



# Civil Resolution Tribunal

Date Issued: August 20, 2021

File: ST-2021-001103

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dr. Frank K.K. Chiu Inc. v. The Owners, Strata Plan EPS 5073*,  
2021 BCCRT 916

B E T W E E N :

DR. FRANK K.K. CHIU INC.

**APPLICANT**

A N D :

The Owners, Strata Plan EPS 5073

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about a January 2021 annual general meeting (AGM). The applicant, Dr. Frank K.K. Chiu Inc. (Dr. Chiu), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS 5073 (strata). Dr. Chiu says that there were procedural irregularities at the AGM, including the way proxies were verified and

strata council members elected. Dr. Chiu asks for orders that the strata produce a written policy on how proxies are verified and certified during electronic meetings and hold a special general meeting (SGM) to elect 2 additional strata council members. The strata denies that there were any procedural irregularities at the meeting.

2. The applicant is represented by its principal, Dr. Frank K.K. Chiu. A member of the strata council represents the strata.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The CRT 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.
5. 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.
6. 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.
7. Some of Dr. Chiu's claims as set out in the Dispute Notice were directed at the strata's property manager, TM. As this individual is not a party to this dispute, I cannot make any orders about him. On the recommendation of a CRT case manager, Dr. Chiu

revised the claims to reflect the strata rather than TM. I will address only the claims against the strata in my decision.

8. The strata says that some of Dr. Chiu's comments about TM are defamatory. The CRT's jurisdiction over strata property matters is set out in section 121 of the CRTA, and I find that this section does not include jurisdiction over defamation claims. As it is outside the CRT's jurisdiction, I will not consider defamation further.
9. In his submissions, Dr. Chiu made additional allegations about procedural irregularities at the AGM that were not included in the Dispute Notice. The strata objected to what it called "scope creep", but made submissions about these points. As the strata had the opportunity to respond to the additional allegations, I find that there would be no breach of procedural fairness in considering them. So, I address the additional allegations below.

## **ISSUES**

10. The issues in this dispute are:
  - a. Whether the AGM complied with the procedural requirements in the *Strata Property Act* (SPA) and Ministerial Order No. M114 (Ministerial Order),
  - b. Whether the strata must produce a written policy on how proxy forms are verified and proxies certified during electronic meetings,
  - c. Whether the strata council election complied with the SPA and the bylaws, and
  - d. Whether the strata must hold an SGM to elect additional strata council members.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim like this, an applicant must prove their claims on a balance of probabilities. The parties provided evidence and submissions in support of their

respective positions. While I have considered all of this information, I will refer to only what I find to be relevant and necessary to provide context to my decision.

12. The strata's bylaws, as filed at the Land Title Office in 2018, allow for general meetings to be held by telephone or electronically. Bylaw 4.5 requires that whatever method the strata uses permit "all persons participating in the meeting to communicate with each other during the meeting". Despite this, the evidence before me suggests that the strata, which is comprised of residential strata lots, usually holds in-person general meetings.
13. An in-person meeting was not possible for the 2021 AGM due to COVID-19 pandemic-related gathering restrictions. The British Columbia government issued the Ministerial Order on April 15, 2020 to permit attendance and voting at general meetings by telephone or any other electronic method so long as all participants could communicate with each other during the meeting, even if the strata corporation did not permit electronic attendance by bylaw.
14. The strata scheduled its 2021 AGM for January 28, 2021. The January 6, 2021 notice package advised owners that the AGM would be held electronically and provided detailed instructions about the Zoom platform and registration. The notice also contained information about a January 25, 2021 town hall meeting, which was also conducted by Zoom, where owners could ask questions and discuss AGM-related matters.
15. The AGM notice asked owners to email their proxy forms to TM in advance of the meeting. TM advised the owners that he had checked the names on the proxy forms against the owners named on title for each strata lot, and rejected those that did not match. There was also a plan in place to verify proxy forms by viewing them at the registration portion of the meeting so long as they were legible. An email chain in evidence shows that there was concern among some strata council members that "flashing a proxy form in front of the computer video camera" may be insufficient to establish its legitimacy. However, it does not appear that any proxy forms were

presented at the AGM as all participating owners submitted their proxy forms in advance.

16. Although TM validated the proxy forms in advance, the minutes of the January 28, 2021 AGM show that the proxies were certified at the meeting. There is no indication that any owners who wished to participate, either through Zoom or by proxy, were denied the opportunity to do so.
17. After dealing with other agenda items, the owners voted to elect a strata council. The minutes document that 9 owners stood for election and that, of these, “5 owners established the required 50% plus 1” threshold for a majority vote.
18. Not all owners were satisfied with how the AGM was conducted. Some owners had expected that all proxy forms would be displayed on the screen so they could verify them and that strata council members would be in the same room with TM during the AGM. Apparently, there was concern that there had been some sort of fraud involved with the proxy forms and the associated voting.
19. Some owners were also unhappy that the strata council was comprised of 5 members instead of the maximum of 7 permitted by the bylaws. An unidentified owner came across an article that discussed options other than leaving council seats vacant if the maximum number of candidates was not elected by majority vote. This owner sent the article to Dr. Chiu, who questioned why TM did not present these options at the AGM.
20. The strata council responded to the concerns about the validation of proxy forms and the election of strata council members in the minutes of its February 24, 2021 meeting. The minutes state that the strata council approved the way the proxy form verification and election were completed.
21. Initially, the strata council did not publish the number of votes each strata council candidate received in its meeting minutes out of a concern that the unsuccessful candidates may be embarrassed by the results. However, as some owners complained about the perceived lack of transparency, the strata council published the

results in the minutes of its May 5, 2021 meeting. The minutes also contained an explanation of how many votes were required to be a successful candidate based on the majority vote.

***Did the AGM's procedures comply with the SPA and the Ministerial Order?***

22. Dr. Chiu submits that the strata held the AGM only by Zoom without an option to participate by telephone. According to Dr. Chiu, this violated the Ministerial Order. The strata says that there was an option to call in to the Zoom meeting using the information provided in the notice package.
23. I agree with the strata that there was a telephone option provided in the January 6, 2021 AGM notice. However, even if this was not the case, the Ministerial Order (like the bylaws) permitted but did not require telephone participation in a general meeting. In the circumstances, I find that the Zoom AGM complied with the requirements of both the Ministerial Order and bylaw 4.5.
24. Dr. Chiu says that, at in-person general meetings, there is a sign-in book that becomes part of the strata's records for owners to review. Dr. Chiu takes issue with the fact that the Zoom meeting did not involve a sign-in book.
25. The SPA sets out some procedural requirements for general meetings, but the sign-in sheets are not among them. Section 35 of the SPA describes the records and documents that a strata corporation must prepare and retain. Section 36 says that a strata corporation must make the records and documents set out in section 35 available for an owner's inspection on request.
26. Meeting sign-in sheets are not included in the scope of documents described in section 35 of the SPA. I find that a sign-in sheet is not required by the SPA and also note that the strata's bylaws are silent on this point. I find that the lack of a sign-in book or sheet does not amount to a procedural irregularity.
27. Dr. Chiu states that there was an agreement that TM and several members of the strata council would be together in the strata's amenity room during the AGM. Instead,

TM was at his home office. The strata denies that there was any such agreement, and says that this would be “counter-intuitive and unnecessary” during the pandemic.

28. After reviewing the strata council meeting minutes and email exchanges in evidence, I find that there is no indication that the strata council made an agreement that TM would conduct the meeting from the strata’s amenity room in the presence of strata council members. Further, there is nothing in the SPA, the bylaws or the Ministerial Order that would require a strata corporation’s property manager and strata council to be in the same room in order for an AGM to be valid. I find that there was no procedural issue with TM and the strata council members participating in the meeting from separate locations.

### ***Proxy form verification and proxy certification***

29. Section 56 of the SPA sets out the general requirements for proxies and the strata’s bylaw 4.4 says that the certification of proxies is the first order of business at general meetings. Neither the SPA nor the bylaws contain any procedures for verifying proxy forms or certifying proxies.
30. The form of proxy used is not in evidence, but there is no suggestion that the form did not comply with the SPA. Instead, Dr. Chiu suggests that the proxy forms were not verified properly.
31. As discussed above, the verification procedure TM used for the 2021 AGM was to check the names on the proxy forms against the owners named on title for each strata lot. TM rejected any proxy form where the owner names did not match. There is no indication that any owners assigned their voting powers to a tenant as permitted by section 147 of the SPA and that the tenant then appointed a proxy. As noted, the proxies were certified at the beginning of the AGM.
32. Dr. Chiu says that this process did not comply with an agreement that he says required that the proxy forms be displayed for all owners to see and verify. Dr. Chiu asks for an order that the strata provide a written policy on how proxy forms are verified and proxies certified during electronic meetings.

33. The strata denies that there was any agreement to display proxy forms. According to the strata, the only proxy forms that were to be shown were any last-minute proxy forms, which would be held in front of the computer camera so they could be verified. The strata did not comment on Dr. Chiu's request for a written policy.
34. Although Dr. Chiu says that the proxy forms were not available for the owners' inspection before or after the Zoom AGM, this is not something that would be available at an in-person meeting. Under section 56 of the SPA, a proxy form does not belong to the strata, but rather to the owner who grants it. Proxy forms are not among the documents that must be retained or disclosed by a strata under sections 35 and 36 of the SPA. I also find that displaying proxy forms to all owners could have privacy implications depending on the type of information the form contained. In any event, based on the evidence before me, I find that there was no promise to do so. Further, the evidence before me does not support the conclusion that there was any fraud or impropriety involved with the proxy forms or proxies themselves.
35. Turning to Dr. Chiu's requested order for this claim, although the strata may choose to do so, there is no requirement in the SPA that a strata corporation create written policies to address proxy form verification or proxy certification.
36. Another tribunal member has found that strata lot owners were not entitled to an order that a strata corporation adopt written procedures for proxy form verification and voting as the bylaws addressed proxy certification and voting procedures in a manner that complied with the SPA. The tribunal member determined that, if the owners wanted a different procedure than what was set out in the bylaws, the appropriate course would be to amend the bylaws (see *Ringler et al v. The Owners, Strata Plan LMS 4555*, 2018 BCCRT 396 at paragraphs 34 to 40). Although this decision is not binding upon me, I agree with its reasoning.
37. I find that the appropriate forum for changing the process for proxy form verification and proxy certification is to bring forward a resolution to amend the bylaws using the procedure set out in sections 126 and 128 of the SPA. I dismiss this claim.



## ***Strata Council Election***

38. The strata's bylaws set out the size of its strata council. According to bylaw 2.2, the strata council must have at least 3 and not more than 7 members. The bylaws do not specify a process for how strata council members are elected.
39. As noted above, 5 council members were elected at the 2021 AGM as only 5 candidates met the "50% plus 1" threshold for a majority vote.
40. Dr. Chiu says that TM failed to advise the owners that there could be other ways of filling vacant council seats after the initial round of voting. According to Dr. Chiu, it is important to have all 7 seats filled so that the council is "diverse, representative and has adequate checks and balances". Dr. Chiu states that the current council is subject to "undue influence from one dominant council member", that the current council members are from the same "lobby group", and that they do not represent the owners as they all own 1-bedroom strata lots. Dr. Chiu asks for an order that the strata hold an SGM to fill the 2 vacant council seats with the candidates who receive the most votes. Dr. Chiu submits that the intent of the SPA is to protect the interests of owners and that any council election should be undertaken with that intent.
41. The strata's position is that the strata council election complied with the SPA and there is no justification for an SGM. According to the strata, some owners were unhappy with the previous strata council's performance and the vote results reflected their desire for new members.
42. I agree with the strata that the wording of bylaw 2.2 does not mean that there must be 7 members on the strata council. Therefore, the current 5-member strata council complies with the bylaws.
43. Turning to the issue of voting, section 50 of the SPA says that, at general meetings, matters are decided by majority vote unless a different voting threshold is permitted. As noted, the strata's bylaws do not contain a procedure for electing strata council members. Therefore, members must be elected using a majority vote as set out in section 50.

44. With this in mind, I find that the strata was correct in determining that 5 strata council members were elected. The 5 successful candidates received between 85 and 107 votes each, while the 4 unsuccessful candidates received between 16 and 55 votes. Therefore, the 4 unsuccessful candidates did not meet the threshold for a majority vote based on the 116 owners who voted.
45. After the owners elected more than the minimum number of strata council members by majority vote, there was no need to engage in the selection of additional members. I find that there was nothing in the SPA or the bylaws that created an obligation for the strata to inform owners of other possible approaches. In addition, absent alternative voting procedures in the bylaws, the use of other approaches could run the risk of violating the SPA. I find that the strata council election complied with the SPA.
46. I acknowledge Dr. Chiu's submission that previous strata council elections were conducted differently. The 2018 and 2020 AGM minutes in evidence show that there was unanimous approval for the candidates in those years. I find that the available evidence does not establish a change in voting procedures.
47. In summary, the owners elected 5 candidates as their strata council representatives using a voting process that complied with the SPA and the bylaws. While I acknowledge Dr. Chiu's concerns about the composition of the current council, I will not interfere with the owners' democratic rights by ordering the strata to hold an SGM to elect additional council members. I dismiss this claim.

## **CRT FEES AND EXPENSES**

48. 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. As Dr. Chiu was not successful, I dismiss the claim for reimbursement of CRT fees. The successful strata did not pay any CRT fees or claim any dispute-related expenses so I order none.

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

**ORDER**

50. I dismiss Dr. Chiu's claims and this dispute.

---

Lynn Scrivener, Tribunal Member