

The Civil Resolution Tribunal

An Overview

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**Revised
January 8, 2017**

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THE CIVIL RESOLUTION TRIBUNAL

Effective July 13, 2016 British Columbia's new Civil Resolution Tribunal began accepting claims in strata matters. The *Civil Resolution Tribunal Act* calls a strata claim over which the Tribunal has jurisdiction a, "strata property claim."¹ In this chapter, any reference to a claim is a strata property claim, unless the context requires otherwise. Eventually, the Tribunal will expand its operations to accept small claims, complementing the operations of the Provincial Court of British Columbia, Small Claims Division.

This chapter explains what strata matters the Tribunal can resolve, as well as how to initiate and respond to a strata property claim. These materials also describe some important practical considerations, such as how to serve Tribunal notices, how time limits are calculated, whether a party must or may be represented by another, and special requirements when settling a claim involving an infant or an adult with impaired mental capacity.

Mandate

The Civil Resolution Tribunal's mandate is to provide dispute resolution services using electronic communication tools. The Tribunal must be accessible, speedy, economical, informal and flexible. In resolving disputes, the Tribunal must apply principles of law and fairness, recognizing that any relationship between the parties will likely continue after the tribunal proceeding is finished. As far as reasonably practicable, the Tribunal must also accommodate the diversity of circumstances of those persons who use the Tribunal's services.² The Tribunal's approach minimizes the use of lawyers.

The Tribunal receives and resolves strata property claims online at www.civilresolutionbc.ca.

Only a strata corporation, an owner or a tenant may ask the Tribunal to resolve a strata property claim.³ An occupant has no standing to initiate a strata property claim with the Tribunal. The *Strata Property Act* defines an "occupant" as a person, other than an owner or tenant, who occupies a strata lot.⁴ Suppose a husband wife together purchase and occupy a strata lot, but only the wife is on title. The husband is an occupant. If the husband wants to make a strata property claim, the wife, as owner, will have to make the claim for her husband.

The Tribunal typically proceeds in three stages: negotiation, facilitation and adjudication. In the negotiation stage, the Tribunal encourages a claimant to resolve the dispute directly with the other side. If that does not work, a Tribunal representative will attempt to facilitate a solution through the agreement of the parties. If facilitation does not resolve matters, one of the Tribunal's independent members will adjudicate the matter.

¹ *Civil Resolution Tribunal Act*, SBC 2012, c. 25, s. 1 (definition of "strata property claim") as amended by the *Civil Resolution Tribunal Amendment Act*, 2015, SBC 2015, c. 16. The reader may find a consolidated version of the *Civil Resolution Tribunal Act* current to 30 November 2016 at the web site of the Queens Printer BC < http://www.bclaws.ca/civix/document/id/complete/statreg/12025_01>. (accessed 10 December 2016)

² *Civil Resolution Tribunal Act*, s. 2(2).

³ *Strata Property Act*, SBC 1998, c. 43, s. 189.1(1). In part, the *Strata Property Act*, s. 1(1) defines the term, "owner" as a person who in the land title office is the registered owner of the fee simple interest in a strata lot, or in the case of a leasehold strata plan, the person who is registered as the leasehold tenant of the strata lot. Section 1(1) of the Act defines the term, "tenant", as, "a person who rents all or part of a strata lot, and includes a subtenant, but does not include a leasehold tenant in a leasehold strata plan as defined in section 199 ..."

⁴ *Strata Property Act*, s.1(1) (definition of "occupant").

Normally, the Tribunal handles claims in the order in which they are received. If, however, there is urgency involved, the Tribunal will give a claim priority; for example, if delay might cause a party to become homeless, or to lose his or her job.⁵

The Tribunal's Jurisdiction

The Civil Resolution Tribunal can resolve some, but not all, strata matters.

What The Tribunal Can Resolve

Subject to various restrictions, the Tribunal may resolve disputes about: ⁶

- the interpretation or application of the *Strata Property Act* or a regulation, bylaw or rule under that act;
- the common property or common assets of the strata corporation;
- the use or enjoyment of a strata lot;
- money owing, including money owing as a fine, under the *Strata Property Act* or a regulation, bylaw or rule under that act;
- an action threatened by the strata corporation, including the strata council, in relation to an owner or tenant;
- a decision of the strata corporation, including the council, in relation to an owner or tenant; and
- 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.

This is the same list of subjects that may be arbitrated under the *Strata Property Act*.⁷

There is no monetary limit. In theory, the Tribunal could resolve a strata property claim of one million dollars or more.

What The Tribunal May Refuse

Where a dispute is within the Tribunal's jurisdiction, the Tribunal will not resolve it if the matter is the subject of another dispute already underway at the Tribunal. Similarly, the Tribunal will not resolve a dispute that has already been resolved by the Tribunal or through another legally binding process. ⁸

The Tribunal may refuse to resolve a dispute that does not disclose a reasonable claim.⁹ Generally speaking, a reasonable claim is a claim that the law recognizes, given the relevant legislation and applicable case law. For example, the *Strata Property Act* only permits a strata council to pass a rule governing

⁵ S.Salter, "Civil Resolution Tribunal: B.C.'s New Online Tribunal", webinar, Courthouse Libraries B.C., (8 September 2016).

⁶ *Civil Resolution Tribunal Act*, SBC 2012, c. 25, ss. 1 (definition of "strata property claim"), 3.6.

⁷ *Strata Property Act*, SBC 1998, c. 43, s. 177.

⁸ *Civil Resolution Tribunal Act*, s. 1 defines "legally binding process" as "a court proceeding or other process for seeking a remedy that provides a legally binding decision respecting a claim." This definition clearly extends to arbitration.

⁹ *Civil Resolution Tribunal Act*, s. 11(1).

the use, safety or condition of common property or a common asset.¹⁰ Suppose that an owner complains that her strata council refuses to pass a rule prohibiting hardwood flooring in a strata lot and the owner asks the Tribunal to require the council to pass such a rule. The Tribunal could refuse to resolve the dispute because it does not disclose a reasonable claim. A strata council may only pass a rule if it concerns common property or a common asset, not the use of a strata lot. This owner's claim is not one recognized by the *Strata Property Act*.

In addition, the Tribunal may refuse to resolve a claim that amounts to an abuse of process.¹¹ At common law, an abuse of process occurs where a party misuses or perverts a court's process for an extraneous or ulterior purpose. The abusive purpose must be a purpose other than one that the process was designed to serve.¹² For instance, suppose that two strata owners are feuding with each other. Acting only out of spite, imagine that one of the owners makes a completely false complaint against the other, alleging breach of a bylaw. As soon as it becomes apparent that the complaint is fabricated out of vindictiveness, the Tribunal may dismiss the dispute as an abuse of process.

The Tribunal may also refuse a claim that is too complex for the dispute resolution process or otherwise impractical for a case manager to resolve.¹³

In the facilitation stage (the *Civil Resolution Tribunal Act* also calls this, "facilitated settlement" or the, "case management phase")¹⁴, the Tribunal may refuse to resolve a claim where a party fails to comply with the Act, the regulations, the Tribunal's Rules, or an order of the Tribunal.¹⁵ This stage is described in more detail later in this chapter.

The Tribunal may refuse to resolve the dispute if the Tribunal concludes that the Supreme Court of British Columbia, if asked under section 12.3 of the *Civil Resolution Tribunal Act*, would order the Tribunal to refrain from determining the claim.¹⁶ Section 12.3 permits the Supreme Court to determine a matter that would otherwise fall within the Tribunal's jurisdiction if it is not in the interests of justice and fairness for the Tribunal to resolve it.

Finally, the Tribunal must refuse any claim that the Tribunal considers outside the Tribunal's jurisdiction. If a claim involves one or more issues within the Tribunal's jurisdiction, and one or more issues beyond the Tribunal's jurisdiction, the claim may be amended to remove any issue outside the Tribunal's jurisdiction.¹⁷

What The Tribunal Cannot Resolve

While the Tribunal may resolve a broad range of strata matters, restrictions apply.

10 *Strata Property Act*, s. 125.

11 *Civil Resolution Tribunal Act*, s. 11(1).

12 See, for example, *D.K. Investments Ltd. v. S.W.S. Investments Ltd.*, (1984) 59 BCLR 333 at para. 113 (S.C.)

13 *Civil Resolution Tribunal Act*, s. 11(1).

14 *Civil Resolution Tribunal Act*, s. 17 and Part 4, Division 2.

15 *Civil Resolution Tribunal Act*, s. 36(3).

16 *Civil Resolution Tribunal Act*, s. 11. See also Civil Resolution Tribunal, How the CRT Works - Accessing services through the Civil Resolution Tribunal, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/steps/#when-dispute>>.

17 *Civil Resolution Tribunal Act*, s. 10.

Matters Reserved for the Supreme Court of British Columbia

The Tribunal does not have jurisdiction to resolve a claim that falls within the following list of subjects reserved for the Supreme Court of British Columbia under the *Strata Property Act*:¹⁸

These Subjects Are Reserved For The Supreme Court of British Columbia		Strata Property Act Section No.
The conflict of interest requirements for strata council members		33
A unanimous vote, including when the Supreme Court may intervene to pass a failed unanimous vote		52
A court appointed voter: where there is no one to vote in respect of a strata lot and the court appoints someone to vote		58
The removal of a claim of lien after purchase from an owner developer: where the purchaser of a strata lot applies to the Supreme Court to discharge a claim of builders lien previously filed against the strata lot when the owner developer owned it		89
The removal of liens and other charges: where an owner may apply to the Supreme Court to remove a builders lien or other charge against title to the owner's strata lot		90
The forced sale of an owner's strata lot to collect money owing, being where the strata corporation applies to the Supreme Court for an order to sell an owner's strata lot to realize a strata corporation's lien or other judgment against the owner's strata lot		117
The Supreme Court's authority to make certain orders regarding rebuilding damaged property and insurance proceeds		160
The Supreme Court's authority to approve a special levy for the repair or maintenance of common property or a common asset where more than 1/2 of the eligible voters approved the resolution in support of the levy, but the resolution did not obtain 3/4 of the votes		173(2)
The appointment of an administrator for the strata corporation		174
In a leasehold strata plan:	Where the leasehold landlord may ask the Supreme Court to order the strata corporation to comply with certain of the landlord's requests	208

¹⁸ *Civil Resolution Tribunal Act*, s. 3.6(2).

These Subjects Are Reserved For The Supreme Court of British Columbia		Strata Property Act Section No.
In a leasehold strata plan:	The leasehold landlord's remedies where a leasehold tenant defaults under the longterm lease for a strata lot	209
In a phased strata development:	Circumstances where an owner developer may apply to the Supreme Court for the release of the developer's security, previously posted to secure the construction of common facilities in a later phase	226 (1)(c) and (d)
In a phased strata development:	Circumstances where an owner developer may apply to the Supreme Court to order an approving officer to extend the deadline in the developer's phased strata plan declaration (Form P) for the developer to elect not to proceed with a particular phase	232
In a phased strata development:	Circumstances where a strata corporation may apply to the Supreme Court for a remedy where the owner developer amends its phased strata plan declaration (Form P)	233
In a phased strata development:	Circumstances where an owner developer or the strata corporation, as the case may be, may apply to the Supreme Court for certain orders where the developer elects not to proceed with the next phase	235
In a phased strata development:	Circumstances where a strata corporation may apply to the Supreme Court to compel the owner developer to complete a phase by a certain date	236
In a phased strata development:	Circumstances where an owner or the strata corporation may apply to the Supreme Court to amend a schedule of unit entitlement	246

These Subjects Are Reserved For The Supreme Court of British Columbia		Strata Property Act Section No.
In a voluntary winding up <i>without</i> a liquidator:	The requirements for a vote to cancel a strata plan and become tenants in common	272
In a voluntary winding up <i>without</i> a liquidator:	If the strata plan has five or more strata lots, the requirement to apply to the Supreme Court to confirm the winding-up resolution	273.1
In a voluntary winding up <i>with</i> a liquidator:	If the strata plan has five or more strata lots, the requirement to apply to the Supreme Court to confirm the winding-up resolution	278.1
In a voluntary winding up <i>with</i> a liquidator:	Circumstances where the Supreme Court may confirm the appointment of a liquidator and vest in the liquidator the land shown on the strata plan, any land elsewhere held by the strata corporation and the strata corporation's personal property	279

Government Matters

In addition, the Tribunal does not have jurisdiction in any of the following matters:¹⁹

- to decide a constitutional question (for example, whether an infringement of a right has occurred contrary to the *Charter of Rights*); or
- where the provincial government is a party in a dispute.²⁰

Although the Tribunal lacks jurisdiction if a party is the provincial government, the Tribunal certainly has jurisdiction if a party is a municipality.

Where Other Statutes Prevail

The Tribunal may not resolve a dispute to which Part 5 of the *Residential Tenancy Act* applies. Part 5 governs the resolution of landlord tenant disputes under that Act.²¹

¹⁹ *Civil Resolution Tribunal Act*, s. 3.6(3) and 9.

²⁰ According to the *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 29, the term "government" means, "Her Majesty in right of British Columbia." In other words, the provincial government.

²¹ *Civil Resolution Tribunal Act*, s. 3.6(3).

Similarly, the Tribunal lacks jurisdiction to resolve a claim where all parties have agreed that the *Arbitration Act* applies.²² That statute was formerly known as the *Commercial Arbitration Act*. In British Columbia, the *Arbitration Act* governs the arbitration process where there is an agreement to refer a dispute to arbitration or when a statute requires arbitration under that Act.²³ If certain criteria are met, parties to a strata dispute may choose to arbitrate under the *Arbitration Act* instead of arbitrating under the *Strata Property Act*.²⁴ For information about strata arbitration, see Chapter 28, *Arbitration*.

Nor may the Tribunal determine if there is a conflict between the *Human Rights Code* and another enactment.²⁵

By Regulation

The provincial government may, by regulation, exclude a matter from the Civil Resolution Tribunal's jurisdiction.²⁶ At the time of this writing, no such regulation exists.

Limitation Periods Apply

The Civil Resolution Tribunal will not resolve a claim whose time limit has expired under the provincial *Limitation Act*.²⁷

This following is only a brief overview of the current *Limitation Act*, which is a relatively technical statute. Other statutes create limitation periods, as well.

The *Limitation Act* is especially significant for a strata corporation that wishes to collect money owing to the corporation. This includes, for example, a strata corporation's claim for unpaid strata fees, for an outstanding special levy contribution, for an insurance deductible or for the myriad other sums collectible under the *Strata Property Act* and a corporation's bylaws and rules.

Effective June 1, 2013 the province substantially revised its limitation legislation. The former *Limitation Act* allowed a party six years to sue to collect a debt and, subject to a few exceptions, established an ultimate 30 year limitation period.²⁸ The current statute establishes a basic limitation period of two years for most claims, including a claim for debt. The current Act also reduces the ultimate limitation period to 15 years, apart from a few exceptions. Generally speaking, where a strata corporation's cause of action for a debt arises *after* June 1, 2013 the corporation must bring its strata property claim to the Tribunal within two years. On the other hand, if the debt of an owner or tenant was due and owing to the strata corporation before June 1, 2013 (that is, the strata corporation's cause of action arose *before* June 1, 2013), in most cases the old limitation regime governs, giving the corporation up to six years to ask the Tribunal to resolve the claim.

22 *Arbitration Act*, R.S.B.C. 1996, c. 55.

23 *Arbitration Act*, s. 2.

24 *Strata Property Act*, s. 175.

25 *Civil Resolution Tribunal Act*, s. 3.8(3).

26 *Civil Resolution Tribunal Act*, s. 3.6(3).

27 *Limitation Act*, SBC 2012, c. 13 and *Civil Resolution Tribunal Act*, s. 13.

28 *Limitation Act*, R.S.B.C. 1996, c. 266 (repealed by the *Limitation Act*, SBC 2012, c. 13, s. 31).

In addition, if the Tribunal issues a Dispute Notice, both the basic limitation period and the ultimate limitation period applicable to the particular claim are suspended.²⁹ The role of a Dispute Notice is explained below. But, both the basic and ultimate limitation periods resume running as soon as the Tribunal notifies the parties of its refusal to deal with the claim or the Tribunal certifies that case management is complete without referring the claim to adjudication, whichever happens first.

A party should never delay acting on a strata property claim. If a party anticipates any delay in bringing a claim, that party should promptly obtain legal advice about the applicable limitation period. Similarly, if the Tribunal refuses to resolve a party's claim, or certifies that case management is complete without referring the party's dispute for adjudication, that party should immediately seek legal advice since limitation periods resume running.

The Effect of Court Proceedings

The extent to which court proceedings affect a claim before the Civil Resolution Tribunal depends which events occur first.

Where A Court Proceeding Occurs First

If a claim is already before a court or other legally binding process, such as arbitration, then a party may not apply to the Tribunal to resolve that claim if:³⁰

- (a) the claim is already before a court or other legally binding process, AND
- (b) a hearing or trial in that court or other legally binding process has been scheduled or has occurred for the purpose of deciding that claim.

Where a proceeding occurs in the Supreme Court of British Columbia, if the court determines that all matters in that proceeding are within the Tribunal's jurisdiction, the Supreme Court must dismiss the proceeding, subject to one exception. If the court concludes that it is not in the interests of fairness and justice for the Tribunal to resolve that dispute, the court may determine the matter. When considering these questions of justice and fairness, the court may consider whether:³¹

- the use of electronic tools in the proceeding would be unfair to one or more parties in a way that cannot be accommodated by the Tribunal;
- an issue raised by the dispute is of such public interest or importance that the dispute would benefit from being resolved by the court to establish a precedent;
- an issue raised by the dispute relates to the constitution or the *Human Rights Code*;
- an issue raised by the dispute is sufficiently complex so as to benefit from being resolved by the court;
- all of the parties to the dispute agree that the dispute should be resolved by the court; or whether

29 *Civil Resolution Tribunal Act*, s. 14.

30 *Civil Resolution Tribunal Rules*, R. 50, online: Civil Resolution Tribunal, Rules < <http://www.civilresolutionbc.ca/rules/>>.

31 *Strata Property Act*, s. 189.6.

- the claim should be heard together with a claim currently before the court.

Where A Tribunal Proceeding Occurs First

Generally speaking, once a dispute reaches the stage called a “tribunal proceeding,” the tribunal process takes priority over starting proceedings elsewhere. To explain the phrase, “tribunal proceeding” requires a brief word about the Tribunal’s process.³²

A party who wants the Tribunal to resolve a dispute must start at the Tribunal’s website by using a tool called the “Solution Explorer.” The Solution Explorer is a portal to a range of online resources designed to help a strata corporation, an owner or tenant to resolve a dispute on their own. If the Solution Explorer’s self-help resources are not sufficient to resolve things, then the party can complete an online application asking the Tribunal to determine the dispute. If the Tribunal accepts the party’s request, the Tribunal issues a Dispute Notice.³³ The role of a Dispute Notice is explained in more detail later in this chapter. Once the Dispute Notice is served, and all responses received, a Tribunal official will provide a brief, last opportunity for the parties themselves to resolve the matter. At that point, the matter becomes a, “tribunal proceeding” in the language of the *Civil Resolution Tribunal Act*.³⁴

Once a tribunal proceeding begins, then in relation to any issue in that proceeding, a party may not sue any other party, or pursue against them any other legally binding process, such as arbitration.³⁵

If a party has already commenced a court proceeding or other legally binding process against a party to a tribunal proceeding, then so long as no hearing or trial has occurred, or been scheduled, to decide the claim in that court proceeding or other process,³⁶ the tribunal proceeding prevails. The parties must adjourn or suspend that other process while the tribunal proceeding continues.³⁷

Where the Tribunal has already issued a Dispute Notice, if a party to that claim wants the Supreme Court of British Columbia to determine the dispute, instead of the Tribunal, that party may apply to the Supreme Court for an order to that effect under section 12.3 of the *Civil Resolution Tribunal Act*. That provision permits the court to determine the matter if:

- a) the Tribunal does not have jurisdiction to resolve the claim; or
- b) whether it is not in the interests of justice and fairness for the Tribunal to resolve the claim. In that regard, the court may consider the same justice and fairness criteria listed in the segment immediately above.³⁸

The Effect of a Dispute Resolution Bylaw

If a strata corporation adopts a bylaw creating a voluntary dispute resolution process, the bylaw must not *require* someone to use that process to resolve disputes among owners, tenants and the corporation. Nor may the bylaw confer on any person the authority to make a binding decision in a dispute.³⁹

³² For detailed information about the Tribunal’s process, see “Initiating A Tribunal Dispute” later in this chapter.

³³ See also Civil Resolution Tribunal, Getting Started - How the Solution Explorer Works, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/self-help/>>.

³⁴ *Civil Resolution Tribunal Act*, s. 17.

³⁵ *Civil Resolution Tribunal Act*, s. 15.

³⁶ *Civil Resolution Tribunal Rules*, R. 50.

³⁷ *Civil Resolution Tribunal Act*, s. 15.

³⁸ *Civil Resolution Tribunal Act*, s. 12.3.

³⁹ *Strata Property Act*, s. 124(2).

If a person uses a voluntary dispute resolution process provided by a bylaw, it does not affect that person's powers, duties or rights, including the individual's right to sue, to arbitrate or to request that the Civil Resolution Tribunal resolve a claim. Where, in accordance with a dispute resolution bylaw, someone makes an admission or statement only for the purpose of that process, then that admission or statement may not later be used in court, in an arbitration, or in a proceeding with the Tribunal. The same applies to any document or record⁴⁰ made only for the purpose of that dispute resolution process.⁴¹

Prerequisites

Depending whether a party is a strata corporation, an owner or tenant, they may have to take certain steps before asking the Tribunal to resolve their dispute.

Strata Corporation

Before a strata corporation asks the Tribunal to resolve a dispute, the corporation may have to give a written demand, or obtain the consent of some owners, as follows.

When A Demand Letter Is Necessary

Before obtaining a Dispute Notice from the Tribunal to collect money from an owner or tenant, the *Strata Property Act* requires a strata corporation to first give that owner or tenant at least two weeks written notice demanding payment and indicating that action may be taken if payment is not made in that time.⁴² The function of a Dispute Notice is explained in more detail later in this chapter.

The *Strata Property Act* does not specify any particular form of written notice. Any notice in writing will likely suffice if it reasonably conveys the necessary information to the reader. For example if, before applying to the Tribunal for dispute resolution services, the strata corporation delivers an invoice to the owner, the invoice is likely sufficient written notice if it makes it plain the amount due and that failure to pay that amount within the demand period may result in action being taken.

Calculating The Demand Notice Period

What does the phrase, "at least two weeks written notice" mean? For the reasons below, the author interprets the phrase to mean, at a minimum, 16 days notice, and in many cases, at least 20 days.

To determine the appropriate notice period in its written demand, a strata corporation should consider two factors: first, the calculation of time under the *Interpretation Act* and second, the *Strata Property Act's* requirements for giving notice.

The Interpretation Act: How To Calculate Time

As a general rule, the provincial *Interpretation Act* governs the calculation of time in British Columbia legislation.⁴³ Section 2 of the *Interpretation Act* says, in part,⁴⁴

⁴⁰ The *Interpretation Act*, s. 29 says that the term "record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise."

⁴¹ *Strata Property Act*, s. 124(3),(4).

⁴² *Strata Property Act*, s. 112(1).

⁴³ *Interpretation Act*, s. 25.

⁴⁴ *Interpretation Act*, s. 2. Section 1 of the Act defines the term, "enactment" as, "an Act or regulation or a portion of an Act or regulation."

2. (1) Every provision of this Act applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or in the enactment.

Section 25 of the *Interpretation Act* sets out this system for calculating time, as follows:⁴⁵

25. (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in a deed, conveyance or other legal instrument.
- (2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- (3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- (4) In the calculation of time expressed as clear days, weeks months or years, or as “at least” or “not less than” a number of days, weeks, months or years, the first and last days must be excluded.
- (5) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included.
- (6) If, under this section, the calculation of time ends on a day in a month that has no date corresponding to the first day of the period of time, the time ends on the last day of that month.
- (7) A specified time of day is a reference to Pacific Standard time, or 8 hours behind Greenwich mean time, unless Daylight Saving time is being used or observed on that day.
- (8) A person reaches a particular age expressed in years at the start of the relevant anniversary of his or her date of birth.

According to section 25(4) of the *Interpretation Act*, we must calculate this two-week period by excluding the first day and the last day, which translates into 16 days.⁴⁶ We may also have to take into account a holiday or business closure. The *Interpretation Act* effectively defines a, “holiday” as Sunday or any statutory holiday.⁴⁷ When counting this 16 day period under the *Interpretation Act*, the time for doing something may fall or expire on a holiday. If that happens, then time is extended to the next day that is not a holiday. Similarly, when counting time under the *Interpretation Act*, the time for doing something in a business office may fall or expire on a day when that office is not open regular business hours. If so, then time is extended to the next day that the office is open.⁴⁸

Strata Property Act: How To Give Notice

Next, one must also know whether the strata corporation will deliver its demand letter personally to the owner or tenant or whether it will be delivered by another permitted method.

⁴⁵ *Interpretation Act*, s. 25.

⁴⁶ *Interpretation Act*, s. 25(4).

⁴⁷ *Interpretation Act*, ss. 25(2) and 29 (definition of “holiday”). To paraphrase in part, section 29 of the Act defines “holiday” to include Sunday, all statutory holidays, and any day set aside by the federal or provincial government, “as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday.”

⁴⁸ *Interpretation Act*, s. 25(3).

Recall that section 61 of the *Strata Property Act* governs notice given by a strata corporation. Where a strata corporation gives notice by leaving the demand letter with an owner or tenant, the notice is considered to be given immediately. When delivering the notice to an owner or tenant personally, this means that a strata corporation's demand period for payment should be at least 16 days, keeping in mind the effect of the *Interpretation Act* described above.

Section 61 of the *Strata Property Act* also permits a strata corporation to deliver notice to an owner or tenant by other means, including:

- mailing it to an address provided by the person outside the strata plan; or
- at the person's strata lot, by:
 - leaving the notice with an adult occupant there;
 - putting it under the door;
 - mailing it to the person there;
 - putting it through a mail slot or into a mail box used by that person;
 - faxing it to a number provided by that person; or
 - emailing it to an email address provided by that person for the purpose of receiving notice.

Where a strata corporation uses one of these other permitted methods to give notice (for example, by mailing it), section 61 of the Act *conclusively* deems the notice to be given four days later. This means that the strata corporation must add four extra days to its demand period when delivering the notice by one of these other methods.⁴⁹

In *Strata Plan BCS 3372 v. Manji*, the court refused to enforce a strata corporation's lien claims for failure, in part, to give the owners sufficient time to pay the sums demanded.⁵⁰ Before registering a lien against an owner's strata lot, a strata corporation must give the same sort of two-week, written demand required before the Tribunal issues a Dispute Notice, or the corporation sues or commences arbitration.⁵¹ In *Manji*, the strata corporation sent its demand letters by mail. Each letter demanded payment of arrears, warning that the strata corporation would register a lien against the owners' respective strata lots if payment was not received within 14 days of the letter's date.

Since the strata corporation delivered its demand letters by mail, the court in *Manji* found that section 61 of the *Strata Property Act* deemed the letters to be conclusively given four days after mailing. In the court's view, the strata corporation should have allowed at least 18 days for payment, being, "two weeks" (or 14 days) plus another four days delivery by mail. But, in *Manji*, the court appears to have overlooked an important factor. The court did not take into account the *Interpretation Act*⁵² when calculating, "at least 2 weeks written notice".⁵³

49 *Strata Property Act*, s. 61(3).

50 *Strata Plan BCS 3372 v. Manji*, 2015 BCSC 2503.

51 *Strata Property Act*, s. 112(1),(2).

52 *Interpretation Act*, s. 25(4).

53 *Strata Property Act*, s. 112(2).

It is not clear whether counsel in *Manjii* brought the *Interpretation Act* to the court's attention. We must use the *Interpretation Act* to calculate how many days amount to, "at least 2 weeks' written notice demanding payment," as required by the *Strata Property Act* when personally delivering the notice to an owner or tenant.⁵⁴ Given the requirements of the *Interpretation Act* described above, "at least 2 weeks' written notice" amounts to 16 days. When giving notice by any other permitted means, as in *Manjii* (delivery by mail), a cautious strata corporation will allow for the basic 16 days as calculated above, *plus* the additional four days required by section 61 of the *Strata Property Act*, for a total demand period of at least 20 days. Recall also what happens if the last day for giving notice falls or expires on a holiday, being effectively a Sunday or statutory holiday. If that happens, then time is extended to the next day that is not a holiday.⁵⁵

For more information about the requirements for delivering notice, see Chapter 12, *Meetings*.

Prior Written Consent Of Some Owners

There is one case where a strata corporation requires written consent before the Tribunal resolves the corporation's dispute with an owner or tenant.

Where a strata corporation seeks to resolve a dispute before the Tribunal on behalf of *only some* owners (or just one owner), the corporation must first obtain the written consent of those owners.⁵⁶ While written consents are necessary, there is no additional requirement to first obtain prior authorization by a 3/4 resolution⁵⁷ passed at an annual or special general meeting.⁵⁸

Only those owners on whose behalf the strata corporation brings the claim must contribute to the expense of resolving it. Each of those owners must contribute a proportionate share of the expense according to the unit entitlement of their respective strata lots.⁵⁹

No General Pre-Authorization Necessary For Strata Corporation

If a strata corporation wishes, as the representative of all the owners (except for any owner who is an adversary in the matter), to sue someone or to arbitrate against them, the *Strata Property Act* often requires the eligible voters to first authorize the law suit or arbitration by a 3/4 vote at a general meeting.⁶⁰ By contrast, if a strata corporation wishes, on behalf of all the owners (except, perhaps, for any owner who is an adversary in the dispute), to submit a Dispute Application Form to the Civil Resolution Tribunal, there is no such requirement. The eligible voters do not have to first authorize this step by a 3/4 vote at an annual or special general meeting. Nor is there any requirement for the eligible voters to authorize a strata corporation to respond to a Dispute Notice given by an owner or tenant.

⁵⁴ *Strata Property Act*, ss. 112(1),(2) and 61.

⁵⁵ *Interpretation Act*, ss. 25(2) and 29 (definition of "holiday"). To paraphrase in part, section 29 of the Act defines "holiday" to include Sunday, all statutory holidays, and any day set aside by the federal or provincial government, "as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday."

⁵⁶ *Strata Property Act*, ss. 172(1)(a) and 189.4(e).

⁵⁷ *Strata Property Act*, ss. 172(1)(b).

⁵⁸ *Strata Property Act*, ss. 172(1)(a) and 189.4(e).

⁵⁹ *Strata Property Act*, ss. 172(2),(3) and 189.4(e).

⁶⁰ *Strata Property Act*, ss. 171 and 176. For more information about these prior-authorization requirements, see Chapter 27, *Lawsuits* and Chapter 28, *Arbitration* respectively.

Owner or Tenant

Before submitting a Dispute Application Form to the Tribunal to resolve a claim, an owner or tenant must first request a strata council hearing under section 34.1 of the *Strata Property Act*, unless the Tribunal otherwise excuses this requirement.⁶¹ As mentioned above, the role of a Dispute Application Form is explained in more detail later.

Hearing Before Strata Council

Section 34.1 of the *Strata Property Act* permits an owner or tenant to ask for a strata council hearing by applying in writing, stating the reason for the request. The regulations define a, “hearing” as an opportunity to be heard in person.⁶²

The council must hold a council meeting to hear the applicant within four weeks after the request. According to the *Interpretation Act*, we must calculate this four week period by excluding the first day and including the last day.⁶³ When section 34.1 of the *Strata Property Act* and section 25(5) of the *Interpretation Act* are read together, a party has up to four weeks plus one day (or 29 days) to hold the meeting to hear the applicant. If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing. Once again, the *Interpretation Act* requires that we calculate this one week period by excluding the first day and including the last day. When section 34.1 of the *Strata Property Act* and section 25(5) of the *Interpretation Act* are read together, a council has up to eight days to give its written decision to the applicant.

Recall also how we take account of a holiday. If the last day for holding a hearing, or for giving a written decision, falls on a holiday, then time is extended to the next day that is not a holiday.⁶⁴

The Tribunal’s Clock

Before examining the steps in a dispute, it is helpful to understand how the Civil Resolution Tribunal counts time.

For the reasons below, we have to use two different methods. If calculating time under the *Strata Property Act* or the *Civil Resolution Tribunal Act*, we use the system in the *Interpretation Act* to calculate time. If calculating time under the Tribunal’s Rules, we use a different formula.

Civil Resolution Tribunal Rules

Typically, the provincial *Interpretation Act* governs how we calculate time when provincial legislation establishes a time limit, as described earlier in this chapter.⁶⁵ Unless a contrary intention appears in the *Interpretation Act* or an enactment, the *Interpretation Act* regulates the calculation of time.⁶⁶

At the time of this writing, the Tribunal’s Rules require us to use, “calendar days” to count time. Rule 5 says,

61 *Strata Property Act*, s. 189.1.

62 *Strata Property Regulation*, B.C. Reg. 43/2000, s. 18.1.

63 *Interpretation Act*, s. 25(5).

64 *Interpretation Act*, ss. 25(2) and 29 (definition of “holiday”). To paraphrase in part, section 29 of the Act defines “holiday” to include Sunday, all statutory holidays, and any day set aside by the federal or provincial government, “as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday.”

65 *Interpretation Act*, s. 25.

66 *Interpretation Act*, s. 2.

5) **In calculating time under these rules, all references are counted as calendar days.**

So, the question is whether Rule (5) amounts to an intention in an enactment to calculate time by a method contrary to that established in the *Interpretation Act*.

There is little doubt that the Tribunal's Rules constitute an enactment. According to the *Interpretation Act*, the term "enactment" means, "an Act or a regulation" and the phrase, "regulation" includes a, "rule."⁶⁷ The *Civil Resolution Tribunal Act* gives the Tribunal authority to make rules respecting practice and procedure before the Tribunal, including rules establishing the time by which an action must be taken in a tribunal proceeding.⁶⁸

A Contrary Intention?

According to the Tribunal's Vice-Chairperson, the phrase, "calendar days" expresses a contrary intention for calculating time. In the Tribunal's view, the use of "calendar days" excludes the *Interpretation Act*.⁶⁹ In other words, according to the Tribunal, we must use "calendar days" to count time under the Rules, not the scheme in the *Interpretation Act*.

In *Bank of Montreal v. Gratton*, the British Columbia Court of Appeal considered what is necessary to demonstrate a contrary intention within the meaning of section 2 of the *Interpretation Act*.⁷⁰

The contrary intention need not be found in express words, but may be inferred from the scheme of the enactment, its legislative history and other circumstances which surround the use of the word in question. Although the Interpretation Act does not use the words "the context otherwise requires", the conclusion that a contrary intention appears may be based on the fact that the context otherwise requires.

Given the Tribunal's mandate to be, among other things, accessible and informal, one sees how the phrase, "calendar days" could express an intention to calculate time by a method contrary to the more technical scheme in the *Interpretation Act*.

Still, the Tribunal's desire to calculate time by "calendar days" poses several difficulties.

What Are "Calendar Days"?

First, what does the phrase, "calendar days" mean? The Tribunal's Rules do not define the phrase, "calendar days." Nor does the phrase, "calendar days" appear anywhere else in British Columbia legislation, as far as the author can tell.

One of the benefits of the *Interpretation Act* is that it sets out very clear steps for calculating time. The Act also addresses related problems, such as what to do if the time for doing an act falls or expires on a holiday or on a day when a business is closed, or what to do when calculating time from a day in a month (say, the 31st) to another month without a corresponding date (say, the last day of the later month is the 30th). When calculating time under the *Interpretation Act*, everyone works from the same, clear set of principles.

Interestingly, the *Interpretation Act* does mention the phrase, "calendar year." When defining the word, "year" the *Interpretation Act* says,⁷¹

⁶⁷ *Interpretation Act*, s. 1 (definitions of "enactment" and "regulation" respectively.)

⁶⁸ *Civil Resolution Tribunal Act*, s. 62(1), (2)(d)(ii).

⁶⁹ Email from Mr. J. Garth Cambrey, Vice-Chairperson-Strata to Mr. Mike Mangan, (12 September 2016).

⁷⁰ *Bank of Montreal v. Gratton* (1987), 18 B.C.L.R. (2d) 138, [1987] B.C.J. No. 1887 (C.A.). The case concerns the *Interpretation Act*, R.S.B.C. 1979, c. 206, s. 2 whose wording is nearly identical to section 2 in the current *Interpretation Act*, R.S.B.C. 1996, c. 238.

⁷¹ *Interpretation Act*, s. 29 (definition of "year").

“year” means any period of 12 consecutive months, but a reference to a “calendar year” means a period of 12 consecutive months beginning on January 1, and a reference by number to a dominical year means a period of 12 consecutive months beginning on January 1 of that dominical year.

In the absence of any explanation from the Tribunal, this work assumes that “calendar days” means that in the 12 month period beginning January 1st, time starts on the first day of the relevant event, after which each consecutive day in the calendar is counted, regardless whether the last day for doing an act falls or expires on a holiday or a day when a business office is closed.

Illustration: Calendar Days Versus The *Interpretation Act*

Here is an example of how we might calculate calendar days versus the conventional approach under the *Interpretation Act*. Although the respective roles of a Dispute Notice and a Dispute Response Form are explained later in this chapter, we can use them now in an illustration.

Rule 80 anticipates what happens if an applicant for dispute resolution serves a Dispute Notice on each of several respondents, but none of them respond by filing their respective Dispute Response Forms with the Tribunal.⁷² Once the Tribunal notifies the applicant that none of the respondents have provided their Dispute Response Forms to the Tribunal, the applicant has 21 days to request a default decision, failing which the Tribunal may dismiss or refuse to resolve the claim.

Suppose that the Tribunal notifies the applicant on Tuesday, December 5, 2017 that no respondents have provided their Dispute Response Forms. When does time run out for the applicant to ask for a default decision? Using the formula for calendar days assumed above, the first day of this 21-day period is December 5th, when the Tribunal gave notice to the applicant. Counting consecutive days, the last day on which the applicant can ask for a default decision is Monday, December 25, 2017, being Christmas Day.

By contrast, if we apply the conventional approach in the *Interpretation Act*, we must calculate this 21-day period by excluding the first day and including the last day.⁷³ If we exclude the first day, Tuesday, December 5, 2017 and then count 21 days, we arrive at Tuesday, December 26th, being Boxing Day. Assuming that Boxing Day is a statutory holiday, time is extended to Wednesday, December 27th, being the next day that is not a holiday.⁷⁴ Applying this system, the applicant’s last day to request a default decision is Wednesday, December 27th.

The Calendar-Day Method Is Limited To The Rules

Second, Rule 5 explicitly confines the calendar-day method of determining time to, “calculating time under these Rules.” It does not extend the “calendar day” approach to calculating time under the *Civil Resolution Tribunal Act*.

Until the Tribunal or the provincial government state otherwise, this work will assume that the calculation of time by calendar days applies *only* to calculating time under the Tribunal’s Rules. When calculating time under the *Civil Resolution Tribunal Act* this work will continue to apply the formula in the *Interpretation Act*.

⁷² *Civil Resolution Tribunal Rules*, R. 80.

⁷³ *Interpretation Act*, s. 25(5).

⁷⁴ *Interpretation Act*, ss. 25(2) and 29 (definition of “holiday”). To paraphrase in part, section 29 of the Act defines “holiday” to include Sunday, all statutory holidays, and any day set aside by the federal or provincial government, “as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday.”

This creates a divided scheme where we use the *Interpretation Act* to calculate time under the *Strata Property Act* and the *Civil Resolution Tribunal Act*, but we use the calendar-day method under the Rules. In a strata property claim, this division could create confusion.

How To Bring A Dispute To The Tribunal

One must follow specific steps to start or respond to a claim before the Civil Resolution Tribunal. The following is an overview of the most important stages in a strata dispute.

Solution Explorer

A party who wants the Tribunal to resolve a dispute must first go to the Tribunal's website. To engage the Tribunal's help, a party begins by using a tool called the "Solution Explorer," briefly mentioned earlier in this chapter.

The Solution Explorer is an online portal to resources designed to help a strata corporation, an owner or tenant to resolve a dispute on their own. By prompting a party to answer a series of ever-more-specific questions, the Solution Explorer first helps the party to identify the issue in dispute. With the issue identified, the Solution Explorer explains in plain language the relevant strata law, helping the party to view the issue in strata law terms.

For example, suppose that an owner receives a letter from his strata council informing him for the first time that he has breached a bylaw and imposing a large fine. The owner is upset; he feels that the fine is too large. The Solution Explorer explains the necessary steps for imposing a fine under the *Strata Property Act*. Now, the owner understands that the critical question is whether the strata corporation followed the correct procedure to impose the fine. The Solution Explorer will suggest how the owner might himself solve the problem before asking for the Tribunal's involvement. The Solution Explorer may provide a letter-template to better help the owner state his case in writing to the strata council. Bearing in mind that a hearing is usually a prerequisite to Tribunal resolution, the Solution Explorer will prompt the owner to ask for a hearing to put his case to strata council.

In most cases, it appears that the Solution Explorer provides all the help that people need. If not, the Solution Explorer permits a party to ask the Tribunal to resolve the dispute. A party asks for the Tribunal's involvement by completing and submitting a Dispute Application Form to the Tribunal.⁷⁵ Some early statistics illustrate the point. In the Tribunal's first month of operation, there were approximately 1,000 online visits to the Solution Explorer, out of which roughly 50 visitors actually submitted Dispute Application Forms.⁷⁶

⁷⁵ See also Civil Resolution Tribunal, *Getting Started - How the Solution Explorer Works*, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/self-help/>>.

⁷⁶ Interview of Ms. S. Salter, Tribunal Chairperson and Mr. J.G. Cambrey, Tribunal Vice-Chairperson by M. Mangan, (17 August 2016).

Dispute Application Form

By submitting a completed Dispute Application Form and paying the required fee, a party asks the Tribunal to resolve a dispute.⁷⁷ The Tribunal sets the fees, except for any fees that must be set by regulation.⁷⁸ At the time of this writing, the fee to apply for dispute resolution is \$150 with a \$25 discount when applying online.⁷⁹ If a person cannot afford to pay a fee, that person may ask the Tribunal to waive the fee upon providing such information as the Tribunal requires.⁸⁰

After reviewing the applicant's Dispute Application Form, the Tribunal will either issue a Dispute Notice for service on each respondent, ask for more information about the matter, or reject the application with an explanation.⁸¹

Dispute Application Form For Or Against A Child

A child is a person who is under 19 years old.⁸²

A child does not have the legal capacity to make or respond to a strata property claim. Instead, a litigation guardian must bring or defend the claim for the child.⁸³ The term, "litigation guardian" refers to an adult who represents the child's interests in the dispute. A litigation guardian acting for a child must provide a signed declaration to the Tribunal stating that the litigation guardian has the proper authority to act for the child and that he or she has no interest in the dispute adverse to the child.⁸⁴

Where a strata property claim involves a child, depending on the circumstances the *Infants Act*,⁸⁵ the *Civil Resolution Tribunal Act* and the Tribunal's Rules may impose important requirements, some of which might involve legal procedures best handled by a lawyer. If a person wishes to make a strata property claim on behalf of a child, especially a claim for compensation, that person will better serve the child's interests by first obtaining legal advice about any special procedures potentially involved. In addition, if the application for dispute resolution involves a personal injury, the child must be represented by a lawyer, or a person supervised by a lawyer, unless the litigation guardian is the Public Guardian and Trustee.⁸⁶

Generally speaking, the Public Guardian and Trustee protects the interests of persons who lack the legal capacity to protect their own interests. Established by the *Public Guardian and Trustee Act*, its officials provide guardianship and trust services for children, financial and personal management for certain adults, and some estate and trust management services.⁸⁷ The reader can find more information about the Public Guardian and Trustee at its website at www.trustee.bc.ca.

77 *Civil Resolution Tribunal Rules*, R. 48.

78 *Civil Resolution Tribunal Act*, s. 62(2)(m) and *Civil Resolution Tribunal Rules*, R. 10.

79 Civil Resolution Tribunal, How the CRT Works - CRT Fees-Strata Disputes, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/crt-fees/>>.

80 *Civil Resolution Tribunal Rules*, R. 11-13.

81 *Civil Resolution Tribunal Rules*, R. 49.

82 *Civil Resolution Tribunal Act*, s. 1 (definition of "child").

83 *Civil Resolution Tribunal Rules*, R. 34.

84 *Civil Resolution Tribunal Rules*, R. 35.

85 *Infants Act*, R.S.B.C. 1996, c. 223.

86 *Civil Resolution Tribunal Rules*, R. 36.

87 *Public Guardian and Trustee Act*, R.S.B.C. 1996, c. 383.

Dispute Application Form For Or Against An Adult With Impaired Mental Capacity

A person with impaired mental capacity may only participate in the Tribunal process through a litigation guardian.⁸⁸ The litigation guardian must provide to the Tribunal a signed declaration stating that he or she has the proper authority to act for the person with impaired mental capacity, and that he or she has no interest in the dispute adverse to the incapable adult.⁸⁹

If the application for dispute resolution involves a personal injury, an adult with impaired mental capacity must also be represented by a lawyer, or a person supervised by a lawyer, unless the litigation guardian is the Public Guardian and Trustee.⁹⁰

Dispute Notice

If the Tribunal issues a Dispute Notice to the applicant, the Notice will be dated. The applicant must within 90 days from the date of the Dispute Notice serve each respondent with a copy of the Dispute Notice and a blank Dispute Response Form.⁹¹ Once an applicant completes the steps for providing notice to a respondent, the applicant must within 10 days provide the Tribunal with a completed Proof of Notice Form for that respondent.⁹²

To calculate time under the Rules, the Tribunal requires us to use “calendar days,” instead of the *Interpretation Act*, as explained earlier. Since the Tribunal does not define what “calendar days” are, this work assumes that “calendar days” means that in the 12 month period beginning January 1st, time starts on the first day of the relevant event, after which each consecutive day in the calendar is counted, regardless whether the last day for doing an act falls or expires on a holiday or a day when a business office is closed. On this basis, the 90-day period would run from and including the date the respondent received the Dispute Notice.

Alternatively, if the courts later determine that the *Interpretation Act* applies, then we must calculate this 90 day period by excluding the first day and including the last day.⁹³ When Rule 51 and section 25(5) of the *Interpretation Act* are read together, a party has up to 91 days to properly serve notice on all respondents and deliver a completed Proof of Notice Form to the Tribunal. Recall also how we take account of a holiday. If the last day for serving a respondent falls on a holiday, then time is extended to the next day that is not a holiday.⁹⁴ What if an applicant wants to serve a business corporation by delivering notice in person at the company’s place of business, but the last day for serving the business corporation falls on a day when the business is closed? Recall how the *Interpretation Act* handles this problem. If the time for doing something in a business office falls or expires on a day when that office is not open regular business hours, then time is extended to the next day that the office is open.⁹⁵

As described earlier, the issuance of a Dispute Notice also temporarily suspends the running of the basic and ultimate limitation periods for the applicable claim.

88 *Civil Resolution Tribunal Rules*, R. 34.

89 *Civil Resolution Tribunal Rules*, R. 35.

90 *Civil Resolution Tribunal Rules*, R. 36.

91 *Civil Resolution Tribunal Rules*, R. 51.

92 *Civil Resolution Tribunal Rules*, R. 68.

93 *Interpretation Act*, s. 25(5).

94 *Interpretation Act*, ss. 25(2) and 29 (definition of “holiday”). To paraphrase in part, section 29 of the Act defines “holiday” to include Sunday, all statutory holidays, and any day set aside by the federal or provincial government, “as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday.”

95 *Interpretation Act*, s. 25(3).

Which Legislation Governs Service Of A Dispute Notice?

The *Strata Property Act* establishes clear requirements for the service of documents by and to a strata corporation.⁹⁶ The *Civil Resolution Tribunal Act* and the Tribunal's Rules create similar, but different criteria.⁹⁷ Which requirements govern service in a claim before the Tribunal?

Section 3.7 of the *Civil Resolution Tribunal Act* says,⁹⁸

3.7 (1) If another enactment gives the tribunal jurisdiction in relation to a claim, the provisions of this Act are subject to that enactment.

The *Strata Property Act* expressly permits a strata corporation, an owner or tenant to ask the Tribunal to resolve, “any strata matter over which the civil resolution tribunal has jurisdiction.”⁹⁹ At first glance, this suggests that the service provisions in the *Civil Resolution Tribunal Act* are subject to the *Strata Property Act*; meaning that the *Strata Property Act* service provisions prevail.

Yet, the *Civil Resolution Tribunal Act* gives the Tribunal authority to make rules regarding, “the manner for giving notices” including , “establishing requirements for service”¹⁰⁰ These provisions clearly suggest an intent for the Tribunal to create its own service rules. If the provincial government intended the service provisions in the *Strata Property Act* to govern service, there would be no need to permit the Tribunal to create its own service rules. In any event, the Tribunal takes the position that its service Rules prevail over those in the *Strata Property Act*.¹⁰¹

Methods of Service Generally

The Tribunal's Rules specify how a Dispute Notice may be served. Subject to some specific requirements set out below, a party may serve a Dispute Notice (and presumably the related, blank Dispute Response Form) by any of these methods:¹⁰²

- delivering the dispute notice in person,
- email,
- fax,
- registered mail, or
- by courier delivery requiring a signature.

Service by email requires proof of receipt from the respondent to whom the email was sent. The respondent must confirm receipt by sending a reply to the applicant by the date shown on the Dispute Notice. Failing a confirmatory reply on time, the applicant can still attempt to serve the Dispute Notice by any of the other permissible methods.¹⁰³

96 *Strata Property Act*, ss, 60–65.

97 *Civil Resolution Tribunal Act*, s. 62(2)(f). See also for example, *Civil Resolution Tribunal Rules*, R. 51-71.

98 *Civil Resolution Tribunal Act*, s. 3.7(1).

99 *Strata Property Act*, s. 189.1(1).

100 *Civil Resolution Tribunal Act*, s. 62(2)(f)(ii).

101 Email from Mr. J. Garth Cambrey, Vice-Chairperson-Strata to Mr. Mike Mangan, (12 September 2016).

102 *Civil Resolution Tribunal Rules*, R. 52.

103 *Civil Resolution Tribunal Rules*, R. 53,54.

According to the Rules, depending on the method of service, a Dispute Notice is considered received, as follows:¹⁰⁴

Method of Service	When Considered Received
In Person	Received at date and time of delivery
Email	Received on the date shown on the respondent's email reply
Fax	Received at date and time of transmission shown on confirmation sheet
Registered Mail	Received at date and time shown on delivery receipt
Courier (signature required)	Received at date and time shown on proof of delivery

What if the applicant has difficulty providing the Dispute Notice to a respondent? The applicant can ask the Tribunal for directions on using another method to satisfy the notice requirements. To make this request, an applicant must provide the Tribunal with a completed Request for Directions on How to Provide Notice Form BEFORE the deadline for providing notice has passed.¹⁰⁵

If the applicant fails to provide the Dispute Notice to a respondent by the deadline on the Dispute Notice, the Dispute Notice is invalid and the Tribunal may refuse to resolve the claim.¹⁰⁶ If the applicant needs more time to serve a respondent, then the applicant can ask the Tribunal to extend the deadline by completing a Request for Directions on How to Provide Notice Form, but the applicant must make this request BEFORE the deadline in question expires.¹⁰⁷

Depending on who, or what, a respondent is, specific types of service may be required, as follows.

How To Serve An Individual Respondent

A party may serve a Dispute Notice by email, fax, registered mail, by courier delivery requiring a signature or by leaving it in person.

How To Serve A Strata Corporation Respondent

To serve a strata corporation, one MUST use one of these two methods; either:

- delivery in person to a strata council member, or
- delivery by registered mail, or by courier delivery requiring a signature, to the corporation's most recent mailing address on file in the land title office.¹⁰⁸

¹⁰⁴ *Civil Resolution Tribunal Rules*, R. 55-59.

¹⁰⁵ *Civil Resolution Tribunal Rules*, R. 71.

¹⁰⁶ *Civil Resolution Tribunal Rules*, R. 69.

¹⁰⁷ *Civil Resolution Tribunal Rules*, R. 70.

¹⁰⁸ *Civil Resolution Tribunal Rules*, R. 62.

How To Serve A Business Corporation Respondent

A party may serve a Dispute Notice on a business corporation by delivery in person to a director, officer, liquidator, trustee in bankruptcy or a receiver manager of the company, or by delivery in person at the company's place of business to a receptionist or other person who appears to manage or control the company's business there. Alternatively, one may serve the Dispute Notice by registered mail, or by courier delivery requiring a signature in person, to the address shown as the company's registered office at the Registrar of Companies.

How To Serve An Extraprovincial Corporation Respondent

To better appreciate the requirements for serving an extraprovincial corporation, some background may be helpful. Where a business corporation is incorporated outside British Columbia, if the company wishes to carry on business inside this province it must register with the Registrar of Companies as an extraprovincial corporation, subject to some exceptions.¹⁰⁹ Depending on the circumstances, an extraprovincial corporation may be required, or permitted, to appoint one or more persons as the company's attorney for receiving notice of legal proceedings. An attorney may be an individual resident in British Columbia, or another company. Where an attorney is appointed, the extraprovincial corporation may file a notice of that attorney's appointment with the Registrar of Companies.¹¹⁰

If a respondent is an extraprovincial company as defined in the *Business Corporations Act*, a Dispute Notice must be served on that respondent by one of these methods:¹¹¹

- by registered mail, courier delivery requiring a signature or delivery in person to the address shown for the head office in the office of the registrar of companies, if that head office is in British Columbia ;
- by registered mail, courier delivery requiring a signature or delivery in person to the address shown for the head office in the office of the registrar of companies for any attorney appointed for the extraprovincial company;
- by delivery in person to the place of business of the extraprovincial company, to a receptionist or a person who appears to manage or control the company's business there; or
- by delivery in person to a director, officer, liquidator, trustee in bankruptcy or receiver manager of the extraprovincial company.

How To Serve An Out-of-Province Respondent

Whether an individual respondent resides in Calgary or Beijing, that party is out-of-province.

To serve a Dispute Notice on an out-of-province party, the applicant must first complete a Request for Directions on How to Provide Notice Form and provide it to the Tribunal. Then, the applicant must serve the Dispute Notice according to the Tribunal's directions.¹¹²

109 *Business Corporations Act*, SBC 2002, c. 57, Part 11.

110 *Business Corporations Act*, ss. 386-389.

111 *Civil Resolution Tribunal Rules*, R. 64.

112 *Civil Resolution Tribunal Rules*, R. 67.

How To Serve A Child Respondent

In the rare event where a child is a respondent, the applicant must provide the Dispute Notice to the child's parent or guardian, unless the Tribunal orders otherwise.¹¹³

A guardian is a person who is legally responsible for a child. Normally, one or both parents are the guardians. If for some reason the parents are not available to serve as guardians, someone else may be appointed guardian; for example, via a deceased parent's will, or by court order. In day to day affairs, the child's guardian normally makes any legal decisions regarding the child.

After the child's parent or guardian receives the Dispute Notice, an adult will have to act in the proceedings as the child's litigation guardian, as mentioned earlier.¹¹⁴ In addition, if the application for dispute resolution involves a personal injury, the child must be represented by a lawyer, or a person supervised by a lawyer, unless the litigation guardian is the Public Guardian and Trustee.¹¹⁵

Depending on the circumstances, a strata property claim against a child may also trigger important requirements under the *Infants Act*, the *Civil Resolution Tribunal Act* and the Tribunal's Rules, some of which might involve legal procedures better carried out by a lawyer. A parent or other guardian who is served with a Dispute Notice against a child will best serve the child's interests by promptly seeking legal advice about any special steps potentially involved.

How To Serve An Adult Respondent With Impaired Mental Capacity

To better appreciate the requirements for serving a Dispute Notice on an adult with impaired mental capacity, the following background may be helpful.

Where an adult, by reason of infirmity, is no longer capable of managing his or her own affairs, the Supreme Court of British Columbia may appoint another person as that adult's committee (pronounced with the emphasis on the first syllable: *comm-i-tee*).¹¹⁶ Where a committee is authorized by the court to manage the adult's financial, business and legal affairs, we refer to that committee as a, "committee of estate." Alternatively, where an adult is incapable of managing his or her own financial affairs, the *Adult Guardianship Act* permits a Health Authority official to issue a Certificate of Incapability appointing the Public Guardian and Trustee as the adult's, "statutory property guardian."¹¹⁷ As statutory property guardian, the Public Guardian and Trustee may make decisions regarding the adult's financial affairs.¹¹⁸ The role of a statutory property guardian is very similar to that of a committee of estate. So much so, that when the Public Guardian and Trustee acts as an adult's statutory property guardian, health care providers often informally call the Public Guardian and Trustee the adult's, "committee of estate."

In addition, the *Representation Agreement Act* permits an adult to make a written representation agreement to appoint another person, in advance, as the adult's representative.¹¹⁹ The representative can make decisions about the adult's health care and routine financial management if ever the adult should become incapable of managing his or her own affairs. The extent of a representative's authority depends on the wording of the particular representation agreement.

113 *Civil Resolution Tribunal Rules*, R. 61.

114 *Civil Resolution Tribunal Rules*, R. 34.

115 *Civil Resolution Tribunal Rules*, R. 36.

116 *Patients Property Act*, R.S.B.C. 1996, c. 349, ss. 1 (definition of "patient") and 6.

117 *Adult Guardianship Act*, R.S.B.C. 1996, c. 6, Part 2.1.

118 *Adult Guardianship Act*, s. 1 (definition of "statutory property guardian").

119 *Representation Agreement Act*, R.S.B.C. 1996, c. 405.

A power of attorney is a document by which one person (called the, “donor”) authorizes another, usually under seal, to act as the first person’s agent (called the, “attorney”) to carry out some endeavour, typically of a legal or financial nature. At common law, the donor of a power of attorney can revoke that power of attorney any time, so long as the donor has sufficient legal capacity when he or she decides to revoke it. If a donor loses his or her legal capacity due to mental infirmity, the common law automatically revokes that power of attorney by operation of law. The *Power of Attorney Act* permits a donor to make an enduring power of attorney.¹²⁰ An enduring power of attorney is one that remains effective if the donor becomes mentally incapable. To constitute an enduring power of attorney, the document must state that the power of attorney will continue despite any subsequent incapability suffered by the donor. The document must also clarify if the attorney may exercise authority while the donor is capable, or only when the donor is incapacitated.¹²¹ As with a representation agreement, the extent of a person’s authority under a power of attorney depends on its wording.

According to the Tribunal’s Rules, if the applicant knows that a respondent has a committee of estate, a representative appointed in a representation agreement, or an attorney appointed in an enduring power of attorney, the applicant must provide the Dispute Notice to:¹²²

- a) the committee, representative or person appointed as that respondent’s attorney, AND TO
- b) the respondent, or the person with whom the respondent resides, AND TO
- c) the Public Guardian and Trustee.

Where a respondent is an adult with impaired mental capacity, this will in many cases mean that the applicant has to make three separate services: first, on the committee of estate (or representative or attorney with enduring powers); second, on the incapable adult in question (or the person with whom they reside); and third, on the Public Guardian and Trustee.

In addition, if the application for dispute resolution involves a personal injury, an adult with impaired mental capacity must be represented by a lawyer, or a person supervised by a lawyer, unless the litigation guardian is the Public Guardian and Trustee.¹²³

Best Practice: Verify Recipient’s Authority

Where someone other than the Public Guardian and Trustee accepts service of the Dispute Notice as the incapable adult’s committee, the applicant should ask to view the relevant court order appointing that person as committee, or alternatively ask for a complete copy of the entered court order bearing the court’s stamp. Similarly, if someone accepts service of the Dispute Notice as the incapable adult’s representative, or as their attorney under a power of attorney, the applicant should ask to see the originally-signed representation agreement or power of attorney, as the case may be, or ask for a complete copy of the document.

120 *Power of Attorney Act*, R.S.B.C. 1996, c. 370, ss. 10 (definition of “enduring power of attorney”) and 12.

121 *Power of Attorney Act*, ss. 13, 14.

122 *Civil Resolution Tribunal Rules*, R. 60.

123 *Civil Resolution Tribunal Rules*, R. 36.

In the case of a representation agreement, the applicant must ensure that the wording clearly gives the representative authority to defend any legal proceedings. Unless the Public Guardian and Trustee is the litigation guardian, the incapable adult must be represented by a lawyer, or someone supervised by a lawyer. So, the representation agreement should ideally also authorize the representative to obtain legal services for the adult.

In the case of a power of attorney, the applicant must ensure that the document contains the necessary wording to make it an *enduring* power of attorney, as described above. The applicant must also verify that the wording expressly gives the attorney the authority to defend the claim. Again, unless the Public Guardian and Trustee is the litigation guardian, a lawyer, or someone supervised by a lawyer, must represent the incapable adult in the dispute, so the power of attorney should ideally also authorize the attorney to hire legal counsel.

If a recipient refuses to verify his or her authority as committee, representative or attorney under a power of attorney, the author suggests that the applicant inform the Tribunal and seek directions. Alternatively, if the recipient is a representative or an attorney whose representation agreement or power of attorney, as the case may be, does not authorize them to defend the claim, the author suggests that the applicant inform the Tribunal and seek directions.

How To Serve Other Types of Respondent

For information how to serve a Dispute Notice on other types of respondent, including a partnership, an unincorporated association, a society incorporated in British Columbia, a trade union, municipality, or extraprovincial society, consult the Tribunal's Rules.¹²⁴

Responding to a Dispute Notice

Once served with a Dispute Notice, the respondent **MUST** complete a Dispute Response Form. The respondent must provide the completed Dispute Response Form to the Tribunal and to every other party in the dispute before the expiry of the timeline shown on the Form. The respondent must also pay the required fee to the Tribunal.¹²⁵ At the time of this writing, the fee to respond to a dispute is \$25 with a \$25 discount when applying online.¹²⁶ If a person cannot afford to pay a fee, that person may ask the Tribunal to waive the fee upon providing such information as the Tribunal requires.¹²⁷

Strata Corporation

If a strata corporation is served with a Dispute Notice, the corporation must inform the owners as soon as feasible.¹²⁸ The expense of defending against the Dispute Notice is shared by all of the owners according to unit entitlement, with one exception. If an owner brought the claim against the strata corporation, that owner is not required to contribute.¹²⁹

¹²⁴ For a copy of the *Civil Resolution Tribunal Rules*, see the Tribunal's website: < <https://www.civilresolutionbc.ca/>>.

¹²⁵ *Civil Resolution Tribunal Rules*, R. 72.

¹²⁶ Civil Resolution Tribunal, How the CRT Works - CRT Fees-Strata Disputes, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/crt-fees/>>.

¹²⁷ *Civil Resolution Tribunal Rules*, R. 11-13.

¹²⁸ *Strata Property Act*, ss. 167 and 189.4(b).

¹²⁹ *Strata Property Act*, ss. 169 and 189.4(c).

If a strata corporation initiates a strata property claim against an owner or owner-developer, or if an owner initiates a claim against the strata corporation, that owner does not, despite being an owner, have a right to the corporation's information or documents relating to the claim, including legal opinions. Likewise, that owner does not, despite being an owner, have a right to attend those portions of any annual or special general meeting, or council meeting, at which the claim is dealt with or discussed.¹³⁰

Out of Province Respondent

In the case of an individual out-of-province respondent, the Tribunal allows up to 30 days to provide a copy of the completed Dispute Response Form together with the completed Additional Claim Form to the Tribunal and to every other party in the dispute.¹³¹

This 30 day period appears to reflect the Tribunal's policy. At the date of this writing, neither the *Civil Resolution Tribunal Act* nor the Tribunal's Rules stipulate this 30 day period.

To the extent a rule establishes this 30 day period, the Tribunal's Rule 5 requires us to calculate the time using "calendar days".¹³² For the reasons stated earlier in this chapter, in the absence of a definition this work assumes that "calendar days" means that in the 12 month period beginning January 1st, time starts on the first day of the relevant event, after which each consecutive day in the calendar is counted, regardless whether the last day for doing an act falls or expires on a holiday or a day when a business office is closed.

On this basis, the 30-day period would run from and including the date the out-of-province respondent received the Dispute Notice for 30 consecutive days.

On the other hand, if this 30-day period is not established in a Rule, then we assume the *Interpretation Act* governs how to calculate this 30 day requirement. Without knowing the specific language that the Tribunal uses to articulate this 30 day policy, it is hard to say which provisions of the *Interpretation Act* apply to calculating this 30 day period. To be conservative, we apply section 25(5) of that Act by excluding the first day and including the last day, giving the respondent 31 days.

Default

A respondent is in default if he or she fails to respond to a properly delivered Dispute Notice by the date shown on the notice.¹³³ If every respondent is in default, then the applicant may ask the Tribunal to make a default decision and order by taking these steps:¹³⁴

1. Request a default decision and order;
2. Provide a completed Proof of Notice Form; and

130 *Strata Property Act*, ss. 169(1) and 189.4(c).

131 Interview of Ms. S. Salter, Tribunal Chairperson and Mr. J.G. Cambrey, Tribunal Vice-Chairperson by M. Mangan, (17 August 2016).

132 *Civil Resolution Tribunal Rules*, R. 5.

133 *Civil Resolution Tribunal Rules*, R. 78.

134 *Civil Resolution Tribunal Rules*, R. 79.

3. Pay the required fee to request a default decision and order. At the time of this writing, the fee to request a default order is \$30 with a \$5 discount when applying online.¹³⁵ If a person cannot afford to pay a fee, that person may ask the Tribunal to waive the fee upon providing such information as the Tribunal requires.¹³⁶

If the Tribunal notifies the applicant that no respondent has provided a Dispute Response, the applicant then has 21 days to ask the Tribunal for a default decision, as calculated earlier in this chapter in “Illustration: Calendar Days Versus The *Interpretation Act*.” If the applicant fails within that period to request a default decision, the Tribunal may dismiss or refuse to resolve the dispute.¹³⁷

How a Respondent May Add A Claim to a Dispute

Rule 73 permits a respondent to add a claim to the dispute. A respondent may add a claim by completing these steps:¹³⁸

1. The respondent must indicate in his or her Dispute Response Form that the respondent will add at least one claim in the dispute;
2. The respondent must complete an Additional Claim Form;
3. The respondent must pay the required fee to apply to add a claim. At the time of this writing, the fee to apply to add a claim is \$150 with a \$25 discount when applying online.¹³⁹ If a person cannot afford to pay a fee, that person may ask the Tribunal to waive the fee upon providing such information as the Tribunal requires.¹⁴⁰ ; and
4. The respondent must also provide a copy of the completed Dispute Response Form together with the completed Additional Claim Form to the Tribunal and to every other party in the dispute within 14 days of receiving the Dispute Notice.

To calculate time under the Rules, the Tribunal requires us to use “calendar days,” instead of the *Interpretation Act*, as explained earlier.¹⁴¹ Since the Tribunal does not define the term, “calendar days”, this work assumes that “calendar days” means that in the 12 month period beginning January 1st, time starts on the first day of the relevant event, after which each consecutive day in the calendar is counted, regardless whether the last day for doing an act falls or expires on a holiday or a day when a business office is closed. On this basis, the period of 14 consecutive days starts on the date the respondent received the Dispute Notice.

Alternatively, if the courts later determine that the *Interpretation Act* applies, then we must calculate this 14 day period by excluding the first day and including the last day,¹⁴² giving a party up to 15 days to provide these documents to the Tribunal and to all other parties. Recall also how we take account of a holiday. If the last day for serving a respondent falls on a holiday, then time

135 Civil Resolution Tribunal, How the CRT Works - CRT Fees-Strata Disputes, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/crt-fees/> >.

136 *Civil Resolution Tribunal Rules*, R. 11-13.

137 *Civil Resolution Tribunal Rules*, R. 80.

138 *Civil Resolution Tribunal Rules*, R. 73.

139 Civil Resolution Tribunal, How the CRT Works - CRT Fees-Strata Disputes, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/crt-fees/> >.

140 *Civil Resolution Tribunal Rules*, R. 11-13.

141 *Civil Resolution Tribunal Rules*, R. 5.

142 *Interpretation Act*, s. 25(5).

is extended to the next day that is not a holiday.¹⁴³ What if a respondent wants to serve a business corporation by delivering copies of the Dispute Response Form and Additional Claim Form respectively in person at a business corporation's place of business, but the last day for serving the business corporation falls on a day when the business is closed? Recall how under the *Interpretation Act*, if the time for doing something in a business office falls or expires on a day when that office is not open regular business hours, time is extended to the next day that the office is open.¹⁴⁴

Where an individual, out-of-province respondent adds a claim, the Tribunal apparently allows him or her up to 30 days to provide a copy of the completed Dispute Response Form together with the completed Additional Claim Form to the Tribunal and to every other party in the dispute.¹⁴⁵ For more information about calculating this 30-day period, please see, "Out of Province Respondent" above.

How a Respondent May Add A Person to a Dispute

Rule 74 also permits a respondent to add another person to the dispute. If a respondent thinks that another person is responsible for a claim, the respondent may apply for dispute resolution against that person by completing these steps. The respondent must:¹⁴⁶

1. Indicate in his or her Dispute Response Form that the respondent will apply for dispute resolution against the other person;
2. Complete an Additional Claim Form identifying the other person and describing any claims against that person;
3. Pay the required fee to apply for dispute resolution. At the time of this writing, the fee to apply for dispute resolution is \$150 with a \$25 discount when applying online.¹⁴⁷ If a person cannot afford to pay the fee, that person may ask the Tribunal to waive the fee upon providing such information as the Tribunal requires;¹⁴⁸
4. Within 14 days of receiving the Dispute Notice, the respondent must provide copies of that Dispute Notice, the respondent's completed Dispute Response Form and Additional Claim Form respectively, plus a blank Dispute Response Form, "by following the rules an applicant would follow to provide notice to start the dispute resolution process;"¹⁴⁹
5. Complete a Proof of Notice Form,
6. Within 14 days of receiving the Dispute Notice, provide a completed Proof of Notice Form, Dispute Response Form and Additional Claim Form to the Tribunal, and
7. Within 14 days of receiving the Dispute Notice, provide copies of the completed Dispute Response Form and the completed Additional Claim Form to every other party in the dispute.

143 *Interpretation Act*, ss. 25(2) and 29 (definition of "holiday"). To paraphrase in part, section 29 of the Act defines "holiday" to include Sunday, all statutory holidays, and any day set aside by the federal or provincial government, "as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday."

144 *Interpretation Act*, s. 25(3).

145 Interview of Ms. S. Salter, Tribunal Chairperson and Mr. J.G. Cambrey, Tribunal Vice-Chairperson by M. Mangan, (17 August 2016).

146 *Civil Resolution Tribunal Rules*, R. 74.

147 Civil Resolution Tribunal, How the CRT Works - CRT Fees-Strata Disputes, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/crt-fees/> >.

148 *Civil Resolution Tribunal Rules*, R. 11-13.

149 *Civil Resolution Tribunal Rules*, R. 74(d).

Before accepting the application to add a party, the Tribunal may require the respondent to make corrections or to provide more information.¹⁵⁰ If the Tribunal refuses to accept the application for dispute resolution against the additional person, the Tribunal will provide its reason for the refusal.¹⁵¹

Like any other respondent, a person who is added as a respondent in an Additional Claim Form MUST complete a Dispute Response Form. The added respondent must provide the completed Dispute Response Form to the Tribunal and to every other party before the expiry of the reply timeline shown on the Dispute Response Form.¹⁵² The added respondent must also pay the required fee. At the time of this writing, the fee to respond to a dispute is \$25 with a \$25 discount when applying online.¹⁵³ If a person cannot afford to pay a fee, that person may ask the Tribunal to waive the fee upon providing such information as the Tribunal requires.¹⁵⁴

The Tribunal Proceeding: Case Management and Tribunal Hearing

According to the *Civil Resolution Tribunal Act*, a tribunal proceeding has two phases: the case management phase and the Tribunal hearing phase, as explained earlier.¹⁵⁵ The Civil Resolution Tribunal must conduct the tribunal proceeding with as little formality and technicality, and with as much speed, as the Act, the Tribunal's rules and a proper consideration of the issues permit.¹⁵⁶

Facilitated Settlement: The Case Management Phase

In the case management phase, a Tribunal official attempts to facilitate an agreement between the parties and to prepare them for a Tribunal hearing, should one be required.¹⁵⁷ *The Civil Resolution Tribunal Act* uses the term, "facilitated settlement" to describe the Tribunal's dispute resolution services.¹⁵⁸ When speaking of the individual facilitating the case management phase, the Act refers to a, "case manager",¹⁵⁹ but the Tribunal Rules use the term, "facilitator." The facilitator may be a member of the Tribunal with authority to make decisions and orders on the Tribunal's behalf. Or, the facilitator may be a specially trained employee of the Tribunal without the powers of a Tribunal member.

Unless the parties otherwise agree, everything that happens between the parties and the Tribunal in the case management phase is confidential. A case manager has authority to require a party to participate in facilitated settlement proceedings. The case manager may conduct this step in person, in writing, by telephone, by videoconference or by email.¹⁶⁰

150 *Civil Resolution Tribunal Rules*, R. 76.

151 *Civil Resolution Tribunal Rules*, R. 77.

152 *Civil Resolution Tribunal Rules*, R. 75.

153 Civil Resolution Tribunal, How the CRT Works - CRT Fees-Strata Disputes, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/crt-fees/> >.

154 *Civil Resolution Tribunal Rules*, R. 11-13.

155 *Civil Resolution Tribunal Act*, s. 17.

156 *Civil Resolution Tribunal Act*, s. 18.

157 *Civil Resolution Tribunal Act*, s. 17.

158 *Civil Resolution Tribunal Act*, s. 1 (definition of "facilitated settlement.")

159 *Civil Resolution Tribunal Act*, s. 1 defines a "case manager" as, "a tribunal member or other tribunal officer assigned responsibility in relation to Part 4 [Case Management Phase]."

160 *Civil Resolution Tribunal Act*, s. 25.

When Communications Are Received

For each dispute, the facilitator directs the processes to be followed, including the type of communication to be used, the steps to be taken and the timelines to be followed. From time to time, the facilitator can alter these directions, as necessary.¹⁶¹

During this phase, the facilitator can review and approve all communications between the parties before those communications are delivered.¹⁶² The facilitator may also communicate privately with one party at a time to facilitate settlement.¹⁶³ The facilitator can also direct a party to provide information or evidence to the Tribunal and to every other party.¹⁶⁴ During this phase, the facilitator may also refer any matter requiring a decision or order to a Tribunal member, including a party's non-compliance with the facilitator's directions.¹⁶⁵

The Tribunal's Rules clarify when certain communications are received, as follows:¹⁶⁶

Information Communicated By This Method	Is Considered Received
Electronically (other than by fax)	24 hours after the communication is sent, <i>unless</i> the electronic communication is made to provide a Dispute Notice to someone. Service of a Dispute Notice by email is explained earlier in this chapter.
Ordinary mail	At noon on the 10th day after the item is postmarked
Registered mail	At the time shown on the delivery receipt
Courier delivery requiring a signature	At the time shown on the delivery receipt
Fax	At noon on the 3rd day after the fax is sent

To calculate time under the Rules, keep in mind that the Tribunal requires us to use “calendar days”, as explained earlier. Since the Tribunal does not define what “calendar days” are, this work assumes that “calendar days” means that in the 12 month period beginning January 1st, time starts on the first day of the relevant event, after which each consecutive day in the calendar is counted, regardless whether the last day for doing an act falls or expires on a holiday or a day when a business office is closed. For example, suppose that on Saturday, December 23, 2017 at 5pm a respondent sends a fax to the Tribunal. When is

¹⁶¹ *Civil Resolution Tribunal Rules*, R. 82-83.

¹⁶² *Civil Resolution Tribunal Rules*, R. 90.

¹⁶³ *Civil Resolution Tribunal Rules*, R. 91.

¹⁶⁴ *Civil Resolution Tribunal Rules*, R. 92.

¹⁶⁵ *Civil Resolution Tribunal Rules*, R. 94.

¹⁶⁶ *Civil Resolution Tribunal Rules*, R. 25-28.

the fax considered received? The first day of this three-day period is December 23rd, when the respondent sent the fax. Counting three consecutive days, the fax is considered received on Monday, December 25th, being Christmas Day, at noon.

Alternatively, if the courts later determine that the *Interpretation Act* applies, then we must calculate this three day period by excluding the first day and including the last day.¹⁶⁷ If we exclude the first day, Saturday, December 23, 2017, and count three days, we arrive at Tuesday, December 26th, being Boxing Day. Assuming that Boxing Day is a statutory holiday, then time is extended to Wednesday, December 27th, being the next day that is not a holiday.¹⁶⁸ Applying this method, the respondent's fax would be considered received on Wednesday, December 27th at noon.

Non-Binding Evaluation Of A Claim

The case manager may provide a non-binding, neutral evaluation of a party's claim(s), including an evaluation of any representations, demands offers, information or evidence relating to a claim. The case manager may also provide his or her view on how the Tribunal would likely resolve the dispute in the Tribunal decision process.¹⁶⁹ A case manager's non-binding, neutral evaluation of the dispute is covered by the Tribunal's confidentiality and non-disclosure rules, described later in this chapter.¹⁷⁰

Settlement Agreement

If the parties reach agreement on any, or all, of the claims in their dispute, they can ask the case manager to prepare a draft consent resolution order to convert the terms of their agreement into an order of the Tribunal. This means that if the parties reach agreement on some, but not all, matters in dispute, they can ask the Tribunal for a draft consent resolution order on those issues where agreement exists. By doing so, the parties will simplify their ultimate dispute, leaving fewer matters for adjudication in a Tribunal hearing.¹⁷¹

Sensibly, it appears that any such agreement must be reduced to writing because the Rules require that the agreement must set out the agreed terms between the parties and any other information that the parties, or the facilitator, think should be included.¹⁷² The parties must also pay the required fee for a consent resolution order.¹⁷³ At the time of this writing, the fee to apply for a consent resolution order is \$25.¹⁷⁴ If someone cannot afford to pay a fee, that person may ask the Tribunal to waive the fee upon providing such information as the Tribunal requires.¹⁷⁵

167 *Interpretation Act*, s. 25(5).

168 *Interpretation Act*, ss. 25(2) and 29 (definition of "holiday"). To paraphrase in part, section 29 of the Act defines "holiday" to include Sunday, all statutory holidays, and any day set aside by the federal or provincial government, "as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday."

169 *Civil Resolution Tribunal Act*, s. 27 and *Civil Resolution Tribunal Rules*, R. 95.

170 *Civil Resolution Tribunal Rules*, R. 96.

171 *Civil Resolution Tribunal Rules*, R. 89.

172 *Civil Resolution Tribunal Rules*, R. 85.

173 *Civil Resolution Tribunal Act*, s. 26 and *Civil Resolution Tribunal Rules*, R. 84.

174 Civil Resolution Tribunal, How the CRT Works - CRT Fees-Strata Disputes, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/crt-fees/> >.

175 *Civil Resolution Tribunal Rules*, R. 11-13.

If the parties approve the case manager's draft consent resolution order, the Tribunal may approve the draft order as an order of the Tribunal. If, on the other hand, the Tribunal declines to approve the draft consent resolution order, the Tribunal must provide the parties with its reasons for doing so.¹⁷⁶

On the other hand, once approved by the Tribunal, a consent resolution order becomes a public document. If the parties reach agreement on some or all matters in dispute, they do not *have to* seek a draft consent resolution order. In some cases, the parties may prefer for the sake of privacy to privately document their agreement rather than formalizing it in a draft consent resolution order. In that case, the parties can privately execute a settlement agreement and ask the Tribunal for a consent order dismissing any or all claims in the dispute.¹⁷⁷

Settlement Agreement Involving A Child

If a draft consent resolution order involves a child, the parties must first meet the requirements of the *Infants Act* before asking the Tribunal to convert their draft into an order of the Tribunal.¹⁷⁸ According to the Tribunal's Rule 87,

87) If the agreement involves a child, the provisions of the *Infants Act* apply to the agreement and must be met before the parties request a consent resolution order.

Navigating the requirements of the *Infants Act* can be legally complex and is best handled by a lawyer. As explained earlier, if an application for dispute resolution involves a personal injury to a child, then the child must be represented by a lawyer, or a person supervised by a lawyer, unless the litigation guardian is the Public Guardian and Trustee.¹⁷⁹ If the dispute concerning the child does not involve a personal injury, and there is as yet no lawyer assisting the child, then the litigation guardian will best serve the child's interests by engaging a lawyer to help comply with any *Infants Act* requirements.

Infants Act Requirements

Forgetting strata matters for a moment, suppose that a child is injured in a motor vehicle accident. Imagine too that the child's parental guardian claims compensation on behalf of the infant, whether there is a law suit or not. If the parties conclude a settlement agreement, the *Infants Act*,¹⁸⁰ the Supreme Court Civil Rules¹⁸¹ and the Small Claims Rules,¹⁸² as the case may be, create clear requirements for the prior approval of one or both of the Public Guardian and Trustee and the courts. By contrast, the analogous requirements for concluding a similar settlement in a claim before the Tribunal are less clear.

At this early stage in the Tribunal's operations, the following explanation and examples constitute the author's best assessment of the circumstances where a strata property claim will engage the requirements of the *Infants Act*. With the passage of time and the publication of relevant Tribunal decisions, this area of the law will become clearer.

176 *Civil Resolution Tribunal Act*, s. 26.

177 *Civil Resolution Tribunal Act*, s. 22.

178 *Infants Act*, s. 40.

179 *Civil Resolution Tribunal Rules*, R. 36.

180 *Infants Act*, s. 40.

181 *Supreme Court Civil Rules*, B.C. Reg. 168/2009, R. 20-2 (17).

182 *Small Claim Rules*, B.C. Reg. 261/93, R. 18-19.

When The *Infants Act* Does Not Apply To A Settlement

A claim on behalf of a child to collect a debt, does not engage the settlement requirements in the *Infants Act*. A claim for debt is a claim for money owing as money. Similarly, where on behalf of a child a litigation guardian brings a claim asking the Tribunal to order someone to do something other than paying money as damages, settlement of the dispute does not trigger the *Infants Act*.

The *Infants Act* Applies To A Claim For Damages

Where a child's strata property claim amounts to a claim for damages, whether for personal injury or otherwise, and the parties reach a settlement agreement on compensation, the *Infants Act* applies. Before the Tribunal converts the parties' agreement into a Tribunal order, the *Infants Act* will require one or both of the Public Guardian and Trustee and the Supreme Court of British Columbia to first approve the settlement.

In a law suit, compensatory damages (sometimes called general damages) represent money owing as compensation for a legal wrong. Compensatory damages may be unliquidated or liquidated. The phrase "unliquidated damages" refers to compensatory damages that are yet to be assessed, for example, by a court, by an arbitrator or by the Tribunal. The phrase "liquidated damages" refers to the situation where the parties to a contract agree in advance in their contract that if a party breaches that agreement, the defaulting party will pay a specific sum, being a genuine pre-estimate of damages. Whether a claim on a child's behalf demands unliquidated or liquidated damages, settlement of the claim engages the *Infants Act*.

Unliquidated Damages

Suppose that a strata owner's child suffers a serious injury when a steel, parkade-gate, while closing, strikes the child. The gate is common property. Suppose also that the child's parent prefers to make a strata property claim to the Tribunal on the child's behalf for compensation, rather than suing the strata corporation in Supreme Court. Since, a litigation guardian must bring the claim for the child, we assume that the owner acts as litigation guardian in the claim before the Tribunal.¹⁸³ The gist of the owner's claim is that the *Occupiers Liability Act* makes the strata corporation liable for failing to ensure that the child was reasonably safe near the common-property parkade gate.¹⁸⁴ Alternatively, the owner claims that the strata corporation was negligent for failing to ensure that the common-property parkade gate operated safely. Let's also assume that this is not a case where the Supreme Court will order the Tribunal to refrain from resolving the claim because it is not in the interests of justice and fairness to do so.¹⁸⁵ Finally, imagine that the owner, on behalf of the child, reaches a settlement agreement with the strata corporation.

Before the Tribunal may convert the parties' settlement agreement into a consent resolution order, the owner must meet the following requirements under the *Infants Act*. Requirements will vary depending when the parties reach their settlement agreement, and the amount. In any case where one must seek the

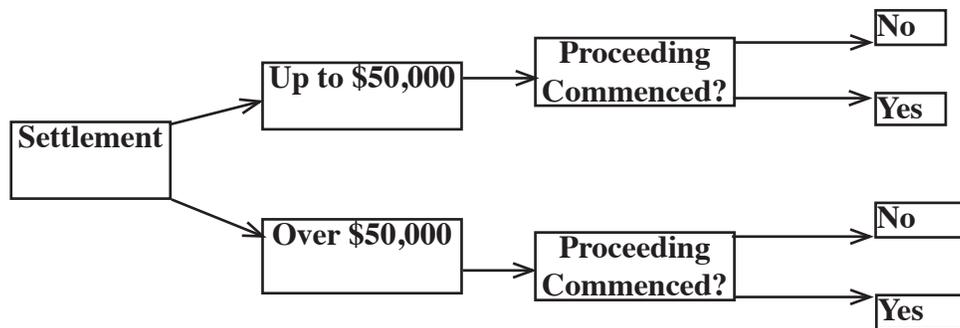
¹⁸³ *Civil Resolution Tribunal Rules*, R. 34.

¹⁸⁴ *Occupiers Liability Act*, R.S.B.C. 1996, c. 337. Section 1 of the Act defines an "occupier", in part, as, "a person who ... has responsibility for, and control over, the condition of the premises" Section 3(1) of the Act makes an occupier responsible, in part, "...to take that care that in all the circumstances of the case is reasonable to see that a person ...will be reasonably safe in using the premises."

¹⁸⁵ *Civil Resolution Tribunal Act*, s. 12.3.

approval of the Public Guardian and Trustee, note that the Public Guardian and Trustee charges a fee for reviewing an application for approval under the *Infants Act*. The fee is based on a sliding scale, depending on the proposed settlement amount.¹⁸⁶

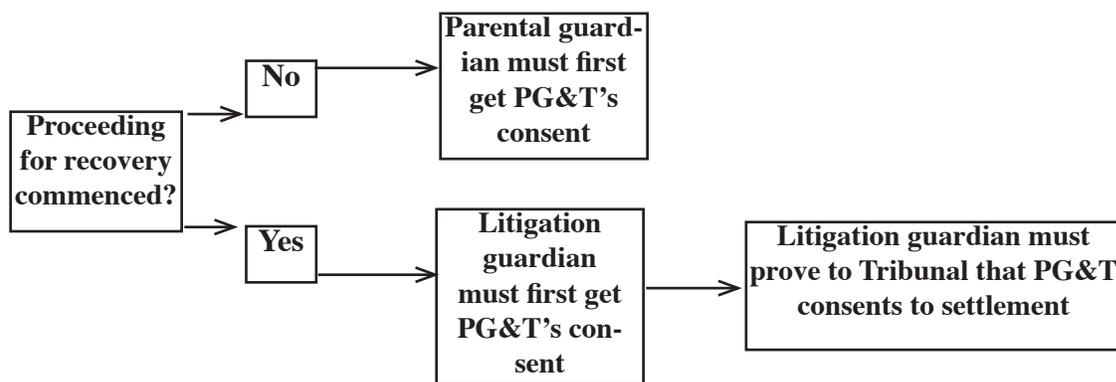
In a claim for unliquidated damages, the *Infants Act* divides settlement agreements into those where the settlement amount is \$50,000 or less versus settlement agreements for more than \$50,000, and then depending whether a proceeding to recover damages has been commenced, as shown below:



When considering a settlement amount for this purpose, interest and any costs awarded by the Tribunal are not included.

Settlement Up To \$50,000

Where the proposed settlement is \$50,000 or less, excluding interest and costs, the *Infants Act* distinguishes whether a proceeding for recovery of unliquidated damages has been commenced. Depending whether a proceeding for recovery has been commenced, either the parental guardian or the litigation guardian, as the case may be, must obtain the consent of the Public Guardian and Trustee (“PG&T”) as shown below:



¹⁸⁶ Public Guardian and Trustee of British Columbia, “Settlement Submissions Under The Infants Act: Public Guardian and Trustee’s Requirements” at p.12, online: Public Guardian and Trustee of British Columbia, < <http://www.trustee.bc.ca/documents/CYS/Settlement%20Submission%20Guidelines%20Under%20the%20Infants%20Act.pdf> >.

No Proceeding For Recovery

Where no proceeding for recovery is commenced, and the settlement amount is \$50,000 or less, excluding interest and costs, a guardian with parental responsibility may make a binding settlement agreement if the guardian first obtains the consent of the Public Guardian and Trustee.¹⁸⁷

Imagine that the parties reach their agreement in preliminary negotiations. No proceeding has yet been commenced. If the settlement amount is \$50,000 or less, the owner, as parental guardian, must apply to the Public Guardian and Trustee for approval of the settlement.

Commencing A Proceeding For Recovery

When does one commence a proceeding for recovery with the Tribunal? Given the way the Tribunal operates, it seems most likely that a party commences a proceeding for recovery of unliquidated damages when the Tribunal issues that party a Dispute Notice for the claim. Under the *Civil Resolution Tribunal Act* and the Tribunal's Rules, the issuance of a Dispute Notice is the initiating notice by which the Tribunal takes jurisdiction over the claim.¹⁸⁸ The applicant must serve the Dispute Notice on each respondent¹⁸⁹ and every respondent, once served, must respond by completing a Dispute Response Form.¹⁹⁰ In addition, the issuance of the Dispute Notice suspends the running of the applicable basic and ultimate limitation periods, as explained earlier in this chapter¹⁹¹.

Proceeding For Recovery Commenced

Suppose that in this case the Tribunal issued a Dispute Notice and the parties later reached their settlement agreement in the case management phase. In these circumstances, a proceeding for recovery of unliquidated damages has been commenced. Since, a litigation guardian must bring the claim for the child, we assume that the owner acts as litigation guardian in the claim before the Tribunal.¹⁹²

If the proposed settlement amount is \$50,000 or less, exclusive of interest and costs, then a litigation guardian may consent to an order awarding damages in favour of an infant if the litigation guardian first obtains the consent of the Public Guardian and Trustee.¹⁹³

So, the owner, as litigation guardian, will have to first apply to the Public Guardian and Trustee for approval of the settlement. Once approval is obtained, the owner, as litigation guardian, will have to prove to the Tribunal that the Public Guardian and Trustee has approved the settlement before the Tribunal converts the settlement agreement into a consent resolution order.

If the settlement agreement also concludes the claim on behalf of the child, the parties will likely wish to terminate the dispute by asking the Tribunal for a consent dismissal order. Since this is a claim on behalf of a child, the Tribunal's Rules also require the prior written consent of Public Guardian and Trustee before the Tribunal may order the consent dismissal of the claim. The Tribunal's Rule 130 says,

130) A person requesting the dismissal of a claim made by a child or an adult with impaired mental capacity must include written consent from the Public Guardian and Trustee for that request.

187 *Infants Act*, s. 40(4).

188 *Civil Resolution Tribunal Act*, ss. 1 (definition of "initiating notice") and 6.

189 *Civil Resolution Tribunal Rules*, R. 51.

190 *Civil Resolution Tribunal Rules*, R. 72.

191 *Civil Resolution Tribunal Act*, s. 14.

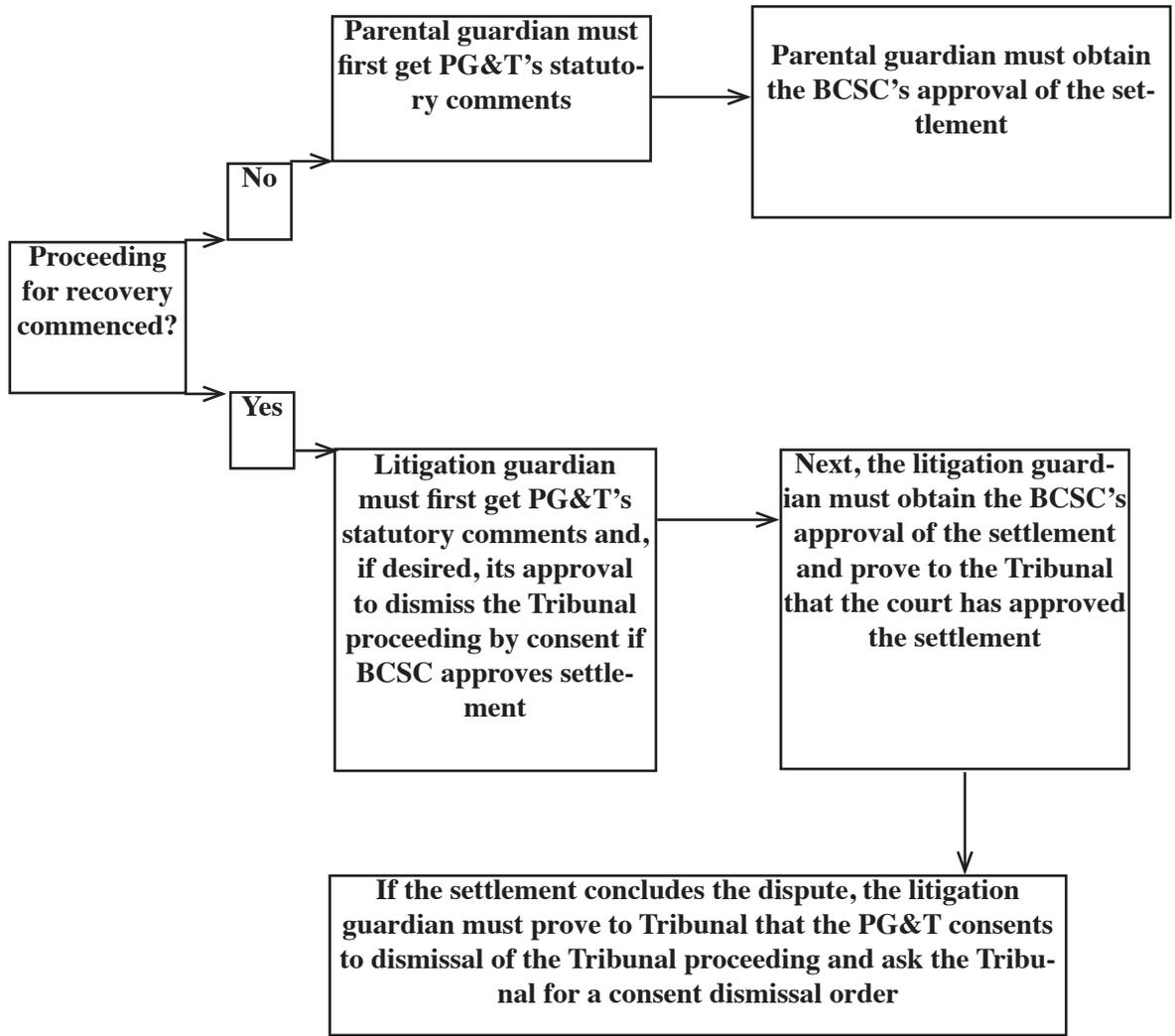
192 *Civil Resolution Tribunal Rules*, R. 34.

193 *Infants Act*, s. 40(7).

In our example, this means that the owner, as litigation guardian, will also have to obtain the written approval of the Public Guardian and Trustee to dismiss the child’s claim by consent. The best practice is likely for the litigation guardian at the same time to ask the Public Guardian and Trustee for both things - approval of the settlement and consent to dismiss the child’s claim, all in writing. In this illustration, once the owner, obtains the Public Guardian and Trustee’s written consent to dismiss the claim, the owner, as litigation guardian, must provide the Tribunal with proof of the Public Guardian and Trustee’s approval before the Tribunal orders the dismissal of the claim by consent.

Settlement Over \$50,000

Where the proposed settlement is more than \$50,000, excluding interest and costs, the *Infants Act* distinguishes whether a proceeding for recovery has been commenced. Regardless whether a proceeding is commenced, the parental guardian or litigation guardian, as the case may be, must first obtain the Public Guardian and Trustee’s (“PG&T”) written comments on the proposed settlement. The Public Guardian and Trustee calls these written remarks the, “statutory comments.” Having obtained the Public Guardian and Trustee’s statutory comments, the parental or litigation guardian, as the case may be, must then apply to the Supreme Court (“BCSC”) for approval of the settlement, as shown below:



No Proceeding For Recovery

Where no proceeding for recovery is commenced, and the settlement amount exceeds \$50,000, a guardian with parental responsibility may make a binding settlement agreement if the guardian meets two prerequisites. First, the Public Guardian and Trustee must review the proposed settlement and provide its statutory comments on the proposed settlement. Second, the Supreme Court must approve the settlement.

194

In our example, imagine that the parties reach agreement in preliminary negotiations to settle the claim for more than \$50,000. The owner, as a guardian with parental responsibility for the child, must first ask the Public Guardian and Trustee for its statutory comments regarding the settlement. At its website, the Public Guardian and Trustee provides a helpful checklist of items commonly required when the Public Guardian and Trustee reviews such settlement proposals.¹⁹⁵ Although the checklist is clearly drafted with a view to settling a personal injury claim involving an injured child, the checklist will help anyone preparing a submission to the Public Guardian and Trustee.

Once the child's parental guardian has the Public Guardian and Trustee's statutory comments, the child's guardian must then submit those comments together with supporting documentation to the Supreme Court. According to the Public Guardian and Trustee, the parental guardian must present to the court evidence of the consent of all parties. For example, the parental guardian could provide a letter, or a signed statutory declaration, confirming approval of the proposed settlement. The parental guardian must also supply evidence to support the reasonableness of the settlement. To do this, the parental guardian may submit to the court affidavit material, correspondence, offers to settle and any other relevant information. If there are legal fees and disbursements involved, the parental guardian should also provide affidavit material explaining the legal expenses.

Proceeding for Recovery Commenced

Where a proceeding for recovery of unliquidated damages has been commenced, and the proposed settlement amount is more than \$50,000, exclusive of interest and costs, a litigation guardian may consent to an order awarding damages in favour of an infant if the litigation guardian first meets two pre-conditions. First, the litigation guardian must obtain the Public Guardian and Trustee's statutory comments. As mentioned earlier, when requesting statutory comments the reader will find a helpful checklist at the web site of the Public Guardian and Trustee.¹⁹⁶ Second, the Supreme Court must approve the settlement.¹⁹⁷ So, the litigation guardian must submit the Public Guardian and Trustee's statutory comments to the court, together with other supporting materials, as described above.

Suppose that in this case the Tribunal issued a Dispute Notice and the parties later settled the child's claim, subject to meeting the *Infants Act* requirements. Imagine that the settlement amount exceeds \$50,000, excluding interest and costs.

194 *Infants Act*, s. 40(5), (10).

195 Public Guardian and Trustee of British Columbia, "Settlement Submissions Under The Infants Act: Public Guardian and Trustee's Requirements" at p.2, online: Public Guardian and Trustee of British Columbia, < <http://www.trustee.bc.ca/documents/CYS/Settlement%20Submission%20Guidelines%20Under%20the%20Infants%20Act.pdf> >.

196 Public Guardian and Trustee of British Columbia, "Settlement Submissions Under The Infants Act: Public Guardian and Trustee's Requirements" at p.2, online: Public Guardian and Trustee of British Columbia, < <http://www.trustee.bc.ca/documents/CYS/Settlement%20Submission%20Guidelines%20Under%20the%20Infants%20Act.pdf> >.

197 *Infants Act*, s. 40(8),(10).

In these circumstances, a proceeding for recovery of unliquidated damages has been commenced and the proposed settlement exceeds \$50,000, exclusive of interest and costs. In the claim before the Tribunal, we assume that the owner acts as litigation guardian.¹⁹⁸ To consent to a Tribunal order awarding damages in favour of the child, the litigation guardian must first obtain the Public Guardian and Trustee’s statutory comments and then apply to the Supreme Court to approve the settlement.¹⁹⁹ Once the Supreme Court approves the settlement, the owner, as litigation guardian, must prove to the Tribunal that the Supreme Court has approved the settlement before the Tribunal converts the settlement agreement into a consent resolution order.

If the settlement agreement also concludes the claim on behalf of the child, the parties will likely wish to terminate the dispute by asking the Tribunal for a consent dismissal order. As explained earlier, the Tribunal’s Rules require the owner, as litigation guardian, to first obtain the written approval of the Public Guardian and Trustee to dismiss the child’s claim by consent.²⁰⁰ The best practice is likely for the litigation guardian, when requesting statutory comments, to ask at the same time for the Public Guardian and Trustee’s written approval of a consent dismissal order in the event the Supreme Court approves the settlement. Later, when the owner, as litigation guardian, asks the Tribunal for a consent dismissal order, he or she will have to prove to the Tribunal that the Public Guardian and Trustee has agreed in writing that the claim may be dismissed by consent.

No Approval By Public Guardian and Trustee

What if the Public Guardian and Trustee refuses to approve the proposed settlement in its statutory comments? No matter the amount involved or whether proceedings have been commenced, in most circumstances the child’s parental guardian, or litigation guardian, as the case may be, can still ask the Supreme Court to approve the settlement. After scheduling the court application, the applicant must give at least 10 days written notice of the application to the Public Guardian and Trustee.²⁰¹ At the court hearing, legal counsel for the Public Guardian and Trustee may, or may not, attend to explain the Public Guardian and Trustee’s position to the court.

According to the *Interpretation Act*, we must calculate this 10-day notice period by excluding the first day and the last day, which translates into 12 days.²⁰²

Liquidated Damages

If one looks carefully at the *Infants Act*, the reader will find a short provision governing the approval of an infant’s claim for liquidated damages.²⁰³ The provision divides settlements according to amount. If the settlement involves a consideration up to \$10,000, the provision requires the consent of the Public Guardian and Trustee.²⁰⁴ If the consideration for the settlement exceeds \$10,000, then it requires,²⁰⁵

... [t]he approval of the [Supreme] court by order made on the petition of a party to the agreement.

198 *Civil Resolution Tribunal Rules*, R. 34.

199 *Infants Act*, s. 40(8),(10).

200 *Civil Resolution Tribunal Rules*, R. 130.

201 *Infants Act*, s. 42. If the Provincial Court has jurisdiction over the proceeding for recovery, this provision permits a party to apply to that court to approve the settlement, if the Public Guardian and Trustee has refused to consent to the proposed settlement.

202 *Interpretation Act*, s. 25(4).

203 *Infants Act*, s. 40(1.1).

204 *Infants Act*, s. 40(1.1)(a).

205 *Infants Act*, s. 40(1.1)(b).

Although these are the statute's requirements, the Public Guardian and Trustee does not enforce them.²⁰⁶ This, at least, is the case at the time of this writing.

If a claim before the Tribunal involves a child's claim for liquidated damages, then before settling that claim the child's litigation guardian should obtain legal advice about this provision in the *Infants Act*, in case the Public Guardian and Trustee changes its practice. Alternatively, the litigation guardian should check directly with the Public Guardian and Trustee. The reader will find contact particulars for the Public Guardian and Trustee's office at its web site, mentioned earlier.

In any event, if the settlement agreement also concludes the claim on behalf of a child, the parties will likely wish to terminate the dispute by asking the Tribunal for a consent dismissal order. As explained earlier in connection with claims for unliquidated damages, the Tribunal's Rules require that the person seeking dismissal of a child's claim must include with their request the written consent of the Public Guardian and Trustee.²⁰⁷ So, the child's parental guardian, or litigation guardian, as the case may be, must first obtain the written approval of the Public Guardian and Trustee to dismiss the child's claim by consent.²⁰⁸ Once the child's parental guardian, or litigation guardian, obtains the Public Guardian and Trustee's consent for dismissal, then he or she must provide the Tribunal with proof of the Public Guardian and Trustee's written approval before the Tribunal dismisses the claim by consent.

Settlement Agreement Involving An Adult With Impaired Mental Capacity

In any strata property claim involving an adult with impaired mental capacity, the *Civil Resolution Tribunal Act* and the Tribunal's Rules create some special requirements.

If the parties to a dispute reach a resolution by agreement on any or all claims in their dispute, they may ask the Tribunal to make a consent resolution order. But, if the agreement involves an adult with impaired mental capacity, the Tribunal must first review the agreement to ensure that it is fair, reasonable and in the incapable adult's best interests.²⁰⁹

If the consent resolution order requires a party to pay money to a person with impaired mental capacity, the order can provide for payment to be made to a committee of the incapable person's estate, or to a representative appointed in a representation agreement, or to an attorney appointed under an enduring power of attorney, or to the person's legal representative. Failing the availability of a committee of estate, a representative under a representation agreement, or someone appointed under an enduring power of attorney, the consent order may require payment to the Public Guardian and Trustee.²¹⁰

If the settlement agreement involving an incapable adult also concludes all claims before the Tribunal, the Tribunal's Rules permit the parties to request a consent dismissal order, as described earlier.²¹¹ If the Tribunal proceeding involves a claim made by an adult with impaired mental capacity, then the person requesting dismissal of that claim must also provide the Tribunal with the written consent of the Public Guardian and Trustee.²¹²

²⁰⁶ Interview of Ms. J. A. Davenport, Deputy Public Guardian and Trustee and Ms.P. Estall, staff administrative lawyer with the Public Guardian and Trustee, by M. Mangan, (12 September 2016).

²⁰⁷ *Civil Resolution Tribunal Rules*, R. 130.

²⁰⁸ *Civil Resolution Tribunal Rules*, R. 130.

²⁰⁹ *Civil Resolution Tribunal Rules*, R. 86.

²¹⁰ *Civil Resolution Tribunal Rules*, R. 88 and 124.

²¹¹ *Civil Resolution Tribunal Rules*, R. 129.

²¹² *Civil Resolution Tribunal Rules*, R. 130.

Case Manager's Recommendation

If all parties consent, the case manager can recommend to the Tribunal how the dispute should be finally resolved. The recommendation may be in the form of a draft final decision, or a draft final decision and draft order giving effect to the decision, all for the Tribunal's consideration. Later, in a hearing, the Tribunal must at least consider the case manager's recommendation, but the Tribunal does not have to adopt it.²¹³

Case Manager Acting As Tribunal

If the case manager is a Tribunal member, then with the consent of the parties, the Tribunal member may offer to act at that point as the Tribunal to directly resolve the matter, without any further case management or hearing.²¹⁴

No Agreement Reached

If a strata property claim is not resolved in the case management phase, it must proceed to a Tribunal hearing.²¹⁵

If the facilitator decides that the parties cannot resolve their dispute by agreement, the facilitator will inform the parties that settlement attempts are finished and ask the applicant to pay the Tribunal decision fee. At the time of this writing, that fee is \$100.²¹⁶ If a person cannot afford to pay a fee, that person may ask the Tribunal to waive the fee, providing such information as the Tribunal requires.²¹⁷

If the applicant fails to pay the Tribunal decision fee, a respondent may pay it. If no party pays the fee, the Tribunal may refuse to hear the dispute or dismiss it. Alternatively, the Rules preserve the Tribunal's right to proceed to hear the dispute anyway, despite the failure to pay the Tribunal's decision fee. This might occur, for example, if the Tribunal considers it important to address a particular issue in the dispute.²¹⁸

Preparing For Adjudication

Upon payment of the Tribunal decision fee, the process of preparing for adjudication begins. To prepare, the facilitator will give the parties a Tribunal Decision Plan. That plan will set out required information, steps and timelines and the date by which the Tribunal will provide its decision.²¹⁹ The facilitator can also direct the parties to complete steps in the Tribunal Decision Plan. For instance, the facilitator may direct a party to provide certain information, evidence or records by a certain date. The facilitator may also require the parties to provide an agreed statement of facts or to respond to the submissions of other parties by a deadline.²²⁰

213 *Civil Resolution Tribunal Act*, s. 28.

214 *Civil Resolution Tribunal Act*, s. 29.

215 *Civil Resolution Tribunal Act*, s. 30.

216 Civil Resolution Tribunal, How the CRT Works - CRT Fees-Strata Disputes, (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/crt-fees/> >.

217 *Civil Resolution Tribunal Rules*, R. 11-13.

218 *Civil Resolution Tribunal Rules*, R. 99-100.

219 *Civil Resolution Tribunal Rules*, R. 101-102.

220 *Civil Resolution Tribunal Rules*, R. 104.

If a party, or the Tribunal, requires a person to provide evidence or to produce a record or other thing within the person's control, the party or the Tribunal may issue a summons. To issue a summons to someone, a party must follow the instructions on the Tribunal's Summons Form and then serve it on that person, together with the necessary fees shown on the Summons Form.²²¹

Once the facilitator has given the Tribunal Decision Plan to the parties, they cannot add any other party or claim without the Tribunal's permission.²²²

If the case manager is a Tribunal member, then a different Tribunal member will later adjudicate the dispute at the Tribunal hearing, unless the parties agree otherwise.²²³

If a party fails to comply with the Tribunal Decision Plan, the Tribunal can do any or all of the following. The Tribunal may decide the dispute relying only on the information and evidence that was filed in compliance with the Tribunal Decision Plan. The Tribunal may also dismiss any claim brought by the non-compliant party. In addition, the Tribunal may require the non-compliant party to pay to another party certain fees or other reasonable expenses incurred as a result of the party's failure to comply with the Tribunal Decision Plan.²²⁴

Tribunal Hearing

In the Tribunal hearing phase, the Tribunal considers the dispute and gives a final decision.²²⁵ The presiding Tribunal member can determine all matters relating to the hearing process, including the format and length of the process.²²⁶ The Tribunal expects most hearings to occur through the written submissions of the parties. Only in exceptionally rare cases will a hearing involve live testimony; for example, where there is a very difficult issue of credibility or a question of unusual complexity. The Tribunal must give its final decision and any orders resolving the dispute by the date communicated to the parties after the Tribunal Decision Plan is finalized.²²⁷

If, at any time before or during the Tribunal decision process, the Tribunal decides that a dispute requires further facilitation, it may refer the matter back to facilitation.²²⁸

Expert Witness

The Tribunal appears willing to accept an expert witness' opinion evidence in a manner similar to the courts. At common law, apart from a few exceptions, the ordinary witness may testify only to the facts as the witness perceives them, but not as to any inferences drawn from those facts; that is, not their opinions. Where, however, the subject matter of the inquiry calls for special knowledge or skill, judges and jurors are not necessarily equipped to draw the correct inferences from the facts in evidence. To assist the court, a witness possessing specialized knowledge on the subject may be permitted to give his or her opinion on the matter.²²⁹

221 *Civil Resolution Tribunal Rules*, R. 106.

222 *Civil Resolution Tribunal Rules*, R. 105.

223 Interview of Ms. S. Salter, Tribunal Chairperson and Mr. J.G. Cambrey, Tribunal Vice-Chairperson by M. Mangan, (17 August 2016).

224 *Civil Resolution Tribunal Rules*, R. 108.

225 *Civil Resolution Tribunal Act*, s. 17.

226 *Civil Resolution Tribunal Rules*, R. 116.

227 *Civil Resolution Tribunal Rules*, R. 118.

228 *Civil Resolution Tribunal Rules*, R. 117.

229 See, for example, *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 at paras. 14-15.

The Tribunal will only accept opinion evidence from a person if the Tribunal decides that individual is qualified as an expert by education, training or experience to give that opinion. The Tribunal has Rules governing expert evidence. In particular, a party wishing to provide expert evidence to the Tribunal must provide a copy of it to every other party by the deadline shown in the Tribunal Decision Plan.²³⁰

Tribunal Orders

In resolving a strata property claim, the Tribunal may make one or more of the following orders:²³¹

- an order requiring a party to do something;
- an order requiring a party to refrain from doing something;
- an order requiring a party to pay money; and
- an order necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.²³²

A final order or decision may also include any order, terms and conditions that the Tribunal considers appropriate.²³³

Order For Strata Corporation To Pay

Where the Tribunal orders a strata corporation to pay money to another party, it appears the order operates as a judgment against *all* of the owners.²³⁴ Certainly, if a party obtains a Tribunal order requiring the strata corporation to pay the party a sum of money, that party may take the steps necessary to enforce the order as a judgment of the Supreme Court of British Columbia, as described below. The party may then register the judgment in a land title office against the title to any, or all, of the strata lots in the strata plan.²³⁵ For more information about the effects of a judgment against a strata corporation, see Chapter 27, *Lawsuits*.

Suppose the Tribunal orders a strata corporation to pay money to an owner in satisfaction of that owner's claim. Where the strata corporation pays an amount to the owner in accordance with the Tribunal's order, that owner is not required to contribute together with all the other owners to the common expense of making that payment.²³⁶

Costs

A final decision of the Civil Resolution Tribunal may include a requirement for one party to pay another for some or all of:

- (a) any Tribunal fees paid by the other party in relation to the dispute;

230 *Civil Resolution Tribunal Rules*, R. 114.

231 *Civil Resolution Tribunal Act*, s. 48.1

232 This order is available where the strata property claim is brought under s. 3.6(2)(e) to (g) of the *Civil Resolution Tribunal Act* [being where the claim involves an action or threatened action, or a decision of the strata corporation, including the council, in relation to an owner or tenant, or the exercise of voting rights at a general meeting by a person holding 50% or more of the votes, including proxies].

233 *Civil Resolution Tribunal Rules*, R. 121.

234 *Strata Property Act*, ss. 166 and 189.4(a).

235 See, for example, *The Owners, Strata Plan VIS 4534 v. Seedtree Water Utility Co. Ltd.*, 2006 BCSC 73 at para. 1.

236 *Strata Property Act*, ss. 169(2) and 189.4(c).

- (b) any fees and expenses paid by another party in relation to witness fees and summonses; and
- (c) any other reasonable expenses and charges that the Tribunal considers directly related to the conduct of the Tribunal dispute resolution process.

If a strata corporation initiates a strata property claim against an owner or owner-developer, or if an owner initiates a claim against the strata corporation, that owner is not liable to contribute to those legal costs that the Tribunal requires the strata corporation to pay.²³⁷

Enforcing A Tribunal Decision or Order

A party who obtains in their favour a final decision of the Civil Resolution Tribunal may enforce that decision through the courts in several ways. A final decision is:²³⁸

- a decision following a Tribunal hearing;²³⁹
- a decision of the Tribunal by way of a consent resolution order, or
- a decision of the Tribunal by way of a dismissal order.

Supreme Court of British Columbia

In the Supreme Court of British Columbia, a Tribunal order may be enforced in contempt proceedings or as a judgment.

Contempt Proceedings

If an adverse party fails or refuses to comply with an order of the Tribunal, the party who obtained that Tribunal order may apply to the Supreme Court of British Columbia to punish the adverse party for contempt. The court can punish the scofflaw as if he or she had breached an order or judgment of the Supreme Court.²⁴⁰

Enforcement As A Judgment

Subject to a few prerequisites, a party can enforce a final decision of the Tribunal by filing, in the Supreme Court, a validated copy of the Tribunal's order giving effect to its decision. A party may only file the validated copy of the Tribunal's order if one or more of the following apply:²⁴¹

- the final decision is an approved draft consent resolution order;
- the time for an appeal to the supreme court has expired and leave to appeal has not been sought or consented to;
- leave to appeal is denied; or
- the appeal is heard, and the Supreme Court confirms the Tribunal's decision.

237 *Strata Property Act*, ss. 169(1) and 189.4(c).

238 *Civil Resolution Tribunal Act*, s.1 (definition of "final decision").

239 *Civil Resolution Tribunal Act*, s. 46.

240 *Civil Resolution Tribunal Act*, s. 60.

241 *Civil Resolution Tribunal Act*, s. 57(2).

Once filed, the Tribunal's order may be enforced as if it were a judgment of the Supreme Court.²⁴²

Provincial Court of British Columbia

A party can also enforce a final decision of the Tribunal by filing in the Provincial Court of British Columbia a validated copy of a Tribunal order giving effect to the decision, subject to meeting a few criteria. A party may only file a validated copy of the Tribunal's order if the order is for financial compensation or the return of personal property. In an order for the payment of money, the principal amount payable must be within the monetary limit for claims under the *Small Claims Act*. Likewise, in the case of personal property to be returned, the value of the property must be within the court's monetary limit.²⁴³ At the time of this writing, the monetary limit of the court remains at \$25,000.²⁴⁴

Once filed, the Tribunal's order may be enforced as if it were a judgment of the Provincial Court.

Overturing A Final Decision Of The Tribunal

A final decision of the Tribunal is subject only to an appeal to the Supreme Court of British Columbia on a question of law or to review under the *Judicial Review Procedure Act*.

A party wishing to appeal against a final decision of the Tribunal, or to seek judicial review, should first consult a lawyer. An appeal on a question of law or an application for judicial review, typically involve more complex legal considerations than does a claim before the Tribunal. Nor should anyone delay seeking legal advice when considering whether to launch an appeal or judicial review. Legal deadlines and special notice requirements may apply.

Appeal

When the Civil Resolution Tribunal notifies a party of the Tribunal's final decision, that party may appeal against that decision to the Supreme Court of British Columbia, if the following criteria are met.

First, a party may only appeal on a question of law arising out of the Tribunal's decision.²⁴⁵ One distinguished judge described a **question of law** this way,²⁴⁶

Briefly stated, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests.

Second, to bring an appeal, all parties to the dispute must consent. If all parties do not consent to a party's wish to appeal, then that party must apply to the Supreme Court for leave to appeal. The phrase, "leave to appeal" means permission to appeal.

The Supreme Court may grant leave to appeal if the court determines that it is in the interests of justice and fairness to do so. When deciding whether leave to appeal is justified, the Supreme Court may consider:²⁴⁷

242 *Civil Resolution Tribunal Act*, s. 57(1),(4).

243 *Civil Resolution Tribunal Act*, s. 58.

244 *Small Claims Act*, R.S.B.C. 1996, c. 430, s. 3 and *Small Claims Court Monetary Limit Regulation*, B.C. Reg. 179/2005.

245 *Civil Resolution Tribunal Act*, s. 56.5(1).

246 *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748 at para. 35.

247 *Civil Resolution Tribunal Act*, s. 56.5(5).

- whether an issue raised by the matter is of such importance that it would benefit from being resolved by the court to establish a precedent;
- whether an issue raised by the matter relates to the constitution or the *Human Rights Code*;
- the importance of the issue to the parties, or to a class of persons of which one of the parties is a member; and
- the principle of proportionality.

Some of these factors are similar to those considered by the Supreme Court when deciding whether to grant leave to appeal on a question of law against an arbitrator's award in an arbitration under the *Strata Property Act*.²⁴⁸ For more information about what constitutes a question of law, and some of the factors involved, see Chapter 28, *Arbitration*.

On appeal, the Supreme Court can confirm, vary or set aside the Tribunal's decision. The court may also refer the claim back to the Tribunal with the court's directions concerning the question of law involved in the appeal.²⁴⁹

If the Supreme Court varies the Tribunal's decision, then the decision, as varied, may be enforced by filing in the court a validated copy of the Tribunal's earlier order together with the order of the Supreme Court varying it.²⁵⁰

Time Limit To Appeal

There is a time limit for appealing against a final decision of the Tribunal. The *Civil Resolution Tribunal Act* says that a party may not file an appeal later than 28 days after that party is given notice of the final decision.²⁵¹

Recall that when calculating time under the Tribunal's rules, the Tribunal requires us to count, "calendar days," as explained earlier in this chapter.²⁵² Since the *Civil Resolution Tribunal Act* establishes this 28-day time limit (not the Tribunal's Rules), the *Interpretation Act* governs the calculation of time, not the Tribunal's "calendar days" approach.²⁵³ The *Interpretation Act* requires that we calculate this 28 day period by excluding the first day, and including the last day.²⁵⁴ When the relevant provision of the *Civil Resolution Tribunal Act* is read together with the *Interpretation Act*, the result is that a party must file their appeal within 29 days after receiving the Tribunal's final decision.

Judicial Review

A final decision of the Civil Resolution Tribunal may be subject to judicial review by the Supreme Court of British Columbia under the *Judicial Review Procedure Act*.²⁵⁵ Technically, a judicial review differs from an appeal.

248 *Strata Property Act*, s. 188(2).

249 *Civil Resolution Tribunal Act*, s. 56.5(6).

250 *Civil Resolution Tribunal Act*, s. 57(3).

251 *Civil Resolution Tribunal Act*, s. 56.5(3).

252 *Civil Resolution Tribunal Rules*, R. 5.

253 For more information about calendar days, see "Calculating Time In A Tribunal Claim: Which Method Governs?" earlier in this chapter.

254 *Interpretation Act*, s. 25(5).

255 *Civil Resolution Tribunal Act*, s. 3.7(2) and *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241.

In a judicial review, the court determines whether the Tribunal made its decision within its statutory authority. In judicial review, the Supreme Court tends to focus on questions concerning the jurisdiction of a decision maker and procedural fairness. Procedural fairness involves the right to an independent decision maker who is not biased, as well as a person's right to hear, and to respond to, the case against them.

In a judicial review, the court may not set aside the statutory body's decision merely because the court would have reached a different conclusion. The court's powers are usually limited to setting aside the statutory body's decision and remitting the matter back to that body.²⁵⁶ For more information about judicial review, see Chapter 28, *Arbitration*.

Time Limit For Judicial Review

At the time of this writing, there is no deadline to apply for judicial review of a final decision of the Tribunal.

According to the *Civil Resolution Tribunal Act*, a party must apply for judicial review of a final decision of the Tribunal within the time prescribed by regulation.²⁵⁷ At the time of this writing, there is no such regulation. A regulation to establish a deadline may, however, be introduced at a future date.²⁵⁸

Practical Aspects of the Tribunal Process

Confidentiality

The Civil Resolution Tribunal must protect personal information in its custody or under its control by making reasonable security arrangements to protect against the unauthorized access, collection, use, disclosure or disposal of such information.²⁵⁹

Parties to a dispute are also bound by confidentiality requirements. Discussions, negotiations and other communications made for the purpose of attempting to settle claims by agreement in the Tribunal process, including information exchanged as part of those communications, are confidential and must not be disclosed during the Tribunal process or in any court proceeding or other legally binding process, such as arbitration, unless:²⁶⁰

- a) The parties agree they can be disclosed;
- b) The parties are required by a court or Tribunal to disclose them;
- c) It is evidence or information exchanged during settlement discussions that would ordinarily be disclosed or produced in a Tribunal decision process, court proceeding or other legally binding process; or
- d) The content of those communications or information is abusive, or includes threats of bodily harm made during or in connection with negotiation or settlement process.

256 *Kinexus Bioinformatics Corp. v. Asad*, 2010 BCSC 33 at paras. 12-13.

257 *Civil Resolution Tribunal Act*, s. 3.7(2).

258 Email from Mr. J. Garth Cambrey, Vice-Chairperson-Strata to Mr. Mike Mangan, (12 September 2016).

259 *Civil Resolution Tribunal Act*, s. 86.

260 *Civil Resolution Tribunal Act*, s. 89 and *Civil Resolution Tribunal Rules*, R. 29.

General Rule: Parties Must Represent Themselves

In proceedings before the Tribunal, the general rule is that every party must represent themselves, subject to a few exceptions described in the table below.²⁶¹

Representative or Helper

Apart from a few circumstances where a representative is mandatory, there is only a small number of situations where a party may have someone else represent them. On the other hand, a party is always welcome to have a helper. The difference between a representative and a helper is explained below.

A Representative

According to the Tribunal, a representative is someone who speaks to the Tribunal on a party's behalf.²⁶² A representative may be a lawyer, or a spouse, relative or friend who has agreed to act as representative, or any other person proposed by the party and permitted by the Tribunal.²⁶³ If a proposed representative is not a lawyer, the Tribunal will make an inquiry into the candidate's ability to communicate and whether the individual has an interest in the dispute.²⁶⁴

There are some circumstances where a representative is always required or permitted, as follows:²⁶⁵

If The Party Is	That Party Must Be Represented By
A child, where the application for dispute resolution involves a personal injury	A lawyer, or someone supervised by a lawyer, unless the child's litigation guardian is the Public Guardian and Trustee
An adult with impaired mental capacity, where the application for dispute resolution involves a personal injury	A lawyer, or someone supervised by a lawyer, unless the adult's litigation guardian is the Public Guardian and Trustee
A strata corporation	An authorized member of strata council
An otherwise incorporated entity (for example, a business corporation)	A director, an officer or an authorized employee
A partnership	A partner or an authorized employee

²⁶¹ *Civil Resolution Tribunal Act*, s. 20(5) and *Civil Resolution Tribunal Rules*, R. 36, 42-44.

²⁶² Civil Resolution Tribunal, How the CRT Works - Accessing services through the Civil Resolution Tribunal, (Vancouver, Civil Resolution Tribunal, 2016), "Can I get someone to help me?", online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/steps/#when-dispute>>.

²⁶³ *Civil Resolution Tribunal Act*, s. 20(4) and *Civil Resolution Tribunal Rules*, R. 40.

²⁶⁴ Interview of Ms. S. Salter, Tribunal Chairperson and Mr. J.G. Cambrey, Tribunal Vice-Chairperson by M. Mangan, (17 August 2016).

²⁶⁵ *Civil Resolution Tribunal Act*, s. 20(5) and *Civil Resolution Tribunal Rules*, R. 36, 42-44.

If The Party Is	That Party Must Be Represented By
An unincorporated entity using a business name	The owner of the business or any authorized employee
Someone with insurance coverage	If the insurer represents that party, the insurer must act through a director, an authorized employee of the insurer, or such other person as a Tribunal employee or member permits

Where someone acts for a corporation, partnership or other form of organization, he or she must have the authority to bind the party at all stages of the Tribunal dispute resolution process.²⁶⁶

Any other party can at any time ask the Tribunal for permission to have a representative. When considering the request, a Tribunal member or employee may consider whether:²⁶⁷

- any other party in the dispute is represented;
- every party in the dispute has agreed to representation;
- the person proposed as representative is appropriate; and whether
- in the interests of justice and fairness, the party should be permitted to be represented.

Where A Strata Council Member Represents A Strata Corporation

Since only, “an authorized member of strata council” can represent a strata corporation party, it makes sense to record the council member’s authority to act in the matter.²⁶⁸ As a matter of good practice, before the strata corporation makes or responds to a claim, strata council would be wise to pass and record a resolution authorizing a particular council member to represent the corporation.

It would be very helpful if the Tribunal would permit a strata property manager to represent a strata corporation where the corporation, or its strata council, so desires. There are many reasons that a strata council may prefer its strata property manager to represent the strata corporation in a dispute before the Tribunal, including lack of time, relevant experience or temperament. In most cases, a strata council member is an unpaid volunteer, receiving only reimbursement for appropriate out-of-pocket expenses. While some strata council members may be retired persons with available time, others have jobs and young families and little spare time. Some strata council members may be comfortable communicating extensively in writing with an adjudicative body, but others are not. Some strata council members may be comfortable with conflict, while others are not, especially where strong personalities or large sums of money are involved.

²⁶⁶ *Civil Resolution Tribunal Rules*, R. 45.

²⁶⁷ *Civil Resolution Tribunal Act*, s. 20 and *Civil Resolution Tribunal Rules*, R. 37, 38.

²⁶⁸ *Civil Resolution Tribunal Rules*, R. 42(a).

A Helper

So long as a party speaks for him or herself, that party is welcome to use a helper. The Tribunal says,²⁶⁹

As long as you do the talking, you are welcome to have a lawyer or a trusted friend or family member help you with negotiation, facilitation, and the tribunal decision process. This person would be your helper. ...

A helper can assist you with lots of different things. For example, they can help you keep organized, take notes, and provide you with emotional support. They can also help you fill out online forms. ...It is important to remember that a helper can't talk to the CRT on your behalf. You have to do all of the talking, but your helper can be there to support you every step of the way....

Your helper should not be someone who will directly gain or lose based on the outcome of the dispute. They also should not be connected to someone who will gain or lose. Also, you cannot call your helper as a witness.

A party does not require the Tribunal's permission to use a helper. Nor is there any requirement to tell the Tribunal that a party has a helper.²⁷⁰

At the time of this writing, if a strata corporation is party to a claim before the Tribunal, then an, "authorized member of strata council" must represent the corporation, as explained above.²⁷¹ Unless and until the Tribunal changes its Rules to permit a strata property manager to represent the strata corporation, the manager should at least be able to act as a helper to assist the strata council member who represents the corporation, so long as the manager has no interest in the dispute. For example, if an owner's claim against the strata corporation involves an allegation of misconduct by the strata property manager, the manager should not serve as the strata council representative's helper.

False Information

It is an offence for anyone in a tribunal proceeding to provide evidence or other information that is false or misleading. If convicted, a person may be liable to pay a fine up to \$10,000 or to imprisonment for six months, or both.²⁷² A person, however, will not be guilty of an offence if he or she establishes that they used reasonable care and diligence in providing the information and that, at the time, the person did not know it was false or misleading.²⁷³

Translation

The Tribunal operates in English. If a party has difficulty communicating in English, or their ability to communicate is limited for some other reason, that party may ask someone else to help translate written and spoken communications. At any time, a facilitator or Tribunal member may direct a party to obtain help to translate or interpret communications. The Tribunal also subscribes to a service that provides interpretation services by telephone in many languages. In an appropriate case, the Tribunal can use those interpretation services instead. Any interpreter must swear an oath to faithfully translate into English what is said.

²⁶⁹ Civil Resolution Tribunal, How the CRT Works - Accessing services through the Civil Resolution Tribunal, "Can I get someone to help me?" (Vancouver, Civil Resolution Tribunal, 2016), online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/steps/#when-dispute> > (accessed 3 August 2016).

²⁷⁰ Civil Resolution Tribunal, How the CRT Works - Accessing services through the Civil Resolution Tribunal, (Vancouver, Civil Resolution Tribunal, 2016), "Do I Have to Ask the CRT Permission to Have a Helper?", online: Civil Resolution Tribunal < <https://www.civilresolutionbc.ca/steps/#when-dispute> >.

²⁷¹ *Civil Resolution Tribunal Rules*, R. 42(a).

²⁷² *Civil Resolution Tribunal Act*, s. 92(2).

²⁷³ *Civil Resolution Tribunal Act*, s. 92(1).

A person may not provide translation support if he or she will be named as a witness in the dispute, or that person otherwise has a direct interest in the outcome of the claim. At any time, the Tribunal may restrict the participation of a person providing support and assistance in the process.²⁷⁴ The Tribunal can also decide which party must bear the costs of the translation or interpretation.

More Information

At the time of this writing, the Tribunal has only been in operation and receiving strata property claims for roughly six months. There is relatively little information publicly available about the Tribunal experience.

For specific questions about Tribunal procedures, the reader may consult the *Civil Resolution Tribunal Act*,²⁷⁵ the Tribunal's Rules and the Tribunal's website.

Beware, however, the Tribunal's rule changes; Rule numbers may from time to time change. As at the time of this writing, since the Tribunal began accepting claims approximately six months ago the Tribunal has on two different occasions (July 28 and November 7, 2016) changed various of its rules. When a statutory body deletes a regulation or rule, they typically leave that provision's number intact while marking the contents of the provision repealed. This leaves all the rest of the regulation or rule numbers intact. In the Tribunal's last rule change effective November 7, 2016, the Tribunal entirely deleted *both* the number and the contents of what was then Rule 70. In the result, the number of every subsequent rule changed by one number; for example, the former Rule 71 became the new Rule 70, and so on.

END

²⁷⁴ *Civil Resolution Tribunal Rules*, R. 30-33.

²⁷⁵ *Civil Resolution Tribunal Act*, SBC 2012, c. 25, as amended by the *Civil Resolution Tribunal Amendment Act, 2015*, SBC 2015, c. 16. The reader may find a consolidated version of the *Civil Resolution Tribunal Act* current to 31 August 2016 at the web site of the Queens Printer BC < http://www.bclaws.ca/civix/document/id/complete/statreg/12025_01>.