



# Civil Resolution Tribunal

Date Issued: September 23, 2019

File: ST-2019-002873

Type: Strata

Civil Resolution Tribunal

Indexed as: *Frolic v. Perfect et al*, 2019 BCCRT 1123

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

ELIZABETH FROLIC

**APPLICANT**

**A N D :**

JAMES PERFECT, NEIL MITCHELL, CHUCK LLOYD-JONES and  
The Owners, Strata Plan NWS 297

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This is a dispute about strata governance. The applicant, Elizabeth Frolic, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NWS 297

(strata). She says that the individual respondents, James Perfect, Neil Mitchell and Chuck Lloyd-Jones, have acted inappropriately in their capacities as members of the strata council and spent the strata's money without approval from the ownership. She seeks a variety of orders about the conduct of the strata and the individual respondents. The individual respondents and the strata disagree with the applicant's position, and ask that her claims be dismissed.

2. The applicant, Mr. Perfect, Mr. Mitchell and Mr. Lloyd-Jones are self-represented. The strata is represented by Mr. Perfect with assistance from a lawyer.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
4. The respondents asked for an oral hearing in order that the applicant may be cross-examined about allegedly defamatory comments. The respondents acknowledge that the tribunal does not have jurisdiction over claims of defamation. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision in *Yas*

*v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

5. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. A dispute that involves some issues that are outside the tribunal's jurisdiction may be amended to remove those issues.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
7. Under section 123 of the CRTA 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, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. whether the strata should be ordered to enforce the bylaws as required by sections 26 and 135 of the Strata Property Act (SPA),
  - b. whether the strata should be ordered to accept the council positions chosen at the March 6, 2019 meeting of the strata council,
  - c. whether the individual respondents should be ordered to pay their own legal expenses,
  - d. whether Mr. Perfect and Mr. Lloyd-Jones should be ordered to not serve on strata council as they are in violation of the strata's bylaws,

- e. whether the strata council members should be ordered to comply with spending as set out in the budget approved by the ownership and as set out in section 92 of the SPA,
- f. whether the strata should be ordered to pay for a representative of the Condominium Homeowners' Association (CHOA) to attend and participate in special general meetings (SGMs) for a period of 2 years,
- g. whether the strata and the individual respondents should be ordered not to commence legal action against the applicant,
- h. whether the strata council members should be ordered to comply with the SPA and bylaws when calling meetings of the strata council,
- i. whether the strata council should be ordered to not circulate notices to residents that are not part of the governance of the strata,
- j. whether the elected members of the strata council should be ordered to include all members on decisions and communications, and
- k. whether the strata council members should be ordered to only obtain legal advice through the advice available under the strata's insurance coverage.

## **BACKGROUND AND POSITIONS OF THE PARTIES**

- 9. Ms. Frolic, Mr. Mitchell, Mr. Perfect, and Mr. Lloyd-Jones are all strata lot owners. At an annual general meeting (AGM) on February 25, 2019, they and one other strata lot owner, OD, were elected to strata council.
- 10. Prior to the first post-AGM meeting of the strata council, the applicant toured the strata's property with the property manager and noted bylaw infractions at a number of strata lots, including those owned by Mr. Perfect and Mr. Lloyd-Jones. The applicant instructed the property manager to send bylaw violation letters to the affected strata lot owners. The parties disagree as to whether these alleged violations were discussed with the other council members, or whether the alleged violations were dealt with in a manner consistent with the strata's previous practice.

11. At the March 6, 2019 strata council meeting, Mr. Perfect participated by telephone and was not present for the entire meeting. The strata council members' positions were determined, although the process by which this happened is not entirely clear. The applicant, OD and the property manager state that everything occurred with the agreement of all parties. However, the individual respondents say that the applicant stated that Mr. Perfect and Mr. Lloyd-Jones were not permitted to vote on any matters as they were in violation of the bylaws and "declared herself" to be president of the strata corporation.
12. Email correspondence among the strata council members after this meeting indicates that the members did not agree about the appropriate wording of the minutes. In addition, there was a lack of consensus as to whether a new landscaping contractor should be hired and disagreement as to whether the correct procedure was being followed for the bylaw violations.
13. The individual respondents suspected that the designation of council positions at the March 6 meeting had not been conducted correctly and the strata was not being governed properly. They say that they were concerned that the applicant might use her capacity as president of the strata council to award contracts to parties who were not at arm's length from the strata, without disclosing potential conflicts of interest, and without soliciting competitive bids. They sought legal advice on their own behalf.
14. Mr. Mitchell called a meeting of the strata council for April 1, 2019, at which time they held an election for positions on the strata council. The applicant was not the successful candidate for the position of president. The applicant maintained the position that she was the president as a result of the March 6, 2019 meeting. According to the individual respondents, the applicant maintained control of the strata's email address and some of the strata's financial documents.
15. The respondents' lawyer sent a letter to the applicant asking her to, among other things, cease and desist from representing herself as the president of the strata council. The lawyer also circulated a letter to the ownership about the applicant's

status as a council member, and advised that Mr. Perfect was the president of the strata council. This letter stated that the bylaw violation letters sent out by the property manager were a nullity, and provided owners with a new method for contacting the strata council.

16. Through the property manager, the applicant circulated her own letter to the owners in which she asserted that she and OD had been excluded by the individual respondents. The applicant talked about improper spending on the part of the individual respondents, with particular reference to an arborist and the landscaping contractor. The applicant indicated that she intended to seek help from the tribunal to address what she felt was rogue behaviour by the individual respondents.
17. The situation caused concern among the strata lot owners. On April 10, 2019, 2 strata lot owners notified the strata council that they had obtained signatures from 40% of owners to support convening an SGM for the purpose of dissolving the current strata council and electing a new council "for the betterment of the Strata complex". Bylaw 4.3 allows the strata, by resolution passed by majority vote at an AGM or SGM, to remove one or more council members and hold an election to replace the council member or members for the remainder of the term.
18. The applicant filed her Dispute Notice with the tribunal on April 11, 2019. On May 1, 2019, the strata council voted to retain a lawyer to assist the strata with the dispute process. The minutes of the meeting show that the individual respondents and OD attended the meeting, and that 3 members voted in favour of hiring a lawyer, with 1 member abstaining. The applicant and OD deny that OD participated in or voted at this meeting. The strata hired the same lawyer who had previously provided advice to the individual respondents.
19. The SGM took place on May 6, 2019. The ownership voted to dissolve the current strata council, and elected a new council with 7 members, being the individual respondents and 4 other owners. The applicant and OD are no longer members of the strata council.

20. At a meeting of the strata council on May 8, 2019, the new strata council held an election for various positions. The individual respondents were elected as officers.
21. The new strata council identified what it felt were procedural issues with the bylaw violation letters sent by the property manager in March of 2019. It decided to nullify these violations, and to form a committee with owners to review the strata's bylaws and rules.
22. The applicant's position is that the strata and the individual respondents have not acted in compliance with the SPA or the strata's bylaws. The applicant says that the individual respondents did not call meetings of the strata council appropriately, did not include her and OD in all meetings or strata-related decisions, hired a lawyer without approval of the ownership, and acted in a manner that would increase expenses for strata lot owners, including the hiring of the new landscaping contractor. The applicant says that the strata council will not enforce the strata's bylaws and that Mr. Perfect and Mr. Lloyd-Jones are not eligible to serve on council due to ongoing bylaw contraventions.
23. The respondents say that the applicant's claims are devoid of merit and moot as the owners elected a new strata council at the SGM. They deny that any of the respondents have refused to enforce the bylaws or rules, or that there has been any inappropriate spending. They say that the new strata council is aware of its legal obligations and mandates, and it is willing to adhere to the bylaws. The respondents say that the strata council acts upon complaints when they are received and always acts with the strata's best interests in mind.

## **ANALYSIS**

24. As a preliminary matter, the applicant's submissions ask for the removal of minutes from the strata's records and the correction of allegedly inaccurate information in various communications. As these issues were not identified in the applicant's Dispute Notice, I am unable to address them.

### ***Compliance with the SPA and Bylaws***

25. The applicant seeks orders that the strata and strata council members comply with various sections of the SPA and the strata's bylaws, as follows:
- a. that the strata enforce the bylaws as required by sections 26 and 135 of the SPA,
  - b. that the strata council comply with the approved budget and section 92 of the SPA,
  - c. that the strata council comply with the SPA and bylaws when calling meetings of the strata council, and
  - d. that the strata council include all members in communications and decisions.
26. I find that it is not necessary to make an order about compliance with the SPA. All strata corporations in British Columbia are required to comply with the SPA, and I am not satisfied that an order to that effect would have significant meaning. It will be open to strata lot owners to request specific remedies from the tribunal or from the courts for any future concerns about compliance with the SPA.
27. Similarly, bylaw 5.1 specifically states that all residents and visitors must comply with the bylaws and the rules. As the members of the strata council are residents, they are included in this bylaw and are obligated to comply with all bylaws, including those in Division 4 that govern the strata council's procedures and decisions. I do not find it necessary to make an order to reiterate the existing obligation in this regard.
28. I decline to make the orders sought by the applicant.

### ***Order to Accept Council Positions as determined on March 6, 2019***

29. The applicant asks for an order that the council positions determined at the March 6, 2019 strata council meeting be accepted. The parties have differing views as to whether the appropriate procedure was followed at this meeting. Given my



conclusion below, I do not find it necessary to make determination about procedural propriety.

30. The issue of the council positions determined on March 6, 2019 is moot. The previous strata council was dissolved and a new strata council elected as a result of the owners' votes at the SGM, as permitted by the strata's bylaws. The applicant speculates that there may not have been an SGM had the individual respondents acted differently. However, the owners' decision cannot be reversed. I dismiss this portion of the applicant's claim.

### ***The Individual Respondents' Legal Expenses***

31. The applicant asks for an order that the individual respondents pay for their own legal expenses that were not authorized by council or the strata.
32. The evidence before me does not suggest that the individual respondents are seeking reimbursement for these or any costs from the strata. An April 11, 2019 email message to a concerned strata lot owner states "we want to be very clear that we are not spending Strata's money on legal representation". This message was signed by the individual respondents.
33. I am satisfied that there is no claim for reimbursement of personal legal expenses on the part of the individual respondents. Therefore, it is not necessary for me to make an order and I dismiss this portion of the applicant's claim.

### ***Order that Mr. Perfect and Mr. Lloyd-Jones Not Serve on Council***

34. Bylaw 4.1(e) provides that no person may continue to serve as a member of the strata council if he or she is in contravention of any bylaw for a period exceeding 30 days. The applicant says that Mr. Perfect and Mr. Lloyd-Jones have been in violation of various bylaws for more than 30 days, and are therefore ineligible to serve on the strata council.
35. As noted above, the newly elected strata council nullified the March 2019 bylaw violation letters due to procedural concerns, including missing documentation for the

alleged infractions. The strata submits the council exercised its discretion under section 27 of the SPA in making this decision. Among other things, section 27 confirms that the strata council has discretion to determine, based on the facts of a particular case, whether a person has contravened a bylaw or rule, and order the person should be fined for same.

36. While the applicant may disagree with the decision, I find that the strata council exercised its discretion to make decisions about the bylaw violations discussed in the March 2019 letters. Thus, there were no ongoing contraventions as a result of these alleged infractions. Further, there is no indication in the evidence before me that there have been subsequent complaints about bylaw infractions on the part of Mr. Perfect or Mr. Lloyd-Jones.
37. I find that the applicant has not established that Mr. Perfect or Mr. Lloyd-Jones have been in contravention of the strata's bylaws for more than 30 days such that they are not eligible to serve on the strata council under bylaw 4.1(e). I dismiss this portion of the applicant's claim.

### ***CHOA Participation***

38. The applicant asks for an order that a CHOA representative attend and participate in SGMs for the next 2 years. It is not clear whether the applicant also seeks a representative's attendance at AGMs but, given my conclusion below, nothing turns on this.
39. The tribunal does not have inherent jurisdiction. Its jurisdiction in strata matters is set out in section 121(1) of the CRTA as including claims concerning:
- a. the interpretation of the SPA or a regulation, bylaw or rule under the SPA;
  - b. the common property or common assets of a strata corporation;
  - c. the use or enjoyment of a strata lot;
  - d. money owing, including money owing as a fine, under the SPA or a regulation, bylaw or rule under the SPA;

- e. an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant;
  - f. a decision of a strata corporation, including the council, in relation to an owner or tenant; and
  - g. the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an AGM or SGM.
40. I find that the order sought by the applicant is not included within the categories set out in section 121(1) of the CRTA. Accordingly, I do not have the jurisdiction to consider it, and refuse to resolve this issue under section 10 of the CRTA. Nothing in my decision would prevent the strata from considering CHOA participation in the future, or from asking the ownership to approve any related expenditures.

### ***Legal Action against the Applicant***

41. The applicant seeks an order that the strata and the individual respondents may not launch a suit against her for the time that she served on the strata council in 2019. The respondents say that they have not commenced or threatened legal action against the applicant.
42. I find that the order sought by the applicant is akin to a restraining order. Claims for restraining orders that are not linked to the categories set out in section 121(1) of the CRTA are not within the tribunal's jurisdiction. I find that the applicant's requested order does not fall within the scope of section 121(1) and I do not have the jurisdiction to address it. I refuse to resolve this portion of this dispute under section 10 of the CRTA.

### ***Correspondence to Residents***

43. The applicant asks for an order that the strata council may not circulate notices to residents that are not part of the governance of the strata. I find that this request is for a restraining order that is not related to one of the claims set out in section

121(1) of the CRTA. Accordingly, I also refuse to resolve this portion of the dispute under section 10 of the CRTA.

### ***Legal Advice***

44. I find that the applicant's request for an order that members of the strata council only obtain legal advice through the strata's insurance coverage is also not related to a claim set out in section 121(1) of the CRTA. As above, I refuse to resolve this portion of the applicant's dispute under section 10 of the CRTA.

45. Nothing in my decision would prevent the strata from discussing procedures for obtaining legal advice in the future.

### **TRIBUNAL FEES AND EXPENSES**

46. Under section 49 of the CRTA, 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. As the applicant was not successful, I find that she is not entitled to any reimbursement.

47. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicant.

### **ORDERS**

48. I dismiss the applicant's claims and this dispute.

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Lynn Scrivener, Tribunal Member