



# Civil Resolution Tribunal

Date Issued: April 5, 2024

File: ST-2023-000516

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lipton v. The Owners, Strata Plan VIS 4673*, 2024 BCCRT 335

BETWEEN:

VALERIE LIPTON

**APPLICANT**

AND:

The Owners, Strata Plan VIS 4673

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. Valerie Lipton owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 4673. Mrs. Lipton asks for orders that the strata provide certain records to her, and destroy others. Mrs. Lipton is self-represented.

2. The strata denies Mrs. Lipton's claims. It says it has provided the records it is required to under the SPA, and it is not obligated to destroy records at Mrs. Lipton's request. The strata is represented by its strata council president.

## **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 process has ended.
4. 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. The CRT's mandate includes proportionality and a speedy resolution of disputes, which I find outweighs the potential benefit of an oral hearing. So, I decided to hear this dispute through written submissions as I find that an oral hearing is not necessary in the interests of justice and fairness.
5. 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.
6. 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.
7. Under CRTA section 10(1), the CRT must refuse to resolve a claim that it considers is not within the CRT's jurisdiction.

### ***Additional Claims***

8. In her submissions, Mrs. Lipton makes additional claims and seeks additional remedies that were not outlined in her Dispute Notice. Specifically, Mrs. Lipton says that the strata's reputation has impacted owners' ability to sell their strata lots. She asks that the CRT direct the strata to draft a code of conduct, and to make it known to local real estate firms to improve the strata's reputation. Mrs. Lipton also says the strata has acted significantly unfairly, and claims \$5,000 in pain and suffering for that unfairness.
9. As noted, these claims were not in Mrs. Lipton's Dispute Notice. While Mrs. Lipton mentioned a claim for pain and suffering in correspondence with the CRT in evidence, she said she was not claiming a monetary amount for it, and did not ask to amend the Dispute Notice to include it until her submissions during the tribunal decision process. The purpose of the Dispute Notice is to define the issues and provide fair notice to the respondent of the claims against it. CRT Rule 1.19 says that the CRT will not issue an amended Dispute Notice after the dispute has entered the tribunal decision process except in extraordinary circumstances. I find no extraordinary circumstances exist here to justify adding new claims at this late stage in the CRT's process. So, I decline to address Mrs. Lipton's additional claims in this decision.

### ***Personal Information Protection Act***

10. The *Personal Information Protection Act* (PIPA) governs how private organizations, including strata corporations, collect, use, disclose and protect personal information. PIPA applies to strata corporations.
11. Mrs. Lipton alleges the strata has breached PIPA in two ways. First, she says the strata has not complied with her withdrawal of consent for the strata to collect, use or disclose her personal information under PIPA section 9. Second, she says the strata has not destroyed her personal information as required by PIPA section 35(2).
12. I find these claims are within the exclusive jurisdiction of the Information and Privacy Commissioner (IPC). PIPA section 52(3) says that the IPC may order an organization to stop collecting, using or disclosing personal information or require an organization

to destroy personal information. To the extent that Mrs. Lipton seeks these orders under PIPA, I refuse to resolve her claims under CRTA section 10(1), because I find they are beyond the CRT's jurisdiction.

13. However, Mrs. Lipton also argues that the strata is obligated to destroy her records that are older than the mandatory retention periods set out under the *Strata Property Act* (SPA) and the *Strata Property Regulation* (SPR). I find this is within the CRT's strata property jurisdiction, and I address this argument further below.

## **ISSUES**

14. The remaining issues in this dispute are:

- a. Must the strata provide Mrs. Lipton with owner complaint letters from 2021 and 2022?
- b. Must the strata provide Mrs. Lipton with a copy of its contract or retainer agreement with its lawyer, and records of payments to its lawyer?
- c. Must the strata destroy records that are older than the SPR's mandatory retention periods?

## **EVIDENCE AND ANALYSIS**

15. As the applicant in this civil dispute, Mrs. Lipton must prove her claims on a balance of probabilities, meaning more likely than not. I have read all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision. The strata provided submissions, but did not provide documentary evidence, despite having the opportunity to do so.

### ***Records Requests***

#### **Complaint letters**

16. Mrs. Lipton requests that the strata provide her with copies of "owner complaint letters". Her Dispute Notice refers to a November 28, 2022 request for strata records,

including owner complaint letters, but that request is not in evidence. However, I infer from the strata's submissions that the request was for all "owner complaints" received by the strata council in 2021 and 2022.

17. SPA section 35 sets out the records that a strata corporation must prepare and retain. Specifically, section 35(2)(k) says that the strata must retain copies of all correspondence sent or received by the strata corporation and council. I find owner complaints submitted to the strata fall under the category of correspondence.
18. Previous CRT decisions have found that a strata corporation is justified in declining to respond to a records request that is vague or overly broad.<sup>1</sup> Here, I agree with the strata's submission that the request is too vague. "Owner complaints" could refer to owners' correspondence with the strata council about bylaw violations, repair and maintenance of common property, strata governance, or other topics.
19. As noted, Mrs. Lipton did not provide her November 28, 2022 records request in evidence. She does not provide specific submissions about this request, other than that the strata has not complied with her document requests. She has not provided any further information about the scope of the correspondence she is asking the strata to provide. In the absence of further evidence or information from Mrs. Lipton about what she means by "owner complaints", I find her request is too vague for the strata to reasonably comply with. So, I dismiss this part of her claim.
20. Given the CRT's mandate to recognize ongoing relationships between parties that will likely continue after the CRT process has ended, I find it appropriate to address the strata's alternative argument about this claim. The strata says that it should not be required to provide complaint letters to owners because of privacy concerns associated with disclosing the identity of the complaints' authors. The strata says PIPA does not give a right to access another person's personal information. This argument has been addressed in several previous CRT decisions, which have consistently found that a strata must disclose personal information if it is contained in

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<sup>1</sup> See, for example, *Cassey v. The Owners. Strata Plan VR326*, 2023 BCCRT 645 and *Slack v. The Owners, Strata Plan EPS4413*, 2022 BCCRT 681.

a record the strata must retain under SPA section 35, and that a strata is not entitled to redact personal information from these records.<sup>2</sup> While previous CRT decisions are not binding, I agree with this reasoning and find it applies to this argument.

21. So, for clarity, while I do not order the strata to produce the requested owner complaint records in this dispute, nothing in this decision prevents Mrs. Lipton from making future records requests to the strata. The strata must comply with reasonable requests, and is not entitled to withhold or redact personal information from the records it is required to retain and disclose under the SPA.

### Clark Wilson Contract and Payments

22. Mrs. Lipton provided a December 1, 2022 letter she sent to the strata requesting records of the strata's payments to its law firm, Clark Wilson LLP, for drafting the strata's privacy policy. She also says she requested the strata's contract or retainer agreement with Clark Wilson, but this request is not in evidence.
23. SPA section 35(2)(g) requires the strata to retain copies of written contracts it is a party to. However, the strata says it has searched its records and it does not have a formal retainer agreement or written contract with Clark Wilson.
24. Mrs. Lipton submitted minutes of the strata's February 10, 2020 council meeting, which show that the council carried a motion to retain Allyson Baker of Clark Wilson as the strata's lawyer. The strata does not dispute that it did so, but says that Ms. Baker was its lawyer previously, and that she agreed by telephone call to continue representing the strata.
25. Mrs. Lipton argues that law firms conduct business with clients based on contractual agreements, and that the absence of a written agreement between a lawyer and a client is a violation of the *Legal Profession Act* (LPA). I find any alleged breach of the LPA is within the jurisdiction of the Law Society of British Columbia under LPA section 26. So, I have not considered this argument further.

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<sup>2</sup> See the detailed analysis in *MacFarlane v. The Owners, Strata Plan 761*, 2024 BCCRT 220.

26. While the strata does not dispute that it has hired Clark Wilson for legal work, I find this does not prove that the strata has a written contract with Clark Wilson. I cannot order the strata to provide a record that does not exist. So, I dismiss this part of Mrs. Lipton's claim.
27. I turn to Mrs. Lipton's request for records of payments to Clark Wilson for drafting the strata's privacy policy, including bank statements, cancelled cheques, and invoices. The strata acknowledges that its privacy policy was recently "rewritten", and does not dispute that Clark Wilson assisted with this. The strata's submissions refer to an invoice from Clark Wilson, so I infer it has paid Clark Wilson for this work.
28. The BC Supreme Court has found that while the SPA requires strata corporations to keep books of account and financial statements, it does not require them to retain or disclose invoices or receipts for each payment.<sup>3</sup> So, I dismiss Mrs. Lipton's request for the strata's invoices from Clark Wilson.
29. SPA section 35(2)(l) requires the strata to retain bank statements and cancelled cheques. SPR section 4.1(3) says the strata must retain these for six years.
30. So, per Mrs. Lipton's December 1, 2022 request, I find the strata must provide Mrs. Lipton with any of its bank statements and cancelled cheques showing any payments it made to Clark Wilson for drafting its privacy policy. Consistent with SPA section 36, I order the strata to do so within two weeks of this decision.

### ***Destruction of Records***

31. Lastly, Mrs. Lipton asks for an order that the strata destroy all of her correspondence dated prior to 2020. She asks that the strata provide a notarized letter confirming that it has done so. The strata says that it is not required to destroy Mrs. Lipton's correspondence under the SPA or the SPR.
32. I acknowledge Mrs. Lipton's argument that the strata's refusal to destroy her correspondence is a breach of PIPA. As explained above, I have refused to resolve

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<sup>3</sup> *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraph 15.

Mrs. Lipton's claims about the strata's alleged PIPA breaches. So, I have only considered the application of the SPA and the SPR to this claim.

33. SPR section 4.1 sets out the minimum length of time that a strata corporation must retain certain records. Section 4.1(5) says that the strata must retain correspondence sent or received by the strata corporation and council for at least two years.
34. Mrs. Lipton says that this provision should not be interpreted to allow the strata to retain personal correspondence indefinitely. She also asks that the CRT to consider removing the words "at least" from the timeline set out in SPR section 4.1(5) to ensure there is no ambiguity. The CRT does not have jurisdiction to amend legislation. However, the CRT may interpret applicable legislation and determine its meaning.
35. Here, I find the wording of SPR section 4.1(5) is clear. It sets out a minimum length of time for the strata to retain records. I agree with the strata's submission that the SPR does not specify a maximum retention time. So, I find the SPA and SPR do not require the strata to destroy records after the retention time ends, and I dismiss this claim.

## **CRT FEES AND EXPENSES**

36. Under CRTA section 49 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. Mrs. Lipton was partially successful, so I order the strata to reimburse her \$112.50 for half of her CRT fees. The strata did not pay CRT fees, and neither party claimed dispute-related expenses.
37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Lipton.

## **ORDERS**

38. Within 14 days of this decision, I order the strata to:



- a. Provide Mrs. Lipton with copies of the strata's bank statements and cancelled cheques showing any payments it made to Clark Wilson LLP for drafting the strata's privacy policy, and
  - b. Pay Mrs. Lipton \$112.50 for CRT fees.
39. Mrs. Lipton is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
40. I refuse to resolve Mrs. Lipton's claims about the strata's alleged breaches of PIPA.
41. I dismiss Mrs. Lipton's remaining claims.
42. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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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Alison Wake, Tribunal Member