



Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Morash v. Elkridge Owner Association*, 2024 BCCRT 622

B E T W E E N :

LOUISE MARGARET MORASH and SANDRA E KAEBE

APPLICANTS

A N D :

ELKRIDGE OWNER ASSOCIATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about society governance. The applicants, Louise Margaret Morash, and Sandra E Kaebe, are members in the respondent society, Elkridge Owner Association. The applicants say the respondent breached the *Societies Act* (SA) by 1) appointing board members incorrectly, 2) by failing to call a general meeting as required by the applicants' petition, 3) allowing the president to have the additional

role of treasurer, and 4) enforcing unregistered and illegal bylaws. The applicants seek 1) an order for the respondent to be “told” that the SA governs it and not the *Strata Property Act* (SPA), and 2) an order that the respondent only enforce legally registered bylaws.

2. The respondent denies any wrongdoing in the Dispute Response. In submissions it instead says its board members have changed and it is not in a position respond to the claims. It asks the CRT to 1) dismiss the claims because the board members have all changed, 2) decide the claims based on the evidence and submissions, or 3) make no decision but comment on whether the applicants’ claims would have been successful. Despite requesting orders, the respondent did not make a counterclaim.
3. Mr. Morash represents the applicants. The respondent’s president represents it.
4. For the reasons that follow, I find the applicants have partially proven their claims.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain society claims under section 129 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute’s parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even where the information would not be admissible in court.
8. Under CRTA section 131, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are as follows:
 - a. Does the SA and not the SPA apply to the respondent?
 - b. Should I order the respondent to only enforce legally registered bylaws?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. The respondent provided no evidence though it had the opportunity to do so.

Issue #1. Does the SA and not the SPA apply to the respondent?

11. As stated earlier, the applicants say the SA applies to the respondent and not the SPA. In submissions the respondent said it was not in a position to comment.
12. SA section 2(1) says that a society may be formed under the SA for one or more lawful purposes. SA section 6 provides societies with the capacity, rights, powers, and privileges of an individual of full capacity. SA sections 13 and 14 discuss how a society may be incorporated under the SA.
13. SPA section 2(1) says that a strata corporation is established once a strata plan is deposited in the land title office. SPA section 3 says the strata corporation is

responsible for managing and maintaining the common property and common assets of a strata corporation for the benefit of the owners.

14. A company search shows the respondent is a member-funded society incorporated under the SA. Its constitution says its objects include operating subleased housing units in a manner “essentially similar to that which would exist if a strata plan was filed under the [SPA].” It also says that in the event of a disagreement as to the applicability of the provision of the SPA, “the provisions of a Lease and Sublease are paramount.”
15. A copy of the sublease is in evidence. It shows that several members of the Westbank First Nation leased 5 leases to sublandlords. The sublandlords in turn granted subleases of the lands. Sublease section 30.7 explicitly states it is not possible to file a strata plan under the SPA for the lands. Despite that, the parties agreed that “it is their intention that the Project and the Owner Association operate in a manner essentially similar to what which would exist if a strata plan was filed in respect of the Lands, and the Owner Association was a strata corporation.” The sublease defines the Project as the residential development on the lands and the Owner Association as the respondent.
16. Section 30.7 goes on to state that in the event of a disagreement as to the applicability of a provision of the SPA, the matter may be referred to arbitration, so long as the provisions of the sublease are paramount.
17. With all that in mind, I have no difficulty finding that the SA applies to the respondent. The documentary evidence shows it is a society incorporated under the SA. It is also not a strata corporation incorporated under the SPA, as explicitly stated in the sublease. So, I find the SPA is generally not applicable to it, though with the conditions I note below.
18. That said, I find I am unable to order any remedy. As noted above, the applicants seek an order for the respondent to be “told” that the SA applies to it and not the SPA. I find the respondent seeks an order for the respondent to follow the SA. However, the CRT typically declines such orders. This is because the respondent must already

do so regardless of whether the CRT orders it or not. Further, a general order to follow the SA may lead to confusion about how the order applies to future-arising issues, and whether such an order would be even enforceable.

19. Further, I have noted that the respondent is meant to be run like a strata corporation under the SPA. So, there may be situations where a reference to the SPA or case law about strata corporations would be applicable to resolve a dispute, even though they do not directly apply. See, for example, my own decision of *Kenning v. Residences at Spirit Ridge Owner Association*, 2024 BCCRT 189. This is another reason why I should decline to make a specific order.
20. The applicants raised specific allegations that the respondent breached the SA by appointing board members incorrectly, applying the wrong threshold to call a general meeting as required by the applicants' petition, and allowing the president to have more than one role. However, they did not ask for any specific remedies about this. So, I find it unnecessary to make any findings or orders about these allegations.
21. Given the above, I decline to make any order on this issue. I dismiss this claim.

Issue #2. Should I order the respondent to only enforce legally registered bylaws?

22. The applicants say that the respondent enforced invalid bylaws. As in the first issue, in submissions the respondent said it was not in a position to comment.
23. SA section 11 requires the respondent society to have bylaws. Section 13(b)(ii) requires a society to file bylaws with the registrar at the time of incorporation. Section 17 describes how a society may alter its bylaws. Section 17(3) says an alteration proposed in a bylaw alteration application takes effect when the bylaw alteration application is filed with the registrar.
24. The respondent filed the applicable bylaws with the registrar on April 11, 2018. The registrar's copy, certified under SA section 17(4), lacks any schedules. As noted below, some of the correspondence refers to refers to a version with Schedule "I" and

Schedule “A” attached. As these schedules were never filed with the registrar under SA section 17(3), I find the schedules are invalid and not part of the bylaws.

25. The documentary evidence shows that the respondent attempted to enforce the schedule bylaws on numerous occasions:

- a. the June 7, 2022 board meeting minutes refer to bylaw 5 about flags from Schedule “A”,
- b. the November 14, 2022 board meeting minutes refer to parking bylaws from Schedule “A”,
- c. the May 29, 2023 board meeting minutes show the respondent’s attempts to enforce bylaws 2(1) and 2(2) of Schedule “I” and bylaw 6 of Schedule “A”, and
- d. in an April 4, 2023 letter a tenant or occupant, SK, complained that bylaws about dogs and cats in Schedule “I” and “A” were invalid.

26. Here, I find it appropriate to order the respondent to only enforce legally registered bylaws. I say this in part because I find such an order is narrow in scope and does not give rise to the same concerns about enforceability that I outlined above. The evidence also shows the respondent consistently attempted to enforce or rely on the invalid schedule bylaws, so I find an order is warranted.

CRT FEES AND EXPENSES

27. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. However, neither party paid any CRT fees nor claimed any dispute-related expenses. So, I order no reimbursement.

ORDERS

28. I order the respondent to immediately only enforce legally registered bylaws.

29. I dismiss the applicants’ remaining claims.

30. This is a validated decision and order. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

David Jiang, Tribunal Member