

Date Issued: May 8, 2024

File: CS-004526

Indexed as: Bodnarchuk v. The Owners, Strata Plan NW2730 and others, 2024 BCHRT 142

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:

Peter Bodnarchuk

**COMPLAINANT**

AND:

The Owners, Strata Plan NW2730 (Cambridge II) and Nora Hutt and Nikki Carrasco

**RESPONDENTS**

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**REASONS FOR DECISION**  
**APPLICATION TO DISMISS A COMPLAINT**  
Section 27(1)(a), 27(1)(d)(ii), 27(1)(c)

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Tribunal Member:

Laila Said Alam

Counsel for the Complainant:

Oliver Pulleyblank

Counsel for the Respondent:

Shawn Smith

## I INTRODUCTION

[1] Peter Bodnarchuk filed a complaint against The Owners, Strata Plan NW2730 (Cambridge II) [**Strata**], Strata Council President, Nora Hutt, and his next-door neighbour, Nikki Carrasco [together, **Respondents**]. Mr. Bodnarchuk alleges that the parties discriminated against him in the area of a service customarily available to the public on the grounds of disability contrary to s. 8 of the *Human Rights Code*.

[2] The Respondents deny discriminating and apply to dismiss the case against them under s.27(1)(c) of the *Code*. The dispute on these applications is principally whether Mr. Bodnarchuk's complaint has no reasonable prospect of success. To decide this application, I must decide:

- a. Whether there is no reasonable prospect Mr. Bodnarchuk will establish that he was adversely impacted by the Strata's response to the single incident with his neighbour and the Strata's failure to provide him EMS codes for the Enterphone.
- b. Whether the Strata is reasonably certain to establish a defense at a hearing that it accommodated Mr. Bodnarchuk to the point of undue hardship when it decided to charge him a fee that is connected to a perceived disability.

[3] Mr. Bodnarchuk consents to dismissing the complaints against Ms. Carrasco and Ms. Hutt on the basis of s. 27(1)(a) and s. 27(1)(d)(ii) of the *Code*, respectively. No service relationship exists between Mr. Bodnarchuk and Ms. Carrasco that could be captured by s. 8 of the *Code*. Additionally, it would not further the purposes of the *Code* to proceed against Ms. Hutt because the Strata is an institutional respondent who can provide Mr. Bodnarchuk with a remedy. The complaints against them are dismissed.

[4] For the following reasons, I allow the application against the Strata, in part. To make this decision, 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

[5] Mr. Bodnarchuk complains about three separate incidents that occurred at the Strata. I will refer to the incidents as the Enterphone Request, the Neighbour Incident, and the Fire Inspection Fee.

[6] Mr. Bodnarchuk says he suffers from recurrent bowel obstruction, anxiety, and depression. He says the Enterphone request relates to these disabilities.

[7] Mr. Bodnarchuk also says he was perceived to have COVID-19 during a mandatory quarantine after returning to Canada from international travel during the COVID-19 pandemic. He says the Neighbour Incident and Fire Inspection Fee relate to this perceived disability.

### A. Enterphone Request

[8] In 2016, after several break-ins, the Strata installed a new telephone entry system and fob access control in the building where Mr. Bodnarchuk resides [**Enterphone**]. The Enterphone was installed after consultation with the owners, a security company, and three information sessions for the owners that were hosted by the RCMP and Enterphone installation security company [**Security Company**].

[9] The building is enrolled in a program called Project Entry. Project Entry allows RCMP rapid access to the building but not to individual strata lots. The Enterphone does not give Emergency Management Services [**EMS**] similar rapid access.

[10] Neither the old entry system nor the Enterphone can house codes for EMS. The Security Company advised against adding entry codes for EMS because doing so would compromise the building's security. At the material time, EMS accessed the building in one of three ways: by being accompanied by RCMP; calling the owner on the Enterphone; or contacting one of the owners on an emergency contact list that the Strata updates and provides to EMS.

[11] On or around August 3, 2020, Mr. Bodnarchuk requested a hearing with the strata council regarding "the issues of our right to appropriate entry by [Emergency Responders] and

other Vital services to our building” [as written]. On or around November 10, 2020, the Strata held a hearing for Mr. Bodnarchuk to bring forward his request. Mr. Bodnarchuk told the Strata that he “had an acute internal medical condition” and “medical concerns” which required “expedited [Emergency Responder] entry for [himself] and others who were vulnerable.”

[12] The Strata asked him for more medical information to understand his accommodation needs. Initially, Mr. Bodnarchuk says he did not provide further details, saying he was embarrassed to share more details about his depression and anxiety because he felt “it would be used against [him].” Later, he says, “my personal requests in a hearing on this matter were negated without any single question to me or inquiry into my medical needs.” Ultimately, the Strata denied Mr. Bodnarchuk’s request.

## **B. Neighbour Incident**

[13] Mr. Bodnarchuk and his wife are snowbirds. They spend the winter through early spring outside of Canada, and the rest of the year residing in their strata lot. In November 2019, they travelled to their winter residence. In March 2020, the Province of BC declared a state of emergency because of the COVID-19 pandemic. Their winter residence quickly became an epicenter for COVID-19 cases. Mr. Bodnarchuk explains that international travel restrictions made it difficult to find a return flight to BC.

[14] Mr. Bodnarchuk eventually returned to his strata lot on July 30, 2020. During this period of the pandemic, federal regulations required all foreign travelers returning to Canada to self-quarantine for 14 days. Federal government officials instructed Mr. Bodnarchuk and his wife to complete the self-quarantine period in their strata lot.

[15] When Mr. Bodnarchuk arrived in the lobby of his building, he interacted with Ms. Carrasco, his then 88-year-old next door neighbour. The account of the interaction is in dispute. Ms. Carrasco maintains that she stood in her doorway and spoke briefly with him out of concern that he had returned to Canada from outside of the country and was not following quarantine rules. In contrast, Mr. Bodnarchuk says she physically attempted to block him from

entering the building and said, “get out of here you have [COVID-19], we don’t want you here.” He describes the interaction as terrifying and physically distressing.

[16] Mr. Bodnarchuk filed a police report against Ms. Carrasco and notified the Strata. The Strata told the owners to call a COVID line or the police if they felt that Mr. Bodnarchuk “wasn’t going to follow the rules.” The Strata also disinfected the building’s communal areas after Mr. Bodnarchuk’s return. He complains the Strata did not enforce a nuisance and hazard bylaw against Ms. Carrasco, nor did they educate other strata lot owners “on the basic rights of owners in relation to [COVID-19]”.

### **C. Fire Inspection Fee**

[17] The strata council scheduled an in-suite fire inspection for August 5, 2020. It notified strata lot owners of the inspection date and that a “fee may be levied for any units” that it could not inspect on that date.

[18] As noted above, Mr. Bodnarchuk and his wife were quarantining at home during that time. The strata manager emailed Mr. Bodnarchuk asking, “Can you confirm that you have already undergone the 14 day quarantine at another location in BC or that you are currently doing your 14 day quarantine at your unit? If you are currently under the quarantine requirement, this may affect [the technicians] being able to access your unit for the fire safety test. Please advise as soon as possible.” In an email exchange with the strata manager, Mr. Bodnarchuk wrote, “So, yes, it would be advisable for [the technicians] to NOT COME into our Apartment...at this time.”

[19] There was no inspection of Mr. Bodnarchuk’s strata lot on August 5, 2020. Mr. Bodnarchuk requested that the Strata waive the reinspection fee. The Strata considered his request at its November 2020 meeting. It decided to charge Mr. Bodnarchuk \$84, writing in its minutes:

The additional fee would be charged back to the owner.

Reason: The owners were aware as early as July 15 (the date notices were distributed) that the inspection would take place on August 5. They had previously advised the strata corporation that in their absence a neighbour was able to facilitate access to the strata lot when and if needed. Despite that, the owners chose to change their plans and return early, knowing that their arrival and quarantine would be at a time when the inspection was to take place. Doing so made access no longer a possibility. As a result the owner breached Bylaw 12 by not providing access.

### **III DECISION**

#### **A. Ms. Carrasco**

[20] Ms. Carrasco applies to dismiss the complaint under s. 27(1)(a) of the *Code*. She says she is Mr. Bodnarchuk's next-door neighbour, and they are not in a service relationship as captured under the *Code*.

[21] Section 27(1)(a) permits the Tribunal to dismiss all or part of a complaint that is not within its jurisdiction. The Tribunal can determine its own jurisdiction at a preliminary stage where there are "sufficient foundational facts" and a "clear legal question": *HTMQ v. McGrath*, 2009 BCSC 180 at para. 64.

[22] There is no information in the materials before me to suggest Mr. Bodnarchuk and Ms. Carrasco are in a service relationship as captured under the *Code*. Additionally, Mr. Bodnarchuk agrees that the complaint against Ms. Carrasco should not proceed. The complaint against Ms. Carrasco is dismissed.

#### **B. Ms. Hutt**

[23] The Strata and Ms. Hutt argue that it would not further the *Code's* purposes to proceed against Ms. Hutt. Mr. Bodnarchuk agrees that the complaint against Ms. Hutt should not proceed.

[24] There are strong policy reasons that favour complaints against individual respondents. As the Supreme Court of Canada has acknowledged, "the aspirational purposes of

the *Code* require that individual perpetrators of discrimination be held accountable for their actions”: *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 56. This is especially true for allegations of discrimination with a high degree of personal culpability, like sexual or racial harassment: *Daley v. BC (Ministry of Health)*, 2006 BCHRT 341 [**Daley**] at para. 53.

[25] On the other hand, naming individual respondents can complicate and delay the resolution of complaints, exacerbate feelings of personal animosity, and cause needless personal distress to individuals who are accused of discrimination: *Daley* at para. 54. Because institutional respondents are liable for the acts of their agents, they will be responsible for any remedy ordered by the Tribunal: *Code*, s. 44(2); *Robichaud v. Canada*, [1987] 2 SCR 84. In those situations, the remedial aims of the *Code* may be most fairly and efficiently fulfilled without holding individuals liable.

[26] The Tribunal balances all these considerations to decide whether the purposes of the *Code* are best served by having a complaint proceed against individuals as well as an institutional respondent, or against the institutional respondent only. It has identified the following factors as relevant:

- i. whether the complaint names an institutional employer as a respondent and that respondent has the capacity to fulfill any remedies that the Tribunal might order;
- ii. whether the institutional respondent has acknowledged the acts and omissions of the individual as its own and has irrevocably acknowledged its responsibility to satisfy any remedial orders which the Tribunal might make in respect of that individual's conduct; and
- iii. the nature of the conduct alleged against the individual, including whether:
  1. their conduct took place within the regular course of their employment;

2. the person is alleged to have been the directing mind behind the discrimination or to have substantially influenced the course of action taken; and
3. the conduct alleged against the individual has a measure of individual culpability, such as an allegation of discriminatory harassment.

*Daley* at paras. 60-62.

[27] I will address these factors in turn.

[28] First, the Strata is named and represents that it has the capacity to provide any remedy. This militates towards dismissing the complaint against Ms. Hutt.

[29] Next, though Ms. Hutt is the president, she is a single member of the strata council. There is nothing in the materials before me that suggests she its directing mind, nor that she alone has the authority to direct the Strata to levy fees or to decide requests from owners. Her conduct, as alleged, does not suggest individual culpability or acting outside of the scope of her role as a strata council member. The complaint against Ms. Hutt is dismissed.

### **C. The Strata**

[30] The Strata applies to dismiss the complaint against it on the basis that there is no reasonable prospect that the complaint will succeed. The Strata argues amongst other things, that this complaint has no reasonable prospect of success because the complainant cannot establish the elements of his case. To decide this application, I must decide:

- a. Whether there is no reasonable prospect Mr. Bodnarchuk will establish that he was adversely impacted by the Strata's response to the single incident with his neighbour or by the Strata's failure to provide him EMS codes for the Enterphone.



- b. Whether the Strata is reasonably certain to establish a defense at a hearing that it accommodated Mr. Bodnarchuk to the point of undue hardship when it decided to charge him a fee that is connected to a perceived disability.

[31] Determinations under s. 27(1)(c) involve a preliminary assessment of whether there is no reasonable prospect that the complaint will succeed: *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 [*Hill*]. This provision creates a gate-keeping function that permits the Tribunal to conduct a preliminary assessment of complaints to remove those that do not warrant the time and expense of a hearing. This is a discretionary exercise by the Tribunal and does not require factual findings, merely an assessment of all of the evidence submitted by the parties: *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95 at paras. 22-26. The threshold for such a review is low and the complainant must only show that their evidence is not speculation or conjecture: *Hill* at para. 27. However, more than a mere chance of success is required.

[32] For the complaint to succeed at a hearing, Mr. Bodnarchuk would have to prove he has a disability or that the Strata perceived him to have a disability, that he suffered an adverse impact in respect to the Strata's services and that it is reasonable to infer that his disability or perceived disability was a factor in the adverse impact: *Moore v. British Columbia (Ministry of Education)*, 2012 SCC 61 at para. 33.

[33] On a s. 27(1)(c) application, the burden is on the Strata to show the complaint has no reasonable prospect of success at a hearing. It can achieve this by showing Mr. Bodnarchuk has no reasonable prospect of establishing his case. If the Strata persuades the Tribunal that there is no reasonable prospect Mr. Bodnarchuk will be able to establish one or more of the elements of his case, it may dismiss the complaint. Therefore, if the Strata disputes one of these elements, Mr. Bodnarchuk must have some evidence in support of these elements, or the evidence must be such that a reasonable inference in support can be drawn. The complaint must be based on more than speculation: *Berezoutskaia* at paras. 24 – 26. In this regard, it is necessary to keep in mind that, at a hearing, Mr. Bodnarchuk need only prove that his disability or perceived disability was a factor in the adverse impact. It need not be the sole or overriding

factor: *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at paras. 45-52.

[34] Alternatively, the Strata may show that there is no reasonable prospect of success in light of its justification for the conduct. In particular, if it is reasonably certain that the Strata would establish a defence at a hearing of the complaint, then there is no reasonable prospect that the complaint will succeed: *Purdy v. Douglas College*, 2016 BCHRT 117 at para. 50. This defence would incorporate the requirement to accommodate Mr. Bodnarchuk to a point of undue hardship.

[35] To justify levying a fine against Mr. Bodnarchuk, the Strata would have to prove that: (1) they adopted the levy for a purpose rationally connected to the function being performed; (2) they adopted the levy in an honest and good faith belief that it was necessary to the fulfillment of that legitimate purpose; and (3) the levy is reasonably necessary to the accomplishment of that legitimate purpose. This third element encompasses their duty to accommodate Mr. Bodnarchuk to the point of undue hardship: *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)* 3 SCR 868 at para. 20 [**Grismer**].

[36] As noted above, on a dismissal application under s. 27(1)(c), the Tribunal assesses all of the evidence before it. Therefore, I must consider the evidence as a whole to determine if this complaint has no reasonable prospect of success.

[37] I first assess whether Mr. Bodnarchuk has taken his disability out of the realm of conjecture. I then assess the three incidents in his complaint separately.

#### *1. Disability*

[38] For the following reasons, I am satisfied that Mr. Bodnarchuk has taken his disabilities out of the realm of conjecture and satisfied the first factor in *Moore*.

[39] Mr. Bodnarchuk submitted a doctor's note identifying his anxiety, depression, and recurrent bowel obstruction. His doctor's note confirms that his recurrent bowel obstruction

can occur unexpectedly, necessitate urgent medical attention, and that on several occasions in the past he has needed transfer to the hospital. As a result, Mr. Bodnarchuk has brought this element of his complaint out of the realm of conjecture.

[40] With respect to COVID-19, in my view, the Tribunal could find, at a hearing, that COVID-19 is a disability under the *Code*: *Gehman v. Seyffert*, 2020 BCHRT 180 at para 87 [***Gehman***].

[41] It is well established that the *Code*'s protection extends to perceived disabilities: *Caster v. Walter Evans (No. 2)*, 2012 BCHRT 163 at 184; *Gehman* at para. 88. The Strata says that at no time did they believe that Mr. Bodnarchuk had COVID-19. The materials before me show that the strata council knew that Mr. Bodnarchuk was quarantining pursuant to federal COVID-19 regulations. The strata council knew through communications from neighbours and their advice to neighbours to contact quarantine officers if they believed Mr. Bodnarchuk and his wife were not adhering to the required quarantine protocol. After being notified of Mr. Bodnarchuk's return, a member of the strata council disinfected the common areas that Mr. Bodnarchuk may have come in contact with and notified other strata council members of their actions. The strata council exercised caution as if he might have COVID-19 when they asked whether he was quarantining at home and whether it would be advisable for the fire inspection company to enter his home during his quarantine period. It appears to me that the strata council's above recommendations and calculations takes out of the realm of conjecture that they perceived Mr. Bodnarchuk to either have COVID-19 or to be at an increased risk of having contracted the virus due to his recent return from a known COVID-19 epicenter: *Gehman* at para. 88.

[42] As a result, Mr. Bodnarchuk has brought this element of his complaint out of the realm of conjecture. I cannot find that he has no reasonable prospect of establishing that this aspect of his complaint falls outside the protection of the *Code* based on a perceived disability.

## 2. *Enterphone and adverse impact*

[43] On the materials before me, I am not convinced that Mr. Bodnarchuk has satisfied the second factor of the *Moore* test with respect to the strata council's decision not to provide access codes on the Enterphone for EMS.

[44] Mr. Bodnarchuk explains his fears of facing a medical emergency based on his recurrent bowel obstruction but does not provide information other than his assertions that he “may require urgent emergency medical attention unexpectedly” and EMS may not be able to access his strata lot in a timely manner. Mr. Bodnarchuk has not put forward sufficient evidence about how EMS’ current system for gaining entry creates a delay that puts his health at risk. Respectfully, asserting his concerns, without more, is merely speculation.

[45] I am not persuaded that the materials before me takes Mr. Bodnarchuk’s allegation that his disability requires a different method for EMS building access out of the realm of conjecture.

[46] In my view, this incident is appropriately dismissed under s. 27(1)(c) because it has no reasonable prospect of success.

### 3. Carrasco Interaction and adverse impact

[47] For the following reasons, I am not satisfied that Mr. Bodnarchuk has taken his allegation that he was adversely impacted by the Strata’s response to his interaction with Ms. Carrasco out of the realm of conjecture.

[48] I understand Mr. Bodnarchuk’s position to be that the Strata failed to enforce their bylaws against Ms. Carrasco or to take any action against her. The Strata did not respond in the manner that Mr. Bodnarchuk would have preferred. Specifically, he complains that the Strata did not use the bylaws to penalize Ms. Carrasco, nor did the Strata educate the strata owners “on the basic rights of owners in relation to [COVID-19].”

[49] A Strata’s services include the implementation and enforcement of its bylaws related to “managing and maintaining the common property and common assets of the strata corporation for the benefits of the owners”: *Rutherford v. Strata Plan VS 170*, 2019 BCHRT 227 at para 20. Such a service must be provided by the Strata without discrimination.

[50] As noted by the Tribunal in *Meyer and Meyer v. Strata Corporation LMS 3080 and Boeis*, 2005 BCHRT 89 at para. 22, “neither the *Code* nor the Tribunal is responsible for policing every aspect of an individual’s social or council-related activities simply because that individual

happens to live in a strata complex”: See also *Rahbek v. Strata Corporation* NW 69, 2010 BCHRT 310 at para. 22.

[51] The bylaw that Mr. Bodnarchuk wanted the Strata to enforce reads in part:

3. Use of Property

(1) An Owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that:

(a) causes a nuisance or hazard to another person;

[...]

(c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot...

[52] The Strata is not directly liable for Ms. Carrasco’s conduct. Its only obligations are to provide its services free of discrimination. Here, Mr. Bodnarchuk says services are enforcement of a bylaw ensuring that an owner not use common property in a way that causes a nuisance or hazard to him or unreasonably interferes with his rights to use and enjoy common property. However, I am not satisfied that the evidence before me weighs toward finding that he was adversely impacted by the Strata’s response to his complaint, and in particular, their decision not to penalize Ms. Carrasco.

[53] Before me is evidence of the Strata’s response. Mr. Bodnarchuk’s complaint was received and reviewed by the strata council, strata manager, and lawyer for the strata corporation. Among the materials before me are an affidavit and the minutes from the strata council’s August 20, 2020 virtual hearing. The hearing was held specifically for Mr. Bodnarchuk and his wife to raise their concerns. They asked for the “strata council [to] educate owners regarding human rights and how others are to be treated.” The Strata decided not to take further action in relation to the interaction with Ms. Carrasco.

[54] In this case and with regard to all the circumstances, even if the Tribunal accepted that the events unfolded exactly as Mr. Bodnarchuk described, it is unlikely that this one incident would rise to the level of discrimination requiring state intervention. It appears, on the

evidence before me, to be an isolated incident arising in the unique circumstances of the COVID-19 pandemic, where there was great uncertainty and heightened concern across the province and the world.

[55] Other materials before me provide further context to the strata council's response and its impact on Mr. Bodnarchuk. Following the incident, Mr. Bodnarchuk filed a police report against Ms. Carrasco. The strata council considered this when it exercised its discretion not to enforce the nuisance and hazard by-law against Ms. Carrasco or take steps to educate the other owners on "human rights and how others are to be treated." The Strata decided that the matter was best dealt with between Mr. Bodnarchuk, Ms. Carrasco, and the police, and did not warrant further intervention by the Strata. Additionally, Mr. Bodnarchuk says the police advised him to file a "court order" if Ms. Carrasco's allegedly harassing behaviour continued. On the evidence before me, he did not do so, which suggests that this was an isolated incident.

[56] The Tribunal has said, "[...] it is not the Tribunal's purpose to adjudicate disputes other than where a person's protected characteristic has presented a barrier to their ability to fully, and with dignity, access an area of life protected by the *Code*. In performing this function, the Tribunal is cognizant that the disputes brought to it arise between human beings, with all the imperfection that entails": *Brito*, 2017 BCHRT 270 at para 41. I also consider that Mr. Bodnarchuk did not have another interaction that would be a "hazard" or a "nuisance" in the common area. In my view, this weighs against finding that he was adversely impacted by the Strata's actions or inactions in relation to his interaction with Ms. Carrasco.

[57] In my view, the complaint does not merit using the Tribunal's scarce resources. It is appropriately dismissed under s. 27(1)(c) as having no reasonable prospect of success because the Strata is reasonably certain to establish a defense at a hearing.

#### 4. *Re-inspection fee and nexus*

[58] As stated above, Mr. Bodnarchuk has taken his perceived disability out of the realm of conjecture.

[59] With respect to adverse impact, the Strata does not dispute that they levied a discretionary fee against him because he was required to quarantine during a period when they required access to his strata lot for testing. The Strata argues that Mr. Bodnarchuk bears full responsibility for the inconvenience of not being able to access his unit on the date of the original inspection. They argue that he chose to come home during the pandemic when he knew that the inspection was scheduled and that he would have to quarantine. Respectfully, these arguments are irrelevant to whether Mr. Bodnarchuk may be able to prove an adverse impact. There is no dispute Mr. Bodnarchuk was charged a reinspection fee. That is enough to take adverse impact out of the realm of conjecture. Accordingly, the Strata has not shown the complaint should be dismissed because Mr. Bodnarchuk has no reasonable prospect of proving that he experienced an adverse impact.

[60] On the third factor of *Moore*, I am not convinced by the Strata's argument that there is no nexus between Mr. Bodnarchuk's perceived disability and the fee levied against him. The Strata says that at no time did they believe or perceive Mr. Bodnarchuk to be infected with COVID-19, therefore could not have been a factor in levying a fee against him.

[61] The Strata advised Mr. Bodnarchuk's neighbours to contact quarantine officers if they had concerns about him quarantining. They also disinfected the common area when Mr. Bodnarchuk's returned from his winter residence. They communicated amongst each other that whether Mr. Bodnarchuk and his wife tested negatively for COVID-19 while abroad was irrelevant and expressed that "[Mr. Bodnarchuk and his wife] still need to self-isolate, so let's hope they do." The Strata also took a cautionary approach to entering Mr. Bodnarchuk's strata lot with technicians during his quarantine period. The Strata noted in their minutes that Mr. Bodnarchuk and his wife returned early, that their quarantine period would overlap with the inspection and "doing so made access no longer a possibility. As a result the owner breached Bylaw 12 by not providing access." On this evidence, it is not reasonably certain that the Strata will prove they did not perceive him to have COVID-19. Mr. Bodnarchuk argues, and I accept, that he has taken nexus out of the realm of conjecture because the fee was levied, at least in part, because he could not allow the technician into his home because he was isolating to

prevent possible transmission of COVID-19. I am satisfied that a connection between his perceived disability and the fee levied against him has been taken out of the realm of conjecture.

[62] The Strata has not convinced me that Mr. Bodnarchuk has no reasonable prospect of establishing this aspect of the complaint at a hearing.

[63] I now turn to whether the Strata is likely to establish a defense at a hearing.

[64] The Strata would have to show that they established the levy in good faith and for a purpose rationally connected to the service, and that their conduct was reasonably necessary, in the sense that they could not accommodate Mr. Bodnarchuk's perceived disability without undue hardship: *Grismer* at para. 20. Whether the Respondents have met their duty to accommodate is a question of fact that considers the specific circumstances of each case.

[65] For the reasons that follow, I am not convinced that the Strata has satisfied the third element – accommodation to the point of undue hardship. In *Leary v. Strata Plan VR1001*, 2016 BCHRT 139 [**Leary**], a case about second-hand smoke, the Tribunal set out the reciprocal obligations that attach to owners and their strata in the case where an accommodation is required. Amongst other things, the Strata's responsibilities include:

- a. Take the lead role in investigating possible solutions. Co-operate with the person seeking accommodation to constructively explore those solutions.
- b. Rigorously assess whether the strata can implement an appropriate accommodation solution. In doing so, the strata may have to consider the financial cost and competing needs of other strata members with disabilities. In some circumstances, a solution may not be possible without the strata suffering an undue hardship. In that case, the strata council should document the hardship and test its conclusion to ensure there is no other possible solution.

*Leary* at para. 69.



[66] Mr. Bodnarchuk raised his opposition to the levy in writing and before the strata council at hearings. The materials do not convince me that the Strata is reasonably certain to prove it explored other solutions with Mr. Bodnarchuk. I am also not convinced on the evidence before me that the Strata sufficiently explained how the work done on the other strata lots that day was of a different nature such that a discretionary fee should be levied against Mr. Bodnarchuk but not against the other strata lots. Additionally, I am not satisfied on the materials before me that the Strata conducted an analysis of whether absorbing the cost of the levy would pose an undue hardship to the Strata.

[67] In consideration of the above, I am not satisfied that the Strata is reasonably certain to establish a defense at a hearing.

#### **IV CONCLUSION**

[68] The application to dismiss against Ms. Carrasco and Ms. Hutt is granted. The complaints against them are dismissed.

[69] The application to dismiss the complaint against the Strata for their failure to act in response to Ms. Carrasco's alleged conduct and for not providing Mr. Bodnarchuk access codes is granted.

[70] The application to dismiss the complaint against the Strata for levying re-inspection fees against Mr. Bodnarchuk while he was in quarantine is denied. This aspect of the complaint will proceed.

[71] I encourage the parties to avail themselves of the mediation assistance offered by the Tribunal to resolve this matter, or otherwise seek to settle this complaint.

Laila Said Alam  
Tribunal Member