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## The Case Of The Neglected Noise Complaints

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Strata councils frequently receive noise complaints. The steps the strata council takes to investigate the complaint and its decision as to whether the noise is unreasonable are subject to scrutiny by the Civil Resolution Tribunal (the “CRT”). What constitutes an adequate investigation of a noise complaint and when noise might be unreasonable were recently considered by the CRT in the case of *Tollasepp v. The Owners, Strata Plan NW 2225*<sup>1</sup>.

### Background

Beginning in May 2019, the applicant complained about a low frequency bass sound from music and a droning noise from an air conditioner which originated in the strata lot above. Most complaints related to daytime noise, however, there were some complaints regarding noise after 10:30 p.m. Between May and December 2019, the applicant submitted 32 complaints.

The applicant submitted audio recordings of the noise and videos showing sound measurements in decibels to the strata council. The recordings established a baseline decibel reading ranging in the mid-30s. The droning sound was at a decibel level of 55, and as high as 70, and the low frequency bass was at a decibel level of 45. The CRT noted that, although evidence of the accuracy of the recordings was not provided, the recordings did provide a reasonable reference point to compare to a base line.

Although the strata corporation did send bylaw contravention warning letters to the strata lot above, the strata manager had suggested to the applicant that the applicant call the municipality to enforce municipal noise bylaws, and that the dispute was otherwise between the two owners.

The applicant requested a hearing, which occurred in August, at which the applicant provided recordings related to additional complaints and recommended that the strata council members use earbuds to properly hear the noise. At the hearing, a few strata council members could not hear the noise and concluded that the evidence was not clear.

Following the hearing, the applicant saw the building manager in the hallway and invited her into the strata lot to hear the noise. The building manager later went to the upstairs strata lot, where she noted an air conditioner. She requested that the owner put tiles under the air conditioning unit. The minutes of the strata council meeting noted, in respect of the noise, that the building manager attended, located the source of the noise, and assisted the owner to minimize noise. The minutes indicated that the strata council would continue to monitor the situation.

The applicant continued to complain about noise. The strata council advised the CRT that it had intended to have three members attend the applicant’s strata lot and investigate, but that all investigation ceased when the applicant filed the dispute notice with the CRT. The strata council argued that its investigation obligations were suspended when the applicant commenced the CRT proceeding.

At the CRT, the strata council argued that it had listened to multiple noise recordings and had only been able to hear a slight sound which did not, in the strata council’s view, constitute a nuisance.

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<sup>1</sup> *Tollasepp v. The Owners, Strata Plan NW 2225*, 2020 BCCRT 481

### ***Adequate Investigation***

The CRT considered the actions of the strata council to determine if the investigation was adequate. The CRT noted:

*... a strata may investigate bylaw contravention complaints as its council sees fit, provided it complies with the principals of procedural unfairness and is not significantly unfair to any person appearing before the council.*

The CRT considered whether the strata council's conduct was significantly unfair to the applicant. The CRT noted that the applicant had an expectation that the strata council would investigate noise complaints, including attending at the applicant's unit and the upstairs unit to determine if the bylaws were contravened. The CRT found that this expectation was objectively reasonable.

To determine whether the investigation was adequate the CRT considered that:

- the building manager only visited the applicant's strata lot and the strata lot above because the applicant had caught her in the hallway;
- there was no sound testing or measurement carried out by the strata council;
- even though the strata council could not hear the noise on the recordings provided by the applicant, this did not mean that they did not need to investigate the complaint since, in addition to the recordings, the applicant had submitted visual measurements which should have alerted the strata council to the need for investigation;
- there was no evidence of follow up by the building manager to see if the addition of tiles under the air conditioner made a difference; the strata council had not monitored the noise, notwithstanding the statement in the August minutes;

- because the applicant had filed a further 17 complaints after the August 6<sup>th</sup> hearing with no response from the strata council, it was unclear how the strata council could conclude, in August, that the noise had been minimized and problems mitigated;
- the strata corporation's bylaws provided that the quiet time was between 10:30 p.m. and 7:00 a.m. and that an owner was not permitted to use a strata lot for any purpose that involved undue noise; some complaints related to noise after 10:30, however the strata council had not paid adequate attention to the time; and
- there is no support in the *Strata Property Act* or the case law that once a complaint is filed, the strata council can suspend the investigation.

In summary, the CRT concluded that the initial investigation had no objective measurement of the noise, there had been no objective measurement of the effect of the noise reduction efforts, and there had been no follow up about the ongoing complaints. As a consequence, the investigation was inadequate and as a result, was significantly unfair to the applicant.

The CRT also stated that, while promoting resolution between owners may be helpful in some instances, the strata council must conduct a fair investigation and enforce its bylaws consistently.

The CRT concluded that the strata corporation's duty to enforce the bylaws includes an ongoing duty to adequately investigate noise complaints. In this case, a proper investigation would involve two or more people attending the applicant's strata lot and it should involve the upstairs owner. It may include hiring a sound testing professional.

### ***Unreasonable Noise***

To determine whether a noise is a nuisance or an unreasonable interference in an owner's use of a strata lot, the CRT noted that this was up to the opinion of the strata council. Nonetheless, this does not insulate the strata council's decision from scrutiny, particularly where its investigation is inadequate. The CRT also stated that the test was whether a reasonable person would find the noise excessive or unreasonable on an objective standard.

To determine whether the noise was unreasonable, the CRT relied on the objective standards from the World Health Organization ("WHO") guidelines, which were the guidelines considered in the BC Supreme Court decision of *Suzuki v. Munroe*<sup>2</sup>. The WHO guidelines provide that noise may cause sleep disturbance in a bedroom at 30 decibels, speech intelligibility issues at 35 and annoyance in outdoor living areas at 50 to 55 decibels.

The owner's recordings showed that, what appeared to be an air conditioner, was causing sustained noise as high as 55 decibels. The CRT accepted that the noise was significantly higher than the background noise in the mid-30 decibel range. The CRT concluded that the noise was unreasonable. Additionally, the CRT noted that the property manager had acknowledged that the noise was likely to be in excess of municipal bylaws, which further supported the CRT's conclusion that the noise was unreasonable. The CRT concluded that the noise was a nuisance and interfered with the applicant's use and enjoyment of his strata lot. The CRT found that a reasonable investigation would have discovered this fact.

### ***Remedy***

The CRT awarded \$1,500 to the applicant for the significantly unfair actions of the strata council in failing to adequately investigate the applicant's complaint. The CRT also stated that if the applicant continues to make noise complaints and the strata council fails to take adequate steps to investigate the complaints and enforce the bylaws, the strata corporation will likely be liable for further damages.

The CRT also noted that the bylaws prohibit air conditioners without approval and only on a medical basis. Although this was not the focus of the CRT decision, the CRT raised the issue of whether the strata council actually approved the air conditioner or whether there was something that should have been done with respect to the unauthorized installation of the air conditioner.

### ***Conclusion***

The case highlights the importance of the strata council taking all steps necessary to investigate noise complaints. It is important to recognize that the matter is not an issue between two owners, but rather is a matter of bylaw compliance that the strata corporation must determine. Although strata corporations may be reluctant to engage professionals to perform sound testing, in some cases, such tests may be necessary to provide the evidence that the noise is unreasonable or, alternatively, to demonstrate that the noise is within an acceptable range.

The case also highlights the importance of the strata council following up if steps have been taken to mitigate or reduce the noise.

As seen in *Tollasepp* and other noise complaint cases that have been adjudicated by the CRT, an owner may be entitled to an award of damages if it is determined that the strata council failed to adequately investigate a noise complaint. Strata councils that are unsure whether their investigation of a noise complaint has been adequate may wish to obtain legal advice.

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<sup>2</sup> *Suzuki v. Munroe*, 2009 BCSC 1403