



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Chan v. Section 1 of The Owners, Strata Plan LMS 2532*,
2025 BCCRT 1319

B E T W E E N :

MARCELLA CHING KWUN CHAN and CHONG HUNG ANNISSA LAM

APPLICANTS

A N D :

Section 1 of The Owners, Strata Plan LMS 2532

RESPONDENT

A N D :

MARCELLA CHING KWUN CHAN and CHONG HUNG ANNISSA LAM

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. These 2 disputes are about an occupancy bylaw. I have written one decision because both disputes are a claim and counterclaim about the same facts, issues, and parties.
2. The applicants, Marcella Ching Kwun Chan and Chong Hung Annissa Lam (owners), co-own strata lot 21 (SL21) in a strata corporation (strata). The respondent, Section 1 of The Owners, Strata Plan LMS 2532 (residential section), is a section of the strata. The owners say that the residential section wrongfully fined them for breaching the occupancy bylaw and denied their request for a hardship exemption. They seek an order for the residential section to allow the owners' family to remain in SL21 despite the occupancy bylaw, reverse all fines levied by the residential section, and for the strata to refrain from levying further fines. They rely in part on the *Human Rights Code* (Code).
3. The residential section disagrees. It says the owners undisputedly breached the occupancy bylaw and it is obligated to enforce it under the *Strata Property Act* (SPA). It also says that it reasonably denied the owners' exemption request. It adds that it voluntarily cancelled some fines that were not levied in compliance with SPA section 135 and providing the owners additional time to comply with the bylaw.
4. The residential section counterclaims for \$6,000 in fines and an order that the owners comply with the occupancy bylaw. The owners disagree. They say that doing so would require them to rehouse 3 family members, and their finances prevent them from doing so.
5. A lawyer, Peter German, represents the owners. The residential section executive president, SC, represents the residential section.
6. For the reasons that follow, I find the owners have proven their claims. I dismiss the residential section's counterclaims.

JURISDICTION AND PROCEDURE

7. 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.
8. 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 key facts are largely undisputed. Lawyers assisted both the owners and the residential section. The written submissions before me are lengthy and detailed. Neither party requested an oral hearing. So, I find that an oral hearing is not necessary in the interests of justice and fairness.
9. 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.
10. 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.

Preliminary Issue: Are matters about the Code properly before me?

11. The owners allege that the residential section discriminated against them on the basis of family status in breach of Code section 8. The residential section says that the owners raised this issue late in proceeding. It submits that it would be procedurally unfair for the CRT to consider it.
12. I must first outline the procedural history of this dispute. The owners first applied for dispute resolution on June 21, 2023. They did not allege any breach of the Code in

the Dispute Notice. In final reply submissions, the owners made the following submission. They cited *Abernathy v. Stevenson*, 2017 BCHRT 239, and said that in the housing context, protection from discrimination based on family status exists to protect families from being unjustifiably excluded from safe and secure housing.

13. The residential section applied for dispute resolution on June 5, 2024. The residential section provided submissions in this dispute. In response submissions, the owners raised the issue of protection from discrimination based on family status and cited *Abernathy*, much in the same manner as discussed above.
14. In final reply submissions, the residential section submitted that it would be procedurally unfair for the CRT to consider, among other things, arguments about the Code. This was because the owners did not raise this issue in the Dispute Response, allege discrimination in their claim, or mention discrimination in their initial submissions. The residential section said that, alternatively, if the CRT considered this issue, it requested additional time to review and obtain evidence and submit arguments.
15. In early July 2025 I asked CRT staff to contact the residential section to provide it the requested opportunity to review, obtain, and submit evidence, and submit arguments about the Code. After receiving my request, the residential section requested additional time to do so, and I granted it. The residential section provided submissions in excess of 25,000 characters and some evidence in the form of BC Assessment search results. The owners provided a response and no new evidence. The residential section then provided a final reply.
16. With that background in mind, I turn to the parties' arguments. The residential section says that procedural fairness has not been adequately "cured". In particular, it points out that the owners did not amend their Dispute Notice in dispute number ST-2023-004964 or amend their Dispute Response in ST-2024-006249 to include allegations about the Code. The owners disagree and say the CRT should consider the Code and relevant case law about it.

17. The purpose of the Dispute Notice is to define the issues and provide fair notice to the other parties of the claims against them. CRT rule 1.19(1) allows applicants to request amendments to a Dispute Notice. However, rule 1.19(3) says the CRT will not allow amendments during the CRT's decision stage except in extraordinary circumstances.
18. Many CRT decisions, including my own, have previously held claims and claim amounts must be limited to those that are in the Dispute Notice, in the absence of extraordinary circumstances. Part of the reason is procedural fairness. The rights of a party to know the basis on which the case will be decided, and to be heard as to their position, are fundamental aspects of the duty of fairness that apply to any adversarial system in which rights are adjudicated. See *Dhanji v. The Owners, Strata Plan LMS 2472*, 2021 BCSC 284 at paragraph 31.
19. I find this situation differs from a request to amend the Dispute Notice. The owners did not raise any new claims late in these proceedings. Instead, they now raise a different legal basis for their claims. The owners still request the same remedies outlined in the Dispute Notice.
20. I acknowledge that it would have been preferable for the owners to fully articulate the legal bases for their claims in the Dispute Notice, particularly since they are represented by counsel. However, the CRT does not require parties to do so. This is partly because of the CRT's mandate includes providing dispute resolution services in an accessible manner. This also recognizes the reality that the vast majority of parties using the CRT's services represent themselves. It is not unusual for a party in the CRT to provide no legal basis for their claim.
21. It follows that the CRT is not required to ignore a new legal issue when a party raises it, and in particular when arguments about it seem to have merit. I find it would be generally preferable in those circumstances to seek further submissions from the parties, rather than to refuse to consider them.
22. The main question is whether the residential section has been provided procedural fairness. For the reasons that follow, I find that it has.

23. First, I provided the residential section the opportunity to submit further evidence and submissions. I did so in part because the residential section requested it. The residential section provided submissions well in excess of the 20,000 character limit normally reserved for an applicant's arguments per claim under rule 7.3(5). It also provided evidence. A lawyer ably provided the additional submissions. Having reviewed the residential section's submissions in full, I find it has had a proper opportunity to address the issue of the Code.
24. I also note that the owners only provided relatively brief submissions in response to the residential section's arguments about the Code. This means that the residential section did not face an overwhelming multiplicity of new arguments or evidence that it had to respond to.
25. Second, and related to the above, I find the residential section's additional submissions directly address the issues before me. The residential section says that the owners did not sufficiently outline their allegations, so it does not know the case to meet. I disagree and find this is not a situation where a party blindly provided submissions without knowledge of what its arguments should be about. The residential section's additional submissions directly address family status and section 8 of the Code, as discussed below. As noted earlier, the residential also provided final reply submissions after the owners' response.
26. Third, the key facts in this dispute are largely undisputed. There are no issues of credibility. There is no indication that consideration of the Code would require any new or different evidence. This is related to the fact that, as noted earlier, the owners have not raised any new claims.
27. If I am wrong and the CRT rules require the owners to amend their Dispute Notice, I would conclude that extraordinary circumstances exist for the same reasons outlined above.
28. I note that the interests at stake in this this dispute are unusually high. The CRT's decision has the potential to force the owners to move or sell their home. In the strata property context, this is one of the most severe consequences a party can

face. The monetary interests at stake include significant and ongoing fines, as the residential section says the owners are in a continuing contravention of the occupancy bylaw.

29. In general, the stringency of procedural protection is directly proportional to the decision's importance and impact on the parties. See, for example, *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48.
30. While I considered this factor, the owners raised the issue of the Code, though admittedly briefly. I decided I required more information to arrive at a decision that was fair in all the circumstances. I provided the residential section an opportunity to provide submissions and evidence at its request. In my view, this is not the situation described in *Dhanji*, where the court held that a CRT member impermissibly created an issue where none had existed. As stated in *Administrative Law in Canada, 6th Ed.* (Toronto: LexisNexis Canada Inc., 2017), cited in *Dhanji* at paragraph 31, the right to be heard is not a right to the most advantageous procedure. It is only a right to have one's views heard and considered by the decision maker.
31. The residential section also says that the owners had the assistance of legal counsel and that Ms. Chan is a law student. It submits that the CRT should hold the owners to stricter procedural standards than a self-represented party.
32. I acknowledge that it would have been preferable for the owners to squarely raise the issue of the Code earlier. However, I do not find this factor, without more, is determinative.
33. The residential also say that by failing to raise the issue of the Code earlier, the owners deprived both parties from using the CRT's full dispute resolution processes that include negotiation and facilitation.
34. I put less significance on this factor in these particular circumstances. The owners never changed their requested remedies from those in the Dispute Notice. The main remedy the owners request is for the residential section to allow their family to live

in SL21. This is not a situation where a compromise solution is easy to envision. The family must either stay or go. Further, having considered it, the residential section denies breaching the Code. In these circumstances I find it unlikely that the parties were deprived of a meaningful opportunity to settle.

35. In summary, I find the issues about the Code are before me and I consider them below.

Preliminary Issue: Should I refuse to resolve this dispute under CRTA section 11(1)(d)?

36. Under CRTA section 11(1), the CRT may refuse to resolve a claim or dispute within its jurisdiction. The reasons to do so include whether the claim or dispute would be more appropriate for another legally binding process or dispute resolution process under CRTA section 11(1)(a), or resolving the claim or the dispute may involve the application of the Code under CRTA section 11(1)(d).

37. Generally, the CRT will not resolve a human rights claim unless it overlaps with an area where the CRT has expertise, like strata property claims. Outside of that context, the CRT often concludes that the Human Rights Tribunal (HRT) is a more appropriate forum to decide human rights claims, given its expertise. See, for example, the non-binding decision of *AA v. BB*, 2025 BCCRT 801 at paragraph 16.

38. The residential section says that I should refuse to resolve this dispute under CRTA section 11(1)(d). It submits that under CRTA section 121(1) the CRT has specialized expertise over specific types of strata property disputes. However, the HRT is best placed to consider claims about discrimination as it has substantial expertise in this area of law. It says this factor is especially important here because my decision would potentially be one of the first, if not the first, to apply the family status discrimination analysis with a focus on family size to an occupancy limit bylaw. It says that, alternatively, the courts should decide such an issue.

39. In my view, the particular circumstances of this dispute require the CRT to decide this dispute. As noted below, the residential section alleges the owners first breached the occupancy bylaw in August 2022. The owners began their proceeding

in July 2023. It is now September 2025. A significant period of time has passed without any resolution for the parties. The consequences of further delay are harsh for everyone involved. From the perspective of the owners, they would continue to accrue unjustified fines and face uncertainty over their residence. From the perspective of the residential section, its legitimate efforts to enforce the occupancy bylaw would continue to be thwarted.

40. Given these facts, I find that refusing to resolve this dispute would be contrary to the CRT's mandate. Under CTRTA section 2(2)(a), that mandate includes providing dispute resolution services in a manner that is accessible, speedy, economical, informal, and flexible. Under CRTA section 2(2)(d), the CRT mandate also includes accommodating, as reasonably practicable, the diversity of circumstances of the persons using CRT services. I find speed and the circumstances, outlined above, strongly support deciding this dispute.
41. I am also mindful that the owners have not filed a claim with the HRT. Code section 22 says that a complaint must be filed within one year of the alleged contravention with the HRT. The residential section says that by considering issues about the Code, I am depriving it of a limitation defence.
42. I acknowledge this concern. However, I find this supports a conclusion that the CRT is the most appropriate forum to decide this dispute. The logical consequence of the residential section's submission is that issues about the Code must be resolved here at the CRT or not at all.
43. Even if the owners could start a second proceeding in the HRT, this would result in parallel proceedings about the same facts and remedies. In such a scenario the HRT would address arguments about the Code. The CRT would address arguments about the SPA. In my view this would result in a wasteful duplication of judicial resources and a risk of inconsistent findings.
44. For all those reasons, I decline to refuse to resolve this dispute under CRTA section 11(1)(d).

Preliminary Issue: Claims about Harassment or Significant Unfairness

45. The owners allege that members of the residential section harassed them. These allegations include complaints about the issuance of entry fobs, the approval of bylaws, the election of residential section executive members, the maintenance of patios and adjacent landscaped areas, and payment of legal fees. The residential section referred to some of these as the “Additional Allegations and Remedies” in reply submissions.
46. The residential section says I should not consider or decide these allegations. I agree. Claims for harassment do not fall under the CRT’s strata property jurisdiction. Even if they did so, there is no recognized tort of harassment in British Columbia. See *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473 at paragraph 61.
47. These allegations may also be characterized a claim about significant unfairness. However, the owners did not claim any specific remedies about these additional allegations in any event.
48. Given all the above, I find the additional allegations discussed above are not properly before me. To the extent I refer to them in my decision, it will only be for background purposes.

ISSUES

49. The issues in this dispute are as follows:
 - a. Must the residential section reverse the occupancy bylaw fines, refrain from levying further fines, and allow the owners and their family members to stay in SL21?
 - b. Must the owners pay the residential section \$6,000 in fines and comply with the occupancy bylaw?

BACKGROUND, EVIDENCE AND ANALYSIS

50. In a civil proceeding like this one, the owners and residential section must prove their respective claims and counterclaims 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.
51. The background facts are undisputed except where noted. The owner developer created the strata in 1996 under the *Condominium Act* (CA), and it continues under the SPA. The strata is not a party to this dispute.
52. The strata filed new bylaws in April 2002. Bylaw 2.1 defines the residential section to include residential strata lots like SL21. The bylaws call the entity that governs the residential section the "executive council", but I will use the term "section executive" as that is the term used in the SPA.
53. Bylaw 5.5 says that a resident must not use, or permit to be used, a strata lot in the residential section except as a private dwelling home and, unless granted prior approval by the residential section executive, in compliance with certain occupancy limits. A resident must not allow more than 2 persons to occupy a strata lot originally designated by the owner developer as a 1-bedroom unit. A resident must also not allow more than 4 persons to occupy a strata lot originally designated by the owner developer as a 2-bedroom unit. Bylaw 5.5 further says that persons include children but not visitors staying less than 30 days in the strata lot.
54. I find that the owner developer designated SL21 as a 1-bedroom unit. The disclosure statement in evidence shows that it designated 24 strata lots as having 1 bedroom, 12 strata lots as having 1 bedroom and a den, and 6 strata lots as having 2 bedrooms. The disclosure statement does not say how many bedrooms each specific strata lot has. However, architectural drawings from the City of Vancouver (City) show that SL21 only has 1 bedroom. I find this means that the owner developer designated SL21 as a 1-bedroom strata lot for the purposes of interpreting bylaw 5.5.

55. Consistent with the above, an October 2023 email from a property research clerk to the residential section shows the City did not issue any permits to change this original construction. Further, in a November 25, 2024 witness statement, SC said that there are no residential section or strata documents that indicate any past owners of SL21 ever applied for permission to alter SL21 to add more bedrooms. I find this is likely true.
56. The owners disagree and say that around 10 years ago SL21's previous owner, JB, renovated SL21 to add one or more bedrooms. I place little significance on this. Bylaw 5.5 is only concerned with the number of bedrooms as originally designated by the owner developer. I find that subsequent renovations, if any, would not affect bylaw 5.5's occupancy limit.
57. For all those reasons, I find bylaw 5.5's wording limits SL21's occupancy to 2 persons.
58. Bylaw 5.6 says than an owner in the residential section who alleges hardship as a result of the passage of bylaw 5.5 may appeal to the section executive for permission to be exempt from bylaw 5.5 on the basis of hardship, and the section executive must not unreasonably refuse the appeal.
59. The strata and residential section are not the same legal entity. The strata's bylaws contained some inconsistencies on whether the residential section could levy fines for bylaw contraventions. I do not intend to dwell on this, but it requires comment.
60. The strata amended bylaw 30.1 on March 25, 2024. Prior to that bylaw 30.1 said that the strata could fine an owner \$200 for each bylaw contravention and \$50 for each rule contravention. It did not say that a section could levy a fine.
61. Inconsistent with this, bylaw 30.2 said that a section executive or strata council, as the case may be, could determine in its discretion that a resident was in repeated contravention of a strata rule or bylaw. If so, they could levy fines, and those fines would be immediately added to the resident's strata lot's fees.

62. As amended in 2024, bylaw 30.1 says that the strata or section, as applicable, may fine an owner a maximum of \$200 for each bylaw contravention or \$50 for each rule contravention. Bylaw 31.1 generally provides that if an activity or lack of activity that constitutes a contravention of a bylaw continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.
63. The owners do not question the residential section's ability to levy fines under bylaw 30.1. I conclude that, read as a whole, the bylaws permitted the residential section to levy fines at all relevant times in this dispute. I base this partly on the wording of bylaw 30.2, which expressly says the sections have such powers. Further, bylaw 5.6 allows owners to appeal to the section executive for relief. This wording would make no sense if the residential section was unable to enforce bylaws, or at least bylaw 5.5.
64. I note that at many times it was unclear whether strata or residential section was the author of the correspondence in evidence. I have done my best to interpret the writer based on the wording used. The correspondence also indicates the strata manager acted for both the strata and the residential section. So, I will simply refer to them as the manager. Starting in November 2023, the residential section took greater care to differentiate itself from the strata. I note this below.
65. With that in mind, I turn to the chronology. A title search shows that the owners purchased SL21 in August 2022. On August 16, 2022, the owners and 3 other family members moved in. It is undisputed that Ms. Lam is the mother of Ms. Chan and the 3 other occupant family members.
66. In some correspondence the owners said there were only 4 occupants in SL21. The owners admit this was inaccurate. They say they indicated 4 occupants at first because they were "frightened" by the situation and one of the family members lived for a short while with her friends.
67. On August 16, 2022, the manager asked Ms. Chan how many people were moving into SL21. Ms. Chan replied that SL21 had 3 bedrooms and 5 people were moving in.

68. I refer back to SC's witness statement. As stated therein, on August 16, 2022, SC met Ms. Lam. Ms. Lam advised that 5 people lived there. Ms. Lam also said that her husband was in Hong Kong and would return to Vancouver at some point. There is no indication that he lives in SL21. SC advised Ms. Lam about the occupancy bylaw and said it limited occupancy to only 2 people in SL21.
69. I will note here that listing sheets from November 2020, April 2021, and April 2022 all state that SL21 had 3 bedrooms. It also measures 986 square feet. The owners' August 2022 correspondence with the manager and the owners' discussions with SC all indicate that the owners genuinely believed SL21 had 3 bedrooms and were unaware that the occupancy limit for a 1-bedroom strata lot applied. Ms. Lam says, and I accept, that the seller's realtor advised her that SL21 had 3 bedrooms. I find that the owners essentially made a mistake in good faith when they purchased SL21.
70. On August 17, 2022, Ms. Lam emailed the residential section manager and asked for an exemption to bylaw 5.5.
71. On August 18, 2022, the manager sent Ms. Lam a letter and advised that the strata council had received a complaint that 4 or 5 residents were living in SL21 in breach of bylaw 5.5. The manager provided Ms. Lam an opportunity to respond in writing or to request a hearing.
72. On August 19, 2022, the owners met SC again. The owners recorded the conversation without SC's knowledge. SC advised she became aware that SL21 was marketed as a 3-bedroom unit and advised the manager about this. SC said that it was not the strata's responsibility to police how SL21 was marketed.
73. In an August 25, 2022 letter, the manager advised that the "council" had denied Ms. Lam's request. The letter is vague on whether this referred to the strata council or section executive. In any event, it provided Ms. Lam 6 weeks to comply with bylaw 5.5 by reducing SL21's occupancy to 2 persons.

74. Also on August 25, 2022, Ms. Lam emailed the manager and specifically requested an exemption to bylaw 5.5 under bylaw 5.6. This is the hardship exemption, discussed earlier. She also requested a hearing.
75. On September 2, 2022, the manager asked the owners for financial documents and proof of children and dependants. The owners did not provide this information as they felt “deeply uncomfortable with this invasive request for private information”. I find there was nothing inappropriate about this request. This information was directly relevant to the hardship exemption request.
76. The residential section held an electronic hearing on September 12, 2022. A September 19, 2022 letter shows the residential section denied Ms. Lam’s request.
77. This letter serves as an example of the strata and residential section at times referring to themselves as the same entity. The letter says it is written by the manager for the strata. However, it refers to a decision by the residential section executive to fine the owners. It then says the owners may respond to the strata council but says the section executive may issue a decision if it does not receive a response in time. It then says the owners may contact the manager, an agent for the strata, for more information. That said, based on the surrounding circumstances, I find the manager was likely advising of the residential section’s decisions.
78. The October 12, 2022 residential section executive meeting minutes show that it decided to levy a \$200 fine. It sent the owners 2 letters on October 24, 2022 advising them about the fine. It also attached correspondence with the City of Vancouver and architectural drawings in connection with the number of bedrooms in SL21. The residential section also cited bylaws 30.1(a), 30.2, and 31.1. It provided the owners an opportunity to respond or request another hearing. A statement of account shows that the residential section levied the \$200 fine on SL21’s account on November 10, 2022.
79. Dr. German began representing the owners around this time, as shown in an October 14, 2022 letter to the manager. Dr. German requested an in-person hearing and exchanged correspondence with the manager in the following weeks.

80. On February 28, 2023, the lawyers for the residential section wrote the owners. They said that the residential section had decided to levy a fine of \$200 for a breach of bylaw 5.5. They also said that the residential section agreed to waive the fine if the owners remedied the contravention by June 19, 2023. They said that otherwise the \$200 fine would remain on SL21's account, and the residential section would potentially levy additional fines every 7 days thereafter if the breach continued.
81. On May 30, 2023, the manager wrote to the owners to remind them of the June 19, 2023 deadline. They said they wrote on behalf of the strata, though I find it likely they meant the residential section executive. In any event, they warned that the owners had to comply with bylaw 5.5. or face a fine of \$200 every 7 days. They provided the owners an opportunity to respond in writing or to request a hearing.
82. The owners applied for dispute resolution on June 21, 2023. CRT notes indicate the owners first named the strata as the respondent. The applicants amended the respondent to be the residential section on October 27, 2023.
83. The July 31, 2023 residential section executive meeting minutes show that the section executive decided to levy fines of \$200 every 7 days until the owners complied with bylaw 5.5.
84. On August 3, 2023, the manager advised the owners that they had received a written complaint the owners had breached bylaw 5.5. The manager said they represented the strata, though this may have been an error. They said the strata would levy fines of \$200 every 7 days until the owners complied with bylaw 5.5. They provided the owners an opportunity to respond in writing or to request a hearing.
85. The owners requested a second hearing, this time in person, which the residential section executive held on September 6, 2023. I note there is some ambiguity in the evidence as to whether the strata or residential section held the hearing, but I find the latter is more likely. Dr. German attended for the owners.

86. The residential section document its decision in a September 19, 2023 letter to the owners, though again some of the wording strongly suggests it came from the strata. The residential section advised it would set another hearing date after providing the owners a copy of the bylaws. Other correspondence shows the residential section did so later that month. The residential section also clarified what procedures it would use in terms of questions and answers.
87. The residential section also said that it had reversed “any previous fines” levied as it felt these did not comply with the procedural requirements of SPA section 135. However, it said that the owners were still in breach of bylaw 5.5. It said that the owners could dispute these allegations at the next hearing.
88. The residential section held the next hearing on November 9, 2023. Ms. Chan and Dr. German both attended. Ms. Chan also recorded the audio of this meeting without the section executive’s knowledge. From listening to it, I find the owners’ comments focused on whether it was proven that the owners breached bylaw 5.5. The owners say the residential section cut off their submissions prematurely, but I find they effectively communicated their position in full.
89. The November 9, 2023 minutes, as amended on February 7, 2024 at the residential section executive meeting, indicate that the residential section determined that the owners were in contravention of bylaw 5.5 and it would levy a \$200 fine. It also decided that if the contravention continued, it would levy a \$200 fine every 7 days. I note the amendments helpfully clarify that the residential section held the November 2023 hearing and levied the fine, rather than the strata.
90. In a November 16, 2023 decision letter, the manager wrote that they were specifically representing the residential section. They said that the letter was about bylaw enforcement proceedings that started with the August 3, 2023 letter. The residential section decided that the owners were in breach of the bylaws as they had admitted to having 5 occupants in SL21 outside the hearing. It also decided to levy a fine of \$200 every 7 days so long as the owners remained in breach.

91. In a May 7, 2024 demand letter, the residential section's lawyers noted that the residential section had levied a fine of \$200 on November 15, 2023, and further fines of \$200 every 7 days thereafter. As of May 2, 2024, the fines totaled \$5,200. The lawyers said the residential section would continue to levy these fines as the owners continued to contravene the bylaws.
92. The May 14, 2024 residential section meeting minutes indicate that by then the fines totaled \$6,000. The residential section decided to continue levying weekly fines so long as the bylaw violation persisted.
93. The residential section applied for dispute resolution and filed its counterclaim on July 2, 2024.

Must the residential section reverse the occupancy bylaw fines, refrain from levying further fines, and allow the owners and their family members to stay in SL21?

94. I will first consider the parties' argument about the Code. The Code applies to strata corporations. In the non-binding decision of *The Owners, Strata Plan LMS 2900 v. Mathew Hardy*, 2016 BCCRT 1, the CRT noted that this is because strata corporations provide management services to the public when they enforce bylaws for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation.
95. Sections in a strata corporation serve similar roles. Here, for example, the residential section seeks to enforce a bylaw. So, I find that the Code applies to the residential section as well given its role and close association with the strata.
96. SPA section 121(1)(a) says that a strata corporation's bylaw is not enforceable to the extent it contravenes the Code. Similarly, Code section 4 says that in the event of a conflict between the Code and another piece of legislation, the Code prevails.
97. Code section 8 prohibits the residential section from discriminating against owners in the services it provides on the basis of certain listed characteristics. One of these is family status. For the owners to succeed they must show that they have a

protected characteristic, they suffered an adverse impact with respect to the residential section's service, and the protected characteristic was a factor in the adverse impact. If the owners establish a prima facie case of discrimination, the burden shifts to the residential section to establish a bona fide reasonable justification for its conduct. This includes whether the strata satisfied its duty to accommodate the owners to the point of undue hardship. See, for example, *Ciesielska v. Eagle Crest Apartments and another*, 2023 BCHRT 226 at paragraph 12.

98. A strata corporation is not in contravention of the Code until it is aware of the discriminatory effect. See, for example, *Brown v. Strata Plan LMS 952*, 2005 BCHRT 137 and *Menzies v. Strata Plan NW 2924*, 2010 BCHRT 33. Here, the owners notified the manager and SC about their family size on the same day they moved in. So, I find the residential section became aware of the potentially discriminatory effect of its occupancy bylaw at that time.
99. The owners essentially allege that family size is part of the protected characteristic of family status. They allege that they suffered adverse impacts from bylaw 5.5 due to their family status. These are the fines and logical consequences that include either breaking up the family or forcing the family to leave SL21. The owners say their family status was therefore a factor, and perhaps the sole factor, in the adverse impacts.
100. The residential section says family status refers to the composition of a family and not its size. It says that bylaw 5.5 is concerned with the number of occupants and does not discriminate against any particular family type, such as families with single parents or children.
101. The term family status is not defined in the Code. Numerous HRT decision have considered this term. HRT decisions are not binding. However, I have considered the reasoning in them with care given he HRT's considerable experience in interpreting the Code.

102. In *Abernathy*, cited above, the complainant was the mother of a family of 6. She alleged that the respondent refused to rent property to her because of her family status, and in particular, the size of her family. She alleged discrimination contrary to Code section 10. This section prohibits landlords from denying a person the right to occupy, as a tenant, space that is represented as being available because of their family status.
103. The respondent said that they refused to rent to the complainant based on the size of her family, and not because she had children. He argued that the Code did not protect against discrimination based on family size. He applied to dismiss the complaint on the basis that the facts alleged could not violate the Code, and that the complaint had no reasonable prospect of success.
104. At paragraph 14, the HRT said, “There is no question that family status includes the size and composition of a family”. At paragraph 18, it concluded that the complainant had alleged facts which, if proven, could violate the Code. The HRT also found that Code section 10 exists in part to protect families from being unjustifiably excluded from safe and secure housing.
105. Similarly, in *Wickham v. Mesa Contemporary Folk Art and others*, 2004 BCHRT 134 at paragraph 9, the HRT reviewed case law and concluded that “a decision based on the size of a family, or the number of children in a family, may amount to a breach of the Code on the basis of family status”.
106. I also find the case of *James and Rowland v. The Owners, Strata Plan VR1120*, 2023 BCHRT 220 relevant. The alleged facts were as follows. The complainants lived in a 1-bedroom strata lot in a strata corporation. A bylaw created an occupancy limit of 2 persons for 1-bedroom strata lots.
107. While living in the strata corporation, the complainants had 2 children. After the complainant’s first child was born, the strata corporation advised the complainants that they were in breach of the strata’s occupancy bylaw and levied fines for the breach. The complainants alleged discrimination under Code section 8.

108. The strata corporation applied to dismiss the complaint. The HRT dismissed the application. It noted at paragraph 53 that enforcing bylaws equally could result in discrimination, and that strata corporations have to be careful not to strictly enforce a bylaw in a way that might have a discriminatory effect. Citing paragraph 15 of *Abernathy*, the HRT wrote that in the housing context, protection from discrimination based on family status “exists precisely to protect families, and others who may be screened out of tight housing markets, from being unjustifiably excluded from safe and secure housing”.
109. Several HRT decisions, including *James and Rowland*, have cited *Abernathy* with approval. In *Ciesielska* the HRT referred to *Abernathy* at paragraph 14 and said that family status included both family size and composition.
110. As noted above, the residential section says family status does not include size on its own. It says the HRT erred in *Abernathy*. It says that the cases the HRT cited, specifically *Fakhoury v. Las Brisas Ltd. (1987)*, 1987 CanLII 8549 (ON HRT) and *Cha v. Hollyburn Estates Ltd.*, 2005 BCHRT 409, were wrongly interpreted by it. The residential section says that the protection afforded by Code section 8 is meant to apply to situations more like those in *James and Rowland*, where the change in family status occurred because the complainants had children after moving in.
111. In *Cha* the landlord limited occupancy of a 1-bedroom apartment to 2 people. A family of 2 adults and a baby applied to the landlord for a 1-bedroom apartment. The landlord refused and said that because they were a family, they could only rent a 2-bedroom apartment. The HRT determined that the landlord discriminated against the family based on family status.
112. In *Fakhoury*, the respondents refused occupancy of a 2-bedroom apartment for the complainant and her 3 children. The board held that the respondents rented 2-bedroom units to families with 4 persons, but only if 2 persons were parents and 2 were children. The Board determined that landlord’s policies discriminated against certain kinds of families.

113. With that in mind, I turn to my findings. I conclude that Code section 8, much like Code section 10, exists in part to protect families from being unjustifiably excluded from safe and secure housing. Section 8 says that a person must not, without a bona fide and reasonable justification, deny to or discriminate against a person or class or persons any accommodation, service, or facility customarily available to the public because family status. I find this wording is broad enough to conclude that safe and secure housing is one of the objects of Code section 8.
114. In particular, I find the Code protects families that may be turned away because they have children. This is a recurring issue in the HRT cases about housing. In *Wickham and Wickham* at paragraph 9, the HRT said, “The law is also clear that discrimination on the basis of family status includes discrimination on the basis that a person is associated with children”. I agree this is the case.
115. I find the Code’s wording does not limit this protection of families with children to a scenario where owners initially complied with a strata’s occupancy limit bylaw, only to breach it later because of the birth of a child. I have no reason to conclude that families with children born outside of this specific scenario would require or deserve less protection.
116. Consistent with my conclusion, the Supreme Court of Canada has repeatedly said that human rights legislation should be given a large and liberal interpretation to best ensure the attainment of its objects. See *Canadian National Railway Co. v. Canada (Human Rights Commission)* and *Action travail des femmes*, 1987 CanLII 109 (SCC). Family status is not a defined term in the Code. So, I find that interpreting family status in a broad manner, with respect to size, is consistent with a large and liberal interpretation.
117. In contrast to this, I find the residential section’s interpretation of family status would draw a bright line where none exists. In my view family size and composition, while not the same, are inextricably connected. Occupancy limits will necessarily affect the composition of families that live in a residence. For example, an occupancy limit of 1 person for each strata lot will effectively disqualify all families

and children from living there. Similarly, an occupancy limit of 2 will likely limit any children in the strata corporation to those in single parent households. This will severely limit the pool of families with children that could live there. Size and composition affect each other. For this reason, I find family status logically includes both.

118. Further, I find the reasoning in *Abernathy* persuasive with respect to its interpretation of family status under Code section 10. In my view, it is logical to conclude that family status should have the same meaning under Code section 8.

119. I agree with the residential section that the situations in *Fakhoury* and *Cha* are not the same as here. However, I find the HRT in *Abernathy* referred to these decisions as part of its reasoning, rather than as binding precedent. In particular, the HRT cited *Fakhoury* at paragraph 15 for its discussion of the purpose behind protecting families in their search for rental accommodation. I find the HRT did not misstate what *Fakhoury* or *Cha* stood for.

120. The residential section accurately points out that *Abernathy* and *James and Rowland* were both HRT decisions about applications to dismiss the complaint, rather than decisions on the merits. I acknowledge the context of these decisions. However, I still find it appropriate to consider their reasoning, even if the conclusions drawn are obiter and not from final decisions.

121. The residential section says that concluding family size is under the protection of family status would lead to “absurd” results. It says this might lead to families of 4, 5, 6, or more individuals living in a one-bedroom apartment, causing overcrowding. I do not find that overcrowding would necessarily follow. As noted below, the law already allows a strata corporation or section to prove justification for its conduct, including any adverse impact such as overcrowding. Put another way, the Code contains safeguards to avoid absurdity.

122. Further, the specific issue before me is whether or not bylaw 5.5 as applied in the particular facts of this dispute is contrary to the Code. A finding in favour of the

owners does not mean that all bylaws restricting occupancy in a strata lot will be unenforceable in all circumstances.

123. In summary, I find that family status under Code section 8 includes both the size and composition of a family. I find that the owners have a protected characteristic as a family of 5 members. Specifically, Ms. Lam is the mother of Ms. Chan and 3 other family members. I find they have suffered an adverse impact as they were fined under the occupancy bylaw and currently face the prospect of breaking up their family or moving. I find family size was the main, if not sole, factor in the residential section issuing the fines, and as such, the main reason for the adverse impacts suffered by the owners. The owners have therefore established a prime facie case of discrimination.
124. I next move on to the residential section's justification for its conduct. In order to justify the adverse impact, the residential section must prove that 1) it adopted the standard for a purpose rationally connected to the function being performed, 2) it adopted the standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate purpose, and 3) the standard is reasonably necessary for the accomplishment of that legitimate purpose. This third element encompasses the residential section's duty to accommodate the owners to the point of undue hardship. See *James and Rowland* at paragraph 47.
125. In *Abernathy* at paragraphs 22 to 23, the HRT noted that some potential justifications for exclusion in the rental context could be strains on the building water supply, insufficient parking, or legitimate health and safety considerations. However, the landlord would be required to bring sufficient evidence to justify the exclusion of a protected group.
126. The residential section has the burden to prove its justification. I find it has not done so for the following reasons.
127. The residential section refers to overcrowding, as noted earlier. It also points out that without the occupancy bylaw, the strata's building would face problems that

include increased wear and tear. I find this means the objects of bylaw 5.5 include preventing overcrowding and accelerated wear and tear.

128. The residential section also says the National Occupancy Standard developed by the Canada Mortgage and Housing Corporation (CMHC) provides that a suitable number of occupants per bedroom is 2 persons. The residential section provided a website link to the standards.

129. I note that parties are instructed not to provide website links as evidence because website content can change over time. So, I did not rely on the link in my decision. In any event, I accept the residential section's summary of the standards. Presumably CMHC arrived at them in a reasonable and thoughtful manner. However, that is not the test. The residential section must show that allowing occupancy that exceeds the standard of 2 persons per bedroom would cause undue hardship for the residential section.

130. Here, there is no evidence to show how allowing 5 persons to occupy SL21 instead of 2 would lead to overcrowding or accelerate wear and tear in the residential section. I acknowledge that common sense suggests that 5 persons leads to more crowding than 2, and more people leads to more wear and tear. However, there is nothing to show that the impact would be anything more than trivial. Consistent with my conclusion, bylaw 5.5 also allows visitors to exceed the occupancy limit so long as their stay is limited to less than 30 days. So, I find it unproven that the standard of 2 persons per bedroom is reasonably necessary for the residential section to accomplish its legitimate purposes.

131. I also find it unclear if the CMHC standard is applicable here. The owners say that there are, in fact, 3 bedrooms in SL21. I find this is likely the case as it is consistent with the fact that several listing sheets in evidence say SL21 has 3 bedrooms. The residential section provided photos that show SL21 had 2 bedrooms and a solarium, but I accept the owners' explanation that these photos are outdated.

132. Aside from this, the residential section did little to describe or show what negative impact it would suffer without enforcing bylaw 5.5 against the owners.

133. I am also not satisfied that the residential section accommodated the owners to the point of undue hardship. While the residential section reversed some fines, it said this was because it did not comply with the procedural requirements of SPA section 135. Further, even if it reversed the fines for other reasons, this would only lessen the adverse impact of fines for the owners, without eliminating it.
134. The residential section provided the owners time to move as it gave them the June 19, 2023 deadline, mentioned above. However, this only gave the owners additional time to comply. The residential section also held hearings and considered a hardship exemption request but proceeded with the fines as noted earlier.
135. For all those reasons, I find that the owners have proven discrimination in breach of Code section 8. I order the residential section to immediately refrain from enforcing bylaw 5.5 against the owners. I also order the residential section to immediately reverse all fines on SL21's strata lot account in connection with enforcing bylaw 5.5. I have worded by orders in this manner so that the strata or residential section may enforce other bylaws against the owners if necessary.
136. Given my findings, I find it unnecessary to consider whether the residential section unreasonably refused the owners' appeal under bylaw 5.6.

Issue #2. Must the owners pay the residential section \$6,000 in fines and comply with the occupancy bylaw?

137. I have found in the circumstances that bylaw 5.5 contravenes the Code. Under SPA section 121(1)(a) I find it is not enforceable against the owners. It follows that I dismiss the residential section's counterclaims for \$6,000 in fines and an order that the owners comply with occupancy bylaw 5.5.

CRT FEES AND EXPENSES

138. 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 therefore order the residential section to reimburse the owners for CRT fees of \$225.

139. The owners also claim \$10,000 for legal fees. There is no evidence to support this claim, such as a receipt or statement of account. So, I dismiss it.

140. The residential section claims \$35,000 for legal fees. As they were the unsuccessful party, I dismiss this claim.

141. The residential section must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDERS

142. I order the residential section to immediately refrain from enforcing bylaw 5.5 against the owners.

143. I order the residential section to immediately reverse all fines on SL21's strata lot account in connection with enforcing bylaw 5.5.

144. Within 30 days, I order the residential section to reimburse the owners \$225 in CRT fees.

145. I dismiss the owners' claim for legal fees.

146. I dismiss the residential section's claims.

147. The owners are entitled to post-judgment interest under the *Court Order Interest Act*.

148. 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.

David Jiang, Tribunal Member