



# Civil Resolution Tribunal

Date Issued: October 17, 2019

File: ST-2019-001275

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dhanji et al v. The Owners, Strata Plan LMS 2472*, 2019 BCCRT 1194

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

SALIMA DHANJI, ROBSON LIU, SADAF MARDANI, STEPHANIE CHEATLEY, AMAN DHANJI, FRANCISCO TAN, SUSAN TAN, JING JUNG BAI, LOCHOVSKY FRED, ALIYA LALANI, PANG YUEN TSE, PRASHANT PANDIT, MICHAEL HERBERT, SANJAY MEHTA, GLENDA LOWE, YAO HONG REN, CHIH-WEI HUANG, QIONG CHEN JIANG, NANCY NOBLE, SANDIE FU, RANDY LAM, JEANNIE LAW, ESHAN FANI, EHASANALLAH EMIDI, JOHN MARUSENKO

**APPLICANTS**

**A N D :**

The Owners, Strata Plan LMS 2472

**RESPONDENT**

**A N D :**

SALIMA DHANJI, ROBSON LIU, SADAF MARDANI, STEPHANIE CHEATLEY, AMAN DHANJI, FRANCISCO TAN, SUSAN TAN, JING JUNG BAI, LOCHOVSKY FRED, ALIYA LALANI, PANG YUEN TSE, PRASHANT PANDIT, MICHAEL HERBERT, SANJAY MEHTA, GLENDA LOWE, YAO HONG REN, CHIH-WEI HUANG, QIONG CHEN JIANG, NANCY NOBLE, SANDIE FU, RANDY LAM, JEANNIE LAW, ESHAN FANI, EHASANALLAH OMIDI, JOHN MARUSENKO

**RESPONDENTS BY COUNTERCLAIM**

---

## REASONS FOR DECISION

---

Tribunal Member:

Micah Carmody

### INTRODUCTION

1. This dispute is about a strata's attempts to monitor and control short-term accommodation (STA) in the strata building.
2. The applicants and respondents by counterclaim, Salima Dhanji, Robson Liu, Sadaf Mardani, Stephanie Cheatley, Aman Dhanji, Francisco Tan, Susan Tan, Jing Jung Bai, Lochovsky Fred, Aluya Lalani, Pang Yuen Tse, Prashant Pandit, Michael Herbert, Sanjay Mehta, Glenda Lowe, Yao Hong Ren, Chih-Wei Huang, Qiong Chen Jiang, Nancy Noble, Sandie Fu, Randy Lam, Jeannie Law, Eshan Fani, Ehasanallah Omid, and John Marusenko (owners), own strata lots in the respondent strata corporation The Owners, Strata Plan LMS 2472 (strata).
3. The owners say STA use is allowed under the bylaws. They say despite this, the strata has illegally collected owners' personal information by monitoring the use of key fobs and recording licence plates to control STAs. They seek orders that the strata stop monitoring key fob use and destroy related records. They seek orders that the strata stop issuing fine letters and harassing the owners, and stop soliciting voting proxy appointments for the strata council president. Finally, they say the strata council president has failed to act in good faith and therefore they seek an order removing him from the strata council.
4. The strata says most of the applicants' strata lots are ineligible for STA use under the bylaws because they are operating illegally. It says that following one applicant owner's complaint to the Office of the Information and Privacy Commissioner, the strata made changes to its information collection policies. The strata denies the remaining allegations.

5. The strata counterclaims, seeking an order requiring the owners to provide a copy of their City of Vancouver (city) STA licences before engaging in any STA activities. It also seeks an order requiring the owners to provide a signed Form K under section 146 of the *Strata Property Act* (SPA), and its bylaws, for each tenant, licensee or occupant.
6. The owners are represented by the primary applicant, Salima Dhanji. The strata is represented by the strata council president.
7. The Dispute Notice listed both Fan Shing Chu Fu and Sandie Fu as applicants. In other tribunal documents, Fan Shing Chu Fu listed Sandie Fu as an 'other name'. Accordingly, I have amended the style of cause to match the title records showing Sandie Fu as owner of a strata lot, and removed the name Fan Shing Chu Fu.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
10. 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.

11. 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.
12. 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**

13. The issues in this dispute are:
  - a. Do the strata's bylaws prohibit STAs?
  - b. Should I order owners to provide a Form K signed by all licensees or occupants of their strata lot?
  - c. Should I order the owners to annually provide a copy of their city STA licence prior to engaging in any STA activities?
  - d. Should I order the strata to reverse all fines for STAs applicable to the owners' strata lots?
  - e. Should I order the strata to stop sending STA-related fine letters to owners?
  - f. Has the strata breached the owners' privacy rights by monitoring the use of key fobs and checking licence plates to identify STAs?
  - g. Should I order the strata to destroy records of the fob owner names used to monitor STAs?
  - h. Did council members fail to act in good faith and follow the law? If so, should I order the removal of any council members?
  - i. Should I order the strata to cease soliciting voting proxy appointments?

## EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant owners must prove each of their claims on a balance of probabilities. The strata must prove its counterclaims to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
15. The strata is a complex of two towers and related amenities in downtown Vancouver. It comprises 272 strata lots. The strata's unchallenged evidence is that the strata property was originally marketed as a residential complex for both owner occupants and investors, where sales optionally included a furniture package with a rental manager that rented the strata lot as part of a rental pool for periods of over 30 days.
16. According to the strata, STAs of fewer than 30 days became a significant issue for the strata around 5 years ago. The strata council began hearing complaints about security, noise, wear and tear, and late-night arrivals due to the high turnover of STA guests.
17. The strata submitted evidence showing active, recent Airbnb listings for numerous strata lots in the strata building. Many of them are available for short-term stays and have recent reviews from guests.
18. The strata also provided statements from witnesses about the impact of STAs. Some residents indicated concern for their safety due to the increased number of strangers in the common areas. Concierge staff said they are asked to hold keys and answer tourists' questions like hotel staff.
19. The owners counter that STA guests are respectful and thoughtful, and say that noise complaints and security concerns arise just as frequently from owner occupants and long-term tenants. The owners say the majority of owners do not want restrictions on STAs, as evidenced by the strata council's failed attempt to introduce new bylaws explicitly prohibiting STAs in 2018.

20. The unchallenged evidence of the strata is that STAs were effectively prohibited by city bylaws until they were regulated in 2018. Commencing in August 2014 the strata council instructed its property management company to send warning letters and fine letters to owners suspected of conducting STAs (including some of the applicants), and to local companies in the business of offering STAs believed to be operating in the strata building.
21. Following the city's 2018 regulation of STAs, the strata's position has been that legal STAs are allowed under its bylaws but that most strata lots are conducting STAs illegally as they were leased to rental managers rather than being the STA operator's primary residence, which is a city requirement. There have been disagreements between the strata council and some owners about how much information the strata can require from owners, including whether the strata can require a copy of an owner's municipal STA licence. The strata says to date only two owners or tenants have provided copies of their licences.
22. The owners say there is no strata bylaw that prohibits owners from conducting STAs. They say whether an owner is legally conducting STAs is an issue for the city and not the strata. They also say there is no evidence of any illegal activity.
23. In submissions, the strata says that without admitting any liability for its past practices or actions, it will consent to a declaration that STAs are permitted under the current bylaws, provided STA operators meet certain conditions. These conditions include complying with applicable municipal bylaws, providing copies of the city STA licences, and complying with other strata bylaws, including bylaw 43.3 which the strata says requires a Form K signed by each occupant.

***Do the strata's bylaws prohibit STAs?***

24. Although the owners' claims are framed in the strata's conduct relating to STAs, I find that underlying the claims, and the strata's counterclaims, is a fundamental issue of whether or not the bylaws prohibit STAs. In their submissions, the owners argue that the bylaws explicitly allow STAs. The strata says the bylaws impose strict

requirements on STAs that most strata lots in the building do not meet. As a result, I find it is necessary to determine whether the strata's bylaws prohibit STA use.

25. The strata's position with respect to STAs has evolved over time as STAs have increased in popularity and as the city refined its regulatory response. The evidence shows that the strata has warned or fined owners suspected of conducting STAs for contraventions of bylaws 4.1(d) (illegal use), 4.1(e) (contrary to a strata plan purpose), 4.5 (commercial use), 4.6 (over occupancy), and 43.3 (Form K requirement).
26. The owners say that STAs are permitted under bylaw 43 governing residential rentals. The strata did not always accept that position but, at least for the purposes of this dispute, it appears willing to accept STAs on two conditions. The first condition is that residents seeking to operate STAs comply with applicable city bylaws and provide the strata with copies of their city STA business licences. The strata says failure to comply with the city bylaws means the use of the strata lot is illegal, contrary to bylaw 4.1(d). The second condition is compliance with bylaw 43.3, which the strata says requires owners to provide a Notice of Tenant's Responsibilities (Form K) signed by each occupant.
27. The owners say that they are not required to provide a Form K with each change in occupancy, unless the occupant is a tenant or sub-tenant, and relies on *The Owners, Strata Plan VR 2213 v. Duncan & Owen*, 2010 BCPC 123. I return to this decision below after summarizing the strata's applicable bylaws.
28. Bylaw 4.1(d) says that a resident or visitor must not use a strata lot, the common property or common assets in a way that is illegal.
29. Bylaw 4.5 says that a resident will not use or allow their strata lot to be used for commercial or professional purposes other than the rental of their suite.
30. Bylaw 4.6, which was added in 2008, says that a resident must not use, or permit to be used, the strata lot except as a private dwelling home. It also restricts occupancy generally to 2 persons per bedroom in each strata lot.

31. Bylaw 43 addresses residential rentals. Bylaw 43.1 says there are no restrictions whatsoever on the number of strata lots that may be leased, whether by short- or long-term leases. Bylaw 43.2 says that bylaw 43.1 cannot be changed except by unanimous resolution.
32. Bylaw 43.3 says that within 2 weeks of renting a strata lot, the landlord must give the strata a copy of the Form K – Notice of Tenant’s Responsibilities signed by the tenant, in accordance with section 146 of the SPA.
33. Bylaw 43.4 provides for a fine of \$200 for a contravention of bylaw 43.3.
34. Bylaw 43.5 says that “lease” or “leased” includes “any agreement whatsoever, whether written or oral, express or implied, predetermined expiry date or not, between an owner and another person, firm or corporation respecting possession and/or occupancy of a strata lot, including a month-to-month tenancy.”
35. Part 8 of the SPA addresses owners’ and strata corporations’ rights and obligations with respect to strata lot rentals. Section 141 allows the strata to pass bylaws to prohibit or limit strata lot rentals.
36. Courts have found that the rights and obligations in Part 8 of the SPA only apply where the renter receives exclusive possession and control of the property, known as legal possession (*HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS 2478*, 2017 BCSC 10, affirmed 2019 BCCA 64). Short-term accommodations do not typically give the guest exclusive possession and control of the property. Rather, they give the guest a licence to occupy the property for a specified period of time.
37. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, the court found that the words ‘rent’ and ‘rental’ in Part 8 are used in the context of tenancies and do not apply to licenses. Because terms used in bylaws must carry the same meaning as the terms in the SPA, the court held that the rental bylaws in that case did not apply to short-term licence agreements.



38. Applying the court's reasoning, which is binding on me, I find that bylaw 43, as a bylaw created pursuant to Part 8 of the SPA, governs tenancies but does not apply to licencing arrangements.
39. In *Duncan & Owen*, a case relied on by the owners, the strata corporation took the position that a move-in fee and Form K was required for every change in occupancy of a strata lot leased to a corporation that provided accommodation to others for a fee. The court found that the SPA did not require a Form K to be delivered to the strata whenever there is a change in occupancy, unless that occupant is a tenant or sub-tenant. The occupiers (who stayed anywhere from 30 days to a year) were licensees and not tenants or sub-tenants. I agree with the court's reasoning, which was expanded in the above-noted decisions and in my view applies with additional force to occupancies shorter than 30 days.
40. In *Semmler*, the court set out the following principles:
- a. A person may occupy a strata lot under a tenancy agreement or a license agreement.
  - b. A tenant is a person who rents all or part of a strata lot and who, through that arrangement, receives an interest in the property including exclusive possession of the premises.
  - c. An occupant is a person other than an owner or tenant who occupies a strata lot.
  - d. A licensee is an occupant but not a tenant.
  - e. Provisions of the SPA that relate to tenants and tenancies do not apply to licensees (para 45).
41. The owners cannot rely on *Duncan & Owen* to assert that bylaw 43.3 does not require Form Ks for each change in occupancy, but also assert that bylaws 43.1 and 43.5 expressly permit STAs. The two positions are in direct conflict. If STAs constitute leases that are allowed under bylaws 43.1 and 43.5, then all bylaw 43

applies to all STAs, and Form Ks are required for each change in occupancy. If Form Ks are not required because the occupants are not tenants but instead licensees, then bylaws 43.1 and 43.5 do not protect STAs. The latter position, in my view, is correct.

42. Bylaw 43.5 is ambiguous because of the use of the term 'and/or'. It says a lease includes any agreement respecting possession and/or occupancy of a strata lot. Although STAs create a right of occupancy, tenancies create a right of occupancy and a right of possession.
43. While the strata bylaws are not a statutory enactment, basic rules of statutory interpretation should be employed in understanding how the bylaws work together (*Semmler*, at para 18). As such, to determine the meaning of an individual bylaw, the bylaws must be read as a whole. An interpretation that allows the bylaws to work together harmoniously and coherently should be preferred.
44. Bylaw 43.5 explicitly says that leases are agreements between *owners* and others. This means that agreements between third party tenants and occupants are presumptively not leases. Bylaw 43.5's final clause states that a lease includes a month-to-month *tenancy*. Although that does not preclude other types of leases, it does suggest an intention not to broaden the definition of 'lease' such that it included STAs.
45. Bylaw 43 refers to 'rental' or 'renting' in its title and in bylaw 43.3 and 43.4. It does not refer to licences. Terms used in bylaws must carry the same meaning as terms used in the SPA. The court's finding in *Semmler*, discussed above, that the words 'rent' and 'rental' in Part 8 apply to tenancies and do not apply to licenses, indicates that bylaw 43 does not apply to STAs.
46. This interpretation is confirmed by reference to bylaws 4.5 and 4.6. Bylaw 4.5 says that a resident must not use or allow their strata lot to be used for *commercial* or professional purposes *other than the rental* of their suite. 'Rental' in this context must be interpreted consistently with the SPA and with bylaw 43 as pertaining to tenancies. 'Rental' does not include a licence to occupy typical of STA.

47. Bylaw 4.6, which was added in 2008, says that a resident must not use or allow their strata lot to be used except as a “private dwelling home”. It also restricts occupancy generally to 2 persons per bedroom.
48. Bylaws 4.5 and 4.6 are use bylaws. Read together, they prohibit the use of a strata lot for commercial purposes or as anything other than a private dwelling home.
49. In *Semmler*, the relevant bylaw prohibited the use of a strata lot for “any business purpose whatsoever” without council approval. The court found that the rental of a strata lot was not a business purpose, because although rentals of fewer than 30 days were prohibited, rentals of more than 30 days were by implication allowed. The court found that short term occupancies were not rentals as they did not create tenancies, so they were not prohibited by the bylaws.
50. The main difference between the bylaws in *Semmler* and the bylaws here is that the bylaws in *Semmler* did not contain any requirement that the strata lot only be used as a private dwelling home. The term ‘private dwelling home’ is not defined in the bylaws or the SPA. The *Oxford Dictionary* online edition ([en.oxforddictionaries.com](http://en.oxforddictionaries.com)) defines ‘private’ as belonging to or for the use of a particular person or group of people only, and ‘dwelling’ as a house, flat, or other place of residence. Based on those definitions, and the cases discussed below, I find that a private dwelling home is a home for the exclusive use of a particular group of people.
51. In *The Owners, Strata Plan VR 164 v. Hawco*, 2018 BCCRT 134, the tribunal considered bylaws that prohibited an owner from using their strata lot for commercial purposes or any purpose other than a private dwelling home. The vice chair found that by charging a fee for short-term use of his spare bedroom, the owner was using his strata lot for a commercial purpose contrary to the bylaws. However, those bylaws contained another bylaw more explicitly prohibiting STAs.
52. Similarly, in *The Owners, Strata Plan VR812 v. Yu*, 2017 BCCRT 82, the tribunal found that an owner using their strata lot as an Airbnb unit was not using it as a “private dwelling home”, contrary to the bylaws. Again, those bylaws also explicitly prohibited STAs.

53. In *Metropolitan Toronto Condominium Corp. No. 850 v. Oikle* (1994 CarswellOnt 763), the owner leased her strata lot to a company in the business of “leasing condominium units to persons who would otherwise stay in hotels.” The court found that the owner was in breach of provisions prohibiting commercial use and requiring units to be used only as private single-family residential dwellings.
54. The BC Supreme Court considered the meaning of ‘residential use’ in a zoning bylaw in the context of vacation rentals in *Nanaimo (Regional District) v. Saccomani*, 2018 BCSC 752. In that case, the Nanaimo Regional District sought an order prohibiting vacation rentals. The owners did not live in the home and rented it out for brief periods. The Regional District argued that renting the home out to tourists was not a ‘residential use’ under the zoning bylaw. The Court found that residential use must be ‘non-transient’. It observed that vacation rental properties can change the character and nature of a residential neighbourhood, as short-term visitors do not share the same goals or interests as residents. I find that the Court’s comments apply with additional force in the strata context where the vacationers may share walls and common property with residents.
55. The BC Court of Appeal recognized the distinction between residential use and commercial STA use in *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2019 BCCA 64, remarking in its opening paragraph:
- Residential use of strata property differs markedly from commercial use for short-term accommodation. For some owners, the latter creates a welcome opportunity to generate income; for others, a revolving door of strangers within their collective home.
56. The foregoing court decisions align with an interpretation of the strata’s use bylaws based on the ordinary meaning of the words, which prohibit uses that are commercial or anything other than a private dwelling home. The court decisions say that STAs are transient and not private, and therefore inconsistent with the use of a strata lot as a private residence. Giving the words in the bylaws their ordinary meaning, the only reasonable interpretation of the strata’s bylaws is that STAs are

prohibited by the use bylaws (4.5. and 4.6), and not saved by bylaw 43, which only applies to tenancies and not STAs. Thus, I conclude that the strata's bylaws do not allow STAs.

***Should I order owners to provide a Form K signed by all licensees or occupants of their strata lot?***

57. Based on the reasoning above, and particularly *Duncan & Owen*, owners and residents are not required by either the SPA or the bylaws to submit to the strata Form Ks for STA occupants. This is because STA occupants are granted licences to occupy rather than the right of exclusive possession. Section 146 of the SPA, which imposes the Form K requirement on landlords, does so only for tenancies (see *Semmler*, above). Accordingly, I decline to order owners to provide the strata with a completed Form K for each licensee or occupant. Given that I have found STAs are already prohibited by the bylaws, this issue is moot unless the strata changes its bylaws. I dismiss the strata's counterclaim.

***Should I order the owners to annually provide a copy of their city STA licence prior to engaging in any STA activities?***

58. The parties do not dispute that city bylaws effectively prohibited STAs under 30 days until April 1, 2018, when the city passed bylaws prohibiting STAs except in a principal residence. Those bylaws also required persons offering STAs to obtain a licence from the city.

59. As discussed above, strata bylaw 1.4(d) prohibits the illegal use of a strata lot. In the past, the strata has tried to stand in the shoes of the city and enforce the city's bylaws by requiring owners to demonstrate proof of principal residence, among other things, rather than simply requiring owners to provide a copy of their city STA licence.

60. I agree with the owners that the strata cannot treat the city's licences as invalid. If an owner or tenant furnishes a copy of its licence to the strata, the strata must accept that it is operating legally. The strata may validly require residents to

produce a copy of their city licences in order to ensure that that the strata lot is not being used illegally contrary to bylaw 1.4(d), but that is as far as the strata's inquiry can go. If the strata thinks the owner should not have a licence for some reason, that is a matter for the strata to raise with the city.

61. Given my finding that that the strata's bylaws prohibit STA uses, it would not be appropriate to order the owners to produce their city STA licences. The strata may require owners and tenants to do so, but the requirement to produce a licence will not arise unless the strata amends its bylaws to remove the prohibition on STA uses. I dismiss the strata's counterclaim.

***Should I order the strata to reverse all fines for STAs applicable to the owners' strata lots?***

62. In submissions, the owners asked that all fines for STAs for the owners be "dismissed". They did not request this resolution in their Dispute Notice. The Dispute Notice only mentions bylaw contravention fines in the context of a requested remedy that the strata council cease "harassment/fine letters". The CRTA and the tribunal's rules allow an applicant to request that a Dispute Notice be amended, but the owners did not make such a request.

63. While the tribunal's mandate includes flexibility in dispute resolution, I find it would not be appropriate to cancel all STA-related fines, for a number of reasons. First, the owners did not provide sufficient details, such as when the fines were levied, to which owners, and for what bylaw contraventions. Second, there is no evidence about some of the strata lots and the uses to which they have been put. Third, given my finding that STAs are contrary to the strata's bylaws, it would be inappropriate to cancel all STA fines. I decline to order the strata to cancel all fines for STAs because I find the issue is not properly before me.

64. In response to the owners' submission, the strata said all fines levied are substantiated by the evidence and should be confirmed due and owing. The strata did not counterclaim for confirmation of the fines. I cannot grant the strata's requested order as the issue is not properly before me.

65. Because part of the tribunal's mandate is to recognize relationships between disputing parties that will continue after the tribunal proceeding is concluded, I will make brief non-binding comments about the bylaw contraventions and fines. The requirements that a strata must meet before imposing a fine for a bylaw breach are set out in section 135 of the SPA and include giving the owner particulars of the complaint in writing, and a reasonable opportunity to answer the complaint. Although some of the strata's letters correctly refer to bylaws 4.5 and 4.6 and provide particulars, others refer to 'illegal' STAs that may have had city STA licences and therefore been legal (although I make no finding on that). The strata may wish to consider reversing STA-related fines that were levied based on breaches of bylaws other than 4.5 and 4.6. It also may wish to consider reversing STA-related fines based on information collected through breaches of PIPA (discussed below), if it has not already.

***Should I order the strata to stop sending STA-related fine letters to owners?***

66. The owners say the strata has "illegally" issued fine letters and continues to harass and bully owners.

67. I have reviewed the letters submitted by the strata and I do not find anything constituting harassment. Letters warning of bylaw contraventions and associated fines are an important tool in any strata's bylaw enforcement toolbox. As mentioned above, section 135 of the SPA sets out the requirements the strata must meet before imposing a fine. The strata's letters generally provide particulars about the alleged contravention, including dates and observations.

68. I found no evidence to support the owners' allegations of bullying and harassment from the strata council. Although some of the strata council's previous efforts, such as creating rules to deal with STAs, may have been misguided, it cannot be said that they were targeted toward specific individuals.

69. For those reasons, and because I have found that STAs are generally prohibited by the bylaws, I decline to order the strata to stop sending fine letters to the owners. I dismiss this claim.

***Has the strata breached the owners' privacy rights by monitoring the use of key fobs and checking licence plates to identify STAs?***

70. The owners allege that the strata has monitored licence plates of vehicles parked in the strata building and monitored the use of key fobs in contravention of the *Personal Information Protection Act* (PIPA). It refers to information from the Information and Privacy Commissioner (commissioner) advising that strata corporations should not use personal information from video surveillance and key fob systems to levy bylaw contravention fines.

71. The strata notes that the owners have made the same allegations in a complaint to the commissioner that is under investigation. The strata also says it changed its policies and procedures regarding collection of personal information from its key fob and video surveillance systems as directed by the commissioner. The strata says it now identifies STAs from complaints, from STA guests identifying themselves as such to the concierge, and from information available from public sources, such as Airbnb listings. I find that those are appropriate ways to gather information about potential bylaw contraventions.

72. Under section 121(1) of the CRTA, the tribunal's strata property jurisdiction is limited to claims under the SPA. The owners' claim that the strata has contravened PIPA is properly a claim under PIPA, not the SPA. Under section 10(1) of the CRTA, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. Accordingly, I refuse to resolve the claim.

73. Even if the tribunal had jurisdiction under the CRTA, I would refuse to resolve the claim under section 11(1)(a)(i) as the claim is more appropriate for another legally binding process. PIPA provides that decisions about PIPA breaches are to be made by the commissioner. The BC Supreme Court has considered whether PIPA is a comprehensive legislative scheme or one that leaves room for civil actions to



enforce its provisions. It found that PIPA is adequately comprehensive and that an individual can only advance a claim against an organization for damages after the commissioner has made an order: *Facilities Subsector Bargaining Association v. British Columbia Nurses' Union*, 2009 BCSC 1562.

74. In some places the owners refer to the *Privacy Act*. It is not clear whether they are using a short form of PIPA or they intended to refer to the *Privacy Act*, distinct legislation establishing a tort for wilfully violating the privacy of another. However, the *Privacy Act* states that despite any other act, an action under the *Privacy Act* can only be heard by the Supreme Court. Accordingly, the Tribunal cannot hear claims under the *Privacy Act*. I refuse to resolve this claim.

***Should I order the strata to destroy records of the fob owner names used to monitor STAs?***

75. For the reasons cited above, I find that the tribunal does not have jurisdiction over this claim. It does not fall within section 121(1) of the CRTA. Additionally, it would not be appropriate for the tribunal to order destruction of property that may be part of an investigation under PIPA. I refuse to resolve this claim.

***Did any strata council members fail to act in good faith and follow the law? If so, should I order the removal of any council members?***

76. Section 31 of the SPA says that in exercising the powers and performing the duties of the strata corporation, each strata council member must act honestly and in good faith, and must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. The owners allege that some strata council members – particularly the long-serving president – have breached this duty.
77. The owners' claim that strata council members failed to act in good faith must fail for 2 reasons. The first reason is that the owners named only the strata as a respondent in this dispute. They have not named individual council members, who therefore have not had the opportunity to provide a defence. The second reason is that claims against council members under section 31 must be brought by or on

behalf of the strata corporation rather than individual owners, because it is the strata corporation to which the council members owe a duty of care. This means that the owners do not have standing to bring a claim under section 31.

78. Courts have said that the only time an owner can bring a claim against a council member is for a breach of the conflict of interest disclosure requirement under section 32 of the SPA: *Wong v. AA Property Management Ltd*, 2013 BCSC 1551 at para 36. Remedies for a breach of section 32 are specifically excluded from the tribunal's jurisdiction under section 122 of the CRTA.
79. As for removal of council members, I note that the president has been elected to council at the strata's AGM for a number of consecutive years. There is no suggestion of anything improper with the elections. Courts and the tribunal are reluctant to interfere with the democratic rights of owners to choose their strata council.
80. For these reasons, I dismiss this claim.

***Should I order the strata to cease soliciting voting proxy appointments?***

81. A proxy stands in the place of the person appointing the proxy. The owners allege that strata and building management staff have solicited proxy appointments on behalf of the strata president for voting. They say that the strata president at the 2018 annual general meeting (AGM) had approximately 53 proxies and used them as a single "super vote". This is related to the above claim in that the owners allege it is not possible to remove the president from council by the democratic voting process due to his influence with building staff and the property manager.
82. In a witness statement, the strata council president said that he has never requested or directed any staff person to ask owners to provide proxy appointments, nor has any other council member to his knowledge. He says staff encourage owners to attend the AGMs or designate a proxy they trust in order to achieve quorum. Statements from 2 staff members confirm that they have not solicited proxy appointments, although they do forward written proxy appointments

to their intended recipients. I find that the owners have not provided sufficient evidence to substantiate their claim that staff have been soliciting proxy appointments.

83. Regardless, the SPA does not prohibit solicitation of proxy appointments. A court or the tribunal may make orders to prevent or remedy a significantly unfair exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an AGM or SGM. However, there is no evidence that any person ever held 50% or more of the votes at an AGM or SGM. At the November 2018 AGM for which the owners complain of the strata council president's 53-proxy 'super vote', there were 50 eligible voters in attendance and 111 represented by proxy. I dismiss this claim.

## **TRIBUNAL FEES AND EXPENSES**

84. The owners were unsuccessful in their claims and the strata was unsuccessful in its counterclaims. Therefore, in accordance with the Act and the tribunal's rules, I find that neither party is entitled to reimbursement for tribunal fees or dispute-related expenses.
85. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

## **ORDERS**

86. I refuse to resolve the owners' claims related to alleged contraventions of the PIPA, and for destruction of records.
87. I dismiss the rest of the owners' claims that were properly before me. I dismiss the strata's counterclaims and this dispute.

---

Micah Carmody, Tribunal Member

