



# Civil Resolution Tribunal

Date Issued: January 16, 2024

File: ST-2022-004885

Type: Strata

Civil Resolution Tribunal

Indexed as: *Johnson v. The Owners, Strata Plan LMS 1685*, 2024 BCCRT 043

B E T W E E N :

DENISE JOHNSON

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 1685

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. Denise Johnson owns a strata lot in the strata corporation, The Owners, Strata Plan LMS 1685 (strata).

2. Ms. Johnson is self-represented in this dispute. The strata is represented by a lawyer, Molly Li. Ms. Johnson has also filed 3 other disputes against the strata. I have decided those disputes in a separate decision.
3. In this dispute, Ms. Johnson makes 5 claims against the strata:
  - a. The strata followed improper procedures for the June 11, 2020 special general meeting (SGM), including requiring restricted proxy voting and accepting late proxy votes. Requested remedy: Hold a new SGM to re-vote on the harassment bylaw approved at the June 2020 SGM.
  - b. The strata improperly made a significant change to common property and spent money from the operating fund to remove a hedge, without the  $\frac{3}{4}$  ownership vote required under the *Strata Property Act* (SPA). Requested remedy: Hold a  $\frac{3}{4}$  vote at an SGM to approve removing the hedge, and to fund the work from the contingency reserve fund (CRF) or a special levy. If the  $\frac{3}{4}$  vote does not pass, the strata must reinstate the common property to its previous condition.
  - c. The strata improperly included \$30,000 for “special projects” in its operating fund budget, contrary to the SPA. Requested remedy: Remove special projects from the budget.
  - d. The strata installed security cameras and recording equipment without posting warning signs required under the *Personal Information Protection Act* (PIPA) and strata bylaws. Requested remedy: The strata must install warning signs.
  - e. The strata routinely distributes strata council meeting minutes more than 2 weeks after meetings, contrary to the SPA and strata bylaws. The minutes also contain false information and breach Ms. Johnson’s privacy. Requested remedies: The strata stop deliberately including false statements that improperly influence owners and violate Ms. Johnson’s privacy.

4. The strata denies Ms. Johnson's claims, and says it has followed the SPA and bylaws.

## **JURISDICTION AND PROCEDURE**

5. The Civil Resolution Tribunal (CRT) has jurisdiction (authority) over strata property claims under *Civil Resolution Tribunal Act* (CRTA) section 121. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required even where credibility is at issue. I am satisfied I can fairly decide this dispute based on the evidence and submissions provided, without an oral hearing.
7. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
8. Ms. Johnson provided late evidence in this dispute. The strata had the opportunity to respond to the late evidence, so I find there was no breach of procedural fairness.
9. The parties uploaded some evidence and submissions relevant to this dispute into the electronic CRT files for the 3 other disputes Ms. Johnson filed. For that reason, I have considered the evidence and submissions for all 4 disputes in deciding this dispute.

### ***Anonymization Request***

10. Ms. Johnson requests that her name be anonymized in this decision, to protect against public disclosure of health information.
11. I place significant weight on the open court principle, as discussed in *Lipton v. The Owners, Strata Plan VIS 4673*, 2022 BCCRT 1010. Parties are generally named in

CRT decisions because these are considered open proceedings. This is done to provide transparency and integrity in the justice system.

12. I find it unnecessary to discuss Ms. Johnson's health information in this decision. So, I find there is no need to anonymize the decision to protect against disclosure of that information. I therefore deny Ms. Johnson's anonymization request.

## **ISSUES**

13. The issues in this dispute are:

- a. Did the strata's June 2020 SGM procedures violate the SPA or bylaws? If so, what remedy is appropriate?
- b. Did the strata violate the SPA by removing the hedge, or by using operating funds to pay for the work? If so, what remedy is appropriate?
- c. Did the strata improperly include \$30,000 for "special projects" in its operating fund budget? If so, what remedy is appropriate?
- d. Must the strata install warning signs about its security cameras?
- e. Has the strata breached the SPA or bylaws in drafting or circulating strata council minutes? If so, what remedies are appropriate?

## **REASONS AND ANALYSIS**

14. In a civil claim like this one, Ms. Johnson, as applicant, must prove her claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' evidence and submissions, but I only refer to what is necessary to explain my decision.

### ***June 2020 SGM***

15. Ms. Johnson says the strata violated the SPA in holding the June 2020 SGM, including by only permitting voting by restricted proxy. The strata admits this, and the

Notice of SGM document confirms that the meeting was conducted solely by restricted proxy. Owners were directed to designate one of two named council members as their voting proxy for the meeting. There was no other option for attending the meeting or voting.

16. The strata explains that it took this step because of COVID-19 pandemic restrictions. However, the CRT has published several decisions, cited by Ms. Johnson, which clearly say that even during pandemic restrictions, strata corporations must hold annual and special general meetings in a manner that permits owner attendance and participation, and that restricted proxy voting is not permitted under the SPA: see *The Owners, Strata Plan VR320 v Day*, 2023 BCSC 364.
17. *Day* is a binding precedent. So, I find the June 2020 meeting procedure was invalid. Ms. Johnson also raised other allegations of improper SGM procedures, including permitting late proxies. However, I find it unnecessary to address those allegations, since I find the procedure invalid because of restricted proxy voting. Since the harassment bylaw was not properly approved as required in the SPA, I find it is unenforceable.
18. The strata says this claim about the June 2020 SGM procedure is barred under the *Limitation Act*, because this CRT dispute was not filed until July 20, 2022. The general limitation period under the *Limitation Act* is 2 years, so I agree the dispute was filed outside that period. However, the *Limitation Act* only applies to claims “to remedy an injury, loss or damage that occurred as a result of an act or omission”: see *Limitation Act* section 1. I find that Ms. Johnson’s claim about SGM voting is not a claim to remedy an injury, loss or damage. Rather, it is a claim about procedures under the SPA. So, I find the *Limitation Act* does not apply.
19. As remedy for her claim, Ms. Johnson requests an order that the strata hold a new SGM to re-vote on the harassment bylaw that was approved at the SGM. The strata says the appropriate remedy is to order the strata not to enforce the current harassment bylaw, until a new bylaw is approved by the strata ownership. Ms. Johnson did not oppose this position, and argues that the current the harassment

bylaw is problematic in several ways. So, I order that the strata may not enforce the harassment bylaw (bylaw 59) filed at the Land Title Office on July 8, 2020.

### ***Hedge***

20. Ms. Johnson says the strata violated the SPA by removing a hedge and replacing it with a rock-edged flowerbed, without having a  $\frac{3}{4}$  ownership vote. She cites SPA section 71, which says a strata corporation may not make a significant change to the use and appearance of common property without a  $\frac{3}{4}$  vote, unless there is an immediate risk to safety or property. Ms. Johnson also says the strata improperly funded this project from the operating fund, and failed to obtain a  $\frac{3}{4}$  vote to pay for the work, as required under SPA Part 6.
21. Photos in evidence show that the hedge ran along the edge of the strata's property, between some townhouse-style strata lots and the public sidewalk bordering the street. The parties agree that the hedge was on common property. The strata says the hedge was removed in stages in 2019 and 2020, primarily because it was dying.
22. In *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333, the court set out a non-exhaustive list of factors to consider when deciding whether a change to common property is significant as contemplated in SPA section 71:
  - a. Is the change visible to other residents or the general public?
  - b. Does the change affect the use or enjoyment of a unit or existing benefit of another unit?
  - c. Is there a direct interference or disruption because of the changed use?
  - d. Does the change impact the marketability or value of a strata lot?
  - e. How many units are in the strata and what is the strata's general use?
  - f. How has the strata governed itself in the past and what has it allowed?
23. Applying the *Foley* factors, I find the hedge replacement was not a significant change. The change is visible to the general public, since it is next to the sidewalk. However,

based on the photos, I find the change in appearance is relatively minor. The photos show that the old hedge ran in front of a 2-3 foot retaining wall, with another, taller hedge planted along the top of the wall. Essentially, the old appearance was of a “stepped” hedge with 2 levels. The photos show that with the lower-level hedge removed, the retaining wall is more visible, with some smaller plants at its base and the rock border along the sidewalk. I find that this replacement of one type of landscaping with another does not look significantly different.

24. There is no evidence before me that the landscaping change affects the use and enjoyment of any strata lot. While Ms. Johnson argues that the new landscaping is unattractive, I find this is a subjective opinion, and there is no evidence that it is supported by other owners. There is also no evidence that the change affected the marketability or value of any strata lot. Ms. Johnson says the new landscaping will be more costly to maintain, but I find that speculative, and unsupported by evidence such as a statement from a landscaper.
25. There is also no evidence before me that the strata has held  $\frac{3}{4}$  votes to approve other landscaping changes. On balance, I find that replacing the hedge was a form of landscaping maintenance. In *Khodadadi v. The Owners, Strata Plan VR 1294*, 2022 BCCRT 928, a tribunal member reasoned that a strata corporation’s duty to repair and maintain landscaping must account for the fact that plants are not static, and may grow, be pruned, or die. The tribunal member concluded that it would be unreasonable to expect a strata corporation to keep landscaping exactly the same over time, and instead the strata must only ensure that a landscaped area retains its overall character.
26. *Khodadadi* was about a strata’s maintenance obligations under SPA section 72, and not about significant changes under SPA section 71. However, I find the reasoning relevant to this dispute, and apply it. I find the overall character of the former hedge area remains the same. It was a landscaped border between the sidewalk and the retaining wall, and it still is. So, I find there was no significant change to the use or appearance of common property.

27. Since I find there was not a significant change to the use or appearance of common property, I find the strata was not required under SPA section 71 to hold a  $\frac{3}{4}$  ownership vote.
28. Since I find the hedge removal and installation of the new landscaping was essentially landscape maintenance work, I also find the strata was permitted to pay for the work from the operating fund. SPA section 92 says operating funds may only be used to pay for work that usually occurs at least once a year, or is necessary to obtain a depreciation report. I find that landscaping work does occur at least once a year, so use of the operating fund was justified.
29. For these reasons, I dismiss Ms. Johnson's claim about hedge replacement.
30. Ms. Johnson also requested an order that owners may use the common property retaining wall to display personal items. However, I find this is not necessarily permissible under SPA section 76, which is about permission to use common property. So, I do not make that order. It is open to the strata to make future decisions about the wall's use.

### ***Special Projects Budget Item***

31. Ms. Johnson says the strata's past operating fund budgets, including in 2020 and 2021, included a \$30,000 line item titled "special projects". Ms. Johnson argues that this was effectively a "slush fund", impermissibly allowing the strata council to spend money without specific authorization or accounting as required under the SPA.
32. The strata says this issue is moot, because in the 2023 budget, the special projects line item was renamed, "Repair and Maintenance - Exterior". The strata says this name change reflects what the line item was always used for, as it paid for routine external repairs such as exterior building drainage, drain wrap repair, balcony drainage repairs, window flashing repairs, drain tile repairs, and other exterior building repairs.
33. Ms. Johnson has not provided evidence that the strata used the special projects line item to pay for work other than routine building repairs. Also, she did not dispute that



the issue is now moot, since the 2023 budget does not have a special projects category. I find there is no purpose in ordering the strata to amend past budgets for fiscal years that have ended, since the money has already been spent and amending the budgets would have no practical effect.

34. For these reasons, I dismiss Ms. Johnson's claim about the special projects budget line item.

### ***Security Cameras***

35. Ms. Johnson says the strata has failed to post warning signs for its security cameras, contrary to PIPA and strata bylaws. She requests an order that the strata install signs warning of the cameras' operation.
36. The strata says it installed new cameras and recording equipment in summer 2021, to replace older cameras installed by the owner developer. The strata says there was no privacy and security bylaw in effect when the original cameras were installed, so there was and is no need to place signs where these older cameras were located.
37. The strata also says Ms. Johnson and all owners know where the cameras are located.
38. PIPA is provincial legislation that governs how private organizations, including strata corporations, collect, use, disclose, and destroy personal information. The Office of the Information and Privacy Commissioner for British Columbia (OIPC) has jurisdiction to make decisions under PIPA. For that reason, I find the CRT does not have jurisdiction to determine if PIPA has been breached. However, the CRT does have jurisdiction to determine if a strata bylaw has been breached.
39. In May 2021, the strata filed a new bylaw, bylaw 61, about privacy and security. Section 61.5(c) says the strata "has or will install signs at various locations within the strata corporation warning that the area is monitored by CCTV cameras".
40. The strata provided no evidence that it installed signs to comply with bylaw 61.5(c), and no evidence that warning signs were already posted. I am not persuaded by the

strata's argument that bylaw 61.5(c) does not apply since there have always been cameras in the same locations. There is nothing in the bylaw that suggests such an exemption. Rather, I find the phrase "has or will install" suggests that bylaw would apply to both new and existing cameras.

41. For these reasons, I order the strata to post a clearly visible sign for each camera, warning that the area is monitored by a CCTV camera. The location of each sign is at the strata's discretion.
42. Ms. Johnson also made arguments about how long the strata retains the security camera recordings. However, I find that is outside the CRT's jurisdiction to decide, and is within the jurisdiction of OIPC. Also, that claim was not raised in the Dispute Notice. So, I make no findings about how long the strata may retain recordings.

### ***Strata Council Minutes***

43. Ms. Johnson says the strata routinely distributes strata council meeting minutes more than 2 weeks after meetings, contrary to the SPA and strata bylaws. She also says the minutes contain false information and breach her privacy.
44. Ms. Johnson also argues that the strata frequently changes council meeting dates without notice to owners, and fails to keep owners informed of the dates, times, and location of council meetings. She also says the council does not allow owners to attend as observers. Ms. Johnson did not include these claims in the Dispute Notice, so I find it would be procedurally unfair to decide them in this decision.

### ***Late Minutes***

Ms. Johnson withdrew her request for a remedy for late minutes, so I make no order about that.

### ***Inaccurate Minutes***

45. Ms. Johnson says the council minutes from various meetings contain false information, deliberately intended to mislead and improperly influence owners. For example, she says minutes state that the strata can place a lien against a strata lot

for unpaid bylaw fines, rental fees, and administrative charges, which is untrue. Ms. Johnson also says that minutes have repeatedly misstated the name of the strata's policy for collecting outstanding accounts. Ms. Johnson also gave other examples, which she says contain misstatements specifically about her.

46. As remedy for her claim about inaccurate minutes, Ms. Johnson requests an order that the strata manager and council members attend remedial strata governance training. I cannot make an order against the strata manager, as they are not a party to this dispute. As for the council, I find the facts before me do not justify such an order. Some of the council's membership has changed since Ms. Johnson's claims arose, and the strata has hired a new strata manager. The strata council remains accountable to strata lot owners through its AGMs and other democratic processes. So, I find the order unjustified in the circumstances.

## **CRT FEES AND EXPENSES**

47. As Ms. Johnson was partially successful in this dispute, under the CRTA and the CRT's rules I find she is entitled to reimbursement of half her CRT fees, which equals \$112.50. Neither party claimed dispute-related expenses, so I order none.
48. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to Ms. Johnson.

## **ORDERS**

49. I order that:
- a. The strata may not enforce the harassment bylaw (bylaw 59) filed at the Land Title Office on July 8, 2020.
  - b. Within 60 days of this decision, the strata must post a sign for each camera, warning that the area is monitored by CCTV cameras.
  - c. Within 30 days of this decision, the strata must reimburse Ms. Johnson \$112.50 for CRT fees.

50. I dismiss Ms. Johnson's remaining claims.

51. Ms. Johnson is entitled to postjudgment interest under the *Court Order Interest Act*.

52. A validated copy of the CRT's order can be enforced through the British Columbia Supreme Court (CRTA section 57). 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 (CRTA section 58). 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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Kate Campbell, Tribunal Member