



# Civil Resolution Tribunal

Date Issued: October 7, 2021

File: ST-2020-003638

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kaur v. The Owners, Strata Plan LMS810*, 2021 BCCRT 1076

BETWEEN:

HARPARMINDER KAUR

**APPLICANT**

AND:

The Owners, Strata Plan LMS 810

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about strata governance. The applicant, Harparminder Kaur, owns strata lot 5 in the respondent strata corporation, The Owners, Strata Plan LMS 810 (strata). Ms. Kaur says the strata has failed to govern the strata in accordance with the *Strata Property Act* (SPA) and bylaws. She asks for the Civil Resolution Tribunal (CRT) to order that:

- a. The strata must repair and maintain various issues with common property (CP) or obtain and provide to the owners a professional report explaining why it cannot repair and maintain the identified CP issues.
- b. The strata must hire professionals to redo CP work that volunteers have done improperly.
- c. The strata must plant a cedar tree to restore privacy to Ms. Kaur's patio.
- d. A declaration that the strata "vindictively threatens" to apply bylaws against Ms. Kaur while council members and their friends consistently contravene bylaws with no consequences.
- e. The strata must enforce its bylaws.
- f. The strata must apply its bylaws evenly and consistently.
- g. The strata must stop treating Ms. Kaur significantly unfairly and bullying her.
- h. Another owner, SE, must permanently remove animal feeders from their deck.
- i. SE must produce proof of permission from the strata granted 10 years ago for operating a business out of their strata lot, or alternatively, terminate their business.
- j. The strata must provide Ms. Kaur with the documents she requested.
- k. The strata must overturn all allegedly unfair decisions made at the September 2020 annual general meeting (AGM), or alternatively, the strata must produce all documents related to unit 106's patio expansion.
- l. The strata must provide Ms. Kaur with documents proving that another owner, J, has been active on council, or alternatively, the strata must appoint the owner of unit 201 to council to replace J.
- m. The strata must start holding regular council meetings.
- n. The strata must amend all meeting minutes and council updates since December 2019 to correct inaccuracies and to reflect accurate details of this

CRT dispute, including the president's report in the September 2020 AGM minutes.

- o. The strata must prevent a non-council member owner from accessing confidential documents and stop disclosing confidential documents.
  - p. The strata must explain to the owners why an insurance claim it made on behalf of 3 owners was not "rescinded and expunged" from the strata's claims history.
  - q. Strata council members from the 2019-2020 year must admit sole responsibility for the additional cost of directors' liability insurance caused by 2 "unwarranted" insurance claims that council made.
  - r. The strata must notify the owners of various alleged "infractions" and the reasons it took action on some of these "infractions" and not others.
  - s. The strata must update the owners on the status of each of the various "infractions" and the status of this CRT dispute.
  - t. The strata must reinstate its survey on energy consumption and costs and its approved 5-year plan.
2. The strata denies Ms. Kaur's claims and says it has operated in good faith and attempted to abide by the SPA and bylaws.
  3. Ms. Kaur represents herself in this dispute and the strata is represented by a lawyer, Anil Aggarwal.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships

between the dispute's parties that will likely continue after the CRT process has ended.

5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under CRTA section 123, 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**

### **Orders Against Non-Parties**

8. Ms. Kaur asks the CRT to make 2 orders against SE, who is not a party to this dispute. However, I cannot make orders against a non-party because they have not had an opportunity to know and respond to the allegations against them or to review and submit evidence, which would be procedurally unfair. I decline to grant the requested orders against SE.
9. Ms. Kaur also asks the CRT for an order against the individual strata council members from 2019-2020. Since the individual council members are not parties to this dispute, I cannot grant this requested order. However, in her submissions Ms. Kaur clarifies that she wants the CRT to make an order against the 2019-2020 strata council as a whole, and not against individual council members.

10. I find Ms. Kaur's revised requested order against the strata council is in essence a claim under section 31 of the SPA which sets out the standard of care for strata council members. It requires that, in exercising the powers and performing the duties of the strata corporation, each strata council member must act honestly and in good faith with a view to the best interests of the strata corporation. It also requires each strata member to exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.
11. However, in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the BC Supreme Court held that the duties of strata council members under section 31 of the SPA are owed to the strata corporation, not to individual strata lot owners. More recently in *Rochette v. Bradburn*, 2021 BCSC 1752, the BC Supreme Court confirmed that the SPA does not allow another strata owner to sue a strata for violations of section 31. The court decisions in *Sze Hang* and *Rochette* are binding precedents and the CRT must apply them. I find Ms. Kaur does not have standing to bring claims or request remedies against the strata council under section 31 of the SPA, so I refuse to grant the requested order.

### **Orders to Enforce Bylaws**

12. Ms. Kaur requests an order for the strata to immediately enforce its bylaws. SPA section 26 requires the strata council to enforce its bylaws whether or not I order it to do so. I find this requested order would serve no purpose and I decline to grant it.
13. Ms. Kaur also requests an order for the strata to apply its bylaws evenly and consistently. As noted above, the CRT has jurisdiction to order parties to do or stop doing something, and these orders are called injunctions. In *Nova Scotia v. Doucet-Boudreau*, 2003 SCC 62, the Supreme Court of Canada said an injunction must give the parties proper notice of the obligations imposed on them and clearly define the standard of compliance expected of them. This is because an injunction is a legal order that can be enforced by the court. I find Ms. Kaur's requested order lacks the required precision in *Nova Scotia* because I find that whether bylaws have been applied "evenly" or "consistently" is something reasonable people can disagree on. I refuse to grant this requested order.

## **Orders Outside CRT Jurisdiction**

14. Ms. Kaur requests an order that the strata stop treating her significantly unfairly and bullying her. In *PG v. The Owners, Strata Plan ABC XXXX* (2021 BCCRT 427), a Vice Chair determined that the strata itself cannot participate in bullying or harassment, because under sections 4 and 26 of the SPA, the powers and duties of the strata are exercised and performed by the strata council. The Vice Chair refused to resolve the applicant's bullying and harassment claims on the basis that they were outside the CRT's jurisdiction. While *PG* is not binding on me, I find its reasoning persuasive and I adopt it here. I refuse to resolve the bullying aspect of Ms. Kaur's requested order on the basis that it is outside the CRT's jurisdiction.
15. Ms. Kaur also requests a declaration that the strata "vindictively" threatens to apply bylaws against her while council members and their friends consistently contravene bylaws with no consequences. In *Seeman v. The Owners, Strata Plan NW2085*, 2019 BCCRT 1315, the CRT determined that it does not have jurisdiction to make declaratory orders in strata claims unless they are incidental to a requested remedy. While that decision is not binding on me, I find its reasoning persuasive and I adopt it here. I find that not only is Ms. Kaur's requested remedy outside the CRT's jurisdiction, but whether or not the strata's actions were "vindictive" is subjective and imprecise. For these reasons, I refuse to resolve this requested order.

## **Strata's Alleged Failure to Submit Relevant Evidence**

16. In her submissions Ms. Kaur says the strata failed to submit some relevant evidence to the CRT in this dispute in breach of the CRT rules. First, she says the strata failed to submit its legal counsel's carbon copied emails from another lawyer which would prove that 3 owners received legal advice funded by the strata even though they were ineligible. However, as explained further below, I find Ms. Kaur's claim that the strata unnecessarily hired lawyers is vague. I also find Ms. Kaur submitted some emails in evidence that seem to be the ones she wants the strata to disclose, so it is unclear exactly what emails Ms. Kaur says the strata has failed to disclose. I find I cannot determine what exactly Ms. Kaur is requesting, so I cannot address her request in this decision.

17. Second, Ms. Kaur says the strata failed to submit blueprints and certain phone logs. I address Ms. Kaur's requests for these documents in further detail below, but I find that none of these documents are relevant to the issues I must determine in this dispute, so I find there is no basis to require the strata to produce them in this dispute.

### **Late Evidence**

18. Ms. Kaur submitted 2 legal invoices after the evidence deadline. The strata objects to the CRT admitting this late evidence, but I find the strata provided a full response to the late evidence so it is not prejudiced by its admission. Given the strata's mandate to be flexible, I admit the late evidence.

### **Strata's Objection to Nature of Claims**

19. Ms. Kaur applied for dispute resolution on May 5, 2020. On January 25, 2021, the strata received Ms. Kaur's Amended Dispute Notice which it says fundamentally changed her original claim. The strata provided an Amended Dispute Response but says it had difficulty understanding and responding to Ms. Kaur's various claims in the Amended Dispute Notice as many of the claims do not align with the requested relief.

20. I agree that Ms. Kaur raises many issues in her Amended Dispute Notice, submissions and evidence that are not relevant to the remedies she seeks. Aside from that, while Ms. Kaur's claims, requested remedies and submissions are somewhat difficult to follow, I find Ms. Kaur was generally able to articulate the basis for her claims and the strata provided substantive responses to those claims. So, I find it is not procedurally unfair for me to decide Ms. Kaur's claims in this decision.

21. That said, in some of her reply submissions Ms. Kaur raises new issues that she did not raise in the Amended Dispute Notice or her initial submissions. Since the strata did not have an opportunity to respond to these new issues or provide evidence about them, I have not addressed them in this decision.

## **ISSUES**

22. The issues in this dispute are:

- a. Has the strata breached its duty to repair and maintain CP?
- b. Has the strata treated Ms. Kaur significantly unfairly in carrying out its repair and maintenance duties?
- c. Has the strata treated Ms. Kaur significantly unfairly in enforcing its bylaws?
- d. Should any of the decisions made at the September 2020 AGM be overturned?
- e. Has the strata failed to provide Ms. Kaur with documents she requested?
- f. Has the strata breached its bylaws by failing to hold monthly council meetings?
- g. Should the strata amend any of its minutes?
- h. Has the strata allowed a non-council member owner to improperly act on behalf of the strata and access confidential documents?
- i. Did the strata make unnecessary insurance claims or unnecessarily hire legal counsel?
- j. Did the strata improperly overturn decisions of previous strata councils?

## **EVIDENCE AND ANALYSIS**

23. In a civil claim like this one, as the applicant, Ms. Kaur must prove her claims on a balance of probabilities. This means the CRT must find it is more likely than not that her position is correct. I have reviewed all the parties' evidence and submissions but refer only to what I find necessary to explain my decision.

24. The strata was created in 1993 under the *Condominium Act* and continues to exist under the SPA. It consists of 21 residential strata lots. In 2003 the strata filed a new set of bylaws with the Land Title Office (LTO) which repealed all existing bylaws and adopted the Schedule of Standard Bylaws under the SPA, with some amendments.



In 2015 and 2017 the strata filed further bylaw amendments with the LTO. I address the relevant bylaws below.

25. Ms. Kaur was formerly the president of the strata council.

***Has the strata breached its duty to repair and maintain CP?***

26. Ms. Kaur says the strata has breached its duty to repair and maintain various alleged issues with CP, each of which I address below. She wants the CRT to order the strata to properly repair and maintain the various CP items identified, and to hire professionals to redo some work she says was done improperly by volunteers.

27. The strata denies breaching its duty to repair and maintain CP. It says it has reasonably repaired and maintained CP and has selected repair options that fit within its budget. It says in some cases it has hired contractors and for other less technical repairs it has relied on community volunteers.

28. Section 72(1) of the SPA requires a strata to repair and maintain CP, and it is well established that the strata's duty in this regard is limited to what is reasonable in the circumstances. A strata is entitled to decide between different options for repairing and maintaining CP and it will not have breached its duty by choosing a more cautious or conservative approach, or by choosing a "good" solution rather than the "best" solution (see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).

29. The strata also relies on *Warren v. The Owners, Strata plan VIS 6261*, 2017 BCCRT 139, in which the CRT held an owner does not have the right to demand certain maintenance as a priority or impose deadlines for their requests to be fulfilled. Rather, a strata is entitled to consider an owner's repair and maintenance requests with a view to the financial circumstances of the community and the strata's capacity to manage its overall maintenance needs. *Warren* is not binding on me, but I find its reasoning persuasive and I adopt it here.

30. Ms. Kaur primarily relies on a home inspection report by Sasa Home Inspections (Sasa) to support her claim, but she submitted only the fourth page of the 18-page report. Ms. Kaur says the strata has had the entire Sasa report since May 2020 but

provided no evidence she ever sent the strata the full report. The strata says it only received the Sasa excerpt and I find there is no evidence to the contrary. Ms. Kaur says the full report is available to the CRT upon request. However, parties are notified at the outset of the CRT's adjudication process that they must submit all relevant evidence at the time of initial evidence submissions. So, I find Ms. Kaur knew or should have known to submit the full Sasa report if she intended to rely on it in this dispute.

31. The Sasa excerpt indicates that Sasa did an inspection on April 19, 2020 and prepared the report for Ms. Kaur, but it does not state what areas of the strata property were inspected, or the nature or extent of the inspection. It also does not state who conducted the inspection or list the inspector's qualifications, education, training, or experience, as required by CRT rule 8.3. So, I find the Sasa excerpt does not meet the requirements for expert opinion evidence under CRT rule 8.3. For all of the reasons explained above, I also find the Sasa excerpt unpersuasive and I place no weight on it.

### **Patio**

32. Ms. Kaur's strata lot is on ground level and there is a limited common property (LCP) brick patio behind it for her exclusive use. The patio has several steps that lead out to a CP green space. The other first floor strata lots have similar LCP patios and steps. Bylaw 8(1)(c)(ii)(c) requires the strata to repair and maintain LCP patios no matter how often the repair and maintenance occurs.
33. Ms. Kaur says her patio bricks are uneven and not level with the steps. She relies on the Sasa excerpt which says this creates a tripping hazard and should be repaired, but as noted above I place no weight on this evidence. She also submitted photos of what she says are other owners' ground level patios with more level bricks, but I find I cannot determine from the photos whether Ms. Kaur's patio bricks are more uneven than those of other patios.
34. In January 2020 Ms. Kaur notified the strata that her patio ties were rotted, termite-infested, slippery, and unsafe. In February 2020 the strata told Ms. Kaur that it was

relying on its recent depreciation report which said that although the patio ties were in “fair to marginal condition with some showing signs of decay,” replacement was not required until 2024. It is undisputed that at some point in 2020 the strata replaced grip strips on Ms. Kaur’s patio steps and installed a caution sign to address her complaints about the slippery ties. Ms. Kaur says the grip strips and caution sign are an “eyesore” and says a permanent remedy is required. However, I find that what constitutes an “eyesore” is subjective, and she provided no proof that there is anything wrong with the temporary repair. The strata says the repair is sufficient for the time being.

35. While the strata did not submit the depreciation report, I find Ms. Kaur has not proven through any persuasive independent assessment that the ties require immediate repair work or replacement. I find the photos she submitted are insufficient to prove her allegation. The evidence shows the strata responded to Ms. Kaur’s complaint by replacing the grip strips and installing a caution sign which, on the evidence before me, I find is not unreasonable.
36. Ms. Kaur also says the strata has completely or partially replaced other owners’ patio steps and ties, but not hers, and says the strata did not replace the grip strip on her steps until 3 months after it replaced grip strips on all other patio steps. However, she provided no persuasive evidence about the condition of other owners’ patio steps and ties before they were replaced or the grip strips applied compared to her patio steps and ties. I find Ms. Kaur’s allegation is unproven.
37. In January 2020 Ms. Kaur complained to the strata that her patio drain was higher than her patio bricks which caused water to pool. In February 2020 the strata told Ms. Kaur a contractor was not available until March 10, 2020, so in the meantime, it had temporarily repaired the drain. Ms. Kaur says the strata has failed to follow up on its temporary repair with a permanent one, and the patio drain is an “eyesore” compared to other patios. However, again, what constitutes an “eyesore” is subjective, and she does not dispute that the temporary repair has been effective. I find it is reasonable for the strata to rely on a temporary repair until there is evidence that further repairs are required.

38. I find Ms. Kaur has not established that the strata breached its repair and maintenance duty with respect to her patio bricks, steps, ties, or drain.

### **Parkade Ceiling Leaks**

39. It is undisputed that in February and March 2020 the strata hired a contractor to repair multiple parkade ceiling leaks. Ms. Kaur says the strata failed to properly repair these leaks. She says there are water stains on the parkade ceiling, but I find this is not proof of active leaks. She relies on a March 14, 2021 statement from CS, another owner, who said they have seen parkade ceiling leaks, but CS provided no photos, details, or dates on which they noticed the alleged leaks.

40. I note here that CS's statement addresses many of the issues Ms. Kaur raises in this dispute. CS acknowledges that they are friends with Ms. Kaur but says it does not affect the neutrality of their statement. However, as a remedy in this dispute Ms. Kaur requests that the CRT order the strata to allow CS and other owners to join council, so I find CS stands to benefit from the outcome of this dispute. I also find that CS's statement is argumentative and advocates for Ms. Kaur's position. For these reasons, I find CS's statement is not neutral, and I place very little weight on it.

41. The strata's July 27, 2020 update letter to owners said a home inspector found no water leaks in the basement. In a January 25, 2021 letter to Ms. Kaur the strata said there had been no parkade ceiling leaks since the drain head above Ms. Kaur's patio was repaired in the spring of 2020. It said the parkade ceiling is monitored after every rainfall and there had been no evidence of further water leakage.

42. I find the strata reasonably responded to and repaired the parkade ceiling leaks and I find Ms. Kaur has not established that there are ongoing leaks.

### **Gutters**

43. In January 2020 Ms. Kaur notified the strata of at least 5 gutter leaks on the strata property. The minutes show the strata hired a contractor who cleaned the gutters on February 11, 2020 and provided a quote for repair work which they said could not be completed until the late spring because of the weather. The minutes show council

approved the quote. The evidence shows the gutter repairs were completed on July 15, 2020, and I find Ms. Kaur has not proven there have been any problems since. I find the strata reasonably responded to Ms. Kaur's complaints about gutter leaks, and so it did not breach its repair and maintenance duty in this regard.

### **Irrigation System**

44. Ms. Kaur says council volunteers improperly repaired the irrigation system in the spring of 2020 by leaving at least 2 sprinkler heads above grass level and visible from her patio. She says a few days later a lawn mower broke at least 1 sprinkler head. She says council did not clean up the broken pieces until late August 2020 at which time they killed a \$25 perennial plant which they failed to replace. CS's statement generally supports these allegations but is vague about the details. However, I find the photos Ms. Kaur submitted of a yellowing plant do not prove that any council volunteer was responsible for killing the plant. Since Ms. Kaur admits the broken sprinkler pieces have been removed, I find there is nothing to remedy. I find Ms. Kaur has not established any basis for the strata to hire professionals to repair the irrigation system or replace the plant.

### **Carbon Monoxide Detectors**

45. Ms. Kaur submitted an October 2, 2019 ProAmp Electric Ltd. invoice to the strata which included service to 3 carbon monoxide detectors. The invoice recommends annual testing and cleaning of the carbon monoxide detectors as well as monthly checks to ensure the green lights are on and no alarms are present because the audio alarms are disabled. Ms. Kaur says the strata has failed to follow these recommendations. The strata says only that it disagrees with Ms. Kaur's characterization of the strata's repair and maintenance efforts in this regard.

46. The minutes in evidence show that the strata performed monthly interior building inspections between December 2019 and June 2020. The minutes specifically mention fire alarm testing as part of these inspections but say nothing about the carbon monoxide detectors. Even if these monthly inspections did include checking the carbon monoxide detectors, the minutes do not mention monthly inspections

between July 2020 and January 2021, nor do they indicate that the strata has conducted annual testing and cleaning of the carbon monoxide detectors since October 2019.

47. Repairing and maintaining the carbon monoxide detectors is clearly a safety issue, and the strata has not explained what actions, if any, it has taken since October 2019 in this regard. In the circumstances, I find it was unreasonable for the strata to ignore the recommendations in the ProAmp invoice, and I find the strata has breached its repair and maintenance duty by failing to inspect the carbon monoxide detectors. However, Ms. Kaur has not requested a specific remedy about the carbon monoxide detectors. So, within 3 months of the date of this decision, I order the strata to arrange for an inspection and cleaning of the carbon monoxide detectors on the strata property if it has not done so in the last 12 months before the date of the decision. The strata must notify the owners of the results of the inspection and cleaning within 30 days of completion. If the carbon monoxide detectors have been inspected and cleaned in the last 12 months from the date of this decision, I order the strata to notify the owners within 30 days of the date of this decision of the dates and results of the most recent inspection and cleaning.

## **Gardens**

48. Ms. Kaur says in the spring of 2020 the strata discarded approximately \$400 of newly planted perennials and replaced them with annuals, and the CP garden beds are now mostly bare soil. She also says the strata has made, “many, many other changes to the grounds” but failed to provide further details. She submitted photos showing an unidentified garden area that appears fuller in June 2019 compared to June 2020. However, I find the photos do not prove that the strata discarded plants or prove the value of any discarded plants. I find Ms. Kaur has submitted insufficient evidence to prove her allegations. Even if the strata did discard the plants or make other changes to the grounds, I find it would not necessarily have breached its repair and maintenance duties by doing so.
49. Ms. Kaur says the strata budgeted \$1,000 for tree pruning in its 2020-2021 fiscal year budget but instead chose to rely on a volunteer council member to prune the trees.

She submitted photos which she says show this council member has done a poor job pruning but I find the photos are insufficient to establish that the strata breached its repair and maintenance duty in this regard.

### **Other Issues With CP**

50. Ms. Kaur says the strata has taken on unnecessary risk by allowing an unidentified elderly resident to climb onto the roof to do maintenance work. The strata says it assumes Ms. Kaur's allegation is about a council member, HW, who it says chose to volunteer to complete certain CP maintenance duties and is physically able to do so. I find that allowing a council member to voluntarily assist with repairs and maintenance is not a breach of the strata's CP repair and maintenance duties.

### ***Has the strata treated Ms. Kaur significantly unfairly in carrying out its repair and maintenance duties?***

51. Ms. Kaur says the strata has treated her significantly unfairly by trimming trees that reduce her privacy while at the same time failing to remove trees that affect her safety. She says the strata "hacked" a cedar tree on CP next to her patio in response to an allegedly fraudulent request from her next-door neighbour to trim the tree. At the same time, Ms. Kaur says she asked the strata to remove a dead tree from an area near her patio more than a year ago, but the strata has failed to remove the tree. She wants the CRT to order the strata to stop treating her significantly unfairly and to plant a new cedar tree on CP to restore privacy to her strata lot.

52. The strata denies Ms. Kaur's allegations. It says it reasonably responded to an owner's request to trim an overgrown cedar tree on CP, and the tree will grow back so there is no need to replace it. It says Ms. Kaur first notified it of the dead tree during this CRT dispute so it had no prior opportunity to address it.

53. Section 123(2) of the CRTA gives the CRT authority to make an order directed at a strata if it is necessary to prevent or remedy a significantly unfair action or decision in relation to an owner. The courts have interpreted "significantly unfair" to mean conduct that is oppressive or unfairly prejudicial. Oppressive conduct has been

interpreted as conduct that is burdensome, harsh, wrongful, lacking fair dealing, or done in bad faith, and prejudicial conduct has been interpreted as conduct that is unjust and inequitable (see *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578). The test for significant unfairness as stated in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44 is: 1) what is or was the expectation of the affected owner or tenant? 2) was that expectation objectively reasonable? 3) If so, was that expectation violated by a significantly unfair action? The strata cites *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576, in which the court said an owner's expectation should not necessarily be considered in all circumstances.

54. The strata says that based on these legal principles, Ms. Kaur cannot establish significant unfairness related to the trees on CP. I agree. I find it was objectively reasonable for Ms. Kaur to expect the strata to treat her the same as other owners when carrying out its repair and maintenance duties. However, for the following reasons I find Ms. Kaur has not established that the strata treated her significantly unfairly as she alleges.
55. The strata submitted an undated handwritten letter from RM, the owner of the strata lot next to Ms. Kaur's, which states that in early fall 2020 they asked a council member to trim the cedar hedge outside their living room window. Ms. Kaur says this letter was not actually from RM, but rather was written by a council member's spouse, however I find she submitted no persuasive evidence to support this allegation. Ms. Kaur says the strata "hacked" the cedar tree in late summer, not early fall, so the timing stated in the letter is inaccurate. However, while the letter is undated it was clearly written after the incident, so I do not find it problematic that the exact timing may not be accurate. Ms. Kaur submitted photos which she says prove the cedar tree did not block any part of RM's window, but I find the photos do not clearly support her allegations.
56. I also find Ms. Kaur has failed to prove she notified the strata about the dead tree prior to starting this dispute. She says in her initial Dispute Notice she mentioned the strata's rundown grounds, which she says included the dead tree, and she says the strata should have followed up with her to clarify what she meant. However, I find this



is not a reasonable expectation. Ms. Kaur also says a council member texted her that he could not remove the dead tree because it was too big, but she did not submit this text as evidence.

57. On the evidence before me I find it was reasonable for the strata to respond to RM's request to trim the cedar tree. I also find Ms. Kaur has not established that the strata failed to respond to any request from her to remove the dead tree. So, I find the strata has not treated Ms. Kaur significantly unfairly with respect to the cedar tree and the dead tree.

58. Ms. Kaur also says the strata has treated her unfairly by leaving debris under the hedge in front of her strata lot while removing similar debris around hedges in front of other strata lots, including those of council members. CS's statement supports her allegation. However, I find Ms. Kaur's allegations and CS's statement are vague about the dates and locations that the strata either allegedly removed or failed to remove the debris. Ms. Kaur submitted some photos as evidence, but I find I cannot establish the exact location of the hedges from the photos. On balance, I find Ms. Kaur has failed to establish that the strata breached its repair and maintenance duty or treated her significantly unfairly by failing to remove debris from under the hedge near her strata lot.

59. In her submissions Ms. Kaur cites various other examples of the strata responding to other owners' repair and maintenance requests to trim and move hedges, repair gutters, and remove moss and algae from skirting, while ignoring her requests. However, I find Ms. Kaur has failed to submit sufficient evidence to prove that any of these events occurred, so I find she has not established that the strata treated her significantly unfairly in relation to any of these repair and maintenance items.

60. I dismiss this claim.

***Has the strata treated Ms. Kaur significantly unfairly in enforcing its bylaws?***

61. Ms. Kaur says the strata has treated her significantly unfairly by enforcing or threatening to enforce bylaws against her while allowing council members and their friends to violate bylaws without consequences. She wants the CRT to order the strata to immediately stop treating her significantly unfairly.
62. The strata denies Ms. Kaur's allegations. It says it does not actively seek out bylaw violations, but it investigates when it receives specific bylaw violation complaints. The strata says the SPA allows strata corporations to deal with bylaw violation complaints as it sees fit, as long as it complies with the principals of procedural fairness and does not treat anyone significantly unfairly. I agree (see *Chorney v. The Owners, Strata Plan VIS770*, 2016 BCSC 148).
63. Based on the *Dollan* significant unfairness test, I find it was objectively reasonable for Mr. Kaur to expect the strata to treat her the same as other owners when enforcing its bylaws. However, for the following reasons I find she has not proven that the strata treated her significantly unfairly in this manner.
64. Ms. Kaur says a council member had at least 2 bird feeders on their balcony since before the spring of 2020 in violation of bylaw 3.4(k), which prohibits an owner from feeding birds and other animals from a strata lot or anywhere on or near the CP or any LCP. Ms. Kaur says she complained of this violation in an April 28, 2020 letter but that letter is not in evidence. On February 7, 2021, the strata notified the owner of the alleged bylaw violation Ms. Kaur raised in this CRT dispute. On March 3, 2021, that owner acknowledged their breach of the bylaw and removed the feeders. Ms. Kaur acknowledges that the feeders are now gone.
65. Since Ms. Kaur failed to submit her April 28, 2020 letter, I find the earliest the strata learned of her complaint was early 2021 when it received the Amended Dispute Notice. The strata undisputedly addressed the complaint within a few weeks of learning about it and the violation stopped. Ms. Kaur does not allege that the strata treated other owners differently in relation to bird feeders on their balconies or patios.
66. Ms. Kaur also says the strata gave the same council member preferential treatment by allowing them an exemption from bylaw 3(4)(s) which prohibits an owner from

using their strata lot for commercial or professional purposes without written permission from the strata council. In an August 17, 2020 letter the owner said their workplace was closed because of the COVID-19 pandemic and asked the strata's permission to have students in their strata lot for private music classes, which the strata approved. Ms. Kaur says this owner never showed the strata proof of their alleged 2011 exemption to bylaw 3(4)(c) which prohibits an owner from using any musical instrument if it causes a disturbance. However, Ms. Kaur has not alleged that she or anyone else complained to the strata about any of this owner's musical instruments causing an unreasonable disturbance. She also has not alleged that the strata denied her or any other owner a similar request to operate a business out of their strata lot during the pandemic.

67. Ms. Kaur says the owners of units 106 and 107 made significant alterations to CP by expanding their LCP patios without documented strata approval. She says this violates bylaw 6(1) which requires an owner to obtain the strata's written approval before altering CP or LCP. She says the strata has failed to enforce this bylaw against these owners. However, as explained in more detail below, I find the strata approved unit 106's patio expansion, and the owners retroactively approved the patio expansion at its 2020 AGM, so unit 106's patio expansion is not in violation of bylaw 6(1). Ms. Kaur says she did not notice unit 107's patio expansion until March 2021 which is well after she started this dispute and amended her Dispute Notice. The strata says that since Ms. Kaur first raised unit 107's alleged patio expansion in her submissions, it has not yet had an opportunity to respond to it. As there is no evidence anyone complained to the strata about unit 107's patio expansion before Ms. Kaur raised it in her submissions, I accept the strata's position. There is also no indication that Ms. Kaur or any other owner has sought or been denied the strata's permission to expand their LCP patio.

68. Ms. Kaur also says the owner of unit 106 installed an energy efficient fireplace without strata approval in violation of the bylaws, but the strata has failed to enforce the bylaws against that owner. However, the strata says Ms. Kaur first notified it of this alleged bylaw violation in her submissions, so it has not yet had an opportunity to respond to it. In the absence of evidence to the contrary I accept the strata's position.

There is also no indication that Ms. Kaur or any other owner has sought or been denied the strata's permission to install a similar fireplace.

69. Ms. Kaur says unit 102 owners' son moved into their strata lot with a big dog in March 2020 in contravention of bylaw 3(3) which prohibits pets except for those required for disabled owners with council approval. Ms. Kaur says the strata did not address this bylaw violation until March 2021, but there is no evidence that she or any other owner complained to the strata about the dog before that time. The strata says council is currently investigating this alleged violation. There is no evidence that the strata has treated Ms. Kaur or any other owner differently in its enforcement of bylaw 3(3).
70. In April 2020 Ms. Kaur treated part of the CP lawn near her strata lot after council had allegedly neglected it. She told council not to mow that portion of the lawn for at least 4 weeks but says that within 2 weeks a council member mowed the lawn. She takes issue with the strata's response in which it told her she had made an unauthorized lawn treatment. However, there is no evidence the strata investigated this as a bylaw violation, so I find she has not established that the strata treated her significantly unfairly in enforcing bylaws related to the CP lawn.
71. Ms. Kaur says that in contrast to allowing council members and their friends to violate bylaws without consequence, the strata has cited her and her friends for minor bylaw violations or threatened them with violations. She says these include having one small flowerpot and a small string of lights on a deck and patio. She says the strata removes notices she posts but allows notices from other owners to remain posted. She also says that on several occasions, council members have yelled at her or her guests about alleged bylaw violations, peered into her windows, filmed her, and placed obstacles in the garden preventing her from accessing it. CS's statement generally supports these allegations, but I find it does not specify dates or times or other details to establish that these incidents occurred or that any of these owners, including Ms. Kaur, were fined for bylaw violations. I find Ms. Kaur has not proven these allegations.
72. On balance, I find Ms. Kaur has not proven that the strata has treated her significantly unfairly in enforcing its bylaws. I dismiss this claim.

***Should any of the decisions made at the September 2020 AGM be overturned?***

73. Ms. Kaur says several of the procedures and decisions at the September 2020 AGM were unfair and should be overturned. She also wants the CRT to order the strata to provide documents proving that another owner, J, has been active on council, or alternatively, order the strata to appoint the owner of unit 201 to council to replace J. However, in her submissions, Ms. Kaur revised this requested remedy to request an order that the strata fill vacancies on council. The strata denies Ms. Kaur's allegations and says it followed the proper procedures at the AGM and is under no obligation to fill any council vacancies.
74. The September 2020 AGM minutes show there were 7 owners present in person and 12 proxies for a total of 19 votes. It is undisputed that Ms. Kaur held 2 proxies, and the outgoing president, JD, held the remaining 10, meaning JD held more than 50 percent of the votes. Ms. Kaur says JD misled many owners into giving them their proxies. However, since JD is not a party to this dispute, I find I have no authority to address any claims against JD personally. So, I make no findings about whether JD misled any owners who gave JD their proxy.
75. Ms. Kaur also says the strata refused to allow additions to the agenda and did not allow open discussions at the AGM. However, neither the SPA nor the bylaws require the strata to allow either of these things at an AGM. In any event, I find Ms. Kaur has not proven her allegations. In their statement CS said they wanted to add an item to the agenda about council violations, but JD "shut it down" before listening to them. However, it is unclear whether CS said this occurred before or during the AGM. Ms. Kaur also submitted a statement from MH, who is CS's son-in-law and does not own or live in a strata lot in the strata but said they attended the AGM. I find MH's statement is not neutral since they are related to CS. I also note that the meeting was chaired by an independent third party, a member of the Condominium Home Owners Association, and there is nothing in the minutes to substantiate Ms. Kaur's allegations. There is also no evidence from a neutral observer who attended the AGM. I find Ms. Kaur has not established that the strata refused to allow additions to

the agenda or open discussions at the AGM, or that it would have breached any provisions of the SPA or bylaws by doing so.

76. Ms. Kaur also takes issue with 2 resolutions passed at the AGM related to unit 106's patio expansion. The first resolution was to retroactively approve the significant change to CP under section 71 of the SPA. The second resolution was to designate the CP portion of the patio expansion as LCP for the exclusive use of unit 106 under section 74 of the SPA. Both resolutions passed, which Ms. Kaur does not dispute. Rather, she says they were improper because they were retroactive.
77. The strata relies on *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333, where the court ordered the strata corporation to consider retroactively approving a significant change by a  $\frac{3}{4}$  resolution, and to permit the change if the vote passed. I find that it is implicit in the court's order in *Foley* that a strata corporation may retroactively approve a significant change to CP.
78. *Foley* is binding on me. While it is of course preferable for the strata to approve any alterations to CP in advance, I find the evidence shows the strata appears to have acted in good faith and simply made procedural errors in allowing the patio expansion before the owners approved it at the AGM. However, since the patio expansion resolutions were undoubtedly approved at the September 2020 AGM, I find that the strata corrected the error.
79. Ms. Kaur also says the election of council members at the AGM was pre-determined, and the strata has since failed to fill vacancies on council. She wants the CRT to order the vacancies be filled by those owners interested in joining council.
80. In CS's statement they said JD told them either at or before the AGM that the council election had been determined before the meeting was called to order. In MH's statement they said JD told them that since the outcome of the election had already been determined, there was no need for candidates to make presentations at the AGM before the vote. However, there is no requirement in the SPA or bylaws for council candidates to make presentations before a council election. I find the minutes clearly show that 8 people were nominated for council, 3 of whom were added to the

ballot during the meeting. A vote was conducted and 7 of 8 candidates were elected. CS was the only candidate not elected because they did not receive enough votes. Ms. Kaur does not allege that the election was in breach of the SPA or any bylaws. I find the fact that JD held more than 50 percent of the votes at the AGM does not mean the election procedure was improper.

81. It is undisputed that between the AGM and the January 15, 2021 council meeting, 2 council members resigned, leaving 5 remaining council members. The strata relies on bylaw 9(1) which requires the strata council to have between 3 and 7 members. It also relies on bylaw 12, which says a replacement council member “may” be appointed from any person eligible to sit on council. The strata says it is not necessary for it to fill vacant council positions provided it has a minimum of 3 members, and I agree. I find there is no basis to make the order Ms. Kaur requests.
82. I dismiss this claim.

***Has the strata failed to provide Ms. Kaur with documents she requested?***

83. Ms. Kaur says the strata has failed to provide her with various documents she requested. She wants the CRT to order the strata to provide her with various documents, including all documents related to unit 106’s patio expansion. The strata says it is willing to provide Ms. Kaur with the documents she requests provided she specifies which documents she wants, and provided the strata is required to prepare or retain the requested documents under section 35 of the SPA.
84. Under section 36 of the SPA, if an owner requests any records the strata is required to prepare or maintain under section 35 of the SPA, the strata must make the requested records available for inspection and provide copies to the owner within 2 weeks of the request. The strata relies on *Kayne v. Strata Plan LMS 2375*, 2007 BCSC 1610 (*Kayne*) in which the court said a record or document not specified in section 35 of the SPA is generally not available to an owner.
85. In a May 24, 2020 joint email to the strata council, Ms. Kaur and 2 other owners requested hard copies of all communications between the strata council and HUB

Insurance and between the strata council and Aviva Insurance from December 19, 2019 to April 29, 2020. The letter said that if the requested documents were not available, the owners requested the phone records of calls between the strata council and these 2 insurance companies during the same time period.

86. On June 26, 2020 the strata sent Ms. Kaur copies of its emails with HUB Insurance for the requested dates. The letter said nothing about the strata's communications, if any, with Aviva Insurance. On June 30, 2020 Ms. Kaur responded to council acknowledging receipt of the emails but stating that the requested phone records were still missing. However, the strata says, and I find, that the strata is not required to maintain such phone records under section 35 of the SPA, so the strata is not required to keep or disclose them.
87. Ms. Kaur did not mention the Aviva Insurance emails in her June 30, 2020 letter, but since the strata does not appear to have responded to her May 24, 2020 request for these emails, I find it is in breach of its document disclosure obligations under section 36 of the SPA. So, within 2 weeks of the date of this decision, I order the strata to provide Ms. Kaur with any emails in its possession to or from Aviva Insurance between December 19, 2019 and April 29, 2020.
88. On June 6, 2020, Ms. Kaur requested "email evidence" that a particular council member had "continuously participated in council business". She also requested a "snapshot" of that owner's phone log showing the time and length of their phone call into the May 15, 2020 council meeting. She says the strata has failed to provide her with these documents. She also says the strata has refused to provide her with its monthly property inspection forms. However, I find the strata is not required to prepare or maintain any of these requested records under section 35 of the SPA, so Ms. Kaur is not entitled to them under section 36 of the SPA.
89. Ms. Kaur says the strata has refused to provide her with blueprints she requested. However, I find it is unclear what Ms. Kaur means by blueprints or whether these are different from the strata plan, which is in evidence. In any event, I find the strata is



not required to prepare or maintain blueprints under section 35 of the SPA, so Ms. Kaur is not entitled to them under section 36 of the SPA.

90. In a January 25, 2021 letter Ms. Kaur asked the strata to provide proof of who paid the LTO fees to register the change of designation of the expanded unit 106 patio area from CP to LCP. Ms. Kaur refers to the October 26, 2020 minutes which show council obtained an estimate from a lawyer about LTO filing fees. There is no evidence that the strata responded to Ms. Kaur's request. Section 35(d) of the SPA requires the strata to prepare books of account showing money received and spent and the reason for the receipt and expenditure. So, I find that if the strata made the LTO expenditure as Ms. Kaur alleges, it must produce that record to Ms. Kaur under section 36 of the SPA. So, within 2 weeks of the date of this decision, I order the strata to provide Ms. Kaur with any documents in its possession showing the strata paid the LTO fee to register the change of designation of CP to LCP associated with unit 106's patio expansion.
91. Ms. Kaur also wants the strata to provide her with copies of all documents related to unit 106's patio extension approval, including the owner's assumption of liability document. The AGM resolution approving the unit 106 patio expansion was conditional on the unit 106 owner providing "an endorsed alteration and assumption of liability agreement." There is no evidence Ms. Kaur requested these documents before starting this dispute. However, since the strata has agreed to comply with Ms. Kaur's document requests, I order it to provide Ms. Kaur with the alteration and assumption of liability agreement with the unit 106 owner within 2 weeks of this decision, as ordered below. Aside from this specific document, I find it is unclear exactly what other documents Ms. Kaur is requesting in relation to the unit 106 patio expansion. So, I decline to order the strata to produce any other patio expansion-related documents.
92. Ms. Kaur also says she wants the strata to provide her with copies of all roof replacement quotations it has received for the roof replacement project. Section 35(2)(k) of the SPA and section 4.1(5) of the *Strata Property Regulation* (SPR) require the strata to maintain copies of all correspondence sent or received by the strata

council for 2 years. In *Sleeman et al v. The Owners, Strata Plan VR 2027*, 2019 BCCRT 1162, a Vice Chair found that a quotation is considered correspondence received by the strata and must be disclosed under section 35(2)(k) of the SPA and regulation 4.1. This decision is not binding on me, but I find its persuasive and I adopt it here. As above, there is no evidence Ms. Kaur requested these quotations from the strata before starting this dispute. However, since the strata has agreed to comply with Ms. Kaur's document requests, within 2 weeks of this decision I order it to provide Ms. Kaur with all roof replacement quotations it has received within the last 2 years from the date of this decision.

93. Ms. Kaur says the strata has produced copies of requested documents to other owners for free, while she has been required to pay for them. Section 4.2 of the SPR allows the strata to charge a copy fee for documents provided under section 36 of the SPA. However, aside from CS's statement, Ms. Kaur provided no documentary evidence that she was ever charged for copies of documents, so I find this allegation is unproven.

***Has the strata breached its bylaws by failing to hold monthly council meetings?***

94. Ms. Kaur says that since the start of the COVID-19 pandemic the strata has failed to hold its regular monthly council meetings in breach of bylaw 18(1). She wants the CRT to order the strata to immediately start holding regular council meetings.
95. Bylaw 18(1) requires decisions at council meetings to be made by a majority of council members present in person at the meeting but does not specify the required frequency of council meetings or a minimum number of meetings per year.
96. The strata says that because of the COVID-19 pandemic, in April 2020 it decided to suspend its monthly council meetings and instead send the owners monthly update letters in the months it did not hold meetings. The evidence shows that in 2020 the strata held 6 council meetings in January, February, March, May, September, and October. In April, July, and August 2020 the strata sent the owners update letters about strata business in between formal council meetings.

97. The strata says as long as it governs its affairs there is no basis to order more frequent council meetings. It relies on *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11, in which the CRT held there is no provision in the SPA requiring a minimum number of council meetings. *McDowell* is not binding on me but I find its reasoning persuasive and I adopt it here. I find there is nothing in the SPA or bylaws requiring the strata to hold a specified number of council meetings each year, so it has not breached bylaw 18(1) by holding less frequent council meetings in 2020 than it did in previous years. I dismiss this claim.

***Should the strata amend any of its minutes?***

98. Ms. Kaur says the strata has frequently violated bylaw 18(3) which requires the results of all votes at council meetings to be recorded in the minutes. She also says the strata has frequently omitted decisions from the minutes or issued inaccurate minutes. She wants the CRT to order the strata to amend all minutes and council update letters since December 2019, including the president's report in the September 2020 AGM minutes, to correct these alleged inaccuracies, including reflecting accurate details about this CRT dispute.

99. The strata denies that it breached bylaw 18(3) or issued inaccurate minutes. It relies on *Kayne* in which the court found the SPA requires only that minutes record the outcomes of votes taken by council. The strata says this means it has discretion to determine what level of detail it includes in the minutes, provided they meet the minimum SPA requirements. The strata also relies on several CRT decisions which find that there are no SPA provisions about retracting or correcting minutes. I agree with the strata's interpretation of the law about requirements for minutes, and I find that in addition to the SPA, the bylaws are silent about retracting or correcting minutes. However, in *Claridge v. The Owners, Strata Plan LMS 223*, 2020 BCCRT 161, a CRT member found that if a strata chooses to include in its minutes more detail than is required by the SPA, there is an implicit requirement that the minutes must be reasonably accurate so that they do not mislead the owners. While this decision is not binding on me, I find its reasoning persuasive and I adopt it here.

100. Ms. Kaur's issues with the minutes are voluminous and varied and somewhat difficult to follow. Many of her complaints are that various decisions of the strata council are not documented in the minutes. However, Ms. Kaur does not allege that council took formal votes in making these decisions, with one exception explained below. In essence, I find these are claims that the strata made unauthorized decisions to take various actions. However, Ms. Kaur does not request any remedies related to unapproved council decisions. Rather, she requests only that the CRT order the strata to amend the minutes. I find minutes cannot be amended to include votes that may not have taken place, so I find I cannot address these allegations about unauthorized council decisions in this decision.

101. Ms. Kaur says that at the December 19, 2019 council meeting, which she and CS both attended as observers, council unanimously approved transferring \$5,000 from the contingency reserve fund (CRF) to the operating fund (OF). She says she advised council during the meeting that owner approval was required for the transfer and that the transfer was unnecessary. She says that in response to her advice the strata decided during that meeting not to transfer the funds, but council never officially overturned its vote, and the minutes from this meeting do not reflect anything about the vote. However, since the strata undisputedly decided against the \$5,000 transfer and never made the transfer, I find the fact that this information was omitted from the minutes would not have misled any owner who did not attend the meeting. I find there is no basis to amend the December 19, 2019 minutes.

102. Ms. Kaur says the minutes from the January 2019 council meeting state that council would make a decision about paying for regular maintenance of the garage door out of the CRF, but no subsequent records show when that decision was made. The January 2019 minutes are not in evidence, but from the context of her submissions I infer Ms. Kaur means the January 2020 minutes, not the January 2019 minutes. The January 14, 2020 minutes were amended on January 31, 2020, and the amended minutes show that council unanimously approved spending \$850 from the CRF to repair the garage door. However, I find the amended January 14, 2020 minutes state nothing about paying for ongoing garage door maintenance out of the

CRF. I find Ms. Kaur has not proven any inaccuracy in the minutes from the January 14, 2020 council meeting in relation to garage door maintenance.

103. Ms. Kaur says some of the specific words in the minutes are inaccurate or misleading. She says the January 14, 2020 minutes are inaccurate because council said it had contacted “most” of the former volunteers when it had failed to contact between 7 and 9 former volunteers. She says the February 18, 2020 minutes are misleading because they state that she had requested “many” of her letters be read into the minutes when she requested only 3 of them be read. However, I find the words “most” and “many” are vague, and Ms. Kaur has not established that greater precision was necessary. I find there is no basis to order the strata to amend the minutes in this regard.

104. The May 15, 2020 minutes state that window washing would be scheduled in early June. The previous line states, “Please refer to April Update Letter for tasks.” Ms. Kaur says the window washing is not mentioned in the April Update Letter. However, I find these are 2 separate sentences in the May minutes, and it is unclear how this is misleading. I find Ms. Kaur has not established any basis for amending the May 15, 2020 minutes.

105. On May 15, 2020, Ms. Kaur sent a demand letter to the strata about its alleged breach of its repair and maintenance duties. The July 27, 2020 update letter shows that council received a letter from Ms. Kaur’s legal counsel, but Ms. Kaur says it failed to notify the owners of the content of her letter. However, I find there is no requirement for the strata to include the contents of Ms. Kaur’s demand letter in the minutes, as there was no council vote about it and it was not the start of a lawsuit.

106. The minutes between January and July 2020 indicate that monthly inspections determined the exterior of the building was “all good.” Ms. Kaur says this is inaccurate as there were many ongoing repair and maintenance issues. However, these minutes also include reports about the strata’s ongoing repair and maintenance projects. I find it is obvious from reading the entirety of each of these sets of minutes that the statements that the exterior inspections were “all good” imply that no new issues were

detected during the inspection. So, I find these statements are not misleading and there is no basis to order the strata to amend the minutes in this regard.

107. An August 10, 2020 update letter from the strata to the owners states that the strata's insurance broker advised it that 2 of the strata's insurers for Directors and Officers Liability (D&O) insurance would not renew coverage because of "current and ongoing litigation (CRT Dispute Claim) brought against Council and 2 Council Officers (Defamation)" by Ms. Kaur. Ms. Kaur says this letter misinformed owners that she was the cause of the strata's insurance problems. She says she only sent 3 owners demand letters, which is not litigation. However, the strata says, and Ms. Kaur does not deny, that on June 15, 2020 she filed a BC Supreme Court claim against the council president at the time for defamation and unauthorized spending of strata funds. I find Ms. Kaur has not established that the August 10, 2020 update letter misled or misinformed owners. I find there is no basis to order the strata to amend the letter.

108. Ms. Kaur says the strata failed to inform owners of legal actions of March 10, 19, May 16, and October 19, 2020. However, it is unclear what "legal actions" Ms. Kaur refers to on these dates. The strata says that section 167(1) of the SPA requires only that it inform owners as soon as feasible after it is sued. I agree. The original Dispute Notice was issued on May 6, 2020, and the May 16, 2020 minutes clearly notify the owners about the dispute. I find Ms. Kaur has not established that the strata breached section 167(1) of the SPA.

109. Ms. Kaur also says the September 2020 AGM minutes misled the owners about the status of this CRT dispute. She says the president's report in those minutes states that the president "dealt with a CRT claim" which she says insinuates that the claim was settled or finished. She wants the president's report amended to replace "dealt with" with "is dealing with". However, Ms. Kaur does not allege that she or any other owner were confused or misled by this statement. In any event, the October 26, 2020 minutes state that the CRT dispute had moved to the adjudication stage, so I find there is no basis to order the strata to amend the president's report in the September 2020 AGM minutes as Ms. Kaur requests.

110. Ms. Kaur says the January 15, 2021 minutes include no update about the CRT dispute even though she had filed her Amended Dispute Notice and the strata had responded. However, the Amended Dispute Notice was not issued until January 25, 2021, so I find the January 15, 2021 minutes could not have included that information.
111. Ms. Kaur also says the January 15, 2021 minutes indicate that an owner PP resigned from council, but subsequent minutes show that PP was active on council. The strata acknowledges that the reference to PP resigning from council in the January 2021 minutes was an error, and PP did not resign at the time. While there are no subsequent minutes in evidence, since Ms. Kaur acknowledges that those minutes indicate PP was still on council, I find it is unnecessary to order the strata to correct the error in the January 2021 minutes as it would serve no purpose.
112. I dismiss this claim.

***Has the strata allowed a non-council member owner to improperly act on the strata's behalf and access confidential documents?***

113. Ms. Kaur says the current strata council has allowed the past president JD to act on the strata's behalf without proper authority and allowed him to improperly access confidential strata documents. She wants the CRT to order the strata to prevent JD from accessing confidential strata documents and to stop disclosing confidential strata information.
114. Ms. Kaur says JD continues to be the "de facto" president despite not being a formal council member. She relies on CS's statement in which they said JD makes most council reports, negotiates contracts with roofers, accompanies contractors on site and gives them directions, deals with the accountant, and researched D&O insurance. Ms. Kaur also says a "council insider" who is too afraid to come forward told her that all 7 new council members were told JD would continue to be the de facto president. However, I find this evidence is vague and the balance of the evidence does not support these allegations.

115. Ms. Kaur says JD's name and handwriting is on various strata bills, invoices and calendars dated after he left council which proves he approved payments and scheduled strata work without authorization. I disagree. Ms. Kaur refers to a specific invoice and some calendars which she says have JD's handwriting on them, but I find she has not proven it is JD's handwriting, which I find would require expert evidence. I find the companies issuing the invoices appear to have outdated contact information for the strata council, and there is no evidence JD approved any of these payments.
116. Ms. Kaur speculates that a handwritten note on an invoice proves JD has unauthorized access to the strata mailbox, but I find the only evidence to support this allegation is a vague statement from CS. CS said they have seen JD use keys to enter and exit the locked council office when he was not on council between December 2018 and December 2019, and again between September 2020 and February 2021. CS also said they saw JD take confidential mail from owners out of the locked strata mailbox. However, CS gave no specific dates or details about any of these alleged incidents, and it is unclear how CS could know that the mail was confidential. Without more, I find these allegations are unproven.
117. Ms. Kaur also speculates that JD improperly sent several emails to the owners on behalf of council, but she submitted no evidence to support this allegation.
118. The strata says JD simply assisted the new council by following up on some projects that were not completed when he left council, and that he continued to work on the roof replacement project as a member of the roof replacement committee. I find the strata's position is supported by the evidence. The October 26, 2020 minutes, the first meeting after JD left council, show that JD attended in his capacity as past president to report on repair and maintenance updates and to provide the new council with copies of monthly inspection forms. The January 15, 2021 minutes state that JD was on the roof replacement committee. The strata says this meant JD had access to some strata documents related to the roof project, but that any owner, including Ms. Kaur, has the statutory right to view these documents. I agree.



119. Ms. Kaur refers to emails in January and February 2021 between JD and the strata's accountants and says JD should not have been communicating with the strata's accountants while not on council. However, I find JD appears to have written and received these emails in his capacity as a member of the roof committee. I also find the emails show that council, not JD, was making the decisions about the project.
120. Ms. Kaur says there is no evidence the strata council authorized JD to be on the roof replacement committee and that she and another owner asked to be on this committee but were never told of the criteria for joining. However, neither the SPA nor bylaws establish criteria for owners to join a strata council special committee.
121. On balance, I find Ms. Kaur has not proven that the strata improperly allowed JD to act on behalf of the strata or gave JD access to confidential strata documents when not on council.
122. I note here that part of Ms. Kaur's requested order is for the strata to stop disclosing confidential strata information, which is broad and does not necessarily relate only to JD. In her submissions Ms. Kaur alleges that the strata shared her email address with other owners, and that a council member gave her private cell phone number to a contractor. However, she provided no other evidence to support these allegations. Ms. Kaur also alleges that the strata circulated confidential financial information about 3 owners. She submitted an excerpt from the April 2020 general ledger which shows NSF charges for 2 named individuals. However, there is no evidence the strata widely circulated this information. I find Ms. Kaur has not proven any of these allegations.
123. I dismiss this claim.

***Did the strata make unnecessary insurance claims or unnecessarily hire legal counsel?***

124. Ms. Kaur says that in 2020 the strata twice hired lawyers through its insurance unnecessarily and against owners' wishes. She wants the CRT to order the strata to explain to the owners within 30 days of this decision why an insurance claim it made on behalf of 3 owners was not "rescinded and expunged" from the strata's claims

history. The strata says all insurance claims it filed were warranted. It says Ms. Kaur's requested remedy is unintelligible and does not articulate a legal issue. I agree that Ms. Kaur's claim and requested remedy are vague, and for the following reasons I dismiss this claim.

125. In March 2020 Ms. Kaur's legal counsel sent some council members demand letters. The strata says that before the council members responded to the letters it asked its insurer if coverage was available to address these demands. Ms. Kaur says the council members should have made personal insurance claims instead. However, the evidence shows that in May 2020 the strata's legal counsel confirmed that the strata would not be involved in any litigation about the demand letters.

126. It is unclear what Ms. Kaur alleges is the second instance in 2020 when the strata improperly engaged legal counsel. As noted above, the May 15, 2020 minutes clearly show the strata approved engaging legal counsel to assist with this CRT dispute. Ms. Kaur says the CRT did not approve the strata having legal counsel, but in a July 17, 2020 preliminary decision the CRT granted the strata's application for legal representation. It is undisputed that in June 2020 Ms. Kaur filed a lawsuit against JD while he was council president. However, it is unclear from the evidence and submissions whether or not the strata engaged legal counsel in relation to this lawsuit.

127. I find that nothing in the SPA or bylaws prevents the strata from hiring legal counsel if it chooses to do so, provided the strata's budget or insurance coverage allows for it. So, I find Ms. Kaur has not established that the strata unnecessarily engaged its insurers or hired legal counsel. I dismiss this claim.

***Did the strata improperly overturn decisions of previous strata councils?***

128. Ms. Kaur says that at the January 14, 2020 council meeting, the first meeting after she left council, the new strata council voted to rescind a decision adopted at the September 20, 2019 council meeting. That decision was to provide owners with a survey to determine interest in turning pilot lights off for 6 months of the year. Ms. Kaur wants the CRT to order the strata to reinstate the survey and the 5-year plan.

129. The strata says it validly decided to cancel the survey which was clearly recorded in the minutes, and I find the evidence supports the strata's position. The strata relies on *Quackenbush v. The Owners, Strata Plan BCS 1098 et al*, 2019 BCCRT 897, in which the CRT held a strata council was within its rights to reverse a decision of a previous strata council. While I am not bound by *Quackenbush*, I find its reasoning persuasive and I adopt it here. Ms. Kaur says the strata never responded to her request for an explanation as to why it made this decision, but I find the strata was not obligated to provide an explanation.

130. As for the 5-year plan, the strata says it "reversed course" on the 5-year plan adopted by the previous council. However, there is no recorded vote of this decision, so I find there is nothing to rescind.

131. Ms. Kaur also says the strata overturned a previous council's unanimous decision in 2016 not to spend strata funds on decorating common areas for religious events, but she requests no remedy related to this allegation so I decline to address it further.

132. I dismiss this claim.

## **CRT FEES AND EXPENSES**

133. 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 see no reason in this case not to follow that general rule. Ms. Kaur claims \$225 in CRT fees and \$1,440.26 in dispute-related expenses which includes \$1,260.83 for legal fees, \$157 for the Sasa report, \$12.44 for scanning fees, and \$9.99 for paper used for this dispute. However, since Ms. Kaur was generally unsuccessful, I find she is not entitled to reimbursement of her CRT fees or dispute-related expenses. The strata did not pay any CRT fees but it claims \$16,748.86 in dispute-related expenses which includes \$16,656 in legal fees and \$92.86 in disbursements for LTO search fees. For the following reasons, I dismiss this claim.

134. Under CRT rule 9.5(3) the CRT will not order one party to pay to another party fees a lawyer has charged in the CRT process unless there are extraordinary

circumstances making it appropriate to do so. Under rule 9.5(4), in determining whether to award legal fees, the CRT may consider the complexity of the dispute, the degree of involvement by the legal representative, whether a party caused unnecessary delay or expense, and any other factors the CRT considers appropriate.

135. The strata says Ms. Kaur's claims are substantial and extraordinary. However, at the same time, in response to Ms. Kaur's claim for legal fees, the strata says she failed to establish that this dispute was extraordinary. I find the strata cannot have it both ways. While this dispute was lengthy, I find none of the individual claims or issues were particularly legally complex or unusual.

136. The CRT granted the strata permission to have legal representation throughout this dispute. However, in their preliminary decision granting the strata's request the Vice Chair noted rule 9.5(3) and specifically stated that legal fees would not be reimbursed except in extraordinary circumstances.

137. The strata says Ms. Kaur's claims lack merit and demonstrate her hostility towards the strata. I acknowledge that Ms. Kaur was mostly unsuccessful in this dispute, and there is evidence of some personal animosity between Ms. Kaur and current and former strata council members. However, I find the overall tenor of her claims and submissions was one of concern about proper strata governance rather than a personal vendetta against the strata or any individual council members. While Ms. Kaur did significantly amend her initial Dispute Notice several months after starting this dispute, I find there is no evidence she did so with an improper motive. I also find there is some evidence that both parties contributed to delay in these proceedings.

138. The strata relies on *Kotowska et al v. The Owners, Strata Plan BCS 2742*, 2018 BCCRT 802, in which the CRT awarded the strata its dispute-related expenses. However, that decision was made under an old version of the CRT rules. I also note that the disbursements the strata claims in this dispute were charged by its lawyer, so my finding about the strata's legal fees also applies to its claim for disbursements.

139. For all of these reasons, I dismiss the strata's claim for legal fees and disbursements as dispute-related expenses. The strata must comply with section

189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Kaur.

## **ORDERS**

140. I order that within 3 months of the date of this decision, the strata must arrange for an inspection and cleaning of the carbon monoxide detectors on the strata property if it has not done so in the last 12 months before the date of the decision. The strata must notify the owners of the results of the inspection and cleaning within 30 days of completion. If the carbon monoxide detectors have been inspected and cleaned in the last 12 months from the date of this decision, I order the strata to notify the owners within 30 days of the date of this decision of the dates and results of the most recent inspection and cleaning.
141. I order that within 2 weeks of the date of this decision, the strata must provide Ms. Kaur with the following documents:
- a. any emails in its possession to or from Aviva Insurance between December 19, 2019 and April 29, 2020;
  - b. any documents in its possession showing the strata paid the LTO fee to register the change of designation of CP to LCP associated with unit 106's patio expansion;
  - c. the alteration and assumption of liability agreement with the unit 106 owner related to the unit 106 patio expansion; and
  - d. all roof replacement quotations it has received in the last 2 years from the date of this decision.
142. I refuse to resolve Ms. Kaur's request for an order that the strata stop bullying her.
143. I refuse to resolve Ms. Kaur's request for a declaration that the strata "vindictively threatens" to apply bylaws against her while council members and their friends consistently contravene bylaws with no consequences.

144. I dismiss the remainder of Ms. Kaur's claims.

145. I dismiss the strata's claim for reimbursement of legal fees and disbursements.

146. 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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Sarah Orr, Tribunal Member