



# Civil Resolution Tribunal

Date Issued: June 4, 2019

File: ST-2018-007603

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 2568 v. Rapp*, 2019 BCCRT 677

**B E T W E E N :**

The Owners, Strata Plan BCS 2568

**APPLICANT**

**A N D :**

Elliot Rapp

**RESPONDENT**

**A N D :**

The Owners, Strata Plan BCS 2568

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. This is a dispute about a hot tub. The applicant (and respondent by counterclaim) is a strata corporation, The Owners, Strata Plan BCS 2568 (strata). The strata claims that the respondent (and applicant by counterclaim), Elliot Rapp, installed a hot tub on his second floor balcony without strata approval. The strata asks for either an order that the hot tub be removed or that Dr. Rapp obtain expert evidence that the hot tub is safe.
2. Dr. Rapp says that he has already proven that the hot tub is safe and that there is no bylaw prohibiting the hot tub on the balcony. Dr. Rapp counterclaims for \$1,064.76, which he says was the cost of having to unnecessarily rewire the hot tub and hire a structural engineer. He also says that the strata unfairly targeted him asks for several orders against the strata and members of strata council.
3. The strata is represented by the strata council president (president). Dr. Rapp is self-represented.

## **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 121 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. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may 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**

8. The issues in this dispute are:
  - a. Did the bylaws require Dr. Rapp to get strata approval prior to installing the hot tub?
  - b. Has the strata already approved the hot tub? If not, has the strata unreasonably refused to approve the hot tub?
  - c. Did the strata breach section 135 of the Strata Property Act (SPA) when it required Dr. Rapp to alter the electrical hookups and hire a structural engineer?
  - d. Should the strata reimburse Dr. Rapp for his electrician and structural engineer costs?
  - e. Did the strata fail to provide documents contrary to section 36 of the SPA?
  - f. Did the president and other members of strata council act in bad faith contrary to section 31 of the SPA? Are punitive damages warranted?
  - g. Should the strata council president be banned from sitting on strata councils throughout British Columbia?

## **BACKGROUND AND EVIDENCE**

9. In a civil claim such as this, each of the parties must prove their claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The strata consists of 14 townhouse-style strata lots. Dr. Rapp is an owner of strata lot 8, which has 2 floors. On the second floor, there is a balcony. The strata plan shows that the balcony is part of Dr. Rapp's strata lot.
11. The strata filed 2 bylaw amendments with the Land Title Office, neither of which are relevant to this dispute. As such, the Standard Bylaws under the SPA apply.
12. Dr. Rapp purchased his strata lot on December 22, 2016. He says that during the sale process, the sellers assured him that the balcony was designed to support a hot tub, which was a key factor in his purchase. Other strata lots have a hot tub on their ground floor patio, but Dr. Rapp wanted a hot tub on the balcony because it had superior views.
13. Dr. Rapp says that before installing the hot tub, he telephoned a structural engineer, who reviewed the plans and determined that the hot tub could be safely installed on the balcony. The hot tub was installed on April 4, 2017, using a crane. That day, a strata council member went to Dr. Rapp's home and informed him of a complaint about the hot tub.
14. In response, Dr. Rapp emailed the president to ask whether there had been a complaint about the hot tub. He said that the balcony had been constructed for a hot tub, which he had confirmed with a structural engineer. He also said that he had double checked the bylaws to ensure that hot tubs were not prohibited.
15. After some email exchanges, the president wrote to Dr. Rapp on April 26, 2017, advising that the strata council had determined that the electrical cable and brackets from the hot tub to the junction box were alterations to the exterior of the building. The strata alleged that Dr. Rapp breached bylaw 5(1)(b), which requires an owner to get written approval from the strata before altering a strata lot in a manner that

involves the exterior of the building. The strata demanded that the cable be rerouted. The strata also requested that Dr. Rapp ensure that his insurance covered the “structural integrity of the deck” and that the hot tub was compliant with the Building Code, both in terms of guardrail requirements and the load on the balcony.

16. Dr. Rapp emailed the president on May 1, 2017, questioning the wisdom of undoing the electrical work associated with the hot tub. He asserted that when he purchased the unit, there was already an electrical cable underneath the balcony, which he completed as part of the hot tub’s installation.
17. Dr. Rapp and 2 members of strata council met on May 6, 2017. The strata maintained that Dr. Rapp was in breach of bylaw 5(1)(b) and required Dr. Rapp to submit plans to reroute the electrical cable for strata approval. The strata said that the wiring was an eyesore, negatively affected strata property values, and risked damaging the structure of the building.
18. On July 11, 2017, the strata council approved Dr. Rapp’s proposal for rerouting the electric cable. Dr. Rapp had an electrician carry out the rerouting.
19. In April 2018, the strata began investigating whether the balcony could support the hot tub. The strata contacted the former owners of Dr. Rapp’s strata lot, a structural engineer and the building’s original architect. Dr. Rapp says that he was unaware of the steps that the strata was taking to assess the hot tub.
20. On August 30, 2018, the president wrote to Dr. Rapp with the outcome of the strata’s investigation. The strata included an email from the architect that the balcony would require additional structures to accommodate the hot tub. The strata also included a letter from an engineer who advised that the hot tub likely far exceeded the live load limit for the balcony. The engineer stated that there was a significant risk of failure. The engineer, who was based on the Lower Mainland, did not physically inspect the balcony. The strata also asserted that the previous owners had reinforced part of the balcony, but not the part that the hot tub was on. The strata said that a structural engineer needed to review and approve the hot tub, or else the hot tub would need to be removed.

21. On September 29, 2018, the engineer that Dr. Rapp had spoken to in March 2017 prepared a technical memo about the hot tub. The engineer had performed a site visit and removed the soffits under the balcony joists to inspect the construction of the balcony. The engineer concluded that the balcony could support the hot tub, taking into account the weight of 6 occupants. The engineer also concluded that the balcony railing complied with the BC *Building Code*.

## **POSITION OF THE PARTIES**

22. The strata argues that:

- a. Bylaws 5(1)(a), (b), (c) and (g) all apply to the hot tub, meaning that Dr. Rapp had to obtain written approval prior to installing the hot tub.
- b. The strata has acted fairly and reasonably in dealing with Dr. Rapp's hot tub.

23. The strata requests that I order Dr. Rapp to either provide a report from a structural engineer confirming that the hot tub is safe on the balcony or remove the hot tub. The strata also requests that I dismiss Dr. Rapp's counterclaims.

24. Dr. Rapp argues that:

- a. He did not breach any bylaw when he installed the hot tub.
- b. It was unnecessary and improper for the strata to require him to reroute the electrical cables and obtain a structural engineer's report.
- c. The strata, and in particular the president, has singled him out unfairly and failed to provide him with due process.

25. Dr. Rapp requests that I make the following orders:

- a. The strata pay Dr. Rapp \$193.20 to reimburse the electrician fees to reroute the power supply.
- b. The strata pay Dr. Rapp \$871.56 to reimburse the structural engineer's fees.

- c. The president pay punitive damages in an undefined amount, to be donated to the BC Children's Hospital.
  - d. The president is barred from serving on any strata council in British Columbia.
26. Dr. Rapp also asks that I dismiss the strata's claims and, implicitly, that I order that the hot tub does not breach any bylaws.

## **ANALYSIS**

### ***Did the bylaws require Dr. Rapp to get strata approval prior to installing the hot tub?***

27. The strata relies on bylaws 5(1)(a), (b), (c) and (g), which say that an owner must obtain written approval of the strata before making an alteration to a strata lot that involves the structure of the building, the exterior of the building, balconies, and the parts of the strata lot that the strata has to insure under section 149 of the SPA.
28. Bylaw 5(2) says that the strata must not unreasonably withhold approval under bylaw 5(1) but may require that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.
29. It is undisputed that Dr. Rapp did not ask for written approval of the strata before installing the hot tub. Dr. Rapp says that he had reviewed the bylaws before installing the hot tub to make sure that hot tubs were not prohibited. I agree that there is no bylaw that explicitly relates to hot tubs.
30. Before proceeding to the merits of the parties' arguments, one of Dr. Rapp's general complaints is that the strata's position about the hot tub has not been consistent. While I appreciate that Dr. Rapp was frustrated by the strata's shifting position, in this dispute the strata only relies on bylaw 5. Whether the strata was correct in its previous positions is irrelevant.
31. Dr. Rapp argues that the strata should not be able to dictate what he does on his strata lot. Dr. Rapp questions whether the strata should have veto power over any

item in his home. I find that Dr. Rapp significantly overstates an owner's obligation to obtain strata approval for alterations to their strata lot. Bylaw 5 gives the strata the authority to approve or refuse certain alterations to a strata lot, but only in specific circumstances. In addition, the strata is prohibited from unreasonably withholding consent. This is how the bylaws balance private property rights with the common good.

32. Dr. Rapp relies on *The Owners, Strata Plan NW243 v. Hansen*, 1996 CanLII 2957 (BC SC) for the proposition that a strata council cannot retroactively prohibit a hot tub. In *Hansen*, the strata corporation passed a bylaw prohibiting hot tubs after the respondent owner had already installed one. The Court found that the new bylaw could not have retroactive application. In this dispute, the strata is not seeking to retroactively enforce a new bylaw. Rather, the strata argues that an existing bylaw applied to the hot tub when it was installed. Therefore, I find that *Hansen* does not assist Dr. Rapp.
33. I find that bylaw 5(1)(c) has clear application to the installation of the hot tub. Bylaw 5(1)(c) applies to an alteration that "involves" a balcony in a strata lot. I find that installing a hot tub on a balcony necessarily involves the balcony. Therefore, Dr. Rapp breached bylaw 5(1)(c) when he installed the hot tub without the strata's written approval. Because of this finding, I will not comment on the strata's arguments about bylaws 5(1)(a), (b) or (g).

***Has the strata already approved the hot tub? If not, has the strata unreasonably refused to approve the hot tub?***

34. Dr. Rapp argues that by undertaking a "secret investigation" after it had agreed to Dr. Rapp's proposal for rerouting the electrical wiring, it breached their agreement about the hot tub. In the context of bylaw 5, I interpret this argument as being that the strata provided express written approval when it accepted his proposal about the electrical wiring. Dr. Rapp argues that it had no right to renege on the approval and make more demands.



35. I find that the strata did not give retroactive written approval for the hot tub by agreeing with how Dr. Rapp rerouted the electrical cables. The strata has an obligation under the SPA to maintain common property for the benefit of the owners. While the balcony itself is not common property, the strata had a legitimate and reasonable concern about the balcony's ability to support the hot tub. If the balcony could not support the hot tub, it would directly affect common property that the strata has an obligation to maintain, because a balcony collapse would inevitably cause significant damage to the building.
36. In addition, when the strata accepted Dr. Rapp's proposed electrical rerouting, it did not abandon its previously stated concerns about the balcony's ability to support the hot tub or the proximity of the hot tub to the balcony railings. The strata's response was silent about those issues. Therefore, I find that the strata has not approved the installation of the hot tub.
37. The next question is whether the strata's refusal to approve the hot tub is unreasonable. Dr. Rapp's arguments focus significantly on the strata's unwillingness to accept Dr. Rapp's evidence about the hot tub's safety. I interpret these arguments as being about the strata's obligation under bylaw 5 not to unreasonably refuse to approve an alteration to a strata lot.
38. Dr. Rapp did not initially provide the strata with his engineer's technical memo, for reasons that he does not explain. When Dr. Rapp first provided it to the strata, it was unsigned and did not carry the engineer's seal, which the strata considered insufficient. However, during the tribunal decision process, Dr. Rapp provided the strata with the signed and sealed version, which the strata has accepted. I therefore consider the issue of the strata only having an unsigned memo to be resolved.
39. In its submissions, the strata's only remaining substantive concern is that the engineer's report does not fully address the issue about the proximity of the hot tub to the balcony's railing. The strata says that the engineer does not adequately explain why the railings are safe.

40. The report says that Dr. Rapp hired the engineer to “determine whether the second-floor deck located at his residence could support the weight of a hot tub”. Later, the engineer states “the guard rail around the deck and adjacent to the hot tub is 42” high, which is compliant with the 2012 BC Building Code”. The engineer completed the report following a site visit, and the report includes photographs of the balcony and hot tub. I find that the strata’s stated concerns about the railing are unfounded as they are directly at odds with the explicit findings in the report.
41. In addition, the strata did not provide any evidence to rebut Dr. Rapp’s engineer’s report, such as another report by the engineer that the strata had previously hired.
42. I find that Dr. Rapp’s engineer provides the best evidence about whether the balcony can support the hot tub and whether the balcony railing is safe. I find that Dr. Rapp’s engineer’s report is more reliable than the strata’s engineer’s evidence because Dr. Rapp’s engineer performed a site visit and his report was more detailed. As for the original architect’s email, there is some evidence that the previous owners of the strata lot added structural supports to the deck after original construction, which the architect may not have been aware of. Based on Dr. Rapp’s engineer’s report, I find that the strata has no reasonable basis to continue to refuse to approve the hot tub.
43. Bylaw 5(2) says that the strata may require an owner to agree, in writing, to take responsibility for any expenses relating to the alteration. Dr. Rapp has stated that he understands that the expenses related to the hot tub are his responsibility. However, I find that it is appropriate to formalize his understanding by ordering Dr. Rapp to provide the strata a written statement taking responsibility for any expenses related to the hot tub. Once Dr. Rapp has done so, I order that the strata is deemed to have approved the hot tub in accordance with bylaw 5.

***Should the strata reimburse Dr. Rapp for his electrician and structural engineer costs?***

44. Dr. Rapp counterclaims for the cost of the electrician and structural engineer. With respect to the cost of the electrician, I find that in the context of the strata

considering approving an alteration under bylaw 5, it was reasonable for the strata to consider whether the electrical cable was safe and aesthetically consistent with the rest of the strata. Dr. Rapp has alleged that it was unwise for the strata to force him to reroute the electrical cables because it could compromise the balcony's membrane but does not provide any supporting evidence. Furthermore, if Dr. Rapp had sought advanced approval as required by bylaw 5, he likely would have avoided this expense. In any event, I find that Dr. Rapp voluntarily incurred this expense and only took issue with it over a year later when he realized that the strata was still assessing whether the hot tub was safe.

45. As for the cost of the structural engineer's report, until September 2018, Dr. Rapp insisted that the strata should rely on his verbal assurance that an engineer told him over the phone that the hot tub was safe. Dr. Rapp also relied on the fact that the previous owners told him that the balcony was designed for a hot tub. Given the potentially serious consequences of placing a hot tub on a balcony that cannot support its weight, I find that it was reasonable for the strata to insist on a formal, written report from an engineer confirming that the balcony could support the weight of a full hot tub. I find that it is appropriate that Dr. Rapp bear the cost of doing so.
46. For these reasons, I dismiss Dr. Rapp's claims for compensation for his electrician and engineering costs.

***Did the strata breach section 135 of the SPA when it required Dr. Rapp to alter the electrical hookups and hire a structural engineer?***

47. Section 135 of the SPA provides a mandatory process that a strata corporation must follow before either imposing a fine, requiring a person to pay the costs of remedying a contravention, or denying a person the use of a recreational facility for contravening a bylaw. A strata corporation must receive a complaint about the contravention, give the owner the particulars of the complaint, provide a reasonable opportunity to answer the complaint, including a hearing if requested, and give written notice of its decision.

48. Dr. Rapp argues that the strata breached section 135 of the SPA by failing to give him “due process”. In particular, he relies on section 135(1)(b) of the SPA, which requires that the strata follow the proper procedures before requiring a person to pay the costs of remedying a bylaw contravention. While Dr. Rapp’s submissions are not entirely clear, he appears to take the position that by demanding that Dr. Rapp reconfigure the electricity hookups and get an engineer report at his own expense, the strata was requiring him to pay the costs of remedying a bylaw contravention.
49. I find that Dr. Rapp’s reliance on section 135(1)(b) of the SPA is misplaced. I find that section 135(1)(b) does not apply to every situation in which a strata corporation demands that an owner pay to remedy a bylaw contravention. Rather, I find that section 135(1)(b) refers to section 133 of the SPA. Section 133 says that a strata corporation may do what is reasonably necessary to remedy a bylaw contravention, including by doing work on a strata lot, and may require that the owner pay the reasonable costs of doing so. By way of example, applied to this dispute, if the strata had paid to remove the hot tub itself and sought to recover the cost of doing so from Dr. Rapp, it would have had to follow the processes set out in section 135.
50. Section 135 does not mandate a process that a strata corporation must follow before determining that an owner or tenant has violated a bylaw. Rather, section 135 mandates a process that a strata corporation must follow before imposing certain consequences of a bylaw violation. In this dispute, the strata did not impose any of the consequences listed in section 135 of the SPA and therefore had no obligation to follow its processes. There is no specific process mandated by the SPA or the bylaws about how a strata corporation must demand that an owner remedy a bylaw contravention, such as demanding a modification to an unapproved alteration.
51. Therefore, I reject Dr. Rapp’s arguments about the strata’s alleged breach of section 135 of the SPA.

***Did the strata fail to provide documents contrary to section 36 of the SPA?***

52. Dr. Rapp claims that the strata failed to provide records that he was entitled to under section 36 of the SPA. Dr. Rapp made 2 requests for records, one on May 30, 2017 and another on May 31, 2017. The strata admittedly did not respond to the second request, which the strata says was inadvertent.
53. The strata says it has now complied with the request. Dr. Rapp says that the strata's response was "superficial". He cites the sparse strata council minutes about the hot tub issue. He believes that the strata council had an obligation to keep much more detailed minutes, and either fraudulently edited them after the fact or failed to keep proper minutes.
54. Section 35 of the SPA sets out the strata's obligations to create records. Section 35(1)(a) of the SPA requires the strata to prepare minutes of council meetings, including the results of any votes. It does not place any further requirements on what needs to be included in the minutes. See *Kanye v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610.
55. Therefore, as long as the strata council minutes record the results of any votes, they comply with the SPA. I find that the strata council's minutes complied with section 35(1)(a).
56. Dr. Rapp also takes issue with the fact that there are no minutes of his hearing. Section 35 of the SPA does not require the strata council to record the details or outcome of a hearing. The only requirement in the SPA after a hearing is in section 34.1(3), which requires the strata to give the applicant in the hearing a written decision within 1 week. There is no obligation to report more widely to the owners about a hearing.
57. Dr. Rapp also relies on what he says is the strata's history of refusing to disclose documents. He relies on a letter of resignation from 2010 from a former strata council member, who believed that the strata council at the time, which included the current president, frustrated her efforts to investigate the strata's financial misdeeds.

Dr. Rapp says that the strata therefore cannot be trusted. I find this evidence speculative and unpersuasive.

58. Dr. Rapp does not identify any other specific documents that he believes exist that the strata has not provided. I find that he has not proven that the strata has failed to respond fully to his request for documents, and accordingly dismiss this claim.

***Did the members of strata council act in bad faith contrary to section 31 of the SPA? Are punitive damages warranted?***

59. Dr. Rapp alleges that the strata council, and in particular the president, acted in bad faith contrary to section 31 of the SPA. Section 31 of the SPA provides that each strata council member must act honestly and in good faith with a view to the best interests of the strata.

60. The obligations in section 31 of the SPA fall to the individual strata council members, not the strata itself. None of the members of strata council are parties to this dispute. Only the president has had an opportunity to make submissions, indirectly, as he made submissions on behalf of the strata.

61. Furthermore, the BC Court of Appeal in *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183, held that the remedies for breaching section 31 of the SPA are found in section 33 of the SPA (see paragraph 59). Furthermore, in *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, the BC Supreme Court found that individual owners in a strata have no right to sue strata council members other than for the remedies set out in section 33 of the SPA. Section 33 of the SPA is expressly outside of the tribunal's jurisdiction under section 122(1)(a) of the Act. Therefore, the tribunal has no jurisdiction to resolve this claim.

62. Section 10(1) of the Act says that the tribunal must refuse to resolve a claim that is outside of its jurisdiction. Accordingly, I refuse to resolve Dr. Rapp's claims for punitive damages against the individual strata council members.

63. While Dr. Rapp frames the relief sought as against the strata council members, his submissions could be interpreted as making allegations about the strata rather than

individual strata council members. In particular, Dr. Rapp says that the strata has discriminated against him and his family by treating them differently than other owners in the strata. In the interest of completeness, I will address these submissions.

64. In *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 SCR 1085, the Supreme Court of Canada said that the purpose of punitive damages is to punish extreme conduct that is worthy of condemnation. The Court also said that punitive damages may only be awarded to punish harsh, vindictive, reprehensible and malicious behaviour.
65. Dr. Rapp says that the strata has admitted that it has discriminated against Dr. Rapp because it has never demanded that any other owner get approval for an alteration to a strata lot. He says that there is evidence that several strata lots have been altered, including by members of strata council. He therefore says that the strata has unfairly targeted him.
66. Dr. Rapp also makes arguments about the strata's alleged failure to follow due process by referencing principles such as the presumption of innocence and the right to be informed of an offence, as set out in the *Charter of Rights and Freedoms*. These principles apply only in the context of criminal law and have no application to the strata's processes. The SPA and the bylaws set out a strata's procedural obligations, as discussed above.
67. The fact that Dr. Rapp has proven that the hot tub is safe does not mean that the strata was not right to be concerned in the first place. I find that the risks posed by a hot tub on a balcony that cannot support it are significantly higher than the unapproved "alterations" that Dr. Rapp points to. I find Dr. Rapp's submissions seeking to draw parallels between the hot tub and the other "alterations" unpersuasive.
68. In addition, I note that the strata acknowledged to Dr. Rapp following the June 2017 meeting that it could have done a better job raising its concerns about the hot tub. The strata sought feedback from Dr. Rapp with an eye to improving its practices.

While the strata had no legal obligation to do so, it would also likely have been preferable for the strata to notify Dr. Rapp that it continued to have concerns about the hot tub's safety before sending him the letter on August 30, 2018, which predictably came as a shock to Dr. Rapp. I find that this letter significantly contributed to the erosion of good will between the parties.

69. That said, insofar as there have been missteps or miscommunication, I note that members of the strata council are lay people volunteering their time in what is often a thankless role. It would be unrealistic and unreasonable to expect strata council to be perfect or to provide the level of procedural protection as in a criminal prosecution. See *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753. While Dr. Rapp is convinced that the strata's treatment of his hot tub has been driven by a personal vendetta, I find that the evidence does not bear out his belief. The written correspondence from the strata to Dr. Rapp has been cordial and respectful. In short, I find that none of the strata's actions are worthy of punishment.

70. Therefore, insofar as Dr. Rapp seeks punitive damages against the strata, I dismiss his claims.

***Should the strata council president be banned from sitting on strata councils throughout British Columbia?***

71. Dr. Rapp alleges that the president is a bully who runs the strata with an iron fist. Dr. Rapp believes that the president should be banned from sitting on any strata councils in British Columbia.

72. First, insofar as Dr. Rapp seeks a remedy that binds anyone other than the strata, his claim must fail. No strata corporation other than the strata is a party to this dispute and I cannot make an order that binds a non-party.

73. More importantly, I find that an order restricting the president's ability to sit on strata council would be inappropriate. Members of strata council are elected by the owners. The president has sat on strata council for over 10 years. This means that the owners have repeatedly endorsed his presidency. While the tribunal's



jurisdiction under section 123 of the Act may allow the tribunal to remove a member of strata council, I find that this remedy would be reserved for truly extraordinary circumstances, which I find are not present in this dispute. Dr. Rapp clearly disagrees with the majority of owners about whether the president should remain, but his recourse is to advocate for a new strata council president through the strata's democratic process. As stated by the Court in *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700, "those who choose communal living of strata life are bound by the reality of all being in it together for better or for worse."

74. I dismiss this aspect of Dr. Rapp's counterclaim.

## **TRIBUNAL FEES AND EXPENSES**

75. 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. Given that both parties have been partially successful, I find that it is appropriate for each party to bear their own tribunal fees and dispute-related expenses.

76. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against Dr. Rapp.

## **DECISION AND ORDERS**

77. I order that:

- a. Within 30 days of the date of this decision, Dr. Rapp provide the strata with a written agreement taking responsibility for any expenses relating to the hot tub.
- b. Upon receiving Dr. Rapp's written agreement referred to in the above paragraph, the strata is deemed to have approved the installation of the hot tub under bylaw 5.

78. I refuse to resolve Dr. Rapp's claim against individual strata council members for breaching section 31 of the SPA.
79. The parties' remaining claims are dismissed.
80. 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 123.1 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.
81. 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 123.1 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.

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Eric Regehr, Tribunal Member