



# Civil Resolution Tribunal

Date Issued: December 10, 2019

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Kornylo v. The Owners, Strata Plan VR 2628*, 2019 BCCRT 1387

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

FRANK KORNYLO

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR 2628

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. The applicant, Frank Kornylo, owns 1 of the 4 strata lots in the respondent strata corporation, The Owners, Strata Plan VR 2628 (strata). The applicant is the only owner who is not on strata council.

2. The applicant's Dispute Notice includes several claims, each of which includes several sub-issues. He asks for the following orders:
  - a. That the strata allow the applicant to rebuild a new fence in the same location as an existing fence and register the fence's location with the City of Vancouver (City) and the Land Title Office (LTO).
  - b. That the 3 strata council members be required to pay City fines and other costs related to City bylaw infractions, without contribution from the applicant.
  - c. That the strata reimburse the applicant for his share of landscaping expenses from February 2015 to February 2019.
  - d. That the current strata council be dissolved and a property management company be retained to run the strata for the next 2 years, at the expense of the 3 strata council members. In the alternative, that the 2019 annual general meeting (AGM) vote "excluding" the applicant from strata council be set aside and that the applicant be put on strata council.
  - e. That the current strata council president, TU, be removed and permanently barred from serving on the strata council.
  - f. That the last 2 years of the strata's finances be audited and that the 3 strata council members reimburse the applicant for any misappropriated funds or unauthorized expenditures.
  - g. That the strata pay the applicant \$36,000 in general damages and punitive damages for harassment and unfair strata decisions.
3. The strata says that all the applicant's claims should be dismissed. The strata also asks for an order for reimbursement of its legal fees.
4. The applicant is self-represented. The strata is represented by TU.

## JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction.
8. 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.
9. 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**

10. The issues in this dispute are:

- a. Should I make any orders against the strata council members about the City bylaw issue?
- b. Should a new fence be built in the same location as the existing fence? If so, what order is appropriate?
- c. Is the applicant entitled to be reimbursed for landscaping expenses from February 2015 to February 2019?
- d. Should I order the strata's finances to be audited?
- e. Is the applicant entitled to general damages or punitive damages?
- f. Should I order the strata to retain a property manager? If not, should I make any orders about the composition of the strata council?
- g. Should I order the applicant to reimburse any of the strata's legal fees?

## **BACKGROUND**

11. In a civil claim such as this, the applicant must prove his case on a balance of probabilities.

12. The strata has 4 strata lots. Strata lots 1, 2 and 3 share a building that fronts a public road, while strata lot 4, the applicant's, is in a separate building on a laneway at the back of the strata's property. The laneway is to the north of the strata's property. TU owns strata lot 1. Until July 15, 2019, MC owned strata lot 2 and was represented in strata matters by her relative, DH, under a power of attorney. EC owns strata lot 3.

13. The strata has filed one bylaw amendment with the LTO, which is not relevant to this dispute. I find that the relevant bylaws are the Standard Bylaws under the SPA.

14. This is the fifth dispute that the tribunal has adjudicated between the applicant and the strata. I decided the first 3 in *Kornylo v. The Owners, Strata Plan VR 2628, 2018 BCCRT 599 (Kornylo 2018)*. The vice chair of strata disputes decided the fourth in *Kornylo v. The Owners, Strata Plan VR 2628, 2019 BCCRT 1215 (Kornylo 2019)*.
15. In *Kornylo 2018*, the applicant made claims about repairs to his strata lot and limited common property (LCP), strata fee arrears and the validity of a strata bylaw. He also asked for an order that a property manager administer the strata, as he has in this dispute. He was partially successful in his monetary claims. I dismissed the applicant's remaining claims.
16. In *Kornylo 2019*, the applicant made claims about the strata's window replacement project and a doorknob. In that dispute, the applicant also claimed punitive damages against the 3 strata council members, even though they were not parties to the dispute. The applicant was successful in his claim for reimbursement of the cost of the doorknob. The Vice Chair dismissed the applicant's remaining claims.
17. In this dispute, the parties provided hundreds of emails as evidence. Many of these emails relate to substantive issues that the tribunal decided in *Kornylo 2018* and *Kornylo 2019*. As I understand both parties' submissions, they provided these emails as evidence about the applicant's claim for general damages and punitive damages, which the applicant says is based on a long pattern of harassment and abuse. The emails also indicate that the applicant plans to bring more tribunal disputes.
18. I find that it is unnecessary for me to describe the parties' correspondence in any detail. Indeed, much of the correspondence relates to matters that were either the subject of previous adjudicated disputes or may be the subject of future disputes. I find that it would be inappropriate for me to make specific findings of fact about matters that are not properly before me. That said, I have read and considered all the correspondence between the parties when assessing the applicant's claims for punitive damages and general damages.

## EVIDENCE AND ANALYSIS

### Should I make any orders against the strata council members about the City bylaw issue?

19. As discussed in more detail below, the City has required the strata to seek approval for an updated landscape plan that addresses changes to the strata's original landscaping. The strata is over 30 years old and has made several landscaping and fence changes over the years. The City takes the position that the strata has made these landscaping changes without City approval, in breach of City bylaws. The landscape issues include the height of a portion of fence, the location of another fence, and changes to the plants in the strata's common property gardens. The City's process is ongoing.
20. The applicant wants the 3 strata council members to pay any costs associated with the strata's efforts to comply with the City's bylaws. His order is directed at the 3 strata council members, not the strata. I find that the applicant's claims against the 3 strata council members must fail.
21. The tribunal considered a very similar claim in *Kornylo 2019*. The vice chair dismissed the applicant's claims against the 3 strata council members for 2 reasons. The first reason was that the applicant did not name any of the strata council members as respondents and the tribunal cannot make orders against non-parties. I agree with this reasoning, although it is not binding on me. As in *Kornylo 2019*, the 3 strata council members are not parties to this dispute. For this reason, I dismiss the applicant's claims against the 3 strata council members.
22. I also agree with the vice chair that even if the applicant had named the 3 strata council members as respondents, his claims still would have failed. The only circumstance where an individual owner can make a claim against a strata council member is for breaching section 32 of the SPA, which is about conflicts of interest. The only remedies for breaching that section are found in section 33 of the SPA: see *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183. Section 122(1)(a) of the CRTA specifically excludes section 33 of the SPA from the

tribunal's jurisdiction. The applicant did not make any claims under section 32 of the SPA, but even if he did, I would have refused to resolve them because only the Supreme Court of British Columbia (BCSC) can decide claims under section 32 of the SPA.

23. Rather, the applicant relies on section 31 of the SPA. Section 31 of the SPA requires strata council members to act honestly and in good faith with a view to the best interests of the strata corporation, and to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. The applicant says that the strata council members breached section 31 of the SPA.
24. Only a strata corporation, not an individual owner, can bring a claim against a strata council member for breaching section 31 of the SPA: see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32. Therefore, the applicant has no legal standing to make a claim against the individual strata council members for breaching section 31 of the SPA. Therefore, even if the 3 strata council members were respondents, I would have dismissed his claims against them because of his lack of standing.
25. I note that in a different part of his Dispute Notice, the applicant asks for an order that he be "excluded" from the costs of the City bylaw issues. While this reframing of the issue does not appear to be directed at the individual strata council members, I find that in substance the applicant is asking for the same thing – an order that the strata council members alone pay for the costs of the City bylaw issues.
26. In any event, the vice chair addressed a very similar claim in *Kornylo 2019*, in which the applicant asked to be excluded from certain strata expenses. I agree with the vice chair that the applicant's claim was essentially for punitive damages. There is no basis in the SPA for an owner to be excluded from certain expenses because the owner believes that the strata made a mistake in incurring them. Therefore, while I have dismissed this specific claim, I have considered the issues with the City in the applicant's claim for general damages and punitive damages, discussed below.

**Should a new fence be built in the same location as the existing fence? If so, what order is appropriate?**

27. As mentioned above, the applicant's strata lot is in a laneway building at the back of the strata's property. The area between the laneway building and the neighbouring property is divided roughly in half. Half of this area is part of the applicant's LCP patio. The other half, which borders the public laneway, is common property that is shown as a "garden" on the strata plan.
28. There is no fence between the applicant's LCP and the common property garden. Rather, the fence is near the laneway, enclosing most of the common property garden (laneway fence).
29. At a special general meeting (SGM) on November 30, 2017, the owners unanimously approved a resolution for a special levy for replacement fencing around TU's patio and EC's balcony. The minutes indicate that the fences around the applicant's and DH's patios would be replaced in a later phase of the project.
30. The first phase of the project was completed around June 2018. The applicant took issue with an 8-foot high "arbor" on the fence around TU's patio. Someone complained to the City that this arbor contravened a City bylaw because of its height. The strata says that the applicant's spouse called in this complaint, but I find that it does not matter who initiated the complaint.
31. On July 16, 2018, the strata's lawyer sent the applicant a bylaw contravention letter about the location of the laneway fence. The strata alleged that the applicant had moved the laneway fence in 2010 to enclose the common property garden. The strata said that during the second phase of the fence replacement project, it would remove the laneway fence and put a new fence at the actual boundary between the applicant's LCP and the strata's common property.
32. The applicant responded that the previous owner had moved the laneway fence. The applicant later provided a statement from the former owner, who admitted that he had done so. In October 2018, the strata dropped the bylaw infraction issue.



33. On August 23, 2018, the strata emailed the owners about the process with the City. The strata said that because of the complaint about the arbor on the fence around TU's patio, the City would inspect the entire strata to make sure it complied with the original landscape plan, which was more than 30 years old. The strata said it had to have a new landscape plan approved. This meant the City would need to approve any changes to the landscaping, including the location of the laneway fence.
34. In the first half of 2019, the strata retained a landscape architect and other experts to help it create the appropriate documents to satisfy the City's concerns. On June 1, 2019, the strata circulated among the owners a document setting out what "minor amendments" it would ask the City to approve. The request included approval of the laneway fence's existing location.
35. The process with the City is ongoing.
36. The applicant says that any attempt to "reopen" the issue of where the laneway fence is located would be significantly unfair. He asks the tribunal to "void any City or council voting requirement or result" that would change where the laneway fence was located. The City is not a party to this dispute and the tribunal has no authority to tell it how to interpret and enforce its bylaws.
37. I find that the current location of the laneway fence effectively converts common property to the applicant's LCP because the other owners cannot access it or use it.
38. The strata says that the owners unanimously agreed to ask the City to allow the laneway fence to stay where it is. That said, the strata says that the matter is before the City and therefore unsettled. The strata says that if the City approves building a new fence in the current laneway fence's location, the strata will still need to vote at an AGM or SGM on whether to convert common property to LCP, which requires a  $\frac{3}{4}$  vote under section 74 of the SPA. I agree that this approach is appropriate because the strata cannot tell the owners how to vote and cannot predict the outcome of a vote. I find that there is no sense in holding a strata vote on the issue before the City has made its final decision.

39. The applicant says that even if the City approves where the laneway fence currently is, the strata will inevitably vote against him. The applicant says that this would be significantly unfair. Under sections 121(1)(e) and 123 of the CRTA, the tribunal has jurisdiction to remedy or prevent a significantly unfair decision, action or threatened action by the strata.
40. I find that the evidence provides no reasonable basis for the applicant's belief that a vote about the laneway fence is a foregone conclusion. TU, who the applicant believes has a personal vendetta against him, has said in an email to the applicant that she has no issue with where the laneway fence currently is. While it is true that in 2018 the strata said that it did not accept the laneway fence's current location, the strata has not maintained that position. In its submission to the City, the strata asked the City to approve the laneway fence's current location with the support of the 3 strata council members. At the very least, this evidence makes it clear that the owners have not prejudged the issue.
41. For these reasons, I find that there is no decision, action or threatened action under section 121(1)(e) of the CRTA. I find that the applicant's claims are speculative and premature. In short, there is nothing to remedy. If the City approves the strata's request that the laneway fence remain in its current location and the owners later vote to rebuild it on the applicant's LCP's border, the applicant may bring another tribunal dispute.
42. For this reason, I dismiss the applicant's claims about the laneway fence's location.

**Should the strata reimburse the applicant for landscaping expenses from February 2015 to February 2019?**

43. The applicant alleges that the strata voted to stop spending any money on landscaping at the 2015 AGM. He says that the strata kept spending money on landscaping despite that vote. He wants the strata to reimburse him for his share of those expenses.

44. The strata held a meeting on January 31, 2015. It does not appear to have formally complied with the requirements of an AGM, but the owners discussed financial matters including gardening and landscaping. The applicant attended, although he left part way through.
45. The strata says the owners voted to end the strata's relationship with a particular gardener, but did not decide to stop spending any money on landscaping. The strata's position is consistent with the minutes in evidence. The strata has several common property gardens so I find it is unlikely that the owners decided to spend nothing to maintain them.
46. The strata provided financial documents from 2016 to 2019. They each include budgeted amounts for landscaping. There is no allegation that the strata did not properly pass these budgets at the strata's AGMs.
47. The applicant bears the burden of proving his claims. I find that he has not proven that the owners voted to stop all spending on landscaping in January 2015, or in any later year. Even if this claim had any merit, I note that at least part of it would likely be barred by the *Limitation Act*.
48. Therefore, I dismiss the applicant's claims about landscaping expenses.

**Should I order the strata's finances to be audited?**

49. The applicant alleges that the corruption in the strata is so bad that the strata needs an audit of its finances for the past 2 years. The applicant says that the fact that the strata is resisting an audit is proof that it has something to hide. The applicant believes that the strata's financial reporting intentionally lacks transparency to facilitate wrongdoing. The applicant argues that at least one strata council member has stolen funds from the strata. The applicant alleges that the strata has failed or refused to explain expenses to him.
50. The strata says it has provided financial disclosure above and beyond the SPA's formal requirements. The strata essentially says that no amount of transparency

could satisfy the applicant, who is convinced that the strata is engaged in wrongdoing.

51. I find that the applicant's expectations about "transparency" are unreasonable. I find that an email exchange between the parties in November 2018 illustrates this. The applicant requested a large number of financial documents under section 35 of the SPA. The strata responded by identifying which of the requested documents it had already provided and providing the remainder. Despite getting what he asked for, the applicant demanded that the strata create an itemized list of the expenses. He considered the strata's response to be a "document dump" designed to confuse him.
52. The strata created the itemized list that the applicant demanded, but the applicant did not believe it was sufficiently detailed. So, the strata created a more detailed itemized list. Despite these efforts, the applicant has continued to allege that the strata has not been transparent.
53. The strata provided financial records as evidence in this dispute, such as budgets, monthly statements from its bookkeeping software, and records of special levies. I find that the records support the strata's argument that it provides financial disclosure that meets the SPA's requirements. I am not satisfied that the applicant has identified any instances in which the strata has improperly reimbursed an owner, or otherwise violated the SPA.
54. Finally, I am not persuaded that the strata's resistance to an audit is evidence that it is trying to hide something. Audits cost time and money.
55. In conclusion, I find that there is no basis to order the strata to have its finances audited. I dismiss this claim.

**Is the applicant entitled to general damages or punitive damages?**

56. The applicant has made many allegations against the strata over the years, which he says justify awards of general damages and punitive damages totaling \$36,000. I summarize the applicant's allegations as follows:

- a. The strata has used the SPA's voting provisions since 2015 to marginalize and dominate the applicant by excluding him from strata council.
- b. The strata's passing of a bylaw allowing DH, as power of attorney for an owner, to serve on strata council in 2016 was designed to further marginalize the applicant from strata decision-making.
- c. The strata's refusal to give the applicant the contact information of the lawyer who drafted MC's power of attorney was proof that the document was fraudulent.
- d. The strata council, and particularly DH and TU, have run the strata's finances with no transparency in order to steal money from the strata.
- e. The strata has reimbursed the other 3 owners for expenses and costs that were not the strata's responsibility, such as plumbing and landscaping costs.
- f. Strata council members routinely call the fire and police departments to harass him.
- g. At the AGM on February 28, 2018, TU used her tie-breaking vote as president to prevent the applicant from sitting on strata council, after the applicant had received 2 of 4 votes.
- h. The strata council uses the SPA to unnecessarily demand access to his strata lot to harass and intimidate the applicant and his spouse.
- i. After 2 strata council members, DH and TU, entered his strata lot to assess the applicant's windows in April 2018, DH manufactured a story that the applicant's spouse had assaulted her.
- j. In October 2018, TU "willfully and maliciously" lied to the City about who extended the laneway fence and who planted a palm tree, which was designed to harm the applicant's reputation.
- k. The strata council has refused his many attempts at compromise because its only interest is to remain embroiled in conflict with him.

- l. TU “stalks” the applicant’s spouse when the applicant’s spouse walks a neighbour’s dog.
  - m. The strata has routinely refused or neglected to respond to all the questions he puts in his emails.
  - n. The strata improperly used strata funds to pay a lawyer to send bylaw infraction letters to the applicant about the alleged assault on DH and the laneway fence’s location.
  - o. When the strata passed a resolution approving a special levy to deal with the City bylaw issues, it included a provision that 2 strata council members could sign contracts on the strata’s behalf. The applicant said that this was “undemocratic” and “unfair”.
  - p. At an informal strata meeting on March 31, 2019, about landscaping, DH “lunged” at the applicant and threatened him.
  - q. On June 17, 2019, DH’s tenant approached the applicant’s front door and angrily alleged that the applicant’s spouse had damaged the tenant’s car, which he believed was orchestrated by the strata.
  - r. The strata council never gives his complaints proper consideration, including his complaint that TU lied to the City and that DH threatened to physically assault him.
  - s. TU manipulates email chains to misrepresent what the applicant has said in the past.
  - t. The strata hired a painter who was a personal friend of EC over the applicant’s objections, which was done to provoke and harass the applicant.
57. The applicant argues that all the above incidents prove that the strata has engaged in a deliberate effort to harass and defraud him. He alleges that the strata’s behaviour has been so bad for so long that he is entitled to general damages for

loss of quiet enjoyment of his home. He also says that the strata should be punished for its behaviour with punitive damages.

58. The applicant relies on an email that EC sent him in January 2019. In that email, EC said that she was “sorry for the harassment and marginalization” that the applicant had “been experiencing”. The applicant says that this proves that the strata council intended to harass and marginalize him. In context, I do not take that statement to be such an admission. Rather, it appears that EC was simply acknowledging the applicant’s perception that he was being harassed and marginalized to try to calm the high tensions in the strata. My interpretation is supported by the fact that when the applicant tried to get EC to take increasingly combative steps, such as asking her to confirm in writing that she thought TU was a “sociopath”, EC stopped responding to the applicant’s emails.
59. The strata says that despite the applicant’s repeated allegations, it has attempted to treat the applicant objectively and fairly. The strata points to the fact that it ruled in the applicant’s favour when it held hearings about DH’s complaint of the alleged assault, about the fence extension, and about DH’s tenant’s behaviour.
60. I note that the strata council’s decision about DH’s tenant’s behaviour relied primarily on TU’s evidence, which supported the applicant’s version of events. In response to this decision, the applicant speculated that TU only agreed with him because of the ongoing tribunal cases, as an effort to “make the false impression” to the tribunal that she treats the applicant fairly. He concluded that it was “too little too late”. Despite being successful, the applicant believed that the process was “biased” against him.
61. I find that the applicant’s impression of this bylaw complaint process demonstrates his overall attitude towards the strata and its decisions. I find that the applicant perceives malice and unfairness regardless of whether there is any objective evidence to support his belief.
62. I decline to make any findings of fact about the specific allegations described above, because the applicant has said in his emails that he intends to bring new tribunal

disputes about several of them. That said, I find no basis in the evidence for an award of general damages or punitive damages. In particular, I note that at least some of the claims appear to be out of time under the *Limitation Act*. Other claims are about the treatment of the applicant's spouse, who is not a party to this dispute. The applicant cannot claim damages on behalf of his spouse.

63. In sum, I find that the applicant has identified no strata actions that unreasonably interfered with his quiet enjoyment of his strata lot, let alone conduct that would justify punishment. Accordingly, I dismiss these claims.

**Should I order the strata to retain a property manager? If not, should I make any other orders about the composition of the strata council?**

64. As outlined above, the applicant asks for several orders about the governance of the strata. The applicant's general argument is that the strata is so dysfunctional, and the current strata council members so out of control, that something drastic must be done to put the strata back on the right track.

65. First, the applicant wants a "property manager" appointed to run the strata. I considered a nearly identical argument in *Kornylo 2018*.

66. As in the previous dispute, I find that what the applicant actually wants is not a property manager but an administrator. I make this finding because the applicant wants someone to make the decisions on behalf of the strata, which is the role of an administrator, not a property manager. A property manager advises strata council but does not control or make decisions for the strata. Under section 122(1)(i) of the CRTA, the tribunal does not have the authority to appoint an administrator.

67. Therefore, for the same reasons I discussed in *Kornylo 2018*, I am not satisfied that forcing the strata to retain a property manager would provide any benefit. I dismiss the applicant's claim for a property manager.

68. For clarity, because the applicant's claim specifically asks for a property manager, this decision does not affect the applicant's ability to ask the BCSC to appoint an administrator. I make no comment on the merits of such a claim.



69. In the alternative, the applicant asks that the 2019 AGM vote “excluding” the applicant from strata council be set aside and that the applicant be put on strata council. The applicant does not identify any procedural problem with the 2019 AGM. Rather, he thinks that it would be in the best interests of the strata for him to be on strata council because his exclusion is a primary source of conflict between the owners. Along similar lines, the applicant asks that TU be banned from strata council, which reflects his belief that she is the primary cause of the strata’s problems.

70. Bylaw 9 says that for strata corporations with 4 or more strata lots, there can be anywhere from 3 to 7 strata council members. Therefore, the bylaws do not require all 4 owners to be on strata council. This means that if 3 owners wish to exclude a fourth owner from strata council, they can. I disagree with the applicant that this is evidence of unfairness, collusion or conspiracy. Rather, it is the function of democratic governance in a small strata.

71. Therefore, while the tribunal may have the authority to dictate who is, or may be, on strata council, I find that such an order would be inappropriate. Members of strata council are elected by the owners. In *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700, the Court said that it is not its role to “interfere with the democratic process” of the strata. I find that this reasoning applies equally to the tribunal.

72. I dismiss the applicant’s claims about the makeup of strata council.

## **TRIBUNAL FEES AND EXPENSES**

73. 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. The applicant was unsuccessful so I dismiss his claims for tribunal fees and dispute-related expenses.

74. The strata claims legal fees, relying on *Parfitt et al v. The Owners, Strata Plan VR 416 et al*, 2019 BCCRT 330.

75. The tribunal's authority to order legal fees is limited to "extraordinary circumstances" under tribunal rule 9.4(3). Tribunal rule 9.4(4)(d) says that the tribunal may consider any factor it considers appropriate in deciding whether to award legal fees. Several tribunal decisions, including *Parfitt*, have noted that the tribunal may apply the law of special costs under the BC Supreme Court Civil Rules in deciding whether to award legal fees.
76. The leading case on special costs is *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 CanLII 2570 (BC CA). The Court of Appeal said that special costs would be awarded for reprehensible conduct in the course of litigation that is deserving of rebuke. In *Moon Development Corporation v. Pirooz*, 2015 BCCA 213, the Court of Appeal confirmed that persisting in unfounded allegations of fraud can attract an award of special costs. As stated by the Court of Appeal in *Gichuru v. Smith*, 2014 BCCA 414, "a party who alleges serious misconduct against another in a civil lawsuit must be prepared to prove such allegations or reap the consequences" of special costs.
77. In *Casses v. Canadian Broadcasting Corp.*, 2016 BCSC 949, the Court said that special costs may also be awarded where "a party made the resolution of an issue far more difficult than it should have been".
78. For years, the applicant's emails to the strata have included unfounded allegations of fraud, dishonesty, malice and other accusations of wrongdoing. In *Kornylo 2018*, I referred to the applicant's emails as abusive and insulting. Since the release of that decision, the applicant's attacks on strata council have not abated.
79. Special costs are only available for conduct during litigation, not pre-litigation conduct. As such, I do not rely on any of the applicant's emails before he filed his Dispute Notice on May 5, 2019. However, since that time, he has persisted in his serious allegations against the strata.
80. For example, in a single email, dated May 31, 2019, the applicant made the following allegations:

- a. That one strata council member is a “liar” who “will say anything to try and support her personal agenda” against the applicant.
- b. That the strata council “makes up lies to continue their theme of harassing & bullying [the applicant]”.
- c. That the strata council made “two fantastically false and frankly preposterous bylaw complaints” against the applicant.
- d. That the strata council “misused strata funds to intimidate and harass” the applicant.
- e. Implies that one strata council member is not a “mentally healthy person”.
- f. That one strata council member “constantly uses & abuses her position on council to harass [the applicant] & power trip and waste our time defending council’s aggression/harassment towards [the applicant]”.
- g. That one strata council member intentionally makes “unfair strata judgments at every opportunity” and “appear[s] to be obsessed with making [the applicant’s] strata life miserable”.
- h. That one strata council member has a “penchant for lying”.
- i. That the strata council had an “intention to inflict pain on [the applicant]”, which “goes directly to [strata council’s] motivation and malicious intent”.
- j. That a strata council member lied to the City to “harm [the applicant’s] reputation” and “quality of strata life”.
- k. That the strata council votes against the applicant’s interests “for no practical strata purposes but to exert misused council power and spite” against the applicant.
- l. That strata council “wilfully and with forethought chose to maliciously” raise the issue of the laneway fence’s location “for no practical purpose but to harass [the applicant]”.

81. In the above email, the also applicant threatens “significant punitive and general financial damages” if the strata council did not immediately resolve the fence issue to his satisfaction. I find that this email, and others like it, are related to this tribunal dispute. I find that the applicant tried to use the threat of punitive damages to pressure the strata into letting him keep his fence where it is and get a seat on strata council.
82. In addition, the applicant repeats most of the above allegations in his submissions in this dispute. He says that the strata and strata council members have defrauded him, misappropriated strata funds, maliciously targeted him for no reason other than to harass him, lied to him, lied to the tribunal, and lied to the City, among other things. I find that none of these allegations were proven by the evidence.
83. The applicant submits that the strata council “misinterprets” his emails as being “rude or accusatory”. He says that his emails are about strata business and are not personal. I find it difficult to see how the strata council could interpret the applicant’s allegations as being just about strata business, as he alleges, given their tone and content.
84. I find that the applicant’s repeated, unfounded allegations of fraud and dishonesty deserve rebuke. I find that he has been reckless in making the allegations. I find that the applicant persisted in alleging serious wrongdoing about matters related to the repairs of the applicant’s LCP even after I rejected similar arguments in *Kornylo 2018*. I find that the applicant’s allegations made the resolution of this dispute, which at its core is about a relatively simple matter of how to address the City bylaw issue, far more difficult than it needed to be. In sum, I find that the extraordinary circumstances exist within the meaning of the tribunal’s rules to justify ordering the applicant to pay the strata’s legal fees.
85. As for the amount, on August 1, 2019, the strata’s lawyer provided an invoice that included \$480 in legal fees for attending to filing a new bylaw and emails related to this tribunal dispute. After tax, this amounts to \$537.60. The invoice does not break down those 2 tasks. The strata says that it spent further money on legal fees related

to this dispute, but did not provide an invoice for unexplained reasons. The strata council minutes authorizing the expenditure of these further legal fees do not mention this dispute or the tribunal. I have therefore only considered the August 1, 2019 invoice.

86. The purpose of special costs is not to reimburse a party's actual legal fees to the penny. Rather, it is an assessment of an objectively reasonable sum for legal fees, based on the invoices in evidence. Because the invoice before me does not break down how much was for the tribunal dispute, I find that it would not be reasonable to order the applicant to pay the entire amount. On a judgment basis, I order the applicant to reimburse the strata \$400 in legal fees.
87. It is unclear from the financial records before me whether the strata ensured that the applicant did not have to contribute to the August 1, 2019 legal bill, as it is required to do under section 189.4 of the SPA. I therefore order the strata to immediately ensure that the applicant did not already contribute to this expense, as required by section 189.4 of the SPA if it has not already done so, to avoid the applicant paying for a portion of the legal fees twice.
88. As for any other legal fees or dispute-related expenses incurred in this dispute, the strata must comply with the provisions in section 189.4 of the SPA by not requiring the applicant to contribute to the expenses of defending the applicant's claims.

## **DECISION AND ORDERS**

89. I dismiss the applicant's claims.
90. I order the strata to immediately ensure that the applicant did not contribute to the legal fees charged on August 1, 2019, insofar as those legal fees are related to this dispute, as required by section 189.4 of the SPA, if it has not already done so.
91. I order that within 28 days of the date of this decision, the applicant pay the strata \$400 in legal fees.

92. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the BCSC. Once filed, a tribunal order has the same force and effect as a BCSC order.
93. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, the strata can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

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Eric Regehr, Tribunal Member