

Recovering Legal Costs For Civil Resolution Tribunal Disputes

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The Owners, Strata Plan VR293 v. Bains [2019 BCCRT 504](#)

The Civil Resolution Tribunal is now the forum for the resolution of many strata-related disputes. The decisions from the Tribunal usually do not consider the parties' legal expenses. The Tribunal's rules set out that these are not recoverable except in "extraordinary cases". This applies to few cases involving stratas.

The recent decision of *The Owners, Strata Plan VR293 v. Bains* 2019 BCCRT 504 sets out an interesting exception to this rule which stratas and property managers should be aware of. Stratas may in fact recover some or all of their legal expenses with the proper bylaw provisions and carefully following the requirements of the *Strata Property Act*.

Although legal representation is normally not allowed at the Tribunal, stratas often incur expenses by having lawyers draft correspondence, review documents or provide other advice and support during a strata conflict.

Bains considered a dispute between an owner and a strata concerning unauthorized alterations to the owner's lot. The dispute resulted in \$13,400 in bylaw infraction fines. The owner counterclaimed for lost rent due to unfair treatment by the strata. The strata had the following provisions in its bylaws:

24.2 An owner is liable for the contravention of the bylaw by his or her tenants, invitees, licensees or visitors and is liable for all costs or expenses incurred or expended by the strata corporation in correcting, remedying or curing such infractions or violations and the same shall be charged to that owner...

24.3 An owner, shall be liable for and indemnify the strata corporation for any legal and administrative expenses, including legal costs on a

solicitor and own client basis, incurred or expended by the strata corporation as a result of such infraction or violation or of its having to enforce these bylaws and rules

The Tribunal found that it was appropriate to allow the strata to recover its legal expenses related to its claim for the fines. Sections 121 and 123 of the *Civil Resolution Tribunal Act* allow the Tribunal to award money owed under a strata bylaw – including legal expenses.

However, it was not clear what expenses were related to the strata's claim versus the respondent's counterclaim. The expenses related to the counterclaim were not recoverable. The Tribunal awarded the strata half of the approximately \$11,500 in legal expenses on the assumption that the expenses were equally related to both parties' claims.

Stratas should review their bylaws to ensure they include similarly effective provisions. Stratas should also carefully document the expenses they incur in attempting bylaw enforcement. Residents in breach of bylaws should be notified that the strata will seek to recover its enforcement costs.

The reasoning in *Bains* does not prevent a strata from pursuing a claim for enforcement costs with the Tribunal even if the underlying dispute is resolved beforehand. A strata could even argue it should recover expenses related to pursuing the enforcement costs.

This could make resolving some bylaw enforcement disputes at an early stage much easier. Residents will share the strata's interest in resolving the dispute if they are concerned they may be fully responsible for a large legal bill.

We expect this topic will be considered in many more Tribunal decisions in the near future.