Civil Resolution Tribunal

Date Issued: March 22, 2018

File: ST-2016-00730 and ST-2017-002772

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hales v. The Owners, Strata Plan NW 2924*, 2018 BCCRT 91

B E T W E E N :

Stephen Hales

APPLICANT

A N D :

The Owners, Strata Plan NW 2924

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Patrick Williams

INTRODUCTION

1. The applicant, Stephen Hales (owner), together with Patricia Velaquez in joint tenancy, owns strata lot 42 in the respondent strata corporation, The Owners, Strata Plan NW2924 (strata). The strata comprises 2 phases with 151 strata lots in

4 buildings. The addresses of the 4 buildings are 1210, 1220, 1230 and 1240 Quayside Drive, New Westminster, BC.

2. There are two disputes. The owner is the applicant in both disputes. The first, ST-2016-00730, is about grants to strata lots of exclusive use of common property storage lockers and the production and retention of records and documents of the strata. The second dispute, ST-2017-002772, is about the alleged failure of the strata to hold council hearings in compliance with s. 34.1 of the *Strata Property Act* (SPA).

3. The applicant is self-represented. The respondent is represented in the first dispute by a lawyer, Jennifer Neville.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

8. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The parties reached an agreement on certain issues prior to this adjudication, and those issues are not before me in this decision.

10. The issues in these disputes are:

FIRST DISPUTE (ST-2016-00730):

a. Has the strata violated the provisions of the SPA with respect to granting use of common property storage lockers to a strata lot?

b. Has the strata violated the provisions of the SPA and the *Strata Property Regulation* with respect to the production and retention of records and documents of the strata?

c. Should the tribunal order the strata to immediately and forthwith fully comply with sections 73, 74 and 76 of the SPA in assigning exclusive use of common property to one or more but not all owners?

d. Is the strata required to send a letter of apology to all owners?

e. Is the owner entitled to punitive damages?

f. Should the strata reimburse the owner $225 for tribunal fees and $11.34 for expenses?

g. Should the owner pay the strata’s expenses totaling $24,772.48?

SECOND DISPUTE (ST-2017-002772):

h. Has the strata violated the provisions of the SPA with respect to holding hearings per s. 34.1?

i. Should the tribunal order that the strata be forever prohibited from imposing any fee or other condition not expressly permitted by the SPA with respect to holding hearings requested by the owner?

j. Should the tribunal order that the strata cannot use the strata contributions of the owner for expenses and costs related to the second dispute and that the strata reimburse the owner and account for monies spent?

k. Should the strata reimburse the owner $225 for tribunal fees and $11.34 for expenses?

BACKGROUND AND EVIDENCE

11. The evidence in support of the relief sought by the owner and the evidence of the strata in response to that relief sought is extensive. Except as noted, I have reviewed all of the evidence submitted. I have only commented upon the evidence and submissions as necessary to give context to my reasons.

12. The strata comprises 151 strata lots in 4 buildings. Phase 1 comprises 73 strata lots. Phase 2 comprises 78 strata lots. Both phases were deposited in the land title office in 1989, when the *Condominium Act* (CA) was the governing statute.

13. The bylaws of the strata are those registered in the land title office under number BB1093332 July 28, 2009 (the 2009 Bylaws). The bylaws of the strata were significantly overhauled July 7, 2001 (the 2001 Bylaws) due to the repeal of the CA and the enactment of the SPA. The 2009 Bylaws replaced the 2001 Bylaws. Two minor amendments were subsequently adopted by the strata. Those amendments are not relevant to the dispute.

FIRST DISPUTE:

Allocation of Storage Lockers

14. Bylaw 14 addresses the issue of storage. It recognizes that storage lockers exist since it prohibits combustible, flammable or hazardous materials and items that exceed the height of the wooden sides of the lockers. The bylaws of the strata do not address the allocation of storage lockers.

15. The strata plan denotes balconies and patios as limited common property. The storage lockers are common property. No storage lockers are designated as limited common property.

16. Resolutions of the strata and the strata council granting exclusive use of common property, including storage lockers, to one or more strata lots, owners or tenants do not exist.

17. Records relating to terminating permission/privilege for exclusive use of basement storage lockers when an owner sells or a tenant ends tenancy of a strata lot do not exist.

18. The owner has the onus to prove, on a balance of probabilities, that the strata violated the provisions of the SPA with respect to the initial grant and subsequent renewal of exclusive use of common property storage lockers. The owner has provided an inordinate amount of documentation, out of all proportion to what is reasonably necessary, in his attempt to discharge that onus.

19. I do not intend to refer to each piece of evidence produced by the owner. The owner states that one incident of a grant without any record should be sufficient. The owner nevertheless produces evidence of 21 incidents on the apparent basis that I will be more persuaded by sheer numbers. The owner produces Form B Information Certificates with respect to past sales. The owner produces real estate listings.

20. It is unnecessary to produce all this evidence. The strata has conceded it that it has granted exclusive use of lockers with no record of any resolutions granting or renewing exclusive use of lockers.

21. The owner purchased strata lot 42 in August 2009. At that time, a storage locker located on the second floor of Building B (the same floor on which strata lot 42 is located) was assigned and continues to be assigned to the strata lot 42.

22. The strata produced an expert opinion of Cory Pettersen. His opinion letter is dated June 27, 2017. Due to a potential conflict of interest and my view that the comments in his letter were not necessary for me to render a decision, I chose to ignore Mr. Pettersen's letter. I neither reject nor accept his comments.

23. James Crosty is a director and past president of the Quayside Community Board (QCB). QCB represents the owners of 2230 strata lots in the Quayside community of New Westminster, BC. The strata is one of 18 strata corporations comprising QCB. In his letter dated July 13, 2107 Mr. Crosty states the many members of QCB have common property storage lockers assigned to strata lots and do not do anything to renew their use on an annual basis. He states that owners will understand that permission to use has been renewed because of the continued use by those assigned a locker. The QCB has never heard of any required resolutions being passed expressly renewing permission to use a locker.

24. Joan Bird is the managing agent for the strata. In her letter dated September 14, 2017, Ms. Bird states that when she first starting managing the strata on June 1, 2015, it was her understanding that the assigned storage lockers, parking stalls and enterphone list she was provided reflected storage locker use from the time the strata plan was deposited. She stated that annual renewal of the exclusive right to use a storage locker is inferred based upon continued use. She stated that in her experience that was common practice for strata corporations.

25. In her letter Ms. Bird referred to the issue of Form B Information Certificates, which prescribed form includes a question as to whether any storage lockers are allocated to the strata lot. She relies on the strata's list to answer that question and

includes the words “Note: The allocation of a storage locker that is common property may be limited as short term exclusive use subject to section 76 of the Strata Property Act, or otherwise, and may therefore be subject to change in the future.”

Production of records under sections 35 and 36 of the SPA

26. The parties previously reached consent on issues involving the production of documents as requested by the owner in August and September 2016. A consent resolution order was issued March 22, 2017. By letter dated October 21, 2016, the owner made a further request for documents (the October 2016 request).

27. The October 2016 request was restricted to documents that granted exclusive use of common property, resolutions with respect to designating limited common property, amendments to the strata plan and any correspondence relating to those issues.

28. The strata did not provide any documentation in response to the October 2016 request, stating that no such documentation existed. The owner has relied on the statement of the strata in his submission that there are no written grants of exclusive use of common property storage lockers.

SECOND DISPUTE:

Has the strata violated the provisions of the SPA with respect to holding hearings per s. 34.1?

29. By letter dated August 5, 2015, the owner requested a hearing of council pursuant to section 34.1 of the SPA. The letter contained 7 separate matters that the Council should address. The owner noted in his letter that he might record or video the hearing proceedings. The letter concluded with the owner stating that he was “reaching out to council with a final comprehensive, internal opportunity to voluntarily self correct all contravening irregularities and to make mutually-acceptable reparations for past contraventions.” The letter also stated “We are

now entering a new, more rigourous phase of the compliance achievement process.” In his letter the owner stated it was time for the council to make a full, honest, no spin, public apology to all owner-members for each and every contravention.

30. The hearing was held August 26, 2015 (the August 2015 hearing). Elizabeth Menzies, a companion of the owner, attended the hearing. Lisa Mackie, a lawyer for the strata, provided a statement dated November 27, 2017 (the Mackie statement).

31. In the Mackie statement, Ms. Mackie states that she attended the August 2015 hearting. Ms. Mackie states that at the outset of the hearing, a motion was made to prohibit electronic recording of the hearing. The motion was passed unanimously by council and the owner and Ms. Menzies confirmed they were not recording the proceeding. However, the owner did record the hearing through his cell phone located in his shirt pocket.

32. The owner has produced an audio of the hearing for consideration by the tribunal. I have not listened to the recording. The Mackie statement notes that Ms. Mackie has listened to the recording and it does not accurately reflect her recollection of events and the reasons for the adjournment by the council of the hearing. Council members who attended the August 2015 hearing produced statements. Those statements remark that a number of events that took place at the 2015 hearing are not noted on the recording. Recordings can be altered and not include the complete proceedings. During his opening submission at the 2015 hearing the owner expressed his disapproval with the motion to prohibit electronic recording. I find that the owner confirmed that he was not recording the August 2015 hearing and it would therefore be improper for me to listen to the recording. I find that I can make a determination of the events of the August 2015 by reviewing statements of participants, including the owner’s submissions.

33. The council members that attended the August 2015 hearing were Mike Parker, Barbara Kroeker, Stephen Sawchuk, Monisha Ravindra, Nick Jordan and Kim Steppan. Each council member provided a statement. The statements are consistent with respect to the events that took place. Those events include the following:

- Ms. Menzies attended as an observer.
- The owner appeared agitated from the beginning.
- The owner wore dark sunglasses throughout.
- The owner confirmed that he would not record the hearing.
- The owner read from a large pile of papers and spoke very quickly.
- Kim Steppan, the council member taking notes politely and respectfully asked the owner to slow down.
- In response, the owner yelled that it was his meeting and no one could interrupt him. Ms. Mackie attempted to calm the owner down and said it was perfectly alright for a council member to ask him to slow down or ask for clarification.
- Ms. Menzies took the arm of the owner and said he should calm down. He reacted angrily and pusher her arm away. She then moved away from the owner.
- The owner pounded the table more than once and stated he was not getting a fair hearing.
- A person from another office knocked on the door of the hearing room to complain of the loud noise being made by the owner.

- Following a brief discussion between Mike Parker (the council president) and Ms. Mackie, the council adjourned the meeting (approximately 10 minutes after its start).
- The owner threw his presentation papers down on the table at Ms. Mackie and Mr. Parker, stated that the council would pay for its conduct, stated that council was now on the precipice and stormed out of the meeting room.

34. Some council members were very shaken by the conduct of the owner and feared for their safety in his presence. The owner states that after an unresolved dispute over the speed of his presentation, repeated disruptions by Ms. Mackie without the owner yielding the floor to her or anyone else, and his unsuccessful attempt to "gavel" the hearing back to order, the council adjourned the hearing before he was finished.

35. In his submission the owner described the hearing.

"*The hearing became quite heated after the Strata's lawyer repeatedly interrupted me during my presentation without my yielding the floor to her. Tempers flared as both sides of the adversarial table argued with passion, likely in part because the assertions I was presenting involved the sensitive topic of assertions of some contraventions that occurred under Council's own leadership. There were loud voices exchanged but, according to CRT behaviour guidelines, which I used in my investigation (in the absence of published Strata conduct acceptability/unacceptability standards), even yelling is acceptable behaviour when a person is "yelling in excitement, frustration, or even anger if the volume is used to get a point across or to ensure that [s(he) is] heard," as I was attempting to do in pursuing my statutory and regulatory right to be heard, despite continuing disruption by the Strata's representatives during my allotted time period".*

36. The owner states the fact that no police were called and no criminal charges laid means his conduct did not rise to a criminal-like level.

37. Ms. Menzies sent a letter dated August 29, 2015 to Joan Bird, the managing agent for the strata. The letter included significant references to past disputes that are not the subject matter of the disputes before the tribunal. Ms. Menzies confirmed that council refused to allow a recording of the August 2015 hearing, interrupted the owner while he was speaking because the minute taker could not keep up and then abruptly adjourned the meeting after the owner expressed his frustration. Ms. Menzies did not contradict the description of the conduct of the owner as described by the council members.

38. By letter dated August 31, 2015 to the owner, Ms. Mackie commented upon the outburst of the owner. She stated that the council felt physically threatened and concerned by the owner's conduct at the August 2015 hearing. She advised the owner that he could not attend a council meeting as an observer unless a third party security person was retained by the strata at the expense of the owner.

39. By letter dated September 6, 2016, the owner requested another hearing pursuant to section 34.1 of the SPA. The owner had two matters that he wished heard:

    - Seeking council's multi-point decision on whether the strata had contravened the SPA or the *Strata Property Regulation* in failing to retain or provide documents he requested.

    - Seeking reparations for the strata's contraventions, including but not limited to expenses he had incurred.

40. By letter dated September 16, 2016, Stephen Hamilton, a lawyer for the strata, responded to the owner's request for a hearing. Mr. Hamilton advised the owner that due to his conduct at the August 2015 hearing, in order for the owner to be permitted to attend any further hearings of the council, he needed to pay in advance the sum of $250.00. That sum was necessary to satisfy the cost for a security person and rental of a neutral location for the hearing.

41. The owner sent the strata essentially identical letters to the September 6, 2016 letter on October 21, 2016, November 16, 2016 and January 18, 2017 (collectively

the four hearing request letters). In each letter the owner noted that he required a net amount of uninterrupted minutes to give his presentation (20 minutes in the first two letters and 30 minutes in the last two letters). The owner stated in each letter that the time requirement would be increased minute-for-minute to give him an opportunity to be heard and council to interject.

42. No hearings were held with the owner after the August 2015 hearing.

43. Subsequent to the October 21, 2016 owner's letter requesting a hearing, the owner sent an October 26, 2016 letter to Ms. Mackie. It must be acknowledged that this letter was sent 14 months after the August 2015 hearing and the August 31, 2015 letter of Ms. Mackie commenting on the owner's conduct at the August 2015 hearing.

44. In that October 26, 2016 letter the owner stated, among other things:

- He had completed his "deep-dive review of the evidence".

- He was giving Ms. Mackie by one of two means a "one-time, time-boxed opportunity to rectify" every written false statement and other mischaracterization she made or allowed to be made about him and his conduct at the 2015 hearing.

- Option 1 – "For your reply to be considered responsive, the corrections must be written with precise, unequivocal accuracy as to exactly what was said and done by all attendees at the hearing and the way you represented what I said and did. I need for you: (1) to state, in particularized fashion, each false statement and mischaracterization; (2) then, for each, specifically identify the associated document in which the false statement/mischaracterization was made by document name/subject and date; and (3) for each instance, provide a correction that truthfully and with precise, unequivocal accuracy describes exactly what actually transpired."

- Option 2 – “If you prefer, as an alternative, I will accept your written, blanket recantation or retraction of all statements you made about my conduct at the August 26, 2015 hearing by Council and an apology for making or allowing false statements and mischaracterizations to be made and maintained. While this option would rescind all references to my conduct at the hearing, it presents a simpler solution for you because you will not need to correct each and every false statement and mischaracterization. This would eliminate the chance that you might overlook a needed correction.”

- He said any attempted rectification by Ms. Mackie stating they were “opinions” would not be accepted.

POSITION OF THE PARTIES IN THE FIRST DISPUTE

Allocation of Storage Lockers

45. The owner argues that the strata granted exclusive use of common property basement storage lockers to strata lots, after July 1, 2000. The owner takes no issue with any grants of exclusive use before July 1, 2000 because the *Condominium Act* applied. The owner argues that:

    - The grants after July 1, 2000 are invalid because they do not comply with the SPA.

    - The grants after July 1, 2000 have not been renewed.

    - Section 76 of the SPA applies.

46. Section 76 of the SPA states:

Short term exclusive use

76 (1) Subject to section 71, the strata corporation may give an owner or tenant permission to exclusively use, or a special privilege in relation to, common

assets or common property that is not designated as limited common property.

(2) A permission or privilege under subsection (1) may be given for a period of not more than one year, and may be made subject to conditions.

(3) The strata corporation may renew the permission or privilege and on renewal may change the period or conditions.

(4) The permission or privilege given under subsection (1) may be cancelled by the strata corporation giving the owner or tenant reasonable notice of the cancellation.

47. The owner argues that the strata has not complied with section 76 of the SPA in that:

    a) The strata has granted exclusive use of common property storage lockers to strata lots, not to an owner or tenant;

    b) The grants are longer than one year, and have survived a transfer of ownership;

    c) The grants have not been renewed; and

    d) The renewal period of the grants can be no longer than one year.

48. The owner relies upon a Financial Institutions Commission (FICOM) directive (directive). The directive is dated December 12, 2015. FICOM directives are intended to assist owners and strata councils in the governance of strata corporations. The directive states that short term exclusive use of common property can be granted specifically to an owner or tenant. It is not attached to the strata lot, so if an owner sells their strata lot, the short term exclusive use automatically ends. The directive notes storage lockers as an example.

49. The directive states that a short term use arrangement cannot be for more than one year, but can be renewed for additional terms of not more than one year. I agree that section 76(2) of the SPA states that the initial grant can be for no longer than one year.

50. I agree that is what the directive states. However; the directive is not the SPA, and while it is a guideline, it need not be followed. Section 76(3) of the SPA states that the strata may renew the permission or privilege and on renewal may change the period or conditions. It does not state the period must be a maximum of one year. Indeed, the SPA does not state a maximum or minimum period on renewal.

51. The owner argues that the grant of exclusive use must be evidenced by a resolution of the strata council that is included in minutes. In support of his argument, the owner refers to sections of the SPA that address quorum of council, voting at council meetings, minutes that must be circulated to owners and so on. The owner cites *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, to support his contention that in order to have validity, a decision must be taken or ratified by a properly constituted and minuted meeting of the council. I accept that premise.

52. The strata argues that a council is not required to give an initial grant or renew a grant of exclusive use of common property in writing. The strata notes that many older strata corporations had developers assign storage lockers to strata lots. The owner has not argued that the CA (before July 1, 2000) grants are the subject of his claim. The owner responds by arguing that the bylaws of the strata require decisions by majority votes and that decisions be recorded in minutes and owners informed of those minutes promptly.

53. The owner addresses the fact that council members are volunteers and the strata may have made a simple "mistake". The owner emphasizes that the council members are knowledgeable and experienced. The owner argues that he is not seeking monetary or punitive damages nor is he suggesting that anyone lose common property use permission if, and when, legally granted. The owner argues

that it does not matter if the alleged non-compliance is intentional or mistake; it matters that there be simple recognition that the strata has contravened the SPA and that it is corrected now and in the future. However, the owner does argue that the strata has transformed an apparent internally-resolvable contravention matter into an abject defiance of the law.

54. The owner notes that strata lot numbers are painted onto each locker and there are lists posted with locker to strata lot suite numbers. He states this is further support for his submission that the grants are improperly to strata lots rather owners or tenants.

55. The owner argues that Mr. Crosty and the QCB have no legal authority over any aspect of the strata's common property storage. The owner states that Mr. Crosty's comments support the submission that storage lockers have been assigned to strata lots rather than owners or tenants. The owner argues that Mr. Crosty supports the owner's argument.

56. The owner argues that Ms. Bird's comments are consistent with his submission that the grant of exclusive use is improperly given to strata lots, rather than an owner or tenant. The owner re-iterates that limited common property designates exclusive use to a strata lot and s. 76 of the SPA grants exclusive use of common property to an owner or tenant. The owner does not refer to Ms. Bird's comments with respect to the prescribed Form B Information Certificate.

57. The strata argues that section (n) of the prescribed Form B Information Certificate demonstrates that the legislature contemplated that a storage locker may be allocated to a strata lot.

58. The owner argues that legislators do not design forms. Legislators only write the law. Legislators delegate the formulation of regulations and forms to the executive of the governing party. Section 59 states that the Form B is a prescribed form

59. The strata argues that since the owner purchased strata lot 42, he has enjoyed, without complaint, the exclusive use of a common property storage locker on the

second floor of Building B. The owner does not dispute this allocation. Indeed the present dispute originates from the owner asking for the exclusive use of another storage locker, located in the basement.

60. The owner defends his position by stating that the argument of an assigned locker on the second floor is a "red herring". The owner argues that this red herring submission "can only serve to distract the adjudicating tribunal member and divert his/her attention away from the in-scope matters in the dispute action". I am not distracted. I acknowledge that the second floor locker allocation is not the subject of the present dispute. However, I find that locker allocation is relevant. It confirms for me that the strata has followed the standard practice of the strata property industry. It also confirms for me that the strata is carrying out its mandate, pursuant to section 3 of the SPA, to manage the common property for the benefit of all strata lot owners, including the owner.

Production of records under sections 35 and 36 of the SPA

61. The owner argues that the strata is in violation of sections 35 and 36 because there were documents that existed and were not produced. He argued that 3 written communications were not produced:

    a) His September 19, 2016 request for permission to exclusively use a basement storage locker;

    b) The September 28, 2016 minutes of the council meeting describing the outcome of his request for a locker; and

    c) The strata's response to his dispute notice in the current matter.

62. The strata argues that it did not provide copies of those 3 written communications because it was reasonable for the strata to reach a common sense conclusion that the owner was not requesting copies of his own correspondence.

63. The owner argues that he needed those copies to complete his investigative files and did not exclude those communications from his scope of request.

64. The owner argues that the previous consent resolution orders are “suggestive that the strata has a proven proclivity not to comply with its legal mandates ....” I find it imperative that I state at this point in my decision that making such a submission is offensive. If nothing else, it will encourage parties not to consent for fear of the consent being used against them in the future.

65. As stated earlier, the tribunal’s mandate is to provide dispute resolution services quickly and economically. To agree with the owner’s submission would be inconsistent with the tribunal’s mandate.

66. The owner argues that the strata used a letter dated September 12, 2016 from Stephen Hamilton, lawyer for the strata, to defend itself with respect to the October 2016 request. The owner argues that this false statement is egregious and offensive to the tribunal because the strata failed to provide the 3 written communications noted earlier.

POSITION OF THE PARTIES IN THE SECOND DISPUTE

Has the strata violated the provisions of the SPA with respect to holding hearings per s. 34.1?

67. The owner argues that when council failed to hold the requested hearings he was placed in a position of having to file disputes with the tribunal. He argues that the existence of the consent resolution orders is consistent with the strata contravening the SPA. I find that consent resolution orders with respect to production of records has no relevance to whether the strata contravened section 34.1 of the SPA by refusing to hold a hearing or requiring the owner to pay $250.00 in advance of a hearing being held.

68. The owner argues that there is no statutory, regulatory or bylaws authority that authorizes the strata or its council to impose a special fee on an owner as a mandatory condition to exercise his or her statutory right to a fully-complaint hearing at his or her request. The owner further argues that no minutes have been

provided that reflect the decision of council to charge him a fee of $250.00 in order for his hearings requests to be granted.

69. The owner argues that the strata did not obtain any relief or order from any court or the tribunal to not hold the hearings or impose a special fee before the hearings would be held.

70. The owner argues that if the council members feared for their safety due to his alleged conduct (the owner disputes the characterization by the council members and Ms. Mackie of his conduct) at the August 2015 hearing, the subsequent hearings requested could have been held by electronic means.

71. The strata argues that the owner on numerous occasions made it very clear in correspondence that he would only accept an "in-person" hearing. Those words are contained in each of the four hearing request letters. Due to the concerns of some council members for their safety, the strata offered to meet in person with two members of council and the strata manager. The owner rejected that offer and did not suggest any other options.

72. The owner cites the decision in *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153, to support his submission it is his fundamental right to expect that the strata and its council will always fully comply with all of its mandates. The owner has cited this decision in both the first and second disputes before the tribunal. The owner initially reproduces only those portions of particular paragraphs that support his contention.

73. The strata acknowledges that section 34.1 of the SPA permits an owner to request a hearing at a council meeting. The strata argues that it had no duty to hold the hearing in in the circumstances. The strata cites *Abdoh v. The Owners of Strata Plan KAS 2003, 2014 BCCA 270* and argues that if there was a breach of section 34.1 of the SPA, it was of a trifling nature.

74. The owner cites the *Interpretation Act* and various case law that the use of the word "must" in section 34.1 of the SPA means that it is imperative that a council

meeting be held, if the owner requests it. The owner argues that there can be no exceptions.

ANALYSIS IN THE FIRST DISPUTE

Has the strata violated the provisions of the SPA with respect to granting exclusive use of common property storage lockers to a strata lot?

75. Section 3 of the SPA states that a strata corporation is responsible for managing common property. Section 4 of the SPA states that the strata council exercises the powers and duty and performs the duties of the strata corporation.

76. If the strata has granted exclusive use of storage lockers pursuant to section 76 of the SPA, I find that the strata has not complied with the provisions of section 76 of the SPA. First, there are no minutes of the strata council or the strata granting exclusive use of common property. Second, the grants appeared to survive sales and hence were to strata lots. That contravenes section 76(1). The grants may be made to owners and tenants. Third, the grants were for longer than one year. That is a contravention of section 76(2). The grants could only be made for one year at which time they needed to be renewed. There can be no renewal of a grant after July 1, 2000 because there was no lawful initial grant under section 76. *Strata Property Regulation* 1*7.7* provides that any grant before July 1, 2000 continues to be enforceable and it need not be renewed. If it is renewed, it must be renewed pursuant to section 76 of the SPA.

77. The owner cites the case *0795520 B.C. Ltd. v. 0720073 B.C. Ltd.*, 2012 BCSC 1694 at para. 42 in support of his argument. The court found that an interim agreement with respect to the grant of exclusive use that was to remain in place until further order of the court or agreement of the parties offended the one year limitation pursuant to section 76 of the SPA. I agree with the owner's submission. The grant must be renewed within one year of the grant. However, the court does not appear to have addressed a renewal period that could have extended the period of grant of exclusive use, if the grant had been lawful originally. I do not

agree that this case is support for the premise that a renewal can be for no longer than one year.

78. The owner cites the case *Abdoh v. Owners of Strata Plan KAS 2003,* 2013 BCSC 817 at para. 47. The plaintiff argued that section 76(3) of the SPA should limit the number of renewals that might be given. The court in the circumstances did not need to rule on that argument (because the strata corporation intended to designate the area of common property as limited common property), but did say as an aside that it would not have ruled in favour of the argument. The court did say that "short term" in the heading of section 76 accurately described a one year period as well as any renewals of that length. The court did not interpret the section as limiting the number of renewals or precluding annual renewals.

79. Since the court's decision on this issue was not required and headings do not form the actual legislation. I am not bound to apply the court's reasoning with respect to the maximum length of a renewal. However, I do find the court's reasoning persuasive. Together with that reasoning, the heading of section 76 of the SPA being "Short term exclusive use" and the directive that renewals cannot be for longer than one year, I find that the number of renewals is not restricted, but that renewals can be no longer than one year.

80. In making this finding, I acknowledge that it is not the standard practice of the strata property industry. The standard practice does not comply with SPA. It will prove onerous, but the result of my finding is that any grant of exclusive use pursuant to section 76 of the SPA will need to be renewed annually by written strata council resolutions, unless the initial grant contains automatic annual renewal periods.

81. The owner takes issue with many comments of Mr. Pettersen. I will not comment on any as it is not necessary and given I have chosen to ignore the opinion of Mr. Pettersen.

82. I accept the evidence with respect to the standard practice of existing strata corporations. I acknowledge that formal resolutions re-assigning storage lockers each year are not typically passed. However, I find that *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, applies to such grants. They must be in writing. They can only be for a maximum of one year. They must be renewed before the one-year expiry. I find that in the present case, the initial grants after June 30, 2000 did not comply with section 76 of the Act. If the initial grants were not lawful, then there can be no renewal of an unlawful grant, regardless of the standard practice of the strata industry, subject to *Strata Property Regulation* 17.7, noted earlier.

83. I find that the July 13, 2017 letter of Mr. Crosty is of little assistance to me. The letter is not an expert opinion. It merely re-states that the common practice that storage lockers are assigned to strata lots and typically the right to exclusive use of those storage lockers, when not designated as limited common property, is not renewed by resolutions in writing.

84. Ms. Bird's September 14, 2017 letter raises a very interesting dilemma; that of granting permission to owners, tenants or strata lots. Section 76(1) of the SPA states that the strata may give an owner or tenant permission to exclusively use common property. However, a Form B Information Certificate is a prescribed form under section 59(1) of the SPA. Being prescribed means the strata cannot change the form.

The Form B Information Certificate:

85. Paragraph (n) of the Form B Information Certificate states "are there any storage locker(s) <u>allocated to the strata lot</u>?" (emphasis added). Subparagraph (n)(ii) provides for a correct box to be checked if the answer is "yes". The fourth box reads "Storage locker(s) number(s) …… is/are common property."

86. Subparagraph (n)(iii) provides for 3 alternative answers if the storage locker is allocated to a strata lot. The first box reads "Storage locker(s) numbers(s) ……

is/are allocated with strata council approval*.” The second box reads alternative answers if the storage locker is allocated to a strata lot. The first box reads “Storage locker(s) numbers(s) …… is/are allocated with strata council approval and rented at …… per month*”. The asterisk is bolded on the Form B and states: **Note: The allocation of a storage locker that is common property may be limited as short term exclusive use subject to section 76 of the Strata Property Act, or otherwise, and may therefore be subject to change in the future**.

87. The third box reads “Storage locker(s) numbers(s) …… may have been allocated by owner developer assignment”.

88. There is then a space for “details” and the note “[Provide background on the allocation of storage lockers referred to in whichever of the three preceding boxes have been selected and attach any applicable documents in the possession of the strata corporation]”.

89. This wording of the Form B Information Certificate was enacted by Regulation 89/2013, effective January 1, 2014. This prescribed form is inconsistent with the application of section 76 of the SPA and somewhat inconsistent with the decisions in *0795520 B.C. Ltd. v. 0720073 B.C. Ltd.* and *Abdoh v. Owners of Strata Plan KAS 2003*. In these 2 cases, the court did not have the opportunity to consider the wording of the prescribed form.

90. As stated earlier the owner argues that legislators do not design forms. Legislators only write the law. Legislators delegate the formulation of regulations and forms to the executive of the governing party. Section 59 states that the form is a prescribed one. I do not agree with the owner’s argument.

91. The owner submitted that in any event, the Form B and its design and captions are not at issue in this dispute. The owner stated that this claim solely relates to whether the strata gave lawful initial and renewal section 76 of the SPA permission for exclusive use of basement storage common property. That characterization is naïve. A prescribed form that addresses common property storage lockers in the

basement is relevant. Moreover, the owner argues that the only exclusive use locker allocation can be to an owner or tenant. The Form B Information Certificate suggests otherwise.

92. Section 76 of the SPA states that a strata corporation may give an owner or tenant permission to exclusively use common property. That section does not preclude a strata council from otherwise granting permission to a strata lot. That conceivably could be done pursuant to section 3 of the SPA, as part of the mandate to manage common property for the benefit of owners. And could be subject to change, as noted in the Form B Information Certificate.

93. I acknowledge that section 3 of the SPA states "except as otherwise provided in this Act". That could be in contemplation of section 76 of the SPA. However, the wording of the Form B Information Certificate must also be considered.

94. Mr. Crosty and Ms. Bird have remarked in their letters what is the standard practice. The legislature has taken the opportunity in Regulation 89/2013 to adopt the standard practice in the prescribed Form B Information Certificate under section 59 of the SPA. The Form B contains a note that the allocation of a common property storage locker "may be limited as short term exclusive use subject to section 76 of the SPA, <u>or otherwise</u>, and may therefore be subject to change in the future" (emphasis added). "Or otherwise" could be the grant of exclusive under the CA or pursuant to section 3 of the SPA. To be consistent with the Form B Information Certificate, the grant could be to an owner, tenant or to a strata lot.

95. I find that the strata gave exclusive use of storage lockers to strata lots. If the grants were after June 30, 2000 (when the CA was repealed) and before January 1, 2014 (Regulation 89/2013), they may have been in violation of section 76 of the SPA. The owner has not submitted that section 76 was violated prior to July 1, 2000. Any written grants to strata lots after December 31, 2013, when the Form B prescribed form was changed to include grants of exclusive use of common property storage lockers to strata lots, may be valid. I acknowledge that grants

under section 117(f) of the CA were to owners, not strata lots. I need not decide this because the owner has not taken issue with grants under the CA. Also, section 117(f) of the CA was Part 5 of the CA, which meant that a bylaw amendment could change the requirement that short term exclusive use of common property be granted strictly to a strata lot owner.

96. It is conceivable that Regulation 89/2013 was passed due to the standard practice in the strata property industry and to ensure that on a practical basis, there were few disputes with respect to the assignment of storage lockers and parking stalls.

97. If the owner were successful in his argument, it would mean that every locker and every parking stall that had been assigned would have to be individually renewed annually. Regulation 89/2013 avoids that very impractical result by stating "or otherwise". To accept the owner's argument would mean that the requirements to disclose a locker assignment in the Form B Information Certificate would be pointless because no assignment would survive a sale of a strata lot.

98. I rendered a decision in *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11. I confirmed at paragraph 90 of that decision the modern approach to statutory interpretation in Canada. "*Today there is only one principle or approach; namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."* I find that interpretation also applies to the regulations to the statute. Read in the entire context of the SPA and the *Strata Property Regulation*, exclusive use of common property can be granted to an owner or tenant pursuant to section 76 of the SPA or by another means, such as to a strata lot as reflected in the Form B Information Certificate.

99. Section 76 of the SPA does not expressly exclude the common property being designated to a strata lot. The section states "may", not "must". Considering the modern approach to statutory interpretation and the wording to the Form B Certificate, I find that designation to a strata lot is permitted. I also find that

designation to a strata lot can be interpreted to be a designation to the owner or tenant of that lot.

100. I find that the neither the strata nor the council have resolved in writing to grant exclusive use of storage lockers to an owner, tenant or a strata lot. The strata has violated its bylaws and the SPA by not recording in writing the grant of exclusive use of common property storage lockers.

101. I find that the strata council may grant exclusive use of storage lockers by written resolutions in the near future. In doing so, I recommend they determine if the grant is pursuant to section 76 of the SPA, or pursuant to another avenue (such as section 3 of the Act). If it is pursuant to section 76 of the SPA, it must be to an owner or tenant, it cannot be for more than one year, and must be renewed annually, unless the grant contains automatic annual renewals.. If it is pursuant to another avenue, it can be to a strata lot, and can be subject to change in the future.

Has the strata violated the provisions of the SPA and the *Strata Property Regulation* with respect to the retention and production of records and documents of the strata?

102. The owner argues that the strata used a letter dated September 12, 2016 from Stephen Hamilton, lawyer for the strata, to defend itself with respect to the October 2016 request. The owner argued that the use of the September 12, 2016 letter of Mr. Hamilton was a false statement that was egregious and offensive.

103. The owner noted in his submission:

"For the foregoing reasons, I submit that [the strata] is attempting to have the Tribunal rule against my assertions using false and misleading statements. I ask that, at a minimum, the adjudicating Tribunal member expressly call out this infraction in his or her decision and consider, in the light of the many other false and misleading statements made by [the strata's] representatives to the Tribunal, refer this false statement matter for prosecution under CRTA s. 92. The lies of

commission and omission by [the strata's] representatives need to stop. They unnecessarily occupy way too much of my time and effort to disprove and, I suggest, for the Tribunal to unnecessarily consider."

104. I have specifically reproduced this passage for a number of reasons. First, the owner has, in my view improperly, argued the previous consent resolution order (in which the September 16, 2016 letter was evidence) show that the strata will not follow a legal mandate. Second, the vast majority of the submissions that the tribunal has had to review are authored by the owner and contain repeated identical submissions and arguments. In the circumstances the submissions of the owner have occupied way too much time of the tribunal. Third, the owner argues what I consider prosecution of the strata's representatives under s. 92 of the Act.

105. Section 92(1) of the Act states:

92 *(1) A person who provides false or misleading evidence or other information in a tribunal proceeding commits an offence and is liable on conviction to a fine of $10 000 or imprisonment for term not longer than 6 months, or both.*

106. The owner has argued that the strata has contravened sections 35 and 36 of the SPA by not providing copies of the owner's own communications and the council minutes with respect to his request for a locker. I find that asking the tribunal to consider invoking section 92 of the Act with respect to an alleged contravention of section 36 is extremely troubling. I have found that the owner is successful in his argument that the strata has contravened the SPA and the strata's bylaws with respect to the use by owners of storage lockers without a resolution in writing.

107. Section 92 of the Act is an extraordinary measure that should not be taken lightly. It is important to send a message to all parties that may be involved in a tribunal dispute that a party recommending a representative be fined $10,000 or spend 6 months in jail, or both, must have very strong evidence of a person providing false or misleading evidence before suggesting that provision be invoked. I find no such evidence in this dispute.

108. Section 36 of the SPA states that upon receiving a request from an owner, the strata must make records and documents available for inspection and provide copies. I find that the strata should have provided the copies of the 3 written communications. I find that the strata's reasons for not doing so were reasonable, especially since the strata agreed in writing that there were no written resolutions granting exclusive use or any designations of limited common property.

109. The owner cited the Supreme Court of British Columbia decision in *Abdoh v. Owners of Strata Plan KAS 2003,* 2013 BCSC 817I in support of his argument (see paragraph 78 of my decision) regarding section 76 of the SPA. The decision in *Abdoh* was appealed; see 2014 BCCA 270. The appeal was dismissed. At paragraph 24 the Court of Appeal stated that courts may properly consider a contravention of a statute, by-law or rule to be so trifling as to not warrant the court's concern. The court applied this doctrine noted in the ancient maxim *De minimis non curat lex*. I apply this doctrine to the present issue regarding sections 35 and 36 of the SPA. The non-production of the 3 communications to the owner is a contravention of section 36 so trifling as to not warrant my concern.

110. I make no order that the strata has violated the provisions of the SPA and the *Strata Property Regulation* with respect to the retention and production of records and documents of the strata.

Should the tribunal order the strata to immediately and forthwith fully comply with sections 73, 74 and 76 of the SPA in assigning exclusive use of common property to one or more but not all owners?

111. I have already stated at paragraph 100 of my decision that the strata council may grant exclusive use of storage lockers by written resolutions in the near future. In doing so, I recommend they determine if the grant is pursuant to section 76 of the SPA, or pursuant to another avenue (such as section 3 of the Act). I would expect the strata to comply with the SPA and govern itself lawfully. I understand that mistakes have been made, council members are volunteers and mistakes may be made in the future. Given also that the strata was following industry standards, it is

not appropriate to order that the strata immediately and forthwith comply with any of the provisions of the SPA.

Is the strata required to send a letter of apology to all owners?

112. While tribunal decisions need not be followed, I am prepared to follow those decisions that I find persuasive. In *Betuzzi v. The Owners, Strata Plan K350*. 2017 BCCRT 6, the tribunal held at paragraph 32 that an apology is not an action that can be ordered under the Act, as an apology is not something that can legally resolve a strata property claim. I accept the conclusion reached in *Betuzzi* and find it applies here.

113. Moreover, earlier in my decision I note the tribunal must recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended. In view of the continued relationship, I find that ordering the issuance of an apology would not foster a continued relationship.

114. I find that the strata does not have to issue an apology to all owners.

Is the owner entitled to punitive damages?

115. The council members are volunteers. Mistakes have been made. The mistakes are minor in nature. The results are mixed. In the circumstances, I do not order any punitive damages.

Should the strata reimburse the owner $225 for tribunal fees and $11.34 expenses?

116. The owner was successful with respect to one of the two main issues (the exclusive use of storage lockers by owners of storage lockers without a resolution in writing). Due to the owner asking me to consider s. 92 of the Act, I find that the owner is not entitled to reimbursement of the $225 for tribunal fees and $11.34 for expenses.

Should the owner pay the strata's expenses totaling $24,772.48?

117. The strata submits that that the owner must pay the strata's expenses totaling $24,772.48. These expenses, for the most part, are legal expenses. The general rule is that the tribunal will not award legal fees. Furthermore, section 189.4(b) of the SPA states that section 167 of the SPA applies to a tribunal dispute. Section 198.4(b) of the SPA states that an owner suing the strata does not have to contribute to the expenses of defending the suit.

118. The owner submits that he should he should not have to pay any of the strata's expenses because he was successful. I agree with that submission. Due to mixed success, the general rule of the tribunal that legal fees not be awarded and section 189.4(b) of the SPA, I find that the owner does not need to pay any of the strata's expenses.

ANALYSIS IN THE SECOND DISPUTE

Has the strata violated the provisions of the SPA with respect to holding hearings per s. 34.1?

119. Section 34.1 of the SPA states:

> *(1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.*
>
> *(2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the application within 4 weeks after the request.*
>
> *(3) 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.*

120. Strata Property Regulation 4.01 states *"For the purposes of section 34.1 of the Act, **"hearing"** means an opportunity to be heard in person at a council meeting"*.

121. With the exception of Regulations 7.2 and 8.2, there is no other provision in the SPA or the Regulations that address a hearing at a council meeting. These 2 regulations state for the purposes of sections 135(1)(e) and 144 of the SPA, a “hearing” means an opportunity to be heard in person at a council meeting. They do not address any process or order that must be followed. I find that the process at a hearing is to be governed by the chair of the meeting, typically the president of the council. I further find that it is reasonable to expect all participants at a council meeting to act with civility and respect each other. I find that the chair of the council meeting can prohibit a recording of the meeting. I find that the owner recorded the August 2015 hearing without approval and in defiance of the chair’s ruling.

122. In his submission, the owner concedes that at the start of the council meeting, council voted not to allow electronic recording of the hearing. He submits that the strata and council do not have rule/bylaw-making authority to control his actions at a hearing held off of the strata premises. I disagree. The council can control the process, as long as it is a council meeting. It does not matter where the meeting is held.

123. The owner admits that he recorded the hearing. He stated that he employed a primary recorder for the first 90 seconds. He deactivated the primary recorder in clear view of attendees at the August 2015 hearing and advised the attendees of his action as he turned the device off. He did not advise the attendees that he also employed a backup recorder in his shirt pocket which was operational during the entire hearing. He denies that he confirmed no recording device would be used and that any accusation that he did confirm that is false and misleading. I find this conduct more than just troubling; I describe it as devious.

124. The owner further submits that the purpose of the hearing was for him to be heard and essentially he would have been recording himself. I will comment on the purpose and the right to be heard later in this decision.

125. I find further support in the concept that council governs its meeting process from the decision in *Panageos v. The Owners, Strata Plan VIS4023*, Oral Reasons for Judgment rendered May 6, 2014, Docket 11-4706, Victoria Registry of the BCSC. This decision involved a hearing that was held, but very quickly became a shouting match, was abruptly terminated and the owner banned from future council meetings.

126. I refer to paragraph 34 of the *Strata Plan VIS4023* decision that states*: "[The strata council] are entitled to govern their own processes. While I might not agree with the decision they took, I cannot disagree that they had the right to take that decision. I will say this: No member, no owner, no one else, has any right to attend a meeting of strata council and disrupt the business of strata council. It is the purview of the right of the chair to run the meeting. That is what democracy is all about."*

127. I find that the owner has no right to demand that he have 20 minutes, 30 minutes or more to make presentations at council hearings. The owner has no right to insist that the council members not interject or interrupt his presentation, whether for explanation or any other reason. I find that the council was acting within its mandate when it adjourned the August 2015 hearing due to the conduct of the owner.

128. As noted earlier, the owner cites the decision in *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCC 2153, to support his submission that it is his fundamental right to expect that the strata and its council will always fully comply with all of its mandates. The owner has cited this decision in both the first and second disputes before the tribunal.

129. The owner initially reproduced only those portions of particular paragraphs that support his contention. In the same paragraphs 50-51 cited by the owner, the court states that within reason, some latitude is justified when scrutinizing the conduct of lay persons performing volunteer roles. The court also states that there must be

recognition that some owners can become unreasonable and an impossible drain on the patience and time of those who do volunteer.

130. I provide an example of unreasonableness. In his submission the owner states: “As was shown in a March 22, 2017 combined CRT Consent Resolution Order (Exhibit “A1”), the Strata’s history of contraventions of its legal obligations has now been confirmed. Council’s behaviour during and after the August 26, 2015 hearing suggests a sham—a bogus account feigning fear based on false, shameful fabrications by its representatives to avoid being held accountable for the Strata’s unlawful conduct. I consider the Strata to be a chronic contravener.” The owner has used the example of a consent resolution order of the tribunal to argue that the strata is a chronic contravener. To suggest that the strata is a chronic contravener of the SPA for not recording all council decisions, not providing documents pursuant to section 36 of the SPA and not holding hearings so that council can be yelled at is, in my view, unreasonable.

131. Later in his submission, the owner says that paragraphs 50-51 in *Mitchell* note that mistakes and missteps may be taken and some latitude is justified when scrutinizing the conduct of volunteers. He then submits that the tribunal not consider that part of the *Mitchell* conclusion to apply to this dispute. He submits that the council members are not “simple, isolated, unsupported, forlorn volunteers”. I cannot accept that one portion in a paragraph of a reasoned judgment of the BCSC be applied and another portion in the same paragraph be rejected. The owner did not refer to the comment in the paragraph with respect to an owner being unreasonable or a drain on patience.

132. The four hearing request letters were essentially identical. I find that circumstance combined with the conduct of the owner at the August 2015 meeting and the contents of the owner’s October 26, 2016 letter to Ms. Mackie was unreasonable and an impossible drain on the patience and time of the council.

133. I accept the version of the council members and Ms. Mackie with respect to what took place at the August 2015 hearing. The owner recorded the meeting in

defiance of the council's prohibition. He states that he attempted to "gavel" the hearing back to order. Ms. Menzies does not deny the description of the owner's behaviour. I find that the owner acted unreasonably and without civility at the August 2015 hearing. I find that it is reasonable that the council could expect the same behaviour at a future council meeting or hearing.

134. The owner stated that he conducted himself according to tribunal behaviour guidelines. He said that acceptable tribunal behaviour guidelines are "yelling in excitement, frustration, or even anger if the volume is used to get a point across or to ensure that [s(he) is] heard." I acknowledge that strata property matters can be emotional. I am aware of tribunal guidelines regarding negotiation that indicate yelling may not be abusive if a person is yelling in excitement, frustration or even anger if the volume is used to get a point across or ensure that one is heard. Those guidelines are with respect to negotiation, not a council hearing. The tribunal guidelines also state that yelling is abusive or disrespectful when it is used to intimidate or talk over another person, is accompanied by aggressive body language such as pointing or invading the personal space of another person.

135. The tribunal behaviour guidelines have no relevance to the conduct of the owner at the August 2015 hearing. Nevertheless, I find that the behaviour of the owner at the hearing was abusive and did not follow tribunal guidelines. He attempted to "gavel" the meeting to order, intimidate council members and invaded personal space by throwing papers at Ms. Mackie and the chair of the meeting.

136. I find that it was reasonable and appropriate in the circumstances to insist that a security person attend any future meeting of council at which the owner attended. However, it is not appropriate to charge the expense to the owner. The expense would have to be incurred by the strata. In other words, either the hearing request is declined, or if accepted the cost is that of the strata. There is no provision in the SPA or the *Strata Property Regulation* to impose a special fee for hiring security and renting a location for a meeting a condition of the meeting.

137. The council refused to grant the hearings requested by the four hearing request letters. The strata states that the requests were refused due to the conduct of the owner at the August 2015 hearing. Section 34.1(1) of the SPA states an owner may request a hearing at a council meeting by stating in writing the reason for the request. Section 34.1(2) states that upon receipt of such a request the council must hold a council meeting to hear the application within 4 weeks after the request.

138. I have reviewed decisions of the tribunal with respect to section 34.1 of the SPA. I have not been able to find any decisions of the BC courts that have addressed the application of section 34.1 of the SPA. The tribunal has ordered that a council must hold a hearing per section 34.1 if an owner or tenant requests a hearing.

- *Smiley v. The Residential Section of The Owners, Strata Plan VIS 1921*, 2017 BCCRT 75
- *Chaveefa v. The Owners, Strata Plan NW 3353*, 2017 BCCRT 101
- *K.Y. v. The Owners, Strata Plan LMS XXXX*, 2017 BCCRT 102
- *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11

The first 3 decisions involved a dispute in which the applicant had contravened the SPA or bylaws and was being penalized. The *McDowell* decision involved a number of governance issues. None of the decisions dealt with an applicant's reason for requesting a hearing being to seek council's agreement that it contravened provisions of the SPA and the *Strata Property Regulation* and seeking reparation for the strata's alleged contraventions.

139. In the *McDowell* decision I canvassed the origins of section 34.1 of the SPA at paragraphs 85 – 93, which came into force on December 10, 2009. I adopt that reasoning in the present dispute. It. I find that section 34.1 does not operate to require the council to grant the hearings requested by the four hearing request letters.

140. I have read the SPA in its entire context, including section 27(1) (subject to the direction of a majority of the owners), section 34.1, section 43, section 46(1), section 135, section 144 and all the sections consistent with the concept that council governs the strata.. I find there can be circumstances when a request for a hearing can be denied. Circumstances exist in the present dispute. They include the following:

(a) The owner has not been fined, nor has he been penalized;

(b) The owner has made previous requests and was granted a hearing;

(c) The owner acted absuively at the August 2015 hearing and the council could expect the same conduct at the four requested hearings;

(d) The owner wished to discuss alleged contraventions of the strata and reparations to the owner due to the alleged contravention; and

(e) The reasons for the requests were with respect to the governance of the strata and would be more properly addressed at a meeting of the owners, or by majority direction of the owners.

141. If the owner wishes to dictate governance to the council, the owner has the opportunity to attempt to do that by requisitioning a meeting per section 43 of the SPA. The owner must garner support; essentially he needs himself and the owners of 30 other strata lots to accomplish having his demands heard at a special general meeting (section 43 of the SPA) or be added as an agenda item to an annual general meeting or a special general meeting (section 46 of the SPA).

Should the tribunal order that the strata be forever prohibited from imposing any fee or other condition not expressly permitted by the SPA with respect to holding hearings requested by the owner?

142. I find that the strata is not entitled to impose a fee not expressly permitted by the SPA with respect to hearings requested by an owner or tenant pursuant to section 34.1 of the SPA.

143. I find that conditions can be placed on section 34.1 hearings. Those conditions can address the conduct or proceedings of the hearings. There could be a restriction on attendees, time to make a presentation, prohibiting recordings of hearings, and so on.

Should the tribunal order that the strata not use the strata contributions of the owner for expenses and costs related to the second dispute and that the strata reimburse the owner and account for monies spent (SPA ss. 189.4(b), 189.4(c). 167(2), 169(1)(a), 169(2)?

144. The specific sections noted address the expenses and costs of defending a lawsuit or tribunal claim. The owner is not required to contribute to the strata's expenses of defending his tribunal claim. If any such expenses have been allocated to the owner, the owner is to be reimbursed, with an appropriate accounting.

Should the strata reimburse the owner $225 for tribunal fees and $11.34 expenses?

145. I have found that the strata cannot charge the owner a special fee of $250 in order to conduct a requested hearing. I have also found that the four hearings requested by the owner did not need to be conducted. The owner requested a declaration that the strata contravened section 34.1 of the SPA for failing to hold fully compliant hearings in response to his 4 hearing requests. He was unsuccessful. I find that the strata does not need to reimburse the owner $225 for tribunal fees and $11.34 expenses.

DECISION AND ORDERS

146. The owner's claims are allowed in part.

147. I found that the strata granted exclusive use of storage lockers to an owner, tenant or for a strata lot in contravention of the SPA by not recording in writing the grant of exclusive use of common property storage lockers.

148. I order that within 45 days of the date of this order, the council, by resolutions in writing, grant exclusive use of all storage lockers to owners, tenants or strata lots, as the case may be, that were not granted before July 1, 2000. In doing so, I recommend the council determine if the grant is pursuant to section 76 of the SPA, or pursuant to another avenue (such as section 3 of the Act). If it is pursuant to section 76 of the SPA, it must be to an owner or tenant, it cannot be for more than one year and it must be renewed annually, unless the grant includes automatic annual renewals.

149. Under section 189.4(b) of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of defending that claim. I order the strata ensure that no part of the strata's expenses with respect to defending these claims are allocated to the owner and if any such expenses have been allocated to the owner, the owner must be reimbursed, with an appropriate accounting.

150. I order that the strata is not permitted to impose a special fee on an owner or tenant who requests a hearing pursuant to section 34.1 of the SPA.

151. I order that the remainder of the owner's claims and requests are dismissed.

152. I order that the strata's claim that the owner pay the strata's expenses is dismissed.

153. Under section 49 of the Act, and tribunal rules 14 and 15, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. Since there has been mixed success, mostly in favour of the strata, and due to the recommendation of the owner that the tribunal consider a section 92 order against the strata, I order that the strata is not responsible to reimburse the owner for tribunal fees paid.

154. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is

attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.3(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

155. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Patrick Williams, Tribunal Member