



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Drew v. The Owners, Strata Plan 1692*, 2024 BCCRT 1107

B E T W E E N :

ROBERT G DREW

APPLICANT

A N D :

The Owners, Strata Plan 1692

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Robert G Drew, lives in strata lot 2 (SL2) in the respondent strata corporation, The Owners, Strata Plan 1692 (strata). Mr. Drew says that the strata treated him in a significantly unfair manner 1) by failing to investigate and enforce bylaw complaints of harassment by 3 individuals named DC, SB, and MB, 2) by failing to provide documents under sections 35 and 36 of the *Strata Property Act*

(SPA) and intentionally interfering with his records request, 3) by hiring lawyers without proper spending authority, 4) by failing to hold a requested hearing, and 5) by treating him dismissively and disrespectfully.

2. As remedies, Mr. Drew seeks 1) findings about the above, 2) an order for the strata council to immediately properly investigate his bylaw complaints and enforce the bylaws, 3) an order the strata to provide him the requested documents and records, 4) order the strata to stop using a lawyer without proper spending authority from the owners, 5) an order for the strata to hire an independent professional facilitator to conduct a general meeting with the owners to provide information and develop a code of conduct for the strata council, an improved anti-harassment and anti-bullying bylaw, and guidelines for the strata's owners.
3. The strata denies Mr. Drew's claims. It says it 1) did not act in a significantly unfair manner, 2) already suitably investigated Mr. Drew's complaints and reached a decision, 3) already disclosed documents as required under SPA section 36, 4) has discretionary expenditure power under the SPA and bylaws to hire a lawyer, and 5) does not need to hold a general meeting as requested by Mr. Drew.
4. Mr. Drew represents himself. A strata council member, DC, represents the strata.
5. For the reasons that follow, I dismiss Mr. Drew's claims.

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)*. 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.

7. CRTA section 39 says the CRT has discretion to decide the format's 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. On key issues, credibility is not a central issue as the documents prove the relevant facts. 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.
8. 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.
9. 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.

Mr. Drew's Standing and the CRT's Jurisdiction over SPA Section 31

10. Under SPA section 31, each strata council member must act honestly and in good faith with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.
11. Some of Mr. Drew's complaints relate to DC's conduct as a strata council member, or the strata council generally. These include allegations about bias, conflicts of interest, and acting in bad faith.
12. The BC Supreme Court has found that individual strata lot owners do not have standing to make claims for breaches of SPA section 31. See *Rochette v. Bradburn*, 2021 BCSC 1752. Further, the CRT does not have jurisdiction for breaches of SPA section 32 concerning conflicts of interest, as section 33 says an owner must apply to a court for this, and the CRT is not a court. CRTA section 122(1)(a) also specifically excludes SPA section 33 from the CRT's jurisdiction.
13. So, to the extent Mr. Drew makes allegations that DC breached SPA section 31 I dismiss them for lack of standing.

SPA Section 34.1

14. On May 17, 2023, Mr. Drew emailed a request for the strata to hold a hearing. In a June 2, 2023 email, the strata decided to refuse the hearing request.
15. SPA section 34.1 requires the strata to hold a council hearing within 4 weeks of an owner's request. SPA section 189.1(2)(a) says that an owner may not apply for dispute resolution until after requesting a hearing under SPA section 34.1. The SPA does not require the strata to hold a hearing. It only requires that an owner request one.
16. Mr. Drew applied for dispute resolution on March 4, 2023, before his May 17, 2023 hearing request. However, I find that in proceeding with this dispute, he impliedly requested the CRT to waive the requirement of a council hearing under SPA section 189.1(2)(b). See, for example, *The Owners, Strata Plan VR320 v. Day*, 2023 BCSC 364. Further, he complied shortly after starting the dispute.
17. Given this, I waive the requirement of a hearing, or alternatively find that Mr. Drew fulfilled the requirement by requesting the hearing shortly after applying for dispute resolution.

ISSUES

18. The issues in this dispute are as follows:
 - a. Did the strata council properly investigate Mr. Drew's bylaw complaints about DC, and enforce the bylaws as needed?
 - b. Did the strata council properly investigate Mr. Drew's bylaw complaints about MB and SB, and enforce the bylaws as needed?
 - c. Did the strata provide Mr. Drew the requested documents and records?
 - d. Did the strata hire a lawyer without proper spending authority?

- e. Did the strata act in a significantly unfair manner by failing to hold Mr. Drew's requested hearing?
- f. Did the strata act in a significantly unfair manner by treating Mr. Drew dismissively or disrespectfully?
- g. Must the strata hire an independent professional facilitator to conduct a general meeting with the owners?

BACKGROUND, EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, the applicant Mr. Drew must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

Issue #1. Did the strata council properly investigate Mr. Drew's bylaw complaints about DC, and enforce the bylaws as needed?

20. The strata filed a complete set of bylaws in June 2019. There are subsequent amendments, but they are irrelevant to this dispute. I will start with outlining bylaw 4(1)(c) as it is key to this dispute.

21. Bylaw 4(1)(c) says that "an owner, tenant, occupant, or invitee must not use a strata lot, the common property, or common assets contrary to any of the following bylaws...in a way that unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot, and no owner, tenant or occupant shall annoy, harass or disturb any other owner, tenant, occupant or invitee." [Emphasis added.]

22. I have considered what the terms annoy, harass, and disturb mean in context. The strata plan shows the strata consists of 36 strata lots in a midrise building. Strata corporations involve communal living. I find it would be inevitable that owners will annoy or disturb each other from time to time. I find it would be unreasonable to interpret this bylaw to mean all such incidents should result in fines or other

enforcement measures. Reading the bylaws as a whole, and in the proper context of strata living, I find the terms “annoy, harass, or disturb” together prohibit harassment and not trivial annoyances or disturbances.

23. There is no recognized tort of harassment in BC. See *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473. That said, in *Mainland Sawmills Ltd. v. IWA-Canada, Local 1-3567 Society*, 2006 BCSC 1195, the court found that, if such a tort exists, it would have the following elements, as later articulated in *Merrifield v. AG Canada*, 2017 ONSC 1333 at paragraph 719:
- a. Was the conduct of the defendant toward the applicant outrageous?
 - b. Did the respondent intend to cause emotional stress or did it have a reckless disregard for causing the applicant to suffer from emotional stress?
 - c. Did the applicant suffer from severe or extreme emotional distress?
 - d. Was the outrageous conduct of the respondent the actual and proximate cause of the emotional distress?
24. I find the test for harassment under bylaw 4(1)(c) is the same as set out in *Mainland Sawmills Ltd.* and *Merrifield*. I also find that, from a plain reading of the test, the threshold is far beyond the ordinary annoyances or disturbances of everyday communal living.
25. Mr. Drew provided an information sheet from the BC Public Service that discusses examples of bullying and harassment. He also provided an information sheet from a law firm about toxic gossip. However, these documents do not formulate a legal test nor are they binding. They are not also specific to the strata or the strata’s bylaws. So, do not put significant weight on them.
26. With that in mind, I turn to the background facts.
27. Both Mr. Drew and DC were on strata council from May 2017 to October 2020. The strata says, and I accept, that there was occasionally friction between them. The minutes show that at the May 2020 annual general meeting (AGM), the owners

elected both Mr. Drew and DC to strata council. DC resigned from the strata council on October 29, 2020, and mentioned “ongoing strata council tensions” in his emailed update of the same date to the owners. At the May 27, 2021 AGM, Mr. Drew ran for a strata council position but fell short of the needed votes.

28. Approximately a year later, from April 29 to May 2022, Mr. Drew sent approximately 13 requests for all copies of emails between DC, other owners, and strata council members on a number of topics. I will discuss this record request further below.
29. In late April and May 2022, Mr. Drew distributed an April 30, 2022 10-page document titled, “Call for Civility”. He sent it to certain owners, in person and by email. In the document Mr. Drew was critical of DC, MB, and SB.
30. Among other things, Mr. Drew said that DC verbally attacked him personally and professionally at a July 24, 2019 meeting. Mr. Drew also discussed an unpleasant incident with SB in 2021 at an indoor parkade and MB’s March 21, 2021 letter that he found insulting. I will discuss the events with SB and MB in greater detail below.
31. The strata did not treat the Call for Civility document as a complaint that DC or SB had breached the bylaws. Mr. Drew does not say it should have acted differently at the time.
32. At the May 25, 2022 AGM, the owners elected DC as strata council president. On September 5, 2022, Mr. Drew emailed the strata council to complain that DC had breached bylaw 4.1(c). The email included 4 PDF attachments that outline Mr. Drew’s complaint. Mr. Drew also added additional details in a September 14, 2022 addendum email.
33. Three strata council members at the time, CR, KD, and SS, investigated the complaint. They outline their evidence in their signed June 2024 statement as follows. DC responded to the complaint and emailed the strata council and strata manager on October 19, 2022. DC said they would “be extraordinarily attentive in expressing my opinion in ways that reduce the risk of offending someone, as much

as possible". The strata's investigators say, and I accept, that DC had no part in the investigation or decision.

34. On October 25, 2022, the strata council wrote a decision letter addressed to DC. The strata council said that it had investigated the complaint and that it did not rise to the level of an actionable contravention of the bylaws. It also said that it did not consider incidents in the September 5, 2022 letter occurring before September 4, 2020. The strata manager emailed DC's response to Mr. Drew and its decision about the complaint on November 14, 2022.
35. On March 4, 2023, Mr. Drew applied for dispute resolution at the CRT. He asked the strata council for a hearing on May 17, 2023. The strata council denied the request on June 2, 2023. The CRT subsequently issued the Dispute Notice on June 27, 2023.
36. I turn to the parties' positions. Mr. Drew says DC harassed him in various ways. These are primarily detailed in the September 5 complaint and its September 14, 2022 addendum which I summarize below.
37. The strata says DC's actions did not rise to the level of harassment. It also did not consider several incidents as it believed these were outside the 2-year limitation period in the *Limitation Act*.
38. I will now outline the applicable law. Mr. Drew bases his claim on the law of significant unfairness. The CRT has authority to make orders remedying a strata corporation's significantly unfair acts or decisions under CRTA section 123(2). The legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113. The BC Court of Appeal has confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. See *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173. In applying this test, the owner's objectively reasonable expectations are a relevant factor, but are not determinative.

39. SPA section 26 requires the strata to enforce its bylaws except in limited circumstances, such as if the breach is trivial. Previous CRT decisions have concluded that owners have an objectively reasonable expectation that a strata corporation will reasonably investigate bylaw complaints and enforce its bylaws. See, for example, *Chan v. The Owners, Strata Plan BCS2583*, 2021 BCCRT 456 at paragraph 67 and *Dhanani v. The Owners, Strata Plan NW 2265*, 2021 BCCRT 282 at paragraph 71. A failure to do so is likely to result in a finding of significant unfairness by the strata corporation.
40. A strata corporation may investigate bylaw contravention complaints as its council sees fit, so long as it complies with the principles of procedural fairness and is not significantly unfair to any person appearing before the council. See *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148 at paragraph 52. The strata corporation cannot avoid that duty by characterizing alleged breaches as interpersonal conflicts. See the vice chair's non-binding decision of *Radley v. The Owners, Strata Plan VR 2690*, 2022 BCCRT 930 at paragraph 32.
41. I turn to the September 5 complaint and its September 14, 2022 addendum. The documents are lengthy, so I have only broadly summarized them here. Mr. Drew alleges that DC did the following:
- a. commented verbally in 2017 that Mr. Drew only joined the strata council to keep an extra parking stall,
 - b. emailed Mr. Drew on July 2, 2019, and said that Mr. Drew's changes to a letter were incorrect and "prematurely inclined towards litigious belligerence",
 - c. made a verbal outburst on July 24, 2019, criticizing Mr. Drew both personally and professionally,
 - d. on February 1, 2021, failed to take immediate action to correct a defamatory draft email by another owner,
 - e. on June 4, 2021, wrote a letter to the strata manager, treasurer, and Mr. Drew that criticized them about legal services and fees relating to the AGM,

- f. withheld information from April to July 2022 about the cost of the 2021 depreciation report,
 - g. emailed Mr. Drew on July 24, 2024, stating, “I don't like your tendency to evoke the specter of legal liability when you don't get your way”,
 - h. some time after October 2020, spread a false narrative that the strata council and Mr. Drew had not supported the former president, WC, and
 - i. at an unknown date, commented that they “dreaded” attending meetings knowing Mr. Drew would be there.
42. The parties disagree on whether the *Limitation Act* applies to Mr. Drew's complaints. However, nothing turns on the *Limitation Act* issue. I say this because, even if all the alleged incidents were true and the strata was obliged to investigate them, I find they do not breach of bylaw 4(1)(c).
43. As noted earlier, the test to meet is outlined in *Merrifield* under 4 factors. Applying them here, I find the following. First, I find DC's conduct at outlined in the complaint was not objectively outrageous.
44. Outrageous conduct is conduct that is deeply shocking and unacceptable, grossly cruel, immoral, offensive, or highly unusual or unconventional. The term outrageous indicates that the conduct must be grossly offensive. An objective assessment is required. See *Merrifield* at paragraphs 720 to 727.
45. In *Eks v. Tadeu*, 2019 ONSC 3745, the court considered the terms flagrant or outrageous behaviour in the context of the tort of intentional infliction of mental suffering. The court said such behaviour was “conspicuously offensive”, “shockingly bad or excessive”, “very bold and unusual”, or “going beyond all standards of what is right and decent”. In contrast, behaviour that the court considered “unwise and misguided” or “ill-advised, disproportionate and even anti-social” was not bad enough to meet the standard of flagrant or outrageous.

46. While not binding, I find the comments in *Merrifield* and *Eks* about outrageous conduct or behaviour are applicable here. While unpleasant for Mr. Drew, I find the described conduct was, at most, anti-social or ill-advised. I cannot objectively characterize it as, for example, grossly offensive.
47. Second, I find it unproven that DC intended to cause emotional stress in Mr. Drew or had reckless disregard for the same. See *Merrifield* at paragraph 731. There is no indication that DC knew that harm was substantially certain to follow. DC's email response indicates he was "discomforted" by the knowledge that he had offended Mr. Drew to the point that he initiated a formal complaint. DC said they would be more careful in the future.
48. Third, I also find it unproven that Mr. Drew suffered from severe or extreme emotional distress. While harassment does not require proof of a visible and provable illness, it does require proof of severe or extreme emotional distress. Emotional distress means distress of such substantial quantity or enduring quality that no reasonable person in a civilized society should be expected to endure it. See *Merrifield* at paragraph 732.
49. There is no evidence, medical or otherwise, that proves Mr. Drew suffered from severe or extreme emotional distress. For example, Mr. Drew did not provide evidence about any medical fees, therapy costs, or seek reimbursement for such treatments in this dispute. There is no indication he could not attend work, volunteer activities, or attend to other activities of daily living. Mr. Drew expressed upset in the correspondence, but I find this did not rise to the level of severe or extreme.
50. Fourth, as I find it unproven Mr. Drew suffered from severe or extreme emotional distress, I find it unproven that DC was the proximate cause of any such distress.
51. Fifth, I find the strata investigated reasonably by asking DC to respond to the complaint. This was not a situation like a noise or smoking complaint, that might require further detailed investigation. There was little else the strata could do.

52. Sixth, as for the strata's resulting decision, I find it was reasonable to find there was no contravention of the bylaws. I have come to the same result as well.
53. Mr. Drew says that the strata should have provided a response sooner. However, as I find DC did not breach bylaw 4(1)(c), I find nothing results from the delay.
54. Given the above, I find the strata council acted reasonably by finding that DC's behaviour did not breach bylaw 4(1)(c). As such, I find the strata did not act in a significantly unfair manner. I dismiss this claim.

Issue #2. Did the strata council properly investigate Mr. Drew's bylaw complaints about MB and SB, and enforce the bylaws as needed?

55. I will begin with the background facts. In March 2021, Mr. Drew and SB had a verbal confrontation in the strata's indoor parkade. SB called Mr. Drew "despicable" for the way Mr. Drew had treated WC, a previous strata council member. WC was very ill at the time.
56. On March 23, 2021, SB sent an email to Mr. Drew. SB included MB as a recipient. MB and SB are married. SB essentially reiterated his position about Mr. Drew and his treatment of WC.
57. As noted earlier, about a year later Mr. Drew distributed the Call for Civility document at the end of April and in May 2022. Mr. Drew criticized both SB and MB in the document. He criticized SB for writing the March 23, 2021 email. Mr. Drew also called the email vindictive, sickening, and exploitative of WC's suffering.
58. On May 7, 2022, MB emailed Mr. Drew. MB complained about Mr. Drew's comments on SB in the Call for Civility document. She called Mr. Drew "juvenile" and said Mr. Drew had defamed SB.
59. On May 25, 2022, Mr. Drew and MB had a verbal confrontation outdoors. MB called Mr. Drew an expletive. This occurred a few minutes after the May 2022 AGM ended at a lawn bowling club.

60. Mr. Drew reported the May 25, 2022 incident to the strata manager in a June 1, 2022 email. The strata replied in a June 28, 2022 letter that it would consider is a complaint that MB had breached bylaw 4(1)(c) and investigate.
61. On June 10, 2022, SB emailed a complaint to the strata about Mr. Drew regarding the Call for Civility document. The strata treated this as a complaint that Mr. Drew had breached bylaw 4(1)(c). It asked Mr. Drew to respond in its June 28, 2022 email. He did so in an August 10, 2022 email.
62. MB emailed the strata manager on July 5, 2022. MB admitted to calling Mr. Drew an expletive on May 25, 2022. MB said they made the comment because Mr. Drew made offensive comments about SB in the Call for Civility document.
63. In an August 9, 2022 email, Mr. Drew complained to the strata council again about MB. He said the March 23, 2021 email was essentially co-authored by MB and SB. He also complained about MB's May 7, 2022 email, and again about the May 25, 2022 outdoor incident. The strata acknowledged Mr. Drew's complaint in an August 18, 2022 email.
64. On August 23, 2022, Mr. Drew emailed a complaint to the strata council about SB. He complained about 1) the March 2021 parkade incident with SB, 2) SB's March 23, 2021 email, 3) an allegation that on June 10, 2022, SB used hurtful language in reporting their complaint to the strata about Mr. Drew, and 4) an allegation that SB used disrespectful language in an April 2022 email to other owners regarding EV charging options. The strata acknowledged receipt in a letter and said it would investigate the incidents and provide updates.
65. Mr. Drew expressly alleged in his email complaints that both MB and SB breached bylaw 4(1)(c). At one point he referred to bylaw 4(1)(a), but I find this was likely a typo.
66. The strata council outlined what it did in a September 8, 2022 letter to MB and SB. It sought a response from MB after receiving Mr. Drew's June 1, 2022 complaint. It asked for and received MB's July 5, 2022 email. After receiving the August 9, 2022

complaint about MB and the August 23, 2022 complaint about SB, it notified both MB and SB about those complaints and asked for additional responses. MB and SB replied on September 6, 2022.

67. The September 6, 2022 email shows MB and SB both expressed anger with Mr. Drew but also “sincere regret” that the matter was a distraction for the strata.
68. Returning to the strata’s decision letter, the strata council found that MB and SB had acted in a manner “not consistent with” bylaw 4(1)(c). It based its decision on MB and SB’s responses. They confirmed that they used offensive language on one occasion.
69. In another September 8, 2022 letter, the strata said it investigated SB’s complaint against Mr. Drew. It also found that Mr. Drew’s behaviour was also “not consistent with” bylaw 4(1)(c).
70. Ultimately, the strata declined to act on any of the complaints. It said this was because since June 2022, Mr. Drew, MB, and SB had not lodged any new complaints about each other. MB and SB also expressed regret to the strata council and said they would “discontinue any further expressions of animus” about Mr. Drew. The strata council wanted to provide time for the parties to “mellow.”
71. I turn to the parties’ positions. Mr. Drew says that the strata failed to investigate and enforce bylaw 4(1)(c) in connection with MB and SB.
72. The strata says it appropriately investigated and decided not to pursue further enforcement measures.
73. Mr. Drew’s complaints about MB and SB are about bylaw 4(1)(c) and significant unfairness by the strata. So, I find the same analysis I used for Mr. Drew’s complaints about DC applies here.
74. First, I find that MB and SB’s conduct, as outlined in the complaints to the strata, were not objectively outrageous. I find that, again, the comments were likely unpleasant for Mr. Drew. However, they were, once again, anti-social or ill-advised

at worst. I say this is the case even if Mr. Drew's allegations about MB and SB are all taken as true.

75. I note that the parties disagree on whether the bylaws apply to the May 25, 2022 incident. The strata says bylaw 4(1)(c) is inapplicable as the incident occurred outside the strata's property. It relies on SPA section 119 and cites *Richardson v. The Owners, Strata Plan VR283*, 2023 BCCRT 383 in support of its position. I find I need not decide this issue as, regardless of where it occurred, I find it was not objectively outrageous, and not a breach of bylaw 4(1)(c).
76. Second, and as before, I find it unproven that MB and SB intended to cause emotional distress in Mr. Drew or had reckless disregard for same. While MB and SB made potentially anti-social or ill-advised comments, the evidence indicates MB and SB made the comments in response to what they perceived as objectionable behaviour by Mr. Drew. I find they were not made with an intent to cause harm.
77. Third, I also find it unproven that Mr. Drew suffered from severe or extreme emotional distress from MB or SB's conduct. I find the correspondence shows he was upset but fails to prove he suffered upset to a severe or extreme degree.
78. Fourth, it follows that I find it unproven that MB or SB were the proximate cause of any severe or extreme emotional distress.
79. Fifth, I find the strata investigated reasonably by seeking a response from MB and SB. It concluded that MB and SB essentially admitted to the acts complained of. I find this was a reasonable conclusion, and there was little else to investigate after this.
80. As for the strata's resulting decision, I find it was reasonable as well. SPA section 129(2) says before enforcing a bylaw, the strata may give a person a warning or time to comply. The strata found that MB and SB breached bylaw 4(1)(c). However, it declined to act, essentially because the breaches were trivial, not ongoing, and it wanted time for the parties to calm down. I find the strata was entitled to reach this

conclusion. I say this partly because, unlike the strata, I find MB and SB did not breach bylaw 4(1)(c).

81. I also put weight on the fact that it did not take any action against Mr. Drew in regard to SB's complaint. I find this is evidence that the strata acted fairly and considered the interests of all the owners. As noted in *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61, a strata corporation is not held to a standard of perfection, but instead "reasonable action and fair regard for the interests of all concerned." Although these comments were made in the context of repair and maintenance obligations, I find them applicable here.
82. Mr. Drew also says that DC was unfairly involved in the investigation into Mr. Drew and MB and SB. I find from the email correspondence, including DC's September 6, 2022 email, that DC's role was largely administrative and did not breach the principles of procedural fairness or natural justice.
83. I also considered whether the strata delayed in its investigation. Three months passed from Mr. Drew's initial complaint of June 1 and the decision letter of September 8, 2022. However, the strata also had to investigate SB's complaint against Mr. Drew and the subsequent complaints of August 9 and 23, 2022. It also obtained a reply to the allegations from MB on July 5, 2022. So, bearing in mind that strata council members are volunteers, I find the strata did not ignore the issue during those 3 months or act unreasonably slowly in the circumstances.
84. For all those reasons, I find the strata did not act in a significantly unfair manner by declining to take further action. So, I dismiss this claim.

Issue #3. Did the strata provide Mr. Drew the requested documents and records?

85. I will first outline the law as it will assist in understanding the facts. SPA section 35 and section 4.1 of the *Strata Property Regulation* set out the records that a strata corporation must prepare and retain. SPA section 36(1)(a) says that on receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to, an owner.

SPA section 36(3) says the strata corporation must do so within 2 weeks. The CRT cannot order the strata to produce records or documents that the strata is not required to provide under SPA section 35. See *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863 at paragraph 27.

86. I turn to the background facts. Starting on April 29, 2022, and continuing several times in May 2022, Mr. Drew sent approximately 13 requests for all copies of emails between DC, other owners, and strata council members during the COVID-19 pandemic on a broad number of topic areas. Mr. Drew also withdrew some of his records requests in a June 2022 email to the strata manager.
87. The evidence before me includes Mr. Drew's May 5 and 11, 2022 emails requesting documents. However, the other requests are not in evidence. So, I find I have an incomplete record of what documents Mr. Drew requested. To the extent Mr. Drew asks me to order production of records where the initial request is not before me, I dismiss his claim.
88. The May 5, 2022 email requested all correspondence and records of communication relating to all aspects of the strata's property management, procedures, and governance from May 27, 2021, to the date of the emails. Mr. Drew listed certain exceptions which I need not summarize here. The May 11, 2022 email requested copies of correspondence, legal opinions, and accounts in connection with the strata hiring a lawyer.
89. On May 7, 2022, the strata council met and decided to consult a lawyer. On May 10, 2022, the strata's lawyer advised that not all of Mr. Drew's requested documents were strata records. The strata summarized some of this advice in general terms in a June 9, 2022 letter to all owners in the strata.
90. On June 14, 2022, the strata emailed records in response to Mr. Drew's records requests. It admitted that the records were provided late.
91. In October 2022, Mr. Drew asked the strata for correspondence it received from MB and SB. On January 9, 2023, Mr. Drew also requested a copy of the outcome of his

complaint against MB. The strata manager replied on January 23, 2023 by email and attached its decision letters to MB and SB.

92. On March 4, 2023, Mr. Drew applied for dispute resolution at the CRT. Mr. Drew then made a records request on March 21, 2023. As such, the March 2023 request is outside the bounds of the Dispute Notice and not properly before me. However, the strata fully argued the issue in submissions. Given the parties' difficult history and the CRT's mandate under CRTA section 2(2) to provide dispute resolution services flexibly, I will resolve it. I note that if I am wrong to do so, then I would make no findings about the March 2023 request.
93. I will first consider year 2022 and early 2023 requests. I turn to the parties' positions. Mr. Drew says that the strata failed to provide him requested documents under SPA section 35 and 36. He also says the strata council or DC intentionally interfered with or delayed his request. He does not say what documents, if any, the strata failed to produce. The Dispute Notice omits this information, and the submissions do not list any specific documents.
94. The strata council says it fulfilled Mr. Drew's requests. It says that it provided the documents late, but the delays were minor for the following reasons: 1) the strata council received numerous requests that were difficult to understand, 2) the strata required legal advice to respond appropriately, 3), the strata council only had 3 members at the time to respond to the request, and 4) the strata council could not have responded earlier given the scope of the requests.
95. I turn to my analysis. Mr. Drew's requests include those made in late April, May, October 2022, and January 2023. He did not say what documents, if any, the strata failed to provide him or must still be provided after the strata uploaded evidence in this dispute. There is incomplete evidence about those requests or the strata's response, or why it might have been deficient. I also note that, for the January 2023 request in particular, Mr. Drew was equivocal about whether the strata breached any obligation to provide the document. As a result, I find it unproven that the strata

failed to provide the requested documents, or that I should order disclosure of any specific documents.

96. This leaves only the issue of the strata's admitted delay in providing the documents. Mr. Drew expected the strata to respond within 2 weeks. The strata said in its June 14, 2022 email that the strata council spent approximately 60 hours identifying the necessary documents. I accept this was likely the case. The strata also says that it had to do this work less than a month before the May 25, 2022 AGM.
97. Without the full requests before me, I am unable to decide on whether Mr. Drew's expectation of a 2-week deadline was reasonable. However, even if Mr. Drew's expectation was reasonable, the normal remedy for significant unfairness in the context of a document request would be to order the strata to provide Mr. Drew with the requested records. See, for example, the non-binding decision of *Francis v. The Owners, Strata Plan VR 460*, 2024 BCCRT 342 at paragraph 51. The evidence and submissions fall short of showing what those records might be. Mr. Drew also did not request a specific remedy for the delay itself.
98. Given the above, I dismiss this claim in connection with the year 2022 and early 2023 requests.
99. This leaves the March 21, 2023 request. In the March 21, 2023 email, Mr. Drew requested correspondence between council members and the strata manager, various documents sent between council members, and documents relating to complaints against Mr. Drew, MB, SB, and DC, for the time period of June 1 to January 23, 2022. The evidence before me indicates the strata provided Mr. Drew the requested documents in email "tranches" dated April 21, May 5, May 19, and June 2, 2023. The full attachments, or tranches, are not in evidence.
100. I turn to the parties' positions. Mr. Drew's submissions indicate he still seeks certain legal opinions. Aside from this, he was not more specific.
101. The strata says it provided the requested documents, save for copies of legal advice or invoices in connection with Mr. Drew's records requests, Mr. Drew's

request for a hearing, or the bylaw complaints referred to in the CRT claims. It admits it provided the other documents late but says this is excused by the magnitude of Mr. Drew's request.

102. On the submissions and evidence before me, I find it unproven that the strata failed to provide any documents in response to the March 2023 request aside from legal advice or invoices.

103. I acknowledge that, as with his previous April and May 2022 requests, the strata provided the documents late in response to the March 2023 request. However, I find that, as stated above, the normal remedy would be to order disclosure of the records Mr. Drew still requires. Mr. Drew did not request a remedy for the delay itself.

104. The only question then, is whether I should order the strata to disclose its legal advice and legal invoices.

105. SPA section 35(2) requires the strata to retain copies of records, including legal opinions. Legal opinions and correspondence with lawyers is normally protected by solicitor-client privilege. The BC Court of Appeal recently addressed whether the SPA contains language specifically clear, explicit, and unequivocal enough to override that privilege. The court found that it does not. See *Mitchinson v. The Owners, Strata Plan VR 1120*, 2024 BCCA 89, at paragraphs 39 to 45 and 57.

106. Given the reasoning in *Mitchinson*, I find the strata's correspondence and legal advice, including legal opinions, are protected by solicitor-client privilege and need not be disclosed.

107. This leaves the legal invoices. In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, the court found that the SPA does "not require the production of every bill or receipt" that may be reflected in the strata's books of account. As the strata is not required to keep copies of invoices under SPA section 35, I find the strata is not required to disclose the legal invoices under SPA section 36.

108. Even if the strata had to keep copies of the legal invoices under SPA section 35, I find that solicitor-client privilege would apply to them. This is because legal invoices may describe legal services, and Mr. Drew did not provide any advice to rebut this presumption. Further, I note that evidence of the approximate amount of the strata's legal expenses in this dispute was also available alternatively through the council and general meeting minutes, if Mr. Drew needed it.

109. For all those reasons, I dismiss this claim as well, and any claims of significant unfairness in connection with records disclosure.

Issue #4. Did the strata hire a lawyer without proper spending authority?

110. As noted above, the strata council decided to hire a lawyer in May 2022 to advise about Mr. Drew's records requests.

111. Mr. Drew says the strata council is too eager to hire lawyers. Instead, it should try to save money by trying to resolve issues beforehand. Mr. Drew relies on the law of significant unfairness. He says that I should order the strata to stop using a lawyer's services without proper spending authority from the owners.

112. The strata disagrees. It says it is entitled to seek legal advice when faced with complaints by an owner. It cites the non-binding decisions of *Ottens v. The Owners, Strata Plan LMS 2785*, 2022 BCCRT 19 and *Schuler v. The Owners, Strata Plan BCS 4064*, 2018 BCCRT 794 in support of its position.

113. I find that Mr. Drew had a reasonable expectation that the strata would reasonably spend funds on lawyers' fees. I first consider what restrictions there are on the strata's ability to do so.

114. SPA section 96 and 97 set out the requirements of strata expenses from the contingency reserve fund and operating fund. These sections require the expense to first be approved by a $\frac{3}{4}$ vote, authorized in the budget, or authorized under section 98 of the SPA that addresses unapproved expenditures.

115. SPA section 98 permits the strata to spend money from the operating fund on unapproved expenses. SPA section 98(2)(a) and (4) allow the strata to set out the amount in a bylaw, and any other conditions or limitations for expenditures.
116. Bylaw 22(2) says that pursuant to SPA section 98, the strata council may not spend money from the operating fund on an unapproved expenditure unless the total amount of the expenditures for the fiscal year is less than \$15,000, it has been approved by a majority resolution of the strata council, and no single expenditure is greater than \$4,000. So, I find the strata could spend up to \$15,000 on legal fees, in combination with all other unapproved expenditures.
117. There is no submission that the legal expenses at issue exceed this limit. The evidence before me indicates the strata council properly approved expenditures from time to time under the bylaws for modest amounts.
118. For example, the September 8, 2021 strata council meeting minutes refer to legal fees of \$463 and \$873.92 incurred during the year. The June 6, 2022 strata council meeting minutes show the strata council unanimously approved a motion to spend \$500 for a lawyer to review the strata's letter to the owners about document requests generally. The October 12, 2022 strata council meeting minutes show the strata council unanimously approved a motion to spend \$1,200 at most in legal fees for the management of complaints. Finally, the April 19, 2022 strata council meeting minutes show the strata council unanimously approved a motion to spend \$1,200 at most in legal fees for the management of complaints. I note this last entry is after Mr. Drew applied for dispute resolution, so its relevance is limited, but it is still for a modest amount.
119. From the evidence, I find it unproven that the strata breached the SPA or the bylaws. The legal fees approved were modest and bylaw 22(2) provides a comparatively ample limit.
120. I also agree with the CRT's comments in *Ottens* and *Schuler*. That is, the strata is entitled to seek legal advice and representation as it sees fit, and also with respect to legal proceedings brought against it by an owner, as the case may be.

121. Given the above, I find the strata did not breach any of Mr. Drew's reasonable expectations about legal expenses. It complied with the SPA and the bylaws and none of its conduct appeared to stray near the line of unacceptability. I find the strata's actions cannot be characterized as significantly unfair in the circumstances. I dismiss this claim.

Issue #5. Did the strata act in a significantly unfair manner by failing to hold Mr. Drew's requested hearing?

122. As noted earlier, Mr. Drew requested a strata council hearing on May 17, 2023. The topics included his harassment complaints, delays by the strata, the strata's decision to hire a lawyer, conflicts of interest, and sharing of legal opinions. In a June 2, 2023 email, the strata decided to refuse the hearing request.

123. SPA section 34.1 requires the strata to hold a council hearing within 4 weeks of an owner's request. The CRT has previously held that the strata may reasonably deny a hearing request in certain circumstances. See, for example, the vice chair's non-biding decision in *Meybodi v. The Owners, Strata Plan EPS869*, 2021 BCCRT 89 at paragraphs 19 and 20, citing *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11. The circumstances include the following:

- a. the owner has not been fined or penalized,
- b. the owner requested and was granted a previous hearing,
- c. the owner outlined demands they were making, not simply the reason for the hearing request,
- d. the owner stated they would be making further demands,
- e. the owner wished to discuss a number of strata wide governance issues not specific to him, and
- f. the reasons for the request were about strata governance and would be more properly addressed at a meeting of the owners, or by majority direction of the owners.

124. Overall, I find that the strata unreasonably denied Mr. Drew's request. In looking at the factors, I note that Mr. Drew had not previously requested a hearing. This is mentioned in some of the correspondence with the strata. At least some of the issues he wished to discuss were specific to him. These included, as noted earlier, his bylaw enforcement complaints and his records request.

125. I find that Mr. Drew had a reasonable expectation that the strata would hold the hearing within 4 weeks of receiving Mr. Drew's request. I find the strata breached his reasonable expectation. I find this was significantly unfair.

126. The SPA does not set out any consequences for breaches of section 34.1. In my view, the normal remedy for such a breach would be to order the strata to hold a hearing. However, Mr. Drew did not request a hearing. I also find that ordering such a remedy would be moot at this point. This is because Mr. Drew fully articulated his concerns in this dispute, and I have otherwise dismissed his claims.

127. In some circumstances the CRT will order a monetary remedy. See, for example, *Hart v. The Owners, Strata Plan VR 172*, 2023 BCCRT 529 at paragraph 41 and *Lozjanin v. The Owners, Strata Plan BCS 3577*, 2019 BCCRT 481 at paragraph 54. However, Mr. Drew did not request this as a remedy, and I find it would be procedurally unfair to order a monetary award without such a claimed remedy in the Dispute Notice.

128. I have also set out below why I find the remedy of ordering the strata to hire an independent facilitator is inappropriate below.

129. Given the above, and despite my finding of significant unfairness, I dismiss this claim.

Issue #6. Did the strata act in a significantly unfair manner by treating Mr. Drew dismissively or disrespectfully?

130. Mr. Drew alleges that the strata treated him dismissively or disrespectfully. The strata denies this.

131. I have found that the strata largely acted properly, save for denying Mr. Drew's request for a hearing. I do not find this, by itself, proves that the strata treated Mr. Drew in a dismissive or disrespectful manner.
132. Having reviewed the parties' correspondence, I also find the strata did not act dismissively or disrespectfully to Mr. Drew to the point that it breached his reasonable expectations, nor were its acts burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable.
133. Some of Mr. Drew's allegations relate to being named in the strata's minutes. The CRT has previously held that identifying an owner by name or unit number in the minutes does not result in significant unfairness. See the non-binding decision of *Bowie v. The Owners, Strata Plan VIS 5766*, 2020 BCCRT 733 at paragraph 68. I agree with this reasoning.
134. Mr. Drew also says that DC and MB jointed together to "harvest proxies" at the May 2021 AGM so Mr. Drew would not be elected to strata council. However, he acknowledges DC and MB did not breach any bylaws by doing so. Elections by nature are competitive and involve garnering votes for or against certain issues or candidates. I find nothing turns on this.
135. For those reasons, I dismiss this claim.

Issue #7. Must the strata hire an independent professional facilitator to conduct a general meeting with the owners?

136. I have already dismissed Mr. Drew's claims for significant unfairness. So, I dismiss his claim for a remedy that includes hiring an independent professional facilitator and other relief in connection with it.
137. However, even if Mr. Drew proved his claims, I still would not order this remedy. In *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700 at paragraph 16, the court said, "It is not for this court to interfere with the democratic process of the strata council. Those who choose communal living of strata life are bound by the reality of all being in it together for better or for worse."

138. Mr. Drew's requested relief includes hiring a facilitator to help, among other things, develop a code of conduct for the strata council and improved anti-harassment and anti-bullying bylaws.
139. In the non-binding decisions of *Pretto v. The Owners, Strata Plan VR 2540*, 2020 BCCRT 600 and *Johnston v. The Owners, Strata Plan EPS 3652*, 2020 BCCRT 843, the CRT cited *Oakley et al.* Both noted the following. Under SPA section 125, the strata may make rules governing the use, safety, and condition of the common property. Under SPA section 126, the strata is entitled to amend its bylaws as voted upon by the strata owners under SPA section 128.
140. As in *Pretto* and *Johnston*, I find that the remedies sought would be an unwarranted interference with the democratic process of the strata council. The CRT should not interfere with the result of the democratic process unless there is evidence of illegality, an improper procedure, or significant unfairness. See the non-binding decision of *White v. The Owners, Strata Plan KAS 3597*, 2018 BCCRT 829 at paragraph 51. I have only found significant unfairness in connection with the strata's refusal to hold a hearing. I do not find the claimed remedy would be appropriate for that breach as it would be an unwarranted interference the court warned against in *Oakeley et al.*
141. For those reasons, I dismiss Mr. Drew's claim for this remedy.

CRT FEES AND EXPENSES

142. 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. I dismiss Mr. Drew's claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses. So, I order none.
143. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Drew.

ORDER

144. I dismiss Mr. Drew's claims and this dispute.

David Jiang, Tribunal Member