



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Francis v. The Owners, Strata Plan LMS 2854*, 2020 BCCRT 1445

BETWEEN:

JENNY FRANCIS

APPLICANT

AND:

The Owners, Strata Plan LMS 2854

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about disclosure of records and documents.
2. The applicant, Jenny Francis, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2854 (strata). Dr. Francis is self-represented, and the strata is represented by a strata council member.

3. Dr. Francis says the strata has twice refused to disclose certain records and documents that she has requested, contrary to sections 35 and 36 of the *Strata Property Act* (SPA). She seeks an order that the strata provide her with copies of the requested documents.
4. The strata acknowledges that it refused Ms. Francis' requests. It says it did so because the requests were "unclear, non-specific, overly broad, speculative, burdensome, unreasonable and vexatious". It says Dr. Francis' request for documents is broader than what is required under the SPA, and that providing documents for the sake of vague or baseless allegations would unduly burden the strata, to the detriment of all other owners. The strata asks that this dispute be dismissed.
5. For the reasons that follow, I order the strata to provide Dr. Francis with the requested documents, modified slightly to comply with the SPA and common law.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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 CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT 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 CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

PRELIMINARY ISSUES

10. The strata raises 2 preliminary issues in its submissions. I note Dr. Francis did not comment on either of these matters in her reply submissions.
11. The first issue is that Dr. Francis' arguments include several statements that are evidence and should have been disclosed as evidence before the evidence deadline. The strata says many statements are false and misleading, and are based on rumour and hearsay. It says the CRT should give no weight to such statements. I find there are no procedural fairness issues as a result of Dr. Francis' initial arguments, whether they included evidence or not, given the strata had an opportunity to respond to them.
12. Section 2 of the CRTA states the CRT's mandate is to provide dispute resolutions services about matters within its authority in a manner that includes being informal and flexible. Section 42 of the CRTA expressly permits the CRT to receive and accept as evidence, any information it considers relevant, necessary and appropriate. I find that information includes rumour and hearsay evidence. Based on my decision below, it was not necessary for me to rely on this information. However, if it was necessary, I would have declined the strata's request that no weight be given to such statements based on sections 2 and 42 of the CRTA. Instead, I would have identified the weight given to the evidence in my reasons.
13. The second issue is that Dr. Francis went beyond the CRT's character limits by letting her arguments for her main claim "spill over and continue" into her claim for dispute-related expenses. The strata says this is an abuse of the CRT's rules.
14. CRT rules 7.3(5) and (6), set character limits for strata property claims at 20,000 characters per claim for an applicant's arguments and 10,000 characters per claim for an applicant's reply. Rule 7.3(8) allows a party to request the character count be increased. CRT rule 1.2(1) states the CRT rules place high importance on fairness

and access to justice, and rule 1.2(2) permits the CRT to waive the application of a rule in exceptional circumstances to facilitate the fair, affordable, and efficient resolution of disputes.

15. I conducted a brief analysis of Dr. Francis' submissions using Microsoft Word software and find her initial arguments contain about 20,588 characters and her reply arguments contain about 8,278 characters. While it does not appear Dr. Francis sought prior approval to exceed the character count for her arguments, I do not find the additional 588 characters used by Dr. Francis to be an abuse of the CRT rules. I find this is especially true given the CRT's mandate to be efficient and flexible, and that Dr. Francis' total arguments were below the maximum 30,000 characters. Although the circumstances here are not exceptional, I find the strata's argument to be trivial and insignificant to the dispute. I find I have discretion to waive the character limit and that to do so here does not create unfairness or prejudice the strata.
16. Therefore, in the circumstances of this dispute, I allow Dr. Francis' arguments.

ISSUE

17. The sole issue in this dispute is whether the strata must provide Dr. Francis with the records and documents she requested, or some of them.

BACKGROUND, EVIDENCE AND ANALYSIS

18. In a civil proceeding such as this, the applicant, Dr. Francis, must prove her claims on a balance of probabilities.
19. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
20. The strata is a mixed-use strata corporation created in July 1997 under the *Condominium Act*, that continues to exist under the SPA. It consists of 82 strata lots in a single mid-rise building located in Vancouver, BC.
21. I have reviewed the strata's bylaws and find there are none relevant to this dispute.

What records and documents, if any, is the strata required to provide to Dr. Francis?

22. There is no dispute that section 36 of the SPA permits an owner to request certain records and documents as set out in Section 35. A strata corporation must make the records and documents listed in section 35 and section 4.1 of the *Strata Property Regulation* (regulation) available, or provide copies of them, to an owner within 2 weeks of a written request, or 1 week if the request is for bylaws or rules. Under section 36(4) of the SPA and section 4.2 of the regulation, a strata corporation may charge up to \$0.25 per page if copies are requested and may withhold providing the copies until the fee is paid.
23. On July 7, 2020, Dr. Francis wrote the strata and requested electronic copies of what appears to be large number of the strata's records and documents. In her letter, Dr. Francis acknowledged there might be a cost for her to receive the requested information and stated she prepaid \$250 to her strata lot account for that purpose.
24. On July 16, 2020, the strata's lawyer wrote to Dr. Francis advising the strata refused her document request stating:
 - a. The strata is not obligated to comply with such unclear, non-specific, overly broad, and speculative requests for records such that compliance with Dr. Francis' request would unduly burden the strata,
 - b. That Dr. Francis did not provide a good faith basis for requesting the documents,
 - c. That Dr. Francis' request was vexatious, based on recent emails sent by Dr. Francis to the strata and its property manager the strata decided were false or baseless, and
 - d. The \$250 pre-payment of copy charges would be exceeded if the strata provided copies all of the requested information, so the strata could refuse to provide the copies under section 36(4) of the SPA.

25. On July 23, 2020, Dr. Francis replied to the strata's lawyer's letter. She reduced the number of records and documents she requested, and responded to the strata's reasons for denying her first request. Dr. Francis also stated she deposited an additional \$200 to her strata lot account to cover additional copy charges bringing the total pre-paid copy charges to \$450, enough to cover 1,800 pages at a rate of \$0.25 per page.
26. On July 31, 2020, the strata denied Dr. Francis' revised request, essentially for the same reasons as described in its July 16, 2020 letter.
27. I find the strata must provide Dr. Francis with the records and documents she requested on July 23, 2020, but note there are slight modifications required for the reasons that follow.
28. I address each of the strata's stated reasons for not providing Dr. Francis with the requested records and documents, but in a different order than set out above.

Is Dr. Francis obligated to provide a reason for her document request?

29. One reason the strata refused to provide Dr. Francis with the records and documents she requested was because she did not give a reason for her request. Dr. Francis says the SPA does not require her to give a reason and I agree.
30. There is no express requirement under section 36 of the SPA that requires an owner who requests access to information or copies of records and documents to provide a reason for their request. Dr. Francis cites *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 as support for her position. The strata did not comment on *Kayne*. I agree that *Kayne* is clear that the requirements of sections 35 and 36 are mandatory and the person requesting the records or documents is not obligated to provide a reason for their request. The court confirms this at paragraph 7, stating the SPA (my emphasis):

...sets out certain documents or categories of documents that **must be kept and produced**. The question of what relevance they have or do not have to any dispute between the petitioner and the corporation is really not relevant.

31. I find I need not address the issue of why Dr. Francis requested the documents based on *Kayne*, which is binding on me. The fact that Dr. Francis did provide reasons for her request does not alter my conclusion.

Is Dr. Francis' request for documents vexatious?

32. Another reason the strata gave for not providing Dr. Francis with her requested documents was because her request was vexatious. The strata relies *Hughes v. Hughes*, 2011 BCSC 1569 at paragraph 14, where the court states that intent to harass or oppress opposing parties is considered vexatious.

33. The online version of the Merriam Webster dictionary (www.Merriam-Webster.com) defines vexatious to mean "intended to harass". It defines harass to mean "to annoy or bother (someone) in a constant or repeated way". Therefore, based on *Hughes* and the definition of vexatious, to support its statement that Dr. Francis' request for documents is vexatious, the strata must provide evidence of her constant or repeated intent to harass the strata.

34. The strata refers to 2 emails in support of its argument that Dr. Francis' request is vexatious. While I agree with the strata the emails appear threatening, they are both directed to the same person employed by the strata's property manager, whom appears to be the property manger's direct supervisor. The emails refers to a "scam" involving the property manager and their supervisor as well as "public humiliation" but the context of the emails is unclear. In a witness statement, the property manager confirms they do not understand the emails or why Dr. Francis sent them.

35. I acknowledge that the property manger is likely an agent of the strata, but I find there is no direct connection that links the emails to the strata, which the property manager appears to acknowledge.

36. I find strata's assertion that these 2 emails represent Dr. Francis' intention to harass the strata, which Dr. Francis denies, is speculative at best. I am not persuaded the emails establish Dr. Francis' document request is vexatious.

37. It is important to note the mandatory nature of section 36 of the SPA as set out in *Kayne*, and equally important that the strata has not provided any documents to Dr. Francis. This dispute is not about a claim Dr. Francis has made against the strata for which she seeks copies of documents to pursue an alleged vexatious issue. Rather, the claim put forward by Dr. Francis is simply that the strata has not provided her with copies of records or documents it is obligated to provide. Further, the only repetitive issue at play is that Dr. Francis reiterated her initial request, reducing the number of documents, after the strata denied it.

38. For these reasons, I find that Dr. Francis' request for documents cannot be considered vexatious.

Are Dr. Francis' requests unclear, non-specific, overly broad, and speculative such that compliance with Dr. Francis' request would unduly burden the strata?

39. I find it helpful to list the records and documents Dr. Francis requested on July 23, 2020, as these are the documents she asks to be ordered in this dispute. I paraphrase Dr. Francis' document request as follows, all of which are for electronic copies:

- a. A full list of current owners, with their strata lot addresses, complete mailing addresses if different, strata lot numbers as shown on the strata plan, and parking stall numbers;
- b. A list of full names of current tenants;
- c. A list of current assignments of voting or other rights by landlords to tenants under sections 147 and 148 of the SPA;
- d. All written contracts to which the strata corporation is currently a party;
- e. Copies of the following documents listed below, for a period of 5 years from July 23, 2015 to July 23, 2020:
 - i. Minutes of annual and special general meetings and council meetings, including the results of any votes whether "formal" or "informal";
 - ii. List of council members;

- iii. Correspondence sent or received by the strata corporation and council, including any correspondence sent or received the strata property manager on behalf of the corporation;
- iv. Any decision of an arbitrator or judge, or of the CRT, in a proceeding in which the strata corporation was a party;
- v. Any legal opinions obtained by the strata corporation;
- vi. The budget and financial statements;
- vii. Income tax returns;
- viii. Books of account showing money received and spent and the reason for the receipt or expenditure.

40. For the following reasons, I find Dr. Francis' request for documents is reasonable, clear, specific, and not overly broad. The strata's arguments are largely based on its speculative allegations of vexation which I have found are unproven. It appears the strata has made a broad sweeping argument that the entirety of Dr. Francis' requested documents are unreasonable, unclear, non-specific and overly broad, without squarely considering the specific documents requested.

41. I find the document requests of Dr. Francis generally include documents set out in section 35(1) and (2) of the SPA. She has, for the most part, followed the SPA descriptions when listing her requested documents, and has not requested documents that are outside the confines of section 35, as I discuss below. On that basis alone, I find I cannot conclude her request is unreasonable. Simply put, the SPA permits Dr. Francis to request certain records and documents, she does not need to provide the strata her reasons for requesting them, and the strata is obligated to provide them.

42. There is case law that clarifies document production which is of assistance here.

43. In *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863, the court considered an appeal of a CRT decision (permitted under a previous version of the CRTA) that included the production of records and documents. The CRT decision

that was the subject of the appeal is indexed as 2017 BCCRT 141. In that decision, the CRT adjudicator ordered the strata to produce documents that were not listed in section 35 of the SPA. The BCSC found that “The decision to order production of documents not covered by s. 35 was inconsistent with existing case law, and was unreasonable” (see paragraph 27). The BCSC varied the CRT order to exclude production of information that was not confined to sections 35 and 36 of the SPA.

44. *Hamilton* also notes the strata corporation’s complaint about filtering minutes to identify those pertaining to certain contracts being onerous was overstated and that the amount of work was manageable (See paragraph 30). I find the same principle applies to the strata’s complaint here about reviewing correspondence and legal opinions. The strata knew, or ought to have known, section 35 correspondence must be produced on request. The correspondence request is within the confines of section 35, with the exception that under the regulation the strata must retain correspondence for 2 years rather than 5 years as requested by Dr. Francis. Given Dr. Francis’ request for correspondence, if modified to 2 years, is not outside the scope of section 35, I find the request cannot be considered unreasonable.
45. Following the principle in *Hamilton*, I find the strata’s complaint that it must review its legal opinions for privilege is overstated and the work involved to do so is manageable.
46. As for the strata’s statement that minutes are available to Dr. Francis via an on-line portal, I do not find that makes it unreasonable for Dr. Francis to request the minutes through section 36 of the SPA. Dr. Francis did not confirm she has access to a portal, but in any event, she is still entitled to obtain copies of minutes directly from the strata.
47. *Kayne* establishes that email correspondence exchanged between council members that does not relate to the business of the strata is not required to be produced under the SPA (see paragraph 22). In other words, only the business correspondence, including email, must be produced. I find this includes correspondence exchanged between the strata council and the property manager. Dr. Francis does not expressly request personal correspondence between strata council members, and my order for production specifically addresses this.

48. *Kayne* also establishes that the books and records of a strata corporation need not be kept in any particular form, provided that a strata corporation keeps books of account that show money received and spent and the reason for the receipt or expenditure as set out in section 35(1) of the SPA. In particular, the strata is not required to provide an owner with copies of receipts or invoices (see paragraph 15). Dr. Francis does not request receipts and invoices or any particular form of books and records. As with the correspondence, I have modified the request for financial information production to be consistent with *Kayne* in my order below.
49. In *Jiwan Dhillon & Co. Inc. v. Owners, Strata Plan LMS4385*, 2010 BCSC 254, the BCSC considered, among other things, whether a strata corporation had failed to maintain and produce financial records and statements required under the SPA. At paragraph 60, the BCSC ordered the strata corporation to produce “all ledgers, journals and other financial books and records” for period of 6 years. I find Dr. Francis’ request for financial records is within the confines of section 35 and consistent with the court’s order in *Dhillon*.
50. The strata cites 3 CRT decisions in support of its argument that the documents should not be provided to Dr. Francis, I have summarized those decisions below. I note each of the 3 decisions centre on the adjudicator’s finding that the owners’ requests were unreasonable, which is not the case in this dispute.
51. First, in *Mellor v. The Owners, Strata Plan KAS 463*, 2018 BCCRT 1, the CRT adjudicator considered whether the strata corporation failed to respond to an owner’s request for documents, among other claims. The adjudicator found the strata had never denied the owner access to the requested records and accepted that many of the owner requests were for records that would not be retained or that did not exist. The reason the adjudicator found the owner’s requests were unreasonable and vexatious include the extensive volume and frequency of requests made by the owner, and that the strata found it overwhelming and unreasonable to answer every request. As I have explained, the circumstances are different here, in that Dr. Francis has made only 2 requests and I have found her requests to be reasonable.

52. Second, in *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11, the CRT adjudicator also considered document production, and other claims. In *McDowell*, the owner argued the strata corporation was required to produce “all strata records” and the adjudicator determined that was not the case. In doing so, he relied on *Mellor* and other CRT decisions about document production. He also explained his conclusion that owner requests must be reasonable even if there are mandatory requirements under the SPA, at paragraph 99:

...I do not need to follow the *Mellor* decision. However, I find that decision persuasive with respect to the interpretation of what appear to be mandatory provisions in the SPA. There can be situations in which reasonableness must prevail, whether it is granting a hearing or producing strata records.

53. Third and finally, in *Bowie v. The Owners, Strata Plan VIS 5766*, 2020 BCCRT 733, involved a CRT dispute about ongoing requests for documents that the adjudicator found had mostly been provided to the applicant owner. The adjudicator found the owner had made repeated requests for documents and information, which in several instances were unclear or outside the records and documents listed in section 35. Thus, he followed *Mellor* and *McDowell* in concluding the owner’s requests were unreasonable and declined to follow the mandatory nature of section 36 of the SPA.

54. I do not find the dispute before me is one where I should interpret the mandatory requirements of Section 36 of the SPA differently I and decline to follow the CRT decisions relied on by the strata. I say this because I have found Dr. Francis’ requests for documents are not vexatious, are essentially reasonable, and are within the scope of the SPA.

55. As I have noted, in some instances Dr. Francis requests documents for a period that exceeds the retention period of section 4.1 of the regulation. One example is the 2-year retention period for correspondence. Another example is that the strata is only required to maintain **current** lists of strata council members under section 35(1)(c) of the SPA, rather than 5-years of council members as was requested by Dr. Francis. To the extent Dr. Francis’ request is for information outside of the required retention periods, I find the matter trivial. It is not sufficient reason for the strata to refuse to

provide all documents and could have easily been explained by the strata. I address the relevant time periods in my order below.

56. For all of these reasons, I find Dr. Francis' document requests are reasonable, subject to the clarifications established in *Hamilton, Kayne* and *Dhillon*, and the regulation. I do not find the requests are unclear, non-specific, overly broad, or speculative as described by the strata.
57. Therefore, I find Dr. Francis is entitled to copies of the documents she requested as modified in my order below. Given the current health emergency in the Province of British Columbia and the time of year, I find it appropriate to order the strata to provide Dr. Francis with the documents set out in my order below in electronic format within 4 weeks of the date of this decision.

Payment for copies of records and documents

58. I will briefly address payment for the requested records and documents. I interpret section 36(4) of the SPA, referenced earlier, to permit the strata to withhold release of any documents until it has received full payment for all documents.
59. As noted, Dr. Francis recognized there is charge for the strata to provide her requested documents. She has apparently pre-paid \$450 to her strata lot account to cover these expenses and says the strata should charge her account for any charges in excess of that amount. It is unknown if that pre-paid amount remains in the account.
60. It is up to the strata to decide if it wants to release the requested documents to Dr. Francis and bill her account for any excess amount, or receive full payment for all requested documents before releasing any document. Either way, the strata should provide Dr. Francis with a receipt that shows the number of documents contained in the request and the rate it charged Dr. Francis for each copy.

CRT FEES AND DISPUTE-RELATED EXPENSES

61. Under section 49 of the CRTA and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. Dr. Francis is the successful party and paid \$225 in CRT fees but did not claim dispute-related expenses. Therefore, I order the strata to reimburse Dr. Francis \$225 for CRT fees. I make no order for dispute-related expenses.

62. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Dr. Francis.

ORDERS

63. I order the strata, within 2 weeks of the date of this decision, to pay Dr. Francis \$225 for her CRT fees.

64. I order the strata, within 4 weeks of the date of this decision to provide Dr. Francis with electronic copies of the following records and documents:

- a. A list of current council members;
- b. A list of current owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, and parking stall numbers;
- c. A list of current tenants;
- d. A list of current assignments of voting or other rights by landlords to tenants under sections 147 and 148 of the SPA;
- e. Copies of all written contracts to which the strata corporation is currently a party;
- f. Copies of minutes of annual and special general meetings and council meetings, including the results of any votes, for the 5-year period from July 23, 2015 to July 23, 2020;
- g. Copies of all business correspondence, including email, sent or received by the strata corporation and council, including any business correspondence or email

- sent or received by the strata property manager on behalf of the corporation, for the 2-year period from July 23, 2018 to July 22, 2020;
- h. Copies of any decision of an arbitrator or judge, or of the CRT, in a proceeding in which the strata corporation was a party;
 - i. Copies of any legal opinions obtained by the strata unless restricted under section 169(1)(b) or 189.4(c) of the SPA;
 - j. Copies of the budget and financial statements, as set out under section 103(3) and sections 6.6 and 6.7 of the regulation, for the 5-year period from July 23, 2015 to July 23, 2020;
 - k. Copies of any income tax returns, if any, covering the 5-year period from July 23, 2015 to July 23, 2020;
 - l. Copies of all ledgers, journals and other financial books and records showing money received and spent and the reason for the receipt or expenditure, excluding copies of receipts and invoices, for the 5-year period from July 23, 2015 to July 23, 2020.
65. Dr. Francis is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
66. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the BCSC. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

J. Garth Cambrey, Vice Chair