# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *The Owners, Strata Plan KAS 2428 v. Baettig,* 2017 BCCA 377

Date: 20171031
Docket: CA43336

Between:

**The Owners, Strata Plan KAS 2428**

Appellant
(Petitioner)

And

**Emma Baettig**

Respondent
(Respondent)

Before: The Honourable Madam Justice Garson
The Honourable Madam Justice Dickson
The Honourable Mr. Justice Fitch

On appeal from: An order of the Supreme Court of British Columbia, dated November 19, 2015 (*The Owners, Strata Plan KAS 2428 v. Baettig*, 2015 BCSC 2125, Kelowna Docket 100377).

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|---|---|
| Counsel for the Appellant: | M.D. Fischer |
| Counsel for the Respondent: | No one appearing |
| Place and Date of Hearing: | Kelowna, British Columbia<br>April 3, 2017 |
| Written Submissions Received: | April 18, 2017 |
| Place and Date of Judgment: | Vancouver, British Columbia<br>October 31, 2017 |

**Written Reasons by:**
The Honourable Mr. Justice Fitch

**Concurred in by:**
The Honourable Madam Justice Garson
The Honourable Madam Justice Dickson

***Summary:***

*Section 118* of the *Strata Property Act provides that reasonable legal costs associated with registering a lien against a delinquent owner's strata lot or enforcing a lien may be added to the amount owing to the strata corporation under a Certificate of Lien. This is an appeal by a strata corporation from an order that limited its recovery for "reasonable legal costs" under s. 118 to party and party costs. Held: Appeal allowed. Section 118 of the Strata Property Act entitles a strata corporation to add to the amount owing under the lien its actual legal costs subject to one qualification: those costs must have been reasonably necessary. This interpretation of s. 118 accords with the words of the provision, its legislative history, its evident purpose and its statutory context. Pursuant to Rule 18-1 of the Supreme Court Civil Rules, costs reasonably necessary to register and enforce the lien were directed to be assessed and certified by the Registrar of the Supreme Court of British Columbia.*



**Reasons for Judgment of the Honourable Mr. Justice Fitch:**

## I. Introduction

[1] Sections 116 and 117 of the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*], provide that a strata corporation may register a lien against an owner's strata lot for unpaid strata fees and enforce that lien by applying for an order for sale of the strata lot. Section 118 provides that certain costs of registering and enforcing a lien pursuant to ss. 116 and 117, including "reasonable legal costs", may be added to the amount owing under the lien. This appeal concerns the proper interpretation of the phrase "reasonable legal costs" as it is used in s. 118 of the *SPA*.

[2] The appellant strata corporation ("the Strata") argues that "reasonable legal costs" means *actual* legal costs, provided those costs are reasonable, thus entitling it to what it describes as "full indemnity" for the legal costs it reasonably incurred in registering and enforcing a lien against a strata lot owned by the respondent, Emma Baettig.

[3] In the underlying proceedings, Master Young (now Young J.) ordered the sale of Ms. Baettig's strata lot, but concluded that s. 118 did not entitle the Strata to an order for the "full indemnity costs" it sought: 2015 BCSC 804. Pursuant to Appendix B of the *Supreme Court Civil Rules* [*Civil Rules*] she awarded the Strata party and party costs at Scale B.

[4] On appeal, Mr. Justice Weatherill affirmed Master Young's decision and dismissed the Strata's appeal: 2015 BCSC 2125. The Strata now appeals Weatherill J.'s order.

[5] For the reasons that follow, I would allow the appeal. In my view, s. 118 entitles a strata corporation to add the actual legal costs it incurs registering and enforcing a lien to the amount owing under the lien, provided those costs are reasonable.

## II. Background

[6] Ms. Baettig owned a strata lot in the Strata's resort community on Okanagan Lake. She failed to pay strata fees and the Strata registered a lien against her lot pursuant to s. 116 of the *SPA*.

[7] Subsequently, the Strata petitioned the court for judgment in the amount unpaid and for an order for the sale of Ms. Baettig's lot pursuant to s. 117 of the *SPA*. Master Young granted the Strata's petition on December 17, 2014, and made an order approving the sale of Ms. Baettig's lot on April 20, 2015. The issue of costs was adjourned to a later hearing.

[8] At the costs hearing, Master Young found that that there was no authority for awarding a strata corporation "full indemnity" costs under s. 118 and several authorities supporting the proposition that costs under s. 118 – and its predecessor provision in the *Condominium Act*, R.S.B.C. 1996, c. 64 [*CA*] – are generally treated as party and party costs. She awarded the Strata its costs at Scale B.

[9] Ms. Baettig did not provide written submissions or appear before the Court on the hearing of this appeal, nor did she appear at any stage of the proceedings in the court below. Based on the Strata's submissions, I am satisfied that Ms. Baettig is aware of the proceedings and has chosen not to participate.

## III. Reasons for Judgment of the Chambers Judge

[10] On the appeal before Weatherill J., the Strata advanced three possible interpretations of s. 118:

1. *actual* reasonable legal costs are added to a lien, become part of the lien, and are not a separate judgment from the lien amount;
2. legal costs of enforcing a lien are dealt with as court costs pursuant to R. 14-1 of the *Civil Rules*; or
3. section 118 creates a separate claim for actual reasonable costs which must be enforced by the initiation of a separate proceeding.

[11] The Strata argued that the first interpretation was the only logical one because it was consistent with the *SPA*'s intent to prevent strata corporations and, indirectly, strata lot owners from being burdened with the legal expenses of recovering strata arrears from delinquent owners. It asserted that the second interpretation could not be correct because R. 14-1 only applies in situations where court proceedings have been commenced. Because a lien can be registered in the land title office and subsequently discharged without any involvement of the courts, the Strata argued that it makes no sense to interpret s. 118 in a way that would preclude a strata corporation from recovering legal costs associated with registering a lien. The Strata asserted that the legislature clearly intended to extend the recovery of legal costs by a strata corporation to tasks taken both prior to and in the course of a court proceeding. Thus, the legislature could not have intended s. 118 to be governed by R. 14-1. Finally, the Strata submitted that the third interpretation is inefficient, time consuming, expensive and inconsistent with the philosophy underlying the legislative scheme as a whole; namely, to put in place mechanisms that protect compliant owners from having to subsidize delinquent owners who will not or cannot pay their proportionate share of strata fees.

[12] Weatherill J. concluded that the second interpretation was the correct one. He rejected the Strata's argument that R. 14-1 does not apply when a lien is registered and discharged without the commencement of court proceedings. He found that the

registration of a lien is a "cause" or "matter" within the definition of "proceeding" in R. 1-1(1) of the *Civil Rules* and that R. 14-1 therefore applies to the registration of a lien, regardless of whether an enforcement proceeding has been commenced.

[13] The Strata argued that Master Young erred by relying on distinguishable cases. It noted that two of the cases – *Strata Plan LMS93 v. Neronovich* (1997), 39 B.C.L.R. (3d) 382 (S.C.), and *Strata Corp. VR 873 v. Crumley* (1982), 40 B.C.L.R. 80 (S.C.) – dealt with s. 37 of the *CA*, the predecessor to s. 118 of the *SPA*. The Strata argued that the legislature's decision to change the wording from "legal costs of a proceeding" in s. 37 of the *CA* to "reasonable legal costs" in s. 118 of the *SPA* signalled an intention to indemnify strata corporations for reasonable legal costs incurred, not just party and party costs.

[14] Weatherill J. relied, in large measure, on the reasoning of Mr. Justice Betton in *First West Credit Union v. Milligan*, 2012 BCSC 610, to reject this argument. One of the issues in *Milligan* concerned the measure of costs encompassed by the phrase "reasonable legal costs" in s. 118 of the *SPA*. Betton J. said this:

> [35] … In the provisions at bar the issue is one of priority only. The priority is given to all of what I will term the core items by s. 116. Section 118(a) does not determine the full extent of costs to which the strata is entitled, but rather the extent to which those costs should receive priority with the core items.
>
> …
>
> [54] The second issue of course relates to the measure of the costs, and in that respect s. 118 is less clear. What is meant by "reasonable legal costs"?
>
> …
>
> [59] As noted in the authorities dealing with statutory interpretation cited above, if the provision is ambiguous it is appropriate to look to factors including the history, internal logic, and legislative context.
>
> [60] The phrase "reasonable legal costs", standing alone is ambiguous. It could mean, as the applicant submits, party and party costs as under *Geis* [2001 BCSC 1016]. It could also mean, as the respondent submits, all legal costs subject to a review of reasonableness under s. 70 of the *Legal Profession Act*. It is therefore necessary to look beyond the plain words of the provision to determine its meaning.
>
> [61] It is clear that under the *Condominium Act* costs were party and party costs at scale. Although the wording of the provision has changed, there has

> been no evidence presented to me to indicate the intention of the legislature to change the law in that respect. …
>
> [62] It is not readily apparent from the difference in language between s. 37 of the *Condominium Act* and s. 118 of the *Strata Property Act* that the legislature intended to change the recovery from party and party costs to full indemnity. Such an intention in the context of utilization of plain language drafting would have been, in my view, much more clearly articulated as in the examples noted above in the petitioner's argument regarding *A.B.C. Recycling*. [The petitioner noted that the *Business Corporations Act*, S.B.C. 2002, c. 57, used the term "indemnity", the *Motor Dealer Act*, R.S.B.C. 1996, c. 316, used the phrase "recovery of actual legal costs", and the *Arbitration Act,* R.S.B.C. 1996, c. 55, used the phrase "actual reasonable legal fees".]
>
> [63] This is not the ordinary case of the legislature modifying the wording of a statute to change its legal effect. Rather, the evidence is that the legislature made a conscious effort to convert British Columbia's legislation to conform with plain language principles during the mid-1990s. …
>
> [64] I refer as well to the comments of Preston J. in *Geis* noted above regarding the *language* of the Act being "legal c*osts" not "legal fe*es".
>
> [65] Examining the internal logic does not, in my view, favour one interpretation over the other. Obviously the goal of the legislation is to give priority to expenses for maintenance and improvement of the common property which serves to benefit all, including previously registered charge holders. In respect of legal costs, it is logical that those receive a similar priority. Conversely not extending that priority to actual legal costs does not prevent the Strata from full recovery of its costs from the owner, they simply do not have priority over previously registered charges. A balance is struck between the interests of strata owners and third party charge holders by limiting the priority costs to party and party costs.
>
> [66] Any successful party to litigation who is the beneficiary of an order as to costs might say that should be full indemnity. That is, however, an exceptional circumstance in this province.

[15] The Strata sought to distinguish *Milligan* on its facts. That case dealt with competing claimants – a strata corporation and a mortgagee who was pursuing a shortfall foreclosure. Because the amount obtained in the sale of the strata lot did not cover the strata arrears, the strata corporation's legal fees and the mortgage, the court was tasked with balancing competing priorities. The Strata argued that *Milligan* should have no application in cases where there are no competing claimants and there is no evidence that there will be a shortfall on the sale of the strata lot.

[16] Weatherill J. disagreed. He found that adopting the Strata's position would mean that the interpretation of "reasonable legal costs" under s. 118 would differ

depending on whether or not competing claims existed. He followed *Milligan* and held that "reasonable legal costs" under s. 118 means party and party costs. He found that judicial comity bound him to follow the *Milligan* decision and, in any event, he was not persuaded that Master Young's decision was clearly wrong.



[17] The Strata sought leave to appeal Weatherill J.'s order to this Court. Mr. Justice Donald granted leave on the following question:

- What is the meaning of the phrase "reasonable legal costs" in s. 118 of the *SPA* as it relates to costs incurred in registering and enforcing a lien under ss. 116 and 117?

## IV. Issues

[18] The appellant submits that deciding the question on which leave was granted requires resolution of the following two issues:

1. Whether the judge erred in concluding that registering a lien under the *SPA* falls within the definition of "proceeding" in R. 1-1 of the *Civil Rules*; and
2. Whether the judge erred in following *Milligan* and concluding that "reasonable legal costs" in s. 118 of the *SPA* means party and party costs.

## V. Analysis

### A. Legislative Framework

[19] Rule 14-1 of the *Civil Rules* provides:

> (1) If costs are payable to a party under these Supreme Court Civil Rules or by order, those costs must be assessed as party and party costs in accordance with Appendix B unless any of the following circumstances exist …
>
> [Emphasis added.]

(The enumerated circumstances are not relevant to this appeal.)

[20] Rule 1-2(2) addresses the application of the *Civil Rules*:

> (2) These Supreme Court Civil Rules govern every proceeding in the Supreme Court unless
>
> (a) the proceeding is a family law case, in which case the Supreme Court Family Rules apply, or

(b) an enactment otherwise provides.

[Emphasis added.]

[21] Under R. 1-1(1), "proceeding" means "an action, a petition proceeding and a requisition proceeding, and includes any other suit, cause, matter, stated case under Rule 18-2 or appeal" (emphasis added).

[22] The following provisions of the *SPA* are relevant:

**Strata corporation responsible for common expenses**

**91** The strata corporation is responsible for the common expenses of the strata corporation.

**Operating fund and contingency reserve fund**

**92** To meet its expenses the strata corporation must establish, and the owners must contribute, by means of strata fees, to

(a) an operating fund for common expenses that

(i) usually occur either once a year or more often than once a year, or

(ii) are necessary to obtain a depreciation report under section 94, and

(b) a contingency reserve fund for common expenses that usually occur less often than once a year or that do not usually occur.

**Calculating strata fees**

**99** (1) Subject to section 100, owners must contribute to the strata corporation their strata lots' shares of the total contributions budgeted for the operating fund and contingency reserve fund by means of strata fees calculated in accordance with this section and the regulations.

(2) Subject to the regulations, the strata fees for a strata lot's share of the contribution to the operating fund and contingency reserve fund are calculated as follows:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots}} \text{ x total contribution}$$

**Notice to owner or tenant of money owing to strata corporation**

**112** ...

(2) Before the strata corporation registers a lien against an owner's strata lot under section 116, the strata corporation must give the owner at least 2 weeks' written notice demanding payment and indicating that

a lien may be registered if payment is not made within that 2 week period.

**Notice to mortgagee**

**113** If a mortgagee has given the strata corporation a Mortgagee's Request for Notification under section 60, the strata corporation

(a) may give the mortgagee written notice that the strata lot owner has failed to pay money owing to the strata corporation for more than 60 days, and

(b) must give the mortgagee a copy of any notice given to the owner under section 112.

**Certificate of Lien**

**116** (1) The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:

(a) strata fees;

(b) a special levy;

(c) a reimbursement of the cost of work referred to in section 85;

(d) the strata lot's share of a judgment against the strata corporation;

(e) [Repealed 1999-21-25.]

(2) The strata corporation may register a lien against any strata lot, but only one strata lot, owned by an owner as owner developer, by registering in the land title office a Certificate of Lien in the prescribed form if the owner developer fails to pay an amount payable to the strata corporation under section 14 (4) or (5), 17 (b) or 20 (3).

(3) Subsections (1) and (2) do not apply if

(a) the amount owing has, under section 114, been paid into court or to the strata corporation in trust,

(b) arrangements satisfactory to the strata corporation have been made to pay the money owing, or

(c) the amount owing is in respect of a fine or the costs of remedying a contravention.

(4) On registration the certificate creates a lien against the owner's strata lot in favour of the strata corporation for the amount owing.

(5) The strata corporation's lien ranks in priority to every other lien or registered charge except

(a) to the extent that the strata corporation's lien is for a strata lot's share of a judgment against the strata corporation,

(b) if the other lien or charge is in favour of the Crown and is not a mortgage of land, or

(c) if the other lien or charge is made under the *Builders Lien Act*.

(6) On receiving the amount owing, the strata corporation must within one week remove the lien by registering in the land title office an Acknowledgement of Payment in the prescribed form.

**Forced sale of owner's strata lot to collect money owing**

**117** (1) After the strata corporation has registered a Certificate of Lien against a strata lot, the strata corporation may apply to the Supreme Court for an order for the sale of the strata lot.

(2) If the strata corporation has obtained a judgment for the amount owing, the court may, after considering all the circumstances, make an order for the sale of the strata lot.

(3) If the strata corporation has not obtained a judgment for the amount owing, the court may try the issue and may

(a) order that judgment be entered against the owner in favour of the strata corporation for the amount of the lien or for an amount that the court, as a result of the trial, finds owing, and

(b) if judgment is entered against the owner, make an order for the sale of the strata lot after considering all the circumstances.

(4) An order for the sale of a strata lot must provide that, if the amount owing is not paid within the time period required by the order, the strata corporation may sell the strata lot at a price and on terms to be approved by the court.

**Costs added to amount owing**

**118** The following costs of registering a lien against an owner's strata lot under section 116 or enforcing a lien under section 117 may be added to the amount owing to the strata corporation under a Certificate of Lien:

(a) reasonable legal costs;

(b) land title and court registry fees;

(c) other reasonable disbursements.

[Emphasis added.]

**Strata corporation may remedy a contravention**

**133** (1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including

(a) doing work on or to a strata lot, the common property or common assets, and,

(b) removing objects from the common property or common assets.

> (2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

[23] Prior to being repealed and replaced by the *SPA*, *s.* 37 of the *CA* provided:

> **Remedies for owner's default**
>
> **37** (1) In this section, **"common expenses"** includes the contribution levied under section 35, and the amounts, if any, added to the levy under section 34 (3).
>
> (2) If an owner defaults in the payment of his or her share of the common expenses, the strata corporation may register in the land title office a certificate in Form B showing the amount owing and the legal description of the strata lot of that owner.
>
> (3) A certificate noted in the register is, except as provided in subsection (8), a charge for the amount owing in favour of the strata corporation, in priority to every other lien or charge of whatever kind except those under the *Builders Lien Act*, and those of the Crown, other than mortgages in favour of the Crown.
>
> (4) On application by the strata corporation, the court may order that judgment be entered against the owner in favour of the strata corporation for the amount owing to the strata corporation on the charge by the owner.
>
> (5) An order under subsection (4) must provide that, failing payment to the strata corporation of the amount owing within 30 days after the order is made, the strata corporation may sell the strata lot at a price and on terms to be approved by the court, taking into account the priority of the charge.
>
> (6) A strata corporation must, before seeking an order for sale under subsection (4), give not less than 4 days' notice of the application to the owner and the owners of all charges ranking in priority after the charge in favour of the strata corporation, by service of a written notice and copies of all documents filed with the court in support of the application.
>
> (7) The strata corporation must, on receipt of the amount owing, file with the registrar acknowledgment of payment in Form C.
>
> (8) The priority of the strata corporation's charge under this section over a charge in favour of another person, as between them, and subject to a contrary intention appearing from the instrument creating them, is according to the date and time of the applications to register or file, to the extent that the amount owing to the strata corporation consists of the owner's share of common expenses incurred on satisfaction by the strata corporation of a judgment entered against the strata corporation.

> (9) A strata corporation may add the land title fee and the legal and administrative costs of filing under subsection (2) or (7) and the legal costs of a proceeding under subsections (4) and (5) to the amount owing by the owner to the strata corporation.
>
> [Emphasis added.]



## B. Discussion

### *1. Whether Registering a Lien is "Cause" or "Matter"*

[24] The first issue on appeal is whether registering a lien in the land title office is a "cause" or "matter" within the definition of "proceeding" in the *Civil Rules*, such that R. 14-1 could apply to legal costs thereby incurred. The issue is important for this reason: if "reasonable legal costs" under s. 118(a) are governed by R. 14-1 of the *Civil Rules* but the registration of a lien is not a "proceeding" under R. 1-1(1) of the *Civil Rules,* a strata corporation would be unable to recover costs it incurred in registering the lien because the *Civil Rules* only provide for the recovery of legal costs if a proceeding is commenced. The appellant says this would lead to an absurd result – one the legislature could not have intended.

[25] Weatherill J. found that registering a lien is a "cause" or "matter". The Strata asserts, as it did before Weatherill J., that registering a lien can be accomplished without any court filings or other invocation of the process of the court and, thus, does not fall within the definition of "proceeding" in the *Civil Rules*.

[26] The legislative evolution of the relevant terms sheds light on this issue. As far back as 1897, the definitions of "cause" and "matter" in the *Supreme Court Act*, R.S.B.C. 1897, c. 56, s. 2(1), involved proceedings *in court*:

> "cause" shall include any action, suit, or other original proceeding between a plaintiff and defendant;
>
> …
>
> "matter" shall include every proceeding in the Court not in a cause.

Those definitions remained largely unchanged until they were repealed in 1976.

[27] In 1969, the legislature added a new definition of "proceeding" to s. 2(1) of the *Supreme Court Act* (S.B.C. 1969, c. 38, s. 1):

> "proceeding" means any matter, cause, or action, including an appeal, whether civil or criminal …

The 1969 amendments to the *Supreme Court Act* did not change the definitions of "cause" and "matter".

[28] In 1976, the legislature repealed the old s. 2(1) and replaced it with a new interpretation section (S.B.C. 1976, c. 33, s. 114). The words "cause" and "matter" were no longer defined. The legislature amended the definition of "proceeding" as follows:

> "proceeding" means an action, suit, cause, matter, appeal or originating application;

[29] In my view, it was never the intention of the legislature to extend the meaning of "cause" or "matter" to include out-of-court applications and registrations. I agree with the Strata that registering a lien in the land title office, without engaging a court process, cannot be a "cause" or "matter" within the definition of "proceeding".

[30] This conclusion accords with the structure of the *Builders Lien Act*, S.B.C. 1997, c. 45, s. 26 [*BLA*]. Under the *BLA*, a claim of lien may be enforced by commencing an action in accordance with the *Civil Rules*. Pursuant to s. 33 of the *BLA*, a proceeding to enforce the lien claim must be commenced not later than one year from the date of its filing. A proceeding is not commenced simply by virtue of registering the lien. It is only commenced when an enforcement action is initiated in the Supreme Court.

[31] The import of this determination is that the *Civil Rules* have no application to the legal costs of registering a lien pursuant to s. 116 of the *SPA*. Since "reasonable legal costs" in s. 118 includes the legal costs of registering a lien under s. 116, it makes no sense to interpret "reasonable legal costs" to include only party and party costs governed by R. 14-1 of the *Civil Rules*. Doing so would mean that a strata corporation could not recover under s. 118 any costs attributable to registering the lien or other steps taken prior to the commencement of an enforcement action. I

agree with the appellant that the legislature could not have intended this absurd result.

[32] Before adopting a construction of a provision that is susceptible of more than one meaning, it is important to consider the consequences of each possible interpretation, for the consequences often point to the real meaning of the words: Peter St. John Langan, *Maxwell on the Interpretation of Statutes*, 12th ed. (London: Sweet & Maxwell, 1969) at 105. In *Rizzo v. Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, Iacobucci J., writing for the Court, addressed the point in these terms:

> 27. … It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, *supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes, supra*, at p. 88).

[33] My conclusion on this issue favours interpreting s. 118(a) of the *SPA* as encompassing actual reasonable legal costs, but it is not determinative of the measure of costs that may be added to the amount owing under the lien once enforcement proceedings have been commenced.

### *2. Interpretation of "Reasonable Legal Costs" under s. 118*

[34] The central issue on appeal is the interpretation of "reasonable legal costs" under s. 118 of the *SPA*. In my view, and for the reasons that follow, interpreting s. 118(a) of the *SPA* to permit a strata corporation to add the actual reasonable legal costs it incurs in registering and enforcing a lien to the amount owing under the lien accords with the words of the provision, its legislative history, its evident purpose and its statutory context.

***(a) General Principles***

[35] In *B.C. Freedom of Information and Privacy Association v. British Columbia (Attorney General)*, 2017 SCC 6 at para. 21, the Court affirmed the long-settled approach to statutory interpretation:

> … namely that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, quoting both E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, and *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21.

[36] In *Canada Trustco Mortgage Co. v. Canada,* 2005 SCC 54, the Court said at para. 10:

> … The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[37] Context plays an important role in construing the words of a statute. Statutory provisions should be read to give the words their most obvious ordinary meaning which accords with the context and purpose of the enactment in which they occur: *Rizzo Shoes* at paras. 21–23; *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743 at para. 14. The plain words of the provision, its legislative history, its internal logic, its evident purpose and its statutory context are all important considerations: *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160 at para. 46; *R. v. D.A.I.*, 2012 SCC 5, [2012] 1 S.C.R. 149 at para. 25.

[38] Other principles of interpretation come into play only where there is genuine ambiguity as to the meaning of a provision. Genuine ambiguity arises when there are two or more plausible readings of a provision, each of which is equally consistent with the intent of the statute: *CanadianOxy Chemicals* at para. 14; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559 at paras. 27–29. The

"entire context" of a provision must be considered before concluding that the provision is reasonably capable of more than one interpretation: *Bell ExpressVu* at para. 29.

***(b) Ordinary Meaning***

[39] The appellant conceded on appeal and in the court below that s. 118(a) is ambiguous. The appellant submits there are two plausible interpretations of what "reasonable legal costs" means: (1) court costs at scale pursuant to the *Civil Rules*; or (2) reasonable legal costs actually incurred by a strata corporation.

[40] Despite making this concession, the appellant submitted that the only plausible interpretation of the provision, given its historical evolution, the plain meaning of the words used by the legislature, the context in which those words appear and the overall purpose of the enactment, is that "reasonable legal costs" means reasonable legal costs actually incurred by the strata corporation. The appellant emphasizes that a plain language reading of the provision favours its proposed interpretation. Thus, the appellant appears to be arguing that the provision is actually unambiguous when viewed historically and in light of its purpose and statutory context.

[41] In any event, Weatherill J. found the phrase "reasonable legal costs", on its own, to be ambiguous. British Columbia courts have interpreted "legal costs" to mean party and party costs in some statutes and to mean actual reasonable costs in others (see discussion at paras. 167–69 of *Canadian National Railway Company et al. v. A.B.C. Recycling Ltd*., 2005 BCSC 647, rev'd on other grounds 2006 BCCA 429 [*A.B.C. Recycling*]). However, as Kirkpatrick J. (as she then was) said in *A.B.C. Recycling*:

> [168] … The task at hand is the interpretation of the meaning of "legal costs" in the context of this *Act*. The fact that in other contexts the courts have concluded that references to "legal costs" in other statutes meant party-and-party costs is not dispositive of the issue before me.

[42] In my view, the words of s. 118(a) of the *SPA*, when examined in light of the section's legislative history, purpose, and context, support an interpretation that

permits a strata corporation to add the actual reasonable legal costs of registering and enforcing a lien to the amount owing under the lien.

***(c) Legislative History***

[43] A useful starting place for interpreting the meaning of "reasonable legal costs" in s. 118 is to examine its predecessor provision, s. 37 of the *CA,* bearing in mind section 37 of the *Interpretation* Act, R.S.B.C. 1996, c. 238, s. 37, which provides that the repeal and replacement of an enactment does not constitute a declaration on the previous state of the law.

[44] As this Court noted in *Raguin v. Insurance Corporation of British Columbia*, 2011 BCCA 482:

> [36] A court may look to prior versions of an enactment to assist with interpretation of the version which is applicable in a particular case. As stated by the Supreme Court of Canada, "prior enactments may throw some light on the intention of the legislature in repealing, amending, replacing or adding to it": *Gravel v. St-Léonard*, [1978] 1 S.C.R. 660 at 667. As explained by Sullivan at 579, it is presumed that amendments are made for an intelligible purpose: to clarify meaning, to correct a mistake, or to change the law.

[45] There is a significant structural difference between the former s. 37 and the current s. 118. In my view, this structural difference is highly relevant in discerning the intention of the legislature when it enacted the provision in issue.

[46] Section 37(9) of the old *CA* drew a distinction between the legal costs incurred by a strata corporation in registering a lien in the land title office versus those it incurred bringing enforcement proceedings before the court:

> (9) A strata corporation may add the land title fee and the legal and administrative costs of filing under subsection (2) or (7) and the legal costs of a proceeding under subsections (4) and (5) to the amount owing by the owner to the strata corporation.
>
> [Emphasis added.]

[47] Section 37(9) distinguished between "legal and administrative costs" of registering a lien and filing an acknowledgement of payment in the land title office (costs not associated with any court "proceeding" to which the *Civil Rules* would

apply) and "legal costs of a proceeding" incurred by a strata corporation in applying for judgment on the lien (in respect of which R. 14-1 of the *Civil Rules* on costs would be applicable).

[48] Courts recognized this distinction and interpreted s. 37(9) as entitling strata corporations to add the *actual* legal and administrative costs of registering a lien to the amount owing under the lien, but only party and party costs of enforcement proceedings. As Huddart J. (as she then was) held in *Crumley* at 83:

> ... In my view, that section allows the strata corporation to add the land title fee, the amount of its legal bill and of any administrative expenses for the filing of Forms B and C – but it allows only the taxable costs on a party-and-party basis of the proceedings.
>
> [Emphasis added.]

[49] Section 118 of the *SPA* removed the distinction between legal costs in the two contexts. For ease of reference, s. 118 provides as follows:

> **118** The following costs of registering a lien against an owner's strata lot under section 116 or enforcing a lien under section 117 may be added to the amount owing to the strata corporation under a Certificate of Lien:
>
> (a) reasonable legal costs;
>
> (b) land title and court registry fees;
>
> (c) other reasonable disbursements.

[50] It is clear that "reasonable legal costs" in s. 118(a) applies to both costs incurred in registering a lien out of court and those incurred enforcing a lien in court. In my view, the legislature's decision to amend s. 118 in this way supports the view that the quantum of legal costs that may be added to a lien is now the same in both contexts.

[51] In light of the structural change to s. 118, I am of the view that the legislature must have intended one of two possible changes to the law:

> (1) To provide strata corporations with a fuller indemnity against delinquent owners than was available under the previous legislation by making the actual legal costs of registering a lien *and* the actual legal costs of

> enforcing a lien recoverable under the lien, subject to a standard of reasonableness; or
>
> (2) To decrease the indemnity available under the previous legislation by making the legal costs of both registering and enforcing a lien subject to assessment on a party and party basis, pursuant to R. 14-1 of the *Civil Rules*.

[52] In addition to making structural changes to s. 118, the legislature also changed the wording used to describe the legal costs that may be added to the amount owing under a lien. Under the former s. 37, a strata corporation was entitled to add the "legal costs of a proceeding" incurred in enforcing a lien, whereas, under s. 118 of the *SPA*, the "reasonable legal costs" of registering and enforcing a lien may be added to the amount owing.

[53] As noted earlier, in *Milligan*, Betton J. concluded that the difference in wording between the two provisions did not show a clear intention on the legislature's part "to change the recovery from party and party costs to full indemnity" (at para. 62). He noted that it was "clear that under the [*CA*] costs were party and party costs at scale" and that, if the legislature intended to change the quantum of recoverable costs, it would have used more clearly articulated language to express this intention (paras. 61–62).

[54] I respectfully disagree with the conclusion of Betton J. on this point. His analysis overlooks what I have termed the structural differences between the two provisions and the fact that *actual* legal costs (not party and party costs) of registering a lien were recoverable under s. 37 of the former legislation. In addition, it might equally be said that if the legislature intended to restrict costs recoverable by a strata corporation to party and party costs at scale, one would expect that s. 118(a) of the *SPA* would make clear that costs recoverable under the lien would be restricted to "court costs", "tariff costs", "costs pursuant to the *Civil Rules*" or "costs of a proceeding".

[55] I am of the view that the change in wording from "legal costs of a proceeding" – clearly referring to costs incurred in proceedings *in court* and implicitly governed by R. 14-1 of the *Civil Rules* – to "reasonable legal costs" – referring to costs incurred both in court *and* out of court – signals an intended change in meaning. In my view, the intention of the legislature was to increase the indemnity provided to strata corporations, rather than decrease it. I do not, however, find the structural and wording changes alone to be determinative of the issue. The analysis must take account of other considerations, including the scheme of the *SPA* as a whole.



***(d) Scheme of the SPA and ss. 116–118***

[56] The scheme of the *SPA* in general, and ss. 116-118 specifically, ensures that individual strata owners have clearly defined rights and responsibilities and provides legislative mechanisms designed to prevent compliant strata owners from being forced to shoulder the burdens created by delinquent owners.

[57] The object of the *SPA* was discussed by Chief Justice Finch in *The Owners, Strata Plan NES 97 v. Timberline Developments Ltd.*, 2011 BCCA 421:

> [16] In general terms, the purpose of the *Strata Property Act* is to lay down clear rules for the creation, registration and transfer of strata titles, and for the delineation of the respective rights and responsibilities of those who develop strata plans, and those who purchase or who may subsequently wish to transfer a strata property.

[58] In *Owners, Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085, Mr. Justice Bauman (now C.J.B.C.) put it this way:

> [35] The general rule under the *SPA* is that within a strata corporation "you are all in it together".

[59] Justice Bauman's observation was based on s. 99 of the *SPA*, which provides that each strata owner has a shared obligation to pay for maintenance and improvements provided by the strata corporation for the benefit of all owners. In other words, the *SPA* ensures that every strata owner "pulls their own weight".

[60] Section 116 allows strata corporations to register a lien against a delinquent strata owner's lot. This lien ranks in priority to all other charges and liens, except

those enumerated in ss. 116(5)(a)-(c) (e.g., liens previously registered in favour of the Crown or under the *Builders Lien Act* retain priority over a strata's s. 116 lien). Section 117 permits a strata corporation that has registered a Certificate of Lien to apply to the Supreme Court for an order for the sale of the strata lot.



[61] As noted earlier, s. 118 entitles strata corporations to add certain costs incurred in registering and enforcing a lien to the amount owing under the lien, including "reasonable legal costs". The costs added to the amount owing under the lien pursuant to s. 118 gain priority against other charges previously registered against the strata lot.

[62] Sections 116–118 of the *SPA* appear under "Part 6 – Finances", "Division 6 – "Money Owing to Strata Corporation". Consistent with the philosophy underlying the *SPA*, the objectives of Part 6 include: (1) keeping the strata corporation whole as to the reasonable costs it incurs; and (2) protecting compliant owners from the financial burden of taking recovery steps against delinquent owners who are unable to pay or otherwise refuse to pay their fair share in strata fees.

[63] Division 6 of Part 6 of the *SPA* provides the framework by which strata corporations can address the failure of a strata owner to meet his or her shared obligations. The *SPA* is premised on the fair division of expenses by statutory formula. As the appellant points out, "each owner must pay amounts assessed to satisfy common expenses which are intended to manage and preserve the investments of all owners in their collective best interests". The strata corporation has no authority to forgive arrears owed by a delinquent owner and has an obligation to ensure that compliant owners are not unfairly burdened by contributions that exceed their lawful share.

[64] In *Strata Corp. VR149 v. Berezowsky* (1986), 5 B.C.L.R. (2d) 316 (C.A.), Mr. Justice Carrothers explained the purpose of the former *CA*'s scheme for the recovery of unpaid strata fees:

> [12] Thus it can be seen that the legislature has imposed on the strata corporation the legal responsibility to care for and administer the common

> property within the strata plan, and has prescribed the mechanism, which is democratically vested in all the owners of the strata plan as a group, for the budgeting of expenditures and levying of contributions on the individual owners in proportion to the unit entitlement of their respective strata lots to raise the funds required by the strata corporation in this regard.
>
> [13] In anticipation of default on the part of the owner to the prejudice of the rest, such as has occurred in this case, the legislature has given the strata corporation (that is, the owners collectively and not an arm's-length independent landlord) a statutory mode of legal "self-help" in the nature of a power of distress to remedy such default. The strata corporation, acting through its strata council also comprised of owners, has the onerous and unpleasant task of exacting delinquent contributions and penalties from immediate neighbours. The legislature has provided that the strata corporation shall have the assistance of the courts in carrying out this unpopular function.
>
> [14] … The remedial provisions in the *Act* for recovery of unpaid assessments are essential and indispensable to the effective maintenance and operation of the entire strata plan.



[65] Sections 116–118 of the *SPA* are remedial. They shift the burden of costs associated with collecting strata arrears to the delinquent owners who have failed to meet their obligations. Accordingly, the provision must be given "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects": *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 8.

[66] In my view, it is consistent with the remedial objective of ss. 116–118 and with the purposes of the *SPA* as a whole to interpret s. 118 as providing a strata corporation with the means to recover costs reasonably incurred in registering and enforcing a lien against a delinquent strata owner. If actual reasonable legal costs are not included in s. 118(a), legal fees not covered by the tariff must be borne by non-delinquent strata owners by way of increased common fees. This would further increase the financial burden on owners who are paying their share. In my view, this interpretation would be inconsistent with the philosophy and scheme of the *SPA*.

[67] Parenthetically, I note that s. 133 of the *SPA,* which appears under "Part 7 – Bylaws and Rules", "Division 3 – Enforcing the Bylaws and Rules", provides that a strata corporation, in doing what is reasonably necessary to remedy a contravention of its bylaws or rules, may require that the "reasonable costs" of remedying the contravention be paid by the owner who is responsible or who is deemed to be so

pursuant to s. 130. A similarly worded provision in s. 127 of the old *CA* provided that "any costs or expenses" incurred by the strata corporation in remedying a violation of its bylaws or rules were payable by the unit owner. In cases decided under s. 127, it was held that strata corporations were permitted to recover actual legal costs expended in enforcing their bylaws by way of court action: *Strata Plan VR 243 v. Hornby*, [1986] B.C.J. No. 2353 (S.C.), *Hill v. Strata Plan NW 2477*, 57 A.C.W.S. (3d) 662, [1995] B.C.J. No. 1906 (S.C.). There has been scant judicial consideration of the meaning of "reasonable costs" in the context of s. 133 of the *SPA*, although one case is capable of being read as suggesting that the phrase encompasses the actual legal costs associated with bringing a court action: see *Strata Plan VR19 v. Collins*, 2004 BCSC 1743 at para. 17.



[68] In my view, the same legislative intent underlies both ss. 133 and 118 of the *SPA* – that strata owners who comply with the bylaws and rules of the strata corporation should not have to shoulder the financial burden of remedying infractions committed by non-compliant owners.

[69] These two provisions should be given a consistent meaning in light of the common legislative goal that underlies both. It would make no sense to award actual reasonable legal costs to a strata corporation that takes action to remedy the contravention of a bylaw or rule, but limit the strata corporation to party and party costs where the strata corporation is compelled to take action under ss. 116 and 117 to recover strata fees from delinquent owners.

***(e) Presumption That Legislature Does Not Speak Gratuitously***

[70] "It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain": *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis Canada, 2014) at 211.

[71] The Strata argues that s. 118 is rendered superfluous if "reasonable legal costs" is interpreted to mean court costs pursuant to R. 14-1. In support of this argument, it cites *A.B.C. Recycling*, in which Kirkpatrick J. concluded that "legal

costs" in s. 27(2)(c) of the *Waste Management Act*, R.S.B.C. 1996, c. 482 [*WMA*], meant reasonable legal costs actually incurred:

> [180] I also agree with CN's submission that interpreting the term "legal costs" in s. 27(2)(c) to mean party-and-party costs would render the section superfluous. In an action by a private party to enforce a statutory right, such as the one in the case at bar, that party will normally be entitled, where successful, to recover party-and-party costs as a matter of course. To find that the reference to "legal costs" in the *Act* only contemplated party-and-party costs would, in my view, render the section completely redundant. This runs contrary to the principle that the legislature is presumed not to speak gratuitously.



[72] In my view, s. 27 of the former *WMA* is distinguishable from s. 118 of the *SPA* and Kirkpatrick J.'s reasoning is inapplicable in the present case. Section 27 of the *WMA* provided that persons responsible for remediation at contaminated sites were liable to any person or government body that reasonably incurred costs associated with remediation, including legal costs. A person (or government body) who successfully brought litigation against a person responsible for remediation at a contaminated site would generally be entitled to recover party and party costs of the proceedings as the successful litigant. Therefore, the inclusion of "legal costs" in s. 27 of the *WMA* would have been redundant if it was interpreted to mean party and party costs.

[73] However, as noted above, the *SPA* does not merely provide that a strata corporation may recover "reasonable legal costs" from a strata owner. If it did this alone, interpreting "reasonable legal costs" under s. 118(a) as party and party costs would render that subsection redundant, since a successful party is generally entitled to party and party costs of the proceedings. Section 118 provides that certain amounts may be added to the amount owing under a Certificate of Lien. Section 116(5) provides that the lien ranks in priority against all previously registered charges, except those enumerated in ss. 116(5)(a)-(c). Thus, interpreting "reasonable legal costs" as party and party costs does not, standing alone, render s. 118(a) redundant because, without s. 118(a), a strata corporation's "reasonable legal costs" would not gain the priority of the lien.

[74] There is, however, another aspect to this argument I do find persuasive. If "reasonable legal costs" under s. 118(a) means "court costs" generally assessed on a party and party basis, ss. 118(b) and (c) would be redundant because "court costs" have long included both legal fees and disbursements: *Gonzales v. Voskakis*, 2013 BCSC 675. As the legislature is presumed not to speak in vain, the structure of s. 118 as a whole supports a conclusion that the legislature intended "reasonable legal costs" to encompass the actual costs incurred by a strata corporation in registering and enforcing a lien against a delinquent unit owner, subject to review for reasonableness.



***(f) Should Milligan be Followed?***

[75] In *Milligan*, Betton J. characterized the scheme in ss. 116–118 in terms of priority alone. He found that s. 118 does not address the extent of the costs a strata corporation is entitled to recover from a delinquent owner, but only the extent to which those costs receive priority under a lien against all other previously registered charges. In the context of a shortfall foreclosure, he held that an appropriate balance is struck between the strata corporation and third-party charge holders by limiting costs to be included and given priority under the lien to party and party costs. He noted that limiting priority to party and party costs did not prevent a strata corporation from pursuing full recovery of its costs from the owner in a separate action: see the definition of "judgment" in the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78. s. 81; see also *Graham et al v. Moore et al*, 2004 BCSC 274, where the court held that a costs order is a judgment and can be registered as a charge against the land of the judgment debtor.

[76] Mr. Justice Betton based this conclusion, in part, on the reasoning in *Canada Trustco Mortgage Co. v. Gies*, 2001 BCSC 1016. In *Gies*, Preston J. put it this way (at para. 12):

> Established rights of third parties, usually mortgagees, are affected by the lien provisions of the *Act*. The safeguard provided by an established taxation process is the appropriate protection to afford third parties against excessive charges under the umbrella of the lien…
>
> [Emphasis added.]

[77] While Betton J. in *Milligan* was understandably motivated to come to an equitable resolution of the matter in the case before him, I am unable to agree with his analysis on several points. First, for the reasons given, I am unable to agree that the change in wording between the old *CA* and the *SPA* did not signal an intention on the part of the legislature to change the law by permitting a strata corporation to recover its reasonable legal costs attributable to steps it was obliged to take to extract unpaid strata fees from a delinquent owner. Second, to the extent *Milligan* suggests that actual reasonable legal costs do not have priority in cases where there is a third-party charge holder in a shortfall foreclosure sale, I cannot agree that the interpretation of s. 118(a) should be made to depend on the precise context in which the provision is engaged. I agree with Weatherill J. that costs recoverable under s. 118 should not differ depending on whether competing claims are in play [para. 42 of Weatherill J.'s reasons for judgement]. Third, I am respectfully of the view that *Milligan* does not take account of the statutory context in which these provisions appear or the purposes that animate them. For these reasons, I am of the view that *Milligan* and *Gies* were wrongly decided and should not be followed on this point.

***(g) Protection from Excessive Charges under the Umbrella of the Lien***

[78] In *Gies* at para. 12, the Court emphasized that the rights of third parties, usually mortgagees, are affected by the lien provisions of the *SPA*. The safeguards in the established taxation process were determined to be necessary and appropriate to protect third parties against "excessive charges under the umbrella of the lien". The concern is a legitimate one with respect to both third-party charge holders and delinquent strata owners. But I do not believe that this concern significantly informs the interpretation of s. 118(a).

[79] Further, it is my view that adequate safeguards are built into the *SPA.* Section 118(a) provides that only reasonable legal costs may be added to the amount owing under the lien. In other words, a strata corporation is entitled to add to the amount owing under the lien its actual legal costs subject to this qualification: those costs must have been reasonably necessary. I note, in this regard, that a similar conclusion has been reached in a similar context and on similarly worded

legislation in Ontario: see, for example, *Mancuso v. York Condominium Corporation No. 216*, 2008 CanLII 31418 (Ont. S.C.J.) at para. 6; *York Condominium Corporation No. 345 v. Qi*, 2013 ONSC 4592 at paras. 14–19, 22.

[80] In my view, safeguards against the inclusion of excessive legal charges under the umbrella of the lien are built into the wording of the *SPA*. Only reasonable legal costs may be added to the amount owing under the lien.

[81] Further, there exists a mechanism for the assessment of legal costs to ensure that what is added to the amount owing under the lien reflects only those costs reasonably necessary to register the lien and conduct the enforcement proceeding. In this regard, Rule 18-1 of the *Civil Rules* provides as follows:

> (1) At any stage of a proceeding, the court may direct that an inquiry, assessment or accounting be held by a master, registrar or special referee;
>
> (2) The court may direct that the result of an inquiry, assessment or accounting be certified by the master, registrar or special referee and, in that event, the certificate, if filed under subrule (9) is binding on the parties to the proceeding.

Rule 18-1(12) provides that the court may give special directions as to the manner in which an assessment is to be taken or made.

[82] Section 9 of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77 empowers this court to make or give any order that could have been made by the court appealed from.

[83] I would direct the registrar of the Supreme Court of British Columbia to conduct an assessment under Rule 18-1 of the *Civil Rules* as to whether the costs claimed by the Strata pursuant to s. 118 of the *SPA* were reasonably necessary to register the lien and conduct the enforcement proceedings. Further, I would direct that the registrar's assessment be certified and provided to a requesting party.

## VI. Summary of Disposition

[84] For the reasons aforesaid, I would allow the appeal and set aside the orders made below.

[85] The proceeds of the sale of the unit are currently being held in trust.

[86] I would grant judgment in the appellant's favour for the "amount owing under the lien".

[87] The "amount owing under the lien" shall include the appellant's reasonable legal costs incurred in registering and enforcing the lien, land title and court registry fees and other reasonable disbursements.

[88] Assessment of the Strata's account for legal costs, fees and other disbursements attributable to the registration and enforcement of the lien is referred to the registrar of the Supreme Court of British Columbia pursuant to Rule 18-1. Legal costs, fees and other disbursements determined by the registrar to have been reasonably incurred in registering the lien and prosecuting the petition shall be allowed and added to the amount owing under the lien. The registrar's assessment shall be certified and the certificate provided to a requesting party.

[89] The respondent is entitled to notice of the assessment appointment.

[90] Following the registrar's assessment and the issuance of a certificate, the proceeds held in trust shall be paid in the priority contemplated by ss. 116(5) and 118 of the *SPA*.

[91] Upon payment to the Strata of the amount owing under the lien, the balance of the funds from the sale of the property, if any balance then remains, shall be paid forthwith to the respondent.

[92] If additional terms are necessary to give effect to the disposition I propose, the parties have leave to speak to the matter. In addition, the parties have leave to

apply to the Supreme Court of British Columbia for directions concerning the assessment of the Strata's account.

"The Honourable Mr. Justice Fitch"

I AGREE:

"The Honourable Madam Justice Garson"

I AGREE:

"The Honourable Madam Justice Dickson"