
The Civil Resolution Tribunal Is Here To Stay! Court of Appeal Suggests CRT Challenges Are Vulnerable

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The first Court of Appeal decision from a Civil Resolution Tribunal (“CRT”) appeal application will make future challenges of CRT rulings by unhappy litigants more difficult. In *Allard v. The Owners, Strata Plan VIS 962* (“*Allard*”), the 3 member panel of the Court of Appeal unanimously set aside a Supreme Court Order granting leave to appeal the CRT decision to the Supreme Court.

The owner disputed the exclusion of the balcony solarium addition from a major renewal project. The Strata excluded this alteration on the grounds that it had no responsibility to repair and maintain owner constructed improvements on exterior balconies. The owner contended that the exclusion was significantly unfair. The CRT held that the Strata had an obligation to repair and maintain the solarium under bylaws similar to the statutory standard bylaws, but determined that its exclusion was not significantly unfair. The CRT relied upon an architectural expert report tendered by Strata concluding that the solarium did not need work. Further, the solarium’s appearance blended in with the project.

The Supreme Court granted leave to appeal. The Court of Appeal overturned this decision. It determined that an appeal was not in the interests of justice and fairness because the chambers judge failed to consider the limited precedential value of the proposed appeal, the relative lack of significance to the parties and the CRT’s special mandate as it pertains to the proportionality principle.

The Court of Appeal reviewed some of the relevant factors for leave applications to the Supreme Court pursuant to section 56.5 of the *Civil Resolution Tribunal Act* as follows:

1. Precedential value means that the appeal must provide guidance to other strata disputes. The Court of Appeal found that the case was “thoroughly infected” by facts unique only to *Allard*.
2. The total class of owners must be reviewed to determine the importance of the issue to the parties. In this case, the \$4.5 million renewal project to address original windows and doors did not include the only 2 solarium out of over 50 units. “It will never be in the interests of justice and fairness to hear an appeal that is of significance to only one of the parties. But the overall significance of the dispute ought to be a relevant, even if non-determinative, factor”.
3. The Tribunal has an express mandate to provide “accessible, speedy, economical, informal and flexible” dispute resolution services using electronic tools, while recognizing that relationships will likely continue after the proceedings. The Court of Appeal addressed the proportionality principle by stating: “An appeal in the Supreme Court, while affording a more painstaking procedure, would unduly lengthen resolution of the dispute and thereby negate the many benefits of the Tribunal proceedings.”

The Court of Appeal noted that the Tribunal “is not bound by the rules of evidence,” but may “receive, and accept as evidence, information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.”

As legal counsel for the Strata Corporation in the *Allard* case, I summarize the following:

1. The CRT is here to stay.
2. The Court of Appeal decision suggests significant deference to CRT decisions.
3. This direction will raise the bar for appeals and impact the success probability for future appeals.
4. This decision will impact future judicial review with an emphasis on deference to CRT findings.
5. The interests of justice and fairness is multi-factored including precedential value, importance of the issue to the parties (not just one party) and proportionality among other things.

Be careful when deciding whether to appeal from a CRT decision. The new world order suggests that the bar has been raised thus reducing your chances of success. A CRT decision challenge could expose unsuccessful CRT litigants to significant and avoidable legal costs if you are unsuccessful in the Supreme Court.

This case marks a shift in culture in favour of the CRT that provides a quick and less expensive form of decision making as compared with litigating in the Supreme Court. There is a tradeoff. Legislative amendments effective January 1, 2019, altered the current appeal process in favour of judicial review for claims filed in the CRT after January 1, 2019. It is anticipated that this legislative change combined with deference message from the Court of Appeal will impact the number and success rate for future CRT challenges in the Supreme Court.

You have a very short period of time to file an appeal to stop the appeal clock. Seek legal advice immediately if you are considering an appeal or a judicial review.