetera.
5 THE COURT: I'm just making a note. So, what was that
6 page number again?
7 CNSL C. WONG: Page 9.
8 THE COURT: Page 9. Okay. Thank you.
9 CNSL C. WONG: Page 9. It should be labeled 2.0.
10 THE COURT: Okay, I have it. Mm-hmm.
11 CNSL C. WONG: And specifically I would like to point
12 out that of the 287 suites labeled, there are 19
13 occupants who responded to the survey, which is
14 7 percent of the total unit occupancy -- of the
15 total occupants, which is acknowledged as a low
16 response rate. But then later on in the
17 analysis -- the LDR utilized this -- these 19
18 suites as the base number to list whether or not
19 there is a moderate issue or a high issue based
20 on 19 responses out of 287.
21 And more specifically, in -- as more of a
22 note of my friend mentioning the photos and
23 reports provided by Bungee Holdings Ltd., I would
24 like to direct, Mr. Justice, your attention to
25 page 111, which starts the several photos that my
26 friend brought, Mr. Justice, your attention to.
27 THE COURT: Mm-hmm. Yes.
28 CNSL C. WONG: And I would like to note that each of
29 those photos that was highlighted --
30 THE COURT: Mm-hmm.
31 CNSL C. WONG: -- at the bottom, it states "Frequency:
32 Isolated". And I would like to quickly mention
33 again, Mr. Justice, that we're talking about a
34 comprehensive enclosure repair, a complete
35 renewal of the waterproofing. And the main --
36 like, most of the photos that has -- is contained
37 in Bungee Holdings Ltd.'s reports are all
38 isolated, individual instances.
39 So --
40 THE COURT: Aren't these matters for engineer -- the
41 judgment of an engineer to determine? Are you
42 asking me to step into the shoes of the report
43 writer?
44 CNSL C. WONG: No. I am pointing them out and they
45 will form a further context to -- to some of
46 TCC's --
47 THE COURT: Okay.

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 CNSL C. WONG: -- reply.
2 THE COURT: All right.
3 CNSL C. WONG: So, of course after receiving these
4 documents, the respondents then gathered together
5 and attempted to retain an engineer to provide a
6 second opinion on these repairs. And I will have
7 to --
8 THE COURT: Mm-hmm.
9 CNSL C. WONG: -- fetch my notes on this matter.
10 And -- oh. A few -- just a few more points to
11 mention and this -- before I move on to
12 Mr. Chen's affidavit. In terms of the -- in
13 terms of the document provided by Mr. Black to
14 the Strata that lists the scope of the work, I
15 will have to -- apologies, I will have to locate
16 it in --
17 THE COURT: Is this page 300 of -- page 300 of tab 3D?
18 CNSL C. WONG: Potentially. Apologies, I will need
19 to -- I have the affidavits broken down in the --
20 THE COURT: All right.
21 CNSL C. WONG: -- in my -- on my laptop and -- okay.
22 I'm referring to page 499 of tab 3, Exhibit H.
23 THE COURT: Hang on a sec. The April 25th letter?
24 CNSL C. WONG: Yes.
25 THE COURT: Mm-hmm. Yes.
26 CNSL C. WONG: Specifically this and -- well, I could
27 point out that, again, in this specific letter
28 Mr. Black does break down the maintenance and
29 repairs into nine -- I believe it's nine --
30 CNSL K. UPPAL: Eight.
31 CNSL C. WONG: -- eight several -- separate
32 categories.
33 THE COURT: Mm-hmm.
34 CNSL C. WONG: And this basically, like, goes into our
35 argument that this is not a single repair that's
36 being proposed. This is eight different repairs
37 bundled into one, bundled into one resolution.
38 And I would also like to note that while Mr. --
39 while Mr. Black does state that not implementing
40 such maintenance repairs is likely to result in
41 further damages in the future, he was silent to
42 what exact damages are being indicated in this
43 case. What exactly are the damages he just -- he
44 was silent on what damages would occur if the
45 repairs were not implemented.
46 So, in response to documents provided, the
47 owner -- the respondents retained Mr. Chen to

Submissions for the Respondents listed in Appendix A of Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 inspect the strata building and review the tender
2 documents, and Mr. Chen's affidavit is included
3 on tab 11.
4 THE COURT: That's Volume 3?
5 CNSL C. WONG: Yes, that's -- that's book 3. And I'd
6 like to first bring your attention to
7 paragraph 4, where Mr. Chen stated:
8
9 In preparation for providing this second
10 opinion, I reviewed the following documents:
11
12 ... The 1st affidavit of Christopher
13 Black along with all attached exhibits.
14
15 THE COURT: Sorry, not your fault, I -- I just lost
16 the reference. So, it's tab 11.
17 CNSL C. WONG: Tab 11, paragraph --
18 THE COURT: Paragraph --
19 CNSL C. WONG: -- 4.
20 THE COURT: -- 4. Okay. Yes.
21 CNSL C. WONG: Where Mr. Chen deposes to having
22 reviewed the first affidavit of Mr. Black, along
23 with all attached documents, which would include
24 the BECA. And, "The 1st affidavit of [Mr.] Jang,
25 along with all attached exhibits," which includes
26 the previous depreciation reports. And
27 specifically, in his report --
28 THE COURT: Is -- is Mr. Chen -- so, this is Mr. Chen.
29 This is the expert --
30 CNSL C. WONG: Yes.
31 THE COURT: -- that you -- your clients have retained,
32 is that right?
33 CNSL C. WONG: Yes. Yes.
34 THE COURT: Okay.
35 CNSL C. WONG: This is the engineer.
36 THE COURT: Okay.
37 CNSL C. WONG: Perhaps it might be better if I just
38 shorthand refer to Mr. Chen as "TCC" --
39 THE COURT: All right, yes.
40 CNSL C. WONG: -- so we don't have any confusion over
41 whether it's Mr. Chen, Mr. Cao, or Mr. Li who is
42 giving evidence, who -- who I'm -- who is
43 addressing at the moment.
44 THE COURT: So, the TCC affidavit.
45 CNSL C. WONG: Yes, the TCC affidavit.
46 THE COURT: And this is the -- all right. Okay, thank
47 you.

Submissions for the Respondents listed in Appendix A of Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 CNSL C. WONG: Yes. And in their affidavit on
2 paragraph 5, TCC did conduct a site visit on
3 April 23rd, 2024 and on all -- all three
4 buildings in the Lotus.
5 Though specifically in his report, which
6 starts on page 4 of the exhibits, Exhibit B, TCC
7 broke down each of the specific items contained
8 in the proposed work and recategorized them based
9 on whether they urgently need repair, whether
10 they can be done as smaller repair projects, or
11 it should just be a maintenance item later on.
12 And, as a result, TCC did concluded that there
13 was no repairs that were urgently required, that
14 the targeted roof repair -- and this is -- we can
15 start this on page 9 of the previous exhibits,
16 the targeted roof repair and below grade
17 damp proofing requires further investigation
18 to -- to identify whether these repairs were
19 necessary. And TCC specifically identified --
20 THE COURT: Sorry -- sorry, just where are you reading
21 on page 9 then?
22 CNSL K. UPPAL: On page 9, "Category - Further
23 investigation required." I am summarizing
24 Scope 1 and Scope 8.
25 THE COURT: All right. I'm not -- that's not at my
26 page 9, so ...
27 CNSL C. WONG: Page -- is it not page 9 of the
28 exhibits?
29 THE COURT: I mean -- page 9 --
30 CNSL C. WONG: At the top corner.
31 THE COURT: Okay.
32 CNSL C. WONG: -- there was a hand-- there is a
33 handwritten -- I mean, it's page 6 of the report,
34 page 9 of the exhibits.
35 THE COURT: I don't have the ... I just go off -- I
36 just have the bottom numbers, so.
37 CNSL C. WONG: The bottom number will be page 6.
38 THE COURT: Okay. Thank you. That's the number I'm
39 going off of then. Thank you. All right. So,
40 if you could just start that again. So, you were
41 referring me to where?
42 CNSL C. WONG: From "Category - Further investigation
43 require[s]." I am functionally --
44 THE COURT: Okay.
45 CNSL C. WONG: -- summarizing --
46 THE COURT: All right.
47 CNSL C. WONG: -- what TCC has found. So, there is no

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 items that requires immediate action. And in
2 terms of further investigation, the target roof
3 repairs require further investigation, as well as
4 the below grade damp proofing.
5 And then in terms --
6 THE COURT: So, the -- above, though, he says no items
7 had immediate action.
8 CNSL C. WONG: Yes.
9 THE COURT: All right.
10 CNSL C. WONG: No items will have -- need immediate
11 action, yes.
12 THE COURT: All right.
13 CNSL C. WONG: And then in category -- in terms of
14 first priority items, TCC did identify four
15 specific locations where there is concrete
16 spalling that should be repaired. That should
17 be -- should be repaired in terms of localized
18 repairs. And afterwards there was most of the --
19 the other items was -- was put under second
20 priority or lower, that these items could be
21 repaired later on when the service life of the
22 assets expired --
23 THE COURT: Mm-hmm.
24 CNSL C. WONG: -- or as a regular maintenance item.
25 More specifically, on, I say, page 36 of the
26 exhibits; I will have to see what the bottom page
27 number is. Page 33 by the bottom pages. In his
28 final recommendations, TCC pointed out that some
29 of the eyebrow locations appear to have been
30 renewed within the last five years - that would
31 be, like, at the top of the page - and questions
32 why these -- the tender documents included in
33 Mr. Black's affidavit included these items. If
34 they have previously been repaired, why was there
35 a repeat repair.
36 THE COURT: And -- and this is -- are you summarizing
37 or am I to follow what you're reading?
38 CNSL C. WONG: I'm -- I'm summarizing.
39 THE COURT: Okay, That's a little challenging for me
40 to do.
41 CNSL C. WONG: Apologies.
42 THE COURT: I'm not being critical of you at all. I'm
43 just saying if I -- because I -- but it -- I
44 guess what would be helpful, and you have done
45 this but just to -- just again, now that I know
46 that you're summarizing, just make sure you give
47 me the page number so I know what page --

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 CNSL C. WONG: Yes.
2 THE COURT: -- you're summarizing. So, was that
3 page 30?
4 CNSL C. WONG: Page 33 if we're going by the bottom
5 page number.
6 THE COURT: All right. That's the very last page for
7 me.
8 CNSL C. WONG: Yes, that's the very last page. At the
9 very top, 5 dot -- this is me reading, "Some of
10 the eyebrow locations --"
11 THE COURT: Mm-hmm.
12 CNSL C. WONG: "-- appear to have been renewed within
13 the last 5 years (around 2019 [to] 2020) . TCC
14 questioned whether recent tender documents
15 included these items. Strata should review if
16 the work took place." [as written]
17 THE COURT: Okay.
18 CNSL C. WONG: And then afterwards, after -- after
19 this response, the second opinion was prepared
20 and served, the Strata had Mr. Black prepare a
21 response affidavit. Now, the response affidavit
22 doesn't just include the final review as we have
23 previously defined, but it also includes the
24 twenty twenty -- 2022 depreciation report, which
25 was not disclosed up until then. I believe that
26 is in - apologies - Mr. Black's third affidavit.
27 I believe that would be tab 4 -- tab 5 actually.
28 Tab 5. Apologies.
29 THE COURT: All right. Okay, I've got tab 5 in front
30 of me.
31 CNSL C. WONG: And before we go too deeply into the
32 actual final reply affidavit, I would like to
33 then bring, Mr. Justice, your attention to some
34 of the changes functionally in the 2022
35 depreciation report. Now, of course this was not
36 provided to TCC because the respondents did not
37 have access to this document prior. However, in
38 Exhibit A, page 34 onwards, 35 specifically --
39 THE COURT: Okay.
40 CNSL C. WONG: -- we see the parkade suspended slab
41 traffic coating, which in the 2015 depreciation
42 report was reported to have a service life of
43 75 years is now reported to have a service life
44 of 10 years. The exterior coat and paint finish
45 on page 40, previously reported -- previously
46 reported to have a service life of 75 years, is
47 now -- has a service life of 10 years. The

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 exterior sealant, that did not change.
2 And in terms of the urethane coating, I
3 believe -- apologies. In terms of the -- I
4 recall the urethane coating still had a -- still
5 had a -- a lifespan -- still had a service life
6 of 25 years, however, I can't locate them right
7 now at this moment. Apologies.
8 THE COURT: So, you're pointing to the difference
9 between the 2015 --
10 CNSL C. WONG: Yes.
11 THE COURT: -- report's estimated lifespan and the one
12 in this report?
13 CNSL C. WONG: Yes.
14 THE COURT: Okay.
15 CNSL C. WONG: I am pointing to the differences and
16 more specifically of course, like, how did -- how
17 did some of the service materials -- how did some
18 of the assets, which, you know, was determined to
19 have 75 years service suddenly lose 60 years of
20 service life. And of course this -- this, of
21 course, was not provided to my clients and not --
22 our clients were not informed of that until
23 July 30th, when the -- when the third -- third
24 affidavit of Mr. Black was provided. And of
25 course that obviously might skew TCC's response a
26 little bit.
27 However, another point, and I'm moving on
28 from the depreciation report and moving towards
29 the response to the second opinion, the final
30 reply provided by Mr. Black --
31 THE COURT: Okay.
32 CNSL C. WONG: -- Mr. Black in his reply claims, on
33 page 111, in terms -- under point 3.3 --
34 THE COURT: Okay. Just let me follow you there. So,
35 page -- not your fault. I just was making a
36 note. So, page -- what page in the top
37 right-hand corner?
38 CNSL C. WONG: 111.
39 THE COURT: Okay. Thank you.
40 CNSL C. WONG: In response to "CATEGORY - IMMEDIATE
41 ACTION REQUIRED" --
42 THE COURT: Mm-hmm.
43 CNSL C. WONG: -- Mr. Black states that:
44
45 No items are included in this category.
46 However, based on the structural
47 investigation of the window wall screen

Submissions for the Respondents listed in Appendix A of Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 attachment at Towers A and B completed by
2 Kunimoto Engineering ... Limited ...
3 completed December 2, 2021, they recommended
4 *"We could not review the condition of the*
5 *plywood ...*

6
7 I will -- I will skip the quote, and at the very
8 bottom, the last sentence:
9

10 We consider the attachment of the window
11 wall screens a life safety issue, therefore,
12 a high priority, immediate action item.
13

14 And this specific items was also cited by my
15 friend --

16 THE COURT: Mm-hmm.

17 CNSL C. WONG: -- as one of the life safety issues
18 that could go into. Now, the issue I -- the
19 respondents take with this specific reply is that
20 the -- the structural repair and reattachment of
21 the window wall screen was not provided in the
22 scope of work. It was not mentioned in the
23 technical scope of work that my friend meant --
24 brought up earlier, which would be -- I'm not
25 sure if we should go there, however, that -- the
26 technical scope of work that my friend referred
27 to would be on page 301 in the first affidavit of
28 Mr. Black.

29 THE COURT: I have that in front of me.

30 CNSL C. WONG: Yes.

31 THE COURT: Just -- it's tab 3D --

32 CNSL C. WONG: Tab 3, yes.

33 THE COURT: -- in my -- in my binder.

34 CNSL C. WONG: So, I have probably spent an unhealthy
35 amount of time looking through the scope of work
36 while preparing, and I can advise that I cannot
37 find any reference to a reattachment of the
38 window wall screen in the technical scope of work
39 that was provided. And, hence, this goes, again,
40 into one of the central questions in that what
41 exactly is the scope of work, what exactly is
42 being repaired here? And when we have an
43 engineer, TCC, review the tender documents and
44 give a second opinion on what exactly is being
45 repaired, why is there an item that it -- that
46 was first mentioned by the LDR that was not
47 mentioned in the original tender documents that

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 TCC did not manage to catch? And then I would --
2 I would also like to point out that in the -- in
3 their -- in their reply LDR mentions -- mentions
4 a report by Kunimoto Engineering made on
5 December 2nd, 2021. That report has not been
6 disclosed. We do not have that report and we do
7 not know what that report says. And we do not
8 know whether the contents of that report was
9 actually included in the scope of work or not.
10 So, of course the Strata provided their reply.
11 There was a 2022 -- there was a 2022 depreciation
12 report, and then there was a mention of a
13 completely new area of repair that the
14 respondents were not aware of previously. So --
15 so, then we can work on -- apologies. So,
16 then -- so then the respondents went and
17 prepared -- apologies, before we move on, we
18 should also cover a bit more of Mr. Black's
19 reply.
20 THE COURT: This is a responding report. 3.3 is
21 responding to the TCC report, right?
22 CNSL C. WONG: Yes.
23 THE COURT: T-- and I just -- for my reference,
24 Mr. Wong, I just wanted to turn up the part of
25 the report that's being responded to. And just
26 if you bear with me. Replying to page 6 of that
27 report, I believe.
28 CNSL C. WONG: I believe so.
29 THE COURT: And that is -- where -- remind me where
30 that report is.
31 CNSL C. WONG: That report is all the way in --
32 THE COURT: It's attached to your petition response,
33 as I understand it, is that right?
34 CNSL C. WONG: That report is pretty -- is on tab 11.
35 THE COURT: I'm on tab 11. And it's responding to --
36 CNSL C. WONG: Tab 11.
37 THE COURT: -- page 6.
38 CNSL C. WONG: Specifically no immediate action
39 required, that would be page 6, yes. Page 6 by
40 the bottom.
41 THE COURT: All right. Okay.
42 CNSL C. WONG: Okay. And I would also quickly like to
43 point out moving forward that in -- in
44 Mr. Black's response report, when mentioning
45 repairs of the first category, second -- second
46 priority, and maintenance scheduling, Mr. Black
47 repeatedly stressed the importance of economy of

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 scale, the fact that access is already provided,
2 and has -- has repeatedly stated that delaying
3 the remaining work would result in increased
4 costs and inflation. This was referred to on
5 page 111, page 112, and page 113. And --
6 THE COURT: Mm-hmm.
7 CNSL C. WONG: -- Mr. Black does state that delaying
8 the work will result in more damages and
9 increased costs, and does state there is more
10 damages, however, the key point that Mr. Black
11 has made in this entire response is regards to
12 economy of scale, in regards -- in regards to
13 access already being provided. And this can be
14 seen in the conclusion on page 115. At the
15 bottom paragraph:
16
17 It is important to note that the TCC Report
18 does not consider construction efficiencies,
19 economies of scale, the services lives of
20 the components and systems, and a
21 comprehensive long term maintenance strategy
22 for the complex ...
23
24 So, we can see that, like, Mr. Black's main
25 concern, who -- like, one of the main concerns,
26 at least, the fact that he keeps on repeating it,
27 is economies of scale and avoiding inflation, and
28 that apparently is the -- is the future harm that
29 the Strata is attempting to avoid. And, again,
30 the Strata's response does not indicate what
31 would occur if repairs are not done in accordance
32 with the plan, only that it would be cost
33 effective and efficient to do a single massive
34 renewal rather than regular maintenance.
35 THE COURT: Well, I think the April 25th letter talked
36 about something more than just cost, I think, but
37 I'm -- that'll -- that'll be in the -- further
38 damage. Was that your point, that the damage
39 wasn't specified? But --
40 CNSL C. WONG: Yes.
41 THE COURT: -- the April 25th letter did say there
42 would be future damage.
43 CNSL C. WONG: Yes.
44 THE COURT: It's not --
45 CNSL C. WONG: My point is that there wasn't --
46 THE COURT: -- so, it's not the case, I don't think,
47 that it's just a cost issue.

Submissions for the Respondents listed in Appendix A of
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1 CNSL C. WONG: It's not a cost issue, however, the --
2 the respondents' point is that there has not --
3 apart from Mr. -- one statement from Mr. Jang
4 stating that worst case scenario the building
5 could collapse, there hasn't really been any
6 statements to what the water ingress is doing,
7 what would -- what would -- what would the
8 damages be, especially concerning that --
9 considering that the -- a lot of the assets being
10 repaired still have an existing service life.
11 And the whole time the -- the -- the main
12 emphasis placed by Mr. Black's reports has been
13 economy of scales and cost efficiency. And there
14 are mentions of damages, but there is no mention
15 of what those damages are.
16 And so, finally, on October 11th the
17 respondents obtained a final response from
18 Mr. Wei [sic]. And -- in response to the
19 second -- to the second response. The final
20 response from --
21 THE COURT: But just --
22 CNSL C. WONG: -- TCC's final response, let's just --
23 THE COURT: -- just hang --
24 CNSL C. WONG: -- call it that.
25 THE COURT: -- just hang on one second.
26 Okay. Sorry. Yes, again, where would you
27 like me to go now?
28 CNSL C. WONG: Tab 14.
29 THE COURT: Tab 14. All right, I'm at tab 14.
30 CNSL C. WONG: Yes. And specifically TCC did make a
31 reply to -- to LDR's reference to the Kunimoto
32 report, which was not disclosed. And TCC
33 mentioned, on page -- page 7 ...
34 THE COURT: Right. Just hang on a second.
35 CNSL C. WONG: It states that the roof Towers A and B
36 were identified in the second opinion report -
37 so, this is halfway down --
38 THE COURT: Mm-hmm.
39 CNSL C. WONG: -- as requiring further review. This
40 includes all components of the repair. [As
41 read:] "The reference document by Kunimoto
42 Engineering was not supplied to TCC. As the
43 building details were designed, reviewed, and
44 signed off by the original design architect and
45 co-consultant indicating the building detail
46 complies to the Building Code, since LDR has a
47 different opinion this may require a further

Submissions for the Respondents listed in Appendix A of
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1 review investigation by the original or second
2 co-consultant and architect. Thus, TCC stands
3 that this area of work requires further review."
4 So -- and of course Mr. -- TCC then clarified
5 that their reviews was in regards to repairs that
6 would address life and safety concerns, while
7 also noting that LDR's response focused heavily
8 on economy of scale. And this specific part is
9 on page 12.
10 THE COURT: Just under that -- that response on the
11 Kunimoto report, did the -- did TCC say that the
12 work to the window screen was not in the scope of
13 work, the proposed scope of work?
14 CNSL C. WONG: Uhh ...
15 THE COURT: You submitted to me that you couldn't find
16 it in there and maybe your friend's going to
17 respond to this, so but did they -- did they
18 opine that it's not something that's proposed to
19 be done?
20 CNSL C. WONG: So, the way it was structured, it
21 indicates that -- it indicates that -- LDR's
22 response indicates that the structural repairs
23 appear to be included in the roof repairs of
24 Tower A and B, however, I cannot find any
25 reference to it in the scope of work, and TCC did
26 not give an opinion on whether or not the -- it
27 was included. However, in TCC's first response,
28 they did not address any structural repairs to
29 the window wall screen while being provided with
30 the tender documents. So, the -- the reasonable
31 inference, the respondents submit, would be that
32 it was not included, hence is why TCC did not
33 comment on it the first time around and only gave
34 a response once the window wall screen was
35 brought up as an issue.
36 And specifically on --
37 THE COURT: So -- and you went to -- which page did
38 you want to go to now?
39 CNSL C. WONG: Page 12.
40 THE COURT: Okay.
41 CNSL C. WONG: And I am -- I will be summarizing here,
42 but the middle, item 3.7.1 --
43 THE COURT: Mm-hmm.
44 CNSL C. WONG: -- where TCC made the comment that
45 their response, the recommendations -- at the
46 final sentence [as read], "The recommendations
47 made by LDR was based on improved efficiencies

Submissions for the Respondents listed in Appendix A of
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1 and economies of scale, whereas TCC was asked to
2 comment on life and safety." And this is
3 commented again on page 13, item 3 point --
4 3.7.3.
5 THE COURT: Mm-hmm.
6 CNSL C. WONG: And in this case TCC actually noted
7 that the -- like, noted again that the
8 recommendation from LDR is based on possible
9 waterproofing failure and economies of scale, but
10 then also opined that -- that proceeding with the
11 repair as LDR suggested may be wasted in the
12 future. That is more of a context, but it's also
13 a comment on the focus on economies of scale
14 as --
15 THE COURT: But -- but isn't -- economies of scale is
16 a cost issue which is permissible under the
17 statute as an other -- as an other issue, isn't
18 it, or as to --
19 CNSL C. WONG: It --
20 THE COURT: -- your friend would say for your -- for
21 TCC to focus on life safety issues is too narrow.
22 I think that's what her submission was.
23 CNSL C. WONG: I understand and I -- I will address
24 that --
25 THE COURT: Okay.
26 CNSL C. WONG: -- in my -- my legal discussion, my --
27 THE COURT: Okay.
28 CNSL C. WONG: -- legal basis, which I am about to
29 proceed to right now.
30 THE COURT: All right. No, I didn't want to rush you.
31 I just wanted to register that question because
32 you've -- I think you've -- your submission is --
33 as I -- as I take it, your submission is that LDR
34 was focused on economies of scale --
35 CNSL C. WONG: Yes.
36 THE COURT: -- issues, and TCC was focused on life
37 safety issues, is that right? So, they had
38 different --
39 CNSL C. WONG: Yes.
40 THE COURT: -- a different focus.
41 CNSL C. WONG: They had -- they -- they did have a
42 different focus, yes.
43 THE COURT: And what flows from that?
44 CNSL C. WONG: And what flows from that is that
45 there -- and, again, just to quickly cover,
46 again, the legal test for -- that we're facing
47 right now --

Submissions for the Respondents listed in Appendix A of
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1 THE COURT: Mm-hmm.
2 CNSL C. WONG: -- the legal test for section 172 is at
3 least 50 percent of the owners voted in favour.
4 The levy is for maintenance and repair of common
5 property or common assets. Those two are not --
6 those two factors are not in dispute right now.
7 The key point is whether the maintenance and
8 repair is necessary to ensure safety or prevent
9 significant loss or damage.
10 And in *Thurlow* -- in *Thurlow*, which is on, I
11 believe -- apologies, I am a little bit
12 disorganized. In *Thurlow*, on tab 9 of the book
13 of authorities ...
14 THE COURT: Just hold on for one moment, please.
15 I just -- and, again, I -- I'll let your
16 friend reply, I suppose, but in your -- in your
17 premise of this submission, the submission you
18 were just making or in that submission that LDR
19 was focused on economies of scale, again, the --
20 the LDR letter of April 25th, 2023 talks about
21 the need for the -- the repairs as indicated in
22 the BECA and not implementing such maintenance
23 repairs is likely to result in further damage in
24 the future. So, that's not really an economies
25 of scale issue. I take economies of scale being
26 once you're in, you might as -- you should do
27 other things because some cost of -- of getting
28 into the envelope or doing that work once spent
29 it's worth doing some more work. That's --
30 that's how I am interpreting "economies of
31 scale", so --
32 CNSL C. WONG: Yes.
33 THE COURT: -- to -- there is -- and perhaps your
34 answer to the -- to this is that, well, the
35 damage isn't specified, but there is -- there is
36 evidence before me. I -- I think your friend
37 advanced or submitted there's evidence before me
38 that there is an opinion of future damage if the
39 work is not done.
40 CNSL C. WONG: There is -- there is an opinion of
41 future damage and then -- there is an opinion of
42 future damages if work is not done, however, it
43 is my submission that the Strata has not
44 established on a balance of probabilities that it
45 is more extensive than normal wear and tear as
46 the building ages.
47 THE COURT: All right. Thank you. All right. I

Submissions for the Respondents listed in Appendix A of
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1 think I interrupted you. You wanted me to turn
2 to the *Thurlow* case, is that right?
3 CNSL C. WONG: Yes. And on paragraph 57, I am just
4 going to point out just quickly in terms of
5 determining what -- whether something is
6 significant loss or damage, it refers to loss or
7 damage that is extensive or important enough to
8 merit attention. And in this specific case there
9 are two paths that my friend brought up that
10 would lead to the resolution being -- the order
11 being granted. The first was my friend commented
12 that she stated that there are two safety issues
13 that was identified, namely, the attachment of
14 the window wall screen, and there is concrete
15 spalling. And the respondents' reply in this
16 specific case is that this case, again, as I
17 mentioned, can be distinguished from many other
18 cases because this is a comprehensive -- this is
19 functionally each repairs rolled into one.
20 And first in terms of the window wall
21 installment, that was not included in the scope
22 of work. It was obvious that that was not
23 included in the scope of work. That was not
24 referenced in the past. And so the fact that
25 there might be issues regarding the window wall
26 screen should not be -- should not have any
27 bearing on whether or not this resolution should
28 be passed or not.
29 In terms of the concrete spalling, what the
30 experts can agree upon -- upon is four locations
31 where -- where TCC pointed out that requires some
32 repair, otherwise there will be potentially life
33 and safety issues. Does it then justify the
34 implementations of eight different repair plans
35 based on the eight recommendations provided by
36 LDR just because there is four localized, like,
37 concrete spalling that may be life or safety
38 issues. And this is -- this functionally then
39 forms the crux of the argument from the
40 respondents' side, both in terms of whether or
41 not there is a life and safety issue and whether
42 or not there is significant loss or damage,
43 whether the repairs are necessary. Because the
44 repairs are very comprehensive. The repairs
45 don't just cover the -- the building's external
46 area. It covers the traffic parkade area. There
47 is the slab on membrane that is -- that is

Submissions for the Respondents listed in Appendix A of
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1 included. And what the respondents' position is,
2 while there might be necessity for one or two of
3 the items to be done in -- by special levy, it is
4 excessive to add on a large number of what I will
5 call ride-ons in this case for such an extensive
6 comprehensive renovation, especially when it --
7 when it comes to items like the urethane
8 membrane, which has 25 years service life.
9 There's seven more years service life remaining
10 for these items and that was not disputed by the
11 2022 depreciation report.

12 So, ultimately this is -- this is the
13 respondents' position on a lot of matters, in
14 that there must still be, everything still --
15 there must be some necessity, some fundamental,
16 like, inherent damage that needs to be remedied
17 beyond regular wear and tear that -- that grounds
18 the entirety of the special levy. And otherwise
19 we have a situation in which there is -- of
20 course there is a few items that needs repair,
21 and of course the legal test allows for these
22 items to be repaired and allows for the court to
23 make a finding that these repairs could be done
24 on a simple majority. However, if the resolution
25 includes nine other repairs that may not meet the
26 test for necessity and they are bound together in
27 the same project, as this one, that does not
28 justify that the nine other repairs should also
29 be approved by the court on a simple majority
30 alone, especially when the amount being requested
31 is \$4 million, which is not an insignificant sum
32 for a building that is relatively young. It's
33 only 16 years. So, I also understand this is a
34 bit of a novel argument. I don't have a lot of
35 case law to support this specific argument,
36 however, I would mainly like to point out that
37 the scope of work has changed since the start of
38 this -- since the start of the petition. Well,
39 it is a relatively minor change in that there is
40 now a window wall screen issue that has life and
41 safety issues that was added in when engineers
42 reviewing the scope of work could not find such a
43 designation previously.

44 THE COURT: What engineers? Again, you've --

45 CNSL C. WONG: TCC. When TCC was reviewing the scope
46 of work --

47 THE COURT: Mm.

Submissions for the Respondents listed in Appendix A of
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1 CNSL C. WONG: -- they cannot -- they did not know
2 that there was a window wall screen that needed
3 to be reattached.
4 THE COURT: Okay. So, they -- they didn't opine that
5 that was a life saving -- life saving issue, is
6 that what you mean?
7 CNSL C. WONG: They did not reach an actual -- they
8 did not comment on it because they were not
9 provided with the 2021 engineering report. They
10 simply stated that -- they simply stated that
11 this report was not disclosed to us. When we
12 inspected it, we didn't see -- we didn't -- like,
13 it was not included in the tender documents. And
14 when we received the scope of -- apologies. They
15 did not say it wasn't in the tender documents,
16 but they did say that they cannot opine on it
17 because they were not provided with any documents
18 indicating that there was an issue to be fixed.
19 THE COURT: Okay.
20 CNSL C. WONG: So --
21 THE COURT: So, you -- you're accepting that
22 there's -- there is some work to be done, but
23 your client says it's not as much as -- as in
24 the -- in the proposed work plan?
25 CNSL C. WONG: In essence -- in essence, yes. In
26 essence --
27 THE COURT: I don't want to put words in your mouth,
28 but that's what I was -- that's what I was
29 hearing, that you accept that there's some work
30 that's justified or necessary, but it's more
31 than -- it's more than is needed.
32 CNSL C. WONG: So, the issue right now that my client
33 is pointing out is that what the expert reports
34 do agree on that needs work to be done is some
35 concrete spalling. That is -- that is the extent
36 of what needs to be done right now based on what
37 the experts agree on. And for this specific
38 agreement, this specific -- this specific repair
39 cannot justify the extensive amounts of
40 renovations that's being proposed by the
41 resolution. And the reason for this is that this
42 resolution isn't a single repair. For example,
43 like, for the *Thurlow* case, the repair was -- was
44 for the replacement of an entire waterproofing
45 screen, a single -- a large repair, a
46 comprehensive repair, but it is a single repair.
47 It was replacing the waterproofing.

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1 THE COURT: Right.

2 CNSL C. WONG: In this specific case there's, I would
3 say, eight repairs being proposed and put into a
4 single project, and perhaps one of those repairs
5 is a necessary repair but the others are not.
6 And, like, the fact that they are all tied
7 together. And what -- this is -- this is pretty
8 much a novel argument that I'm advancing here,
9 that there is a limit upon which the strata can
10 rely on inflation and economy of scale to justify
11 additional work beyond what is strictly necessary
12 and what would cause damages. The work must be
13 stemmed in some damages that would occur if the
14 work is not done. And perhaps there might be
15 some additional work that can be done based on
16 economy of scale, but in this case it is the
17 respondents' position that the strata has not
18 established that there is an independent damage
19 to be -- that would occur if the repairs are not
20 done beyond inflation. Which -- which the
21 respondents take the position that if inflation
22 alone can justify a lot of additional work on a
23 relatively small localized damage, then it
24 would -- it would functionally mean that the
25 Strata would always obtain the order under 172
26 whenever they apply unless there is a -- unless
27 the -- unless the market is not -- is not in a
28 state of inflation.

29 And then --

30 THE COURT: Just -- it's not -- on the point of
31 damage, that you -- on the -- well, I was taken
32 to portions of the reviewing report from LDR
33 beyond the -- the issue about the window wall
34 replacement. Some other ones were -- were the
35 opinion is given that delaying work -- and I'm
36 just reading from page 112, delaying work could
37 result in damage to the remaining systems; water
38 ingress; deterioration of the suspended slab;
39 spalling concrete, or delaminating concrete. I
40 mean, there's -- there's multiple, and there's
41 another one on page 113 I was referred to.
42 And -- and that -- that delaying work could cause
43 water egress. And so I -- well, I just -- I'm
44 just observing that. I'll let you respond to it
45 if you want, but I just wanted to -- I'm just
46 registering that I have been taken to evidence in
47 the reviewing report that talks about specifics

Submissions for the Respondents listed in Appendix A of
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1 of other potential damage if work is not done.
2 CNSL C. WONG: And specifically in regards to these
3 responses, these has been -- these have been
4 reviewed --
5 THE COURT: Mm-hmm.
6 CNSL C. WONG: -- by TCC and we do have expert
7 evidence in response --
8 THE COURT: Okay.
9 CNSL C. WONG: -- opining on these, whether --
10 THE COURT: Okay.
11 CNSL C. WONG: -- on these potential damages.
12 THE COURT: Okay. Thank you.
13 CNSL C. WONG: But, again, this is a matter of scope
14 and scale, and we do acknowledge that prior case
15 law does state that inflation and further -- and
16 the fact that future repairs might be more
17 expensive could justify that -- could justify
18 prevention of future loss, however, it is the
19 respondents' position that this is a case that is
20 relatively extreme and -- and that inflation
21 alone should not justify this extent of
22 comprehensive repair work.
23 And then just to quickly cover the case that
24 in the courts [sic] find that all of the above
25 are met, the court needs to consider whether it's
26 appropriate to exercise their discretion. And
27 the specific case I will lead you to is, I
28 believe, the one on tab 8.
29 THE COURT: Just one moment.
30 CNSL C. WONG: And specifically in --
31 THE COURT: Just -- just one moment, please.
32 CNSL C. WONG: Yeah.
33 THE COURT: All right. Tab 8, yes. I've got that
34 open.
35 CNSL C. WONG: So, specifically in the factors that
36 would determine whether it is appropriate for the
37 court to exercise their discretion, they have to
38 consider whether the strata acted in bad faith;
39 whether there are procedural irregularities;
40 whether the strata acted with reasonableness on
41 the strength of professional advice, and whether
42 court approval of the resolution would unfairly
43 prejudice the owners in the minority. And in
44 this case, as my friend mentioned, the issues to
45 note is whether the strata acted in bad faith,
46 and whether the strata has acted reasonably on
47 the strength of the professional advice.

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1 THE COURT: Again, just to review your -- your last
2 point, I just -- I -- and you don't have to
3 respond to this now, but I -- you seem to be
4 making an argument that there is -- and I --
5 and -- as I understood, that there is some risk
6 of damage but that it's too extensive and that
7 the -- it's not justified to go to the extent
8 that -- that it's proposed to go and -- but
9 the -- but I -- the *Thurlow* case -- and -- and I
10 have made no conclusion about this. I'm just --
11 I'm just -- I'm just -- I'm just observing this.
12 The *Thurlow* case includes comments that the court
13 is not to be in a position of overseeing --
14 overseeing or managing repairs. The court's
15 review is to give deference to the strata
16 council, the strata corporation. And so I -- I
17 guess I just ask you if your friend says what --
18 the argument that you're making, the -- the novel
19 argument you're making is contrary to comments in
20 the *Thurlow* case, that the court ought not to be
21 overseeing or managing repairs, doing an
22 intensive review of expert reports, paying
23 deference, what you do say to that if that -- if
24 that -- if your friend makes that argument?
25 CNSL C. WONG: Specifically I would ... Specifically
26 I will bring -- I -- I will respond that the
27 *Thurlow* case, again, can be distinguished --
28 THE COURT: Okay.
29 CNSL C. WONG: -- due to the fact that the *Thurlow*
30 case addresses one large repair on one asset.
31 What we are talking about here is a large amount
32 of repairs on several assets, some of which still
33 have significant remaining service lives. And
34 the issue at hand mainly would be -- and perhaps
35 it's -- like, I can touch a bit on whether the
36 Strata acted reasonably on the strength of
37 professional advice. This will --
38 THE COURT: Yes, it -- perhaps it -- it goes to that
39 as well.
40 CNSL C. WONG: It goes to that because while we
41 acknowledge that some of the assets may need
42 repair relatively soon, it should be repaired, a
43 lot of -- some of the assets, the polyurethane
44 most -- most significantly still has seven years
45 remaining, of service life remaining. And it is
46 our submission that, like, it is not -- the
47 Strata did not act reasonably in this sense

Submissions for the Respondents listed in Appendix A of
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1 because they decided to have a complete
2 replacement of an asset with seven years
3 remaining service life because of economy of
4 scale and ease of access. And this falls --
5 this -- this once again falls into -- if I may
6 draw a bit of a comparison, in the *Thurlow* case
7 they acknowledge that some parts of the water --
8 water membrane is in danger of collapse, would
9 cause life and safety issues, and the judge in
10 that -- and the chambers judge in that case found
11 that, oh, this does not justify the -- a more
12 extensive review, and of course that was
13 repealed. However, in this case it would be
14 stating that, okay, some part of the -- some part
15 of the waterproofing needs repair, that's fine,
16 let's do the traffic lot, let's do the
17 parking lot at the same time, which is not
18 something that is directly connected to the item
19 of repair that is actually needed and necessary.
20 So, this is a case where there is -- and this is
21 the respondents' submissions is that this
22 resolution has a few necessary repairs and they
23 add on a lot of unnecessary ones for the sake of
24 economy of scale and having it done all in one
25 go, which is -- which would distinguish it from
26 cases like *Thurlow*. If -- if these -- if these
27 repairs were provided as, let's just say,
28 separate resolutions, for example, then not all
29 of them would meet the necessity test. In fact,
30 the vast majority of them would not meet the
31 necessity test, that's the respondents' position.

32 THE COURT: All right.

33 CNSL C. WONG: And that ultimately just boils down to
34 a little bit of a confusion over what exactly is
35 being reviewed. We've had Mr. Black provide two
36 different letters listing out the reviews. We
37 have the technical tender documents which set out
38 the scope of work, and we have had summaries
39 provided by the resolution, we've had summaries
40 provided by Mr. Jang. And in -- in the current
41 case even a professional engineer, in this case
42 TCC, reviewing the tender documents cannot
43 strictly ascertain the exact scope of work that
44 is being required of this large project, which
45 would distinguish it from many of the other cases
46 in which either the building is extremely old and
47 needs a complete do-over or, like, cases like

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1 Thurlow where it is one significant asset that
2 requires repair. In this case the building is
3 relatively young, only 16 years old, and the
4 resolution seeks a multitude of repairs of
5 different varieties and not all of them are
6 strictly connected to each other. And --
7 THE COURT: You said there are two different letters
8 and tender documents. So, I am aware of the one
9 letter, the April 25th, 2023 letter.
10 CNLSL C. WONG: Yes.
11 THE COURT: What's the other letter you're speaking
12 of?
13 CNLSL C. WONG: The other letter I'm speaking of is in
14 the -- I believe it is in Mr. Black's first
15 affidavit.
16 THE COURT: There was a report --
17 CNLSL C. WONG: Exhibit G. The letter prepared in
18 advance of the town hall meeting --
19 THE COURT: Okay.
20 CNLSL C. WONG: -- which ...
21 THE COURT: All right. Okay. I have it there, I
22 think.
23 CNLSL C. WONG: Okay.
24 THE COURT: March 14th, 2023.
25 CNLSL C. WONG: Yes.
26 THE COURT: And then the tender documents.
27 CNLSL C. WONG: Which is page 311, I believe.
28 THE COURT: 301 to -- 301 to 311 possibly, is that
29 what you mean?
30 CNLSL C. WONG: Apologies. I'll have to pull that up.
31 Scope of work. 301, sorry. Yes, 301.
32 THE COURT: Okay. All right. Okay.
33 CNLSL C. WONG: And so the respondents also take the
34 position that the Strata did not act reasonably
35 on the strength of professional advice. Namely,
36 in that by bundling so many repairs together, it
37 puts -- puts a heavy strain and a heavy special
38 levy upon the owners when the same repairs could
39 have been done in a more -- the same repairs
40 could have been done at the end of the respective
41 asset service life.
42 THE COURT: And you've said that a few times now, and
43 so what are you -- are you referring to the asset
44 life and the depreciation report that was for
45 75 year lives or what are you referring to there?
46 It's -- and I -- I may want to hear from your
47 friend on this. Your submission seems to be

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1 presupposing that it's uncontested or that it's a
2 fact that these repairs don't need to be done now
3 because these components or parts of the envelope
4 will last a certain number of years. Is that --
5 that's what I'm taking right from your
6 submission.
7 CNSL C. WONG: So --
8 THE COURT: What are you -- what are you relying on
9 when you say that?
10 CNSL C. WONG: -- I understand that it would be
11 contested --
12 THE COURT: Mm-hmm.
13 CNSL C. WONG: -- and what I am relying on is
14 specifically the numbers that I pointed out in
15 the depreciation report, both in 2015. And then
16 some of the -- of course some of these service
17 lives have been revised by the 2022
18 depreciation --
19 THE COURT: Mm-hmm.
20 CNSL C. WONG: -- report, especially in cases where
21 60 years were cut off the service life --
22 THE COURT: Mm-hmm.
23 CNSL C. WONG: -- which raises -- raises some alarm
24 bells in my respondents' mind, but we don't
25 really have -- we didn't really have the
26 resources to do another review of it. And
27 specifically I believe what has -- what has not
28 been changed by the 2022 depreciation report is
29 that the exposed urethane, which is the
30 waterproofing coat, a lot of the exposed urethane
31 still -- still has -- still has seven years of
32 service life, as they are -- as they are
33 represented to have 25 years of total service
34 life.
35 THE COURT: Is it polyurethane membrane?
36 CNSL C. WONG: Polyurethane, yes.
37 THE COURT: All right.
38 This is -- but -- and maybe I'm -- I -- I
39 thought your friend had said that that was to be
40 done at the balconies and eyebrows.
41 CNSL C. WONG: Yes, I understand.
42 THE COURT: Yes.
43 CNSL C. WONG: Apologies. I can't find specifically
44 that area in the 2022 depreciation report.
45 THE COURT: Okay.
46 CNSL C. WONG: I suppose that I must have
47 misremembered.

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 THE COURT: Okay. All right. I interrupted you,
2 Mr. Wong. You were talking -- you were -- I
3 think you were in discretionary matters.
4 CNSL C. WONG: Okay.
5 THE COURT: I think. You were in the -- the part of
6 the discretion, the court's discretion, is that
7 right?
8 CNSL C. WONG: Yes, in the court's discretion.
9 And, finally, just in terms of whether the
10 strata acted in bad faith. And on -- on
11 paragraph 150 of *Strata Plan VR 778*, it does
12 state that:
13
14 The Respondents have the burden to establish
15 that the Strata Council engaged in improper
16 conduct that was both serious, and likely to
17 have affected the results of the vote.
18
19 THE COURT: All right. Yes. And that's one of the
20 criteria. I don't have that paragraph in front
21 of me, but I think that's summarized in the
22 *Thurlow* case as well.
23 CNSL C. WONG: Yes.
24 THE COURT: Okay.
25 CNSL C. WONG: And specifically in this case, I do
26 acknowledge that -- I do acknowledge that the --
27 the respondents' position on this specific is
28 slightly weak because a lot of the strata's
29 activities -- a lot of the alleged activities
30 occurred after the SGM, however, the respondents
31 would once again point out the -- the fact that
32 the owners were not given much time to
33 contemplate the special levy, as well as what --
34 as well as the council president's statements on
35 the official We-- WhatsApp group prior to the --
36 to the SGM, which stated that if the -- worst
37 case scenario if the repairs were not done, then
38 the building will collapse. These were
39 improper -- these -- the respondents allege these
40 are improper communications that may have swayed
41 the votes of a few of the members at the time.
42 THE COURT: All right. So, I just want to be
43 specific -- specific about what you're arguing
44 here. So -- so, the -- in terms of discretion,
45 you're -- you're arguing -- are you arguing lack
46 of bad faith, is that what this is -- or a lack
47 of good faith?

Submissions for the Respondents listed in Appendix A of
Response to Petition (filed May 14, 2024) by Cnsl C. Wong

1 CNSL C. WONG: Yes.
2 THE COURT: You're saying there's lack of good faith
3 because the owners weren't given enough time, you
4 say, to consider before the SGM and that there
5 was a -- a WeChat that said worst case scenario,
6 is that right?
7 CNSL C. WONG: Yes, and it was -- it was on the,
8 quote/unquote, "official" WhatsApp platform for
9 the unit owners to discuss these matters and to
10 direct any questions towards the Strata Council.
11 THE COURT: Okay.
12 CNSL C. WONG: And then of course the -- the
13 respondents are also saying that -- that the
14 strata should have disclosed Mr. Black's prior
15 connection with the -- with Lotus, the Strata.
16 So --
17 THE COURT: So, you have -- those are your three
18 arguments on bad faith --
19 CNSL C. WONG: Yes.
20 THE COURT: -- is that right?
21 CNSL C. WONG: Yes. So, subject to any questions.
22 THE COURT: And -- and then are you arguing then that
23 the Strata -- so, on discretion you're arguing
24 bad -- good -- or lack of good faith --
25 CNSL C. WONG: Mm-hmm.
26 THE COURT: -- and also you're arguing that the Strata
27 did not act reasonably, is that right?
28 CNSL C. WONG: Yes.
29 THE COURT: On the strength of professional advice.
30 CNSL C. WONG: Yes. I believe I have covered that a
31 bit earlier.
32 THE COURT: In the -- in the threshold part.
33 CNSL C. WONG: Yes.
34 THE COURT: Okay. I don't think I have any further
35 questions.
36 Thank you, Mr. Wong.
37 CNSL C. WONG: Thank you.
38 THE COURT: Yes, Ms. Uppal.
39 CNSL K. UPPAL: Would -- would you like me to add --
40 start the reply --
41 THE COURT: Yes, I --
42 CNSL K. UPPAL: -- or should we take a break?
43 THE COURT: -- we could -- did you wish to take the
44 break now? We could take the break now.
45 CNSL K. UPPAL: I'm in the Court's hands. It's ...
46 THE COURT: We would usually take a break now.
47 CNSL K. UPPAL: Okay.

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Reply submissions for the Petitioner by Cnsl K. Uppal

1 THE COURT: And how are we going to be doing for time,
2 do you think?

3 CNSL K. UPPAL: I'm -- I probably only have about
4 10 minutes of comments.

5 THE COURT: All right. So, we'll take -- we'll take a
6 15 minute recess.

7 CNSL K. UPPAL: Thank you.

8 THE COURT: Okay.

9 Thank you.

10 THE CLERK: Order in chambers. This chambers is
11 adjourned for a break.

12

13 **(CHAMBERS ADJOURNED FOR AFTERNOON RECESS AT**
14 **3:14 P.M.)**

15 **(CHAMBERS RECONVENED AT 3:32 P.M.)**

16

17 THE CLERK: We're back on record, sir.

18 THE COURT: All right. Thank you.

19 All right. Yes.

20

21 **REPLY SUBMISSIONS FOR THE PETITIONER BY CNSL K. UPPAL:**

22

23 CNSL K. UPPAL: Mr. Justice, I just have a few
24 comments to make in reply. The first one, just
25 because it's fresh in my mind and perhaps also
26 in -- in your mind, is about this window parapet
27 reattachment and --

28 THE COURT: Right.

29 CNSL K. UPPAL: -- the -- the submission from my
30 friend that it seems to be something new. I want
31 to take the Court to --

32 THE COURT: Window wall screen I think is what --

33 CNSL K. UPPAL: Window wall -- I think the issue is it
34 starts getting referred to as different things in
35 different documents. So, the first -- the
36 earliest place I can locate it at this time is in
37 the affidavit at tab 3 --

38 THE COURT: Yes.

39 CNSL K. UPPAL: -- which is in the second book, at
40 Exhibit G --

41 THE COURT: Yes.

42 CNSL K. UPPAL: -- this is the -- the scope of work
43 that was sent out to all owners on March 14th,
44 2023 prepared by LDR. And so on the -- on
45 page 496, where LDR talks about the targeted
46 reroofing at Tower A and B, they have a
47 photograph there [as read], "Water ingress and

Reply submissions for the Petitioner by Cnsl K. Uppal

1 deteriorated plywood noted at the roof parapet
2 where the window wall is attached." That's the
3 first photograph on the left. And then just
4 beneath that, that photograph, underneath that
5 there's a little caption [as read], "Deteriorated
6 plywood noted at roof parapet where the window
7 wall is attached." So, I would argue that
8 there -- there is sort of this disclosure of this
9 issue.
10 And if we turn to the next exhibit, which is
11 H, on the letter that you have been taken to a
12 few times, April 25th letter, it actually
13 discusses, in the very last summary paragraph
14 that's been read but perhaps not in its entirety,
15 it says [as read], "In some cases, such as the
16 proposed re-roofing work on Towers A and B (in
17 other words, reattachment of the window wall
18 screen) will also help address safety concerns."
19 So, I -- it's our submission that it has been in
20 the previous documents. The fact that TCC didn't
21 pick up on it in their responding -- or in their
22 second opinion, I -- I can't speak to why that
23 occurred. The only sort of other factor to close
24 that gap perhaps is finding it or not finding it
25 in the tender documents. And -- and I -- it's my
26 submission that because it seems to be very much
27 tied to the roofing work, I suspect it's somehow
28 included there, but, again, I am not an engineer
29 and I can't really explain the technicality of
30 those bid documents.
31 THE COURT: So -- so, proposed -- so, is window wall
32 screen -- all right. In the letter of
33 April 25th, it's -- it's referred to with --
34 reattach of window wall screen is referred to
35 with reference to reroofing work.
36 CNSSL K. UPPAL: Yeah, it seems to be tied in to the
37 reroofing project --
38 THE COURT: Mm-hmm.
39 CNSSL K. UPPAL: -- and same with the document I took
40 you to just previously, it seems to be some work
41 that is entirely sort of tied in with the -- that
42 targeted reroofing.
43 THE COURT: Mm-hmm.
44 CNSSL K. UPPAL: So, I can't speak to why it's not sort
45 of an easily findable word in the tender
46 documents, but I simply would submit that because
47 those documents are so technical I don't have the

Reply submissions for the Petitioner by Cnsl K. Uppal

1 expertise to locate them -- locate it there. It
2 could be explained in some other way.

3 THE COURT: All right.

4 CNSL K. UPPAL: But these documents definitely refer
5 to it and -- and Tri-Can had these documents
6 previously.

7 There is a -- seems to be a submission that
8 this Kunimoto Engineering structural report was
9 not disclosed. My only point to make there is
10 that it was not asked for. It's -- as you can
11 see, there has been a lot of documents disclosed.
12 And if Tri-Can had requested that document, we --
13 we could have potentially located it.

14 Part of my friend's submission on bad faith
15 has to do with the fact that their clients were
16 not aware of this until sort of notice of the --
17 the special levy was coming up sort of in
18 March of 2023. And I just -- I don't want to
19 spend too much time on it because I don't think
20 it meets the test for bad faith, but I -- what I
21 will say, just to answer that point, is that the
22 affidavit number 1 of Clifton Jang, which is in
23 book 1, tab 2, attaches a number of Strata
24 Council meeting minutes.

25 THE COURT: Just hang on one second, please.

26 Just give me one moment, please.

27 CNSL K. UPPAL: Yes.

28 THE COURT: Yes. Sorry, tab which?

29 CNSL K. UPPAL: Tab -- so, tab 2 in book 1, which is
30 the affidavit number 1 of Clifton Jang, at tab 2
31 and if you go to Exhibit C, those are a number of
32 council meeting minutes over the years that we
33 were able to gather and we have attached them all
34 as one exhibit. I'll take Your Justice
35 specifically to page 356 of the exhibits.

36 THE COURT: Okay.

37 CNSL K. UPPAL: First -- first -- sorry, halfway down
38 the page at "Guests", these are the Strata
39 Council meeting minutes of Thursday,
40 September 29th, 2022.

41 THE COURT: Mm.

42 CNSL K. UPPAL: Josh Chambers of RDH Engineering
43 attended to present his proposal for the BECA and
44 discuss the future project. On the next page,
45 page 357, this is where I see the first sort of
46 in black and white communication that there would
47 be a project upcoming under "Business arising",

Reply submissions for the Petitioner by Cnsl K. Uppal

1 number 1 [as read], "Exterior walls painting:
2 Council plans to recommend completing remaining
3 areas of recoating the exterior in 2023, planning
4 envelope renewal and a potential special levy."
5 And -- and that goes on. In sort of the
6 subsequent meeting minutes it's mentioned over
7 and over again. So, there's a mention of it in
8 the October 20th, 2022 meeting minutes and then
9 again in the December 2022 minutes. And then the
10 best place is in the February 2nd, 2023 minutes
11 there's a -- at page 370 --

12 THE COURT: Mm-hmm.

13 CNSSL K. UPPAL: -- it -- it explains the -- the
14 recommendation in more detail under "Business
15 arising", [as read] "Please be advised a levy
16 will be proposed at the upcoming special general
17 meeting on April 13th, 2023." And so my
18 submission in response to my friend is that as
19 early as September 2022 it was in the minutes and
20 then it started to gather more detail over the
21 months.

22 With respect to, you know, this idea of
23 documents, I have already expressed in my initial
24 submissions, I -- I won't go there again, but
25 there is a comment disclosure provide that I -- I
26 don't see was utilized. Minutes are really the
27 only thing the Strata Corporation has to
28 disseminate to owners, and -- and I have
29 demonstrated there that they did make mention of
30 that.

31 THE COURT: So, you say that there's no evidence of a
32 breach of a legal obligation to disclose
33 documents?

34 CNSSL K. UPPAL: That's correct.

35 THE COURT: All right.

36 CNSSL K. UPPAL: My friend's submission was that
37 essentially what -- what we're looking at here is
38 eight repair items looped into one resolution,
39 and I don't see how that's an impediment to a
40 section 173 order or a special levy. A special
41 levy does not, under section 108 of the *Strata*
42 *Property Act*, have to do with one specific thing.
43 There are requirements for setting out what the
44 levy is about, what it's for, but it doesn't have
45 to only be for one subject matter. So, it's my
46 submission that that -- that would be
47 inapplicable in the consideration of whether

Reply submissions for the Petitioner by Cnsl K. Uppal

1 the -- the order ought to be granted.

2 There was a lot of time spent on the 2015
3 depreciation report and then some less time on
4 the 2022 depreciation report. My submission on
5 that point is that the 2022 is -- is more recent.
6 It was produced by -- by actually taking
7 inventory of the assets. It is likely a better
8 indicator of service lives. But what I'll also
9 say is that the depreciation report is there to
10 do exactly that, provide an asset inventory and
11 some idea around Maintenance Projects and repair
12 renewal. I -- I submit that it's not as
13 intensive as the BECA, and the BECA ought to be
14 sort of the -- sort of prevailing document that
15 led to the scope of work.

16 And I do -- I -- I would argue that my
17 friend's submission did say -- he did say in his
18 submission, I have it written down, that the
19 issue is scope and timing really for the owners.
20 The scope is too big and the timing is too soon.
21 And it's my submission that I have led the Court
22 to paragraphs in the authorities that -- that
23 state that scope and timing is that -- a decision
24 of the Strata Council and the Strata Corporation
25 and it's not the Court's job to intervene on
26 those issues if --

27 THE COURT: And those references, are -- are you
28 referring to the -- the *Thurlow* case --

29 CNSL K. UPPAL: *Thurlow*, yes.

30 THE COURT: -- with the -- all right.

31 CNSL K. UPPAL: That's all I have, Justice, in reply,
32 subject to any further questions you may have.

33 THE COURT: It's possible you have already responded
34 to this, but I just -- I will ask you. Your
35 friend advanced what I think he might have
36 acknowledged was a novel argument. And -- and I
37 may -- I may not be perfectly summarizing this,
38 but that the -- the -- my note was that your
39 friend submitted that there were a few items that
40 needed repair, but the resolution included nine
41 other repairs that weren't necessary and they --
42 they shouldn't -- they weren't -- they're not
43 justified. So, perhaps you have already
44 responded to that, but I -- I took that to be a
45 thrust of your friend's submission that this
46 is -- there is acknowledgement -- as I
47 appreciate, that there is acknowledgement that

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Reply submissions for the Petitioner by Cnsl K. Uppal

1 there was some concrete spalling that needed to
2 be repaired but everything else was simply
3 economies of scale and inflation mitigation
4 measures that -- that went too far, and I think
5 he may have used the word relatively extreme in
6 terms of the scope of work. And I just wanted to
7 give you a chance to respond to that squarely,
8 although you may have done that in one of your
9 other points, but what do you say to that?

10 CNSL K. UPPAL: Yeah. It's our submission that when
11 evaluating the engineering opinions, there
12 appears to be -- in my view, TCC doesn't lead
13 evidence, I would say -- or state in its report
14 that damage will not occur if these things are
15 not fixed. And so I think that the -- you know,
16 the -- the Strata Corporation's argument is that
17 all of these items are required to prevent
18 significant loss or damage, whether physical or
19 otherwise. And we have -- I have confirmed in
20 the case law "otherwise" does relate to sort of
21 costs. And so although we acknowledge that some
22 of those repair items are included due to
23 economies of scale, which is acknowledged in the
24 material, it's our submission that a majority of
25 them are to prevent significant loss or damage,
26 and really the legal test doesn't appear to
27 define that. It doesn't say you must only have
28 damage that is physical. It includes "or
29 otherwise" in the same sentence. And so I -- I
30 recognize my friend's submission that, well, none
31 of the cases really say that if your only loss is
32 inflation that that's why you ought to be granted
33 your order. And I may not go so far this
34 afternoon to submit that, well, potentially 173
35 could potentially allow that, but I would say
36 we -- we have that factor but we also do have the
37 actual physical damage, which I had highlighted
38 in my earlier submissions and I heard your
39 Justice repeat that there are -- there is risk to
40 systems degenerating further; there is risk of
41 water ingress; there is risk of further
42 delamination. So, there --

43 THE COURT: And just to be specific, I was referring
44 to --

45 CNSL K. UPPAL: The reviewing ...

46 THE COURT: -- the reviewing report at pages 111 to
47 113, I think --

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Reply submissions for the Petitioner by Cnsl K. Uppal

1 CNSL K. UPPAL: Correct.
2 THE COURT: -- is that right? As well as the -- I
3 think that's what I was referring to.
4 CNSL K. UPPAL: Yes. It's -- it's between the pages
5 of --
6 THE COURT: Mm.
7 CNSL K. UPPAL: -- 110 and 115 of Mr. Black's third
8 affidavit.
9 THE COURT: Mm-hmm.
10 CNSL K. UPPAL: It started at the bottom of 111 and
11 then there were quite a few places in the next
12 few pages.
13 THE COURT: And where was the reference to economies
14 of scale? Your friend referred to it a number of
15 times and sometimes in the context of TCC's
16 reports, but where --
17 CNSL K. UPPAL: Mm-hmm.
18 THE COURT: -- where does your -- do you accept that
19 your client -- that -- that -- pardon me, that
20 LDR focused on economies of scale?
21 CNSL K. UPPAL: I -- I recognize that there are
22 certain -- the interesting thing with the -- this
23 report is it sort of reorganized the way the TCC
24 organized their recommendations, and then LDR
25 responds. So, it's not sort of in line with the
26 BECA recommendations, it's a little bit harder to
27 follow it, but I think the most helpful place is
28 the bottom of page 115 --
29 THE COURT: Mm-hmm.
30 CNSL K. UPPAL: -- where LDR notes that the TCC report
31 does not consider construction efficiencies,
32 economies of scale and the service life of the
33 components and systems, and et cetera, and
34 basically talks about how you have to think of
35 everything as a whole when you're coming up with
36 a repair strategy, and I think that acknowledges
37 the fact that that is a part of what LDR did.
38 THE COURT: So, that -- that page -- and your friend
39 did take me to that, that passage, that the scope
40 of work does consider economies of scale.
41 CNSL K. UPPAL: Correct. Along with all of those --
42 THE COURT: So, it's a blend --
43 CNSL K. UPPAL: -- other --
44 THE COURT: -- a blend of -- a blend of damage
45 mitigation work -- you submit a blend of damage
46 mitigation work and -- and work considering
47 economies of scale. Is that what you're

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Reply submissions for the Petitioner by Cnsl K. Uppal
Discussion re setting a date for oral Reasons for Judgment

1 submitting? So, it's a combination of those
2 concerns?
3 CNSL K. UPPAL: It's a combination of all of those
4 factors.
5 THE COURT: All right.
6 CNSL K. UPPAL: So, along with economies of scale,
7 construction efficiencies, service lives of the
8 components, and a comprehensive long-term
9 maintenance strategy for the complex.
10 THE COURT: All right.
11 CNSL K. UPPAL: And the only thing I should correct
12 myself, I meant to do this earlier, my apologies,
13 is when I was pointing to the -- the numbers in
14 the BECA recommendations, 20 was not included and
15 I misspoke when I said that. The best place, I
16 think, which is -- that would assist the Court is
17 that letter of April 25th, 2023 where Chris Black
18 references the BECA recommendations and he refers
19 to eight of them.
20 THE COURT: Mm-hmm.
21 CNSL K. UPPAL: Those are the eight.
22 THE COURT: So, there are eight recommendations.
23 CNSL K. UPPAL: Correct.
24 THE COURT: So, 20 is not included.
25 CNSL K. UPPAL: That's correct.
26 THE COURT: Okay.
27 All right. All right. I don't think I have
28 any further questions for you. All right. I
29 don't have any further questions.
30 CNSL K. UPPAL: Thank you.
31 THE COURT: Mr. Wong, is there anything arising out of
32 that?
33 CNSL C. WONG: No. No, Mr. Justice.
34 THE COURT: All right. I'd like to stand down for
35 15 minutes, if we may.
36 CNSL K. UPPAL: Sure.
37 THE COURT: Okay.
38 THE CLERK: Order in chambers. This court -- this
39 chambers is stood down for 15 minutes.
40
41 **(CHAMBERS ADJOURNED AT 3:52 P.M.)**
42 **(CHAMBERS RECONVENED AT 4:09 P.M.)**
43
44 THE COURT: Thank you.
45 Counsel, what I'd like to do is set a date
46 for oral reasons in this matter. Just give me
47 one moment.

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Discussion re setting a date for oral Reasons for Judgment

1 Court Clerk, I'll just look at my ... Could
2 I set it for Monday, October 28th at 9:00 a.m.?
3 CNSL K. UPPAL: My apologies, Justice, I'm in chambers
4 that day.
5 THE COURT: At 9:00 a.m.?
6 CNSL K. UPPAL: Yeah -- oh. It should be 10:00 a.m.
7 9:00 a.m. --
8 THE COURT: Yes.
9 CNSL K. UPPAL: -- should be okay.
10 THE COURT: Yes.
11 CNSL K. UPPAL: Yes.
12 THE COURT: Mr. Wong, are you available that day?
13 CNSL C. WONG: Yes, I am available on that day. Do I
14 have -- can the Court give directions that we
15 appear by MS Teams maybe?
16 THE COURT: Yes, I would give that direction.
17 CNSL C. WONG: Thank you.
18 THE COURT: I'll just ask the Court Clerk to check
19 first whether that date is available.
20 CNSL K. UPPAL: Okay.
21 THE CLERK: How much time do you need, sir?
22 THE COURT: Less than one hour.
23 THE CLERK [on courtroom telephone]: Hi, it's Sandra
24 calling --
25 THE COURT: 30 minutes.
26 THE CLERK: -- from courtroom 45 with
27 Justice Stephens. Hi, we've been wondering -- he
28 needs a -- a day, Monday, October 28th. We're
29 wondering if you have space available, around
30 9 o'clock. Less than an hour. That works good?
31 Perfect.
32 [To the Court:] Can we go ahead and set it
33 for them?
34 THE COURT: Yes.
35 THE CLERK [to the Court]: Thank you.
36 [On courtroom telephone:] Okay, bye.
37 [To the Court:] Yes, we are good.
38 THE COURT: All right. So, I will give oral reasons
39 for judgment at 9 o'clock on October 28th, 2024,
40 with Mr. Wong having leave to appear by Teams.
41 CNSL C. WONG: Thank you.
42 CNSL K. UPPAL: May I also have leave? I actually
43 have chambers in Kelowna that day at 10:00 a.m.
44 So, I'll be appearing by MS Teams for that as
45 well.
46 THE COURT: All right. I would give leave for both
47 parties --

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Discussion re setting a date for oral Reasons for Judgment

1 CNSL K. UPPAL: Thank you.
2 THE COURT: -- both counsel to appear by Teams. And I
3 will be present here in Vancouver.
4 All right. I don't believe there's anything
5 further. Court Clerk, is there anything further
6 from your perspective? No? All right.
7 Counsel, anything further?
8 CNSL C. WONG: No.
9 THE COURT: All right.
10 CNSL K. UPPAL: No, Justice.
11 THE COURT: Thank you. We'll adjourn until Monday at
12 9:00 a.m. Thank you.
13 CNSL K. UPPAL: Thank you.
14 THE CLERK: Order in chambers. This chambers is
15 adjourned until Monday.

16
17 **(CHAMBERS ADJOURNED AT 4:13 P.M. TO**
18 **OCTOBER 28, 2025 AT 9:00 A.M.)**
19

20 Reporter's Certification:

21
22 I, Marianna Horvat, RCR, Official Reporter
23 in the Province of British Columbia, Canada,
24 BCSRA No. 379, do hereby certify:
25

26 That the proceedings were taken down by me
27 in shorthand at the time and place herein set
28 forth and thereafter transcribed, and the same is
29 a true and accurate and complete transcript of
30 said proceedings to the best of my skill and
31 ability.
32

33 IN WITNESS WHEREOF, I have hereunto subscribed
34 my name this 26th day of April 2025.
35

36
37 *Marianna Horvat*
38

39 _____
40 Marianna Horvat, RCR
41 Official Reporter
42
43
44
45
46
47