



The Case Of Too Much Information

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Although the *Personal Information Protection Act* (“PIPA”) has applied to strata corporations for a number of years, knowing what information can be collected and for what purposes is not always clear. A decision of the Civil Resolution Tribunal (the “CRT”) recently considered these issues and has provided some clarity for strata corporations¹.

In *Wong*, the strata corporation’s bylaws required guests who stayed overnight to provide their name, various contact information and photo identification. The strata corporation fined the owners for breaching the bylaw. The owners then applied to the CRT for an order that the bylaw was unenforceable pursuant to section 121(1)(a) of the *Strata Property Act* (the “SPA”) because it contravened PIPA. Section 11 of PIPA states that an organization, such as a strata corporation, may only collect personal information for purposes that a reasonable person would consider appropriate in the circumstances. Section 121(1)(a) of the SPA provides that a bylaw is not enforceable to the extent that it contravenes other legislation.

Before considering the substantive argument, the CRT was required to consider whether it had jurisdiction to deal with the matter.

The CRT noted that part of the role of the Information and Privacy Commissioner (“IPC”) is to oversee and enforce PIPA. Section 52 of PIPA grants the IPC the power to make orders, including an order that an organization stop collecting, using or disclosing personal information, or require an organization to destroy personal information. Whereas, the CRT has jurisdiction over the interpretation and application of the SPA and a strata corporation’s bylaws. Additionally, the CRT is

permitted to consider other legislation, including PIPA in the context of section 121(1)(a) of the SPA.

The CRT acknowledged that it could not make an order under PIPA that a strata corporation stop collecting or using information. However, the CRT noted that that was not what the owners were seeking. The CRT stated that the owners’ request was for an order that the bylaw was not enforceable under SPA because it contravened PIPA. The CRT concluded that such an order was within the jurisdiction of the CRT because it was an order in relation to a strata corporation’s bylaws and the application of the SPA.

The facts considered by the CRT were the following:

In 2015, the strata corporation passed a bylaw that required guests occupying a strata lot for more than three days to complete a Temporary Resident Information Form (“TRIF”). In 2018, the bylaw was amended to require a TRIF to be completed by all overnight guests of a resident. The TRIF required the visitor’s name, suite number the visitor was visiting, whether the visitor was a tenant (defined as a person paying rent) or a guest (defined as a person who has been invited by the owner or tenant), duration of stay, visitor’s telephone number and e-mail address, key fob number the visitor was using, whether the visitor will access shared facilities, and the make and license plate of the car and parking stall number that the visitor will be using. The visitor, the attending concierge and the head concierge were required to sign the TRIF and the visitor was required to provide a copy of their photo identification, which was attached to the TRIF. In September 2019, the TRIF permitted frequently visiting guests to only fill out the TRIF once.

¹ *Wong et al. v. The Owners, Strata Plan BCS 435*, 2020 BCCRT 53

The strata corporation stated that the TRIF is stored under “lock and key”, and the strata corporation’s privacy policy indicated that it would keep guest information only as long as it is necessary to fulfill the identified purposes or a legal purpose. However, the CRT found this statement to be vague and inferred that there was no policy for destroying completed TRIFs.

The owners argued that the guest information collected was unreasonable and unnecessary. They argued that the building has a concierge, a key fob system, and security cameras, which were enough to provide adequate security.

The strata corporation stated that there were two goals in requiring the TRIF. One was to enforce the strata corporation’s bylaw that prohibited short term rentals and the other purpose was for safety and security.

After considering various IPC decisions, the CRT found that the legal test with respect to personal information is that a strata corporation can collect and use personal information if a reasonable person would consider it appropriate in the circumstance. In determining what is appropriate the CRT stated that a reasonable person:

- expects the strata to collect as little information as possible to achieve its stated goals considering the sensitivity of the information;
- considers how effective the system requiring the collection of personal information is in achieving its goals; and
- considers how the organization handles and disposes of the personal information it collects.

The CRT immediately concluded that a reasonable person would not consider the photocopying of guest photo identification to be appropriate. The CRT noted that presumably this was done to compare the information on the TRIF which could be accomplished by simply inspecting the identification.

With respect to the specific information, the CRT found that because the policy allows the strata to keep the TRIFs indefinitely, the strata corporation can accumulate the data about who visits each resident overnight, for

how long and how often. Such information was not only the visitor’s personal information, but also the resident’s personal information. The exception for frequent guests only applied to people immediately related to the resident or to caregivers.

After finding that the information was sensitive, the CRT stated that it was required to balance the sensitivity of the personal information against the strata corporation’s reasons for collecting it.

Regarding short term rentals, the strata corporation argued that the TRIF was necessary to deter fraudulent misrepresentation. However, the CRT held that even without the form, an honest short-term renter will verbally give the concierge enough information for the strata corporation to enforce the bylaw. A dishonest short-term renter could easily deny to the concierge that they were staying overnight or they could identify themselves as a guest rather than a renter on the TRIF. The CRT concluded that the TRIF would not be an effective way to deter or catch dishonest short-term renters.

Regarding safety and security, the CRT held that the strata corporation provided no evidence that it faced chronic safety or security issues and no evidence that overnight guests had damaged property or committed a criminal offence. The CRT also noted that the strata has a key fob log and approximately 30 security cameras.

The CRT found that a reasonable person would not consider the collection of the personal information on the TRIF, including photocopying photo identification, to be appropriate in the circumstances. The CRT held that the portion of the bylaw that required overnight guests to complete a TRIF contravened PIPA and thus was unenforceable.

As a result of the *Wong* decision, a strata corporation may wish to review the information it collects and specifically consider, if the information is sensitive, whether there are less intrusive ways that the strata corporation can achieve its desired result without obtaining the information. If the information is determined to be necessary, a strata corporation should review its privacy policy to ensure that there are clear policies on the release and on the destruction of such

information and that such policies are being followed. As a reminder, PIPA requires a strata corporation to develop policies and practices necessary to meet its obligations under PIPA.

The Office of the Information and Privacy Commission has published *Privacy Guidelines for Strata Corporations and Strata Agents* which strata corporations will find helpful when considering privacy policies and the application of PIPA.