
CRT Comments On Alterations And Tips for Good Governance

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In the case of *The Owners, Strata Plan KAS 510 v. Nicholson*, 2017 BCCRT 48 ("*Nicholson*") the Civil Resolution Tribunal ("CRT") decided whether Nicholson ("Owner") had to restore her limited common property deck to the original depth and length, at her own cost.

Although CRT tribunal members are not bound to follow the same reasoning that other tribunal members used in previous cases, the reasoning in CRT decisions will likely be persuasive to other tribunal members. In this article, I have summarized the *Nicholson* decision. Where applicable, I have provided a "Take Away" paragraph that can be used by councils and strata managers to refine their governance practices in light of the *Nicholson* decision, and also in light of provisions in the Schedule of Standard Bylaws, which were not considered in the decision.

In the *Nicholson* case, the Strata Corporation owner commenced CRT proceedings. The issues that were determined by the CRT were as follows:

- (a) Should the Owner be required at her expense, to restore her deck to its original depth and length, either on the basis that she acted in a conflict of interest, or had not obtained the appropriate council permission to extend her deck?
- (b) Is the Strata Corporation's case barred by the limitation period of two years?

The findings of the tribunal member regarding whether permission for the deck alteration had been granted and the limitation period are of general interest to strata corporations. Also of importance is that strata corporations looking for general practice tips on governance should look beyond CRT decisions and read

the *Strata Property Act*, regulations, the bylaws and other documents, as the CRT may make comments that do not take into account all of these factors.

A. Background

In *Nicholson*, the Owner, "sometime during the fall of 2014" extended her limited common property deck to increase the size. The increase in size was referred to in the decision as an "extension". The Owner paid for the extension and the Strata Corporation received three written complaints about it in 2016. The Strata Corporation submitted that at least some of these complaints were made in 2015, but formalized in writing in 2016. The deck extends past a privacy wall and is visible by other areas of the complex.

The Strata Corporation had filed a consolidated set of bylaws, including a bylaw that that a strata lot owner wishing to make any structural or apparent alterations or additions to the building exterior, common property, or limited common property must "First secure written approval from Council".

The Owner was a Council member from at least May 2013 to March 2015. She was involved in the repair and maintenance of rotten decks. The Minutes in May 2014 provided that the Owner "requested permission to extend deck out by 2 feet while repairs are being done". The Owner further reiterated her request in an email dated May 22, 2014.

There were emails exchanged between the Owner and another Council member and the other Council member supported the deck extension. Also, a Council member recalled that the deck extension was approved, but could not remember the details of the approval.

The decision of Council to approve the deck extension, if there was one, was not evidenced in the Minutes of a Council meeting. There does not appear to be specific evidence that the Council members actually had a vote to allow the deck extension either at either a formal or informal meeting.

B. Alteration

The Tribunal put the onus on the Strata Corporation to prove that the deck extension was not approved, rather than putting the onus on the Owner to prove that the deck extension was approved.

The Tribunal found it would be significantly unfair to require the owner to reduce the size of her deck to its original state, given that she had made requests and she relied on positive email correspondence.

Section 18(1) of the *Schedule of Standard Bylaws* provides that “At Council meetings, decisions must be made by a majority of council members present in person at the meeting.” Section 18(3) of the *Schedule of Standard Bylaws* under the *Strata Property Act* requires “The results of all votes at a council meeting must be recorded in the council meeting minutes”. I do not know whether these bylaws were not included in the filed bylaws for the Strata Corporation in the *Nicholson* case. In my experience, these bylaws are generally included in bylaws that Strata Corporations pass when they repeal the *Schedule of Standard Bylaws*.

The CRT found that the Owner did not need to prove that the decision supporting her alterations was made by majority vote at a Council Meeting or evidenced in the Council Minutes.

Take Away

Councils and strata managers should be careful to ensure that any correspondence regarding alterations does not suggest support for an alteration unless an approval of Council has been decided by a majority vote at a Council meeting and evidenced in the Minutes. If the owner proceeds with an alteration with tacit approval of a Council member by email, the CRT may find that approval for the alteration was granted.

C. Limitation Period

The CRT considered that the Strata Corporation’s claim was statute barred based on the two-year limitation period set out in the *Limitation Act*. The deck extension

was completed in mid-August 2014 and was visible from elsewhere in the complex. The Tribunal found that by November 4, 2014 the Strata Corporation knew the deck extension was completed and should have reviewed its records to see if the proper approval had been given. The Dispute Notice was not filed until November 18, 2016.

Take Away

The obligation to comply with the bylaws regarding alterations may be treated as subject to a two-year limitation period by the CRT, instead of as an ongoing obligation to comply with the bylaws. This puts an obligation on the Council to act on issues regarding alterations very quickly if they want to preserve the Strata Corporation’s right to do so. Perhaps an annual alterations inspection is in order.

The concept a duty to comply with the bylaws for an alteration being statute barred is an interesting one. If the Strata Corporation has a duty under the bylaws that it does not fulfill, will the CRT be as likely to find a claim of an owner to be statute barred, or will it be considered an ongoing obligation of the Strata Corporation?

D. Conclusion

Councils can review the decisions of the CRT to help refine their governance practices. The decisions are available at <http://decisions.civilresolutionbc.ca/crt/en/nav.do>. This article is for educational purposes only. For specific legal concerns, please consult a lawyer.