COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NW 2575 v. Booth,* 2020 BCCA 153

Date: 20200528
Docket: CA45664

Between:

The Owners, Strata Plan NW 2575

Appellant
(Petitioner)

And

Verna Booth and George Booth

Respondents
(Respondents)

And

The Civil Resolution Tribunal

Respondent
(Respondent)

Before: The Honourable Madam Justice Newbury
The Honourable Madam Justice Saunders
The Honourable Madam Justice Dickson

On appeal from: An order of the Supreme Court of British Columbia, dated September 19, 2018 (*The Owners, Strata Plan NW 2575 v. Booth*, 2018 BCSC 1605, Vancouver Docket S1711431).

Counsel for the Appellant: L. Mackie
A. Aggarwal

No one appearing for the Respondents,
Verna Booth and George Booth

Counsel for the Respondent,
The Civil Resolution Tribunal: T. Mason
L. Kerr

Place and Date of Hearing: Vancouver, British Columbia
October 8, 2019

Place and Date of Judgment: Vancouver, British Columbia
May 28, 2020

Written Reasons by:
The Honourable Madam Justice Saunders

Concurred in by:
The Honourable Madam Justice Newbury
The Honourable Madam Justice Dickson

Summary:

Section 20 of the Civil Resolution Tribunal Act, S.B.C. 2012, c. 25, limits the role of lawyers in proceedings before the Civil Resolution Tribunal. A dispute came before the Civil Resolution Tribunal between the respondent owners of a strata lot and their Strata Corporation, in which the owners claimed $700 for repairs to a patio, $300 in "costs incurred in the Tribunal Resolution", and $25,000 for loss of enjoyment of life, threats, abuse, and stress. The Strata Corporation requested permission from the Tribunal to be represented by a lawyer in this dispute. The Tribunal, in denying the claim, described it as "a common dispute" and said there was "nothing exceptionally unusual or complex about the subject-matter of the dispute". The Supreme Court of British Columbia dismissed the Strata Corporation's petition for judicial review. On appeal, the Strata Corporation submitted that the seriousness of the Tribunal's misapprehension of the nature of the dispute and its effect on the Tribunal's decision made its decision unreasonable.

Held: Appeal allowed. The scale and basis of the claim take it beyond mere repairs referred to by the Tribunal, and raise more complex legal issues including of tort, vicarious liability, reputation, and, potentially, jurisdiction. The Tribunal's failure to consider these features demonstrates flawed reasoning and renders the decision unreasonable. The request for representation is remitted to the Tribunal for fresh consideration.

Reasons for Judgment of the Honourable Madam Justice Saunders:

[1] The Civil Resolution Tribunal has before it a notice of dispute filed by Verna and George Booth against their strata corporation, The Owners, Strata Plan NW 2575, claiming $26,000, apportioned as $700 for repairs to a patio in their condominium, $25,000 for loss of enjoyment of life, threats, abuse, and stress, and $300 in "costs incurred in the Tribunal Resolution". Under the Civil Resolution Tribunal scheme, the role of lawyers is limited and participation by a lawyer requires the Tribunal's permission. This appeal concerns the Tribunal's decision denying the Strata Corporation's request to be represented by a lawyer. It is from an order made October 7, 2019 by Mr. Justice Smith dismissing its petition for judicial review of the Tribunal's decision.

[2] The Civil Resolution Tribunal is an innovative addition to dispute resolution in British Columbia. Its constating legislation, the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25, came into force March 15, 2013, and the Tribunal commenced operations on July 13, 2016. The purpose of the Tribunal is to provide dispute

resolution services within its mandate in an "accessible, speedy, economical, informal and flexible" manner (s. 2(2)(a)) that "applies principles of law and fairness …" (s. 2(2)(b)). The legislation adopts a model of electronic communication, employing "online dispute resolution services available to the public" (s. 2(3)(b)). By s. 2.1 the Tribunal may adjudicate claims in relation to the *Strata Property Act*, S.B.C. 1998, c. 43, as specified in Division 4 of Part 10 of the *Civil Resolution Tribunal Act*. Sections 121 and 122 in that part divide strata property claims into those over which the Tribunal has jurisdiction and those over which it does not, in which case the Supreme Court has jurisdiction.

[3] The listing of claims in s. 121, over which the Tribunal has jurisdiction, in general terms, encompasses disputes considered amenable to speedy and economical resolution that relate to the intertwined relationships between neighbours in a stratified building, or between property owners and their Strata Corporations represented by elected boards of governance and management. Section 121 provides:

> 121 (1) Except as otherwise provided in section 113 [*restricted authority of tribunal*] or in this Division, the tribunal has jurisdiction over a claim, in respect of the *Strata Property Act*, concerning one or more of the following:
>
> (a) the interpretation or application of the *Strata Property Act* or a regulation, bylaw or rule under that Act;
>
> (b) the common property or common assets of a strata corporation;
>
> (c) the use or enjoyment of a strata lot;
>
> (d) money owing, including money owing as a fine, under the *Strata Property Act* or a regulation, bylaw or rule under that Act;
>
> (e) an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant;
>
> (f) a decision of a strata corporation, including the council, in relation to an owner or tenant;
>
> (g) the exercise of voting rights by a person who holds 50% or more of the votes, including

> proxies, at an annual or special general meeting.
>
> (2) For the purposes of this Act, the tribunal is to be considered to have specialized expertise in respect of claims within the jurisdiction of the tribunal under this Division.

[4] Section 122 lists those strata claims over which the Tribunal does not have jurisdiction.

[5] The Tribunal, by s. 118, also has jurisdiction to resolve claims for relief in the nature of debt or damages, limited in amount to $5,000 by s. 3 of the *Tribunal Small Claims Regulation*, B.C. Reg. 232/2018 (previously s. 2 of the *Civil Resolution Tribunal Small Claims Regulation*, B.C. Reg. 111/2017).

[6] As part of its model, s. 20 of the *Civil Resolution Tribunal Act* limits the role of lawyers in a tribunal proceeding:

> 20 (1) Unless otherwise provided under this Act, the parties are to represent themselves in a tribunal proceeding.
>
> (2) A party may be represented by a lawyer or another individual with authority to bind the party in relation to the dispute if
>
> (a) the party is a child or a person with impaired capacity,
>
> (b) the rules permit the party to be represented, or
>
> (c) the tribunal, in the interests of justice and fairness, permits the party to be represented.
>
> (3) Without limiting the authority of the tribunal under subsection (2) (c), the tribunal may consider the following as circumstances supporting giving the permission:
>
> (a) another party is represented in the proceeding;
>
> (b) the other parties have agreed to the representation.
>
> (4) A person representing a party in a tribunal proceeding must be a lawyer unless
>
> (a) the rules otherwise permit, or
>
> (b) the tribunal is satisfied that the person being proposed to represent the party is an appropriate person to do this.

> (5) In the case of a party that is a corporation, partnership or other form of organization or office with capacity to be a party to a court proceeding, the person acting for the party in the tribunal proceeding must be
>
> (a) a director, officer or partner of the party,
>
> (b) an individual permitted under the rules, or
>
> (c) an individual permitted by the tribunal.

[7] Section 63 provides that the Tribunal may adopt rules about procedure to advance the resolution of disputes in accordance with its purposes. The *Civil Resolution Tribunal Rules* in effect at the time of the impugned decision set out the procedure for obtaining permission for a lawyer or agent to represent a party:

> 2. These rules must be applied in a way that
>
> a) takes reasonable steps to recognize and address the needs of tribunal participants,
>
> b) is appropriate in the circumstances of each dispute, including consideration of fairness and proportionality,
>
> c) recognizes any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded,
>
> d) facilitates speedy, accessible, inexpensive, informal and flexible processes,
>
> e) encourages early and collaborative dispute resolution,
>
> f) makes reasonable accommodations for the diverse circumstances of persons using the tribunal,
>
> g) recognizes the value of certainty and finality in the resolution of disputes and compliance with outcomes, and
>
> h) promotes understanding of the dispute resolution processes for the tribunal's participants and for the public in general.
>
> …
>
> 35. At any time, a party can ask for permission to be represented in a dispute by providing information requested by the tribunal.
>
> 36. In considering a request for permission to be represented, a tribunal employee or member may consider whether
>
> a) any other party in the dispute is represented and if so, whether that representative is a lawyer or other person supervised by a lawyer,
>
> b) every party in the dispute has agreed to representation,

> c) the person proposed as the representative is appropriate, and
>
> d) in the interests of justice and fairness, the party should be permitted to be represented.

These *Rules*, renumbered, are substantially the same in the Tribunal's current revised *Rules*.

[8] This appeal concerns the foregoing provisions in the context of a strata property dispute in which the dominant portion of the claim, $25,000 of the total $26,000, is for "loss of enjoyment of life, threats, abuse and stress". That is a description of damages for civil wrongs, and appears on its face to be a claim for damages, or relief in the nature of damages, for various torts. The main ground of appeal, discussed below, challenges the Tribunal's failure to consider this description and its conclusion that the claim is not exceptionally unusual or complex. It is important to note, in light of the nature of the claim, that this appeal does *not* address the constitutional or statutory jurisdiction of the Tribunal to exclusively, or at all, entertain a claim in tort, at least to this scale which is in excess of the Tribunal's small claims limit. In particular, it does not engage the principles addressed, for example, in *Better Value Furniture (CHWK) Ltd. v. General Truck Drivers and Helpers Union, Loc. 31* (1981), 26 B.C.L.R. 273 (B.C.C.A.) per Chief Justice Nemetz, leave to appeal ref'd [1981] 2 S.C.R. viii, applied in *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214, wherein this court upheld the injunction issued by Chief Justice McEachern enjoining tortious behaviour associated with a strike although the regulation of the strike itself came within the jurisdiction of the Labour Relations Board ([1980] B.C.J. No. 1935).

[9] Nor does the appeal address the constitutionality of the *Civil Resolution Tribunal Act*'s general limitation on representation by a lawyer, including under the *Charter of Rights and Freedoms.*

[10] The issue before us concerns only the content of the Tribunal's decision, in particular its treatment of the issues likely to arise in respect of the broad claims for damages sought against the Strata Corporation.

The Dispute

[11] The dispute resolution process was commenced against the Strata Corporation by Verna and George Booth on June 27, 2017. The claim concerns responsibility for maintenance of a sunroom attached to their strata unit, one of 28 in this strata complex. They claim $700 for repairs to the sunroom, $300 for costs incurred in the Tribunal process, and $25,000 for "loss of enjoyment of life, threats, abuse and stress". In their response to the request for representation, the Booths complain of "physical and emotional abuse … inflicted on us for the past 6 years", allege "verbal abuse", say "[t]wice we have had to call for Police protection from [a] council member … (Physical attack and threat of bodily harm)", refer to "dishonest statements, oppressive acts and failure to act in good faith" and say the Strata Corporation has been "dishonest, oppressive and have not acted in good faith".

[12] The Strata Corporation takes issue with the claim. It has a directors' and officers' liability insurance policy that provides it with defence coverage in respect of the dispute. Under the policy, counsel was retained to represent the Strata Corporation in the Tribunal proceedings. The Strata Corporation filed a Representation Request, outlining the reasons it said counsel should be appointed as its representative. Verna and George Booth objected to the request, saying the proposed representation "would tilt the scales of justice against us".

[13] By reasons dated August 18, 2017, the Tribunal refused the request for representation. In doing so, it described the dispute as one that "involves the authorization and maintenance of a sunroom". The Tribunal observed that s. 20 of the *Civil Resolution Tribunal Act* generally requires a party to be self-represented, and in respect to a strata corporation this means through a member of the strata council, unless other representation is allowed by the Tribunal. The Tribunal referred to s. 20 of the *Act* and Rule 36. It is convenient to set out significant portions of the decision, indexed at 2017 BCCRT 61:

> 13. … For the reasons which follow, I find that the tribunal should not allow this request.

14. In reaching this conclusion, I have put significant weight on the following:

    (a) The owners do not agree to the representation. This is a factor set out in both the Act and the tribunal's rules. The owners' view is that allowing the strata to be represented by a lawyer would "tip the scales of justice against [them]. There is no fairness in that."

    (b) The owners are not represented. This is also a factor in both the Act and the tribunal's rules. In this regard, I have also considered the owners' undisputed submission that they cannot afford legal representation.

    (c) There is nothing exceptionally unusual or complex about the subject-matter of the dispute. It is a common dispute type within the tribunal's strata jurisdiction, conferred under the Act.

…

17. The tribunal's residual discretion under section 20, is just that; residual. The legislature has authorized the tribunal to make exceptions, on a case-by-case basis "in the interests of justice and fairness." Given the general rule in section 20 of the Act, the tribunal's residual discretion should be exercised in exceptional circumstances, not routinely. Exercising this discretionary authority on the basis that a party disagrees with the legislation would effectively gut section 20 of the Act, subverting the will of the legislature, and exceeding the tribunal's authority.

…

19. The strata's submissions focus substantially on tribunal rule 2, which sets out the purpose of the tribunal's rules. Tribunal rule 2 serves as an interpretive aid, and includes considerations such as: taking reasonable steps to recognize the needs of tribunal participants, recognizing relationships between parties, facilitating speedy, accessible, inexpensive, informal and flexible processes, encouraging early and collaborative dispute resolution, making reasonable accommodations for the diverse circumstances of persons using the tribunal, and recognizing the value of certainty and finality in the resolution of disputes, among others.

20. While tribunal rule 2 provides helpful guidance in applying the rules, the test for the tribunal in exercising its discretion under section 20(2)(c) is expressly set out in the Act, namely, whether it is in the interests of justice and fairness for the party to have a representative. Both the Act and tribunal rule 36 provide specific, though non-exhaustive, factors to consider in deciding whether to exercise the discretion in section 20(2)(c) of the Act.

21. While many of the factors in tribunal rule 2 support my decision not to exercise my discretion to permit representation in this case, including facilitating the inexpensive and informal resolution of disputes, to the extent there is a conflict, I have put greater weight on the factors enumerated in the Act and rule 36, as discussed earlier.

…

25. The strata submits that it entered into an insurance contract with the insurer, and legal representation is one of the insurance benefits. It argues that section 20 of the Act "interferes" with its right to this benefit, and the tribunal should exercise its discretion to permit representation for this reason.

…

27. An implication from the strata's argument is that legislative provisions should conform to the terms of contracts between private entities, and not, conversely, that private entities should ensure the terms of their contracts are consistent with applicable legislation. I do not accept the strata's argument in this regard. I also find that it would be inappropriate for the tribunal to use the residual discretion in section 20(2)(c) to assist a party to contract out of a legislative provision with which it disagrees.

…

29. As discussed above, a party is entitled to use a "helper" throughout the tribunal process, and there is no restriction on a strata's or insurer's ability to get legal advice, assistance completing documents, preparing submissions, or organizing evidence, among other help.

…

33. In some cases, it may be more efficient for the strata's representative to jointly represent the strata and the insurer. However, there is nothing particularly unusual or complex about this dispute that would justify exercising the exceptional, residual discretion under the Act on the basis of efficiency, especially in the face of the owners' disagreement with the request and own lack of representation.

34. The provisions of the Act specifically address the resolution of strata disputes in British Columbia. The [*Strata Property Act*] governs strata corporations in British Columbia. It follows that all disputes within the tribunal's strata property jurisdiction under the Act involve the application of the [*Strata Property Act*] or other legislation. Moreover, the type of strata dispute in this case is fairly common and typical of those within the tribunal's jurisdiction. I also note that a party is free to get legal advice or assistance in preparing evidence and submissions before the tribunal.

[Emphasis added.]

The Judicial Review

[14] The reviewing judge determined that the applicable standard of review is reasonableness and embarked on an analysis applying *Dunsmuir v. New Brunswick*, 2008 SCC 9. He considered and rejected the Tribunal's submissions that the petition, being of an interlocutory ruling, was premature. On the approach he was

required to bring to the review, he said a question was "whether the decision fell within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para. 47). He answered that question affirmatively, reasoning:

> [30] The Chair decided that there was nothing particularly difficult or complex about this dispute that justified a departure from the general practice. It is arguable that, in characterizing the dispute as she did, the Chair overlooked the fact that this is not simply a dispute about who is responsible for paying certain costs. The vast majority of the amount claimed by the Booths relates to damages for alleged threats, abuse and loss of enjoyment of life. In their response to the representation request, the Booth's allege dishonesty, fraud and bad faith. They also allege that they were physically attacked, threatened with bodily harm by a named member of the strata council.
>
> [31] It is particularly important for the petitioners to have the assistance of counsel in defending that sort of claim. That need arises not only from the amount sought but from the potential impact of such allegations on the reputation of the individuals involved. There may also be an issue of whether or to what extent such a claim falls within the CRT's jurisdiction and, if there is such an issue, the petitioner may have a greater need for the assistance of counsel in putting forward a pure question of law. At the same time, the Chair was undoubtedly correct that participation of counsel on one side could put the other at a significant disadvantage.
>
> [32] The fact that the petitioner may need assistance of counsel does not necessarily translate into a need for counsel's direct participation. I agree with the Chair that the nature of the CRT proceedings will still allow the petitioner to obtain assistance of counsel and most of the benefits of its insurance coverage even if it is not formally represented.
>
> …
>
> [37] As the Chair pointed out, there is nothing to stop the Strata Corporation from relying on counsel to prepare the submissions and other materials that it submits to the CRT. Even if the CRT did not recognize a party's right to such assistance, there is probably nothing it could do to prevent it.
>
> [38] I am, therefore, not persuaded that the interim CRT decision will deprive the Strata Corporation of counsel's assistance or the benefits of its insurance policy in any significant way. The situation may become different if the CRT decides this is one of the exceptional cases where an oral hearing, including cross-examination of witnesses, is required. That is not the situation now before the court.

> [39] I find the Chair appropriately considered the relevant matters within the context of the governing legislation, arrived at a conclusion within "the range of possible, acceptable outcomes" and provided clear reasons for her decision. The decision cannot be said to be unreasonable and the petition must be dismissed.
>
> [Emphasis added.]

Grounds of Appeal

[15] The appellant contends the judge erred by:

1. failing to consider the seriousness of the Tribunal's misapprehension of the nature of the dispute and its material effect on the decision to deny legal representation;
2. failing to consider that the effect of the misapprehension precluded the Tribunal from applying Rule 2; and
3. relying on the fact that no oral hearing had been scheduled and that the appellant could re-apply for legal representation in the event one were to be scheduled.

Standard of Review

[16] The first issue this court must consider in any case involving the decision of a tribunal is the nature of our role as an appellate court. In *Fraser Mills Properties Ltd. v. Coquitlam (City)*, 2018 BCCA 328, Madam Justice Fisher gave this succinct explanation:

> [12] In an appeal from a decision in a judicial review, the role of this Court is to determine whether the chambers judge identified the correct standard of review and applied it correctly, effectively stepping into his shoes and focusing on the administrative decision under review [citations omitted]. However, in circumstances, albeit rare, where a chambers judge on judicial review is called upon to make original findings of fact, deference is owed to those findings [citation omitted].

[17] At the hearing of the appeal, the parties agreed that s. 56.7 of the *Civil Resolution Tribunal Act* does not apply and the judge was required to consider the Tribunal's decision against a standard of reasonableness, although they differed on its application. Since the hearing of this appeal, the Supreme Court of Canada has

released *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, re-stating the common law standard of review, and establishing a presumption that the standard of review of decisions of administrative tribunals shall be reasonableness, with limited exceptions.

[18] The parties have addressed *Vavilov* in supplementary written submissions. They agree that *Vavilov* does not alter the standard of review that applies to the Tribunal's decision, but they differ on that standard's application to this case and on the effect of the discussion in *Vavilov* on the case before us. However, the Tribunal did not entirely adopt the *Vavilov* framework for assessment of reasonableness in the circumstances of this case, and said "[it] is difficult and not entirely appropriate to retroactively measure the chambers judge's decision against a framework that did not exist at the time of judgment". The Tribunal contends that the result will be the same whether we apply the *Vavilov* framework or the analysis from *Dunsmuir* that formerly applied, and that on either approach, the Tribunal was reasonable. It submits that the Strata Corporation's objection is to the Tribunal's findings of fact, not its reasoning, and that the deferential approach we must apply to findings of fact precludes us from interfering with the Tribunal's decision.

[19] Following the path suggested by the respondent Tribunal is not a sound course in my view. *Vavilov* assumes its relevance to cases not yet decided. It is now the stated law, and in my view we are bound to apply its approach.

[20] *Vavilov* is compendious. Under it, the starting place for review is the decision of the Tribunal itself. The court explained:

> [15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.

[21] Where reasons are provided, the reviewing court must proceed by focusing on the decision maker's reasoning process. The court explained:

> [99] A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: [citations omitted].
>
> [100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.
>
> [101] What makes a decision unreasonable? We find it conceptually useful here to consider two types of fundamental flaws. The first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. There is however, no need for reviewing courts to categorize failures of reasonableness as belonging to one type or the other. Rather, we use these descriptions simply as a convenient way to discuss the types of issues that may show a decision to be unreasonable.
>
> …
>
> [102] To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error": [citations omitted]. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": [citations omitted] …
>
> …
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: [citations omitted]. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

Discussion

[22] Obviously our role is to consider the reasonableness of the Tribunal's decision. Before delving into this review, I briefly raise the issue of tribunal standing. In *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684, Justice Estey recognized that concerns about a tribunal's impartiality may arise if the tribunal is permitted to defend its own decision in court beyond filling an "explanatory role with reference to the record". He regarded tribunals as expressing their views on matters through the decisions they make. More recently, in *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, Justice Rothstein tempered *Northwestern Utilities*, saying that there is not a "categorical ban on tribunal participation on appeal", but rather there is discretion to allow such participation in order that a court may "hear useful and important information and analysis", in particular in cases which otherwise would lack an adversarial context. Here, the issue of the Tribunal's defence of its decision on the merits was not addressed by the judge and, in any event, since Verna and George Booth have not made submissions, the Tribunal's participation pragmatically provides an adversarial context. Still, even where a tribunal makes submissions that seek to support a decision on its merits, as is the case here, our starting place and focus on judicial review, as *Vavilov* stresses, is the reasons provided.

[23] I also wish to address briefly the Tribunal's suggested circumvention (in its para. 29) of its own decision denying the Strata Corporation acknowledged representation – that the Strata Corporation can "get legal advice, assistance completing documents, preparing submissions, or organizing evidence". See also para. 34.

[24] It seems to me to be irregular for the Tribunal to put its imprimatur on a "way around" its own decision, setting up the unhappy appearance of "a wink and a nod". Such details of the arrangements between counsel and client concern the scope of the retainer and the strategy agreed, both matters of privilege. Of course the retainer may include collaboration between counsel and client, through what may be described in modern parlance as a limited retainer, creating documents submitted by

the client that have been heavily influenced, if not authored, by counsel. Such is normal and acceptable. However, the Tribunal here intrudes remarkably into solicitor and client arrangements and disrespects the work product of the person in the background by prohibiting recognition for that person. Second, and more seriously, the circumvention fosters fiction. Nor does the approach suggested by the Tribunal relate in any way to keeping the playing field level; it misses the fundamental notion that it is not the identity of the spokesperson that wins the day before an objective and independent decision maker, but rather the substance of the positions advanced and the cogency of the parties' submissions. In my view, it is not a viable answer to its own decision for the Tribunal to say that the Strata Corporation can only have the help it needs if it receives it anonymously and behind the scenes.

[25] I turn to the first ground of appeal. I consider it should succeed. The judge correctly described the main theme of the claim: "The vast majority of the amount claimed by the Booths relates to damages for alleged threats, abuse and loss of enjoyment of life". That claim is justified by Verna and George Booth (in their response to the request for representation) on the basis that they were the subjects of wrongful personal conduct of a serious nature by people associated with the Strata Corporation's management. Yet neither the scale of the claim, nor the asserted basis for it, was considered by the Tribunal.

[26] The scale and basis of the claim are material features of the request made by the Strata Corporation. It is clear to me that the scale and basis of the claim take it beyond the mere repairs referred to by the Tribunal, into a more complex zone of legal issues. In *Vavilov*, the majority explained that failure of the decision maker to account meaningfully, in the reasons provided, for central issues or concerns of the parties (or evidence) may be shortcomings that will fatally undermine the reasonableness of the decision:

> [126] … a reasonable decision is one that is justified in light of the facts: [citation omitted] … The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it.
>
> …

> [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: [citation omitted]. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties.
>
> [Emphasis in original.]

[27] The Tribunal contends that the appellant is challenging findings of fact, being the nature of the claim before it. If so, this case fits into *Vavilov*'s description in para. 126 because the primary matter of the claim, according to the originating document, is for damages for personal conduct, not the "authorization and maintenance of a sunroom". I consider, however, that the appellant's challenge to the decision is more properly characterized as resting on a failure of the Tribunal to consider a key submission by the Strata Corporation – that the substance of the claim against it takes the dispute far out of the usual or common complaint contemplated by s. 121 of the *Civil Resolution Tribunal Act*, and raises issues of complexity.

[28] In my view, the Tribunal, by referring to this claim as involving "the authorization and maintenance of a sunroom", in saying there is "nothing exceptionally unusual or complex about the subject-matter of the dispute", and in describing the claim as "a common dispute" and "typical", without accounting for the complexity inherent to the claim itself, rendered an unreasonable decision. The issues raised include allegations of the commission of torts, vicarious liability for torts, issues of personal and corporate reputation and, potentially, jurisdiction. I conclude that absent meaningful consideration of these features, the Tribunal's reasoning is flawed, and the decision is not reasonable.

Conclusion

[29] The Strata Corporation is content to remit their request to the Tribunal for reconsideration. Accordingly, I would allow the appeal, quash the Tribunal's

decision, and remit the request for representation to the Tribunal for fresh consideration.

"The Honourable Madam Justice Saunders"

I agree:

"The Honourable Madam Justice Newbury"

I agree:

"The Honourable Madam Justice Dickson"