



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Townsend et al v. The Owners, Strata Plan NW 2545*, 2018 BCCRT 209

B E T W E E N :

Norma Townsend and Brent Townsend

APPLICANTS

A N D :

The Owners, Strata Plan NW 2545

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Norma Townsend, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2545 (strata). The applicant, Brent

Townsend, is Norma Townsend's son and resides with her in her strata lot as a tenant.

2. This dispute is about the strata's standard of governance involving contract administration, warranties, strata expenses, and alleged violations of the *Strata Property Act* (SPA) and the strata's bylaws.
3. The applicants say the quality of governance has been poor and that the strata council has failed to meet the standard of care expected of its members.
4. The applicants seek orders that the strata notify all owners of its SPA and bylaw violations, implement a system for recording quotations, contracts and warranties, and obtain a determination from the Canada Revenue Agency (CRA) on the classification of its resident caretaker.
5. The strata says the applicants' claims are of a minor and trivial nature and more about discrediting the strata council, which is not expected to held to a standard of perfection and may occasionally make mistakes, given its members are volunteers. The strata asks that the tribunal dismiss the applicants' claims.
6. The applicants are represented Mr. Townsend. The strata is represented by a lawyer, Mr. Silvano Todesco.
7. For the reasons that follow, I find the strata must ensure it acts in accordance with sections 97 and 103(4) of the SPA and bylaws 22.3 and 22.4. I also find the strata must propose a $\frac{3}{4}$ vote resolution at it next general meeting to correct common expenses improperly made from its operating fund.

JURISDICTION AND PROCEDURE

8. 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.

9. 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 credibility issues or other reasons to conduct an oral hearing.
10. 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.
11. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
12. Under section 31 of the Act, a tribunal facilitator (also known as a case manager), may provide the parties with the opportunity to have a person added as a party to the dispute in accordance with the rules and with any directions by the facilitator.
13. 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.
14. The strata is the only respondent in this dispute and I have discussed below the applicants' requests for orders affecting non-parties, including individual strata council members.

ISSUES

15. The issues in this dispute are:
 - a. Does the tribunal have jurisdiction to hear this dispute?
 - b. Has the strata acted contrary to the SPA when it:

- i. Approved an expense for a strata council dinner in February 2015?
 - ii. Approved its operating budget for the fiscal year ending November 30, 2016?
 - iii. Approved expenses for the fountain repairs in 2016?
 - iv. Approved the purchase of a defibrillator in June 2016?
 - v. Amended its budget at the January 23, 2017 annual general meeting?
 - vi. Failed to conduct a council hearing?
 - vii. Failed to provide requested records and documents to the applicants?
 - viii. Failed to record the number of votes for January 23, 2017 $\frac{3}{4}$ vote resolutions?
- c. Has the strata acted contrary to its bylaws when it:
- i. Failed to permit observers at its strata council meetings, or
 - ii. Record the number of votes relating to resolutions considered at September and October 2016 strata council meetings?
- d. Has the strata failed to recognize the CRA's requirements when it entered into a contract with a building maintenance company in December 2016?
- e. Has the strata council or its members failed to meet their statutory standard of care when exercising the powers and performing the duties of the strata?

BACKGROUND AND EVIDENCE

16. In a civil claim such as this, the applicants bear the burden of proof and the evidence must be established on the balance of probabilities.
17. Though I have read all of the material provided, I refer only to evidence I find relevant to provide context for my decision.

18. The strata is a 78-unit strata corporation located in Richmond, British Columbia. It employs a full time caretaker on a contract basis.
19. The applicant Ms. Townsend purchased her strata lot in December 2002. The applicant Mr. Townsend has lived in Ms. Townsend's strata lot since October 2010.
20. At a strata council meeting held February 11, 2015, the strata council approved an expense not to exceed \$1,050.00 from the approved budget to pay for a council dinner in appreciation of outgoing members.
21. Part of the strata's landscaping includes a water feature (fountain) located above the underground parking garage. From the photographs contained in a contractor's quotation, it appears the fountain is located in a central courtyard area. It is undisputed that the fountain has caused leaks into the underground parking garage and that maintaining it in a waterproof state has been difficult for several years.
22. In September 2012, a contractor supplied a 5-year labour warranty for repairs it completed to waterproof the fountain (fountain warranty). The waterproof membrane began to fail by September 2013 as acknowledged in the September 25, 2013 and September 4, 2014 strata council minutes.
23. The June 25, 2015 strata council minutes state that the strata council painted "test panels around the fountain", and that the strata would not contact the fountain warranty contractor for the next few months, pending the success of the test panel painting. The May 25, 2016 strata council minutes state, "test patches of various paints have been in place for almost a year and a number have resisted peeling. A further quotation is expected shortly before a final decision can be made to proceed [with the fountain repairs]." Ultimately, the strata did not pursue the contractor under the fountain warranty.
24. The strata did not seek approval for the fountain repair expenses until the annual general meeting (AGM) held January 27, 2016. The proposed operating budget

distributed with the January 2016 AGM notice included a budget line item for “fountain repair” of \$1,000 and a projected surplus for the operating fund of \$66,941 for the fiscal year ending November 30, 2016.

25. The strata proposed an amended operating budget at the January 2016 AGM. The amendments were to include \$71,941 of previous years’ operating surplus as income and included a list of “Minor Capital Costs” for certain maintenance and repair or improvement items. The list included \$15,000 for “Fountain Pool”.
26. The January 2016 AGM minutes show a motion “to bring the proposed operating budget(s) to the floor for discussion” and that “following discussion, the vote was taken” and passed. No details of the budget discussion were included in the minutes. However, the “approved budget” distributed with the minutes is identical to the amended budget presented at the January 2016 AGM.
27. The September 28, 2016 strata council meeting minutes show the strata council had received 3 bids for the fountain repair, that the funds for the lowest bid of \$37,500 had been set aside, and that “town hall” meetings would be called with the owners as soon as possible “to get [the fountain repair] started.” Three town hall meetings were held on October 6, 2016 at different times of the day.
28. Between October and November 2016, the strata council approved fountain repair expenses of approximately \$53,550.
29. The January 2016 AGM minutes also show that the strata’s bylaws were amended to permit all unapproved expenditures to be less than \$15,000 for each fiscal year. The bylaw amendment was filed at the Land Title Office on February 9, 2016.
30. At a June 21, 2016 strata council meeting, the strata council approved the purchase of a defibrillator for approximately \$2,500 after receiving 2 quotations.
31. On December 1, 2016, the strata engaged a building maintenance company for a 1-year term to complete certain maintenance and cleaning services. It is unclear if the contract has been renewed annually.

32. At the January 23, 2017 AGM, the strata council presented a budget with a deficit of \$5,637. The January 2016 AGM minutes show approval of the proposed operating budget. The approved budget distributed with the minutes confirms this.

POSITION OF THE PARTIES

33. The applicants say their claims are substantive, involving legislation, governance and matters of finance that should be taken seriously but have been dismissed or ignored by the strata.

34. The applicants request that:

- a. The strata refrain from contravening the SPA and its bylaws,
- b. Issue an apology to all owners detailing its SPA and bylaw violations,
- c. Implement a formal process for recording contractor selection, bid processes, quotations, contract details, and warranties,
- d. Obtain a determination from the CRA on the employment classification of its caretaker,
- e. The bylaw amendments passed at the January 23, 2017 AGM be declared invalid.

35. The strata says that, although the strata council has made mistakes as volunteers, the strata and its council have acted on the advice of professionals and that the applicants are holding the strata council to an inappropriate standard of perfection.

36. The strata believes the applicants are attempting to point out any alleged errors of the strata council, regardless of relevance or severity, to the point where the claims are frivolous. It also says that Mr. Townsend is a “serial complainer that seems to be seeking relief that will make no difference to the governance of the [strata].”

37. The strata requests that the tribunal dismiss the applicants’ claims.

ANALYSIS AND DECISION

Does the tribunal have jurisdiction to hear this dispute?

38. The issue here is about Brent Townsend's status as an applicant, and, the addition of his mother Norma Townsend as a co-applicant. The tribunal issued the dispute notice for this dispute on November 16, 2016 under section 6 of the Act with only Brent Townsend named as an applicant. I understand that Mr. Townsend considered himself a tenant of his mother's strata lot. I further understand that a Form K – Tenants Undertaking has now been filed with the strata that shows Mr. Townsend as a tenant of Ms. Townsend's strata lot.
39. During facilitation, the respondent strata raised the issue of jurisdiction. The facilitator directed that Norma Townsend, the registered owner of strata lot 66, be added as an additional applicant. In a telephone discussion with the facilitator, Ms. Townsend agreed to be added as a named applicant.
40. As earlier noted, the Act permits a facilitator to provide the parties to a dispute with the opportunity to add a person to the dispute as set out in the tribunal rules and in accordance with the facilitator's directions. The tribunal rules are silent on adding an applicant to a dispute. Given the language of section 31 of the Act, I find the facilitator had the authority to direct that Norma Townsend be added as an applicant to this dispute.
41. Further, I find that the addition of Norma Townsend is in keeping with the tribunal's mandate of offering speedy, economical, informal and flexible dispute resolution services since a fresh application could have been made by the current applicants had the tribunal refused to resolve this dispute for lack of jurisdiction. I find there has been no prejudice to the respondent resulting from the addition of Norma Townsend as an applicant.
42. For these reasons, I find the tribunal has jurisdiction to hear this dispute.

Has the strata acted contrary to the SPA?

The February 2015 strata council dinner expense

43. The applicants say the strata council, at its meeting held February 11, 2015 “approved an increase to their dinner stipend” contrary to section 34 of the SPA because a $\frac{3}{4}$ vote was required prior to the strata council approving the expense. The applicants rely on the January 2015 AGM notice package and minutes, which do not show that a $\frac{3}{4}$ vote resolution approved this expense.
44. Section 34 of the SPA permits council members to be paid, provided the expense is approved in advance of the payment: in the budget, in the bylaws, or by a $\frac{3}{4}$ vote resolution. While I agree the dinner expense can be considered payment to strata council members, I disagree that prior approval of the expense was not obtained.
45. The February 2015 strata council meeting minutes clearly state the expense was approved in the budget, which is not disputed by the applicants. The applicants appear to have been aware of the annual dinner expense as they refer to the expense as “an increase to [the council’s] dinner stipend”, suggesting the expense occurred annually.
46. That the budget did not contain a separate line item for the dinner expense, or that the budget explanatory notes did not identify the expense, does not mean the expense was not contained in the budget. For example, from my review of the approved operating budget attached to the January 2015 AGM minutes, I note there is a “Sundry, Postage & Copies” budget line item that could reasonably include the dinner expense.
47. Neither the SPA nor the strata bylaws address the level of detail that must be included in an operating budget. The level of detail is up to each strata corporation to decide. Strata owners have the ability to direct the strata on what level of detail should, or should not, be in a budget. Therefore, I find an operating budget does

not have to contain a separate line item for each specific expense. It is possible for budget line items to group expenses together or name them in a general fashion.

48. Further, the budget explanatory notes used by the strata are, in my view, not part of the approved budget. Rather, I find they provide some assistance for owners to understand how the strata corporation will track expenses during the course of the fiscal year.
49. For these reasons, I dismiss the applicant's claim that the dinner expense for the strata council noted in the February 2015 strata council minutes was not previously approved. I find the strata did not contravene section 34 of the SPA.

The 2016 operating budget approval

50. The applicants say the strata presented an amended budget to the strata owners at the January 27, 2016 AGM that was "in addition to" the original budget included in the AGM notice package circulated in advance of the meeting. It is undisputed the amended budget was contained in a handout to the owners, tenants and proxies who were present at the meeting.
51. The applicants say the procedure was contrary to section 103 of the SPA for 2 reasons. First, the amended budget was not circulated with the AGM notice package. Second, the vote to accept the amended budget was contrary to the SPA. I understand the applicants to mean that the original budget was not amended using a proper voting procedure.
52. Section 103(1) and (2) state the strata must prepare a budget for the coming fiscal year for approval by majority vote at each AGM and that the proposed budget must be distributed with the AGM notice. Under section 103(4) of the SPA, a proposed budget may be amended by a majority vote resolution at the AGM before the budget itself is put to a vote.
53. As earlier noted, the January 27, 2016 AGM minutes show a motion "to bring the proposed operating budget(s) to the floor for discussion" and that "following

discussion, the vote was taken” and passed. No details of the budget discussion were included in the minutes and there was no vote taken to amend the proposed operating budget that was circulated with the AGM notice. However, the “approved budget” distributed with the minutes is identical to the amended budget presented at the January 2016 AGM.

54. I do not find that by proposing an amended operating budget at the AGM through a handout to those voters present at the meeting contravened the SPA, given a proposed operating budget was distributed with the AGM notice in accordance with the SPA and that a budget can be amended by majority vote at the AGM. That the strata had proposed an amended budget and handed it out at the meeting does not mean that owners cannot consider the amendments. Such a procedure is no different from amendments to the budget being made by voters at the AGM.
55. However, for the reasons that follow, I agree with the applicant that the procedure used to vote on and adopt the amended budget did not follow the requirements of the SPA.
56. Section 103(4) of the SPA permits the proposed operating budget distributed with the AGM notice to be amended before the budget itself is put to a vote. It appears that did not happen at the January 27, 2016 AGM given the minutes do not show any amendments were made to the proposed budget contained in the AGM notice, yet the amended budget contained in the handout was approved.
57. Had the proposed budget contained in the AGM notice been considered and amended, the minutes would have reflected a resolution to amend the proposed budget before a final vote was taken on the amended budget. This is the procedure I find is required to satisfy section 103(4). In other words, a resolution to approve the proposed budget must be made before resolutions to amend the budget can be considered to allow a final vote to be taken on the amended budget.

58. Accordingly, I find the strata contravened section 103(4) of the SPA when it did not first consider the proposed budget contained in the AGM notice, and make amendments to it, before approving a final amended budget.
59. The applicants request that I order the strata to issue a letter to strata residents acknowledging an apology for its error and acknowledging it did not follow the residents' advice who brought the matter to the strata's attention.
60. I decline the applicants' requests for the following reasons.
61. As the strata correctly notes in its submissions, its council is made up of volunteers and can be expected to make mistakes. The applicants' noted concerns were raised at the January 23, 2017 AGM and the strata approved the January 27, 2016 AGM minutes despite those concerns being raised. I find by accepting the minutes, the owners agreed that the amended budget was approved despite proper voting procedures not being followed. In other words, the owners accepted the strata's mistake at the 2016 AGM with respect to approving the amended budget.
62. This decision will be made available to the strata and I expect it will adopt a practice of correcting any errors I have noted. The decision is also available to any owner or tenant of the strata through a section 59 request under the SPA.
63. Regarding the applicants' request for an apology, I find a forced apology would serve no useful purpose and I decline to order the strata provide one.
64. Although I decline the applicants' requests, in order to assist the strata not to make a similar future mistake, I find it would be helpful to order the strata to follow the requirements of section 103(4) of the SPA as it relates to approving budgets at its AGMs.

The 2016 fountain expenses

65. In the dispute notice, the applicants allege the strata approved expenses for the fountain that exceeded its authorized expense of \$15,000. In their submissions,

the applicants expand on this claim saying the expense was contrary to section 98 of the SPA and that capital expenses for the fountain repair should properly be made from the strata's contingency reserve fund (CRF) rather than the operating fund.

66. The strata relies on an affidavit sworn by the strata council treasurer. The treasurer says payment for the fountain repairs totaling \$53,550 were properly authorized and were made entirely through different line items of the operating budget, which included a line item allowance for capital expenses.
67. I accept the strata's submissions that the fountain repairs totaled \$53,550. Although unclear, the applicants seem to accept that the strata paid \$53,500 for the fountain repairs, a difference of \$50. I cannot explain the \$50 difference but find that nothing turns on this total.
68. The approved operating budget included the following expense line items:
 - a. Capital expenses - \$50,000
 - b. Repair and maintenance - \$30,000
 - c. Fountain repairs - \$1,000
 - d. Special projects - \$40,000
69. Absent any evidence to the contrary, I accept the treasurer's statement that the \$53,550 fountain repairs were paid from the following budget line items:
 - a. Repair and maintenance - \$13,125
 - b. Special projects - \$15,000
 - c. Capital expenditures - \$25,425
70. Setting aside for a moment the issue of whether the repairs were operating expenses or CRF expenses, I accept that fountain expenses were authorized through the approved budget.

71. Under section 97 of the SPA, operating fund expenses must not only be authorized, but must also be consistent with the purpose of the fund as set out in section 92. That is, the operating fund expenses must be for common expenses that usually occur either once a year or more often than once a year.
72. The strata did not provide any direct submissions on whether the fountain expenses were consistent with the purpose of the operating fund. It could be argued that because the fountain repairs had been ongoing for several years, a portion of the common expenses for the fountain repairs could be considered to occur as often as once per year.
73. However, I find that, on a balance of probabilities, it is more likely that the common expenses for the fountain repairs completed by the strata in 2016 would occur less often than once a year and therefore would not be an operating fund expense. Specifically, I note the repairs included repointing and sealing of the fountain bricks as well as membrane replacement. I would expect that both of these common expenses would occur less often than once a year.
74. For these reasons, I find the strata did not have the authority to expense the fountain repairs from the operating fund, even though the strata's owners approved such expenses.
75. Having reached this conclusion, I do not have to consider if the strata contravened section 98 of the SPA.
76. Turning now to the applicants' requested remedy, I decline to order the strata to issue a letter to the strata residents apologizing or acknowledging its errors, for the same reasons as stated above.
77. However, I do not find this to be a trivial or minor breach of the SPA. Neither do I find it to be an error that is not correctable, especially considering the money has been spent.
78. Given the strata owners previously approved the expenses from the operating fund in error, I find an appropriate remedy is for the strata to propose a $\frac{3}{4}$ vote

resolution to approve the \$53,550 expense for fountain repairs from the CRF at its next general meeting. If the resolution passes, the matter will be resolved. If the resolution fails, the applicants are free to bring a fresh application to the tribunal that the strata spent operating funds contrary to section 97 of the SPA.

79. I also order the strata to ensure it has proper authority to spend money from its operating fund, consistent with section 97 of the SPA.

The defibrillator expense

80. The applicants say the strata council's decision to purchase the defibrillator in June 2016 was contrary to sections 97 and 98 of the SPA. They note it was a new defibrillator and not a replacement defibrillator. They rely on the amended operating budget and list of capital expenses, approved at the earlier January 2016 AGM, which do not reference a defibrillator. I also note the January 2016 AGM notice and minutes do not show a $\frac{3}{4}$ vote to approve the expense was passed.
81. The strata does not directly address this claim in its submissions other than its general statement that many of the minor incidents outlined by the applicants, if true, are irrelevant, unimportant and of a trivial nature such that a council, acting reasonably in the interests of all owners might have decided to ignore the breach without unfairly prejudicing anyone. The strata notes the British Columbia Court of Appeal discussed this concept in *Abdoh v. The Owners of Strata Plan KAS 2003*, 2014 BCCA 270.
82. As earlier noted, under section 97 of the SPA, the strata must not spend money from the operating fund unless the expenditure usually occurs once a year or more often than once a year, is first approved by a $\frac{3}{4}$ vote at a general meeting or is authorized in the operating budget or under section 98 of the SPA as an unapproved expenditure.
83. In order for me to find in the applicants' favour, I must be satisfied the defibrillator expense was paid from the operating fund and that such an expense does not

usually occur once a year or more often than once a year, and that the expense was not authorized under section 98(2)(a) of the SPA.. The June 2016 strata council minutes do not address if the defibrillator's cost was to be paid from the operating fund and I was not provided with any evidence as to the expected life of the particular defibrillator purchased by the strata. Further, there is no evidence that the expenditure was not within the guidelines of unapproved expenditures under section 98 of the SPA, which for the strata, were increased to \$15,000 on February 9, 2016.

84. Without that evidence, I cannot determine if the strata contravened section 97 or 98 of the SPA. Therefore, I find the applicants have not met the burden of proof to establish that the strata acted contrary to the SPA. Accordingly, I dismiss the applicants' claim in this regard.

The 2017 operating budget approval

85. At the January 23, 2017 AGM, the strata approved a deficit budget, after carrying forward prior years' surplus. The applicants rely on an email exchange with a Condominium Home Owners Association (CHOA) representative that suggests operating budgets must be balanced. The applicants also say the strata's approval of a deficit budget is contrary to section 105 of the SPA because the use of accumulated operating surplus funds "apart from those immediately preceding the last year's operating surplus, must be made by resolution, approved and passed by a ¾ vote at an AGM."
86. For the reasons that follow, I do not agree with CHOA's suggestion that operating budgets must be balanced. I also do not agree with the applicants' interpretation of section 105 of the SPA.
87. There is nothing in the SPA or the strata bylaws that says the operating budget must be balanced. As earlier noted, section 103 says the strata must approve prepare a budget for the coming fiscal year for approval by majority vote at each AGM and that the budget must contain the information required by the regulations.

Regulation 6.6 sets out the information required in a budget, but does not say that a deficit (or surplus) budget cannot be approved.

88. Under section 105(2) of the SPA an operating deficit must be eliminated within the next fiscal year of the strata. The deficit can be eliminated in various ways that include operating below budget or approving an expense form the CRF to cover the deficit. The strata would have had until November 30, 2017 to eliminate its current year deficit.
89. The applicants' concern about the use of the operating surplus monies is also addressed in section 105 of the SPA. An operating surplus may be transferred to the CRF, carried forward as an operating fund surplus, or used to reduce the total contribution to the next year's operating fund, or used for another purpose provided a $\frac{3}{4}$ vote is first approved. It appears from the financial statements and approved budgets that the strata historically carries the operating surplus forward or uses it to reduce strata fees in accordance with the SPA, for which a $\frac{3}{4}$ vote is not required.
90. I do not see that the strata acted contrary to the SPA when it approved a deficit budget or the use of its operating fund surplus to reduce strata fees when it approved its budget at the January 23, 2017 AGM.
91. Accordingly, I dismiss the applicants' claim in this regard.

The council hearing

92. The applicants' submissions relate to an alleged request of another owner for a council hearing under section 34.1 of the SPA. They rely on an email communication between the other owner and a council member dated November 2, 2016.
93. Based on my review of the email exchange, I do not agree that the other owner requested a strata council hearing. The email primarily addresses a town hall meeting about the fountain, which the owner says they attended because they wanted to find out about the fountain "and also had been finally allowed to speak

to council.” The owner also says their requests “go back to May, unanswered by the management company and the [council president].”

94. There is no evidence before me to suggest the owner requested a strata council hearing pursuant to section 34.1 of the SPA. The owner’s reference to unanswered requests can be interpreted as a lack of response to their emails. No other evidence was provided, including any verification from the owner who wrote the email.
95. Further, the applicants were not denied a council hearing and the owner whose email has been provided is not a party to this dispute. Had the other owner wanted to complain they were not granted a hearing, they could have made that complaint. The applicants in this dispute, have no standing to dispute whether the strata council offered another non-party owner a council hearing.
96. For these reasons, I dismiss the applicants’ claim that the strata acted contrary to section 34.1 of the SPA.

Request for records and documents

97. The applicants say they requested information pursuant to section 36 of the SPA in June 2017. They state the strata directed they request the information from its legal counsel and that he has not yet received the requested records and documents.
98. The applicants say they have no requested remedy and included this claim to highlight the fact that they were unreasonably prevented access to legally allowable records and documents.
99. Given, the applicants did not provide any evidence as to the nature of the missing records or documents (including whether they fall within the categories that must be disclosed under the SPA) and that they seek no remedy, I dismiss the applicants’ claim.

Recording the number of votes for January 23, 2017 ¾ vote resolutions

100. The applicants say that at the January 23, 2017 AGM, voting on bylaw amendments under “Resolution “C” was inappropriately conducted as, after a lengthy recess when it was observed that voters left the AGM, voting continued on the bylaw amendments without ensuring a quorum was still present at the meeting. They also say the minutes are incorrect as they do not reflect a recess was taken to consider the strata council’s election before resuming discussion on the Resolution “C”.
101. In particular, the applicants rely on the vote count shown in the AGM minutes for bylaw amendments considered for bylaw 6 that totaled 53, the same number of votes that were present at the start of the meeting. They also rely on written statements from 2 other owners.
102. The applicants ask that the bylaw amendments be declared invalid.
103. The strata does not provide submissions on this issue. Therefore, I infer the strata believes this to be captured by its general statement that the matter is minor in nature and, if true, irrelevant, unimportant and of a trivial nature.
104. I cannot agree that confirming a quorum exists at a general meeting when voting on bylaw amendments is trivial or unimportant. On the contrary, section 48(1) of the SPA states that the strata must not conduct business at a general meeting unless a quorum is present.
105. However, while I accept the applicants’ position that some voters left the AGM and that the votes recorded in the minutes were inaccurate, there is no evidence to confirm that the remaining eligible voters reduced the total number of votes below quorum.
106. For these reasons, I decline to find the bylaw amendments invalid.

Has the strata acted contrary to its bylaws?

Observers at strata council meetings

107. Bylaw 22.4, as amended February 19, 2009, states owners, resident spouses and resident family members “may attend council meetings as observers”. In other words, the strata must permit certain people to attend council meetings if they choose to do so, except for the exceptions listed in bylaw 22.5 as discussed below.
108. Bylaw 22.5 states observers may not attend portions of council meetings that deal with bylaw contravention hearings, rental bylaw exemption hearings and “any other matters if the presence of observers would, in the Council’s opinion, unreasonably interfere with an individual’s privacy.
109. The applicants assert that Mr. Townsend, and another observer, were asked to leave a December 7, 2016 strata council meeting when the strata council began discussing the next year’s operating budget. They say the strata council president declared the November 10, 2016 strata council meeting an “internal meeting” not open to observers.
110. The applicants also say that the business conducted at the strata council meetings was not of a nature for which observers should have been restricted attendance.
111. The strata does not directly address this issue.
112. The November 10, 2016 meeting minutes show it was a meeting called for the sole purpose of reviewing quotations for work on the fountain. The December 7, 2016 strata council meeting minutes were not provided but the preceding November 23, 2016 meeting minutes show the next meeting of December 7th will be a “Budget meeting open only to Council Members.”
113. Based on my review of the minutes and other evidence provided, I find there was no reason for the strata not to permit observers at the November 10 or December

7, 2016 strata council meetings. I find this action to be contrary to the strata bylaws 22.4 and 22.5.

114. The applicants' request that I order the strata to issue a letter to strata residents acknowledging it acted contrary to the bylaws. The applicants also request I order the strata to follow the bylaws in future.

115. Again, I decline to order the strata issue a letter to its owners as this decision will be made available to the strata and is available to an owner under section 59 of the SPA.

116. However, I agree with the applicants' request that the strata act in accordance with its bylaws 22.4 and 22.5 with respect to allowing observers to attend strata council meetings and I so order.

Recording the number of votes for council resolutions

117. The applicants say the strata council failed to record the results of its votes at strata council meetings held September 28, 2016 contrary to bylaw 23.3.

118. Bylaw 23.3 states that the results of all votes at a council meeting must be recorded in the minutes.

119. It appears the applicants' claim is that the number of votes cast in favour, against, or in abstention of a motion is not always recorded in council meeting minutes. I find the bylaw requires only the result of the vote be recorded; that is, whether the motion was carried. There is no requirement to record the number of votes set out in the bylaws and I find the decision to do so is at the strata council's discretion.

120. To the extent the applicants are referring to a correction to the September 28, 2016 strata council meeting minutes that was recorded in the October 27, 2016 minutes, I find the correction properly addresses the recording of the result of the vote held at the September meeting that was omitted from the September meeting minutes.

121. As a result, I dismiss the applicants' claim in this regard.

Has the strata failed to recognize the requirements of the CRA or other employment legislation when it entered into a contract with a building maintenance company in December 2016?

122. The applicants say that they have brought to the council's attention the consequences of improperly classifying the caretaker as a contractor, which may include exposing the strata to payment of "back-taxes and/or financial penalties should it be found that an individual is incorrectly classified as a contractor as opposed to that of an employee..."

123. The applicants point to a CHOA bulletin that explains the different classifications and possible consequences under various legislation of classifying a caretaker as a contractor if the caretaker instead meets all requirements of an employee classification.

124. The strata provided an affidavit from its treasurer, a Chartered Professional Account, in which the treasurer gave their professional opinion that the contractor status of the maintenance company is clearly established.

125. Aside from their assertions, the applicants provide no evidence that the building maintenance company falls into the employee classification.

126. Therefore, I find the applicants have not met the burden of proof to establish that the strata has failed to recognize the CRA's requirements, or other employment legislation, with respect to the building maintenance contract. Accordingly, I dismiss the applicants' claim in this regard.

127. I provide no opinion on whether the classification of the building maintenance person is correct as I find that matter is not before me.

Has the strata council or its members failed to meet their statutory standard of care when exercising the powers and performing the duties of the strata? If so, what is an appropriate remedy?

128. A strata council member owes both a statutory fiduciary duty and a statutory duty of care in the management of the affairs of the strata (*Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183).
129. Under section 31 of the SPA, each council member must act honestly and in good faith with a view to the best interests of the strata, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
130. As earlier noted, the individual strata council members are not named parties in this dispute and have not had the opportunity to provide submissions. For this reason, I dismiss the applicants' claim that the strata council or its members have failed to meet the required standard of care.
131. I acknowledge that the applicants' submissions were substantial in support of this claim and that their concerns surrounding the governance of the strata are likely their primary concerns. Specifically, the applicants feel the strata council poorly handled the fountain repairs and related contract warranties.
132. Even if the individually council members had been named respondents, I would not have found they failed to meet the required standard of care.
133. I have addressed the standard of care expected of strata council members under section 31 of the SPA on several occasions. (See for example *Mason v. The Owners, Strata Plan BCS 4338*, 2017 BCCRT 47, *Lo v. The Owners, Strata Plan LMS 3094*, 2018 BCCRT 78, *Corner v. The Owners, Strata Plan K 833*, 2018 BCCRT 189 and *Schuler v. The Owners, Strata Plan BCS 4064*, 2018 BCCRT 175.)
134. In order to find a council member failed to meet their statutory duty of care, it is necessary to find they acted dishonestly, in bad faith or with a view to best interests of someone other than the strata and failed to exercise the care, diligence

and skill of a reasonably prudent person in comparable circumstances. These factors are simply not present here as I find the allegations made by the applicants to be their own opinion unsupported by any evidence.

135. Much of the applicants' submissions allege that the strata council members failed to meet the stand of care because they acted contrary to the SPA or the strata bylaws. I have earlier addressed the applicants' claims about the SPA and bylaw contraventions above and found the strata acted contrary to the SPA on 2 occasions and the bylaws once.
136. About the SPA violations, I do not find the strata council members acted contrary to section 31. Specifically, I do not find the find the SPA violations were deliberate or intentional.
137. About the bylaw contravention, while the strata council's action to restrict observers appears intentional, based on the evidence I do not find the strata acted in bad faith or contrary to section 31 of the SPA.
138. The applicants also say the strata council failed to address construction deficiencies relating to elevator vestibule deficiencies resulting from work completed in 2015. The applicants also say that contractor was paid for the full amount of the work despite some deficiencies not being completed.
139. The applicants cite the time taken to address some of the concerns, lack of supervision of the contractor, neglect of the strata council getting "good value for the monies spent" and payment of the full amount as reasons the strata council did not meet the standard of care.
140. Again, the applicants rely on minutes and their own assertions but provide no evidence on the amount of time taken, the deficient work, or the amount that was paid.
141. For these reasons, even if the individual council members had been named respondents, I would not have found they failed to meet their required stand of care and dismissed the applicants' claims in this regard.

DECISION AND ORDERS

142. The applicants have been partially successful in this dispute.

143. I order that the strata:

- a. follow the requirements of section 103(4) the SPA as it relates to approving budgets at AGMs,
- b. ensure it has proper authority to spend money from its operating fund consistent with sections 96 of the SPA,
- c. act in accordance with its bylaws 22.4 and 22.5 with respect to allowing observers to attend strata council meetings, and
- d. propose a $\frac{3}{4}$ vote resolution to approve the \$53,550 expense for fountain repairs from the CRF to the owners at its next general meeting.

144. I order the applicants' remaining claims are dismissed.

145. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case to deviate from the general rule. I find the respondent strata has been the most successful party and has not paid any tribunal fees or claimed dispute related expenses. Accordingly, I make no order for reimbursement of tribunal fees.

146. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to the strata corporation's expenses of defending the claim or in any monetary order issued against it. I order the strata to ensure that no part of the expenses incurred by the strata in defending the applicants' claims, are allocated to Ms. Townsend.

147. 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 56.5(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 Supreme Court of British Columbia.

J. Garth Cambrey, Vice Chair