



# Civil Resolution Tribunal

Date Issued: March 5, 2024

File: ST-2023-001895

Type: Strata

Civil Resolution Tribunal

Indexed as: *MacFarlane v. The Owners, Strata Plan 761*, 2024 BCCRT 220

B E T W E E N :

LYNN MACFARLANE

**APPLICANT**

A N D :

The Owners, Strata Plan 761

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr, Vice Chair

## INTRODUCTION

1. Lynn MacFarlane owns and lives in a strata lot in the strata corporation The Owners, Strata Plan 761. Another resident complained that Mrs. MacFarlane's dog was off leash on common property, contrary to the strata's bylaws. Mrs. MacFarlane requested a copy of the complaint. The strata provided a copy that redacted the

complainant's personal information. She asks for an order that the strata provide her with an unredacted copy of the complaint. She is self-represented.

2. The strata maintains that it was entitled to redact the complaint. It asks me to dismiss Mrs. MacFarlane's claim. A strata council member represents the strata.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
6. 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.
7. I note that both parties' submissions referred to difficulties with the CRT's online evidence portal. It appears that both parties were ultimately able to upload all the evidence they wanted to upload. However, this is not entirely clear. I decided not to

ask the parties to confirm they had provided all their evidence because this dispute turns on the correct interpretation of the applicable law, not disputed facts.

## **ISSUE**

8. The issue in this dispute is whether Mrs. MacFarlane is entitled to an unredacted copy of the complaint letter.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mrs. MacFarlane as the applicant must prove her claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. On October 3, 2022, the strata sent Mrs. MacFarlane a bylaw contravention letter. The letter said the strata had received a complaint about Mrs. MacFarlane's dog being outside unleashed, contrary to the strata's bylaws.
11. On October 10, Mrs. MacFarlane wrote to the strata asking for a copy of the complaint letter. On November 15, the strata responded that its first letter was just a warning and that it would take no further action about the complaint. The strata said it had provided particulars of the complaint as required by section 135(1)(e) of the *Strata Property Act* (SPA). It did not directly respond to the request for the original complaint letter.
12. On January 6, 2023, Mrs. MacFarlane wrote again, reiterating her request. On January 25, the strata provided a redacted copy of the complaint letter, which was from July 29, 2022. The redacted letter in evidence has a blacked-out signature line, which presumably covers the complainant's name and possibly other personal information, such as an address. The strata continues to refuse to provide an unredacted copy on privacy grounds.

13. The strata's obligation to retain and disclose records is set out in SPA sections 35 and 36. Section 35 lists the records the strata must retain. Specifically, section 32(2)(k) says that the strata must retain copies of all correspondence the strata and strata council send or receive. Section 36 requires the strata to provide copies of that correspondence within two weeks of a request. The SPA contains no provision that authorizes the strata to redact or withhold records set out in section 35 for privacy reasons.
14. The *Personal Information Protection Act* (PIPA) governs how private organizations, including strata corporations, can collect, use, and disclose an individual's personal information. PIPA section 18 lists circumstances where an organization may disclose personal information without the individual's consent. Section 18(1)(o) says that an organization may disclose personal information if it is required or authorized by law.
15. Numerous CRT decisions have applied PIPA section 18(1)(o) to records requests under SPA section 36, including requests for unredacted bylaw complaint letters. Those decisions all reached the same conclusion. PIPA section 18(1)(o) allows the strata to disclose personal information if it is contained in a record the strata must retain under SPA section 35. Since disclosure under SPA section 36 is mandatory, the strata cannot redact personal information from those records. See, for example, *The Owners, Strata Plan EPS 2409 v. Cao*, 2020 BCCRT 466, and *Raitt v. The Owners, Strata Plan LMS 1087*, 2022 BCCRT 279.
16. The strata does not directly address the reasoning in those decisions, but argues that I should not follow them. Previous CRT decisions are not binding on me. The strata makes several arguments.
17. First, the strata relies on SPA section 135, which outlines the process a strata corporation must follow when enforcing its bylaws. One requirement, set out in section 135(1)(e), is to provide the affected person with particulars of the complaint. As the strata points out, section 135(1)(e) does not require the strata to provide a copy of the complaint itself or the identity of the complainant. The strata argues that

by creating a specific provision about bylaw enforcement, the legislature intended that complaints be treated differently from other correspondence.

18. I disagree. Section 135(1)(e) sets out information that the strata must unilaterally disclose every time it enforces a bylaw, regardless of whether the owner or tenant has requested it. It does not govern what a strata corporation must disclose on request under section 36. I find that if the legislature had intended that written complaints be treated differently than other correspondence, it would have made this explicit. In short, I find that the strata's obligations under section 135 are in addition to its obligations under section 36.
19. The strata also relies on *Little Qualicum River Village Strata Corporation (Strata Plan Vis 4673) (Re)*, 2019 BCIPC 03, a decision of the Office of the Information and Privacy Commissioner (OIPC). The OIPC is an independent office of the legislature that has jurisdiction to make decisions about a private organization's compliance with PIPA. The strata says this decision confirms the strata's authority or obligation to redact personal information.
20. In *Little Qualicum*, an owner in a strata corporation requested an unredacted copy of a bylaw complaint letter. The strata corporation refused. The strata relies on the OIPC's statement that "there are simply no provisions in PIPA ... which can compel an organization to disclose an individual's personal information to another individual".
21. I find that the strata has taken this part of the OIPC's decision out of context. The OIPC decided that it did not have jurisdiction to make an order about the disclosure of unredacted complaint letters because the SPA, not PIPA, governs an owner's right to request correspondence. The OIPC was explaining why PIPA did not govern the owner's records request. I find that *Little Qualicum* does not help the strata.
22. The strata also points to its own bylaws. There is no explicit bylaw about disclosing a bylaw complainant's identity, but the strata says its bylaws have an implicit emphasis on privacy. I find it unnecessary to address these bylaws in any detail. This is because section 121 says that a bylaw is unenforceable to the extent it contravenes other parts of the SPA. So, to the extent the strata's bylaws may implicitly support redacting

personal information from correspondence, they would be unenforceable because that redaction would contravene SPA sections 35 and 36.

23. Finally, the strata provided a portion of a report from a 2021 special committee of the BC legislature about PIPA. The excerpt outlined how certain stakeholders did not think that the SPA and PIPA struck the right balance between transparency and privacy. In essence, the strata echoes that belief here. The strata argues that it would be better for strata communities if the identity of people making bylaw complaints could be kept private. The strata expresses concern that residents will be unwilling to make bylaw complaints if they know the subject could find out who made the complaint. However, neither PIPA nor the SPA has changed since the 2021 report. It is not the CRT's role to change the law. Only the legislature can do that.
24. In short, I agree with previous CRT decisions that say SPA section 36 requires strata corporations to disclose unredacted written bylaw complaints on request. I therefore order the strata to provide Mrs. MacFarlane with an unredacted copy of the bylaw complaint letter at issue. The strata will have 14 days to comply.

## **CRT FEES AND EXPENSES**

25. In her submissions about CRT fees and dispute-related expenses, Mrs. MacFarlane asked someone at the CRT to phone her because she was unsure about what she was supposed to say in that section. I decided not to ask CRT staff to contact Mrs. MacFarlane about this because she is clearly entitled to her CRT fees under the CRTA and the CRT's rules. This is because she is the successful party. I order the strata to pay her \$250 in CRT fees. She did not claim any dispute-related expenses and there is nothing in the materials to suggest she incurred any.
26. The *Court Order Interest Act* applies to the CRT. Section 2(c) does not allow for interest on "costs", which I find includes CRT fees. So, I make no order for interest.
27. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. MacFarlane.

## DECISION AND ORDERS

28. I order that within 14 days of this decision, the strata:

- a. Provide Mrs. MacFarlane with an unredacted copy of the July 29, 2022 bylaw complaint letter, and
- b. Pay Mrs. MacFarlane \$250 in CRT fees.

29. Mrs. MacFarlane is entitled to post judgement interest under the *Court Order Interest Act*.

30. This is a validated decision and order. 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