



# Civil Resolution Tribunal

Date Issued: March 12, 2021

File: ST-2020-005317

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dhanani v. The Owners, Strata Plan NW 2265*, 2021 BCCRT 282

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

INARA DHANANI

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 2265 and OMBRETTA TONSIC

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about the enforcement of smoking and nuisance bylaws in a strata building.

2. The applicant, Inara Dhanani, owns and lives in strata lot 167 (SL167) in the respondent strata corporation, The Owners, Strata Plan NW 2265 (strata). The other respondent, Ombretta Tonsic, owns and lives in strata lot 143 (SL143).
3. Ms. Dhanani says Ms. Tonsic is smoking in SL143 and causing adverse impacts on Ms. Dhanani from second-hand smoke. SL143 is 3 floors down, directly below SL167. Ms. Dhanani says the strata has failed to enforce its no smoking bylaw, which prohibits smoking in a strata lot, on common property and on balconies. She asks for:
  - a. an order that the strata enforce its no smoking bylaw,
  - b. an order that Ms. Tonsic stop contravening the no smoking bylaw,
  - c. reimbursement of \$5,573.48 in strata fees,
  - d. reimbursement of \$1,037.39 for air circulator fans, and
  - e. reimbursement of \$1,101.89 for various expenses, later amended to add a further \$4,000.
4. Ms. Dhanani initially attached a dollar value of \$10,000 to her requested order that Ms. Tonsic stop smoking and \$10,000 to her requested order that the strata enforce its bylaw. She asked for the “maximum penalty” to be assessed to each respondent, so I infer that she seeks \$10,000 in damages from each respondent.
5. Ms. Tonsic says she has never smoked in her apartment, and she stopped smoking on her balcony when the strata passed a bylaw prohibiting it in December 2018.
6. The strata says it has investigated Ms. Dhanani’s complaints, including with professional air quality testing, but has been unable to substantiate Ms. Dhanani’s accusation that Ms. Tonsic is smoking.
7. Ms. Dhanani and Ms. Tonsic represent themselves. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
10. 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.
11. 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.

### ***Human Rights Tribunal complaint***

12. Ms. Dhanani filed her CRT dispute on July 11, 2020. After the parties submitted their evidence, the strata said the CRT dispute should not continue because Ms. Dhanani

and her spouse filed a July 27, 2020 complaint in the BC Human Rights Tribunal (HRT) about the same issues.

13. Section 15 says once a CRT dispute starts, a party must not commence another proceeding about the same issues against a party to the CRT dispute. If a party starts such a proceeding, it must be adjourned or suspended while the CRT dispute is continuing.
14. Ms. Dhanani submitted a copy of her HRT deferral request. The respondents both indicated they were satisfied with that request and wished the CRT to proceed with a decision on Ms. Dhanani's claims. On that basis, I proceeded to hear this dispute.

### ***Reply objection***

15. The strata raised a preliminary objection to Ms. Dhanani's reply submissions. It says that Ms. Dhanani's replies to each claim contain further argument or information that she reasonably could have included in her original submissions. The strata asks me to disregard all but 1 paragraph, but does not identify any particular new information or argument.
16. The CRT is not bound by the strict rules of evidence or procedure as a court but must be alive to the unfairness that can result when a respondent is denied the opportunity to address an issue an applicant raises for the first time in reply. On balance, I am not persuaded that Ms. Dhanani's submissions raise new issues to which the strata did not have the opportunity to respond substantively. Much of Ms. Dhanani's reply submissions are not relevant. Others are a reshaping of her original submissions in an attempt to address the strata's response. Given the tribunal's mandate to resolve disputes in a speedy, informal and flexible manner, I have considered Ms. Dhanani's reply submissions.

### ***Alleged privacy breach***

17. Ms. Dhanani expresses concern that the strata posted an unsealed envelope on her door containing "private, confidential and sensitive" information. There is no

evidence anyone else read the letter in the envelope. The only private information in the June 18, 2020 letter was that Ms. Dhanani had smelled smoke in SL167. Ms. Dhanani did not ask for a specific remedy for this alleged breach of privacy. I find that claims about the strata's duty to protect an owner's personal information are outside the CRT's jurisdiction (see the non-binding but persuasive reasoning in *The Owners, Strata Plan VIS5602 v. Copeland*, 2020 BCCRT 1188, paragraphs 14-18.). To the extent that Ms. Dhanani made a claim for breach of privacy, I refuse to resolve it under section 10 of the CRTA.

## **ISSUES**

18. The issues in this dispute are:
  - a. Has Ms. Tonsic contravened the strata's smoking or nuisance bylaws?
  - b. Has the strata adequately investigated Ms. Dhanani's complaints?
  - c. What remedies, if any, are appropriate?

## **EVIDENCE AND ANALYSIS**

19. As the applicant in this civil dispute, Ms. Dhanani must prove her claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

### ***Background and Complaints***

20. The strata was created in 1985 and includes 238 strata lots in 2 towers. Ms. Dhanani lives on the fifth floor in SL167 with her husband, ND, who is not a party to this dispute. Ms. Tonsic lives in SL143 on the second floor of the same tower, in the same vertical plane. Both strata lots have limited common property balconies.
21. Ms. Dhanani submitted numerous news reports and articles from medical and science journals about the health risks of exposure to cigarette smoke and

particularly to exhaled e-cigarette aerosol. It is not controversial that second-hand smoke poses serious health risks. Neither respondent disputes that e-cigarette aerosol poses a health risk, so I have not summarized the articles here.

22. Ms. Dhanani's first written smoking odour complaint to the strata was on October 30, 2017. It is undisputed that Ms. Tonsic moved into SL143 on or around that date.
23. At that time, the strata's smoking bylaw only prohibited smoking on "internal common property areas". This means smoking in strata lots and on limited common property balconies was allowed, subject to bylaw 3(1).
24. Bylaw 3(1) prohibits, among other things, activities that cause a nuisance or hazard to another person, or otherwise interfere with the rights of another person to use and enjoy a strata lot or common property.
25. Ms. Dhanani and ND wrote 11 complaint letters in 2017 about second-hand smoke. Ms. Tonsic admits she smoked on her balcony at that time. The strata, through its property manager, wrote 3 letters to Ms. Tonsic about smoking, asking her to "take steps to mitigate the transference of second-hand smoke," and warning of a possible fine for contravention of bylaw 3(1).
26. In early 2018, the strata council held 2 hearings with Ms. Dhanani to address her concerns about smoking. The strata also attended SL167 to investigate the alleged second-hand smoke. The strata does not dispute Ms. Dhanani's account that the strata council members smelled second-hand smoke in SL167 and spotted Ms. Tonsic on her balcony at the same time, though she denied smoking.
27. On March 12, 2018, Ms. Tonsic responded to the strata's letter acknowledging that she smoked on her balcony but arguing that it was allowed under the bylaws and did not amount to a nuisance given the distance between the strata lots. In an April 12, 2018 letter, the strata council told Ms. Dhanani it could not take any enforcement action against Ms. Tonsic.
28. The strata continued to try to address Ms. Dhanani's concerns, and requested medical evidence from her and ND. A letter from Ms. Dhanani's family doctor stated

that Ms. Dhanani suffered from hives and eye allergies. The doctor said second-hand smoke exposure can be detrimental to any individual's health but is particularly troublesome for Ms. Dhanani given her "moderately severe" allergies.

29. Ms. Dhanani and ND continued to write complaint letters, stating that they could not open their windows or use their balcony because of the smoke. They provided dates and times when they smelled smoke, including times they were woken from sleep. Ms. Tonsic was in Europe from June to October 2018, and Ms. Dhanani made no second-hand smoke complaints in that time. To address smoking complaints, the strata decided to again propose a no smoking bylaw, despite at least one failed attempt in the past. The resolution to approve the no smoking bylaw passed at the December 6, 2018 annual general meeting (AGM).
30. On December 12, 2018, the strata filed bylaw 3(42), the no smoking bylaw, in the Land Title Office. The no smoking bylaw prohibits smoking in a strata lot, on interior common property, on patios and balconies, and within 8 metres of a door, window or air intake. Smoking is defined to exclude purely olfactory (smelling) purposes with no tobacco or nicotine, such as burning incense. It includes tobacco smoking, electronic cigarettes, and smoking or vaporization of substances containing cannabis.
31. Ms. Dhanani sent 24 complaint letters in 2019 and 112 complaint letters in 2020. Ms. Dhanani's letters, which were jointly written with ND, complained of coughing, headaches, burning and watery eyes, sore throat, difficulty breathing, worsened allergies, restlessness, loss of sleep, undue fatigue, and anxiety. It is unclear in the letters, and in Ms. Dhanani's submissions, which of the symptoms she, as opposed to ND, experienced. The complaints were about times their windows were open. However, the letters said the smell seeped into clothing, furniture, mattresses, blankets and food.
32. In early 2020, the strata and Ms. Tonsic exchanged letters. Ms. Tonsic denied smoking in her strata lot, in some cases indicating she was out of town on the dates of some complaints. The strata noted a direct correlation between Ms. Tonsic's

presence and the complaints. The strata also asked Ms. Tonsic to stop her admitted use of incense or air fresheners. Ms. Tonsic suggested an air quality test.

33. The strata retained ABM Environmental Inc. (ABM) to conduct air quality testing in response to Ms. Dhanani's complaints and unrelated complaints about smoking in the other tower. ABM tested air quality on 2 dates and produced 2 reports that I discuss further below.
34. On May 13, 2020, the strata wrote to Ms. Dhanani, stating that because the ABM reports found "no toxic fumes or cigarette smoke," it would not engage in further bylaw enforcement against Ms. Tonsic without new evidence.
35. The strata reversed the 3 fines it had previously applied to Ms. Tonsic's account.
36. Ms. Dhanani stopped sending the strata complaints after June 21, 2020 but submitted as evidence a log of when she smelled cigarette smoke, e-cigarette smoke or scented e-cigarette smoke between June 22 and November 9, 2020.

***Has Ms. Tonsic contravened the strata's smoking or nuisance bylaws?***

37. As noted above, the strata's bylaw 3(1) prohibits owners from causing a nuisance. A nuisance in the strata context is an unreasonable interference with an owner's use and enjoyment of their property that is also substantial or non-trivial: *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502. The test is an objective one, measured with reference to a reasonable person occupying the premises. The courts have said that in a strata corporation, a certain amount of "give and take" is necessary among neighbours: *Sauve v. McKeage et al.*, 2006 BCSC 781.
38. Based on Ms. Dhanani's complaints and her witnesses' evidence, discussed below, I am satisfied that Ms. Dhanani has smelled cigarette smoke or similar odour frequently, though not continuously, from October 2017 through October 2020. The question is whether Ms. Dhanani has proven on a balance of probabilities that the smoke is coming from Ms. Tonsic smoking in SL143 as alleged.



39. Ms. Tonsic says she has never smoked inside her strata lot but admits she smoked on her balcony before the no smoking bylaw. She says since the no smoking bylaw was passed, she has not smoked on her balcony. Ms. Tonsic says she smokes tobacco cigarettes but has never used e-cigarettes, vaping or any other form of smoking. She says ABM's air quality testing confirmed she does not smoke in SL143.
40. According to a letter from the strata council president, from October 30, 2017 to June 20, 2020, the strata did not receive any smoke or odour complaints from the 2 strata lots directly above SL143, or the strata lots directly beside SL143. I find the lack of complaints is not determinative of whether Ms. Tonsic smoked in her strata lot, as there may be any number of reasons a person may not formally complain about odours.
41. According to the ABM reports, there are more than 7,000 chemicals in tobacco smoke. Tobacco smoke contains particulate with nicotine and tar, and gasses such as carbon monoxide, carbon dioxide, and volatile organic compounds (VOCs). The reports also state that the consensus of the medical community is that environmental tobacco smoke or second-hand smoke is a health risk, causing lung cancer and heart disease and exacerbation of asthma and respiratory illnesses.
42. ABM's air quality testing examined levels of carbon dioxide, carbon monoxide, total VOCs, and airborne particulates less than 2.5 microns using a direct reading instrument. Baseline measurements were taken outdoors before and after the assessment indoors.
43. ABM report 1 was for air quality testing on March 25, 2020. The testing occurred in SL167 and a strata lot in the other tower.
44. As noted in ABM report 1, Ms. Dhanani had not reported smoke odour since March 18, 2020. Ms. Tonsic was away, so there was no testing conducted in SL143.

45. ABM report 1 found no tobacco smoke odour outside SL143. In SL167, carbon dioxide, carbon monoxide, total VOC and airborne particles were all below detectable levels or below applicable guidelines.
46. The report did not give an opinion on whether smoking was taking place inside SL143 or whether smoke had penetrated SL167.
47. Because Ms. Tonsic was away for the March 25, 2020 testing, ABM conducted air quality testing in SL143 on April 17, 2020. ABM report 2 indicated no tobacco smoke odour in SL143. It said levels of carbon dioxide, carbon monoxide, VOCs and airborne particles were all below detectable levels or below applicable guidelines.
48. The report concluded that the air quality parameters did not indicate the presence of tobacco smoke at the time of assessment.
49. Notably, Ms. Dhanani's complaints indicate that she smelled "TOXIC smoke/fume/chemicals" each day from April 9 to April 17, 2020. On April 17, Ms. Dhanani detected such odour from 3:43 a.m. intermittently until 9:15 a.m., 3 hours before the air quality testing in SL143. I therefore find ABM report 2 strongly suggests there was another source of the offending odour.
50. Although the author's qualifications were not provided, Ms. Dhanani did not dispute the strata's assertion that ABM employs "Certified Indoor Air Quality Technicians". The strata did not present ABM's reports as expert evidence under the CRT rules and the reports do not, in my view, contain opinion evidence. That said, I find that ABM was a qualified independent professional and I put significant weight on ABM's observations.
51. Ms. Dhanani makes a number of arguments about why I should not accept ABM's reports.
52. First, she alleges that the strata council gave notice to Ms. Tonsic before performing the April 17, 2020 air quality testing. I find there is no evidence to support this assertion.

53. Second, Ms. Dhanani suggests testing for smoking must include surface sampling. She relies on 2 previous CRT decisions in which a strata corporation relied on environmental testing that included surface sampling (*Blanchard v. The Owners, Strata Plan VR 145*, 2019 BCCRT 1107 and *Hill v. The Owners, Strata Plan VR 145*, 2019 BCCRT 1153). I find the fact that one strata corporation's consultant used surface sampling is not determinative of the industry standard. I find that whether surface sampling was necessary or would have resulted in a different outcome is beyond a common person's understanding and requires expert evidence to prove. Because Ms. Dhanani does not provide expert evidence to challenge the ABM reports, I cannot agree that ABM's methods were inadequate.
54. Third, Ms. Dhanani says hand-held instruments are not sufficient and lab analysis is required to test for second-hand smoke exposure. She provided quotes from 2 environmental consultants. The quote from "Mr Natural Environmental Engineers" says lab analysis is required because "handheld portable devices are not sensitive enough to quantify concentrations typically observed and required high-end lab grade sensors such as gas chromatography, etc." (reproduced as written). Although a "site engineer" is named at the top of the quote, it is not clear if the engineer prepared the quote. In any event, the quote does not refer to the ABM reports and Ms. Dhanani does not suggest the author reviewed the reports. The information in the quote appears to be intended to explain the cost of the services, and not as an assessment of ABM's methods. The other quote was prepared by an administrative coordinator with no qualifications provided. I do not know what information these companies used to create the quotes and what information Ms. Dhanani provided them with. Therefore, I do not accept the quotes as expert opinion evidence, and I put no weight on them.
55. One study Ms. Dhanani provided suggests nanoparticle exposure is significantly higher with e-cigarettes than with regular cigarettes. The ABM reports measured particles with a diameter of 2.5 microns or less, but it is unclear whether nanoparticles, being smaller, were captured. Without an expert's opinion on ABM's methods I am unable to conclude that that ABM's methods would not have captured e-cigarette particles.

56. In summary, Ms. Dhanani did not provide any compelling evidence to support her claim that the ABM reports are not valid. She also provided no contrary expert report showing different air quality findings. As a result, I place considerable weight on ABM's findings.
57. Ms. Dhanani provided a number of witness statements from neighbours on her floor, who all said they visited Ms. Dhanani on various dates from September to November 2020 and smelled cigarette smoke in the bedroom. Those that provided more detail said the window was open. I take the statements as independent confirmation of what Ms. Dhanani says she smells in her bedroom with the window open. They do not indicate where the odour was coming from.
58. Ms. Dhanani provided a statement from NH, who lives immediately below SL167. NH says they smell smoke every night around 11 p.m. and sometimes in the morning. They say they do not know where the smoke is coming from.
59. To some degree, Ms. Dhanani's evidence is internally inconsistent, and inconsistent with her witnesses' evidence. Ms. Dhanani submits that she is confident Ms. Tonsic stopped smoking cigarettes in early 2020 and began smoking e-cigarettes or vaping because ND developed symptoms from second-hand exposure to e-cigarettes. She does not explain the symptoms or how they are different from symptoms of second-hand exposure to cigarette smoke. Ms. Dhanani says all her complaints since January 26, 2020 have been about Ms. Tonsic using "ENDS/products" (electronic nicotine delivery systems, which includes e-cigarettes). She also suggests Ms. Tonsic uses scented vaping products and passes them off as incense and air fresheners. Yet many of Ms. Dhanani's complaints in April, May and June 2020 referred explicitly to cigarette smoke. Ms. Dhanani's witnesses also describe the smell as cigarette smoke, for the most part. Ms. Dhanani appears to have tailored her submissions to emphasize e-cigarettes after ABM report 2 found no tobacco smoke present in SL143.

60. Ms. Dhanani's husband, ND, provided a statement. ND said that in the past 3 years he has had many conversations with DJ, the resident in the strata lot immediately above SL143. ND says in the elevator in mid-April 2019 DJ said, "this lady will not give up smoking" and similar statements about Ms. Tonsic.
61. However, DJ's response to Ms. Dhanani's questions in a summons notice did not support ND's evidence. Ms. Dhanani asked DJ to confirm the April 2019 conversation, but DJ either did not respond to the question or Ms. Dhanani failed to produce their response. Ms. Dhanani asked DJ to explain why they sealed their windows. DJ said their windows are not sealed and they put carboard up to block out the hot sun. I find DJ's evidence does not help establish that Ms. Tonsic smokes in SL143.
62. ND says on April 17, 2019, he met a former strata council member, LM, on the elevator. He says when he mentioned the smoking issues, LM offered to accompany him outside SL143. He said they could smell cigarette smoke in the corridor outside SL143.
63. LM's response to Ms. Dhanani's questions in a summons notice similarly does not support ND's evidence. LM said she did not recall the details of her conversation with ND or what she did.
64. However, Ms. Dhanani submitted an audio recording of conversation with LM, made on October 3, 2020, before she sent LM the summons notice. In the recording, Ms. Dhanani asked LM if she recalled doing a second-floor inspection about smoke, and LM said, "vaguely." She agreed that she remembered talking to ND in the elevator, and going outside "the door", and it smelled like smoke. I find LM's verbal admission that she smelled smoke in the corridor outside SL143 on one occasion is insufficient to establish that Ms. Tonsic is the source of Ms. Dhanani's complaints.
65. ND gave a detailed account of 5 dates between January 26 and February 29, 2020, on which he observed, from outside, Ms. Tonsic sitting inside her living room with the window open and saw fumes or smoke dissipating in the air, or saw the light from a cigarette or e-cigarette, or both. He said on 1 occasion he saw the light 23

times. These observations are documented in Ms. Dhanani and ND's contemporaneous complaint letters to the strata.

66. ND is not an impartial witness. He is Ms. Dhanani's spouse, and they made all of their smoking complaints to the strata jointly. Together with Ms. Dhanani, ND is a complainant in the suspended HRT proceeding addressing the same complaints. Ms. Dhanani's submissions indicate that ND would have been a party to the CRT dispute but for the requirement to be an owner or tenant under section 189.1 of the SPA. As an interested party, ND's evidence must be treated with caution. ND's evidence does not persuade me that Ms. Tonsic is the source of the smoke odour, given that he is not impartial.
67. Ms. Dhanani provided a layout of the strata lots beside and below hers, and whether she believes the occupants of each are smokers or non-smokers. She did not explain how she determined the smoking status of these individuals. She describes 9 of them as non-smokers, Ms. Tonsic as the only smoker, and 3 as unknown.
68. Ms. Dhanani's submissions do not seem to consider the possibility that smoke or particles could be coming from any of the 3 strata lots with residents of unknown smoking status, or travelling down from one of the strata lots above her, as was the case in *Teh v. The Owners, Strata Plan 202*, 2021 BCCRT 180.
69. As for nuisance from incense or air fresheners, Ms. Tonsic does not specifically deny burning incense or using air fresheners. Although not banned like smoking, those activities may still contravene bylaw 3(1) if they amount to a nuisance. However, the vast majority of Ms. Dhanani's complaints are about cigarette or e-cigarette smoke. In submissions, Ms. Dhanani suggests air fresheners are a source of VOCs, but does not acknowledge that ABM report 2 found no VOCs in SL143. Unlike cigarette smoke with its known health effects, it is not clear that the smell of incense or air fresheners two floors away rise to the level of substantial and unreasonable.
70. It is possible that Ms. Tonsic has been smoking in her strata lot and is being untruthful. However, I find the most compelling evidence before me is the ABM

reports, which indicate Ms. Tonsic is not the source of Ms. Dhanani's complaints. I find that Ms. Dhanani has not proven that Ms. Tonsic smoked in her strata lot or otherwise caused a nuisance. I dismiss Ms. Dhanani's claims against Ms. Tonsic.

***Has the strata adequately investigated Ms. Dhanani's complaints?***

71. Section 26 of the SPA requires the strata council to exercise the powers and perform the duties of the strata, which include bylaw enforcement. The strata council is required to act reasonably when carrying out these duties. This includes a duty to investigate alleged bylaw contraventions, such as smoking complaints.
72. Section 135 of the SPA requires the strata to give an owner or tenant who is the subject of a complaint an opportunity to be heard before the strata levies a fine. Aside from section 135, the SPA sets out no procedural requirements a strata must follow when investigating a complaint. The courts have said a strata may investigate bylaw contravention complaints as its council sees fit, provided it complies with the principles of procedural unfairness and is not significantly unfair to any person appearing before the council: see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148.
73. Ms. Dhanani says the strata treated her unfairly by inadequately investigating her complaints about smoking and odour, and by closing her "case" after the ABM tests. Her submissions raise the issue of whether the strata has treated her significantly unfairly. The CRT may make orders under section 123(2) of the CRTA to remedy significant unfairness.
74. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith.
75. For the reasons that follow, I find the strata's May 2020 decision to stop investigating Ms. Dhanani's ongoing complaints was significantly unfair. Up until that point, I find the strata met its investigatory obligations under the SPA.

76. It is undisputed that before May 2020, the strata:
- a. sent multiple letters to Ms. Tonsic,
  - b. imposed (and later reversed) 3 bylaw contravention fines on Ms. Tonsic,
  - c. organized air quality testing, and
  - d. held 3 hearings with Ms. Dhanani.
77. Ms. Dhanani says the strata should not have reversed the fines it applied to SL143 and should have applied more fines given the number of complaints she made. While the strata must enforce its bylaws, it is not required to levy a fine for each bylaw contravention. SPA section 130(1) says the strata corporation *may* fine an owner if a bylaw or rule is contravened, and section 129(2) says a strata corporation may give a warning or give time to comply. As well, the strata must hear from the subject of the complaint. I find it was not reasonable for Ms. Dhanani to expect that the strata would not reverse fines to Ms. Tonsic if Ms. Tonsic provided evidence that she was not smoking.
78. I also find it was reasonable for the strata to waive the fines it applied to Ms. Tonsic's account when ABM report 2 found no evidence of tobacco smoke in SL143. Given that Ms. Dhanani complained about smoke and odour 3 hours earlier, ABM report 2 casts doubt on whether Ms. Tonsic was the source of the offending odour, despite the correlation between Ms. Dhanani's complaints and Ms. Tonsic's presence.
79. Ms. Dhanani raises other examples of alleged mistreatment by the strata as evidence of the strata's overall unfair approach to her complaints. These complaints relate to mistakes in strata council minutes and difficulties in scheduling a hearing. I am not persuaded that Ms. Dhanani has identified anything other than inadvertent errors.
80. That said, the strata has not explained why the ABM reports meant it could disregard Ms. Dhanani's complaints entirely. The ABM reports indicated that Ms. Tonsic was not the source of Ms. Dhanani's complaints, but they did not invalidate her



complaints. The odour must have been coming from somewhere. This is confirmed by Ms. Dhanani's neighbours in this dispute. I find it was unduly harsh for the strata to stop investigating Ms. Dhanani's complaints based on the ABM reports.

### ***Conclusion and Remedies***

81. The strata is already obligated to investigate Ms. Dhanani's smoke and odour complaints. There is no practical utility in ordering any particular procedure for council to follow (see *Chorney v. The Owners, Strata Plan VIS770*, 2016 BCSC 148, at paragraph 52). I leave it to the strata to determine how best to identify the source of the smoke odour, but I note it appears the strata has not sent anyone to experience the odour in SL167 when Ms. Dhanani is experiencing odour since May 2018. The strata also has not, since that time, sent anyone to observe, outside the building, where the odour may be coming from. Doing these things may help the strata to identify the source of the odour.
82. Ms. Dhanani seeks \$10,000 in damages for the ongoing nuisance she says she has suffered due to smoking and related odours.
83. In *The Owners, Strata Plan LMS 3539 v. Ng*, 2016 BCSC 2462, the court said that in cases of nuisance, a remedy should be made without undue delay once the respondent is aware of the nuisance. The court found that a strata lot owner had brought to the strata's attention facts that required investigation, and failure to conduct that investigation amounted to a failure to use reasonable care to discover the facts.
84. In *Bahmutsky v. Petkau*, 2020 BCCRT 244 (*Petkau*) a CRT vice chair applied the reasoning in *Ng* to award \$1,000 in damages to applicants who experienced smoke nuisance in a strata for 16 months, where the strata failed to enforce its bylaws.
85. While *Petkau* is not a binding precedent, it establishes that the strata may be liable for damages where it takes insufficient steps to investigate nuisance complaints and enforce its bylaws. In this case, I found it was significantly unfair of the strata to refuse to continue to investigate Ms. Dhanani's complaints after May 2020.

86. Certain factors suggest a higher award of damages, such as Ms. Dhanani's evidence that the smoking odour has worsened since May 2020. Other factors, such as the lack of objective evidence of odour when the windows are closed, suggest a lower award. On balance, I find Ms. Dhanani is entitled to damages of \$400 for enduring approximately 6 months of smoke odours since the strata stopped investigating her complaints.
87. I dismiss Ms. Dhanani's claim for reimbursement of strata fees. First, she has not explained the connection between the loss of enjoyment of her strata lot and her payment of strata fees. Second, strata fees are mandatory and cannot be waived or withheld in protest of strata actions: *Stewart v The Owners, Strata Plan KAS 2601*, 2020 BCSC 809.
88. Ms. Dhanani asks in submissions for an order that the strata install "24/7" chemical monitors or detectors in Ms. Tonsic's strata lot. I find the evidence does not support such an invasive remedy, so I decline to order it.
89. Nothing in this decision prevents Ms. Dhanani from filing complaints in the future. As well, nothing in this decision prevents the strata from determining, if a future investigation reveals new evidence, that Ms. Tonsic is smoking in her strata lot.

## **CRT FEES, EXPENSES AND INTEREST**

90. 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. Ms. Tonsic did not claim any dispute-related expenses or pay any CRT fees.
91. Ms. Dhanani had partial success against the strata. She paid \$225.00 in CRT fees. I order the strata to reimburse her for half this amount, or \$112.50.
92. Ms. Dhanani claims \$4,000 for an expert report and for cleaning, repair and rehabilitation services. There is no expert report before me, and no evidence that Ms. Dhanani retained an expert. There are also no receipts for cleaning or repair

services, and no explanation of how they were related to the CRT dispute. I dismiss this claim.

93. Ms. Dhanani requested \$1,037.39 for “air circulator fans”. She submitted one receipt for \$141.30, dated March 11, 2020. I dismiss this claim because she did not prove that the fan was necessary to address the smoke odour.
94. Ms. Dhanani claims \$1,101.89, which she says includes the following expenses: fax costs, legal consultation, medical legal report, LegalShield membership, CHOA membership, title search, and medication form completion. She provides receipts for some of those items.
95. Dispute-related expenses must be related to the CRT dispute, so in general, expenses incurred well before a party files its dispute application with the CRT are not allowed. For that reason, I decline to allow reimbursement of fax expenses, which were from 2016 and 2017.
96. I do not allow reimbursement of the LegalShield or CHOA monthly fees because Ms. Dhanani has not explained how they relate to this dispute, or when she began paying them.
97. I do not allow the \$50 claim for completion of a medical form, dated March 17, 2020, because there is no medical form in evidence. The only medical evidence is the 2018 letter and there is no evidence of what this cost.
98. I allow \$21 for the title search, \$35 for notarization of ND’s statement, and \$40 for witness summons fees, for a total of \$96. I find the strata must reimburse Ms. Dhanani for half this amount, or \$48.
99. The strata claims \$20,292 in legal fees and \$226.54 in disbursements for 2 land title searches. CRT rule 9.5(3) says that except in extraordinary circumstances, the CRT will not order one party to pay another party’s legal fees in a strata property dispute. CRT rule 9.5(4) says that in considering whether and to what degree legal fees should be reimbursed, the CRT may consider the complexity of the dispute, the degree of involvement by the representative, whether a party or its representative

caused unnecessary delay or expense, and any other factors the CRT considered appropriate.

100. The strata says Ms. Dhanani's conduct rises to the level of extraordinary, and cites Ms. Dhanani's "unfounded allegations of bad faith," lengthy history of complaints, and extreme claims for expenses.
101. I find the circumstances of this dispute are not extraordinary. Despite the large volume of evidence, this dispute is about the strata's duty to enforce its bylaws. The CRT frequently decides such disputes, which largely turn on the facts. I find the large number of complaints Ms. Dhanani made to the strata does not make this dispute extraordinary. I find there is no merit to the strata's arguments about Ms. Dhanani's conduct.
102. Moreover, in *Lam v. The Owners, Strata Plan EPS 2328*, 2018 BCCRT 73, a CRT Vice Chair found that to order reimbursement of legal expenses would be contrary to section 189.4(b) of the SPA, which states that an owner who brings a claim against a strata corporation is not required to contribute to the expense of defending the claim. I find the reasoning in *Lam* persuasive. I find the expense of defending a claim includes legal fees and disbursements.
103. The strata also says that in attempting to resolve the issues in this dispute, it incurred about \$2,100 to retain ABM. I find the strata authorized ABM's air quality testing to aid the strata in enforcing its bylaws, rather than in contemplation of a CRT dispute, so the ABM invoices are not dispute-related expenses.
104. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Dhanani is entitled to pre-judgement interest on the \$400 damages May 13, 2020, which I find is the date the strata stopped investigating her complaints, to the date of this decision. This equals \$1.50.
105. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Dhanani.

## ORDERS

106. Within 30 days of the date of this order, I order the strata to pay Ms. Dhanani a total of \$562.00, broken down as follows:
- a. \$400.00 in damages,
  - b. \$1.50 in interest under the *Court Order Interest Act*,
  - c. \$160.50 for \$112.50 in CRT fees and \$48 in dispute-related expenses.
107. Ms. Dhanani is entitled to post-judgment interest as applicable on the \$400 damages.
108. I refuse to resolve Ms. Dhanani's potential claim for breach of privacy.
109. Ms. Dhanani's remaining claims, including her claims against Ms. Tonsic, are dismissed.
110. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. 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.

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Micah Carmody, Tribunal Member