



Court File No. **VLC-S-S-256703**

NO.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

THE COMMERCIAL SECTION OF THE OWNERS, STRATA PLAN EPS 1945

PETITIONER

AND:

THE OWNERS, STRATA PLAN EPS 1945  
THE RESIDENTIAL SECTION OF THE OWNERS, STRATA PLAN EPS 1945

RESPONDENTS

**PETITION TO THE COURT**

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

ON NOTICE TO:

The Owners, Strata Plan EPS 1945  
c/o Pacific Quorum Properties Inc.  
101A-38142, Cleveland Avenue, PO Box 1519  
Squamish, BC V8B 0B1

The address of the registry is:

800 Smithe Street, Vancouver, BC V6Z 2E1

The petitioners estimate that the hearing of the petition will take 2 days.  
This matter is not an application for judicial review.

**This proceeding is brought for the relief set out in Part 1 below by**

the person(s) named as petitioner(s) in the style of proceedings above  
 .....[name(s)]..... (the petitioner(s) )

- If you intend to respond to this petition, you or your lawyer must
- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
  - (b) serve on the petitioner(s)

- (i) 2 copies of the filed response to petition, and
- (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	<p>The ADDRESS FOR SERVICE of the petitioner is:</p> <p>Citadel Law Corporation          1400 – 1125 Howe Street          Vancouver BC, V6Z 2K8</p> <p>Fax number address for service (if any) of the petitioner:</p> <p>E-mail address for service (if any) of the petitioner: <a href="mailto:service@citadellawyers.ca">service@citadellawyers.ca</a></p>
(2)	<p>The name and office address of the petitioner's lawyer is:</p> <p>Silvano S. Todesco          Citadel Law Corporation          1400 – 1125 Howe Street          Vancouver BC, V6Z 2K8          Telephone: 778-945-9990</p>

FORM 11 (RULE 4-5 (2) )

**ENDORSEMENT ON ORIGINATING PROCESS FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The petitioner claims the right to serve this Petition to the Court on the Respondents outside British Columbia, if need be, on the grounds that this matter concerns contractual obligations, and the contractual obligations, to a certain extent, were to be performed in British Columbia.

Claim of the Petitioner

## Part 1: ORDERS SOUGHT

1. An order under section 174 of the *Strata Property Act*, S.B.C. 1998, c. 43 (“SPA”) appointing an administrator of The Owners, Strata Plan EPS 1945 (the “Strata Corporation”) to exercise the powers and perform the duties of the Strata Corporation and its Strata Council;
2. That the appointment of the administrator be for an initial term of 12 months, or as otherwise directed by this Honourable Court, with liberty to apply for extensions;
3. That the administrator be empowered to:
  - a. call and conduct general meetings;
  - b. make decisions on matters of governance and management;
  - c. enforce bylaws and rules fairly and lawfully;
  - d. supervise the budget, levy special assessments, and authorize expenditures;
  - e. engage legal, engineering, or other expert advice as needed;
  - f. remedy unsafe or unlawful conditions on common property;
  - g. resolve conflicts between Commercial and Residential Sections; and
  - h. carry out the administrator's duties free from interference by Strata Council members.
4. The administrator may retain professionals, including legal counsel, for opinions, advice and services in relation to the administrator's duties;
5. The administrator's fee accounts shall be rendered monthly, and shall be payable by the Strata Corporation, provided that at the request of any party, the Administrator shall pass his accounts before the Registrar of the Supreme Court of British Columbia;
6. The Strata Corporation add the Administrator as a named insured on its errors and omissions insurance policy, at the expense of the Strata Corporation;
7. In the alternative, the administrator may purchase liability insurance coverage for the work performed by the administrator under this Order, and all expenses associated in obtaining the insurance coverage be charged to the Strata Corporation as an expense of the administrator;

8. The administrator shall report to the Court as directed, with respect to the steps under this Order, the costs incurred by the administrator, and whether the appointment should continue;
9. The administrator be at the liberty to apply to the Court for directions to assist and permit the discharge of the administrator's duties hereunder;
10. The administrator and/or any party have the liberty to apply to this Court to substitute another administrator from the one appointed, extend the term of an administrator for any subsequent term or terms, or to expand or reduce the scope of the administrator's powers, as this Court deems appropriate;
11. If any  $\frac{3}{4}$  vote resolution or majority vote resolution of the owners is required to give effect to any of the Orders set out herein, and if such resolution does not pass at a general meeting of the owners, the administrator and/or any party have leave to apply to the Court for an Order approving the resolution;
12. No person shall issue any legal process against the administrator or any employee or representative of the Administrator related to this appointment without the leave of this Court;
13. Alternatively, pursuant to section 173 of the SPA, the Petitioners seek an order that the Strata Corporation be directed to:
  - a. Cease and desist from holding unauthorized meetings, making decisions, or passing resolutions without proper quorum, valid requisitions, or compliance with the SPA and bylaws;
  - b. Provide full and timely access to strata records, including meeting minutes, financial statements, parking and storage assignments, and correspondence, to all strata lot owners and their representatives;
  - c. Revoke or vary any resolutions or registrations of land title interests (including parking and storage assignments) that were improperly authorized or recorded without required approvals;
  - d. Implement transparent and inclusive procedures for all meetings and votes affecting both the Residential and Commercial Sections, ensuring compliance with statutory voting thresholds and equal participation rights;
  - e. Establish clear policies governing the use of common property, visitor parking, and shared facilities, guaranteeing equal access and rights to all owners consistent with the registered strata plan; and

f. Suspend any further unilateral alterations to common property or bylaw amendments until proper consultation, voting, and court approval where required have been obtained;

14. Costs; and

15. Such further and other relief as this honourable court may deem just and proper.

## **Part 2: FACTUAL BASIS**

### **The Parties**

1. The Petitioner is a Section within the Owners. Strata Plan EPS 1945 created pursuant to Part 11 of the of the *Strata Property Act*, SBC 1998 c. 43 (the “SPA”) (the “Commercial Section”) and governed by the Commercial Section Executive.
2. The Respondent, the Owners. Strata Plan EPS 1945 is a Strata Corporation established by s. 2 of the SPA (the “Strata Corporation”) and governed by the Strata Council.
3. The Respondent, the Residential Section of the Owners, Strata Plan EPS 1945 is a Section within the Strata Corporation created pursuant to Part 11 of the of the SPA (the “Residential Section”) and governed by the Residential Section Executive.

### **Background**

4. The Strata Corporation is a mixed-use development comprising 70 strata lots. The Commercial Section is comprised of 10 strata lots. The Residential Section is compromised of 60 strata lots on three floors.
5. The Strata Corporation is governed by a single set of bylaws applicable to the entire Strata Corporation but contains distinct schedules of voting rights and entitlements applicable to each section, consistent with the framework established under Part 11 of the SPA, which provides for sectioned strata corporations with separate rights and responsibilities for each section.
6. Part 11 of the SPA establishes the framework for sectioned strata corporations, recognizing that separate sections within a single strata plan may have distinct rights, responsibilities, and governance arrangements. This legal structure imposes obligations on the Strata Council to ensure equitable treatment and participation of each section in the corporation’s affairs.
7. The Petitioner as a legally recognized section within the Strata Corporation seeks judicial relief against the Strata Corporation considering significant governance dysfunction,

exclusion, and unfair treatment by the Residential Section, which controls the Strata Council and overall management of the Strata Corporation.

8. Over an extended period, the Strata Council has been dominated by Residential Section owners. The Commercial Section has been excluded from meaningful participation in Strata Council discussions, bylaw committees, and decision-making concerning the governance and operation of the Strata Corporation.
9. The governance imbalance has been exacerbated by communications issued to owners that mischaracterize lawful governance actions as improper. Notices distributed by the Residential Section executive have described a validly requisitioned Special General Meeting under s. 43 of the SPA as a coup, accused petitioning owners of attempting to delay the AGM illegally, and implied that their motives were improper.
10. Similar notices have portrayed the Commercial Section's efforts to secure access to visitor parking and correct budget allocations as unreasonable demands, omitting the fact that the Commercial Section already contributes to the cost of common property. These communications have fostered division, discouraged participation, and entrenched hostility between sections, further impairing the governance function of the Strata Corporation.
11. The registered strata plan designates nearly all areas outside the strata lots as common property, including the visitor parking, gym, lobby, mechanical rooms, and shared access points. Despite this, access to certain facilities has been unilaterally restricted in practice, favoring one section over another.

### **Commercial Section Governance Exclusion**

12. Since approximately 2018, governance has increasingly been dominated by the Residential Section. As a result of this, the interests of each Section have not been properly represented by the Strata Council's decisions.
13. The Strata Council has systematically disregarded transparency, openness, and procedural fairness mandated by the SPA, significantly marginalizing the Commercial Section input despite repeated good faith attempts by the Commercial Section owners to collaborate on critical bylaw reforms and governance issues.
14. Notably, on or about August 20, 2024, an Annual General Meeting resolution approving electric vehicle charging infrastructure was passed improperly using a combined Residential Section and Commercial Section vote.
15. Legal advice obtained by the Commercial Section subsequently confirmed that separate  $\frac{3}{4}$  votes from each Section were required under the SPA, but this was disregarded by the

Strata Council, and the incorrect combined majority vote was relied upon, significantly prejudicing the Commercial Section.

16. A Strata Council member and two Residential Section owners were granted approval to install EV chargers on common property designated as limited common property, based on alteration agreements which did not disclose whether all required permits were obtained.
17. Further, this approval was obtained through electronic voting outside Strata Council meetings without transparency and was subsequently ratified at a Strata Council meeting held on November 18, 2024, despite strong objection by the Commercial Section representative.
18. The Strata Council's approval of EV charging station installation agreements lacked external legal review and were drafted internally by Strata Council members. These alteration agreements were approved without transparency, independent electrical planning reports, or proper bylaw amendments, raising concerns about the lawful alteration of limited common property. The absence of due process in these approvals further undermines confidence in the Strata Council's governance.
19. The process leading to the installation of three electric vehicle charging stations in Residential Section parking stalls was also procedurally and technically deficient. Although owners approved \$10,000 from the contingency reserve fund at the October 1, 2024 Special General Meeting to obtain an Electric Planning Report, no such report was acquired before installations were completed.
20. Contractors were instructed to coordinate solely with an Residential Section Strata Council member, excluding Commercial Section representatives. An independent technician retained by the Commercial Section later confirmed there was insufficient electrical capacity to support planned charging in the Commercial Section parkade without substantial upgrades, including a new electrical panel and expanded Wi-Fi access.
21. Despite these findings, the installations proceeded without addressing capacity constraints, without three-quarters approval to permanently convert common property stalls, and without consistent or complete alteration agreements on record.
22. The other concern that arises here, is that the Strata Council frequently conducts votes by electronic means, including email voting outside of formal Strata Council meetings. While electronic voting is a valid process under the SPA, the way these votes have been utilized raises procedural and fairness concerns.

23. This electronic voting process seems to have been employed as a tool to marginalize and exclude the Commercial Section from meaningful participation. The Strata Council, which has almost all Residential Section owners as members, routinely ratifies these votes retroactively, often without meaningful consultation or transparency, thereby enabling the Residential Section majority to control decisions without adequate deliberation or input from the Commercial Section minority. This includes votes relating to hallway alterations and approval of EV charger installations, as documented by multiple Commercial Section owners.
24. The Strata Council routinely conducts brief vote by email approvals without providing requested particulars to owners who request them. The carpet alteration was pushed through over email while information requests were ignored.
25. There is evidence of improper procedure such as a Residential Section executive email chain which shows legal advice being relied upon without a Strata Council vote, alongside attacks on a dissenting member raising governance concerns in these procedures.
26. Further problems arose due to a prolonged electrical outage. The Strata Council was warned that failure of the sanitary and storm sumps could flood the elevator pits and cause biohazardous damage. A contractor advised for a permanent solution which was a dedicated generator sized to run the four pumps and security, and was estimated at approximately \$140,000, but the Strata Council took no steps to bring that option to owners or to implement it.
27. Instead, by email vote and without notice to or approval of owners, the Strata Council purchased a gasoline-powered pump for over \$3,000. The purchase was not an emergency, lacked a storage/safety plan, and does not address the identified risk of power-outage failure of the building's pumping systems. This is further example of the Residential Section using informal processes to make unilateral decisions over critical common-property assets while excluding Commercial Section input.

### **Denied Access to Common Property**

28. On December 19, 2024, the Commercial Section initiated proceedings at the Civil Resolution Tribunal regarding the unlawful denial of access to visitor parking stalls. Subsequent evidence revealed that Residential Section owners, including Strata Council members and their associates, have routinely parked in visitor parking spaces, demonstrating a pattern of significant unfairness and selective enforcement of bylaws against Commercial Section owners.

29. The denial of visitor parking access to Commercial Section owners persisted for over a decade since the beginning, despite their financial contributions to the installation, operation, and maintenance of the secure gate system.
30. During this period, Residential Section visitors and contractors were permitted unrestricted use of visitor parking. The lack of access for commercial clients required them to park blocks away, harming the competitiveness and accessibility of businesses operating in the building.
31. This policy was selectively enforced; for example, contractors serving Residential Section units were allowed to use visitor parking, while commercial owners were refused the same courtesy. The prolonged denial and inconsistent enforcement reinforce the broader pattern of unequal treatment and exclusion of the Commercial Section.
32. Also, Commercial Section owners have been denied further access to amenities such as the gym and lobby for over a decade, despite those areas being designated as common property in the registered strata plan. Meanwhile, Residential Section owners and their guests use those same facilities freely.
33. The unequal gym and lobby use by these Residential Section owners is without formal authorization or bylaw amendment. Alterations were made in 2023 by Residential Section owners to the gym facilities without any notification or approval involving the Commercial Section, directly contravening s. 71 of the SPA regarding use and alterations of common property.
34. Commercial Section representatives have also been denied access to key strata records and operational areas, such as mechanical rooms, while Residential Section Executives and their agents have unrestricted access. This has prevented the Commercial Section from verifying complaints, investigating technical issues, or ensuring accountability in operations management.
35. On May 30, 2025, the Commercial Section's Executive formally notified the Strata Corporation and the Strata Council regarding multiple critical unresolved issues concerning visitor parking access, budget allocation, and management transparency.
36. Despite these and prior requests, the Commercial Section has not received confirmation that access fobs for common areas have been activated for Commercial Section owners, effectively restricting their use of facilities designated as common property.
37. The Strata Council proposed a budget at the May 21, 2025, AGM that allocated all common area expenses, including those related exclusively to Residential Section areas,

to be shared equally, unfairly burdening Commercial Section owners for areas they have not had access to or use of.

38. In addition to inequitable allocations, Residential Section only expenses have been improperly charged to the joint account, including elevator repairs for equipment exclusively used by the Residential Section and cleaning of Residential Section common areas.
39. Retroactive charges for such Residential Section exclusive expenses were imposed on the Commercial Section dating back several months without consent or prior notice.
40. The Commercial Section requested a professional accountant's opinion to review these allocations and seek adjustment of fees to exclude Commercial Section owners from Residential Section's expenses until proper access is restored.
41. Even without an accountant, it is clear that the Residential Section is unfairly prohibiting the Commercial Section from utilizing common property, and that the additional proposal to allocate common expenses relating to these prohibited areas is completely inequitable.
42. The Commercial Section is effectively being required to fund maintenance and improvements to areas from which they are excluded. Requests to reallocate expenses to reflect this exclusion have been ignored or dismissed without explanation. This has led to mounting frustration and further strained the ability of the sections to function cooperatively under the same corporate governance.

### **Unequal Approval of Alterations**

43. Air conditioning units and other alterations have been installed by Residential Section owners with Strata Council approval through informal and potentially invalid indemnity agreements. These alterations appear to have been performed without proper permitting or disclosure in Form B certificates issued to purchasers.
44. At least one Residential Section owner installed air conditioning on their balcony without proper authorization or disclosure in Form B certificates, leading to further questions regarding systemic non-disclosure and mismanagement. Despite complaints by other owners within the Strata Corporation, the Strata Council has failed to rectify or even formally address these unauthorized installations, reflecting significant procedural neglect.
45. Selective enforcement of alteration bylaws has further undermined procedural fairness. At least two Strata Council members from the Residential Section undertook flooring alterations without paying the required \$100 fee or entering into valid indemnity agreements.

46. In one case, a \$100 entry appeared months later in accounting records under a transitory account without any supporting bank transaction. Requests for proof of payment yielded conflicting explanations, and no enforcement action was taken. By contrast, alteration requirements have been strictly enforced against owners who are not Strata Council members, demonstrating a pattern of preferential treatment for those in positions of authority.
47. Also, the Residential Section installed a second, unauthorized wash station in the residential parkade; persistent leakage into Storage Room #1 was reported repeatedly and ignored.

### **Unilateral Hallway Alterations**

48. In January 2025, the Strata Council received a formal request from the Residential Section Executives to approve changes to the hallways of the Residential Section's floors. The Commercial Section was not advised of the request or the vote being planned at the upcoming general meeting. The project was planned to proceed using the Residential Section contingency reserve funds.
49. On January 13, 2025, despite repeated requests by the Commercial Section owners for clarification, the Strata Council failed to provide formal written documentation of the proposed hallway alteration plans or any evidence of compliance with the procedural obligations outlined in the SPA.
50. At the Strata Council meeting on January 13, 2025, the Residential Section Executives explicitly requested that the Commercial Section abstain from voting at the forthcoming SGM regarding significant hallway alterations.
51. By June 10, 2025, Residential Section minutes recorded the painting completed on Residential Section floors and that carpet had been ordered, confirming commitment before proper joint approval had been obtained.
52. This deliberate attempted exclusion violates the SPA's requirement of inclusive decision-making processes concerning common property, representing a further attempt to marginalize Commercial Section owners from democratic governance.

### **Issues Related to Record Keeping**

53. The Strata Corporation has also failed to maintain records and transparency regarding parking and storage assignments. Commercial Section owners were asked in 2021 to provide original developer documentation, while Residential Section owners were not.

54. Form B certificates for Commercial Section strata lots state that parking is assigned on a short-term, revocable basis, while Residential Section strata lot assignments remain unverified and permanent.
55. Commercial Section owners have requested records, amendments, and actions on numerous issues, including the collection of Form B data, correction of inaccurate assignments, and clarification of bylaw authority. These requests have gone unanswered.
56. Despite repeated requests, the Residential Section has not been required by Strata Council to submit original developer parking and storage assignments. Form B certificates issued for Residential Section units continue to inaccurately suggest permanent exclusive use rights, while commercial unit certificates falsely imply uncertainty and temporary status of assignments, causing potential prejudice to commercial property values and marketability.
57. Further, previous bylaw amendments registered in 2016 and 2017 are not supported by proper resolutions or filed meeting minutes, and their validity is now in question.
58. Requests from commercial owners for documentation supporting purported bylaw amendments filed on August 30, 2016, and September 6, 2017, have been repeatedly ignored by Strata Council.
59. The absence of supporting documents, minutes, or evidence of properly conducted votes renders these amendments legally dubious, undermining procedural integrity as mandated by s. 128 of the SPA.
60. The Strata Corporation has no privacy policy or bylaw addressing access to personal information or limiting involvement by owners of one Section in matters of the Strata Corporation.

### **Financial Mismanagement**

61. The Strata Corporation has engaged in a pattern of financial mismanagement contrary to the SPA, including inequitable allocation of expenses, improper withdrawals from the Contingency Reserve Fund (“CRF”), inaccurate budgeting, and selective or incomplete financial disclosures.
62. Routine operating items, such as \$15,000 in landscaping, have been misclassified as capital expenses to justify CRF use. This practice artificially reduces the operating budget, depletes reserve funds intended for long-term capital projects, and undermines lawful financial management under s. 96 of the SPA.

63. The improper uses of the CRF also included in December 2023, and December 2024, the Strata Council withdrew \$88,311 and \$75,303 from the CRF to pay annual insurance premiums without bringing forward any ownership resolution for approval, contrary to s. 96 of the SPA.
64. At the August 20, 2024, AGM, owners were given financials only to Jan. 31, 2024; corrected/current financials were circulated only after repeated requests from concerned owners. These proper financials were not circulated until after budgets had been approved for the upcoming year.
65. The May 21, 2025, AGM budget package misstated the CRF balance, omitted over \$18,000 in invoices from the prior fiscal year, and presented an inaccurate surplus figure. The budget lacked supporting documentation for large expense items, including a \$50,000 “R&M General” allocation, and omitted prior-year actuals.
66. The May 21, 2025, AGM notice proposed a 25.67% operating-budget increase, but the minutes record approval at 28.68%. This un-noticed 3.01% uplift materially differs from what owners were told and resulted in higher fees without informed consent.
67. Multiple owners experienced post-AGM withdrawals consistent with the 28.68% figure rather than the noticed 25.67%, confirming a systemic overcharge following a procedurally defective approval.
68. The AGM package further reflected a 10% increase in the management fee and a 30% increase in administration fees without prior disclosure to the Commercial Section and without providing copies of any new or amended contracts to justify those increases.
69. In February 2025, the Strata Council voted by email to forgive half of a \$1,924.86 late-payment penalty imposed by the City of North Vancouver for overdue water and sewer charges, with the remainder to be reimbursed by the property manager. No reimbursement was made, and the full amount was paid from the operating account.
70. In a May 2, 2025, email from the strata manager on behalf of fellow Strata Council members, the Strata Council admitted it did not get legal advice in producing the budget and asserted that the Act permits a loan from the CRF and that no resolution should be required for the loan they received.
71. The same email asserted that there is no requirement to consider the engineering or depreciation reports when preparing the operating budget.
72. These statements reflect a misapprehension of statutory obligations around CRF borrowing, CRF transparency and prudent budgeting. They are also inconsistent with the duty in the SPA for the Strata Council to act with diligence and due care.

73. Interest income of \$9,412.64 earned on the CRF account was not recorded as strata income, and the general ledgers contained adjustment entries and transfers between operating and reserve accounts without supporting resolutions or documentation.
74. The strata manager, acting at the direction of the Residential Section, executed CRF transactions without proper Strata Corporation resolutions or oversight. These included the purchase of a gasoline pump for over \$3,000, unexplained credits and debits, and an alteration fee associated with a Strata Council member that was not deposited into the operating account.
75. The Strata Council has failed to provide meaningful explanations for accounting discrepancies, including outstanding items on bank reconciliations, unexplained vendor cheques, and reclassified expenses. Repeated written requests from Commercial Section representatives for clarification have gone unanswered.

### **Conclusion**

76. After dealing with the blatant disregard for the Commercial Section's complaints and concerns, the Commercial Section has authorized legal action by a three-quarters vote resolution due to the major difficulties experienced in attempting to resolve matters informally with the Strata Council and Residential Section.
77. The above factors reflect a profound governance breakdown characterized by unilateral Residential Section control, systemic exclusion of the Commercial Section, and ongoing disregard for statutory duties under the SPA. This entrenched imbalance undermines the principles of shared ownership, procedural fairness, and equitable decision-making fundamental to the Strata Corporation's governance and can not be fixed without court intervention.

### **Part 3: LEGAL BASIS**

78. The Petitioners seek the appointment of an administrator for the Strata Corporation pursuant to s. 174 of the SPA. This remedy is extraordinary and is not sought lightly.
79. The leading case on the test for appointing an administrator remains *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493 ("Lum"), where Mr. Justice Harvey identified five primary factors to consider in deciding whether such an appointment is in the best interests of the strata corporation:
  - (a) whether there has been established a demonstrated inability to manage the strata corporation;

- (b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to the affairs of the strata corporation;
- (c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation;
- (d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance;
- (e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

80. The jurisprudence confirms that these factors are not a checklist, but rather contextual considerations for the Court to weigh in determining the best interests of the strata corporation. While democratic governance is a cornerstone of the SPA, it is not absolute.
81. As noted by the Court of Appeal in *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2019 BCCA 64 (Highstreet) at para 45, the SPA is a consumer protection statute. The appointment of an administrator under s. 174 is one such mechanism to protect the collective interests of owners when democratic processes break down or are abused.

### **Inability to Manage the Strata Corporation**

82. The evidence before the Court establishes that the Residential Section of the Strata Corporation has assumed disproportionate control of the management of the Strata Corporation and has repeatedly made decisions unilaterally or contrary to the governing legal framework.
83. Numerous examples detailed in affidavits and attached exhibits show a pattern of improper conduct and mismanagement, including:
- (i) holding an unauthorized SGM on October 1, 2024, without valid requisition and in violation of procedural rules, as shown in the SGM minutes;
  - (ii) making material changes to common property (including hallway paint and carpet) without approval of a 3/4 vote as required by s. 71 of the SPA;
  - (iii) negotiating and registering parking assignments affecting Commercial Section strata lots without required agreements or valid resolutions;
  - (iv) issuing communications on behalf of the Strata Corporation or Strata Council with misleading or incorrect assertions of authority; and
  - (v) ignoring requests for procedural fairness or for clarification about legal authority from concerned Commercial Section owners.
84. While bills may be paid and daily operations technically continue, these actions collectively amount to a failure of legitimate governance.

85. The Petitioners say, as was noted in Lum, everything appears fine on the surface until the damage is revealed beneath. These ongoing abuses of process and the exclusion of dissenting owners from meaningful participation reflect an inability to manage.

### **Misconduct and Mismanagement**

86. The Petitioners rely on a substantial record of misconduct and mismanagement in relation to:

- (i) The failure to act in good faith with respect to shared assets and rights (parking stalls and storage);
- (ii) The failure to follow procedural requirements under the SPA and bylaws when calling meetings or proposing resolutions;
- (iii) The failure to engage Commercial Section strata lot owners in decisions affecting their legal interests; and
- (iv) The registration of changes to land title records concerning parking stalls without the authority or signed agreements.

87. These acts reflect either wilful misconduct or neglect. In either case, the outcome has been a serious erosion of trust and legitimacy. The Residential Section has disregarded legal process, acted outside its scope of authority, and created a hostile and exclusionary governance environment.

88. As highlighted by Chief Justice Bauman in *Owners, Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085 at para 35, the fundamental principle underpinning the SPA is that within a strata corporation, all owners are inherently bound together, succinctly described as “you are all in it together.” This legal principle emphasizes shared obligations, mutual responsibility, and equitable treatment among all owners within the strata corporation.

89. S. 66 of the SPA explicitly codifies this principle, providing that each owner holds common property and common assets as a tenant in common proportionate to their respective unit entitlement. This statutory provision creates an inherent legal obligation upon all owners, and, by extension, the Strata council, to manage and use common property fairly, transparently, and equitably, without unilateral imposition of exclusive privileges or unauthorized modifications.

90. S. 69 of the SPA creates an implied legal framework akin to an unregistered easement, compelling all owners and the strata corporation collectively to provide reciprocal shelter, support, utilities, and necessary facilities. The Residential Section’s systematic exclusion of Commercial Section owners from shared facilities, visitor parking, and critical decision-making processes breaches these implicit statutory obligations and fundamentally disrupts the intended legal balance of collective ownership.

91. Every owner within the Strata Corporation is legally and equitably bound to bear costs for the maintenance, repair, and fair administration of the common property.
92. The misconduct and mismanagement identified stem directly from the Residential Section's repeated disregard for the foundational principle that the Strata Corporation is a shared entity, collectively owned and governed by all strata lot owners. By unilaterally excluding the Commercial Section from meaningful participation, manipulating financial obligations, and ignoring statutory requirements, the Residential Section has violated the essential tenets that underpin the Strata Corporation's governance.
93. This conduct erodes the trust and cohesion necessary for a functioning Strata Corporation and thereby justifies the Court's intervention to restore balance and lawful administration.

### **Need to Bring Order to the Strata Corporation's Affairs**

94. An administrator is necessary to restore the rule of law and impartiality to the Strata Corporation's affairs. It is evident that the current decision-making body cannot or will not correct course.
95. A neutral third party with clear authority from this Court will be positioned to:
  - (i) Review and potentially reverse unauthorized resolutions and registrations;
  - (ii) Engage in fair negotiation with Commercial Section owners regarding parking and storage allocations;
  - (iii) Reestablish procedural fairness in meetings and correspondence; and
  - (iv) Restore faith in the governance of the Strata Corporation by acting transparently and within legal limits.
96. The record reveals a deep and ongoing rift between Residential Section and Commercial Section owners. This is not a typical disagreement, it is an entrenched power imbalance between one group effectively marginalizing another.
97. It is crucial to emphasize that the core issue in this matter is the fundamental governance breakdown stemming from conflicts between the Residential and Commercial Section's of the strata corporation. Unlike typical disputes involving competing Residential Section interests, the conflict here involves a structural imbalance in power dynamics, where Residential Section owners have effectively overridden Commercial Section owners' statutory rights.
98. This entrenched imbalance cannot be resolved through regular democratic means because Commercial Section owners lack sufficient numerical strength to influence resolutions. Judicial intervention is necessary precisely because the democratic process has been

systematically undermined, making an administrator the only viable solution to restore fairness and ensure compliance with statutory obligations.

99. The exclusion of Commercial Section owners from decisions that affect their property interests, including communications sent without consultation and the registration of parking changes without agreements, is in direct opposition to the collective governance principles in the SPA.
100. *Norenger Development (Canada) Inc. v. The Owners, Strata Plan NW 3271*, 2016 BCCA 118 (Norenger) is a leading British Columbia Court of Appeal authority confirming that an administrator may not override owners' voting rights except where the SPA so provides. In Norenger, the dispute concerned disagreements between the Residential Section and Commercial Section of the strata corporation but did not impair the strata's core governance functions.
101. The Court emphasized that democratic rights to vote on bylaw amendments, expense allocations, and changes to common property are fundamental to strata governance and cannot be abrogated by an administrator without clear statutory authority. In Norenger, the strata continued to function pending Court-authorized bylaw changes and expense allocations, respecting statutory voting thresholds such as majority, 3/4, or unanimous votes.
102. By contrast, the Strata Corporation suffers from chronic dysfunction: The Strata Council has called unauthorized meetings, imposed secret e-votes, registered parking changes without proper approvals, and excluded the Commercial Section entirely from governance for over a decade. Such systemic collapse goes far beyond Norenger's narrow context and squarely falls within the best interests test for administration articulated in Lum.
103. Unlike Norenger, where the dispute was primarily about repair and maintenance disagreements among owners generally, the governance breakdown here is far more severe and distinct. It reflects a persistent disregard for the legal and procedural rights of Commercial Section owners and their reasonable expectations of transparent, democratic governance and fair participation.
104. Accordingly, only an independent administrator appointed under s. 174 of the SPA can restore lawful governance, enforce statutory obligations, and protect the rights of all owners where democratic processes have been systematically undermined and fundamental governance duties repeatedly ignored or subverted.

## **Internal Struggle Impeding Governance**

105. The evidence before the Court reveals a persistent and entrenched power struggle within the Strata Corporation between the Residential Section and the Commercial Section. This conflict has materially impaired the Strata Council's ability to govern effectively and in accordance with its statutory duties under the SPA.
106. This factional conflict manifests in systemic exclusion of the Commercial Section owners from meaningful participation in governance, unauthorized special general meetings and votes, unilateral financial decision-making, denial of access to strata records, and ongoing refusal to engage with Commercial Section owners on matters affecting their legal interests. These actions are not isolated incidents of disagreement but form part of a deliberate strategy to marginalize and suppress the Commercial Section.
107. Lum emphasized that where internal divisions within a strata corporation rise to the level of a struggle among competing groups so as to impede or prevent proper governance, this factor weighs strongly in favor of appointing an administrator under s. 174 of the SPA.
108. The Lum decision recognizes that such internal strife may undermine the strata corporation's ability to discharge its fiduciary and statutory responsibilities and jeopardize the collective interests of all owners.
109. The Residential Section's exercise of power is without meaningful consultation or consensus and violates the fiduciary-like duty imposed by s. 31 of the SPA, which mandates Strata Council members to act honestly, in good faith, and with due care, diligence, and skill in the best interests of the Strata Corporation.
110. The governance dysfunction described here echoes the principles articulated in HighStreet where the Court of Appeal underscored the SPA's nature as a consumer protection statute and affirmed that appointment of an administrator is an appropriate remedy to address breakdowns in democratic governance threatening minority owners' interests.
111. Considering the above, the Strata Corporation cannot fulfill its statutory duties or protect the collective interests of all owners while this internal struggle persists. Judicial intervention through appointment of an administrator is therefore necessary and justified to ensure compliance with the SPA and restore governance that is lawful, inclusive, and equitable.

## **Appointment of Administrator is Only Reasonable Prospect**

112. The Petitioners submit that only the appointment of an administrator offers a meaningful prospect of restoring legality and fairness to the Strata Corporation's affairs.

113. The administrator's mandate may be limited in scope to:
- (i) Reviewing decisions made since 2023 affecting Commercial Section lots;
  - (ii) Resolving all outstanding disputes over parking and storage rights;
  - (iii) Restoring governance functions to compliance with the SPA and Bylaws; and
  - (iv) Reporting to the Court periodically and stepping down when those functions are normalized.
114. The Petitioners have demonstrated that the facts of this case satisfy each of the five factors set out in the Lum test. Having established a demonstrated inability to manage the strata corporation, substantial misconduct and mismanagement, the necessity of appointing an administrator to bring order, the presence of a power struggle impeding governance, and that only an administrator can realistically restore proper governance, the Petitioners submit that appointment of an administrator is fully justified and in the best interests of the strata corporation.

#### **Statutory Duties of Strata Council Members**

115. Having fully addressed the five factors outlined in Lum, it is necessary to consider the broader context of the statutory duties and communal standards that underpin strata governance.
116. The SPA establishes not only procedural mechanisms but also substantive principles of shared ownership, equity, and fairness that are essential to the proper functioning of a strata corporation.
117. The issues of systemic exclusion, unilateral decision-making, and disregard for minority owners' rights raise concerns beyond the mechanics of governance breakdown.
118. They implicate core obligations imposed on Strata Councils to act fairly, transparently, and in accordance with both the letter and spirit of the SPA. It is therefore appropriate to examine the principles of s. 31 and statutory contraventions and unfair conduct remediable under s. 165 of the SPA, which further justify judicial intervention to restore equitable governance.
119. It is also important to recall key statutory duties imposed on Strata Councils under the SPA s. 31. S. 31 of imposes a fiduciary-like duty on Strata Council members to act honestly, in good faith, and with reasonable care, diligence, and skill in the best interests of the strata corporation. Failure to meet this standard can amount to unlawful conduct and grounds for court intervention.
120. Evidence before the Court shows the Strata Council's failure to comply with this duty, as it has acted with malice, disregarded expert and legal advice, and pursued actions causing financial harm and prejudice to certain owners without reasonable justification.

## Significant Unfairness

121. While all the other factors outlined in this petition guide the appointment of an administrator, it is critical to recognize that the SPA also grants the Court expansive powers under s. 173 to intervene directly. This includes the power to issue interim or final orders tailored to prevent or remedy such unfairness.
122. In the British Columbia Court of Appeal in *The Owners Strata Plan LMS 2768 v. Jordison*, 2013 BCCA 484, (“Jordison”) the broad and remedial powers granted to the Court under s.173 of the SPA are underscored.
123. In *Jordison*, the Court recognized that s.173(c) confers on the Supreme Court the authority to make any orders necessary to give effect to mandatory or prohibitory orders under s.173(a) or (b), including, in extreme cases, ordering the forced sale of a strata lot to enforce compliance with strata bylaws and court injunctions.
124. This expansive remedial jurisdiction reflects the Legislature’s intention that the Court have the flexibility to fashion effective and practical remedies tailored to resolve significant strata governance disputes and ensure compliance with the Act. The Court in *Jordison* rejected any narrow or technical reading that would limit the power of the Court to enforce strata governance when ordinary remedies prove inadequate
125. The Petitioners further rely on the principles articulated in *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, to affirm that a section within a strata corporation possesses the same legal powers and duties as the strata corporation itself in relation to matters solely affecting that section.
126. The Court of Appeal in this case at paragraph 10, explicitly recognized that where sections are created, they effectively function as separate corporations, empowered to act independently with respect to their own interests. This legal equivalence means that sections have standing and authority akin to that of the strata corporation and can exercise rights and remedies accordingly.
127. Given this, it follows that sections may pursue remedies under the SPA as if they were strata corporations themselves. Specifically, s. 173 of the SPA, which empowers a strata corporation to apply to the Court for orders to carry out its powers and duties, must be available to sections acting in their corporate capacity. This interpretation ensures that sections are not relegated to a subordinate status but are afforded full legal agency to protect their distinct interests within the larger strata framework.

128. Regarding the basis of a section's application under s. 173, the doctrine of significant unfairness, though developed in s. 164 jurisprudence, can equally inform relief sought under s. 165, which may serve as a persuasive foundation for relief.
129. While s. 173 is traditionally framed as a procedural and enforcement power, the demonstrated presence of significantly unfair conduct affecting the section's rights or interests can justify court intervention under this provision to compel proper exercise of the section's statutory powers. If necessary, the wording of the application may emphasize the section's statutory duties and the need for judicial orders to rectify conduct that frustrates those duties, with significant unfairness functioning as the factual and equitable underpinning rather than the strict legal ground.
130. The British Columbia Court of Appeal's decision in *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, affirms that the Court's powers under the SPA to address significant unfairness are broad and remedial.
131. In this case, the Court emphasized that significantly unfair conduct encompasses oppressive, unjust, or inequitable actions by a strata corporation that burden minority owners disproportionately.
132. While recognizing the primacy of democratic governance and the right of strata owners to amend bylaws by supermajority vote, *Kunzler* confirms that the reasonable expectations of individual owners remain a relevant factor in assessing unfairness.
133. The Court cautioned against interpreting these expectations as an absolute veto over democratic decisions but underscored that judicial intervention is warranted when minority owners face undue and unreasonable burdens.
134. This decision supports the Petitioners' position that the Residential Section's conduct here, which systematically excludes and prejudices the minority of Commercial Section owners, constitutes significant unfairness justifying intervention.
135. The systematic exclusion described in paragraphs 24–30 and 39–42 shows denial of visitor parking and amenities for over a decade, selective enforcement of alteration bylaws in favour of Residential Section Council members, and permitting unauthorized installations without consequence, demonstrates conduct that is oppressive, inequitable, and inconsistent with the reasonable expectations of Commercial Section owners, squarely meeting the test for significant unfairness recognized in *Kunzler*.
136. Further, the Supreme Court's decision in *Chorney v. The Owners, Strata Plan VIS770*, 2016 BCSC148, provides more guidance on the concept of significant unfairness under the SPA.

137. The Court emphasized that while Strata Councils must act fairly and observe procedural fairness, particularly in investigations and enforcement of bylaws. The court also states that not every procedural imperfection or owner dissatisfaction amounts to significant unfairness warranting judicial intervention. The Court stressed that courts should be cautious in intervening in strata governance absent clear and serious abuses.
138. Importantly, *Chorney* recognizes that strata corporations retain discretion in complaint handling and governance decisions as long as their processes comply with the SPA's principles of procedural fairness and natural justice. Courts should not impose rigid procedural frameworks beyond those required by statute, nor intervene lightly in ordinary strata operations.
139. In *Chorney*, significant unfairness was not found, however, the present case differs markedly. Here, the Commercial Section has been systemically excluded from governance participation for an extended period, subjected to unauthorized meetings and votes, denial of access to records, unilateral alteration of bylaws, and manipulation of financial obligations.
140. These cumulative governance failures and exclusionary practices far exceed isolated procedural disputes, constituting clear violations of the SPA's governing legislation. It is crucial to show that the SPA is being violated to further underscore the significant unfairness as defined by the court in *Chorney*.
141. As recognized in *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, significant unfairness according to the Court involves objectively examining whether the strata's conduct unjustly prejudices certain owners or is oppressive, harsh, or lacking in fair dealing.
142. Here, similar principles apply because the Residential Section has systematically marginalized Commercial Section owners by excluding them from critical decisions regarding property rights and procedural fairness, meeting the threshold of significant unfairness.
143. Given these egregious governance failures, the Petitioners submit that this Court should exercise its powers under s. 173 to make orders necessary to prevent and remedy this significant unfairness.
144. Such orders may include prohibiting unauthorized meetings and resolutions, mandating access to strata records, invalidating improperly passed bylaws or resolutions, and directing inclusive consultation processes.
145. Specifically, the facts in this case reflect a clear violation of the principles outlined in *Dolnik*: Commercial Section owners' reasonable expectations of transparent governance,

procedural fairness, and lawful use of common property have been persistently breached by the Residential Section's unilateral actions.

146. If the court decides against an administrator, the deliberate exclusionary conduct of the EPS 1945, unlike the repair-focused dispute in Dolnik, represents a deeper and broader governance dysfunction that necessitates immediate intervention through an order under s. 173.

## **Conclusion**

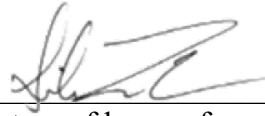
147. The Petitioners have demonstrated that the facts of this case satisfy each of the five Lum factors, evidencing an inability to manage, substantial misconduct and mismanagement, the necessity of an administrator to restore order, a power struggle impeding governance, and that only the appointment of an administrator offers a meaningful prospect of resolution.
148. This Petition further shows that the Residential Section's conduct violates the core statutory duties of Strata Council members under s. 31 of the SPA and breaches many other fundamental principles of the SPA regarding shared ownership and equitable treatment.
149. For these reasons, the Petitioners submit that the extraordinary remedy of appointing an administrator under s. 174 is not only warranted but necessary to restore lawful governance, ensure fairness among all owners, and protect the collective interests of the Strata Corporation.
150. Or in the alternative, the cumulative impact of these breaches amounts to significant unfairness and should inform an order under s. 173 that would result in establishing a remedy to the unfair acts of the Residential Section.

## **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Arezou Nazeri made August 27, 2025
2. Affidavit #1 of Jennifer Vaughan made August 28, 2025
3. Affidavit #1 of Kwok Bung Lean made August 27, 2025
4. Affidavit #1 of Paul Rodrigues made August 27, 2025
5. Such other affidavits as are available from time to time from individual petitioners, owners, experts or interested parties.

The petitioner estimates that the hearing of the petition will take 2 days.

Date: 09/04/2025

A handwritten signature in black ink, appearing to read 'Silvano Todesco', written over a horizontal line.

Signature of lawyer for petitioner  
Silvano Todesco

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this petition

with the following variations and additional terms:

.....  
.....  
.....

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of  Judge  Associate Judge

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

THE COMMERCIAL SECTION OF THE OWNERS, STRATA PLAN EPS 1945

PETITIONER

AND:

THE OWNERS, STRATA PLAN EPS 1945  
THE RESIDENTIAL SECTION OF THE OWNERS, STRATA PLAN EPS 1945

RESPONDENTS

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**PETITION TO THE COURT**

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**CITADEL LAW CORPORATION**

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