Date Issued: May 7, 2024
Files: CS-000121

Indexed as: Oostlander v. The Owners, Strata Plan LMS2891 and others, 2024 BCHRT 141

IN THE MATTER OF THE *HUMAN RIGHTS CODE,*
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

Jeanette M. Oostlander

COMPLAINANT

AND:

The Owners, Strata Plan LMS2891 and FirstService Residential BC Ltd. dba FirstService Residential and Carol Storoz and Diane Peel and Corinne Bergdal

RESPONDENTS

REASONS FOR DECISION
APPLICATION TO AMEND A COMPLAINT
Rules 24(4)(a) and (b)
APPLICATION TO DISMISS A COMPLAINT
Section 27(1)(c)
APPLICATION TO FILE FURTHER SUBMISSIONS
Rule 28(5)

Tribunal Member:	Shannon Beckett
On their own behalf:	Jeanette Oostlander
Counsel for the Respondents:	Kainat Rizvi

I INTRODUCTION

[1] Jeanette Oostlander is a woman of Philippine origin and ancestry. She owns a strata unit in a building managed and maintained by the respondent strata corporation, Owners of Strata Plan LMS2891. The strata corporation exercises its powers and duties through a strata council [**Council**] with the assistance of a strata management company, the respondent FirstService Residential BC Ltd. dba FirstService Residential [**FirstService**]. At the time of the events giving rise to this complaint, Carol Storoz was the Council president, Diane Peel was a member of the Council, and Corrine Bergdal was the strata manager of FirstService.

[2] Ms. Oostlander alleges that the Owners of Strata Plan LMS2891, FirstService, Carol Storoz, Diane Peel and Corrine Bergdal, [together, the **Respondents**] discriminated against her in the area of services, based on her race, ancestry, place of origin and colour, contrary to s. 8 of the *Human Rights Code* [***Code***]. In particular, she alleges that after she told the Council in September 2019 that she was Filipino, they changed the location of two Council meetings she planned on attending. She says that Council meetings are normally held in Ms. Storoz' unit, but that on the two occasions she advised that she planned to attend the meetings, the Council changed the location to the utility room in the Strata's parkade, where the building's Filipino cleaners stored their brooms and cleaning supplies. Ms. Oostlander says the change of the meeting location was insulting and humiliating, and that it deprived her of the ability to participate in the governance of her strata.

[3] The Respondents deny discriminating and argue that the Council decided to change the locations of the two meetings in good faith, due to renovations and remediations in Ms. Storoz' unit at the time. They say that Ms. Oostlander is a well-known member of the Filipino community, and that members of the Council were aware, before September 2019, that she was Filipino. Additionally, they say that over the years Ms. Oostlander has attended several Council meetings in Ms. Storoz' unit, and that another member of the Council is also Filipino, and regularly attends Council meetings in Ms. Storoz' unit.

[4] This decision deals with three outstanding preliminary applications: Ms. Oostlander's application to further amend her complaint [**Amendment Application**]; the Respondents' application to dismiss the complaint [**Dismissal Application**]; and Ms. Oostlander's application to file additional submissions on the Dismissal Application [**Sur-Reply Application**].

[5] Resolution of both the Amendment and Sur-Reply Applications requires consideration of what is procedurally fair in the circumstances, and what would best facilitate the just and timely resolution of the complaint. Resolution of the Dismissal Application turns on whether Ms. Oostlander has taken the allegation that her Filipino ancestry was connected to the decision to change the meeting location, out of the realm of conjecture.

[6] For the following reasons, I:

1. grant the Amendment Application in part,
2. grant the Sur-Reply Application and
3. grant the Dismissal Application and dismiss the complaint as amended in its entirety.

[7] In coming to these decisions, I have considered all the information filed by the parties. In these reasons, I only refer to what is necessary to explain my decision. I make no findings of fact.

II BACKGROUND

A. Events Giving Rise to the Complaint

[8] The events giving rise to the complaint appear to have started in September 2019, after a Filipino woman who worked as a cleaner at the strata complex resigned from her employment. On September 10, 2019, Ms. Oostlander sent the Council a letter advising that prior to resigning, the cleaner told Ms. Oostlander that she was "stressed out" by the demands put on her by a person on the Council. In her letter, Ms. Oostlander "reminded" the Council that the cleaner was "not a servant", and stated that the Filipino cleaners who worked at the strata complex "are visible minority immigrant women and ought not be exploited".

Importantly for the purposes of these applications, Ms. Oostlander also described her shared background with the cleaner and stated, "we are both Filipino and we spoke in Tagalog".

[9] On September 16, 2019, shortly after Ms. Oostlander sent the letter, she contacted Ms. Bergdal, and stated "I have decided to attend the next strata council meeting. The members may have questions about the former caretaker".

[10] On September 17, 2019, Ms. Storoz emailed the Council requesting permission to replace her carpet and paint her unit.

[11] On September 25, 2019, at 7:58 am, Ms. Oostlander again wrote to Ms. Bergdal requesting to attend the next Council meeting. Ms. Bergdal wrote back at 11:00 am the same day and told Ms. Oostlander that she had passed Ms. Oostlander's correspondence on to the Council and was "waiting on advisement".

[12] Ms. Oostlander wrote back a few minutes later at 11:20 and stated:

> hi Corinne,
> sorry -- but an owner cannot be restricted from requesting a hearing at a council meeting.
> See section 34 of SPA below:
> […]
> **Please advise me within 7 days of this email if I have to apply to the CRT for a ruling.**
> Best!
> Jeanette [emphasis added]

[13] That same day, at 11:33 am, Ms. Bergdal wrote to Ms. Storoz and forwarded Ms. Oostlander's request to attend the next Council meeting, along with what Ms. Bergdal described as "correspondence". The "correspondence" was not identified or attached to the cover email I reviewed, but it appears from the emailed responses from the Council that it included at least Ms. Oostlander's September 10 letter about the Filipino cleaner. At 11:55, Ms. Storoz, forwarded the materials onto the rest of the Council and stated:

> Please read attached correspondence.
> Do you agree or not to JO's attendance at the next meeting?
> Please respond asap to me.

> **Also, will someone please offer to host the meeting if the majority agrees to hearing.**
> Many thanks,
> Carol [emphasis added]

[14] At 12:29pm, Ms. Peel replied to Ms. Storoz' email and copied the rest of the Council and stated:

> Not sure how attending a Strata Meeting will make a difference. The caretaker has only been asked to perform duties that are within the scope of our contract with BarEl – period.
>
> If we agree to have her come to a meeting…I suggest we meet in the caretaker's room downstairs, **a neutral location**. [emphasis added]

[15] At 4:34 pm, Ms. Storoz wrote to Ms. Bergdal and advised:

> Council welcomes JO to the next Strata meeting: however, before she attends, please ask her to specifically identify the issue(s) she would like to address, in writing.
> Also, give her a time limit. We will have a lot on our agenda.
> **We will be meeting in the Caretaker's office as my unit is undergoing a reno.**
> Thanks,
> Carol [emphasis added]

[16] On September 26, 2019, at 12:18 pm, Ms. Bergdal wrote back to Ms. Oostlander and advised her:

> Council welcomes you to the next Strata meeting on Thursday October 3, 2019, at 6:30pm within the Caretaker's Office on P1 in the parkade.
>
> Council requests that in advance of the meeting and your attendance, please specifically identify the issue(s) you would like to address, in writing, that are within the purview of the Council's role.

[17] At 7:37 pm on September 26, Ms. Oostlander wrote back to Ms. Bergdal and advised she wished to speak at the October 3 Council meeting about a strata unit which was being rented on the same floor as her strata unit. She made no mention of speaking to the issue of the Filipino cleaner. At the end of her email, she requested confirmation that the meeting was being held in the Caretaker's office. On October 1, Ms. Bergdal sent Ms. Oostlander and email confirming the Caretaker's office as the location of the meeting.

[18] According to the Council Meeting minutes, Ms. Oostlander appears to have attended the October 3 meeting and discussed the issue of the rental unit. The minutes document that Ms. Oostlander, referred to as "an Owner" in the minutes, attended the meeting for 13 minutes. The Respondents say that after she finished her submission and left, the Council remained in the Caretaker's office for the rest of the meeting, which lasted approximately 2.5 hours.

[19] Following the October 3 meeting, the Council convened an additional meeting on October 29. The meeting minutes indicate this meeting was held in Ms. Storoz' unit.

[20] After she attended the October 3 meeting, Ms. Oostlander went back and forth in writing with the Council about the rental issue she had raised concerns about. She requested documents and was provided with documents from FirstService. She says she was of the view that Ms. Peel, the owner of the unit being rented, was in violation of the Strata Bylaws, and that the breach of the bylaws could result in Ms. Peel paying over $40,000 in fines. As a result, she requested another meeting with the Council to discuss her view of the matter.

[21] On December 10, Ms. Oostlander sent an email to Ms. Bergdal advising that "this week you will receive by registered mail my request for a meeting with council pursuant to s. 34.1 of the Strata Property Act." On December 12, Ms. Bergdal wrote back and told Ms. Oostlander she would advise her when the January Council meeting was set as soon as it was confirmed. On December 16, Ms. Bergdal advised Ms. Oostlander that the next Council meeting was set for January 9, 2020, at 6:30 pm in the Caretaker's office. Approximately half an hour later Ms. Oostlander wrote back and confirmed "I will attend the council meeting on Jan. 9.2020 at 6:30 in the Caretaker's office".

[22] On December 22, 2019, Ms. Oostlander sent Ms. Bergdal a lengthy letter which she asked Ms. Bergdal to send to each of the Council Members. Despite being sent on December 22, the letter was dated December 24, and in it, Ms. Oostlander raised, for the first time, a concern about the meeting taking place in the Caretaker's office. She wrote:

> I confirmed my attendance at the Jan. 9. 2020 meeting with council at 6:30 p.m. Corrine advises that this meeting will again take place in the caretakers office, a room in the parkade. As you also know, when I met with council in September to discuss this issue, I was also made to attend the meeting in the caretakers office.
>
> My position on the location of the meeting:
>
> I understand that all other council meetings (whether there are guests or not in attendance) take place in Carol's condo.
>
> **I, therefore, conclude that making me meet council in the Caretakers office is a form of harassment, meant to discourage my attendance.**
>
> Each one of you who condones, participates in this harassment, including the property management company FSR.
>
> **At the very least, it is a form of microaggression (defined below) because I, like the past and present building caretakers, am Filipino** microaggression is a term used for brief and commonplace daily verbal behavioral or environmental indignities whether intentional or unintentional that communicate hostile, derogatory or harmful prejudicial slights and insults toward any group, particularly culturally marginalized groups.
>
> …

[23] On December 23, 2019, at 5:42 pm, Ms. Oostlander emailed Ms. Bergdal and said "I am now able to attend. Kindly advise all the strata council members." Ten minutes later, at 5:52 pm, Ms. Oostlander emailed Ms. Bergdal again, this time advising that she would not be attending the January 9 Council meeting.

[24] On December 31, 2019, Ms. Bergdal wrote to Ms. Oostlander to confirm that Ms. Oostlander would not be attending the January 9 Council meeting.

[25] Also on December 31, 2019, the Respondents say that Ms. Storoz experienced a water leak in her unit which caused disruption to her unit. The Respondents say plumbers and a restoration company attended, and that Ms. Storoz telephoned members of the Council to suggest the January 9 council meeting take place in the Caretaker's office. The Respondents say that the Council members advised Ms. Storoz that despite the level of disruption in her unit, they were content to meet there.

[26] On January 8, 2020, Ms. Oostlander provided a three-page written submission to the Council setting out her concern that Ms. Peel's rental of her unit was violating the Strata Bylaws. In the submission Ms. Oostlander made a number of requests about issuing a substantial fine to Ms. Peel, and requiring Ms. Storoz and Ms. Peel to recuse themselves from voting on the issue at the Council meeting.

[27] On January 9, the Council meeting took place in Ms. Storoz' unit.

B. Procedural History

[28] This complaint has a complicated procedural history which has resulted in the three applications currently before the Tribunal. I set out the pertinent history below.

- **April 9, 2020** - Ms. Oostlander filed her original complaint.
- **July 6, 2020** - The Respondents filed their response to the complaint.
- **October 23, 2020** – The Respondents filed an application to dismiss the complaint.
- **November 30, 2020** - Ms. Oostlander filed a four-page amendment to her original complaint which provided the names of three of the individual respondents, and which added further particulars.
- **December 22, 2020** - The Tribunal accepted the November 30 amendment for filing and set a submission schedule for the Respondents to file an amended response to the complaint and an amended dismissal application.
- **December 23, 2020** – Ms. Oostlander filed a further two-page amendment to her original complaint, again, adding further particulars to the complaint.
- **December 29, 2020** – The Tribunal accepted the December 23 amendment, and set a further submission schedule for the Respondents to file an amended response to the complaint and an amended dismissal application.
- **January 15, 2021** – The Respondents filed an amended response to the complaint, and an amended dismissal application.
- **February 18, 2021** – Ms. Oostlander filed her response to the amended dismissal application.
- **March 18, 2021** – The Respondents filed their reply to Ms. Oostlander's response to the amended dismissal application.
- **March 22, 2021** – Ms. Oostlander filed an application to make a further submission on the amended dismissal application.

- **June 24, 2022** – Ms. Oostlander filed an application to further amend her complaint.
- **August 19, 2022** – Ms. Oostlander asked the Tribunal to withdraw the December 23, 2020, amendment, which the Tribunal accepted on December 29, 2020.
- **October 28, 2022** – Ms. Oostlander filed a 31-page document and asked that it be forwarded to the Member deciding the Amendment Application. The Tribunal accepted this document as an "amendment" to the Amendment Application. Subsequently, on December 16, 2022, Ms. Oostlander clarified that she filed these documents in support of the Amendment Application. I have considered them as she has clarified.
- **December 14, 2022** – The Respondents filed their response to the June 24, 2022, Amendment Application, including the documents Ms. Oostlander submitted on October 28 in support.

III DECISION

A. Amendment Application

[29] Rule 24(4) of the Tribunal's Rules of Practice and Procedure requires a complainant to apply to amend their complaint in the following three situations:

a) if the amendment adds an allegation that occurred outside of the time limit for filing the complaint under section 22 of the *Code*;
b) if there is an outstanding application to dismiss the complaint; or
c) if the hearing date is less than four months from the date the amendment is filed.

[30] The overarching purpose of the Tribunal's Rules is to facilitate the just and timely resolution of complaints. The requirement that a party must apply to amend their complaint in the circumstances set out under Rule 24(4), is generally aimed at ensuring fairness between the parties and within the Tribunal's complaint process.

[31] In the present case, there is an outstanding application to dismiss the complaint, so Rule 24(4)(b) is engaged. Although the Respondents submit that proposed amendment is untimely, which, on its face, engages Rule 24(4)(a), as I explain below, I find it is most appropriate in the present case to consider the Amendment Application under Rule 24(4)(b).

Rule 24(4)(a)

[32] Rule 24(4)(a) is concerned with the question of whether an amendment is timely for the purposes of the *Code*. Its purpose is to prevent a complainant from using the Tribunal's amendment process to circumvent the statutory time limit for filing complaints set out in s. 22 of the *Code*.

[33] The Respondents argue that Ms. Oostlander has had numerous opportunities to amend her complaint, and that "a subsequent amended Complaint filed over two years since the submission of the Application to Dismiss is late and not timely." The Respondents do not reference Rule 24(4)(a) in their submissions, or provide any authority on its application in the present case. Likewise, Ms. Oostlander does not reference Rule 24(4)(a) in her submissions, and indeed appears to have focussed her very brief submissions on the application of Rule 24(4)(b). Ms. Oostlander's only possible response to the Respondent's argument that the amendment is untimely is that the amendments "did not yet occur at the time of the initial complaint".

[34] The Tribunal has consistently held that the timeliness of an amendment is based on the filing date of the original complaint, and not on the date the amendment was filed: *Kruger v. Xerox Canada (No. 3)*, 2005 BCHRT 284, para. 22; *Forsyth v. Bulkley Valley Wholesale and others*, 2014 BCHRT 268, at para. 20. When assessing timeliness in this context, the Tribunal considers allegations that take place within the time limit for filing the original complaint to be timely. This exercise is often backwards looking, and involves the assessment of whether the new allegations set out in the amendment occurred within the one-year[1] time period *preceding* the date the original complaint was filed.

[35] In the present case, the Respondents' position on the timeliness of the amendment appears to assume that because the amendment was filed *after* the original complaint was filed, it is untimely. This bare assertion is not an adequate basis upon which I can assess timeliness. The Respondents do not refer to any of the new allegations in the amendment and

[1] Or six-months, if the original complaint was filed under earlier legislation which set out a six-month timeline for filing complaints with the Tribunal.

explain why they are out of time, or even reference what their view of the time period for assessing timeliness would be. I note that the proposed amendment contains many allegations which occurred during the same time period as those accepted in the original complaint, which would make those allegations timely for the purposes of Rule 24(4)(a). The proposed amendment also contains allegations that post-date April 9, 2020, when the original complaint was filed. Some of these allegations occurred as late as spring 2022, two years after the original complaint was filed.

[36] It may be that there is a principled basis upon which to draw a distinction between how the Tribunal assesses timeliness for new allegations in an amendment which pre-date the date the original complaint was filed, and those which post-date the date the original complaint was filed. However, in the present case, the parties have not provided me with law or submissions on this issue, or on the issue of timeliness in general. Further, as I explain below in my analysis of Rule 24(4)(b), I have disallowed the new allegations in the proposed amendment which could potentially be considered untimely under Rule 24(4)(b).

[37] For the above reasons, I find it is more appropriate in the present case to consider the Amendment Application and any questions of its timeliness under Rule 24(4)(b).

Rule 24(4)(b)

[38] In *Pausch v School District No 34. and other*s, 2008 BCHRT 154, the Tribunal explained that in the context of an amendment filed while an application to dismiss is outstanding, the purpose of Rule 24(4) is to "provide procedural fairness when a respondent files an application to dismiss a complaint by preventing a moving target": at para. 28. In *Patterson v Panacea Outreach and Support Services and others*, 2015 BCHRT 150, the Tribunal further explained that when there is an outstanding application to dismiss, the Tribunal "tends to accept amendments which particularize or are otherwise part and parcel of the original complaint while tending to find new allegations not apparently connected to the original allegations to be less conducive to procedural fairness and more of a 'moving target'": at para. 49.

[39] The Respondents argue that the proposed amendment materially changes the nature of the original complaint. Specifically, they say that the amendment includes new allegations of "racial segregation" and "racial stereotyping". The Respondents submit that if the Tribunal accepts the proposed amendment, they would be prejudiced, as the amendment contains over two pages of substantive information that they have not had a chance to review or respond to. They point out that the Dismissal Application is still outstanding, and in it, they have not had a chance to address the new allegations. Finally, the Respondents say that Ms. Oostlander has been granted numerous opportunities to amend her complaint since the original complaint was filed, and as a result, the Respondents have incurred increased costs in having to review and respond to her frequent changes.

[40] Ms. Oostlander argues that the Tribunal should accept the proposed amendment because it includes new allegations that occurred after she filed her original complaint in April 2020. She further argues that she referenced some of the new allegations that appear in the amendment, specifically those from February 2020 to January 2021, in her response to the Dismissal Application and supporting affidavit. She says that as a result, the Respondents have already had a fair chance to review and respond to those allegations.

[41] Neither of the parties point me to the specific amendments in the proposed amendment they say should be accepted or dismissed. On my review, the proposed amendment can be separated into four categories:

1. amendments which take place during the timeframe of the original complaint, and which particularize or repeat the allegations in the original complaint;
2. amendments which set out new allegations which post-date the filing of the original complaint, and which involve negative conduct by the Respondents and others towards Ms. Oostlander;
3. amendments regarding the remedies Ms. Oostlander seeks; and
4. amendments which remove information that was present in the original complaint.

1. Amendments which Particularize or Repeat Allegations

[42] I find the amendments which particularize or repeat allegations made in the original complaint, do not present a "moving target", which would prejudice the Respondents or cause them unfairness in having to respond to. This category of amendments is found in the underlined red portions of the first full three pages of the proposed amendment, the last four paragraphs of page five of the amendment, and allegation "a" at the top of page 4 of the proposed amendment.

[43] Allegation "a" on page four of the proposed amendment simply repeats an allegation which was accepted by the Tribunal in the November 27, 2020, amendment. The rest of the amendments in this category outline allegations of stereotyping and segregation based on race, and reiterate allegations that the utility room was used by Filipino cleaners to store their cleaning supplies.

[44] I disagree with the Respondents that this part of the proposed amendment raises the issues of "racial stereotyping" and "racial segregation" for the first time. From the time Ms. Oostlander filed her original complaint, she has alleged the Respondents compared her to the other Filipino women who were cleaners in the Strata complex, and segregated her to the utility room for the specific Council meetings she advised the Strata she was going to attend. Indeed, she specifically references being "racially stereotyped" in her response to the Dismissal Application, which allegation the Respondents had a chance to, and did, respond to in their Reply submissions on the Dismissal Application.

[45] In my view, the above-noted portion of Ms. Oostlander's proposed amendment particularizes her complaint, and is appropriately characterized as part and parcel of the original complaint. The Respondents have had a fulsome opportunity to understand the allegations set out in this part of the proposed amendment and respond to them in their Amended Response to the Complaint, and in their Amended Dismissal Application. As such, no issue of fairness arises with respect to my decision to accept this part of the proposed amendment and add it to the complaint.

2. Amendments which Set Out New Allegations

[46] In contrast to my above finding, I decline to exercise my discretion to accept the second category of amendments in the specific circumstances of this case. I find this category of amendments would create a "moving target" for the Respondents if they were to be accepted. Given the procedural history of this matter, and the substance of the new allegations, which would materially change the nature and extent of the complaint, I find fairness favours not accepting this category of amendments.

[47] As I describe above, this category of amendments sets out new allegations which post-date the filing of the original complaint, and which describe negative conduct by the Respondents and others towards Ms. Oostlander [**the New Allegations**]. These amendments are comprised of the 16 allegations set out on page four and five of the proposed amendment, which are numbered "b"[2] to "o", as well as the six paragraphs which follow those allegations[3].

[48] Generally speaking, the New Allegations claim that FirstService, Ms. Storoz, the Council, and six other individuals who are not named as respondents in this complaint, treated Ms. Oostlander negatively after she filed her complaint with the Tribunal. Ms. Oostlander characterizes these allegations as "ongoing harassment and intimidation". However, in my view, the New Allegations are properly characterized as allegations under s. 43 of the *Code* that the Respondents and others retaliated against Ms. Oostlander because she filed her human rights complaint.

[49] I am satisfied that the New Allegations represent a material change to the nature and extent of the complaint. First, they involve several parties who are not parties to this complaint, and who Ms. Oostlander has not applied to add as additional respondents. If Ms. Oostlander had applied to add these new respondents at this stage of proceedings, where the Respondents have already filed an amended Complaint Response and Dismissal Application, I would find the

[2] The list of allegations on page 4 is misnumbered and letters "a" and "b" each appear twice in the list. The letter "b" I reference here, is the first letter "b" which appears in the list.
[3] Ending at the heading "3. How was each ground of discrimination a factor in the adverse impact".

disruption to the complaint process would create significant unfairness and would not facilitate the just and timely resolution of the complaint.

[50] Further, the New Allegations are different in character from the allegations in the original complaint, which involve the Respondents changing the meeting location of two Council meetings to a place that Ms. Oostlander expressly connects to her protected characteristics. The New Allegations do not express any connection to Ms. Oostlander's protected characteristics, and are essentially, an entirely new allegation of retaliation, which Ms. Oostlander did not allege in her original complaint or the subsequent accepted amendments.

[51] In situations involving alleged retaliation, it is understandable that complaint amendments might contain allegations which are materially different from allegations in the original complaint. Whereas a complaint of discrimination concerns the connection between a complainant's protected characteristics and adverse impacts they say they experienced, a retaliation complaint concerns the connection between the alleged retaliatory conduct and the fact that a complainant filed (or may file) a human rights complaint. Retaliation is a different kind of complaint, brought under a separate section of the *Code*, and may well involve different conduct than the conduct which gave rise to the original discrimination complaint.

[52] Nevertheless, even though proposed amendments alleging retaliation may be expected to be different in nature from the original complaint, that does not mean that they ought to be automatically accepted as amendments. A more contextual analysis is required to determine what is fair as between the parties in any given case, and what will best facilitate the just and timely resolution of the complaint.

[53] In the present case, Ms. Oostlander has already been afforded two opportunities to amend her complaint, which has resulted in the Respondents having to review her amendments, and amend their Response to the Complaint, as well as their Dismissal Application. Further, several of the New Allegations are alleged to have taken place before Ms. Oostlander filed her December 23, 2020, amendment, and Ms. Oostlander has not explained

why those allegations were not included in that most recent amendment. Ms. Oostlander also does not provide any explanation why she waited until June 24, 2022, years after some of the New Allegations took place, to file her Amendment Application. Although I have not made a finding about the timeliness of the New Allegations under Rule 24(4)(a), the fact remains that waiting so long to raise at least some of the New Allegations in the current complaint process means that the complaint is farther along, and it is likely to be more disruptive to the parties and the Tribunal's process if the New Allegations are accepted. Put another way, given the procedural history of this matter, materially changing the substance of the complaint in the manner proposed by Ms. Oostlander at this stage may undermine, rather than facilitate, the just and timely resolution of the matter.

[54] Although Ms. Oostlander argues that the Respondents have had a fair chance to review and respond to many of the New Allegations because she referenced them in her Response to the Dismissal Application, when I reviewed her submissions, I did not see reference to the New Allegations. It is true that she references some of the New Allegations in her affidavit in support of her response to the Dismissal Application, but it would be procedurally unfair to allow Ms. Oostlander to circumvent the formal amendment process by simply referring to these New Allegations in her affidavit, without even discussing them in her submissions. Further, although Ms. Oostlander expressly states that the Respondents have "made submissions with respect to [the proposed amendment] when they filed their *Reply to the Complainant's Response to the Application to Dismiss* on March 16, 2021", I note the Respondents' March 16 submissions do not respond to any of the New Allegations.

[55] For the above reasons, I find that fairness favours not accepting the part of the proposed amendment which sets out the New Allegations. I next move on to discuss the category of amendments which relates to the remedies Ms. Oostlander is seeking.

3. Amendments to Remedies Sought

[56] Amendments to the remedies Ms. Oostlander is seeking are located on the last page of the proposed amendment, under the heading "6. Remedies". This category of amendment does

not pose an issue of fairness in the present case because the outstanding Dismissal Application is not concerned with what remedies Ms. Oostlander is seeking. The Dismissal Application focusses on the questions of whether Ms. Oostlander has no reasonable prospect of proving the elements of her complaint of discrimination, and whether the Respondents have a defense to any claim of discrimination. Allowing Ms. Oostlander to amend the remedy portion of her complaint at this stage does not result in a "moving target" as contemplated in the Tribunal jurisprudence. The amendments she has made to this section of the complaint are relatively minor, and, in any event, under Rule 20.1 of the Tribunal's Rules of Practice and Procedure, the parties will have an opportunity closer to the hearing date, to set out their positions on the appropriate remedy. In particular, under Rule 20.1(3) the Respondents will have a full opportunity to respond to Ms. Oostlander's request for specific remedies. For the above reasons, I find it is fair in all of the circumstances to accept this part of the amendment.

[57] Finally, I move on to consider the category of amendments which purport to remove information that was present in the original complaint.

4. Amendments which Remove Information

[58] In the body of the June 24, 2022, proposed amendment, Ms. Oostlander has removed several substantive sections of her original complaint. Most of the amendments which purport to remove information are minor edits or clarifications of earlier information and do not raise fairness concerns. However, I have identified two changes which appear to be substantive. First, Ms. Oostlander seeks to remove her admission that she is "a well-known member of the Philippine Canadian Community who has stood up for the Filipino caretakers at the Carlings Strata Corporation". Second, in the context of the rental bylaw issue, she also seeks to remove reference to her assertion that Ms. Peel could be responsible for paying a $40,000 fine to the Strata.

[59] In their amended Dismissal Application, the Respondents have responded to the two above noted substantive items. For example, they have relied on Ms. Oostlander's admission that she is a well-known member of the Philippine Canadian community to refute her allegation

that it was only after she told the Council that she was Filipino that they started discriminating against her.

[60] To the extent that the Respondents have based their submissions on assertions and admissions which Ms. Oostlander now seeks to withdraw, I find that allowing these amendments would not facilitate the just and timely resolution of the complaint. Allowing Ms. Oostlander to selectively edit her complaint to remove information after reviewing the Respondents' submissions would be unfair, and would present a "moving target", and delay resolution of the complaint. For those reasons, I do not accept the above-noted amendments which seek to remove substantive information from the complaint.

Conclusion on Amendment Application

[61] For the above reasons, I grant Ms. Oostlander's Amendment Application in part.

[62] I allow the following amendments to the complaint:

- the amendments which particularize or repeat allegations made in the original complaint, which are found in the underlined red portions of the first full three pages of the proposed amendment, the last four paragraphs of page five of the amendment, and allegation "a" at the top of page four of the proposed amendment,
- the amendments to the remedies sought by Ms. Oostlander, which are located on the last page of the proposed amendment, under the heading "6. Remedies", and
- removal of information in the body of the June 24, 2022, proposed amendment, which reflects minor edits or clarifications of earlier information.

[63] I deny the remainder of the proposed amendment, including:

- amendments which set out the New Allegations of negative conduct by the Respondents and others towards Ms. Oostlander, which are comprised of the 16 allegations set out on page four of the proposed amendment, which are numbered "b" to "o", as well as the six paragraphs which follow those allegations, and
- the removal of substantive information in the complaint including Ms. Oostlander's admission that she is a well-known member of the Philippine Canadian community who has stood up for the Filipino caretakers at the Carlings Strata Corporation, and information about Ms. Oostlander's assertion that Ms. Peel could be responsible for paying a $40,000 fine to the Strata.

[64] I next move on to consider the Dismissal Application and Sur-Reply Application.

B. The Dismissal and Sur-Reply Applications

[65] The Respondents apply to dismiss Ms. Oostlander's complaint on the basis that it does not disclose a contravention of the *Code* under s. 27(1)(b), and that it has no reasonable prospect of success under s. 27(1)(c). In my view, the Dismissal Application is most appropriately considered under s. 27(1)(c). For the following reasons I find the Respondents have persuaded me that Ms. Oostlander's complaint has no reasonable prospect of success.

Preliminary Issue – Sur-Reply Application

[66] After the close of the amended submission schedule in relation to the Dismissal Application, Ms. Oostlander filed an application under Rule 28(5) to file further submissions. In it, she argues that she should be permitted to file additional submissions because the Respondents raised new information in their Reply to the Dismissal Application. She says her additional submissions respond strictly to that new information.

[67] Ms. Oostlander's further submissions consist of three brief paragraphs. The first paragraph relates to the Respondents' contention that Ms. Storoz was aware prior to September 10, of Ms. Oostlander's race, country of origin or ancestry. The second two paragraphs argue that the Tribunal must convene a hearing in order to resolve conflicts in the evidence including 1) determining who gave Ms. Bergdal instructions to hold the January 9 meeting in the utility room, and 2) determining whether another Filipino-Canadian member of the Council was aware prior to September 10 that Ms. Oostlander was Filipino.

[68] The Respondents oppose the application and say Ms. Oostlander has had ample opportunity to advance her case and they should not be put to the additional time and expense of responding to her further submissions at this stage after she has already made numerous submissions. They also argue that the first paragraph of Ms. Oostlander's further submissions is not responsive to "new" information, and the final two paragraphs do not disclose a viable

reason that the Tribunal must convene a hearing in this matter. In effect, their response to the application contains their response to the substance of the further submissions.

[69] I agree with the Respondents that the first paragraph of Ms. Oostlander's submission does not respond to new information raised by the Respondents. It is simply further argument about why Ms. Oostlander says the Respondents were unaware of her protected characteristics until September 10. Similarly, the second paragraph of her further submissions merely repeats an argument about the need for a hearing, which she made in her earlier submissions. However, the third paragraph is responsive to the new allegation in the Respondent's Reply submission that another Filipino-Canadian member of the Council knew as early as 2015 that Ms. Oostlander was Filipino.

[70] In my view, nothing turns on whether or not I accept Ms. Oostlander's further submissions. Although it is important that parties respect the Tribunal's submission process so that submissions are not exchanged back and forth indefinitely, the Respondents have now had a chance to provide their response to all three paragraphs of the further submissions, and Ms. Oostlander has had a chance to respond to one new element of the Respondent's Reply submissions. Given that my ultimate decision on this application is to dismiss Ms. Oostlander's complaint, I want to ensure she has a full opportunity to bring her case. In these circumstances, I find it is fair and will facilitate the just and timely resolution of the complaint to accept the further submissions in their entirety.

Section 27(1)(c) – No reasonable prospect of success

[71] Section 27(1)(c) is part of the Tribunal's gate-keeping function. It allows the Tribunal to remove complaints which do not warrant the time and expense of a hearing. Under this section of the *Code*, the Respondents bear the burden for demonstrating that Ms. Oostlander's complaint has no reasonable prospect of success.

[72] The Tribunal does not make findings of fact under s. 27(1)(c). Instead, the Tribunal looks at the evidence to decide whether "there is no reasonable prospect that findings of fact that would support the complaint could be made on a balance of probabilities after a full hearing of

the evidence": *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95 at para. 22, leave to appeal ref'd [2006] SCCA No. 171. The Tribunal must base its decision on the materials filed by the parties, and not on speculation about what evidence may be filed at the hearing: *University of British Columbia v. Chan*, 2013 BCSC 942 at para. 77.

[73] A dismissal application is not the same as a hearing: *Lord v. Fraser Health Authority*, 2021 BCSC 2176 at para. 20; *SEPQA v. Canadian Human Rights Commission*, [1989] 2 SCR 879 at 899. The threshold to advance a complaint to a hearing is low. In a dismissal application, a complainant does not have to prove their complaint or show the Tribunal all the evidence they may introduce at a hearing. They only have to show that the evidence takes their complaint out of the realm of conjecture: *Workers' Compensation Appeal Tribunal v. Hill,* 2011 BCCA 49 [***Hill***] at para. 27.

[74] To prove her complaint at a hearing, Ms. Oostlander will have to prove that she has one or more characteristics protected by the *Code*, she was adversely impacted in the area of services, and her protected characteristics were a factor in the adverse impact: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33. As set out under the third element, Ms. Oostlander need only show that a protected characteristic was "a factor" in the adverse impact. She is not required to prove that a protected characteristic was a significant or overriding factor.

[75] Ms. Oostlander describes herself as a person of Philippine origin and ancestry, and a racialized person of colour. The Respondents do not dispute that Ms. Oostlander is Filipino and has the protected characteristics she sets out in her complaint. However, they argue that she has no reasonable prospect of proving she experienced any adverse impacts in the area of services, and that even if she did, she has no reasonable prospect of proving any connection between her protected characteristics and any alleged adverse impacts.

[76] I deal with each of the Respondents' arguments in turn.

1. Adverse Impacts

[77] Ms. Oostlander says she was adversely impacted by the Respondents' decisions to hold the Council meetings in the utility room because she felt belittled and humiliated by being forced to meet where the Filipino cleaners stored their supplies, and therefore she was effectively deprived of her ability to participate in governance of her strata with dignity and respect.

[78] The Respondents deny Ms. Oostlander experienced any adverse impacts. First, they argue that the meeting location of a Council meeting is not a "service" as contemplated by s. 8 of the *Code*. They also argue that even if it is a service, Ms. Oostlander only attended the October 3 meeting for 13 minutes and did not raise any concerns about the meeting location at the time, which indicates she was not significantly impacted. They further say that because she chose not to attend the January 9 meeting at all, she cannot have experienced any adverse impacts.

[79] I will first consider the Respondent's argument about the scope of "services" under s. 8 of the *Code*. I will then move on to consider their arguments about the impacts on Ms. Oostlander of the October 3 and January 9 meetings.

Service Customarily Available to the Public

[80] The Respondents say that the location of the Council meetings is not a "service…customarily available to the public" as contemplated by s. 8 of the *Code*, and therefore Ms. Oostlander has no reasonable prospect of establishing that she experienced an adverse impact in the area of services. I disagree. The Tribunal has recognized that attendance at and participation in the governance of a strata by an owner is a service customarily available to the public as contemplated by s. 8 of the *Code*: *Kargut obo others v. Strata Plan BCS 802*, 2017 BCHRT 269. In the present case, the essence of Ms. Oostlander's complaint is that because of the Respondents' actions, she was denied the ability to attend and participate in the governance of her Strata. Insofar as she alleges it was the location of the Council meetings which led to her inability to attend and participate in the governance of the Strata, I am

satisfied that she has taken the allegation that her complaint engages a service customarily available to the public out of the realm of conjecture.

Impacts of October 3 and January 9 Meetings

[81] The Respondents say that even if the location of the Council meeting could amount to a service customarily available to the public, Ms. Oostlander has not provided any evidence demonstrating she experienced any adverse impact from attending the October 3 Council meeting in the utility room, or declining to attend the January 9 meeting. They point out that she attended the October 3 meeting for 13 minutes, and the rest of the Council members concluded their meeting in the utility room and stayed for an additional 2.5 hours. They also point out that despite her regular correspondence with the Council, Ms. Oostlander did not raise any concerns about the location of the Council Meeting until December 16, which they say, "strongly suggests that the impact of being in the caretaker's office for 13 minutes was not particularly adverse, if at all". With respect to the January 9 meeting, the Respondents say that because Ms. Oostlander chose not to attend the meeting, she has no reasonable prospect of proving that she experienced any adverse impact.

[82] In my view, the Respondents' submissions ignore Ms. Oostlander's key argument, that their choice in meeting location treated her as lesser than them, and made her feel belittled and humiliated.

[83] With respect to the January 9 meeting, I find the Respondents define the scope of the alleged adverse impact too narrowly. Ms. Oostlander says because she determined it was humiliating and belittling to require her to attend the meeting in the utility room, she was "constructively" prevented from participating in the Strata governance. Thus, it is irrelevant to the question of adverse impact that she did not actually attend the meeting. I agree with Ms. Oostlander that if the actions of the Council in changing the meeting location effectively prevented her from participating in the Strata governance with dignity, this would amount to an adverse impact.

[84] With respect to their argument that the delay in her raising a concern about the October 3 meeting location "is strongly suggestive that the impact of being in the caretaker's office for 13 minutes was not particularly adverse, if at all", the Tribunal has recognized that there are many reasons why a person may not raise allegations of discrimination at the precise moment they happen. Further, with respect to the January 9, meeting, it is undisputed that Ms. Oostlander expressly informed the Council that she considered the meeting location to be discriminatory and humiliating, and that supports her contention that at least by that point she felt belittled and humiliated by the meeting location.

[85] Discrimination exists where a person's protected characteristic has presented as a barrier in their ability to fully, and with dignity, access an area of life protected by the *Code*. Ms. Oostlander's description of her understanding of the reasons for the change in meeting location indicates her view that she was unable to participate in the governance of her strata with dignity. There is no question that feelings of humiliation and belittlement in this context can amount to adverse impacts for the purpose of the *Code*.

[86] I next move on to consider the question of whether Ms. Oostlander has a no reasonable prospect of proving a connection between the alleged adverse impacts and her protected characteristics.

2. Connection between Adverse Impacts and Protected Characteristics

[87] Ms. Oostlander puts forward two arguments about the connection between her protected characteristics and the adverse impacts she says she experienced. First, she says there is a temporal connection between the Respondents learning she was Filipino and their decision to change the location of the meetings to the utility room. Ms. Oostlander argues that the Respondents did not know she was Filipino until September 10, 2019, when she sent them a letter advising that she was Filipino and raising concerns about the Council's treatment of the cleaners. She says the decision to change the meeting location was made shortly after her letter was sent, and that this is evidence that supports an inference of nexus.

[88] Second, Ms. Oostlander argues that because the utility room is used by the Filipino women cleaners of the Strata, and Ms. Oostlander is also a Filipino woman, it can be inferred that the Respondents' decision to move the location of the meeting to the utility room was infused with stereotypes about Filipino women.

[89] In support, Ms. Oostlander makes the following key arguments:

- Before they became aware of her identity as a Filipino person, whenever she wanted to meet with the Council, she would meet in Ms. Storoz' unit
- Only the meetings she told the Respondents she was going to attend were arranged to take place in the utility room, no other meetings have taken place there either before or after
- Although Ms. Storoz says the October 3 meeting could not take place in her unit due to renovations, a meeting which occurred shortly after the October 3 meeting (October 29) occurred in her unit, and the renovations were still ongoing at that time.
- Although Ms. Storoz says the January 9 meeting was scheduled to be held in the utility room because she had an emergency leak in her unit, the meeting was scheduled to take place in the utility room on December 16, and the leak did not happen until December 31.
- After Ms. Oostlander said she was not going to attend the meeting on January 9, the Council rescheduled the meeting to occur in Ms. Storoz unit, and the meeting took place there.
- There were other options for a meeting space, including other Council member's units, or meeting by teleconference, but the utility room was chosen.

[90] The Respondents argue Ms. Oostlander's position is purely speculative, and does not take her complaint out of the realm of conjecture. They say that Ms. Oostlander has no reasonable prospect of proving a connection between her protected characteristics and the adverse impacts she says she experienced because members of the Council knew prior to September 10 that she was Filipino, and because the decisions to relocate the October 3 and January 9 meetings to the utility room were made in good faith, for solely non-discriminatory reasons, namely due to ongoing renovations in Ms. Storoz' unit. They further argue that at the time, the Council was made up of diverse members, including Iranian-Canadian, Filipino-

Canadian, German-Canadian, and English-Canadian members who regularly attended Council meetings in Ms. Storoz' unit.

Respondents' Knowledge of Ms. Oostlander's Protected Characteristics

[91] The Respondents say that they are reasonably certain to prove that Ms. Storoz and other members of the Council had been aware for years prior to the events that gave rise to the complaint that Ms. Oostlander's was Filipino. In support, they point out Ms. Oostlander's own admission that she is a well-known member of the Philippine-Canadian community. They also refer to the portion of Ms. Oostlander's LinkedIn profile, which she submitted in relation to this application, and highlight the first line of the profile which states "Jeanette M. Oostlander is an immigrant woman from the Philippines who became a member of the Law Society of British Columbia in 1988". They say that this demonstrates that she advertised professionally that she is Filipino.

[92] The Respondents further reference Ms. Storoz' sworn evidence that:

- she was aware that Ms. Oostlander was Filipino-Canadian prior to September 2019 because Ms. Oostlander "often made reference to the fact that she was a lawyer, and one of the first Filipino-Canadian lawyers in Vancouver".
- she was aware that Ms. Oostlander spoke Tagalog to the previous Strata caretaker who had worked for the Strata for 10 years, and
- that another Council member, who is also Filipino, told her that he knew Ms. Oostlander was Filipino-Canadian as early as 2015 when he first met her.

[93] Ms. Storoz' sworn affidavit attached an email from Mr. Jonathan Abad, a Council member at the time of the events that give rise to this complaint. In the email, dated March 3, 2021, Mr. Abad wrote to Ms. Storoz as follows:

> Hi Carol,
>
> As discussed, I did know that Jeanette Oostlander is from the Philippines. I joined the Strata council in 2015 until 2021. **It was in 2015 when I first met and spoke to Jeanette. We were in the elevator and it was then she mentioned to me that she was from the Philippines** and that she was the

> first or one of the first Filipina lawyers in BC. Being from the Philippines myself, I though it was a great accomplishment.
>
> Thanks,
>
> Jonathan Abad [emphasis added]

[94] Ms. Oostlander's argues that "the source of the information in [Mr. Abad's] unsworn statement is in dispute", and therefore a hearing is necessary. However, Ms. Oostlander does not explain or expand upon what she disputes, she just says the "source" of the information is in dispute. She does not appear to dispute Mr. Abad's own identification as a Filipino person and a Council member at the time, or that he knew in 2015 she was Filipino. Instead, she speculates about an alternative way he may have come to know about her Filipino identity[4].

[95] Similarly, Ms. Oostlander does not appear to dispute Ms. Storoz' sworn evidence about her knowledge that Ms. Oostlander was Filipino well before September 10. She does not allege Ms. Storoz' is not credible or that Ms. Storoz is lying. She simply says that Ms. Storoz' knowledge of her ability to speak Tagalog and Ms. Storoz' "reliance on gossip" does not confirm that Ms. Storoz knew that she was Filipino before the September 10 letter.

[96] Many human rights complaints raise issues of credibility. This is not, by itself, a sufficient reason to deny an application to dismiss: *Evans v. University of British Columbia*, 2008 BCSC 1026 at para. 34. It is only where there are foundational or key issues of credibility, that the complaint must go to a hearing: *Francescutti v. Vancouver (City)*, 2017 BCCA 242 at para 67.

[97] In my view, Ms. Oostlander's responses to the evidence led by the Respondents on this issue are vague, speculative, and do not raise a foundational issue of credibility. She does not deny either Mr. Abad or Ms. Storoz' version of events, but merely speculates about alternatives to what they say they knew. Further, Ms. Storoz' evidence and Mr. Abad's email are consistent with Ms. Oostlander's own admission that she is a "well known member of the Philippine-Canadian community". In the absence of a clear conflict in the evidence on this point, and considering the clear, specific, and detailed evidence provided by the Respondents, which is

[4] Through a news article, which Ms. Oostlander links in her submissions

supported by Ms. Oostlander's own admission, I find the parties' evidence does not raise a foundational issue of credibility on this point. While I acknowledge that the question of whether the Respondents' knew Ms. Oostlander was Filipino prior to September 10 is a key issue in this complaint, based on the material before me on this application, the Respondents' have persuaded me that if this matter were to go to hearing, they would be reasonably certain to prove that at least some members of the Council were aware, before September 10, that Ms. Oostlander was Filipino.

[98] This context significantly undermines the first part of Ms. Oostlander's argument about the prospects of establishing nexus; that it was only *after* the Council discovered she was Filipino that they refused to meet with her in Ms. Storoz' unit. As such, what remains is her contention that because she is Filipino, the Respondents stereotyped her and equated her with the Filipino cleaners, and so they specifically chose utility room to meet with her because that is the "domain of the Filipino women cleaners of the strata".

Decisions to Relocate Meetings Based on Stereotype

[99] Ms. Oostlander argues that the Respondents chose the utility room to meet with her because of its connection to "other immigrant women from the Philippines". She further says that the Respondents purposely selected the utility room in order to "exclude, shame and humiliate [her] in the eyes of her fellow strata unit owners". In my view, Ms. Oostlander's arguments about why the Respondents chose the utility room are speculative, and unsupported by the evidence the parties have provided on this application. I am satisfied on the whole of the materials before me that the Respondents have met their burden of demonstrating Ms. Oostlander has not brought this allegation out of the realm of conjecture.

[100] The Respondents adamantly deny that they stereotyped Ms. Oostlander and picked the utility room because she is Filipino or because of its connection to the Filipino cleaners. They say that the decisions to relocate the October 3 and January 9 meetings were made in good faith due to ongoing renovations in Ms. Storoz' unit. In support of their position, the Respondents assert (and Ms. Oostlander does not dispute) that the Strata does not have any

meeting rooms, and but for Ms. Storoz' agreement to hold meetings in her unit over the years, all of the Strata meetings would have been held in the utility room. The Respondents provide pictures of the utility room, which show it to be bright and clean, with filing cabinets, a microwave, flowers in a vase, and a desk with stationary, and office chairs. While it may well be that cleaning staff stored cleaning supplies in the room, it appears from the pictures that the room was more akin to an office than a supply room.

[101] The Respondents also provide several pictures of Ms. Storoz' unit, which Ms. Storoz' deposes were taken between September 29, 2019, and November 2019. The pictures show piles of books, clothing, and other belongings in the living area of the unit. The Respondents also provide pictures of Ms. Storoz' unit which she deposes show the water damage and repairs to her until which occurred as a result of the water leak she had on December 31, 2019. The pictures show significant renovation work in the kitchen area.

[102] The Respondents also provide contemporaneous email correspondence showing that on September 17, 2019, Ms. Storoz wrote to the Council and sought permission to renovate her unit, and that on September 25, 2019, Ms. Storoz wrote to Ms. Bergdal and advised her the October 3 meeting would take place in the "Caretaker's office as my unit is undergoing a reno".

[103] In response to Ms. Oostlander's argument that because the Council met on October 29 in Ms. Storoz' unit that the October 3 meeting could have taken place there too, Ms. Storoz deposed that when the October 3 meeting took place, the contractor she hired told her the work would start in her bedroom, so she had moved all of the contents of her bedroom to the living area. She further deposed that after October 3, her contractor informed her that the work would instead start in her living room, so she moved the contents of her bedroom back out of the living area. Ms. Storoz also said that the meeting that took place in her unit on October 29 was very short compared to other meetings, only lasting 30 minutes, and that Council members had to sit between piles of renovation materials during the meeting. The meeting minutes for the October 29 meeting confirm the meeting was only 30 minutes long. In any event, Ms. Oostlander's argument about the October 29 meeting does not undermine the

evidence which demonstrates the Respondents are reasonably certain to prove that at the time of the October 3 meeting, Ms. Storoz' unit was undergoing renovation.

[104] With respect to the January 9 meeting, Ms. Oostlander argues that the timing of Ms. Storoz' water leak does not match up with the timing that Ms. Bergdal advised her the meeting would take place in the utility room. The documentary evidence before me shows that Ms. Bergdal advised Ms. Oostlander that the January 9 meeting would take place in the utility room on December 16, two weeks before the water leak in Ms. Storoz' unit. In her first affidavit Ms. Storoz deposes she changed the location of the strata meeting after she experienced a water leak[5]. In her second affidavit, Ms. Storoz deposes neither she nor Ms. Bergdal were able to locate any written correspondence concerning the meeting location for the January 9 meeting, but that she assumes that the meeting location was changed because the original renovations in her unit, which had started in September, did not complete until a few days before Christmas eve[6]. She says that after the water leak on December 31, she telephoned other members of the Council and they said they were content to meet in her unit despite the leak and resultant damage.

[105] I acknowledge Ms. Oostlander's concern that the above evidence demonstrates a discrepancy between Ms. Storoz' first and second affidavits. However, even if I were to accept, for the purposes of this application, that the Council and/or FirstService purposely changed the meeting location when they became aware Ms. Oostlander wanted to attend the meeting, in the context of this complaint, without more, that finding does not demonstrate any connection to her protected characteristics.

[5] Affidavit of Carol Storoz, sworn October 22, 2020, at para. 19.
[6] Affidavit of Carol Storoz, sworn March 17, 2021, at para. 16.

[106] Although racial discrimination is often subtle and pernicious[7], there is no "presumption of discrimination"[8], and any inference of discrimination must be rooted in the evidence of a particular case, and must be "tangibly related to the impugned decision or conduct"[9].

[107] That the Council may not have wanted to meet with Ms. Oostlander in one of their units could have many reasons aside from racial prejudice and stereotype. As the Respondents have pointed out, some of Ms. Oostlander's correspondence included express threats to commence an action before the Civil Resolution Tribunal or the BC Supreme Court[10], and on my own review of the correspondence, some of it contained language which could be described as adversarial. Further, it is clear from the correspondence leading up to the January 9 meeting, that the subject matter that Ms. Oostlander wanted to address with the Council involved a longstanding dispute specifically involving both Ms. Peel, and Ms. Storoz.

[108] The above context overshadows any inference of discrimination that Ms. Oostlander says the Tribunal should draw in the circumstances. Given the Respondents' evidence about the choice of the utility room as a meeting space, and the historical relationship between Ms. Oostlander and Ms. Storoz and Ms. Peel, I find that Ms. Oostlander's assertion that the choice of the utility room was a purposeful tactic to humiliate her because of its connection to the Filipino cleaners is just that, a bare assertion. This finding, together with my above finding that the Respondents are reasonably certain to prove that at least some members of the Council were aware, before September 10, that Ms. Oostlander was Filipino, leads me to conclude that Ms. Oostlander has no reasonable prospect of proving a connection between her protected characteristics and the adverse impacts she alleges.

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[7] *Campbell v. Vancouver Police Board (No. 4)*, 2019 BCHRT 275, at para. 102.
[8] *Richardson v. Great Canadian Casinos and another*, 2019 BCHRT 265 at para. 144.
[9] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (CanLII), [2015] 2 SCR 789.
[10] See for example September 25, 2019, 11:20 am, email from Ms. Oostlander to Ms. Bergdal; December 10, 2019, 1:55pm, email from Ms. Oostlander to Ms. Bergdal; letter to Council Dated December 24, 2019; January 8, 2020, 10:23 am email from Ms. Oostlander to Ms. Bergdal, requesting to be submitted to Council at January 9 meeting.

3. Conclusion on Reasonable Prospect of Success

[109] For the above reasons the Respondents have persuaded me that Ms. Oostlander's complaint has no reasonable prospect success, and I dismiss her complaint, as amended, in its entirety.

IV CONCLUSION

[110] For the above reasons, I:

1. grant Ms. Oostlander's amendment application in part, and order that:
    a. the amendments set out at paragraph 62 of this decision are accepted, and
    b. the remainder of the amendments, including the amendments set out at paragraph 63 of this decision, are not accepted.
2. grant Ms. Oostlander's Sur-Reply Application, and have accepted and considered her further submissions in their entirety, and
3. grant the Respondents' Dismissal Application, and order that Ms. Oostlander's complaint, as amended, is dismissed in its entirety.

Shannon Beckett
Tribunal Member