



Civil Resolution Tribunal

Date Issued: April 8, 2020

File: ST-2019-006948

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ruberg v. The Owners, Strata Plan VR 1175*, 2020 BCCRT 389

BETWEEN:

INGRID RUBERG

APPLICANT

AND:

The Owners, Strata Plan VR 1175

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is primarily about maintenance and repair of skylights and windows at a residential strata corporation.
2. The applicant, Ingrid Ruberg (owner), is an owner of strata lot 31, also known as unit 210, in the respondent strata corporation, The Owners, Strata Plan VR 1175

(strata). The owner says 2 skylights and a window at her strata lot require replacement. The owner says although strata bylaws state that these items are the owner's responsibility, the bylaws are invalid, and the strata is responsible for the items under the *Strata Property Act* (SPA). The owner also says the strata should obtain a depreciation report, and that she was treated unfairly by strata council members and was coerced into resigning from the strata council.

3. The owner requests numerous remedies, as follows:
 - a. An order that the strata replace the 2 skylights and window at issue.
 - b. An order for the strata to advise strata lot owners that the strata is responsible for maintaining and repairing roof skylights, balcony skylights, windows, and sliding glass doors.
 - c. An order for the strata, at a general meeting within 6 months, to hold a vote on a revised set of bylaws that comply with the SPA, including bylaws 2, 8, and 15.
 - d. An order for the strata, at a general meeting within 6 months, to either recommend a depreciation report be obtained or hold a vote on neutral resolutions to approve or waive obtaining a depreciation report.
 - e. An order for the strata to, in writing, either substantiate or withdraw false allegations the owner says were made at a July 12, 2019 meeting, that the owner was using her council position for personal gain and was in a conflict of interest.
 - f. \$5,000 in punitive damages for the strata's significantly unfair treatment of the owner, and bad faith in allegedly making false allegations against the owner to coerce her resignation from the strata council.
 - g. Orders for the strata council to designate a strata privacy officer within 6 months, and to develop and implement a privacy policy.
 - h. An order that strata council members complete strata governance training.

- i. Reimbursement of \$210 for the cost of an inspection and report about the glazing at unit 210.
 - j. Reimbursement of \$58.75 for the cost of documents requested from the strata's property manager on August 14, 2019.
 - k. Reimbursement of \$45.75 for land title searches and filing fees.
- 4. The strata says it acted in accordance with its bylaws, which are valid, and which make strata lot owners responsible for the costs of repairing and maintaining their skylights, windows, and doors. The strata also says it properly waived any requirement for a depreciation report. The strata denies the owner's claims, including that it treated the owner unfairly.
 - 5. The applicant is self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

- 6. 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.
- 7. 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.
- 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.
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.

Preliminary Matters

Defamation

11. The owner seeks an order that the strata substantiate or withdraw alleged false allegations against her, and claims punitive damages in part for the strata council making those alleged false allegations. I find this is essentially a defamation claim, that a strata council communication negatively affected the owner's reputation. However, under section 121(1) of the CRTA, the tribunal's jurisdiction in strata matters only extends to certain types of claims in respect of the SPA. I find the SPA does not govern defamation claims. Although not binding on me, this finding is consistent with previous tribunal decisions, such as *Adamson v. The Owners, Strata Plan NW 2582*, 2019 BCCRT 377 and *Taylor et al v. The Owners, Strata Plan 1801 et al*, 2018 BCCRT 925. As a result of this finding, I refuse to resolve the applicant's defamation-related claims under section 10 of the CRTA. I do not comment further on these allegations, except to give context to the owner's allegations of significant unfairness under the SPA, over which the tribunal does have jurisdiction.

Privacy

12. The owner seeks an order for the strata council to designate a privacy officer and implement a privacy policy that complies with sections 4 and 5 of the BC *Personal Information Protection Act* (PIPA). PIPA governs how strata corporations, as private

organizations, collect, use, disclose, and protect personal information. PIPA sections 4 and 5 require, among other things, that organizations must designate a privacy officer and develop policies and practices needed to meet its obligations under PIPA. I find the owner's claim is that the strata contravened PIPA, and should be required to remedy its contraventions. I find this is a claim under PIPA, and not a SPA claim under section 121(1) of the CRTA. As a result, I refuse to resolve this claim under CRTA section 10.

13. Further, I find that even if the tribunal had jurisdiction over this PIPA claim, I would refuse to resolve it under CRTA section 11(1)(a)(i) because the claim is more appropriately resolved by the Information and Privacy Commissioner (IPC), an officer of the Legislature that oversees and enforces PIPA. The owner does not claim damages under PIPA for mishandling her personal information, but only seeks the strata's compliance with duties imposed by PIPA. Under sections 36 and 52(3)(a) of PIPA, the IPC may conduct investigations about such compliance, and make orders requiring that a duty imposed under PIPA be performed. Orders requiring duties imposed under PIPA be performed are exactly what the owner claims here, and I find such issues are more appropriately resolved by the IPC.

Bad faith

14. The owner alleged that the strata council acted in bad faith. Strata councils exercise the powers and perform the duties of a strata under section 4 and 26 of the SPA. Strata council decisions are made by majority vote of each individual council member, because the strata corporation itself does not make decisions. So, I find the owner's claim of bad faith relates to individual strata council members.
15. The owner has not named individual council members as respondents in this dispute. I find I cannot make orders against non-parties who have not been given the opportunity to respond to complaints made against them. For these reasons, I dismiss the owner's claims that the strata council acted in bad faith.
16. Even if the owner had alleged individual council members acted in bad faith, I would have dismissed the claim because the owner does not have standing to make it. A

claim of bad faith implies one or more strata council members breached their standard of care under section 31 of the SPA. Section 31 requires a council member to act honestly and in good faith with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.

17. Based on decisions of the BC Supreme Court, I find the owner has no standing to make a claim under section 31. In *Wong v. AA Property Management Ltd*, 2013 BCSC 1551 at paragraph 36, the court said a strata lot owner may only sue an individual strata council member for a breach of the conflict of interest disclosure requirement under SPA section 32. Remedies for breaches of section 32 are excluded from the tribunal's jurisdiction under CRTA section 122(1)(a). Similarly, in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the court said strata council member duties under SPA section 31 are owed to the strata corporation, and not to individual owners. This means the owner cannot succeed in a claim against the strata or individual strata council members for a breach of section 31.
18. These BC Supreme Court decisions are binding on the tribunal. Therefore, applying the *Wong* and *Sze Hang* decisions, I would dismiss the owner's claim for a remedy under section 31.

ISSUES

19. The issues in this dispute are:
 - a. Are the 2 skylights and window the owner seeks to have the strata replace common property?
 - b. Is the strata responsible for maintaining and repairing the kitchen and living room skylights, and living room transom window?
 - c. If the strata is responsible for the 2 skylights and window, are any one or more of the following 3 remedies appropriate?

- i. An order for the strata to advise other owners that the strata is responsible for maintaining and repairing roof and balcony skylights, windows, and sliding glass doors in strata lots.
 - ii. An order for the strata to propose an amended set of bylaws, including amendments to bylaws 2, 8, and 15, to be voted on at a general meeting.
 - iii. An order for the strata to replace the 2 skylights and window at issue.
- d. Must the strata make recommendations about, or propose resolutions for, obtaining a depreciation report, to be voted on at a general meeting?
 - e. Were the strata's actions significantly unfair to the owner, and if so, is the owner entitled to \$5,000 in punitive damages or another remedy?
 - f. Should the strata require council members to complete strata governance training?
 - g. Is the applicant entitled to reimbursement of \$210 for a home inspection fee, \$58.75 for requested strata documents, and \$45.75 for land title search and filing fees?

EVIDENCE AND ANALYSIS

- 20. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. I have read all of the submitted evidence, but refer only to the evidence I find relevant to provide context for my decision.
- 21. The strata was created in the 1980s. The owner's strata lot is a 2-floor "stacked townhouse" in the top 2 floors of a strata building, and features 2 adjoining sun decks.
- 22. The owner says 2 skylights and a window at her strata lot are cracked and need to be replaced. She says the strata has refused to do so. The strata acknowledges its refusal, and says its bylaws require the owner to perform such repairs or

replacements. The parties disagree about who is responsible for repairs to skylights, windows, and doors on common property.

Are the 2 skylights and window the owner seeks to have the strata replace common property?

23. Based on photos of the owner's 2 cracked skylights, I find the skylights are affixed to boxes, which extend above the roof of the strata. I find the skylight glass is entirely above the surface of the roof. The strata plan does not indicate the exact upper boundary of strata lot 31, but does not designate the roof above the lot as limited common property (LCP). The parties do not deny that the roof is common property, and the strata has indicated it is responsible for maintaining and repairing the roof. I find the roof above strata lot 31 is common property.
24. Section 68(1) of the SPA says the boundary of the strata lot is midway between the interior surface of the structural portion of the ceiling, and the structural portion of the ceiling that faces common property – in this case, the roof. The owner obtained a September 3, 2019 home inspection report from a home inspector licensed by Consumer Protection BC. The report said the skylights were consistent with an exterior face installation, are considered part of the building envelope, and the glass components were exterior of the midway point. I find the skylights are beyond the section 68(1) midway point. Therefore, I find the kitchen and living room skylights are common property and are not LCP.
25. The living room transom window, however, is in an exterior wall of a building, between strata lot 31's living room and an open-air sundeck. According to the strata plan, strata lot 31's sundecks are part of the strata lot, and are not common property. Therefore, I find the living room transom window is part of strata lot 31, and is not common property. Photos of the window show, and I find, that the window is part of the exterior of the building.

Is the strata responsible for the 2 skylights and window?

26. The strata says that under its bylaws, it is not responsible for maintaining and repairing the owner's skylights and windows.
27. The strata repealed and replaced all its previous bylaws with new bylaws filed at the Land Title Office (LTO) in May 2002. These bylaws included bylaws 2 and 8. The strata's bylaws 2 and 8 are about the owners' and strata's responsibilities for repairing and maintaining property. The owner does not deny that bylaws 2 and 8, including any amendments, were properly passed at strata general meetings and registered at the LTO.
28. The strata's 2002 bylaw 2 contained three subsections numbered 2(1) through 2(3).
29. An amendment to bylaw 2(1) was filed at the LTO in June 2008. This amendment deleted the previous bylaw 2(1), and replaced it with new bylaws numbered 2(1) through 2(5). I find the 2008 amendment only deleted the previous bylaw 2(1), leaving previous bylaws 2(2) and 2(3) in place. I find this has resulted in duplicate numbering, with both previous 2002 bylaws 2(2) and 2(3), and new 2008 bylaws 2(2) and 2(3), being filed with the LTO. The strata may wish to consider amendments to clarify this confusing numbering.
30. The sections of bylaw 2 most relevant to this dispute are the new 2008 bylaws 2(1) and 2(2). These sections say an owner must repair and maintain "**the owner's strata lot**" (my emphasis), including doors, skylights, and windows, as well as window casings, sills and frames. The bylaw also says the strata may complete repairs or replacements if the owner does not complete them in a reasonable time, and charge the costs to the owner.
31. I find the 2008 bylaw 2(1) only requires the owner to repair and maintain "the owner's strata lot," and not common property. I find this bylaw says the owner must repair and maintain doors, skylights, and windows that are part of the owner's strata lot. I find the bylaw does not say owners are responsible for skylights, doors, and windows located on common property.

32. I now turn to bylaw 8, which reads:

8 The strata corporation must repair and maintain all of the following:

- a. common assets of the strata corporation;
- b. common property that has not been designated as limited common property (excluding doors, skylights (roof and balcony), and windows);
- c. limited common property, but the duty to repair and maintain it is restricted to:
 - i. the following, no matter how often the repair or maintenance ordinarily occurs:
 - A. the structure of a building;
 - B. the exterior of a building i.e. siding, roof;
 - C. exterior chimneys,
- d. a strata lot in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to
 - i. the structure of a building,
 - ii. the exterior of a building,
 - iii. chimneys.

33. Bylaw 8(d) says the strata must repair the portion of a strata lot that is the exterior of a building. While similarly-worded bylaw 8(c)(i)(B) says siding and roof are specific examples of “the exterior of a building,” bylaw 8(d)(ii) does not limit “exterior of a building” to only those items. In light of my finding above, that the owner’s living room transom window is part of the exterior of a building, I find that bylaw 8(d)(ii) requires the strata to repair and maintain the owner’s living room transom window.

34. Bylaw 8(b), a key section in this dispute, is poorly drafted. As a result, it may cause confusion about whether the strata is exempted from repairing and maintaining the “doors, skylights (roof and balcony), and windows” of all common property, or only those items that are also LCP. Given the lack of doors, skylights, and windows designated as LCP in the strata plan, and the wording of the bylaw 8, I find the correct interpretation of bylaw 8(b) is that the strata is exempted from repairing and maintaining doors, skylights, and windows that are non-LCP common property. Above, I found the owner’s 2 skylights are non-LCP common property, so bylaw 8(b) says the strata does not have to maintain or repair them.
35. The parties do not deny that for several years, the strata and its owners have operated on the assumption that strata lot owners, and not the strata, must pay for maintenance and repairs to skylights, doors, and windows. It is not disputed that several owners have replaced skylights at their own expense. However, I found above that bylaw 2 only requires the owner to repair or maintain her strata lot.
36. While bylaw 8(b) says the strata is not required to repair or maintain non-LCP common property skylights, the bylaw must be consistent with SPA section 72. I find bylaw 8(b) is not consistent with section 72, for the following reasons.
37. Section 72 of the SPA states:
- (1) Subject to subsection (2), the strata corporation must repair and maintain common property and common assets.
 - (2) The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of:
 - (a) limited common property that the owner has a right to use, or
 - (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.
38. So, section 72(2)(b) says the only way a strata can make an owner responsible for repair and maintenance of non-LCP common property is if it is identified in the

regulations and subject to their prescribed restrictions. No such regulations are in effect. This means the strata cannot make an owner responsible for repair and maintenance of non-LCP common property through its bylaws. While not binding on me, I note the tribunal employed the same reasoning in *VJS Enterprise Inc. v. The Owners, Strata Plan NW 2873*, 2020 BCCRT 68 and *Turenne v. The Owners, Strata Plan NW 1370*, 2017 BCCRT 44.

39. The strata relies on the decision *Matthews v. Owners Strata Plan NW1874*, 2009 BCPC 0066 to support its position that the owner, not the strata, is responsible for the 2 skylights and window. However, I find that decision is not applicable here, as the court refused to hear the case for lack of jurisdiction, and its non-binding opinion was about responsibility for repairs to LCP, not common property that is not LCP. The strata also cited *Silva and Amadeo v. The Owners, Strata Plan NW58*, 2017 CRTBC 7. While not binding on me, I agree with *Silva's* finding that responsibility for repair and maintenance of common property under the SPA cannot be varied through strata bylaws.
40. In addition, the strata also submitted a 2011 legal opinion, and a 2019 email comment on that opinion, stating that the strata can transfer responsibility for the repair and maintenance of doors, windows, and skylights to strata lot owners by bylaw. A legal opinion given to the strata is not binding on the tribunal. Further, the legal opinion and email are about the ultimate issue in this claim, which is for the tribunal alone to decide, so I place no evidentiary weight on them (see *Brough v. Richmond*, 2003 BCSC 512 at paragraph 6). In addition, I note the legal opinion and email are based on there being a lack of clarity in the SPA's definition of what is common property versus a strata lot. I find the SPA's definitions are sufficiently clear.
41. Under SPA section 121, a bylaw is not enforceable to the extent that it contravenes the SPA. I find the SPA requires the strata to maintain and repair non-LCP common property, but under SPA section 72 the strata's bylaws may not transfer that responsibility to owners. Therefore, I find the exceptions to bylaw 8(b), which state that the strata is not responsible for repairing and maintaining non-LCP common

property doors, skylights, and windows, are contrary to SPA section 72 and are not enforceable.

42. As a result, I find the strata is responsible for maintaining and repairing the 2 non-LCP common property skylights at issue in this dispute. Above, I determined the strata is also responsible for maintaining and repairing the owner's living room transom window.

What is the appropriate remedy for the 2 skylights and window?

43. Having found the strata is responsible for the 2 skylights and window at issue, are any of the owner's requested remedies appropriate?
44. I find it is not appropriate to order the strata to advise strata lot owners that the strata is responsible for common property skylights, windows, and doors, and I dismiss the owner's claim for this remedy. The strata is required to act in accordance with the SPA, which dictates that the strata is responsible for maintaining and repairing all non-LCP common property, including skylights and windows. This means the strata can no longer rely on its unenforceable bylaw stating otherwise. Further, this tribunal decision is publicly available at no charge on the tribunal's website, including to strata lot owners. I dismiss the owner's claim for this order.
45. The owner seeks an order for the strata to propose a revised set of bylaws, to be voted on at a general meeting. Strata lot owners are free to propose bylaw amendments using the process set out in SPA section 43. The strata may also propose bylaw revisions.
46. The owner also suggested that bylaw 15(3) is unenforceable. Bylaw 15(3) requires a decision to be provided within 2 weeks after a strata council hearing. The owner's notes of a July 12, 2019 strata hearing reveal that she expected a written decision to be provided within one week, as set out in SPA section 34.1(3). The council provided its written decision on July 19, 2019, within one week of the hearing, in accordance with both the SPA and bylaw 15(3). So, I find nothing turns on the

enforceability of bylaw 15(3) in this dispute. However, I find bylaw 15(3) contravenes SPA section 34.1(3), and is therefore unenforceable under SPA section 121. Section 34.1 will apply to council hearings and decisions going forward, and cannot be varied by a bylaw.

47. For the above reasons, I dismiss the owner's claim for an order that the strata propose new bylaws.
48. The owner also seeks an order for the strata to replace the 2 cracked skylights and transom window at issue. While there are visible cracks in those items, the owner confirms that none of them are actually leaking. It is undisputed that the strata did not thoroughly investigate the state of all exterior skylights and windows, believing they were not the strata's responsibility.
49. Strata councils are permitted to reasonably prioritize repairs and maintenance based on budgetary concerns while balancing the needs of all owners: *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784. *Weir* also said determining what is reasonable may involve the strata assessing whether a solution is good, better, or best. Further, while not binding on me, I agree with the reasoning in *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241, that an owner cannot direct the strata on how it must conduct repairs.
50. The September 3, 2019 home inspection report said the original windows and skylights at the strata were approaching their life span of 25 to 35 years. The report recommended replacement of the 2 skylights and window. However, the report also recommended that a "qualified glazier" both evaluate those items and provide estimates for their repair or replacement. I find this statement indicates that the home inspector was not able to fully evaluate the owner's skylights and window, and that the task required a glass specialist. I find this makes the inspector's recommendation for skylight and window replacement less persuasive. In any event, neither the inspector nor the owner suggested the 2 skylights or window needed emergency repairs or were actually leaking.

51. Here, the strata has not yet considered the status of all the skylights and windows it is responsible for maintaining and repairing, including their relative need for maintenance and its budgetary resources for that work. I find the strata should be given an opportunity to exercise its discretion in investigating and prioritizing any non-emergency repairs and maintenance. So, I find it is not appropriate to order replacement of the 2 skylights and window at issue. However, I find it is appropriate to ensure the strata takes timely steps to investigate and prioritize maintenance and repairs for the 2 skylights and window, particularly considering the long delay while the strata denied responsibility for those items. Therefore, I order the strata to, within 2 months of the date of this decision, investigate the status and maintenance needs of the 2 skylights and living room transom window with the assistance of a window expert, and issue a written decision to the owner about the timing and extent of its planned maintenance and repair of those items.

Must the strata propose a resolution that it obtain a depreciation report?

52. The undisputed evidence is that the strata has, at successive annual general meetings, waived the SPA requirement for a depreciation report. The owner has not alleged that any of these waiver votes were invalid, or that the strata contravened its bylaws or the SPA in waiving a depreciation report, so I have not considered that matter.

53. The owner says a depreciation report is a good idea in order to properly plan for the strata's maintenance. The strata says it has been proactive in planning for major maintenance projects, and as a result the strata owners have continued voting in successive years to defer obtaining a depreciation report. The strata submitted minutes from recent annual general meetings showing votes to defer a depreciation report. The strata also says that at the 2019 annual general meeting, the owners voted unanimously to obtain a building envelope depreciation report, as an alternative to a full depreciation report.

54. Under SPA section 94 and *Strata Property Regulation 6.2(7)*, the strata may waive the requirement to obtain a depreciation report for 18 months by a $\frac{3}{4}$ vote at an

annual or special general meeting. In this case, the strata will be required to obtain a depreciation report unless the owners continue to vote for a waiver at least every 18 months. Further, if persons holding at least 20% of the strata's votes wish to obtain a depreciation report sooner, they may call a special general meeting and propose a resolution under sections 43 and 46 of the SPA. So, I find it unnecessary to order the strata to propose a resolution for obtaining or waiving a depreciation report, and I dismiss the owner's claim for such an order.

Were the strata's actions significantly unfair?

55. As explained below, the owner's concerns appear on a background of interpersonal difficulties with the other strata council members during her time on council from November 2018 to July 2019 and afterward.
56. The owner requested a strata council hearing about the strata's responsibility for repairing her skylights and window, and the enforceability of bylaws 2 and 8. The hearing was held on July 12, 2019, and the council issued a written decision on July 19, 2019. The owner alleges the strata acted significantly unfairly toward her.
57. The tribunal has jurisdiction to determine claims of significant unfairness because section 164 of the SPA is similar to section 123(2) of the CRTA, which gives the tribunal authority to issue such orders preventing or remedying a significantly unfair action, decision, or exercise of voting rights: *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119.
58. The courts and the tribunal have considered what "significantly unfair" means, and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable.
59. The BC Court of Appeal considered the language of SPA section 164 in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated in *Watson* at paragraph 28:

The test under s. 164 of the *Strata Property Act* also involves objective assessment. [Dollan] requires several questions to be answered in that regard:

- a. What is or was the expectation of the affected owner or tenant?
- b. Was that expectation on the part of the owner or tenant objectively reasonable?
- c. If so, was that expectation violated by an action that was significantly unfair?

60. The owner alleges three main instances of significant unfairness. First, the owner says the strata council and president unfairly disregarded the owner's view of skylight and window issues, as well as her concerns regarding the enforceability of bylaws 2 and 8, and the requirement that she sign an indemnity agreement before the council would approve skylight and window repairs. This argument partially conflates the owner's disagreements while on council with her requests to council as an owner. In any event, I find the owner reasonably expected the strata to consider her requests and issue a fair decision about them.

61. The strata council held a hearing and allowed the owner to present her position and requests regarding responsibility for skylight and window replacement, enforceability of bylaws 2 and 8, and other requests which the owner now claims in this dispute. The owner's submissions for that hearing are extensive but clear, and I am satisfied the strata council was aware of them when it issued its written decision denying the owner's requests. I find the decision was based on the strata's honestly-held belief that its bylaws were enforceable, which flowed in part from the strata's interpretation of a legal opinion it had obtained. I find the council's decisions were rational and logical, and were not significantly unfair.

62. The owner argues that the strata council, and specifically its president, tried to stifle her concerns and requests out of malice, and prevented her from expressing her opinions at strata council meetings. Conversely, the strata says other strata council members felt badgered by the owner's frequent interruptions at council meetings,

particularly when council votes did not go her way. Correspondence among the strata council members, including the owner, shows forceful opinions and communications by both the owner and other council members. However, none of the correspondence before me demonstrates harsh, wrongful, or unjust behaviours, and I find there was no significant unfairness.

63. Second, the owner says she was unfairly singled out by being required to sign an indemnity agreement before the strata would approve repairs to her skylights and window. The strata says, and the owner does not deny, that the indemnity agreement was a new strata initiative championed by the owner. The strata says, and I find, that the owner was simply one of the first few of many strata lot owners required to sign an indemnity agreement before the strata approved repairs. The strata provided several examples of such agreements signed by other owners in 2019. Some of the evidence suggests the owner felt indemnities should not be required for skylight and window replacements, as opposed to upgrades and alterations, but the evidence is insufficient to prove this interpretation.
64. As the strata's interpretation of its bylaws was incorrect, and the owner was not required to repair the 2 skylights and window, I find no indemnity agreement should have been required in this case. However, I find the strata interpreted its bylaws in good faith and applied the indemnity requirement consistently among strata lot owners. Further, I find the strata refused responsibility for skylight and window repairs and maintenance based on its interpretation of the bylaws, and not because of the owner's refusal to sign the indemnity agreement. As a result, I find the strata's indemnity-related actions did not rise to the level of significant unfairness.
65. Last, the owner says she was coerced to leave the strata council in July 2019 by the strata council's unfair actions, led by the president. It is not disputed that immediately after the owner's July 12, 2019 hearing concluded, and before the owner departed, the strata council held a meeting for the purpose of asking the owner to resign. The strata council said if the owner did not resign, they would call a vote for her removal from the council at a general meeting. The owner resigned shortly after.

66. According to the strata, the strata council experienced communication and functional challenges after the owner joined the council, which were the subject of council discussions for months. The strata says the other council members all believed the strata council could no longer function, given the communication and interpersonal difficulties they attributed to the owner's presence on council. Further, the strata says the owner's requests for the strata to repair her skylights and windows were essentially a request that the strata disobey its own bylaws or amend them without a proper vote, which was untenable. Having considered the owner and council communications in evidence, I find the above views were honestly held by the other strata council members.
67. The owner says the strata alleged she was in a conflict of interest by advocating for personal benefits while on council, and that she resigned so she would not have to address this "false allegation" at a general meeting. I accept this is the owner's honest view of the circumstances.
68. I find the strata clearly indicated the hearing was separate from, and unrelated to, the council meeting that followed. On the evidence before me, I also find the strata council was conscious about not allowing its meetings and hearings to exceed their scheduled length. However, I find that asking the owner to resign from council immediately following her hearing before council, even in the interests of time efficiency, does not lend an appearance of fairness to the strata's actions, especially considering that the council's hearing decision was based on misinterpretations of strata bylaws. But I find the strata council had longstanding difficulties with communication that the other council members honestly believed arose from the owner's actions on council. Therefore, I find the apparent unfairness of the council's decision to ask for the owner's resignation following the hearing does not rise to the level of significant unfairness, although it approaches that threshold. Therefore, I find the strata did not act significantly unfairly in this case.
69. The owner also says the strata intentionally treated her unfairly by publishing her name in the minutes of the July 12, 2019 hearing. The strata says the owner's name was omitted from its draft of the minutes, as was its practice. The strata says a

property management company clerk then inserted the owner's name into those draft minutes and circulated them without final strata council review. The strata says upon discovering this error, it amended the minutes to remove the owner's name, and re-circulated them. The strata apologizes for the mistake. The owner says it is more likely that an unidentified member of council executive verbally directed the clerk to insert the owner's name into the minutes out of anger or malicious intent, to discredit and embarrass the owner. There is no evidence to support a council member causing the owner's name to be inserted into the minutes. As a result, I find this alleged action by an unknown council member is mere speculation, is not persuasive, and does not prove significant unfairness.

70. Overall, I find the strata did not act significantly unfairly toward the owner, and I dismiss her claim for \$5,000 in punitive damages. Further, even if I had found that the strata's actions were significantly unfair, I would not have awarded punitive damages. In *Craig v. The Owners, Strata Plan 1526*, 2018 BCCRT 310, which is not binding on me but which I find persuasive, a tribunal vice chair considered the tribunal to have the authority to order punitive damages, because it may order a party to pay money under section 123(1)(c) of the CRTA. The vice chair noted that punitive damages require malicious, oppressive, and high-handed conduct. While the vice chair in *Craig* found the strata and strata council's actions related to significant breaches of the SPA and were troubling, they did not rise to the level of malicious, oppressive, or high-handed, and he dismissed the punitive damages claim.
71. I find the strata council's request for the owner to resign following the July 12, 2019 hearing was ill-timed, and likely stressful and difficult for the owner. But given my findings above, I consider the strata's conduct to be not significantly unfair, and not malicious, oppressive or high-handed. So, I find there is no basis to award punitive damages. I dismiss this claim.

Should the strata council's members be required to complete strata governance training?

72. The evidence reveals that the owner and another strata council member attended a one-day seminar on strata governance during the owner's time on council. The owner then recommended the training to the strata council. According to the evidence, the council later applied for membership in the organization that provided the training, and intended to seek its assistance in planning major maintenance projects.
73. In her correspondence with the strata council, the owner expressed concerns with its approach to planning for ongoing maintenance, and its governance practices. She relies on the *Craig* decision noted above, which is not binding on me. In *Craig*, a tribunal vice chair ordered the strata to have its council members attend workshops on strata governance and their roles and responsibilities on council. However, the vice chair found the strata and council had been involved in several significant breaches of the SPA and strata bylaws, such as violations in calling general meetings, proposing $\frac{3}{4}$ votes and special levies, and calling and keeping minutes of strata council meetings. This dispute is different, as I find no such repeated, significant breaches are at issue or have been proven. At most, the strata council was mistaken in its belief that the exceptions in bylaw 8(b) were enforceable, and about the applicability of bylaws 8(d) and 2(1).
74. On balance, I find the evidence does not demonstrate a grave misunderstanding of strata council roles that necessitates training. So, I dismiss the owner's claim for an order that the strata arrange for strata council governance training.

Should the owner be reimbursed \$210 for a home inspection fee?

75. The owner claims \$210 for the September 3, 2019 home inspection report relating to the 2 cracked skylights and window. This is not a dispute-related expense, as the owner obtained the inspection before applying to the tribunal for dispute resolution.
76. The strata never denied that these skylights and windows were cracked or might require replacement, and only argued that the strata was not responsible for them.

The owner obtained this inspection on her own initiative, without first confirming whether the strata would pay for it. Further, the report recommends that additional evaluations be performed by a professional glazier, so I find it is of limited use to the strata council, who was already aware of the skylight and window cracks when the inspection was obtained. Therefore, I do not find the strata is responsible for the cost of the inspection, especially considering that the strata has discretion about how and when to perform maintenance and repairs, as described above. I dismiss the owner's claim for the home inspection fee.

Should the owner be reimbursed \$58.75 for requested strata documents?

77. The owner claims \$58.75 for copies of strata documents she requested from the strata's property manager on August 14, 2019. This is not a dispute-related expense, as the owner requested the documents before applying to the tribunal for dispute resolution. The owner does not deny that she was charged the correct amount for these documents, as permitted under the *Strata Property Regulation*. I find the strata documents obtained through this document request largely relate to the owner's claims about significant unfairness, which were not successful. So, I dismiss the owner's claim for the strata document fee.

TRIBUNAL FEES AND EXPENSES

78. Under section 49 of the CRTA and 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 not to follow that general rule.

79. The owner claims \$45.75 in LTO search and filing fees that she says were needed to obtain the strata's registered address, which she used to serve the tribunal Dispute Notice. The owner submitted an invoice from her lawyer with a corresponding disbursement totalling \$29.95, and which did not break down any time spent on the LTO search. The owner also submitted a copy of the cheque she used to pay the lawyer's invoice. Importantly, the owner did not explain why she did

not ask the strata council or property management company for the strata's registered address, and instead requested them through her lawyer. As a result, on a judgment basis, I find the owner is entitled to reimbursement of \$15 for LTO search and filing fees, which is approximately half the disbursement paid to her lawyer for that purpose.

80. The owner paid \$225 in tribunal fees. The owner was partially successful in this dispute, so I order reimbursement of half her tribunal fees, which equals \$112.50. The strata did not claim any dispute-related expenses.
81. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

82. I order that, within 30 days of the date of this order, the strata will pay the owner \$127.50, broken down as follows:
- a. \$15 for Land Title Office search and filing fees, and
 - b. \$112.50 for tribunal fees.
83. I order that, within 2 months of the date of this order, and contingent on the owner providing the strata reasonable access to her strata lot, the strata will investigate the status and maintenance needs of the 2 skylights and living room transom window at issue with the assistance of a window expert, and based on that investigation issue a written decision to the owner about the timing and extent of its planned maintenance and repair of those items.
84. The owner is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
85. I refuse to resolve the owner's claims for defamation and breaches of PIPA.
86. I dismiss the owner's remaining claims.

87. 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.

88. 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 owner 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.

Chad McCarthy, Tribunal Member