



# Civil Resolution Tribunal

Date Issued: August 1, 2023

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Cassey v. The Owners, Strata Plan VR326*, 2023 BCCRT 645

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

JANE CASSEY

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR326

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr, Vice Chair

## **INTRODUCTION**

1. Jane Cassey owns a strata lot in the strata corporation, The Owners, Strata Plan VR326 (strata). Mrs. Cassey alleges that the strata has breached the *Strata Property Act* (SPA) in numerous ways.

2. She specifically alleges that the strata council holds “secret” email meetings and delegates authority to a “planning group” committee, both to avoid owner scrutiny. She asks for an order that the strata pass a bylaw to formally create and delegate authority to the planning group and that the planning group report its activities in detail in council meeting minutes. She also asks for an order that the strata stop acting on email decisions until they are ratified at a council meeting. The strata says there is nothing improper about either practice.
3. Mrs. Cassey also alleges that the strata has failed to disclose records as the SPA requires. She asks for an order that the strata provide correspondence between council members, strata management, and third parties about the strata council’s “discharge of council powers and duties”. The strata says that it has already disclosed what the SPA requires it to disclose.
4. Finally, the strata has a web portal where the strata manager posts documents. Mrs. Cassey asks for an order that the strata’s web portal is a common asset under the SPA and that the strata allow owners to post petitions and other notices directly on the web portal. The strata denies that it owns the web portal. The strata says that it is under no legal obligation to provide access to the web portal to all the owners.
5. Mrs. Cassey is represented by her husband, Don Sipes. The strata is represented by a lawyer appointed by its insurer.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT’s process has ended.
7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral

hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

8. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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.
10. I note that the remedies Mrs. Cassey asks for in her submissions are slightly different from the ones in her initial dispute application. The strata did not object to this. I find that the substantive issues are largely the same and that the strata had a reasonable opportunity to respond to Mrs. Cassey's arguments, including the remedies. I find no procedural unfairness in considering the remedies as set out in Mrs. Cassey's submissions. I have therefore treated Mrs. Cassey's submissions as an amendment to the remedies she requested in her initial dispute application. With that, I find that she no longer wants an order about accounting for special levy funds. I say this because she makes no submissions about the special levy.
11. Mrs. Cassey also makes submissions and provided evidence about the strata's activities that I find are unrelated to any of her requested remedies. I find it unnecessary to consider those allegations, as I find it would serve no purpose.
12. I also note that the evidence indicates that Mrs. Cassey has had no direct involvement with the strata on any of the issues in this dispute. She says that she assigned him her rights as an owner under section 147 of the SPA, although she did not provide a copy of it. The strata mentions in its submissions that Mr. Sipes is not an owner, but does not dispute that he had the legal authority to act for Mrs. Cassey on strata matters at the relevant times, including this dispute. I have decided this dispute on the basis that he does have that authority.

## ISSUES

13. The issues in this dispute are:

- a. Should I make any orders about the strata's "planning group?"
- b. Can the strata act on decisions made by email vote before ratifying them at a council meeting?
- c. Is the strata's web portal a common asset? Are the owners entitled to post documents to the web portal?
- d. Is Mrs. Cassey entitled to any requested records under sections 35 and 36 of the SPA?

## BACKGROUND AND EVIDENCE

14. In a civil claim such as this, Mrs. Cassey as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

15. The strata consists of 42 residential strata lots in a single building. It was created in 1976. Mrs. Cassey has owned her strata lot since 2015. The strata repealed and replaced all previous bylaws in 2010. It has filed numerous amendments since then. I discuss the bylaws where relevant below.

## ANALYSIS

### ***Should I make any orders about the strata's "planning group?"***

16. This claim relates to the strata council's decision to create a planning group or committee to oversee the day-to-day operations of a balcony remediation project. The strata says that the committee was made up of strata council members. The strata says the committee allowed for quick decisions about "minor but important" matters like paint colour.

17. As mentioned above, Mrs. Cassey effectively wants me to order the strata to adopt a bylaw authorizing the use of committees and order those committees to report its activities in detail. I note that previous CRT decisions have cautioned against orders that undermine a strata corporation's democratic governance, such as orders requiring the adoption of a new bylaw. See, for example, *Parnell v. The Owners, Strata Plan VR 2451*, 2018 BCCRT 7. I agree with this general principle. With that, I turn to the merits of Mrs. Cassey's claim.
18. First, I find that the strata's bylaws already authorize the use of committees. Bylaw 24.1 allows the strata council to delegate its powers and duties to one or more people. Bylaws 24.2 to 24.4 place some limits on what the strata council can delegate, but in general, I find that the practice of creating a committee to oversee a particular project is permissible under the strata's bylaws. I agree with Mrs. Cassey that the creation of a committee under these bylaws would need to be made by a strata council vote. However, I find it unnecessary to make any findings about the balcony project committee, including whether it was properly formed, because that project is complete and the committee no longer exists.
19. Mrs. Cassey also asks for an order requiring any committees with delegated authority to report its activities in detail. The strata's bylaws place no such obligation on a delegated person or committee. I note that the strata provided evidence showing that the balcony project committee regularly reported on its progress despite the absence of a bylaw. While it may be preferable for committees to report to the owners, I do not consider this issue to be so crucial that it would justify the CRT's intervention. I find that it should be left to the owners to amend the bylaws if they wish to require committees to formally report to the owners.
20. I dismiss Mrs. Cassey's claims about the strata's use of committees.

***Can the strata act on decisions made by email vote before ratifying them at a council meeting?***

21. The strata undisputedly makes certain decisions by email and later ratifies the decisions at a properly constituted and minuted council meeting. It also undisputedly

acts on the decision as soon as an email consensus is reached, and does not wait for ratification. It is this practice that Mrs. Cassey challenges. She thinks the strata must wait until a formal council meeting vote to act on email decisions.

22. In *Kayne v. The Owners, Strata Plan LMS2374*, 2007 BCSC 1610, the court considered the practice of “informal meetings” of a strata council to discuss issues facing the strata. The court endorsed the practice, but said that no decision made at an informal meeting “has any validity unless and until” it is ratified at a formal council meeting.
23. In *Azura Management (Kelowna) Corp. v. Owners of the Strata Plan KAS2428*, 2009 BCSC 506, and *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147, the court found that the SPA did not prohibit meetings by email. In other words, if a strata council held a formal meeting via email, and properly minuted that meeting, decisions made at that email meeting would be valid based on the reasoning in *Kayne*. It is unclear from those cases how an “email meeting” would operate.
24. In *Starr v. The Owners, Strata Plan EPS 59*, 2019 BCCRT 778, a CRT vice chair applied this reasoning to email discussions between council members, which may include a vote on a strata matter. He concluded that email discussions were similar to the informal meetings the court referred to in *Kayne*, and were subject to the same limitations. That is, the vice chair reasoned that any decision purportedly made via email is not valid “unless and until” there is a vote at a council meeting. A CRT member reached the same conclusion in *Laing v. The Owners, Strata Plan NW 3323*, 2021 BCCRT 809. Other CRT decisions are not binding on me, but I agree with the general reasoning in *Starr* and *Laing*. In particular, I find that the use of the word “until” in *Kayne* clearly indicates that email decisions are not valid before they are ratified.
25. However, based on *Azura* and *Yang*, I find that a strata corporation could authorize its council to make email decisions by creating a process for email meetings in its bylaws. Here, I find that the strata’s bylaws do not permit such meetings. Bylaw 21.2

says that the strata council can hold electronic meetings only if the council members and other participants can communicate with each other. I find this refers to simultaneous communication such as by telephone or video conference.

26. The strata argues that it would be impractical and overly cumbersome to wait for a council meeting before acting on decisions reached by email. I acknowledge that it would often be more convenient for strata council members to make decisions via email, with immediate effect. For her part, Mrs. Cassey argues that email decision making lacks transparency because no one can observe the meeting. I find that it is for the owners to decide how to strike the correct balance between efficiency and transparency for their community. As it stands, I find that the strata cannot act on any decisions made via email until the strata council votes on it at a proper council meeting.
27. Mrs. Cassey acknowledges that there may be emergency situations where the strata must make an immediate decision. I agree that this will sometimes be the case. I find that the strata's authority to make emergency decisions outside of the formal decision-making process in its bylaws comes from its overall duty to manage and maintain common property and common assets. As for when the strata could legitimately make a decision outside of council meetings, I find it would be appropriate to adopt the same standard as for unapproved emergency expenditures under section 98(3) of the SPA. That is, I find that a strata council may make decisions outside a council meeting, including by email, if there are reasonable grounds to believe that an immediate decision is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.
28. I therefore order the strata not to act on decisions made by email unless and until they have passed a majority vote at a properly convened strata council meeting, unless the decision relates to an emergency situation as defined in section 98(3) of the SPA. This order will cease to have effect if the strata amends its bylaws to permit council meetings to take place via email.

***Is the strata's web portal a common asset? Are the owners entitled to post documents to the web portal?***

29. This claim relates to the strata's decision to remove a tree, which Mr. Sipes opposed. As part of his efforts to prevent or delay the removal, Mr. Sipes circulated a petition under section 43 of the SPA, which allows owners to require the strata to hold a special general meeting (SGM) to consider a resolution or other matter. Section 43 says that the petition must be signed by at least 20% of the strata's votes to trigger the SGM. Mr. Sipes obtained 13 signatures, over the 20% threshold. He delivered it to the strata council on August 13, 2021. The strata did not hold the SGM as required, so Mr. Sipes called an SGM himself under section 43(6). The tree issue, and the petition about it, were contentious but I find it unnecessary to discuss the details, because this claim is limited to the strata's web portal.
30. Specifically, Mr. Sipes asked to post the petition and SGM notice to the strata's web portal. The strata, through its strata manager, refused. Mrs. Cassey argues that the web portal is a common asset, and so the strata was legally obligated to post the petition on request.
31. Section 1 of the SPA defines "common asset", in relevant part, as "personal property held by or on behalf" the strata. The strata argues that it does not own the web portal. Rather, the strata says its strata management company owns the web portal, and the strata pays to use it.
32. I fail to see how the strata's use of the strata manager's web portal creates an ownership interest in it. It is a service offered by the strata management company, not an asset the strata acquired. I find that the web portal is not a common asset.
33. In any event, I find that there is nothing in the SPA or bylaws that would require the strata to allow owners to post notices on the web portal. Even if the web portal is a common asset, the SPA does not say that all owners are entitled to unfettered use of common assets.
34. I also disagree with Mrs. Cassey's argument that the signatories of the petition were "acting as the strata". Section 43 provides a mechanism for owners to call an SGM



but this process does not make those owners a new strata council entitled to general control of the strata. Overall control of the strata remains with the council. I find that the strata did not breach any duty to Mrs. Cassey when it refused to post Mr. Sipes's petition or SGM notice. I dismiss this aspect of Mrs. Cassey's claim.

***Is Mrs. Cassey entitled to any requested records under sections 35 and 36 of the SPA?***

35. Section 35 of the SPA sets out a lengthy list of records that the strata must create or retain. Section 36 of the SPA says that the strata must provide access to or copies of any section 35 record within 2 weeks of a request (except for bylaws and rules, where the deadline is 1 week). Section 4.1 of the SPA sets out how long the strata must retain different types of records. The strata has no obligation under the SPA to create, retain, or disclose records that are not listed in section 35. Along similar lines, the CRT has no authority to order the strata to create or disclose records that are not listed in section 35. See *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863.
36. The evidence indicates that Mr. Sipes has made numerous records requests over the past 2 years. The requests evolved over time. It is undisputed that the strata provided some documents but not others. Mrs. Cassey's submissions do not clarify what specific documents are allegedly outstanding. Instead, Mrs. Cassey requests a very broad order that the strata "provide the communications between the Council officers and management and 3<sup>rd</sup> parties that relate to the discharge of Council powers and duties in the course of doing Strata corp. business". For its part, the strata says that the requests often went beyond what section 35 of the SPA required, so it was justified in its refusal to provide certain records.
37. While compliance with section 36 of the SPA is mandatory, numerous CRT decisions have concluded that a strata corporation is justified in declining to respond to an unreasonable request. One such circumstance is where a demand for records is vague or overly broad such that complying with the request would be unduly burdensome. See *Tenten v. The Owners, Strata Plan VR133*, 2019 BCCRT 1427. While other CRT decisions are not binding on me, I agree with this reasoning.

38. I find that Mrs. Cassey's requested order is so broad and vague that it would be unreasonable to order the strata to comply with it. She essentially asks for every piece of correspondence the strata has sent or received. I note that in *Kayne* the court concluded that correspondence between strata council members was not captured by section 35(2)(k), but it placed no other limitation on what correspondence the strata must retain. I find it would be burdensome to require the strata to compile essentially all its correspondence from the past 2 years. For that reason, I dismiss Mrs. Cassey's claim. That said, the strata's obligations under sections 35 and 36 are ongoing, and it must respond to reasonable records requests.

### **TRIBUNAL FEES AND EXPENSES**

39. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mrs. Cassey was partially successful, so I find she is entitled to reimbursement of half her \$225 in CRT fees, which is \$112.50. Neither party claimed any dispute-related expenses, so I order none.

40. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Cassey.

### **DECISION AND ORDERS**

41. I order the strata not to act on decisions made by email unless and until the strata council has passed a majority vote at a properly convened strata council meeting, unless there are reasonable grounds to believe that an immediate decision is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise. This order only applies to the strata's current bylaws about strata council meetings.

42. Within 14 days of this decision, I order the strata to pay Mrs. Cassey \$112.50 in CRT fees.

43. Mrs. Cassey is entitled to post judgement interest under the *Court Order Interest Act*, as applicable.
44. I dismiss Mrs. Cassey's remaining claims.
45. 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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Eric Regehr, Vice Chair