



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Wong v. The Owners, Strata Plan BCS 435*, 2020 BCCRT 53

BETWEEN:

PETER WONG and LINDA WONG

APPLICANTS

AND:

The Owners, Strata Plan BCS 435

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicants, Peter Wong and Linda Wong, own a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 435 (strata). This is a dispute about a strata bylaw that requires all overnight guests to provide their name, contact information and photo identification (guest registration bylaw). The strata has fined the applicants for breaching this bylaw on 3 occasions for a total of \$350 in fines.

2. The applicants make several arguments about the guest registration bylaw and the fines. First, they argue that the bylaw is unenforceable under section 121(1)(a) of the *Strata Property Act* (SPA) because it contravenes the *Personal Information Protection Act* (PIPA). Second, they argue that the guest registration bylaw is not valid under section 119 of the SPA. Third, they argue that the guest registration bylaw is too vague to be enforceable. Finally, they argue that if the guest registration bylaw is valid, the strata should not have fined them because the alleged breaches of the bylaw were trivial. The applicants ask for an order that the guest registration bylaw be declared unenforceable and that all fines that the strata has imposed for breaching the bylaw be cancelled.
3. The strata argues that the bylaw complies with the SPA and is otherwise valid and enforceable. Regarding the applicants' arguments about section 121(1)(a) of the SPA, the strata argues that the Civil Resolution Tribunal (tribunal) does not have jurisdiction over PIPA and therefore cannot make an order under this section. The strata asks that I dismiss the applicants' claims.
4. Linda Wong represents both applicants. The strata is represented by the strata council president.

JURISDICTION AND PROCEDURE

5. These are the tribunal's formal written reasons. 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 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.

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. A dispute that involves some issues that are outside the tribunal's jurisdiction may be amended to remove those issues.
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. Does the tribunal have jurisdiction to consider whether the guest registration bylaw contravenes PIPA?
 - b. If so, does the guest registration bylaw contravene PIPA?
 - c. Is the guest registration bylaw valid under section 119(2) of the SPA?
 - d. Is the guest registration bylaw too vague to be enforceable?
 - e. Should the strata have exercised its discretion not to enforce the guest registration bylaw because the effect of the applicants' noncompliance was trivial?
 - f. What remedy, if any, is appropriate?

BACKGROUND AND EVIDENCE

11. In a civil claim such as this, the applicants must prove their case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
12. The strata consists of 129 strata lots in a high rise condominium building in Vancouver. Some of the strata lots are townhouses, but most are apartments in a tower accessed via a lobby and elevator. The strata employs a "24/7" concierge in the lobby. The strata's key fob system only allows people to access their own floor, not the whole strata building. The key fob system also records each time a fob is used, who the fob is assigned to, and what floor the fob accessed. The strata has either 29 or 30 security cameras (there is conflicting evidence, but the exact number does not matter). The recordings are saved for 2 months.
13. The applicants own and reside in a strata lot in the tower. They have lived there since the strata was built in 2003.
14. The facts underlying this dispute are not contested. The strata first passed a bylaw regulating overnight guests at an annual general meeting (AGM) on October 22, 2014. This bylaw required all guests staying more than a week to "register and complete the Waterford Temporary Occupant Form".
15. The strata replaced this bylaw at an AGM on October 28, 2015. The new bylaw said that any guest occupying the strata lot for more than 3 days must complete a "Temporary Resident Information Form" (TRIF).
16. The strata passed the current guest registration bylaw at an AGM on October 24, 2018. The guest registration bylaw now reads:

Not prohibited, is the right of residents to have guests in their home. For the purposes of this bylaw guests are defined as family, friends or acquaintances of the resident without paying rent or consideration in any form whatsoever, and the residents receive no benefit from the guests whatsoever except the benefit of their company.

A “Temporary Resident Information Form” must be completed by all overnight guest(s) of a resident.

17. The bylaws do not say what information the strata will collect with the TRIF. Until September 2019, the TRIF collected the following information:

- a. The visitor’s name,
- b. The suite number the visitor is visiting,
- c. Whether the visitor is a “tenant” (defined as “a person paying rent for the temporary use of a strata unit or portion of a strata unit”) or a “guest” (defined as a “person who has been invited by an owner or a tenant to visit”),
- d. The duration of the visitor’s stay,
- e. The visitor’s telephone number and email address,
- f. The key fob that the visitor is using during their stay,
- g. Whether the visitor will access any shared facilities,
- h. The make and license plate of the visitor’s car, and the parking stall they will use during their stay, and
- i. The visitor’s emergency contact name and telephone number.

18. The visitor, attending concierge and head concierge had to sign the TRIF. The visitor also had to provide a copy of photo identification, which was attached to the TRIF.

19. The TRIF was amended in September 2019. The TRIF now requires the name and signature of the strata resident but no longer asks for an emergency contact. The new TRIF also allows for “frequently visiting” guests to only fill out the TRIF once. The TRIF still requires the visitor to provide a copy of their photo identification.

20. The strata says that the completed TRIFs are stored “under lock and key”. The strata’s privacy policy does not refer specifically to TRIFs but says that it retains

guest personal information “only as long as it is necessary to fulfill the identified purposes or a legal purpose”. I find that this vague statement allows the strata to retain this personal information for as long as it wants. The strata does not say when, if ever, completed TRIFs have been destroyed. I infer that there is no policy for destroying completed TRIFs.

21. Between May and July 2019, the strata sent the applicants 3 notices of infraction for breaching the guest registration bylaw. The applicants did not deny that their overnight guests had failed to complete the TRIF or provide photo identification but objected to the validity of the guest registration bylaw. The strata fined the applicants \$50 for the first infraction, \$100 for the second infraction, and \$200 for the third infraction, for a total of \$350 in fines.
22. In October 2019, the applicants paid \$350 in trust for the disputed bylaw fine amounts.

ANALYSIS

Does the tribunal have jurisdiction to consider whether the guest registration bylaw contravenes PIPA?

23. The strata argues that whether the guest registration bylaw contravenes PIPA is in the exclusive jurisdiction of the Information and Privacy Commissioner (IPC). The IPC is an officer of the Legislature. Part of the IPC’s role is to oversee and enforce PIPA.
24. PIPA governs how private organizations, including strata corporations, collect, use, disclose and protect personal information. PIPA applies to strata corporations.
25. Section 52 of PIPA grants the IPC the power to make certain orders. Relevant to this dispute, section 52(3) says that the IPC may order an organization to stop collecting, using or disclosing personal information or require an organization to destroy personal information.

26. Section 121(1)(a) of the CRTA gives the tribunal jurisdiction over the interpretation and application of the SPA and a strata corporation's bylaws. Section 121(1)(a) of the SPA says that a bylaw is not enforceable to the extent that it contravenes another enactment. PIPA is an enactment within the meaning of section 121(1)(a) of the SPA, so a strata bylaw is unenforceable to the extent it contravenes PIPA.
27. The applicants argue that in determining whether the guest registration bylaw is enforceable under section 121(1)(a) of the SPA, the tribunal has jurisdiction to assess whether it contravenes any enactment, including PIPA. The applicants say that they are not asking for an order under PIPA, they are asking for an order under the SPA. They say that the IPC does not have jurisdiction to order a bylaw unenforceable or reverse the fines.
28. The strata relies on *Dhanji et al v. The Owners, Strata Plan LMS 2472*, 2019 BCCRT 1194. In *Dhanji*, the applicant owners asked for orders that their strata corporation stop monitoring key fob use and licence plates and that the strata corporation destroy any related records. The tribunal found that only the IPC had jurisdiction to make those orders.
29. I agree with the tribunal's reasoning in *Dhanji* but find that it is distinguishable because of the orders sought in each dispute. As discussed above, the IPC has exclusive jurisdiction to make orders that a strata corporation stop collecting, using or disclosing personal information, and to destroy personal information in its possession. That is what the applicant owners wanted in *Dhanji*. However, I agree with the applicants that the IPC does not have jurisdiction to make orders about the enforceability of a strata bylaw or the reversal of fines.
30. In *Parkinson et al v. The Owners, Strata Plan VIS 5086*, 2018 BCCRT 438, the tribunal considered the enforceability of a strata bylaw that prohibited an owner from using a parking stall. The tribunal found that a municipal bylaw required the owner to have access to the parking stall. In order to assess compliance with section 121(1)(a) of the SPA, the tribunal assessed whether the bylaw contravened the municipal bylaw. The tribunal found that the strata bylaw was unenforceable under

section 121(1)(a) of the SPA because it contravened the municipal bylaw, even though the tribunal has no jurisdiction to enforce municipal bylaws. I agree with the tribunal's reasoning, even though it is not binding on me.

31. I find that the tribunal's jurisdiction over section 121(1)(a) of the SPA means that the tribunal may assess a strata bylaw's compliance with another statute, including PIPA. On that basis, I find that the tribunal has jurisdiction to consider the guest registration bylaw's compliance with PIPA in order to determine whether the guest registration bylaw is enforceable under the SPA.
32. Section 11 of the CRTA says that the tribunal may refuse to resolve a dispute within its jurisdiction in certain circumstances, including where there is a more appropriate forum.
33. I find that the IPC would not be a more appropriate forum because it could only address one of the applicants' claims. Under section 52 of PIPA, the IPC could order the strata to stop collecting and using personal information using the TRIF, which would arguably have the same effect as declaring the guest registration bylaw unenforceable. However, the IPC could do nothing about the applicants' outstanding fines. I therefore find that the IPC is not a more appropriate venue than the tribunal.

Does the guest registration bylaw contravene PIPA?

34. The applicants argue that the guest registration bylaw offends section 11 of PIPA, which says that an organization, such as a strata corporation, may only collect personal information for purposes that a reasonable person would consider appropriate in the circumstances.
35. The applicants argue that the guest personal information that the strata collects is unreasonable and unnecessary. The applicants argue that the personal information that the strata collects is sensitive, especially photo identification. The applicants argue that the strata has presented no evidence to support its position that the safety and security of the strata's owners is enhanced by the collection of guest

personal information. The applicants say that the concierge, key fob system and security camera are enough to provide the owners with adequate safety and security and to enforce short-term rentals.

36. The strata says that the applicants do not personally approve of the guest registration bylaw and want to impose their views on the rest of the owners. The strata says that most owners support the guest registration bylaw. The strata says that because any guest must use common property to enter a strata lot, the strata has a right to control who comes and goes.
37. The strata has 2 stated goals in requiring visitors to fill out the TRIF is to protect: enforcing the strata's bylaw that prohibits short-term rentals and "safety and security". According to the President's Report from the October 2018 AGM, a tenant was using Airbnb to operate a "brothel" in a strata lot. In this dispute, the strata says that it was able to help 2 owners evict tenants based on information in the TRIF, including the owner of the strata lot with an alleged brothel. The strata argues that the TRIF deters short-term rentals, criminal activity and "other nefarious uses" of strata property. The strata says that it could pass the personal information onto police if a guest commits a crime.
38. The strata also argues that the TRIF "deters fraudulent misrepresentation", presumably on the part of visitors who would lie about whether they were short-term renters. Finally, the strata says that it allows it to enforce the bylaws should a guest breach a bylaw.
39. Three IPC decisions have considered the issue of whether a reasonable person would consider the collection of personal information appropriate within the meaning of section 11 of PIPA: *K.E. Gostlin Enterprises Ltd., Re*, 2005 CanLII 18156 (BC IPC), *Cruz Ventures Ltd. (Wild Coyote Club) (Re)*, 2009 CanLII 38705 (BC IPC) and *Shoal Point Strata Council (Re)*, 2009 CanLII 67292 (BC IPC). While IPC decisions are not binding on me, I find these decisions highly persuasive because the IPC has specialized expertise in the interpretation of PIPA.

40. In *Gostlin*, the organization operated a hardware store. As part of its return policy, it collected personal information including the customer's name, address and telephone number to prevent fraud. The organization justified the collection because "criminals abhor visibility", which the IPC accepted. The organization provided detailed evidence about the problem of fraudulent returns on its business. The IPC confirmed that the "reasonable person" was objective, and the "idiosyncrasies, likes, dislikes or preferences of a particular individual do not determine the outcome". The IPC said that PIPA aims to balance the right of privacy with the needs of the organization. The IPC concluded that the organization's collection of personal information was appropriate.
41. In *Wild Coyote Club*, the organization operated a nightclub. At its entrance, the organization swiped its customers' driver's licenses through a card reader. The card reader collected the name, sex, date of birth and drivers license number of each customer, which was sent to a third party company. The organization, and other organizations using the same system, could record whether a customer was involved in an altercation.
42. The IPC found that, in general, a person's name, address and telephone number are not sensitive pieces of personal information. However, in the context of a data collection system, collection of the customers' identities became intrusive because it gave the organization information about an individual's activities and habits. The IPC also found that driver's licence numbers are sensitive "due to their value in facilitating identity theft". The IPC said that "driver's licence numbers should not be collected where an examination of the driver's licence is sufficient".
43. In *Shoal Point*, the IPC considered a strata corporation's use of video surveillance. The strata corporation had 10 video cameras. The strata corporation said it used the information captured by the videos to identify security breaches, prevent damage to property, and investigate bylaw breaches.
44. The IPC noted that the "reasonable person test considers the nature of the information collected, the purposes and circumstances surrounding collection and

use of the information, and how the organization handles the information”. The IPC reasoned that this required a consideration of whether the organization’s practice was the least intrusive method to achieve its objectives. The adjudicator found that a reasonable person would accept video surveillance of exterior entrances for security reasons but not for bylaw enforcement.

45. Taken the above decisions together, I find that the legal test to be applied is as follows. The strata can only collect and use personal information if a reasonable person would consider it appropriate in the circumstances. A reasonable person expects that the strata would collect as little personal information as possible to achieve its stated goals considering the sensitivity of the personal information. A reasonable person also considers how effective the system requiring the collection of personal information is in achieving its goals. Finally, a reasonable person considers how the organization handles and disposes of the personal information it collects.
46. In this dispute, the strata collects a range of personal information from relatively mundane information, like a name, to highly sensitive information, like a copy of photo identification, which I find would likely be a driver’s licence or passport.
47. First, I have no difficulty concluding that a reasonable person would not consider photocopying each guest’s photo identification to be appropriate. Presumably, the only reason to do so is to compare it to the information the visitor put on the TRIF. There is no explanation about why this goal would not be equally met by the concierge simply inspecting the photo identification.
48. What about the personal information on the TRIF itself? On its own, arguably none of the personal information on the form is particularly sensitive. However, I find the reasoning in *Wild Coyote Club* to be instructive. Based on the fact that the privacy policy allows the strata to keep the TRIFs indefinitely, I find that the strata can accumulate data about who visits each resident overnight, for how long, and how often. This is not only the visitor’s personal information, it is the resident’s personal information as well. While the revised TRIF allows “frequent” guests to register only

once, this exemption only applies to people who are “immediately related to the resident” and caregivers.

49. Therefore, I find that the personal information in the TRIF collects is sensitive. I now must balance the sensitivity of the personal information against the strata’s reasons for collecting it. The strata’s submissions offer 2 reasons: enforcing the strata’s prohibition against short-term rentals and ensuring the “safety and security” of the strata and owners.
50. With respect to short-term renters, I find that collecting short-term renters’ personal information is unnecessary. Other strata corporations, such as the strata corporation in *Dhanji*, enforce short-term rentals in part by relying on the short-term renters identifying themselves to the concierge and advising what unit they are staying in. I find that an honest short-term renter will give verbally the concierge enough information for the strata to enforce the bylaw on short-term rentals. I see no additional benefit to the strata in having the concierge collect and retain the short-term renter’s personal information.
51. As for the strata’s concern about “fraudulent misrepresentations”, unlike the organization in *Gostlin*, the strata provided no evidence to support its position that it had a problem with fraud. The strata simply asserts that the TRIF is “effective” at deterring fraud without explaining how. I find that a dishonest short-term renter could easily deny to the concierge that they were an overnight guest, ignore the concierge, or identify themselves as a resident’s guest as opposed to a short-term renter. I therefore find that the TRIF would not be an effective way to deter or catch dishonest short-term renters.
52. Also, the strata provided no evidence about whether it had tried other, less intrusive methods of enforcing its bylaws, such as by tracking down offenders on vacation rental sites like Airbnb. Finally, I note the finding in *Shoal Point* that bylaw enforcement is a less compelling reason to collect personal information than safety and security.

53. As for safety and security, most of the strata's arguments are based on assumptions or hypothetical situations. The alleged brothel is the only safety or security issue that the strata identified related to short-term rentals or overnight guests, which I find could have been solved without the TRIF. The other safety or security issues described in the evidence related to long-term tenants. In fact, the applicants provided a letter from the Vancouver Police Department, which shows that the police attended the strata 12 times between January 1, 2016, and October 2, 2019. This letter suggests that the strata has not faced any chronic safety or security issues. There is no evidence that any overnight guests have damaged property or committed a criminal offence. Even if there was, the strata has 29 to 30 security cameras and a key fob log to catch the offenders.
54. For these reasons, I find that a reasonable person would not consider the collection of personal information in the TRIF, including photo identification, to be appropriate in the circumstances.
55. Because of my conclusion about section 11 of PIPA, I need not consider the applicants' other arguments, including their argument that the guest registration bylaw contravenes other parts of PIPA.
56. As for the remedy, section 121(1)(a) of the SPA says that a strata bylaw is unenforceable only to the extent that it contravenes another enactment. The first part of the guest registration bylaw simply affirms that residents may have overnight guests, which I find does not contravene PIPA. I find that the only part of the guest registration bylaw that contravenes PIPA is the requirement that overnight guests complete a TRIF, which includes the requirement for photo identification.
57. In terms of the form of the order, I note that the tribunal does not have jurisdiction to make declaratory orders (see *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379). Previous tribunal decisions have ordered that bylaws are unenforceable (for example, *Wong et al v. The Owners, Strata Plan EPS 1067*, 2019 BCCRT 117 and *Wigard v. The Owners, Strata Plan 1073*, 2019 BCCRT 1447). I do not consider an order that a bylaw is unenforceable to be, in substance,

a declaratory order. Section 123(1)(b) of the CRTA says that in resolving a strata property claim, the tribunal may order a party to refrain from doing something. I find that making an order that a bylaw is unenforceable is no different than ordering the strata to refrain from enforcing it. To match the wording of the CRTA, I order the strata to refrain from enforcing the guest registration bylaw to the extent that it requires overnight guests to complete a TRIF and provide a copy of photo identification.

58. In light of this finding, I order the strata to cancel the fines it has imposed on the applicants for breaching the guest registration bylaw. The applicants did not ask for an order about \$350 it paid to the property manager “in trust” and there is little evidence before me about it. I therefore do not make an order about these funds, but if the property manager or strata continues to hold them in trust, they should be returned to the applicants.
59. I note that there is evidence that the strata has imposed fines for breaching the guest registration bylaw on other strata lots. I cannot make orders about non-parties, but I will make a non-binding suggestion that the strata proactively reverse those fines.
60. I also note that the strata’s privacy policy allows it to use video footage to investigate bylaw or rule infractions. The strata may wish to review *Shoal Point* and consider whether to amend its privacy policy.
61. Finally, this decision should not be taken as authority that the strata, or any other strata corporation, could never pass a PIPA-compliant bylaw that includes collecting the personal information of overnight guests or short-term renters. This decision rests on the specific facts before me, including the lack of evidence that the strata had tried less privacy intrusive strategies to achieve its goals, the lack of evidence that the TRIF is effective at achieving its purposes, and the apparently indefinite retention of the records at issue.

TRIBUNAL FEES AND EXPENSES

62. 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. I see no reason in this case to deviate from the general rule. I therefore order the strata to reimburse the applicants for tribunal fees of \$225. The applicants did not claim any dispute-related expenses.
63. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicants.

DECISION AND ORDERS

64. I order that:
- a. The strata immediately refrain from enforcing the part of the guest registration bylaw that requires overnight guests to complete a TRIF, including the requirement for photo identification.
 - b. The strata immediately cancel the fines imposed on the applicants' strata lot for breaching the guest registration bylaw.
 - c. The strata immediately pay the applicants \$225 in tribunal fees.
65. 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 Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.
66. 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 applicants 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.

Eric Regehr, Tribunal Member