

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NWS3075 v.
Stevens,*
2018 BCSC 1784

Date: 20181016
Docket: S172207
Registry: Vancouver

Between:

The Owners, Strata Plan NWS3075

Petitioner

And

Coralee Dawn Stevens

Respondent

Before: The Honourable Madam Justice Fleming

Reasons for Judgment

Counsel for the Petitioner:	H.J. Dunton
The Respondent appearing on her own behalf:	C.D. Stevens
Place and Date of Trial/Hearing:	Vancouver, B.C. April 17 and 20, 2018; and May 4, 2018
Written Submissions of the Petitioner:	May 18, June 8 and July 3, 2018
Written Submissions of the Respondent:	May 29 and August 7, 2018
Place and Date of Judgment:	Vancouver, B.C. October 16, 2018

Introduction

[1] The petitioner is the strata corporation of a 63 unit residential complex called Central Heights Manor located in Abbotsford (“Strata”). The Strata’s bylaws include a bylaw requiring occupants to be 55 years or older. Coralee Stevens owns a unit in the complex and is under the age of 55.

[2] The Strata applies for a declaration that Ms. Stevens is in breach of an order granted following a petition hearing on July 13, 2017 (“Petition Order”), and is in contempt of court. It seeks orders that include, among other things, the forced sale of her unit, vacant possession and exclusive conduct of sale, and an order requiring her to pay its actual legal fees, other fees and disbursements pursuant to s. 133 of the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*], as assessed and determined by the Registrar.

[3] Ms. Stevens is self represented and has been throughout this proceeding and others also involving the Strata. She identifies herself as a person with a permanent disability based on mental health issues that include anxiety, depression, PTSD, OCD and agoraphobia for which she receives a disability pension of approximately \$1,000 per month. She impressed me, however, as an able litigant, obviously intelligent, organized and well aware of the Strata’s governance obligations and her rights as an owner.

Overview

[4] Ms. Stevens’ mother was the former owner and occupant of the unit. In or about October 2014, Ms. Stevens was registered on title as a joint tenant. Her mother died in March 2015. Ms. Stevens’ sole ownership of the unit was registered in December 2015. After that, more than once, Ms. Stevens asked the strata council to exempt her from the age bylaw which it refused to do.

[5] Based on the belief Ms. Stevens was occupying the unit, the Strata fined her for breaches of the age bylaw.

[6] In July 2016, the Strata commenced an action against Ms. Stevens in the Provincial Court for the recovery of the fines.

[7] In November 2016, Ms. Stevens filed a notice of dispute with the Civil Resolution Tribunal (“CRT”) alleging the strata council was not abiding by the SPA or its bylaws and rules. She also complained the strata council was granting personal loans to owners from the Contingency Resolution Fund (“CRF”), its legal action against her was illegal because it was attempting to use the CRF to do so, and it had failed to address “over 50 bylaw infractions” by other owners she had reported.

[8] The Strata started this proceeding in March 2017, asserting Ms. Stevens had been living in the unit since her mother’s death and was engaging in abusive, harassing and threatening communications with the strata council through allegations of bullying, harassment, cruelty, misuse of authority, dishonesty, illegality, and discrimination. It also complained about her threats to take legal and media action, and multiple allegations of bylaw violations, criminal activity, as well as bullying and abusive behaviour against other owners.

[9] Before the petition hearing in June 2017, Ms. Stevens filed a petition of her own in the Chilliwack Registry against the Strata seeking a number of orders including an order that all other legal proceedings in Provincial and Supreme Court be dismissed and she be exempted from the age bylaw and permitted to live full-time and permanently in her unit, based on compassionate grounds. In her petition, she again made allegations of financial impropriety against the strata council including the misuse of CRF funds to sue her in both Supreme Court and Provincial Court, failure to act on her allegations of bylaw infractions against other owners, as well as discriminatory enforcement of the age bylaw against her.

Petition Hearing

[10] At the petition hearing in this matter on July 13, 2017, Ms. Stevens denied residing in her unit. Justice Walker found she had been. In his reasons *The Owners,*

Strata Plan NWS3075 v. Stevens (13 July 2017), Vancouver S172207 (B.C.S.C.) he stated:

[6] Ms. Steven’s defence is that she does not reside at the premises (unit 121). I disagree. I am satisfied that she had resided at unit 121 since her mother’s death and, despite her submissions to the contrary, she continues to reside there. I say that for these reasons: She continues to use the suite daily to cook meals and to bathe. She also does her laundry there once a week. Ms. Stevens sleeps in the unit at least two days a week, and has for some time. Although she sleeps in her trailer (off-site) when she is not sleeping at unit 121, she continues to use unit 121 as a residence and keeps many of her personal effects there.

[11] Ms. Stevens’ response to the petition had set out many of these same facts, along with the same allegations contained in her Chilliwack petition about the strata council’s discriminatory application of the age bylaw to her, its use of incorrect and/or improper procedures in fining her, and passing a resolution to spend up to \$30,000 “to take me to supreme court”.

[12] Regarding this last allegation, Walker J. was satisfied the Strata had brought the “action” properly in accordance with the bylaws, based on the “requisite vote of the owners”. He also concluded the age bylaw itself was presumptively valid, pending the outcome of Ms. Stevens’ apparent challenge to its validity in the Chilliwack petition proceeding.

[13] With respect to the Strata’s allegations of abuse and harassment, Walker J. stated:

[11] I also wish to deal with the abuse and harassment issues... The allegation is that Ms. Stevens has engaged in abusive, harassing, and threatening communication with members of the strata council as well as other unit owners who are not members of the council. Ms. Stevens challenges the credibility of the statements made by numerous affiants in their affidavits concerning alleged behaviour. She denies some of the allegations altogether and says that other allegations concern events that have been either taken out of context or did not occur in the manner reported. In contrast, Ms. Stevens submits she has been the victim of verbal abuse by some of the unit holders.

[12] As a result, I am left with conflicts in the evidence that depend on determinations of credibility. For that reason, I have concluded that determining whether what Ms. Stevens says in her submissions and in her

evidence, or whether what the affiants state, is true, is neither appropriate nor susceptible of summary determination on this petition.

[13] However, I can say, and find, that based on your own words, Ms. Stevens, as contained in your evidence, you have engaged in inappropriate threats and have used language that either borders on, or crosses the line of, abusive and harassing behaviour, and it simply has to stop.

[14] The Petition Order declared that Ms. Stevens had breached the age bylaws by residing in unit 121 since her mother's death, engaged in inappropriate threats and used language that constituted abusive and harassing behaviour. It also included a number of terms prescribing her conduct which I summarize as follows:

...

3. Ms. Stevens is prohibited from occupying unit 121 and must vacate it forthwith.
4. Ms. Stevens may not engage in any indicia of residency in unit 121, such as cooking meals, bathing, doing laundry, staying overnight, and using the facilities.
5. While she remains the owner of unit 121, she shall abide by the *SPA* its regulations and the bylaws and rules of the Strata and she is specifically restrained from uttering any abusive or obscene comments directed at any owner or their families.
6. Ms. Stevens is enjoined from communicating directly with the strata council about her disputes with the strata council. Instead, she may direct any communication of this nature to the property manager or its legal counsel, in which she may not include in any threatening, harassing or abusive language.
7. Ms. Stevens is enjoined from communicating at all with individual members of the strata council, or other strata lot owners about her disputes with the strata council.

...

9. Ms. Stevens is not enjoined from communicating with strata lot owners generally and in particular with those people she says are her friends, provided that:

(a) her communications are pleasant and appropriate, non-threatening, non-harassing, non-abusive, and do not contain obscene language; and

(b) she does not discuss with them her disputes with the strata council.

10. Nothing in this order in any way impairs Ms. Stevens' rights incidental to ownership of unit 121, including the rights to:

(a) access the unit;

(b) maintain the unit;

(c) ensure that no waste, flooding, et cetera occurs;

(d) list it for sale; and

(e) deal with her mother's effects; and if she intends to have someone attend unit 121 on her behalf, she must provide written notice to the strata council, care of the property manager or its legal counsel. In this way, she can attend unit 121 or have some attend on her behalf to make sure the lights are on, the power is on, et cetera, if she is away.

[15] The Petition Order granted the Strata liberty to apply for further relief if "abusive and threatening behaviour" on the part of Ms. Stevens continued.

[16] Although the Strata sought costs, including costs payable pursuant to s. 133 of the *SPA* in the petition, that issue was not addressed.

Appeal

[17] Ms. Stevens appealed the Petition Order on July 14, 2017 and then applied for an order that she not be required to pay fees. The Court of Appeal dismissed her application, unpersuaded she could not afford to pay them “without due hardship” given her ownership of the mortgage free strata unit and the absence of evidence regarding her disability status.

Provincial Court Proceeding

[18] In November 2017, the Strata’s Provincial Court claim against Ms. Stevens, for unpaid fines from January 2016 to July 13, 2017, proceeded to a three day trial. In *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2, Judge Skilnick indicated that Ms. Stevens continued to deny she had resided in the unit, despite admitting to doing so in correspondence to the strata council and Walker J.’s finding. Judge Skilnick concluded she was estopped from arguing that she was not a resident in the unit during the period of the fines. He was also not persuaded by her further argument that the Strata had failed to comply with the procedural requirements of s. 135 the *SPA* before imposing the fines. He granted judgment against Ms. Stevens in the total amount of \$13,400 assessed at \$200 per week, prejudgment interest and costs of \$266.

[19] Regarding the issue of legal fees he wrote:

[68] The Defendant was billed for the Claimant’s legal fees as part of the invoice which she was given, informing her of the amount that she owed in outstanding fines. Counsel for the claimant concedes that this amount should not have been included as a part of any judgement awarded to the Claimant by the Defendant. Section 19(4) of the *Small Claims Act* provides that “(4) The Provincial Court must not order that one party in a proceeding under this Act or the rules pay counsel or solicitor’s fees to another party to the proceeding.” There is also an argument to be raised that the Defendant has already paid a portion of this cost once in the form of her strata fees, though this argument has less force if she is found to have caused the problem in the first place. In any event, the Claimant is not seeking the inclusion of this amount in any judgement it receives and it will not be included in any judgement awarded to the Claimant.

[20] A certificate of judgment was registered on title in the amount of \$16,122.28.

[21] After the petition hearing the Strata continued to impose fines on Ms. Stevens of \$200 per week for breaches of the age bylaw. She paid her monthly strata fees of \$373.77.

Subsequent Events

[22] On or about January 22, 2018, Ms. Stevens listed her unit for sale. On January 25, 2018, the Strata’s property manager wrote to her on behalf of the strata council advising it had directed the legal costs incurred related to the “concern of underage residency” and her strata lot be levied against her unit, further to a meeting held January 24, 2018 and s. 133(2) of the SPA. The letter enclosed a statement dated January 25, 2018 that included a charge of \$86,123.62 for “Legal Fee (Herbert Dunton July/16-Jan/18) and \$1,173.38 for “Litigation support (Teamwork)”.

[23] Ms. Stevens deposes to receiving two offers to purchase her unit a short time later, on January 29, 2018. A contract for purchase and sale shows an acceptance of Ms. Stevens’ counter offer in the amount of \$324,000. However the following day, the purchasers’ realtor sent an email advising they “were not comfortable going forward with the purchase, due to the “many red flags noted in strata/financial/rules and regs”. Ms. Stevens’ materials include a Form B (Information Certificate) completed by the Strata dated January 26, 2018, that states she owed \$111,941.69 and the amount of the contingency fund was \$51,860 which she says and I accept was provided to the purchasers.

[24] Ms. Stevens took her unit off the market after the collapsed sale, describing herself as very distressed over being left without enough money to buy a new home, if forced to pay the Strata’s legal costs.

[25] On February 1, 5, 14, March 7 and 9, 2018, she sent written communication to the strata council through the property manager requesting documentation of and an explanation for the legal costs set out in the statement, noting the two week deadline under s. 36(3) of the SPA. Her letter dated March 7, 2018 includes:

Dear Council, thank you for accepting my request for a hearing at this time, under a professionals advice in the strata industry I'm going to cancel my request for a hearing so I can discuss the issue with legal council. If after that we feel that I should request fa hearing then you will receive a new request for a hearing. Under the SPA it is my legal right as an owner to a Hearing, engaging a third party such as Mr. Dunton does not fall in line with the SPA.

....

I have requested to be provided with documentation of all legal fees you are invoicing me for, this is my third request, as an owner I am entitled to this information and in not providing it, it is a violation of the SPA. Please provide me with these receipts.

I see that an owner has also requested similar information through the minutes, and it appears that your response is you are going to try to get those fees reimbursed by me via further court proceedings, instead of giving them the dollar amount that they were requesting.

[Emphasis in the original.]

[26] On March 20, 2018, she delivered a letter requesting to “inspect the records, in particular the financials to do with the legal bills/related costs pertaining to unit #121 from Jan. 1, 2016 to the current time”.

[27] Prior to that, on March 2, 2018, Ms. Stevens filed a second dispute notice with the CRT asking that the legal fees and fines applied to her account from July 14, 2017 onward be removed or dismissed. Her claim summary includes:

...

To prove their fines are not legitimate I can provide evidence to prove that I am not in violation of the bylaw (and am following the Supreme Court Order) and they are attempting to take money from me that they are not entitled to.

...

It appears that in order for a Strata to collect a “Chargeback for Legal Fees” they must have a very clearly worded bylaw that states this, There is no such bylaw ... Sections 167(2) and 171(6) of the Act make it clear that an owner involved in a lawsuit with a strata corporation is not required to contribute to the strata’s corporation’s legal expenses.

On October 26, 2016 Strata held as SGM to vote on whether to take Supreme Court action against me, owners also voted on spending money from the CRF with a cap set at \$30,000 to proceed (I do have a recording of their lawyer Herb Dunton promising owners the cap was set at \$30,000).

[28] On March 18, 2018 Ms. Stevens sent an email to the property manager offering to begin making payments in relation to the amount she owed the Strata under the Provincial Court judgment.

[29] Ms. Stevens states that on April 3, 2018, after seeking legal advice, she relisted her unit with a listing price of \$369,900.

[30] On April 13, 2018 a CRT adjudicator advised the parties she refused to resolve Ms. Stevens second dispute, having concluded a decision on the merits would have taken an inordinate and unusual amount of time, disproportionate to the tribunal's mandate to provide speedy dispute resolution, citing 191 pieces of evidence, lengthy written submission (69 pages), and conflicts in the evidence regarding the significant factual disputes.

[31] During the hearing, Ms. Stevens emphasized her desire to sell but expressed concern about the effect on the small contingency fund on the marketability of her unit. The evidence did not include a response to her request for an explanation and or documents regarding the Strata's legal fees and or costs, although Ms. Stevens indicated she received some information before the completion of the hearing.

Positions of the Parties

[32] The Strata alleges Ms. Steven engaged in a number of breaches of the Petition Order involving ongoing occupation of the unit, prohibited or abusive communication, and threatening, harassing or abusive behaviour with other owners or in written communications sent to the strata council through the property manager. The Strata also alleges Ms. Steven's communications with traditional and social media violated the Petition Order. In support of its application, the Strata relies upon the affidavit evidence of various owners some of whom are also strata council members, as well as Ms. Stevens' brother, Michael Stevens.

[33] Ms. Stevens denies she has breached the Petition Order and almost all of the Strata's allegations that do not relate to her written communications. She also accuses the strata council of continued misconduct, making similar if not the same

allegations she made at the petition hearing and in the other litigation. Specifically, she alleges the Strata violated s. 171(2) of the *SPA*, which requires a resolution authorizing the Strata to sue be passed by a 3/4 vote at a special or general meeting, largely in relation to payment of legal fees in excess of the \$30,000 cap. She also accuses strata council members and some owners of ongoing harassment. Ms. Stevens describes the Strata's application as retaliation for her second CRT claim regarding the invoice for legal fees and asserts there is no provision in the *SPA* permitting a "charge back for legal fees". She also complains the owners have not been informed of the legal costs above the \$30,000 cap spent by the Strata.

[34] In her application response, Ms. Stevens asks for 17 orders under the heading: "Respondents Orders Sought", not part of the prescribed form. They are properly the subject of her own application, which has not been brought.

[35] She relies on her own affidavit sworn April 16, 2018. It includes more than 132 exhibits, many of which deal with events prior to the Petition Order, and an unsworn undated statement from Brad Montgomery, Ms. Stevens' partner produced at the hearing on April 20, 2018.

[36] A summary of the alleged breaches of the Petition Order and bylaws, along with Ms. Stevens' responses, is as follows:

1. On July 14, 2017, Ms. Stevens served the notice of appeal from the Petition Order on Ms. Barkwell, an owner and a member of the strata council, in the common dining room area, handing her an envelope and stating, "You are served", rather than providing the document to the property manager or the Strata's legal counsel.

Ms. Stevens acknowledges serving Ms. Barkwell personally, although she denies saying anything.

2. In late July 2017, Ms. Stevens approached another owner Moira McLean asking her to sign a petition alleging the strata council has misspent money in suing her and had dishonestly taken other money. Ms. Stevens

also asked Ms. McLean to distribute the petition to other owners not on the strata council. According to Ms. McLean, the petition called for a special general meeting to hold the strata council to account for their actions. Ms. McLean also alleges that when she refused to help Ms. Stevens, she became aggressive and later left a threatening voicemail stating she intended to bankrupt the whole complex. Ms. McLean says she did not keep a copy of the petition or the voicemail.

Ms. Stevens denies ever providing a petition to Ms. McLean.

3. On August 26, 2017, Ms. Stevens yelled and raised her middle finger at owners Anne and Erv Dyck, from her car, as they were out walking close to the complex.

Ms. Stevens denies these events ever occurred.

4. On December 19, 2017 in response to receiving a Christmas card from owner Lois Kettering, Ms. Stevens sent an email to the strata council stating:

I have been to the police today in regards to unit# 308 and Lois Kettering unwanted correspondence ...

Any contact from her is being considered harassment and if there is one more incident from her I will be filing a restraining order at Supreme Court immediately and without notice.

She is in breach of a bylaw and after she has been sent her warning please send me a copy by mail. This is a very serious issue and I will be informing the tribunal of her activity as well.

Ms. Stevens alleges ongoing harassment by Ms. Kettering that began during the 2016 annual general meeting. According to Ms. Stevens, she received a previous card from Ms. Kettering and her husband, George, after filing two complaints against Ms. Kettering for bylaw violations and making a report to the Abbotsford police about criminal harassment, the details of which are not provided. Ms. Stevens complains that Ms. Kettering continued to harass her during the trial in Provincial Court by

making faces at her. Ms. Stevens says she views the 2017 Christmas card as part of an obsessive fixation. She alleges that since that time, Ms. Kettering has continued to harass her whenever she can, again, without describing how, and the strata council has done nothing to address the issue.

5. On December 23, 2017 Ms. Stevens wrote another email to the strata council stating:

Pending the outcome of the [court] and the small claims judge decision I will be looking at taking legal action against the Strata for harassment, defamation of character, slander and libel in addition to what the lawyer suggests.

6. In subsequent emails to the strata council, dated February 1 and March 7 Ms. Stevens wrote:

The use of over \$60,000 without owners knowledge or consent will be dealt with on Tuesday in court before the judge... Sadly what is apparent is that this Council has spent money they were never entitled to spend without owners knowledge and consent in what appears to be a case of gross incompetence, Council I am devastated at how you have handled the Strata's affairs and I feel that if owners had knowledge of these actions they also would be, but I cannot speak for them.

... I urge you to please consider that the more you continue engaging legal representation the more the owners will end up paying when it is not necessary... I am not responsible for reimbursing anything.

... I feel that possibly your lawyer has tried to convince you he is there to help you. But after you look at the total for his legal bills so far what is apparent is that he is a business man trying to make his money off of vulnerable owners and you are now in the position where you will have to explain to owner why the cap that was set at \$30,000 was not kept. Unfortunately in choosing to do this you are in violation of the SPA.

... over the past week things have changed with the media getting involved since the Abbynews wrote their article, I have been contacted by a different media outlet daily. Unfortunately with the actions on your part the public and the owners are becoming aware of those actions, so many which are violations of the SPA, including the misuse of the CRF to what looks like using over \$60,000 of owners money without their knowledge or consent. I've spoken to a retired judge and if this is the case and is proven, those individuals could each be held responsible.

... This situation saddens me as it is the owners that have been left to deal with the choices that council had made. I'm going to suggest that to avoid additional legal costs from this point and giving your lawyer and Teamworks more of owners money, that Council decides amongst itself to invoice me only for the court approved fines up to July 13th which you are entitled to and I then pay those fines by selling the unit and we both move forward for the sake of owners not being put to further financial risk and to assist you to not continue to violate the Strata Property Act.

In her March 7, 2018 email, Ms. Stevens also described "dropping off her letter to council" in person: "As I went to get the mail I saw that council was already starting ... As I was in the common area, I could hear counsel members discussing private council members (*sic*) to 7 non council owners, I believe that this a violation of the SPA and PIPA as well".

7. In March 2018, Ms. Stevens complained to the media about the Strata, including Global News, CBC Television, and Rogers Breakfast Television Vancouver, as well as newspapers including the Surrey Now Leader and the Abbotsford News. The Strata accuses Ms. Stevens of telling "the very same abusive stories she was ordered not to repeat", and describes many of her comments on these news outlets and Facebook as being made in violation of the Petition Order.
8. On March 9, 2018 Ms. Stevens emailed the strata council about Michael Steven's involvement in this matter:

Please consider what getting involved with Mike will do for your current position, and the medias ongoing involvement I doubt you want this being made public. If you continue to include Mike in Strata business I have the option to make this letter public which for me is not a liability because of the documentation I do have to back everything up.

In his affidavit, Mr. Stevens states he became aware of this proceeding after seeing Ms. Stevens on Global TV News alleging people in their mother's "seniors complex" were mistreating her. Mr. Stevens describes her as a chronic, pathological liar who readily makes false allegations and

threatens to sue, including false allegations of sexual abuse involving other family members.

Ms. Stevens alleges Mr. Stevens has an extensive criminal past involving extreme violence and is very mentally unstable. She accuses him of having attempted to blackmail every family member except her.

9. From July 14, 2017 until the application was filed, Ms. Stevens has refused to vacate her unit. The Strata relies upon her own emails notifying the strata council that she would be attending her unit on 78 days between October 21, 2017 and March 19, 2018. Each of those emails however provides a reason for attending permitted under the Petition Order.

In addition, owner Sonja Reddicopp deposes to attempting to keep a record of the activity she noticed in Ms. Steven's unit from July 16, 2017 onward. The record includes close to 100 entries. Several involve seeing Ms. Stevens' car parked in the garage early in the morning, the sounds and smells of laundry being done and some noises from inside her unit as early as 6:30 am. Harold Klassen, another owner who lives next door to Ms. Stevens' unit, deposes to similar, although far fewer, observations, including the sounds of washer and dryer operating and the smell of food being prepared in the hallway next to her unit.

Mr. Klassen also noted that after a flood occurred in another unit on August 4, 2017, Ms. Stevens appeared at his door within minutes of the fire alarm sounding.

Ms. Steven strongly denies residing in the unit after the Petition Order. She explains her frequent attendance was largely related to the damage caused by the flood and subsequent restoration work. She asserts she was away camping or in Penticton on many of the days Ms. Reddicopp apparently observed activity in her unit, relying on camping and other receipts and records from the alarm company purportedly showing when

the home alarm was on and off. She also alleges Ms. Reddicopp has “proven to be incredibly dishonest” in the past.

10. On March 4, 2018, Ms. Stevens served documents related to her second CRT claim on Mr. Klassen who is the strata council president, at his home.

Breaches of the Petition Order

[37] Just as Walker J. was, I am left with conflicts in the affidavit evidence regarding many, if not most, of the Strata’s allegations that cannot be fairly resolved without being able to assess the credibility of the deponents.

[38] This is particularly true with respect to the allegations that Ms. Stevens has continued to reside in or occupy the unit, in breach of terms 3 and 4 of the Petition Order. Although it is apparent, Ms. Stevens has provided inconsistent accounts of her occupancy in the past, and her petition response acknowledged the basis upon which Walker J. found she had residing there since her mother’s death, at this hearing, she denied all of the new allegations suggesting she is cooking meals, doing laundry or staying overnight in the unit.

[39] All of the evidence on this issue is provided by interested parties. In the absence of independent evidence or cross-examination, which was not sought, I am not able to find that Ms. Stevens has continued to occupy her unit or engaged in the indicia of residency prohibited by term 4.

[40] The same is true with respect to the allegations of Ms. McLean and Mr. and Mrs. Dyck, which if true would constitute serious breaches of the Petition Order.

[41] I do not consider the Strata’s allegations with respect to Ms. Stevens’ communications with the media and on social media to be violations of the Petition Order. It does not prohibit indirect communication.

[42] That leaves the Strata’s allegations that Ms. Stevens has used threatening, harassing and abusive language in her email communications with the strata council

in breach of term 6 and her service of documents on Mr. Klassen in April 2018 and Ms. Barkwell in July 2017 in breach of term 7 and perhaps 9 of the Petition Order.

[43] Serving Mr. Klassen personally at his home with documents regarding her second CRT claim breaches term 7, which prohibits her from communicating at all with individual members of the strata council or other owners about her disputes with the strata council. Mr. Klassen is the president of the strata council. In my view, service of such documents falls within the scope of prohibited communication. I reach the same conclusion with respect to her service of the notice of appeal upon Ms. Barkwell. It is not clear if dropping off a letter to the strata council in person, which she described, constitutes another breach.

[44] There has been no suggestion that Ms. Stevens engaged in abusive or threatening behaviour or abusive or threatening language on those occasions.

[45] The Strata argues that Ms. Stevens' email communications outlined above also breached term 6 of the Petition Order, requiring her to communicate with the strata council about her disputes with them through the property manager or legal counsel, without using threatening, harassing or abusive language.

[46] Although some of Ms. Stevens written communications threatens legal consequences, legal action and media exposure, neither party made submissions about how term 6 ought to be interpreted and whether or not her impugned communications fell within its scope. Neither "her disputes (with the strata council)" nor "threatening, harassing or abusive language" are defined in the Petition Order or Walker J.'s reasons for judgment.

[47] At the same time, bearing in mind the nature of the allegations set out in the petition, I certainly understand why the Strata would describe Ms. Stevens' written communications regarding Ms. Kettering as using "threatening" or "harassing" language. Again, in her email regarding Ms. Kettering, Ms. Stevens characterized any contact from her as harassment and threatened a without notice restraining order. Ms. Stevens described complaining to police in response to receiving a

Christmas card. The content of her email is confrontational and highly dramatic. In these circumstances, I am not able to conclude, however, that it falls within the intended meaning of term 6.

[48] In my view, Ms. Stevens other email communications do not violate term 6. Although some of the content includes communications about her disputes with the strata council, including the misuse of funds, her tone is polite. To the extent she cautions the strata council against involving her brother by threatening to publish a letter, this is not communication about any such disputes. His involvement postdates the Petition Order. Further I can see no valid reason for involving Mr. Stevens in this matter, given he has no knowledge of the circumstances relevant to the petition and this application. I cannot properly rely upon his bare allegations about Ms. Stevens being dishonest and malicious which have served to inflame tensions between the parties.

[49] In the result the Strata has proven Ms. Stevens breached term 7 of the Petition Order by serving Ms. Barkwell and Mr. Klassen.

Finding of Contempt

[50] The Strata did not seriously pursue its application for a finding of contempt based on Ms. Stevens' alleged breaches of the Petition Order.

[51] Rule 4-3(1)(i) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Civil Rules*], requires personal service of a contempt application. Rule 22-8(11) requires the application and all filed affidavits in support to be served at least 7 days before the hearing.

[52] Rules relating to contempt proceedings are to be interpreted *strictissimi juris*, or to the strictest letter of the law (*Claggett v. Claggett*, [1945] 2 W.W.R. 191, [1945] 3 D.L.R. 414 (B.C.C.A.)). Non-compliance with the Rules is fatal to a civil contempt application.

[53] The Strata acknowledges Ms. Stevens was not personally served. The affidavit of the process server establishes that he left the documents at the front door of her unit after knocking and calling her name but receiving no response. Ms. Stevens denies being in the unit at the time and says her realtor was there instead. The process server deposes to hearing the noise of the TV blaring from the suite and seeing someone looking at him through the peephole. His evidence certainly causes me to suspect that Ms. Stevens was simply trying to avoid service but there is no dispute the requirement for personal service was not met.

[54] In any event, the party alleging contempt must prove each element beyond a reasonable doubt, which is not possible here (see: *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217 at 224-225). The Strata has failed to establish most of the alleged breaches on the lower balance of probabilities standard given the conflict in the evidence.

[55] The application for a finding of contempt is therefore dismissed.

Court Ordered Sale

[56] The Strata also seeks an order forcing the sale of Ms. Steven’s unit.

[57] Under s. 173 of the SPA, the court may do one or more of the following:

...

- (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
- (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
- (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

[58] The *Owners Strata Plan LMS 2768 v. Jordison*, 2013 BCCA 484 [*Jordison*], decided s. 173(c) empowers the court to order a sale of strata lot, in an extreme case, where an owner has demonstrated an unwillingness to comply with an injunction. At para. 27 Justice Donald wrote:

It is apparent from the language of s. 173 that the Legislature intended by subsection (c) to empower the Supreme Court to make such orders as will be effective in accomplishing the objects mentioned in (a) and (b). According to *Jiwan* this includes injunctive orders. In an extreme case, which this is, where the subjects of the order have demonstrated an unwillingness to comply with an injunction, the court must have the ability to go to the terminal remedy of sale in order to fashion an effective remedy for the other strata owners. The appellants have repudiated the cooperative foundation of strata living and their intolerable behaviour has brought about the forced sale. There was ample evidence before the judge that only a sale would resolve the problem.

[59] Similar to this case, the petitioner in *Jordison* had obtained an order requiring the respondent and her son to abide by the *SPA*, its regulations and the Strata's bylaws and rules. In addition, they were restrained from engaging in particular conduct such as making loud noise, obscene gestures or uttering abusive language directed at any of the other owners or their families. The petitioner then sought a declaration that the respondent was in breach of the mandatory injunction, relief that included a finding of contempt, and orders of vacant possession and forced sale, which the chambers judge granted and the court of appeal upheld.

[60] As I have indicated, by the time of the hearing, Ms. Steven had re-listed her unit for sale. She made it abundantly clear that she wished to sell as soon as possible and end her involvement with the Strata. She was concerned, however, that the small contingency fund, and issues apparent in the minutes may prevent a sale.

[61] The Strata proposed an order of forced sale be granted, in the event she did not sell the unit within a certain time frame.

[62] It has failed to prove however Ms. Stevens continued to breach the age by-law and many of the other alleged breaches of the Petition Order. This is not an extreme case requiring the "terminal remedy" of a court ordered sale. The application for a forced sale is therefore also dismissed.

Recovery of Actual Legal Costs

[63] In their notice of application, the Strata sought an order that the matter of legal costs be referred to the registrar for an assessment and determination of the

actual legal costs, fees and other disbursements reasonably incurred by the Strata to enforce and defend its bylaws, relying upon s. 133 of the SPA.

[64] Section 133 provides:

Strata corporation may remedy a contravention

133(1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including

- (a) Doing work on or to a strata lot, the common property or common assets, and
- (b) Removing objects from the common property or common assets.

(2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

[65] Perhaps because of the request for a reference to the registrar, the Strata did not provide any evidence regarding its legal costs, fees or other disbursements. The Strata also provided no evidence about how and whether it had “required” Ms. Stevens to pay its “reasonable” costs as contemplated by s. 133. Her materials alone addressed those circumstances, which I set out above.

[66] At the hearing the Strata’s only submission was it was entitled to recover its actual legal costs assessed as reasonable by a registrar, based upon *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377, a case decided after the Petition Order.

[67] At issue in *Baettig* was the interpretation of section s. 118 of the SPA, which allows reasonable legal costs, certain fees and reasonable disbursements incurred in registering and enforcing a lien against an owner’s strata lot to be added to the amount owing to the strata corporation under the Certificate of Lien.

[68] At para. 50 the Court of Appeal explained s. 118 provides that the amount of “reasonable legal costs” can be added to the lien *when registering it out of court*.

[50] It is clear that “reasonable legal costs” in s. 118(a) applies to both costs incurred in registering a lien out of court and those incurred enforcing a lien in court. In my view, the legislature’s decision to amend s. 118 in this way

supports the view that the quantum of legal costs that may be added to a lien is now the same in both contexts.

[69] In *obiter*, Mr. Justice Fitch reasoned that reasonable legal costs may be recoverable under s. 133 although it does not refer to “legal” costs, given cases decided under s. 127 of the *Condominium Act*, R.S.B.C. 1996, c. 64, the previous provision, had established that a strata was permitted to recover actual legal costs expended in enforcing bylaws, by way of court action, (see: *Strata Plan VR 243 v. Hornby*, [1986] B.C.J. No. 2353 (S.C.); and *Hill v. Strata Plan NW 2477*, 57 A.C.W.S. (3d) 662, [1995] B.C.J. No. 1906 (S.C.)).

[70] The Court of Appeal considered the reference to “reasonable costs” in s. 133(2) in concluding the intent of ss. 133 and 118 was to ensure that “strata owners who comply with the bylaws and rules of the strata should not have to shoulder the financial burden of remedying infractions committed by non-compliant owners”.

[71] In directing the Supreme Court registrar to assess the legal costs claimed in that case, the Court of Appeal observed that Rule 18-1 of the *Civil Rules* provides a mechanism to ensure that what is added to an amount owing under a lien reflects only those costs reasonably necessary to register the lien and conduct the enforcement proceeding (para. 81).

[72] Apart from discussing *Baettig*, I received no submissions dealing with the process by which a strata may seek recovery of the reasonable costs of remedying a bylaw contravention under s. 133 from the Court. Accordingly, at the conclusion of the hearing I directed the parties to provide additional written submissions.

[73] Unfortunately, the Strata did not address the issue. Instead, it produced a bill of legal costs in the amount of \$81,885.02 including legal costs of \$75,467.84 and disbursements related to the petition and the notice of application. Again, the Strata referred to *Baettig*, reciting various aspects of the decision in detail.

[74] Consequently, for a second time, I directed the parties to provide written submissions regarding the following:

1. What procedural steps does the SPA require the Strata to follow to recover its legal costs, as reasonable costs of remedying a bylaw contravention, pursuant to s. 133(2)?
2. Does the evidence show the Strata followed any such steps?
3. Has the Strata complied with s. 135(1) and (2) of the SPA with respect to requiring Ms. Stevens to pay the cost of remedying her contravention?

[75] In response, the Strata submitted the only procedure required to recover its reasonable costs is compliance with s. 135 (1) to (3) which read:

Complaint, right to answer and notice of decision

135 (1) The strata corporation must not

- (a) impose a fine against a person,
- (b) require a person to pay the costs of remedying a contravention or

...

for a contravention of a bylaw or rule unless the strata corporation has

- (d) received a complaint about the contravention,
- (e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and

...

(2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the person referred to in subsection (1)(e) and (f).

(3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.

[76] The Strata argues it has complied with s. 135(1) and (2) by requiring Ms. Stevens to pay the costs of her contraventions of the age bylaw only after receiving complaints, giving her the particulars of those complaints in writing, an opportunity to answer them, an opportunity for hearings and giving her notice in

writing of its decisions as soon as feasible. I agree to a large extent. The Provincial Court determined this very matter, finding the Strata was in compliance with the prerequisites for imposing a fine under s. 135 during the period of the fines. I disagree with the Strata's suggestion that Walker J. declared Ms. Stevens to be in contravention of both the age bylaw and bylaw 3(1). Neither his reasons nor the Petition Order include a declaration regarding bylaw 3(1). Instead, the Petition Order declared Ms. Stevens had engaged in inappropriate threats and used language that constitutes abusive and harassing behaviour. Bylaw 3(1) limits an owner's use of a strata lot and common property. Those limits include a prohibition on causing a nuisance or unreasonably interfering with the rights of other persons to use and enjoy another strata lot or common property. While Walker J. could have found her inappropriate threats and abusive and harassing behaviour fell within the scope of those provisions, he did not.

[77] The Strata's further submissions also referred to bylaw 30(3) described as a "legal fees charge back" bylaw for the very first time, although the bylaws were in evidence at the hearing. Bylaw 30(3) provides that among other things, legal expenses incurred by the Strata to enforce the bylaws "shall become part of the fee/assessment of the Owner responsible ...". The submissions did not go on to discuss the procedure for compelling payment of legal expenses under a bylaw. Nor did the Strata address the procedural mechanism for recovery of expenses pursuant to s. 133 on its own.

The Process for Recovering Actual Legal Costs under the SPA

[78] As I have indicated, prior to the SPA, s.127 of the *Condominium Act* was interpreted as requiring a Strata to bring an action in debt to recover legal fees after a judgment established bylaws had been contravened rather than seeking recovery by way of a costs award (*Hill* at para. 11). It read:

Violation of bylaws

127 (1) An infraction or violation of these bylaws or any rules and regulations established under them on the part of an owner, the owner's employees, agents, invitees or tenants may be corrected, remedied or cured by the strata corporation.

- (2) Any costs or expense incurred under subsection (1) by the corporation
 - (a) must be charged to that owner, and
 - (b) must be added to and become a part of the assessment of that owner for the month next following the date on which the costs or expense are incurred, but not necessarily paid by the corporation, and become due and payable on the date of payment of the monthly assessment.

(3) The strata corporation may recover from an owner by an action for debt in a court of competent jurisdiction money which the strata corporation is required to expend as a result of an act or omission by the owner, the owner's employees, agents, invitees or tenants, or an infraction or violation of these bylaws or any rules or regulations established under them.

[Emphasis added.]

[79] In contrast, s.133 does not require a debt action and is essentially silent on the procedure for recovery of the reasonable costs of remedying a contravention. Section 133(2) simply provides that a strata “may require” that those reasonable costs be paid by the person who may be fined for the (actual) contravention under section 130. In the absence of a power to impose a lien (ss. 116 and 118) or a fine (s. 130) for the costs of remedying a contravention, it appears the only way to “require” an owner to pay, is by “suing” or making an application pursuant to ss. 171(1) and 173(1). They provide:

Strata corporation may sue as representative of all owners

171 (1) The strata corporation may sue as representative of all owners, except any who are being sued, about any matter affecting the strata corporation, including any of the following matters:

- (a) the interpretation or application of this Act, the regulations, the bylaws or the rules;
- (b) the common property or common assets;
- (c) the use or enjoyment of a strata lot;
- (d) money owing, including money owing as a fine, under this Act, the bylaws or the rules.

...

Other court remedies

173 (1) On application by the strata corporation, the Supreme Court may do one or more of the following:

- (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;

(b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;

(c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

...

[Emphasis added.]

[80] Under s. 1, a "suit" means any kind of court proceeding and to "sue" means [to bring] any kind of court proceeding which is defined in Rule 1-1 of the *Civil Rules* to mean "an action, petition proceeding and a requisition proceeding".

[81] Since the enactment of the *SPA* there appears to be some confusion, reflected in the pleadings and materials of the Strata here, about the relationship between "costs" pursuant s. 133 and Rule 14-1 of the *Civil Rules*, and the recovery of costs provided for in a strata bylaw. The issue was considered in *Blackmore et al. v. Owners, Strata Plan VR-274*, 2004 BCSC 1121 at paras. 62-69. The case involved a review of an arbitrator's decision to award the strata solicitor-client costs in a dispute with an owner about a bylaw created pursuant to s. 133. Justice Goepel as he then was, explained:

[62] In justifying the cost award under the bylaw, the arbitrator referred to *Strata Plan VR243 v. Hornby*, [1986] B.C.J. No. 2353 (S.C.) (QL) and *Hill v. Strata Plan NW 2477*, [1995] B.C.J. No. 1906 (S.C.) (QL) as authority for the proposition that a strata corporation may claim actual legal expenses incurred. Those cases arose under s. 127 of the *Condominium Act*, R.S.B.C. 1979, c. 61, the predecessor to s. 133 of the *Act*. In both cases, the strata corporation sued the owner after the litigation to which the costs related had concluded to recover its actual legal costs. The cases are distinguishable from this situation where the strata corporation seeks to recover its legal expenses not in a separate proceeding but as "costs".

[63] The strata corporation points to *Canadian Imperial Bank of Commerce v. Charbonnages de France International S.A.* (1996), 42 C.B.R. (3d) 163 (B.C.C.A.) as support for the arbitrator's decision to award costs based on the bylaw. In that case, the bank had demanded payment under the terms of a credit agreement and when payment was not forthcoming, it obtained judgment against the appellants in the amount owing. The bank then brought a second claim seeking to recover certain additional amounts, including its enforcement costs. The claim for enforcement costs was founded on the following contractual provision:

The guarantor shall from time to time upon demand by the fiscal agent on behalf of the lenders forthwith pay to such agent all expenses (including legal fees) incurred by the lenders and such agent in the

enforcement against the guarantor of any of the lenders' rights hereunder.

The Court of Appeal awarded special costs based on that term.

[64] **Charbonnages** appears to be contrary to an earlier Court of Appeal decision: **P & T Shopping Centre Holdings Ltd. v. Cineplex Odeon Corp.** (1995), 3 B.C.L.R. (3d) 309 (C.A.). That case concerned a lease agreement which contained the following provision:

All costs, expenses, and expenditures including, without limitation, the complete legal costs incurred by the Landlord as a result of any default by the Tenant shall forthwith on demand be paid by the Tenant as Additional Rent together with interest, at the rate specified in Section 4.08(e), from the date any such costs, expenses, and expenditures are incurred by the Landlord until the same are fully paid and satisfied.

[65] Having succeeded in its claim, the landlord sought special costs based on the aforementioned provision. The Court rejected the claim. Madam Justice Southin observed at [paras.] 18-19:

There, the agreement specified a scale of costs provided by law and provided for those costs to be taxed by the district registrar, and if this agreement had said the respondent was entitled to special costs to be taxed, there would be no difficulty in our making such an order. But it does not. It does not embody any term used in the Rules.

As I understood him, counsel for the respondent invited us to make the order because special costs are bound to be less than what the respondent is entitled to recover under the covenant. My difficulty is that I do not consider it is proper to proceed upon any such assumption. It is not for us to construe the covenant or predict what the result would be of an assessment of special costs. Thus I would not make the order sought.

[66] The Court went on to hold that if the landlord wanted the benefit of that contractual provision it should bring a separate proceeding.

[67] It is difficult to reconcile the two decisions. Although **Charbonnages** is the more recent decision, **P & T Shopping Centre** is a considered decision on the very point in issue.

[68] In this case, as in **P & T Shopping Centre**, the bylaw does not embody any term used in the **Rules of Court**. Further, the bylaws contemplate that the owner will be assessed first and only if the assessment is unpaid can the strata corporation commence an action to recover the amount owing. That was the process followed in both **Hornby** and **Hill**. There has been no assessment under the bylaw in this case....

[Emphasis added.]

[82] Justice Goepel chose to follow **P & T Shopping Centre Holdings Ltd. v. Cineplex Odeon Corp.** (1995), 3 B.C.L.R. (3d) 309 (C.A.), which was recently cited

with approval in *Trenchard v. Westsea Construction Ltd.*, 2017 BCCA 352. At para. 8, the Court of Appeal explained that a party cannot merely claim solicitor-client costs authorized by a bylaw or contractual provision as court costs. Instead, the party must elect either to sue for the costs in a separate proceeding and forego its court costs, or accept the Court’s jurisdiction to decide upon the appropriate costs under the *Civil Rules*:

[8] There are two cases from this Court that are relevant to Westsea’s claim. In *P & T Shopping Centre Holdings Ltd.* the plaintiff sought special costs relying on a covenant in the lease. The Court said that the lessor had two options and had to make an election, either to seek party and party costs under the tariff, or to seek costs under the lease. If it sought costs under the Lease it had to follow the following procedure:

[22] The respondent’s remedy is to send to the appellant a statement setting out its claim under the clause and demanding payment and, if the appellant refuses to pay, to sue for those costs as unpaid rent. As to what the appellant should do, *Re Holliday and Godlee, supra*, may give it a clue.

...

(See also *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2018 BCSC 66 at para. 385; *AMT Finance Inc. v. Gonabady*, 2010 BCSC 278; *Wild Dunes Holdings Inc. v. Hackett*, [1999] B.C.J. No. 372 at paras. 10, 13; *B.U.K. Investments Ltd. v. Ken Pappas*, 2002 BCSC 161 at paras. 28-32; *Halle v. Ritchie*, 2008 BCSC 1452 at paras. 63-67; and *Aspen Enterprises Ltd. v. Quiding*, 2009 BCSC 50 at paras. 20-23).

[83] This same point was made in *Cheung v. The Owners, Strata Plan VR1902*, 2004 BCSC 1750. There, citing *Blackmore*, Justice Gerow refused to order special costs under a bylaw which permitted recovery of the strata’s legal costs by way of an assessment, noting there had been no assessment.

[84] In light of these authorities and in the absence of submissions addressing the issue, I will not consider the Strata’s “legal charge back” bylaw as a basis for recovering its “actual legal costs” in this proceeding any further.

Discussion

[85] Here the Strata first sought recovery of its reasonable expenses including legal expenses relying upon s. 133, in its petition at the petition hearing. The Strata then asked for the same relief in its notice of application. In the meantime, the CRT refused to determine Ms. Stevens' claim against the Strata related to the same or similar expenses.

[86] The first question is: Does s. 173 allow for such an application? I am satisfied the answer is yes.

[87] Section 173 expressly permits a strata to make applications for orders requiring an owner to perform a duty required by the SPA, the bylaws or the rules, as well as to stop contraventions of the same. Again, s. 133 allows a strata to require an owner to pay the reasonable costs of remedying a contravention. Although it is unclear if requiring an owner to pay gives rise to a "duty" under the SPA, it would be incongruous to impose upon a strata the burden of suing separately for the costs of remedying a contravention associated with an application to stop an owner from contravening, particularly in light of the purpose of s. 133 identified by *Baettig*. It is also significant that the Strata's application was brought in a petition proceeding and the petition itself sought recovery of legal costs under the section.

[88] This gives rise to a second question: Is the Strata's application for s. 133 costs incurred as a result of the petition and the petition hearing properly before me? Because there is no indication s.133 costs or court costs were adjudicated at the petition hearing, again the answer is yes. Also, leaving aside the distinction between s. 133 costs, and court costs, requiring the parties to appear before Walker J. to address the issue of s. 133 costs for the petition hearing would increase litigation costs and cause inconvenience to both. Further, the Strata's application for a reference to the registrar was not made at the petition hearing, based as it is upon *Baettig*, which, again, was decided subsequently.

Reference to the Registrar

[89] Rule 18-1 allows the court to direct an assessment by the registrar. Rule 14-1 identifies a registrar as the court officer before whom costs, including special costs, are to be assessed. Although judges may assess court costs, including special costs, the discretion to do so, is to be exercised sparingly. The superior expertise and experience of registrars in assessing court costs which involves considering the reasonableness of legal costs, disbursements and other expenses is well recognized: *Gichuru v. Smith*, 2014 BCCA 414. I accept therefore, a registrar is also best placed to assess the reasonableness of the “s. 133 costs” claimed by the Strata.

[90] To facilitate the efficiency of a registrar’s hearing and without intending to fetter the exercise of his or her discretion, I wish to comment on the question of reasonableness. Firstly, I regard proportionality as an important consideration in assessing whether and to what extent the Strata’s actual costs are reasonable. Reasonable costs include those necessary for the proper presentation of the case. The result or the degree of success achieved is also a factor. While the Strata was successful at the petition hearing, it was largely unsuccessful in its application before me. To be recoverable the actual costs claimed must fall within the scope of the “reasonable costs of remedying the contravention”. Significantly, the Strata did not establish Ms. Stevens had engaged in a further breach of the age bylaw. The other alleged breaches were of the Petition Order, not the by-laws, most of which I also dismissed along with the contempt application, and the application for a forced sale. In addition, I regard the Strata’s allegations that Ms. Stevens breached the Petition Order through her statements to the media or on social media, and its decision to obtain and rely upon the evidence of her brother Michael as unreasonable. Further, I do not consider the actual costs incurred to prepare the Strata’s further written submissions requested twice, to be reasonable. Most were not responsive. Those that were should have been provided at the hearing.

[91] In the event the Strata ask for costs associated with the Provincial Court action or the CRT proceedings, in my view they are not recoverable in this case.

Firstly, the Strata made no submissions about its *entitlement* to those costs. Regarding the Provincial Court action, Judge Skilnick’s reasons addressed the legal costs invoiced to Ms. Stevens before the trial, indicating the Strata conceded they were not recoverable in that action with reference to s. 19(4) of the *Small Claims Act*, R.S.B.C. 1996, c. 430. Given the provision, I note, but come to no conclusion about the potential for unfairness to a successful defendant owner, were s. 133 to be interpreted as allowing a strata to recover its actual costs related to a Provincial Court action. I have the same concern about any costs that may be claimed in relation to the CRT proceedings. Section 20 of the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 provides that parties are generally required to represent themselves. Both forums are intended to offer simple and inexpensive access to dispute resolution and the adjudication of legal disputes.

[92] Pursuant to Rule 18-1(1), therefore, I direct an assessment of the Strata’s reasonable costs of remedying the contravention of its bylaw(s) be held by a registrar. Pursuant to Rule 18-1(2), I further direct the assessment be certified by the registrar, and the certificate provided to a requesting party. The party scheduling the assessment appointment must notify the other. If additional terms are necessary to give effect to my reasons regarding the assessment, the parties have leave to apply for directions.

[93] I remind the parties the Petition Order remains in effect.

[94] Finally I wish to make clear that although I was exposed to some negotiations between the parties regarding the question of costs, which I had encouraged them to attempt to resolve outside of the courtroom, I have not considered anything that may have been said by either of them in deciding this issue.

“Fleming J.”