

Indexed as: Seymour v. Strata Plan VIS 2551 (No. 2), 2018 BCHRT 186

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:

Lorne Seymour

COMPLAINANT

AND:

The Owners, Strata Plan VIS 2551 (Sea View Strata)

RESPONDENT

**REASONS FOR DECISION
APPLICATION TO DISMISS A COMPLAINT
APPLICATION TO FILE FURTHER SUBMISSIONS
Section 27(1)(c) and Rule 28**

Tribunal Member:

Paul Singh

Advocate for the Complainant:

Brenda Seymour

On their own behalf:

The Owners, Strata Plan
VIS 2551 (Sea View Strata)

I INTRODUCTION

[1] Lorne Seymour and his wife are owners of a unit in the building owned by the Respondent Owners, Strata Plan VIS 2551 (Sea View Strata) [**Strata**]. Mr. Seymour says the Strata refused to approve renovations to the bathroom of his unit and says this refusal constitutes discrimination against him regarding a service because of his physical disability, mental disability, and age contrary to s. 8 of the *Human Rights Code* [**Code**].

[2] The Strata says it refused to approve the renovations because Mr. Seymour failed to provide information it reasonably required under the Strata bylaws. The Strata denies discriminating against Mr. Seymour and applies to dismiss the complaint under s. 27(1)(c), (e) and (g) of the *Code*.

[3] While I do not refer to it all in my decision, I have considered all of the information filed in relation to this application to dismiss. This is not a complete recitation of the parties' positions, but only those necessary to come to my decision. I make no findings of fact.

[4] For the reasons that follow, I allow the Strata's application and dismiss the complaint in its entirety.

II BACKGROUND

[5] Mr. Seymour is seventy-two years old with end-stage Chronic Obstructive Pulmonary Disease. He requires constant use of an oxygen tank and has limited mobility. A care-aid attends at his unit to assist him with daily activities including with his showering needs.

[6] Mr. Seymour sought to renovate the bathroom in his unit to install a walk-in shower and a "comfort height" toilet to improve his safety and to accommodate his mobility restriction. He wanted to pay for the renovation with a Home Adaptation for Independence grant from BC Housing but required the Strata's approval for the renovation before he could be eligible for the grant.

[7] On July 7, 2017, Mr. Seymour delivered a letter to the Strata seeking approval for the bathroom renovation.

[8] Mr. Seymour's request was considered and denied by the Strata at the Annual General Meeting held on July 7, 2017. The Minutes of the Annual General Meeting set out the reasons for the denial:

The Strata has not been supplied with any plans, information or acknowledgment from a plumber on the installation of a shower insert that alter the plumbing ... VIS2551 Bylaws are clear on the process of alterations and if an owner requires a letter from the Council approving such, we require confirmation from the plumber. VIS2551 has no control of owners completing work in their unit (without our approval). It would come to our attention if there was a plumbing issue. If an owner is requesting our approval, in writing, our Bylaws must be adhered to. If it was necessary to have a claim, regarding this installation, VIS2551 insurance could be null and void otherwise ... the Strata cannot write/sign a letter to allow the Seymours to renovate their unit without more information. VIS2551 Strata Bylaw Division 1, #5 and #6 must be adhered to.

[9] Mr. Seymour disputes the Strata's assertion that Strata insurance could be voided without further plumbing information for the proposed renovation and has filed an email from the Strata's insurance broker to support his position. In the email, the insurance broker says, "I can confirm that as long as you have a reputable contractor doing the work, there is nothing in our policy that would void the strata's insurance if you were to change some of the plumbing in the bathroom of your unit."

[10] The Strata agrees with the insurance broker that a plumbing change arising from a renovation to a unit may not, in and of itself, void the Strata's insurance. However, the Strata says that in circumstances where a claim arises **after** it fails to complete its due diligence, different insurance obligations arise than the one contemplated by the insurance broker, and in those circumstances the Strata's insurance could be voided.

[11] On July 11, 2017, a member of the Strata Council emailed Mr. Seymour's wife and informed her that:

The Strata Council is not, in any way, “holding up your ability to make your home safe for a 71 year old senior man, with end stage COPD so that he can live his remaining days at home.” The Council has been very clear that renovations in the bathroom will assist and improve Lorne’s safety in his home and support this alteration, once we receive the required information.

We have been very clear. Supply the Council with information, the type of tub/walk in shower you want to use that includes information from the plumber who is installing the unit and whether it is going to require any alterations to the plumbing.

...

If you or any owner changed their tub, without our permission, we have no control UNLESS there was a problem. You have asked for the Council’s permission to do so. We LEGALLY cannot give our permission without following our own by-laws as previously explained. If we did otherwise, and there was a problem, it would negatively affect our insurance.

Do you need assistance locating a plumber who would put in writing the installation of a certain model of tub without any change in the plumbing and a diagram/plan? That is what we need and I could give you some names.

[12] On October 21, 2017, Mr. Seymour’s wife delivered an email to the Strata in which she attached a specification sheet and price quote for the proposed walk-in shower. The email did not, however, contain information from a plumber regarding whether and to what extent the renovation would alter the unit’s plumbing.

[13] By letter dated January 14, 2018, a member of the Strata Council responded to Mr. Seymour and stated:

The Strata requires a statement from the plumber installing your desired unit stating, “there will be no change to the existing plumbing OR what the change will be”. If you would like the Strata Council to contact the plumber and ask for a letter with this necessary statement, please advise (VIS2551 will also cover the cost associated with this necessary requested letter).

[14] Notwithstanding the requests made by the Strata, there is no dispute that Mr. Seymour did not provide the Strata with the requested information from a plumber on whether and to what extent the proposed bathroom renovation would alter existing plumbing in his unit.

[15] Mr. Seymour says there have been recent renovations allowed in another unit within the Strata building which include bathroom floors being replaced, toilet and bathtubs being replaced and electrical fixtures being replaced. He says the Strata is aware that some of these renovations are being done in contravention of the Strata bylaws as the tradesman are not licenced and building permits have not been obtained. He says the Strata is discriminating against him by selectively allowing renovations to other units, regardless of whether they conform to the Strata bylaws, while refusing to approve renovations to his unit. The Strata denies that it is aware of, or has allowed, renovations to other units in contravention of the Strata bylaws.

[16] The Strata says that Mr. Seymour's claim that he has been treated unfairly is unfounded. The Strata says it has been supportive of Mr. Seymour throughout his tenure at the Strata's building. The Strata says that in 2016 it removed a large tree outside Mr. Seymour's residence at its own expense because the roots of the tree were making the entrance walkway uneven and difficult for Mr. Seymour to operate his electric scooter into the building. The Strata says it allowed Mr. Seymour to park his scooter in the hallway inside the building and to plug his scooter into the hallway electrical outlet and did not charge Mr. Seymour for this benefit. The Strata also says that one of its councillors gave up his own parking spot to allow Mr. Seymour to park his vehicle adjacent to the entry doorway.

[17] Mr. Seymour disputes the characterization of these events. He says the removal of the tree occurred before he moved into the Strata building and was done for the benefit of all owners and not just himself. He says he offered to pay the extra charge for using the electric outlet to charge his scooter but that the Strata unilaterally decided he need not do so. He also says that the parking spot adjacent to the entry doorway was given up by a unit owner before he became a councillor and only once the Strata failed to find a solution to the parking problem.

[18] Mr. Seymour says the Strata's refusal to approve the bathroom renovation arises in part from a Strata councillor's [Councillor] personal vendetta against him and his wife. He says they rented a unit from the Councillor in the Strata building before purchasing the unit in which they

currently live. He says that once they informed the Councillor of their intent to move out of her unit, the Councillor “became a completely different person and was unwilling to work with [them] on anything”. He says the Councillor unreasonably refused to refund their security deposit and has engaged in a pattern of bullying against them since that time. The Councillor denies having a personal vendetta against Mr. Seymour and his wife, denies bullying them, and says she had valid and reasonable grounds to withhold their security deposit.

[19] The Strata says it did not discriminate against Mr. Seymour by refusing the proposed renovation and says it would have acted in the same manner with any other unit owner regardless of their personal characteristics. The Strata says Mr. Seymour has initiated this complaint because of personal animus against the Strata Council and says that the source of the personal animus is Mr. Seymour and his wife’s perceived unfairness at not having their security deposit reimbursed by the Councillor, the failure of Mr. Seymour’s wife to be nominated to Strata Council, and the failure of Mr. Seymour’s wife to be hired as Treasurer by Strata Council. The Strata also says Mr. Seymour has initiated a meritless complaint for personal financial gain to address financial difficulties he is experiencing. Mr. Seymour denies that personal animus or financial gain were factors in his decision to file this complaint.

III APPLICATION TO FILE FURTHER SUBMISSIONS

[20] Before deciding the application, I address the fact that, after the submission process closed, Mr. Seymour filed a further submission. Generally, the Tribunal’s process regarding applications involves three submissions: the application, the response, and the reply: *Tribunal Rules of Practice and Procedure* Rule 28(2). A participant must apply to file a further submission to address a new issue or information: Rule 28(5)-(6).

[21] It is within my discretion to permit or consider additional submissions, but an application to file further submissions is an unusual procedure and should be limited solely to replying to new information or issues contained in the reply: *Kruger v. Xerox Canada (No. 2)*, 2005 BCHRT 24, at para. 22. An overriding consideration is whether fairness requires an opportunity for further submissions: *Gichuru v. The Law Society of British Columbia (No. 2)*,

2006 BCHRT 201, at para. 201; *Simpkin v. St'at'imx Tribal Police Board*, 2014 BCHRT 255, at para. 21.

[22] Mr. Seymour seeks leave to file a brief submission contesting reply submissions made by the Strata on issues including the Strata's state of knowledge of the proposed bathroom renovations. The Strata has not responded to Mr. Seymour's application.

[23] In the interest of fairness, and given the lack of prejudice to the Strata, I will consider Mr. Seymour's further submission.

IV ANALYSIS AND DECISION

A. SECTION 8 OF THE CODE

[24] Mr. Seymour alleges discrimination on the basis of age and disability in the area of service under s. 8 of the *Code* which states:

Discrimination in accommodation, service and facility

8 (1) A person must not, without a bona fide and reasonable justification,

- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
- (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.

[25] In the case of a relationship between a strata corporation and a unit owner, a complaint is properly made under s. 8 where it relates to the services a strata provides to the owners: *Shannon v. The Owners, Strata Plan KAS 1613 (No. 2)*, 2009 BCHRT 438 [**Shannon**], at para. 175.

[26] The Tribunal has found that strata corporations may provide various types of services under s. 8 of the *Code*. In *Shannon*, the specific service provided by the strata was that of

considering and either approving or rejecting a request to install a solar screen on the front window of the Shannons' home. This was seen as a particular example of the strata's more general service of enforcing and applying its bylaws: *Shannon*, at para. 176.

[27] In the instant case, the specific service provided by the Strata is that of considering and either approving or rejecting a renovation to a unit. This too is a particular example of the Strata's more general services of enforcing and applying its bylaws. As such, Mr. Seymour's complaint is properly made under s. 8 of the *Code*.

[28] The Strata applies to dismiss Mr. Seymour's complaint under ss. 27(1)(c), (e) and (g) of the *Code*. In my view, this application is most appropriately considered under s. 27(1)(c) of the *Code*.

B. SECTION 27(1)(C): NO REASONABLE PROSPECT OF SUCCESS

[29] Determinations under s. 27(1)(c) of the *Code* 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 in order 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 conjecture: *Hill*, at para. 27.

[30] The requirements to prove discrimination were affirmed by the Supreme Court of Canada in *Moore v. British Columbia* 2012 SCC 61 [*Moore*]. The Court held that complainants must show that they have a characteristic protected from discrimination; that they have experienced an adverse impact in a protected area; and that the protected characteristic was a factor in the adverse impact.

[31] Further, a protected characteristic need not be the sole or even the dominant factor in the adverse treatment; it need only be *a factor* in the discriminatory treatment: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, at para. 52.

[32] If a complainant establishes that a protected characteristic was a factor in the adverse impact, the burden shifts to the respondent to justify its conduct: *Moore*, at para. 33.

[33] On a s. 27(1)(c) application the burden is not on Mr. Seymour to prove discrimination. Rather, it is on the Strata to show there is no reasonable prospect of the complaint succeeding. If the Tribunal determines there is no reasonable prospect that Mr. Seymour will be able to establish one or more elements of his complaint at a hearing, it may dismiss the complaint. In circumstances where the Strata disputes one of these elements, Mr. Seymour must have some evidence to take his allegation out of conjecture.

[34] Alternatively, if the Tribunal determines under s. 27(1)(c) that it is reasonably certain that the Strata can justify its conduct, it may dismiss the complaint. This justification analysis incorporates the question of whether it is reasonably certain that the Strata satisfied its duty to accommodate Mr. Seymour to the point of undue hardship: *Purdy v. Douglas College and others*, 2016 BCHRT 117, at para. 50.

[35] In the instant case, there is no dispute that Mr. Seymour faces a disability-related adverse impact in respect of Strata services. His physical disability requires accommodation in the form of a more accessible bathroom facility in his unit and the accommodation was denied by the Strata. The denial requires a justification.

[36] The Strata says it was justified in its denial because it needed information which Mr. Seymour did not provide. To dismiss the complaint, I must be satisfied that it is reasonably certain that the Strata's request was reasonable and that it was Mr. Seymour who stood in the way of the accommodation request.

[37] It is to this issue that I now turn.

[38] Section 119 of the *Strata Property Act* authorizes the Strata to enact bylaws to manage strata property:

119 (1) The strata corporation must have bylaws.

(2) The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation

[39] The Strata is obligated to follow its bylaws, as set out in the Preamble to the Strata bylaws:

These Bylaws bind the Strata Corporation and the owners, tenants and occupants to the same extent as if the Bylaws had been signed by the Strata Corporation and each owner, tenant and occupant and contained covenants to observe and perform their provisions.

[40] Section 121 of the *Strata Property Act* makes any bylaw unenforceable to the extent it contravenes the *Code*, and s. 4 of the *Code* provides that the *Code* prevails over any other enactment, which includes a strata bylaw. Mr. Seymour does not, however, argue that the Strata bylaws themselves are discriminatory and bylaws which impose a duty on the Strata to ensure that it bases its review of a proposed modification of a unit on adequate and reliable information, would not, in any event, be seen to contravene the *Code*: see, for example, *Calderoni v. Strata Council Plan No. K6*, 2009 BCHRT 10, at para. 47.

[41] Rather, Mr. Seymour argues that the Strata's exercise of discretion, pursuant to the bylaws, to refuse his renovation request is discriminatory.

[42] Sections 5 and 6 of the Strata bylaws set out the owners' rights and obligations when making alterations to their units. The provisions relevant to this complaint are as follows:

5(1) An owner must obtain the written approval of the Strata Corporation before making an alteration to any of the following (the Alteration):

...

(j) wiring, plumbing, piping, heating, air-conditioning and other services.

...

5(3) The application of the unit owner(s) for an Alteration to the strata lot or to common property, including limited common property, pursuant to section 5(1) shall be in writing and shall enclose the following (the “Application”)

(a) details of the proposed Alteration;

(b) a plan showing the proposed location of construction of the Alteration and nature of the change, including details of the proposed materials and dimensions;

[43] It is clear from the wording of ss. 5(1)(j) and 5(3)(a) and (b) of the Strata bylaws that the Strata had a duty to inquire into, and to be apprised of, whether and to what extent there would be changes to the existing plumbing of Mr. Seymour’s unit before the Strata could approve the proposed renovation.

[44] As set out above, Mr. Seymour’s wife delivered an email to the Strata on October 21, 2017 in which she attached a specification sheet and price quote for the walk-in shower. In that email, Mr. Seymour’s wife says:

As you can very clearly see by the attached quote and Specification sheet for the shower insert, the renovations will not change any of the existing plumbing nor does it fall under any of the restrictions of the bylaws in Division 1, Section 5-1.

[45] However, on review of the documents attached to the email, it is not apparent whether the proposed renovation would alter existing plumbing in Mr. Seymour’s unit. No explanation is provided by Mr. Seymour or his wife on the source of their representation and the documents do not contain any assurance or explanation by a plumber on whether the renovation requires a plumbing change to the unit.

[46] Mr. Seymour’s wife endeavors to explain why requisite information from a plumber was not provided to the Strata. She says the Strata, “demanded a letter from the plumber saying that the plumbing would not change, or what changes there would be. At that point the plumber told me he doesn’t need the job that badly, and we lost him”. There is, in my view, no reasonable prospect of this explanation succeeding at a hearing to justify Mr. Seymour’s failure to act, considering the Strata’s uncontroverted proposal that it was prepared to recommend

and pay for a plumber to assist Mr. Seymour with obtaining the requisite information. In other words, I am satisfied that it is reasonably certain the Strata would establish that it offered a reasonable path to the accommodation, and that Mr. Seymour did not reasonably cooperate: *Central Okanagan School District v. Renaud*, [1992] 2 S.C.R. 970, at paras. 43-44.

[47] Mr. Seymour says the Strata's application to dismiss his complaint should be denied because there are credibility considerations which necessitate a hearing. Specifically, Mr. Seymour says there is conflicting evidence on issues including whether the Councillor was justified in withholding his security deposit, whether the Councillor had a personal vendetta against him, whether the Strata's insurance could be voided in the absence of requisite plumbing information, and whether other unit owners were renovating their units in contravention of the Strata's bylaws with the Strata's knowledge.

[48] Credibility is an issue in nearly every human rights complaint. However, the fact that a complaint raises issues of credibility does not necessarily mean that a complaint cannot be dismissed under s. 27(1)(c) of the *Code*: *Evans v. University of British Columbia*, 2008 BCSC 1026, at para. 34; *Bell v. Dr. Sherk and others*, 2003 BCHRT 63, at para. 28.

[49] The Tribunal will consider whether the credibility issue is central to the complaint. Where the credibility issue is central to the complaint and cannot be resolved on the basis of corroborative affidavits and contemporaneous documentary evidence, a hearing will often be necessary to resolve the complaint: *Francescutti v. Vancouver (City)*, 2017 BCCA 242, at para. 67; *Jussila v. Finning International*, 2009 BCHRT 413, at para. 75.

[50] In my view, the credibility issues advanced by Mr. Seymour are not crucial to a determination of the merits of his complaint.

[51] The central issue in this complaint concerns the reason for the Strata's decision to refuse its approval of renovations to Mr. Seymour's unit. The Strata says its refusal was justified given Mr. Seymour's failure to comply with reasonable Strata bylaw requirements.

[52] The credibility issues raised by Mr. Seymour do not address this central issue. Mr. Seymour's dispute with the Councillor regarding his security deposit and his assertion of a "personal vendetta" against him by the Councillor, even if proven, would not vitiate his obligation to comply with the Strata bylaws. Similarly, whether there are insurance consequences for contravening the Strata bylaws or whether there are other unit owners carrying on renovations in contravention of the Strata bylaws would not vitiate the Strata's obligation to enforce the bylaws in Mr. Seymour's case.

[53] Given that Mr. Seymour failed to provide requisite and reasonable information to the Strata, I am persuaded there is no reasonable prospect that Mr. Seymour's complaint will succeed.

V CONCLUSION

[54] For the reasons set out above, I allow the Strata's application and dismiss the complaint in its entirety.



Paul Singh, Tribunal Member