



# Civil Resolution Tribunal

Date Issued: October 4, 2021

File: ST-2020-009205

Type: Strata

Civil Resolution Tribunal

Indexed as: *Newman v. The Owners, Strata Plan NW 3323*, 2021 BCCRT 1063

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

KAREN NEWMAN, SHIREEN CAMELL, and DOROTHY WOLFE

**APPLICANTS**

**A N D :**

The Owners, Strata Plan NW 3323

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

## **INTRODUCTION**

1. The applicants, Karen Newman, Shireen Cammell, and Dorothy Wolfe, each co-own strata lots in the respondent strata corporation, The Owners, Strata Plan NW 3323 (strata). The applicants say the strata has failed to provide requested records as required under the *Strata Property Act* (SPA) and seek an order that the strata release all requested legal, advising and consulting bills from January 1, 2019 to November

5, 2020. The applicants also say the strata refuses to allow owners to attend strata council meetings and has failed to advise owners of the dates of council meetings, contrary to the strata's bylaws. The applicants ask for an order that the strata find an electronic platform for meetings and post a schedule of its council meetings.

2. The strata says the documents requested by the applicants are protected by solicitor-client and litigation privilege. It says it has been unable to accommodate owner attendance at strata council meetings in person due to COVID-19 related restrictions or electronically due to technical difficulties. The strata says it has discretion to decide how to hold its meetings.
3. The applicants are represented by Ms. Cammell. The strata is represented by a strata council member.
4. As explained below, I find the strata breached its bylaws surrounding council meetings but find no remedy is required in these circumstances. I dismiss the applicants' claim for copies of the strata's bills.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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.
9. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

## **ISSUES**

10. The issues in this dispute are:
  - a. Must the strata provide the requested legal bills?
  - b. Did the strata contravene the SPA or its own bylaws by denying owners the ability to attend strata council meetings, or failing to inform owners of the upcoming meeting dates?
  - c. If the answer to b is “yes” then what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this one the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). I have reviewed the parties’ submissions and weighed their evidence, but only refer to that necessary to explain and give context to my decision.
12. The strata was created in 1990 and consists of 97 residential strata lots in an age 55 and up complex. The strata filed a consolidated set of bylaws in the Land Title Office on March 23, 2012, which I find apply to this dispute. Although the strata filed

additional bylaws after this date, I find those later bylaws are not relevant to the issues in this dispute.

### **Legal Bills**

13. Ms. Newman asked the strata to provide copies of all legal and consultation bills and fees paid from January 1, 2019 onward. The strata provided copies of most invoices requested by Ms. Newman, including some legal invoices. However, it refused to provide legal invoices about bullying and harassment complaints, claiming litigation and solicitor-client privilege. The strata provided Ms. Newman with the total amount spent on the invoices it claimed privilege over. None of this is disputed.
14. In their submissions, the applicants say they are no longer pursuing their request for the legal bills. The applicants did not ask to withdraw the claim under CRT rule 6.1, which would allow them to apply to the CRT to bring the claim again in the future. So, I find I must make a final decision on the applicants' claim for copies of bills.
15. Section 35(1)(d) of the SPA requires the strata to prepare books of account, showing money received and spent and the reason for the receipt or expenditure. Section 35(2)(k) requires the strata to keep copies of all correspondence received. SPA section 36 requires the strata to provide copies of records listed in section 35 to owners, upon their request.
16. In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, at paragraph 15, the court said that the purpose of the SPA was to inform owners how the strata spent money and did not require the strata to produce every bill or receipt reflected in the strata's books of account. In *Hallman v. The Owners, Strata Plan KAS 1821*, 2021 BCCRT 1052, a tribunal member found an owner was not entitled to requested legal invoices, based on the court's reasoning in *Kayne*. Although not binding on me, I agree with the tribunal member's reasoning and find the *Hallman* decision persuasive. While the applicants are entitled to know how much the strata spent on legal fees, they are not entitled to copies of the legal invoices under sections 35 and 36 of the SPA. Given this, I find I need not consider the strata's argument that the invoices are protected by privilege.

17. I dismiss the applicants' claim for copies of all legal and consultation bills from January 1, 2019 onward.

***Owners' attendance at council meetings as observers***

18. On March 16, 2020 the BC Provincial Health Officer (PHO) issued an order under the *Public Health Act* to prohibit gatherings of more than 50 people, due to the COVID-19 pandemic.

19. On October 18, 2020 Ms. Cammell and Ms. Newman asked to attend the October 19, 2020 strata council meeting as observers. The strata denied their request, saying that the meetings were not currently open to observers, due to the COVID-19 pandemic. In a series of September and October 2020 emails, Ms. Wolfe asked the strata to install wi-fi in the clubhouse and allow strata residents to observe strata council meetings electronically. The strata declined Ms. Wolfe's requests, saying the strata's lawyer recommended against broadcasting council meetings by Zoom, an electronic meeting platform. None of this is disputed.

20. All 3 applicants requested a strata council hearing, which was held on November 19, 2020. The applicants made written submissions, asking the strata to find an electronic meeting platform that would allow residents to participate in, and observe, strata meetings. In a November 25, 2019 decision letter, the strata said it was not prepared to allow guests at the meetings, due to the pandemic, changing public health orders, and the need to keep residents safe. None of this is disputed.

21. The applicants say the strata contravened its own bylaws. Bylaw 13.11(a) gives the strata council the option to hold its meetings by electronic means, so long as all council members and participants can communicate with each other. Subsection (c) says that owners may attend council meetings as observers, providing they notify the president at least 24 hours in advance of the meeting. Subsection (d) provides exceptions for observers, for privacy concerns.

22. The strata says this issue is moot (meaning no longer legally relevant) because the PHO is now lifting the gathering restrictions and so the strata can allow observers to

attend council meetings again in person. I disagree. In *Binnersley v. BCSPCA*, 2016 BCCA 259, the BC Court of Appeal described the legal principle of mootness, as follows:

... if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot...

23. Although I agree that PHO's orders have been relaxed, some restrictions continue to exist, and the COVID-19 pandemic is not yet over. Further, the live issue is whether the strata has the authority to refuse to allow owners from observing strata council hearings, even out of concern for the owners' health. So, I find the issue is not moot.
24. The strata admits it refused to allow observers at strata council meetings but says it did so to protect its residents during the pandemic. I find allowing Ms. Cammell and Ms. Neman to attend the October 19, 2020 meeting would not have violated the 50-person gathering limit in effect at the time, as only 9 other attendees were noted in the meeting minutes. Further, as the strata accommodated 13 people attending the September 2020 AGM in the clubhouse, I find it likely could have safely accommodated 11 people at the October 19, 2020 strata council meeting. Even if their attendance at the meeting would have violated the then current public health guidelines, I find the strata still had an obligation to allow Ms. Cammell and Ms. Newman to observe the non-private parts of the meeting, under bylaw 13.11(c).
25. I agree with the strata that the council is made up of volunteers, who make mistakes, and that some latitude is justified when scrutinizing their conduct (see *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753). However, I find the strata must still comply with its own bylaws. Although bylaw 13.11(a) gives the strata discretion as to whether a council meeting will be held in person, or electronically, that discretion must be exercised in a way that does not violate an owner's right to observe strata council meetings, under bylaws 13.11(c) and (d).
26. The strata says electronic meetings are complicated for residents and that the strata did not have the correct equipment or knowledge to conduct the meetings. However,

it is undisputed that the strata held the March and April 2020 council meetings by Zoom, as well as an information meeting on May 25, 2021 and the June 9, 2021 AGM. So, I find the strata has demonstrated its capability to hold meetings in an electronic format. Further, even if the meetings are complicated or owners need help, I find that does not absolve the strata from finding a way to allow residents to observe council meetings if in person attendance is not possible.

27. I find the strata contravened bylaw 13.11(c) by refusing to allow Ms. Cammell and Ms. Newman to attend the October 19, 2020 strata council meeting. I further find the strata's position to not allow owners to observe strata council meetings is contrary to bylaw 13.11(c). I will address the appropriate remedy below.

### ***Informing Owners of Scheduled Council Meetings***

28. The applicants also say the strata failed to inform residents of scheduled council meetings. Although the applicants did not raise this issue in their application for dispute resolution, I find it is part of their argument that the strata did not allow owners to attend strata council hearings as an owner cannot ask to attend a hearing unless they know such a hearing has been scheduled. Further, I find addressing this issue is not procedurally unfair to the strata, as it took the opportunity to respond to the applicants' claim in its argument.
29. The applicants say the strata failed to inform owners of scheduled council meetings on March 9 and April 21, 2021. The strata says it complied with all notice requirements in the SPA by listing the next council meeting date at the end of the minutes for each council meeting, posting notices on the clubhouse bulletin board, in correspondence from the property manager, in the strata newsletter or other notices.
30. Bylaw 13.08(e) requires the strata to inform owners about a council meeting "as soon as feasible" after the meeting is called. Bylaw 13.08 allows any council member to call a meeting by giving other council members 1 weeks' notice, although a meeting can be held in less than 1 week in an emergency or if all members consent.

31. I find the strata did not list the March 9 or April 21, 2021 council meetings in the previous council meeting minutes. Rather the minutes noted different meeting dates. From the evidence before me, I also find the council meeting schedule posted in the strata building did not include the March 9 or April 21, 2021 meeting dates. The strata's newsletter, up to December 3, 2020 also does not mention those meeting dates, although neither party produced later versions of the strata's newsletter.
32. Although the strata says it published each strata council meeting schedule in at least 2 of the mentioned formats, it did not specifically address the applicants' arguments about the March 9 or April 21, 2021 dates. Based on the evidence in this dispute, I find the strata did not inform the owners about those 2 council meetings. There is no indication in the meeting minutes that either meeting was for emergency purposes. So, I find the strata contravened bylaw 13.08(e) for the March 9 and April 21, 2021 meeting dates.

### ***Remedy***

33. As noted above, I found the strata contravened its own bylaws by not allowing observers to attend strata council hearings and by failing to inform owners of the March 9 or April 21, 2021 strata council meetings. So, I find I have addressed the applicants' request for "rulings" on whether the strata breached bylaws 13.11(c) and 13.08(e).
34. There is no indication that Ms. Newman and Ms. Cammell's attendance at the October 19, 2020 strata council meeting would have resulted in any different outcome. Nor is there any indication that any of the applicants would have asked to attend the March 9 or April 21, 2021 meetings, had they known about the meetings. So, although I find the strata did not comply with its bylaws, I find there is no resulting error the strata must remedy.
35. I decline to order the strata to "find a platform" for electronic meetings, as requested by the applicants because I find it unnecessary. It is up to the strata to determine how it will hold electronic meetings in the future. I note the strata says it is already taking these steps by proposing a resolution at an upcoming general meeting to fund an

information technology expert opinion about what the strata needs to buy and do to conduct electronic meetings and install wi-fi around the complex. Further, I note that electronic meetings can be as simple as telephone conferencing, depending on the meeting circumstances. So, I leave it to the strata to determine how it can best comply with its own bylaws about electronic meetings.

36. I also decline to order the strata to “post an accurate meeting schedule”, as requested by the applicants. This is because strata bylaw 13.08 already requires the strata to inform owners of council meeting dates, as soon as feasible after they are called. The strata is already required to comply with its own bylaws, so I decline to order it to do so.
37. The applicants seek no further remedies for the strata’s bylaw contraventions. As explained above, I find no remedy is required and so I find I must dismiss the applicants’ claims.

## **CRT FEES and EXPENSES**

38. 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. I find the applicants are only partially successful in their claims because, although they proved the strata contravened its bylaws, I found no appropriate remedy. So, I find the applicants are entitled to reimbursement of \$112.50, which is half their CRT fees. Neither party claimed any dispute-related expenses.
39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

## **ORDERS**

40. I order the strata to pay the applicants \$112.50 as partial reimbursement of their CRT fees, within 30 days of the date of this order.

41. The applicants are entitled to post-judgment interest under the *Court Order Interest Act*.
42. I dismiss the remainder of the applicants' claims.
43. 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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Sherelle Goodwin, Tribunal Member