



# Civil Resolution Tribunal

Date Issued: February 29, 2024

File: ST-2022-001492

Type: Strata

Civil Resolution Tribunal

Indexed as: *Skelton v. The Owners, Strata Plan VIS 6212*, 2024 BCCRT 201

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

JOSEPH TODD SKELTON

**APPLICANT**

**A N D :**

The Owners, Strata Plan VIS 6212

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This dispute is about strata records and governance. Joseph Todd Skelton co-owns a strata lot in The Owners, Strata Plan VIS 6212 (strata). Mr. Skelton says the strata has failed to provide him with various strata records he requested. He also says the strata has stopped allowing him to pay his strata fees monthly. Mr. Skelton asks for an order that the strata provide him with its income tax returns from the last 7 years

and its business number within 60 days, and unredacted cheques and bank records immediately. He also wants the strata to allow him to pay his strata fees monthly. Finally, he asks for an order that the strata council be required to take strata governance training to better understand their obligations under the *Strata Property Act* (SPA).

2. The strata says it has provided Mr. Skelton with all requested records as required by the SPA. It says it filed income taxes for 2021 and 2022, provided Mr. Skelton with the notices of assessment for those years, and determined that it is not required to back-file for previous years. It says it is not required to provide Mr. Skelton with the unredacted records he seeks. The strata says its bylaws require all owners to pay their annual strata fees by the first day of the month following the annual general meeting (AGM), so it is not required to allow Mr. Skelton to pay his strata fees monthly. Finally, the strata says an order requiring its council members to take strata governance training is unnecessary.
3. Mr. Skelton is self-represented. The strata is represented by a council member.

## **JURISDICTION AND PROCEDURE**

4. 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). 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.
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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Must the strata provide Mr. Skelton with unredacted records?
  - b. Must the strata provide Mr. Skelton with its last 7 years of income tax returns and its business number?
  - c. Must the strata allow Mr. Skelton to pay his strata fees monthly?
  - d. Should I order the strata council to take strata governance training?

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Mr. Skelton must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to provide context for my decision.
10. The bare land strata has 20 strata lots and was created in 2007 under the SPA. The SPA's Standard Bylaws apply to this dispute, as well as various amendments the strata has made over the years, which I address as necessary below.

### ***Must the strata provide Mr. Skelton with unredacted records?***

11. SPA section 35 sets out a list of records a strata must prepare and keep. SPA section 36 says that when a strata receives a request from an owner for these records, the

strata must make them available for inspection and provide copies to an owner within 2 weeks (or 1 week for bylaws or rules).

12. On December 17, 2021, Mr. Skelton requested the strata's books of account showing money received and spent and the reason for the receipt or expenditure, as well as its bank statements, cancelled cheques, and certificates of deposit, all for the period between January 1 and December 15, 2021. The strata was required to keep these records under SPA sections 35(1)(d) and 35(2)(l).
13. On January 11, 2022, the strata emailed Mr. Skelton the requested documents. The recipient names on the cheques and on their corresponding bank records were redacted. When Mr. Skelton asked about the redactions, the strata responded that privacy laws required it to protect private information, so he was not entitled to the redacted information.
14. Mr. Skelton says that despite privacy laws, the SPA requires the strata to provide him with unredacted copies of the cheques and related bank records. He cites several previous CRT decisions as authority for this principle, some of which I address below. He seeks an order for the strata to provide him with unredacted copies of these documents.
15. The strata maintains that the redacted cheques meet its SPA records disclosure obligations. It says the cheques were paid to volunteer owners to reimburse them for strata expenses, and some of those owners requested that their names be redacted because they did not want Mr. Skelton to retaliate against them. The strata also says Mr. Skelton's wife works at a bank, so it was concerned about the cheque recipients' potential financial safety. I find the strata's insinuation that Mr. Skelton's wife, who is not a party to this dispute, would somehow undermine any of the cheque recipient's financial security is baseless.
16. Strata corporations are subject to the *Personal Information Protection Act* (PIPA). PIPA section 18(1)(o) says that an organization may disclose personal information about an individual without that individual's consent if the disclosure is required or authorized by law. SPA section 36 is mandatory and requires a strata corporation to

provide a requesting owner with an unredacted copy of a document listed in SPA section 35. Many previous CRT decisions have found that any document listed in SPA section 35 is authorized to be disclosed under PIPA section 18(1)(o) (see for example *Shayesteh-Fard v. The Owners, Strata Plan VR 437*, 2023 BCCRT 179, and *Horton v. The Owners, Strata Plan NW2*, 2021 BCCRT 1153). These decisions are not binding on me, but I find their reasoning persuasive and I adopt it here.

17. In summary, I find PIPA section 18(1)(o) authorizes the strata to disclose unredacted cheques and bank records under SPA section 36. I find an owner's request that their name be redacted from a cheque is not an authorized reason under PIPA for the strata to redact the records in question. I find the strata was not permitted to redact the cheques and related bank records included with its January 11, 2022 email to Mr. Skelton. So, I find the strata must provide unredacted copies of these documents to Mr. Skelton within 14 days of the date of this decision.

***Must the strata provide Mr. Skelton with its last 7 years of income tax returns and its business number?***

18. On February 2, 2022, Mr. Skelton requested the strata's income tax returns for 2018, 2019, and 2020. SPA section 35(2)(j) and the *Strata Property Regulation* section 4.1(3) require the strata to retain copies of income tax returns, if any, for at least 6 years. SPA section 35 does not mention a strata's business number, and it is not clear from the evidence whether Mr. Skelton ever asked the strata to provide its business number before this dispute. In any event, given my findings below, I find nothing turns on this.
19. On February 3, 2022, the strata responded that it had never filed income taxes, so there were no income tax returns available. The strata says it has since obtained a business number and filed income taxes for 2021 and 2022. It says it has determined that although it is technically required to file income taxes, since it is a non-profit organization there is no penalty for not filing. The strata says this means there is no requirement to back-file income taxes for previous years. The strata says it explained this to owners at the 2022 AGM, which I find is reflected in the corresponding minutes.

20. As part of its evidence in this dispute the strata submitted its notices of assessment for 2021 and 2022. These documents include the strata's business number. Mr. Skelton acknowledges receipt of these documents through the CRT process. I am satisfied that Mr. Skelton now has all of the strata's income tax returns, so I dismiss this claim.

***Must the strata allow Mr. Skelton to pay his strata fees monthly?***

21. Until 2019 the strata allowed owners to pay strata fees monthly, quarterly, or annually. The strata changed its policy in 2020 unilaterally without discussing it with owners. Mr. Skelton says the increased cost of living and rising interest rates have caused financial hardship for several owners. He says 2 other owners asked him to raise the issue of monthly strata payments because they have struggled to pay their annual strata fees in a single payment. He asks for an order that the strata allow him to pay his strata fees monthly.
22. The strata relies on its bylaw 1(a) which has been in force since 2009. It says owners must pay strata fees "on or before the first day of the month following" the AGM. The strata says this bylaw clearly requires an owner to pay its entire annual strata fees in one payment. I agree.
23. Mr. Skelton says the intention of bylaw 1(a) was to allow owners to pay strata fees monthly, quarterly, or yearly, and that he knows this because he was council president at the time bylaw 1(a) was amended. However, I find that is not what the bylaw says, and that is not a reasonable interpretation of the bylaw.
24. The strata admits that despite bylaw 1(a), before 2020 it allowed owners to pay their strata fees monthly, quarterly, or annually. It submitted minutes from its January 28, 2012 AGM at which a motion was unanimously passed stating that annual strata fees "must be paid in 1 of 3 ways, automatic bank debit, 12 post dated cheques or paid in full by cash or cheque". However, the strata says that resolution has never been registered as a rule or bylaw. I agree, and so I find that resolution has no formal effect.

25. The strata says that in recent years it decided to stop allowing monthly or quarterly payments because of the time and effort required for council members to deal with multiple payments and bounced cheques. I find the strata was within its rights to start enforcing its bylaw because bylaw enforcement is mandatory under the SPA. Mr. Skelton says the strata failed to notify owners of this change. On the contrary, I find that in 2022 the strata gave Mr. Skelton at least 3 weeks' notice that his annual strata fees were due in one payment.
26. The evidence also shows that in a March 10, 2022 email the strata gave Mr. Skelton and the other 3 owners of his strata lot an opportunity to apply for a hardship exemption, which would allow them to pay their strata fees in biannual or quarterly payments. Mr. Skelton does not appear to have availed himself of this option.
27. In summary, I find the strata's bylaws do not require it to allow Mr. Skelton to pay his annual strata fees monthly. I dismiss this claim.

***Should I order the strata council to take governance training?***

28. Mr. Skelton says the strata's various SPA and bylaw violations over the past several years are persuasive evidence that the strata council needs formal governance training. In submissions Mr. Skelton refers to various requests he made to the strata for records and hearings between January and May 2023. He says the strata has treated him significantly unfairly in response to these requests. He also claims that the strata's diversion of his strata fees towards other common expenses contravened the SPA and caused him mental distress. He also says the strata has contravened the SPA and its bylaws in various other ways over the past several years. He says all of these infractions support his claim that the strata council requires formal training. Mr. Skelton did not raise any of these specific allegations in his Dispute Notice, and he has not requested any other remedies in relation to them. So, I have only considered these allegations in the context of Mr. Skelton's request for an order that the strata council take governance training.
29. The strata says mandatory training for strata council members is unnecessary. It says some of its council members have significant experience on homeowner

associations, and some have taken formal strata governance training. It says it has a Vancouver Island Strata Owners Association membership and legal counsel, and it uses both resources as needed. The strata also says that as a direct result of Mr. Skelton's concerns, it has hired a permanent accountant to complete the ledger, year-end financial statements, and file taxes. It says mandatory training is not legislated, and it may deter owners from volunteering to join the strata council, as it has been increasingly difficult to find and retain council members.

30. In support of his claim Mr. Skelton relies on *Craig v. The Owners, Strata Plan 1526*, 2018 BCCRT 310, in which a vice chair ordered a strata corporation to ensure its acting strata council members attended strata governance training. That decision is not binding on me.
31. The CRT has jurisdiction to order parties to do something or stop doing something. Orders of this nature are known as injunctions. An injunction is a legal order that can be enforced by the court, including in contempt proceedings. In a more recent CRT decision, a vice chair declined to order a tenant to stop its subtenants from smoking on strata property (see *The Owners, Strata Plan KAS 1622 v. Kamloops (Pacific No. 52) Branch of the Royal Canadian Legion*, 2022 BCCRT 205 at paragraphs 21 to 24). The vice chair found the requested order was inappropriate because the tenant could not control its subtenant's behaviour. He found that if he granted the order and the subtenant later smoked on their balcony, the tenant would be in breach of a court order for something someone else did. He cited *Hope (District of) v. L-156 Holdings Ltd.*, 1995 CanLII 565 (BC SC) for the principle that an injunction can only impose obligations on a party that that party is capable of obeying through its own actions.
32. Similarly, in *1280137 B.C. Ltd. v. The Owners, Strata Plan VR 95*, 2022 BCCRT 764, a vice chair declined to order a strata corporation to prevent visitors from using a specific parking stall for the same reasons.
33. *Kamloops* and *1280137 B.C. Ltd.* are not binding on me, but I find their reasoning persuasive, and I adopt it here. The strata cannot compel its council members to attend training, so I find it is inappropriate to grant the requested order. If I did so, and



a council member refused to attend the training, the strata would be in breach of an order for something a council member did. So, I find it is unnecessary for me to address each of Mr. Skelton's specific allegations against the strata outside of what he specifically raised in his Dispute Notice. This is because even if the strata contravened the SPA and bylaws in all the ways Mr. Skelton alleges, the only remedy he seeks is an order that the strata council attend training, which I find it is inappropriate for me to make. For all of these reasons, I dismiss this claim.

## **CRT FEES AND EXPENSES**

34. 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. Since Mr. Skelton was partly successful, I find he is entitled to reimbursement of half his CRT fees, which is \$112.50. He did not claim any dispute-related expenses.
35. The strata did not pay any CRT fees, but it claims \$1,342.33 in dispute-related expenses for its legal fees. In support of its claim, it submitted 2 invoices for legal fees, one dated April 26, 2022, for \$1,028.73, and one dated October 26, 2023, for \$313.60.
36. CRT rule 9.5(3) says the CRT will not order one party to pay to another party any fees a lawyer has charged in the tribunal dispute process, except in extraordinary circumstances. CRT rule 9.5(4) says that, in making this determination, the CRT may consider:
  - a. The complexity of the dispute,
  - b. The degree of involvement by the representative,
  - c. Whether a party or representative's conduct has caused unnecessary delay or expense, and
  - d. Any other factors the CRT considers appropriate.

37. I find the legal issues in this dispute were not particularly complex. It appears the strata's legal counsel assisted it during some parts of the CRT's dispute resolution process, but there is no indication that Mr. Skelton's conduct caused any unnecessary delay or expense.
38. The strata says Mr. Skelton has behaved inappropriately towards strata council members and other owners over the last 12 years, including verbal abuse, threats of legal action, and physical violence. It says police have been called numerous times to address Mr. Skelton's inappropriate behaviour over the years, but it did not provide any specific details of these alleged incidents. The strata submitted emails going back to 2011 and 3 witness statements from council members which generally support the strata's allegations about Mr. Skelton's inappropriate behaviour. However, the statements do not provide examples of specific incidents aside from one incident in May 2020 which predates this CRT dispute. The strata also says that since 2020 Mr. Skelton has made constant records requests, which it says are an abuse of council members' time and a form of harassment.
39. I find the strata's claim for reimbursement of legal fees is essentially a request for special costs. Previous CRT decisions have found that the CRT may apply the law of special costs under the BC Supreme Court Civil Rules in deciding whether to award legal fees (see for example *Parfitt et al v. The Owners, Strata Plan VR 416 et al*, and *Kornylo v. The Owners, Strata Plan VR 2628*, 2019 BCCRT 1387). These decisions are not binding on me, but I find their reasoning persuasive. In *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 CanLII 2570 (BC CA), the Court of Appeal said that special costs could be awarded for reprehensible conduct during litigation that is deserving of rebuke. This means that special costs are not available for pre-litigation conduct.
40. While the strata has documented some problematic behaviour from Mr. Skelton over the past 12 years, I find that none of it is directly related to the issues in this CRT dispute, aside from the records requests. While Mr. Skelton's requests to and communications with strata council have been extensive, he was partially successful in this CRT dispute, so I find his queries to the strata were not baseless. I find Mr.

Skelton's alleged pattern of inappropriate behaviour is unrelated to this CRT dispute and has not affected the dispute resolution process. So, I find special costs are not appropriate in this case.

41. For all of these reasons, I find there are no extraordinary circumstances here, and I dismiss the strata's claim for reimbursement of its legal fees.
42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Skelton.

## **ORDERS**

43. Within 14 days of the date of this decision, I order the strata to:
  - a. Provide Mr. Skelton with unredacted copies of the cheques and other documents included in its January 11, 2022 email to him, and
  - b. Pay Mr. Skelton \$112.50 as reimbursement of half his CRT fees.
44. Mr. Skelton is also entitled to postjudgment interest under the *Court Order Interest Act*.
45. I dismiss Mr. Skelton's remaining claims.
46. I dismiss the strata's claim for reimbursement of its legal fees.

47. 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