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IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

David Beckett and Chia Fang Kuan

COMPLAINANTS

A N D:

The Owners, Strata Plan NW 2603

RESPONDENT

REASONS FOR DECISION

Tribunal Member:	Diana Juricevic
Counsel for the Complainants:	Clea F. Parfitt
Counsel for the Respondent:	Andrew C. Breen
Dates of the Hearing:	October 27 to 31, 2014 November 3 to 7, and 24, 2014
Location of the Hearing:	Vancouver
Submission Schedule Completed:	January 23, 2015

I INTRODUCTION

[1] David Beckett and Chia Fang Kuan (the “Complainants”) filed a complaint alleging that The Owners Strata Plan NW 2603 (the “Strata”) discriminated against them with respect to services, on the basis of physical and mental disability, contrary to s. 8 of the *Human Rights Code*. The Complainants allege that the second-hand tobacco smoke (“second-hand smoke”) of an owner, residing immediately below them, infiltrated their suite, adversely affecting their disabilities, and that the Strata failed to respond adequately to their concerns. The Complainants also allege that the Strata committed numerous acts of retaliation over a period of years, contrary to s. 43 of the *Code*.

[2] This matter proceeded to a lengthy hearing. I have considered all of the evidence and submissions of the parties. In these reasons, I set out only that evidence required to come to my decision. This is my decision on the merits of the complaint.

II WITNESSES

[3] Mr. Beckett and Ms. Kuan testified on their own behalves. Kari Lasanen, Donna Walsh, Margaret Silzer, Fiona Graham, Paul Knibbs, William Kristiansen, and Christine Kristiansen testified on behalf of the Strata. It was not necessary to recount the testimony of Ms. Graham in order to determine the merits of the complaint.

[4] I am entitled to accept some, none, or all of a witness’ testimony. Where there was a disagreement in the evidence, my findings and reasons are set out. In resolving conflicts in the evidence, and determining whether to accept the evidence of any witness, in whole or in part, I have applied the factors set out by the British Columbia Supreme Court in *Van Hartevelt v. Grewal* 2012 BCSC 658, paras. 30-35, and *Bradshaw v. Stenner*, 2010 BCSC 1398 (“*Bradshaw*”), paras. 185-187. As set out in *Bradshaw*, the following factors may be considered in assessing credibility:

Credibility involves an assessment of the trustworthiness of a witness’ testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his [or her] memory, the ability to resist the influence of interest to modify his [or her] recollection, whether the witness’ evidence harmonizes with

independent evidence that has been accepted, whether the witness changes his [or her] testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, (1926), 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Faryna*]; *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356). (para. 186)

[5] In assessing credibility, I have also adopted the following methodology set out in *Bradshaw*:

[...] a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions". (para. 187)

[6] The most helpful evidence in this case is the video and audio evidence created at the time of events. These recordings provide the most accurate reflection of what occurred, rather than witnesses' memories that have deteriorated through the passage of time, hardened through this proceeding, or been reconstructed. I have used contemporaneous recordings as a yardstick against which to compare and assess the reliability of the witnesses' testimony. In doing so, I have taken into account those recordings that were compiled and edited by the Complainants. I am satisfied that the Respondent had notice and opportunity to explore the recordings during cross-examination.

III EVIDENCE

[7] Mr. Beckett and Ms. Kuan are married. In 2009, they bought a two-bedroom condo in the Strata, and began to reside there. The Strata is an age-restricted complex and consists of several low-rise residential buildings. There are over fifty condos in the Strata. Many of the owners are retired and have been living there for a number of years. Some of the owners are smokers. There are no Strata bylaws prohibiting smoking. There is a club

house, where owners can socialize and collect mail, and grounds where owners can park recreational vehicles. The Strata is self-governed and managed by a Strata Council that is comprised primarily of volunteers. Mr. Beckett joined the Strata Council as gardener.

Second-Hand Smoke Complaint

[8] A few months after moving in, Ms. Kuan noticed the smell of second-hand smoke in their home. She noticed the smell in a bathroom, and believed the smoke was coming from a pipe under the sink. She could also smell smoke in their laundry room. Ms. Kuan works as a consultant and has a home office. She found it difficult to breathe, so she began wearing a medical mask in her office and elsewhere. Ms. Kuan brought the smell to her husband's attention. As a former smoker, Mr. Beckett did not initially notice the smell. He explains that his "sniffer" was not as sensitive as hers, so Ms. Kuan had to point it out to him several times before he began noticing the smell of second-hand smoke.

[9] Mr. Beckett raised their concerns about second-hand smoke to Mr. Neufeld, who was president of the Strata Council at the time. Mr. Neufeld walked through their unit, but was unable to smell any smoke. According to Mr. Beckett, Mr. Neufeld appeared to be aware of the issue of second-hand smoke, and advised them to plug holes under the sink with foam, which they eventually did.

[10] Ms. Walsh, Mr. Kristiansen, and Ms. Kristiansen all testified that the owner from whom Ms. Kuan and Mr. Beckett purchased their condo was a smoker. Mr. Beckett and Ms. Kuan were aware of this, but Ms. Kuan recalled being told that this owner never smoked indoors. As a result, Ms. Kuan attributed the smell of second-hand smoke to an owner residing in a suite directly below them, Mr. Augustin, who was also a smoker.

[11] Mr. Beckett recalled speaking to Mr. Augustin many times about smoke seeping into their home. Mr. Neufeld also spoke to Mr. Augustin about their concerns. Although Mr. Augustin agreed not to smoke indoors, Mr. Beckett and Ms. Kuan continued to smell smoke in their home and attributed it to Mr. Augustin. Mr. Beckett began researching the effects of second-hand smoke. He found an "enormous" amount of information on its toxicity. Mr. Beckett grew increasingly concerned about his health.

First Complaint of Second-Hand Smoke

[12] In November 2009, Ms. Kuan and Mr. Beckett wrote a letter to the Strata Council complaining about second-hand smoke. They put their complaint letter in a “golden box” located in the club house, which was used by owners to correspond with the Strata Council. Their complaint coincided with a health scare that Mr. Beckett experienced, which he believed was life-threatening. Mr. Beckett had a pre-existing heart condition, and had numerous surgeries. Mr. Beckett believed that his latest health scare was caused by second-hand smoke emanating from Mr. Augustin’s suite. Mr. Beckett felt panicked and irate, and believed that his life was being put at risk.

[13] Mr. Beckett was passionate in the presentation of his evidence. In general, I find that Mr. Beckett honestly stated his perceptions. However, I find that his perceptions did not accord with those of a reasonably objective observer. Mr. Beckett had a tendency to exaggerate and overdramatize his experiences. For example, he described his heart stopping thirty times and being dead forty times. He also had a tendency to state conclusions as fact based on his own inferences rather than reporting actual observations. Mr. Beckett acknowledged having trouble with his memory. His indignation for Mr. Knibbs, Mr. Kristiansen, and Ms. Kristiansen was evident throughout his testimony and influenced his recollection of events. His testimony was not always consistent with contemporaneous documentary evidence or video recordings. As a result, I have not relied on his evidence where it cannot be corroborated by independent evidence.

[14] The Strata Council did not respond to the Complainants’ complaint letter. The letter was delivered three days before the Strata’s annual general meeting, which was held every November. Mr. Beckett continued to be a member of the Strata Council. Mr. Lasanen was elected as the new president. Mr. Lasanen explained that the complaint letter was “lost in the shuffle” during the transition, and attributed the error to Mr. Neufeld. Although I accept the letter was lost, I do not accept Mr. Lasanen’s explanation for the error. Despite his role as president of the Strata Council, Mr. Lasanen had a tendency to attribute errors committed by the Strata Council to other owners, and conveniently, at times, to owners who did not testify at the hearing. Also, every winter, Mr. Lasanen, with his wife, drove his recreational vehicle to a sunny destination, and went on an extended vacation. During his

absence, he delegated his duties to the Strata Council's vice president. Mr. Beckett and Ms. Kuan believed that Mr. Lasanen "ignored" his duties on Strata Council while he was away on vacation, and found this really inappropriate.

[15] Mr. Beckett and Ms. Kuan believed that the Strata Council was not taking their concerns seriously. They became even more irate when they noticed the Strata Council responding to issues raised by other owners. Ms. Kuan began rigorously documenting her symptoms. Mr. Beckett continued researching the health effects of second-hand smoke, almost on a daily basis. In his own words, "again and again and again and again", he found that second-hand smoke kills "hundreds of thousands of people". Mr. Beckett resigned from the Strata Council in March 2010. Despite their efforts to ameliorate the smell, they continued to detect second-hand smoke in their home.

Arrival of Mr. Knibbs and Dog-Barking Complaints

[16] In May 2010, Mr. Knibbs moved into the Strata. He purchased a condo across the laneway from Mr. Beckett and Ms. Kuan. Mr. Knibbs owned a dog. Mr. Beckett recalled that problems with Mr. Knibbs arose shortly after Ms. Kuan began complaining about the barking noises of another neighbour's dog. Ms. Kuan recalled that a "kerfuffle" arose with Mr. Knibbs after she raised concerns that his dog was too big to comply with the Strata's bylaws.

[17] At around this time, Ms. Kuan was diagnosed with bronchitis and attributed her condition to second-hand smoke. She was also annoyed by what she described as the excessive barking of a dog belonging to Mr. Rutledge. Ms. Kuan recorded in detail the date, time, location, and frequency of the barking, which occurred mostly during daytime hours. Eventually, Ms. Kuan submitted a dog-barking complaint to the Strata Council. Ms. Kuan explained that she did not approach Mr. Rutledge directly, because she felt uncomfortable speaking to men. Rather, she was hoping her complaint would spur Mr. Rutledge to "control his dog's barking". Ms. Kuan did not believe she was confrontational, but rather, her anxiety and frustration "went up to the roof".

[18] In general, I find that Ms. Kuan honestly stated her perceptions. However, I find that her perceptions were not those of a reasonably objective observer. While Ms. Kuan meticulously documented her observations and kept contemporaneous records, her notes

are not an independent record of what happened. Her evidence was primarily based on her own personal interpretation of events. Ms. Kuan was hyper vigilant, which influenced her perception of events, and had a tendency to exaggerate her symptoms. At times, her testimony seemed unreasonable, impossible, or unlikely. At other times, her testimony was not consistent with video footage or medical documents that were entered into evidence. For example, Ms. Kuan testified about her serious fear of dogs. Her testimony about freezing when she sees dogs and efforts to avoid contact with them (e.g. crossing the street or using her husband as a barrier) was not consistent with video footage that was submitted into evidence. Ms. Kuan's belief that she was not confrontational with owners was also not consistent with video footage that was submitted into evidence. As a result, I have not relied on her evidence where it cannot be corroborated by independent evidence. In the absence of independent corroboration, I have also not relied on Ms. Kuan's evidence where it is corroborated by Mr. Beckett, or Mr. Beckett's evidence where it is corroborated by Ms. Kuan.

[19] The Strata Council received Ms. Kuan's dog-barking complaint. Mr. Beckett also telephoned Mr. Lasanen to discuss the complaint, and was advised to resolve the issue by speaking with Mr. Rutledge directly. After finding out about the dog-barking complaint, Ms. Kuan recalls that Mr. Knibbs began making barking noises at her, and on one occasion, he also asked whether the traffic was too loud.

[20] A short time later, Ms. Kuan and Mr. Beckett began complaining to the Strata Council about Mr. Knibbs, whose behaviour they described as "hostile". Ms. Kuan also documented their interactions. She reported that, whenever they saw Mr. Knibbs, he "barks, howls or woofs at us". Mr. Beckett found Mr. Knibbs' behaviour to be really inappropriate. Mr. Beckett spoke to Mr. Knibbs, and recalled asking him whether he had ever observed a child being killed or eaten by a dog. Mr. Beckett explained to Mr. Knibbs that his wife was raised to fear dogs because she comes from a country where this happens. Instead of resolving their conflict, Mr. Beckett believed that Mr. Knibbs went out of his way to "parade" his dog and intimidate them, and likened this to "illegal confinement".

[21] Mr. Beckett and Ms. Kuan perused the Strata bylaws, and discovered that one of the bylaws required dogs to be on a leash at all times. They began vigilantly reporting what

they considered to be dog-off-leash infractions to the Strata Council. Many of their complaints were directed at Mr. Knibbs. Other owners disagreed with their interpretation of the bylaw, and considered it entirely appropriate for owners to unleash dogs on common stairways as they entered and exited their homes.

[22] Mr. Knibbs acknowledged saying “bark” and “woof”, but does not remember howling like a dog or asking if the traffic was too loud. Mr. Knibbs denies directing his comments at Ms. Kuan and testified that he directed the comment to anyone who was listening. I find that Mr. Knibbs had frequent memory lapses, which were not consistent with the passage of time. Mr. Knibbs had a tendency to acknowledge behaving badly only when confronted with video evidence. Also, when describing incidents involving Ms. Kuan, Mr. Knibbs had a tendency to downplay his own behaviour to appear more reasonable in the conflict that ensued. In my view, Mr. Knibbs was not candid in his testimony when an answer would not necessarily assist his case. He clearly had command of the situation, and shifted his answers as the questions developed. His hostility towards Ms. Kuan and Mr. Beckett was evident during his testimony, and influenced his recollection of events. For these reasons, I do not find Mr. Knibbs’ testimony credible.

More Complaints of Second-Hand Smoke

[23] After returning from a trip overseas, Ms. Kuan began experiencing symptoms which she attributed to second-hand smoke exposure. Shortly thereafter, in December 2010, Mr. Beckett and Ms. Kuan submitted another complaint about second-hand smoke to the Strata Council. Ms. Kuan explained that they waited more than one year to make a second formal complaint because they are not confrontational people. I accept that Ms. Kuan genuinely believed that she was not confrontational. However, given her testimony about the impact of second-hand smoke on her health, and her propensity to file complaints on other matters, I do not find her explanation for the delay to be plausible.

[24] The Strata Council soon responded to their complaint. A Strata Council meeting was held, and Mr. Beckett discussed concerns about smoking. The Strata Council also notified Mr. Augustin of the complaint and gave him an opportunity to respond. Although Mr. Augustin disagreed about being approached by Mr. Beckett on several occasions (he recalled receiving one voice message three months earlier), Mr. Augustin indicated that he

would not smoke indoors. Since Mr. Augustin did not testify, Mr. Beckett's evidence is uncontested. Nevertheless, given my credibility findings, and in the absence of independent corroboration, I am unable to determine the number of times Mr. Beckett approached Mr. Augustin to raise concerns about second-hand smoke.

[25] In the interim, Mr. Beckett continued to send Mr. Lasanen a considerable amount of information about the deleterious effects of second-hand smoke. He also called Mr. Lasanen a number of times to complain about second-hand smoke in their home. Although Mr. Lasanen was still president of the Strata Council, Mr. Knibbs had recently been elected as vice president and would act in Mr. Lasanen's absence.

[26] In January 2011, the Strata Council met several times to discuss the Complainants' second-hand smoke complaint. Mr. Beckett did not recall attending one meeting. However, he recalled having trouble convincing the Strata Council that second-hand smoke was a hazard. Apparently, a disagreement arose about the appropriate method of detecting second-hand smoke. The Strata Council endorsed a "sniff test", whereby two owners would visit the Complainants' home to see whether they could smell any second-hand smoke. Mr. Beckett testified that, in discussion with an air quality contractor, the "sniff test" was not determinative of the existence of second-hand smoke. He wanted the Strata Council to pay for a contractor to conduct an air quality test. The Strata Council did not want to incur that expense, so it proceeded with the "sniff test". Mr. Lasanen testified that the Complainants were required to notify the Strata Council when they thought they could smell second-hand smoke before two owners would perform the "sniff test".

[27] A short time later, Mr. Beckett and Ms. Kuan wrote another complaint letter to the Strata Council about second-hand smoke. In their letter, they stated that Ms. Kuan was sensitive to second-hand smoke and was suffering from "congestion problems diagnosed as Bronchitis before she went out of the country for several weeks". Presumably, the Complainants were referring to Ms. Kuan's trip to Taiwan in November. However, their letter is not consistent with Ms. Kuan's medical chart, which notes "Bronchitis" only once in May. Mr. Beckett testified that their final written complaint was sent by email towards the end of January. At the end of January, Mr. Beckett contacted the Strata Council to report the smell of smoke in their home. In response, two owners (one of them was Mr.

Rutledge) visited their home to perform a “sniff test”. Apparently, they were unable to smell any second-hand smoke.

[28] The Complainants question the sincerity of the Strata Council’s response. They received a letter from the Strata Council, dated one week before the “sniff test” was conducted, which they believed contained the Strata Council’s final position on the matter. The Respondent denies that the letter contained the Strata Council’s final position. The Respondent acknowledges the date of the letter, and that the letter states that the Strata Council has “done due diligence in this matter”. However, the Respondent argues that the Strata Council had not completed its investigation and refers to the passage that the Strata Council “is making every effort to respond to your concerns”.

[29] I find that the letter contained the Strata Council’s final position on the matter, and was written before the Strata Council performed the “sniff test”. Although Mr. Lasanen testified that the Strata Council had not yet concluded its investigation, I do not find his testimony credible in this regard. His testimony was not consistent with the testimony of Mr. Knibbs and Ms. Walsh, who were both on the Strata Council at this time. They agreed that the letter was written after the Strata Council made its decision on the smoking issue. Mr. Knibbs was performing Mr. Lasanen’s duties while he was away on vacation. Mr. Lasanen acknowledges that he did not vet the letter before it was sent to the Complainants. He initially attributed this oversight to going on his annual vacation at around this time and not being really good with dates. His testimony that he left for his annual vacation shortly after the Strata Council meeting on January 19th was consistent with Mr. Beckett contacting Mr. Knibbs (and not Mr. Lasanen) on January 30th to request the “sniff test”. However, his testimony was not consistent with the Respondent’s submissions that Mr. Lasanen went on his annual vacation starting February 1st. During cross-examination, after being confronted with discrepancies in the letter, Mr. Lasanen recalled a conversation with a member of the Strata Council who did not testify at the hearing and could not be cross-examined. Given Mr. Lasanen’s propensity to attribute Strata Council errors to other owners, I did not rely on his hearsay evidence in this regard.

[30] Ultimately, the Strata Council took no further action to address the Complainants’ second-hand smoke complaint. Mr. Beckett and Ms. Kuan were upset that they had to deal

with Mr. Knibbs on the Strata Council. Mr. Beckett was “outraged” and “really angry”, and he found Mr. Knibbs to be dismissive of their “life-threatening” concerns. Mr. Beckett recalled Mr. Knibbs questioning whether there was any smoke coming into their unit, and advising them to leave Mr. Augustin alone because he was moving out of the Strata in a few months. Mr. Beckett believed that Mr. Knibbs did not care whether they lived or died. Ms. Kuan recalled her anxiety and fear increasing enormously. They both wanted the Strata Council to take their concerns about second-hand smoke seriously.

Human Rights Complaint and Small Claims Action

[31] In February 2011, Mr. Beckett and Ms. Kuan filed a human rights complaint (on February 9, 2011) and a small claims action (on February 17, 2011). It took many months before the Strata Council was notified of the human rights complaint (the significance of this delay will be discussed below). However, the Strata Council was served with the small claims action a few days later on February 19, 2011. On behalf of the Strata Council, Mr. Knibbs notified the owners of the small claims action and warned them that they may each be required to pay a quantum of damages.

[32] Mr. Beckett and Ms. Kuan felt ostracized by the Strata Council and shunned by other owners. They wanted to convince the other owners that they had legitimate concerns about second-hand smoke, and to explain why they were “forced” to sue them in small claims court. They invited the owners to join them at a weekly social held at the club house called “coffee & conversation”. The weekly event usually attracted approximately a dozen owners. That week, however, only two other owners showed up. Mr. Beckett and Ms. Kuan believed that the rest of the owners conspired to avoid them that day. The following week, Mr. Beckett and Ms. Kuan wrote a letter to the Strata, referring to their small claims action, and the “conspiracy of silence and shunning”. They posted their letter on the notice board of the club house. They no longer wanted to communicate with Mr. Knibbs, and among other things, wrote:

The straws that [Mr. Knibbs and others] are grasping at to hide from the life threatening invasion of our unit is pathetic and so superficial that it is totally unbelievable and truly reprehensible. We have been the victims here [...]

[33] To bolster their claim about second-hand smoke exposure, Ms. Kuan ordered online urine testing kits, which contained TobacAlert testing strips, and were designed to detect cotinine in the urine. Ms. Kuan testified that cotinine in the urine was a reliable indicator of recent tobacco exposure. In February 2011, Ms. Kuan began testing her urine using these TobacAlert testing strips, and continued to test her urine intermittently for the next six months until August 2011. From time to time, Ms. Kuan was away from the Strata, and observed that her symptoms subsided immediately. She believes that her urine tests prove that she had been exposed to second-hand smoke. Mr. Beckett did his own research, and based on what he read, he believed these tests are extremely accurate, with an accuracy rate of over 90%.

[34] In the meantime, Mr. Augustin moved out of the Strata beginning in April 2011. Ms. Kuan testified that her health improved after Mr. Augustin moved out. She had fewer issues with her nose, and was able to sleep better. Mr. Beckett testified that their concerns about second-hand smoke ceased, for the most part, after Mr. Augustin moved out of the Strata. With the exception of a complaint about marijuana smoke lodged a few years later, the Complainants did not submit more second-hand smoke complaints to the Strata Council after this time. Notwithstanding my credibility findings, given independent corroboration, I accept the Complainants' testimony to the extent that their concerns about second-hand smoke ceased, for the most part, after Mr. Augustin moved out of the Strata.

Picture-and-Video-Taking and Harassment Complaints

[35] Ms. Kuan also began vigilantly taking photos (in February) and videos (in March) of bylaw infractions around the Strata. She eventually began using three video cameras to record these incidents. She kept one digital camera (which could take photos and videos) in her purse or hanging around her neck. She also mounted another video camera on a tripod in their home, which was visible to other owners. Sometimes, the tripod was positioned in their hallway facing their front door. At times, the Complainants would keep their front door open, with only their screen door closed. At other times, the tripod was positioned in a bay window facing the laneway and clubhouse. Eventually, they also mounted small security cameras outside their front door. Ms. Kuan also mounted a video camera on the dashboard of her car to record incidents while she was driving.

[36] The taking of photographs and videos enraged Mr. Knibbs, who believed that he was being provoked by Ms. Kuan. Mr. Knibbs resented being videotaped by Ms. Kuan. He described her behaviour as “relentless”, “without provocation”, and “endless”. Mr. Knibbs testified that he lost his patience “once the camera came out” and the “petty accusations started to fly”.

[37] It also upset Mr. and Ms. Kristiansen, who lived next door to Mr. Beckett and Ms. Kuan, and shared a common landing and breezeway. Mr. and Ms. Kristiansen could often see the video camera when it was positioned in the hallway, and believed that they were being recorded as they entered and exited their home. They found this really upsetting and began gesticulating at the camera.

[38] Ms. Kuan acknowledges that some of her cameras were pointed towards the front entrance of Mr. and Ms. Kristiansen’s home. However, she does not understand why they were upset because, from her perspective, they could easily enter their home through a back entrance and avoid walking by her video camera. Mr. and Ms. Kristiansen described their back entrance as tantamount to a fire exit. They believed that it was unreasonable of Ms. Kuan to expect them to avoid the front entrance of their home.

[39] Ms. Kuan began videotaping and photographing Mr. and Ms. Kristiansen to document behaviour that she considered to be harassment. She also made detailed notes of these incidents. Most of these incidents occurred while Mr. and Ms. Kristiansen were entering and exiting their home, and using the common landing that was shared between the two homeowners. For example, Ms. Kuan documented Mr. Kristiansen splashing water towards their door with his umbrella, tapping his thumb as he walked by, pointing and twirling his finger, holding a gun finger to his head, cleaning his shoe (and throwing dirt towards their door), stomping up to the top of the stairs, blowing a kiss at one of their cameras and saying “fucking asshole”, laughing at the camera and saying “you are complete nuts” [sic], calling them “fucking idiots”, scratching his crotch (on the outside of his pants), and putting tape over their security cameras. She also documented Mr. Kristiansen standing in front of their screen door with a camera, taking a picture, and instructing his wife to do the same.

[40] Ms. Kuan documented hundreds of similar incidents. She compiled harassment statistics, and documented other incidents that she characterized as an invasion of her privacy, verbal and physical assault, attempted entry, “ridicule”, “intimidation and threat stalking”, and “obscene gestures”. Eventually, Ms. Kuan documented over 400 incidents for Mr. Kristiansen, over 400 hundred incidents for Ms. Kristiansen, almost 200 incidents for Mr. Knibbs, and several incidents involving Mr. Rutledge and Mr. Lasanen.

[41] Mr. Kristiansen acknowledged giving Ms. Kuan the finger, but had no recollection of saying “fucking asshole”. Mr. Kristiansen had a limited recollection of many other incidents in which he was accused of behaving badly. I find that Mr. Kristiansen had frequent memory lapses, which were not consistent with the passage of time. Mr. Kristiansen had a tendency to acknowledge behaving badly only when confronted with video footage. He attempted to minimize his behaviour and provided explanations for his behaviours that were, at times, implausible and disingenuous. For example, when confronted with one photo, Mr. Kristiansen denied “grabbing” his crotch to express disapproval at being recorded, and explains that he was simply “scratching” it because he had an “itch”. His testimony is not consistent with contemporaneous police reports. Mr. Kristiansen was not always responsive in his answers. Although Mr. Kristiansen testified that he had a difficulty understanding English, his difficulties arose primarily during cross-examination. In my view, he was not candid in his testimony when an answer would not necessarily assist his case. His animosity towards the Complainants was evident, which in my view, impacted his recollection of events. For these reasons, I do not find Mr. Kristiansen’s testimony credible.

[42] In general, I found Ms. Kristiansen’s testimony to be forthright. She acknowledged reacting emotionally and provided details that could be adverse to her case. She acknowledged behaving badly, and at one point, showing her colostomy bag to the video camera. She resented being videotaped and felt violated by the intrusion into her privacy. Nevertheless, Ms. Kristiansen had a tendency to minimize her behaviour in describing conflict that arose with the Complainants. Her frustration and contempt for the Complainants was evident in her testimony and influenced her recollection of events. For example, Ms. Kristiansen periodically misspelled Ms. Kuan’s name in a way that Ms. Kuan considered derogatory. Although Ms. Kristiansen explained that it was a mistake,

and apologized at the hearing, I do not find her explanation plausible. She began periodically misspelling Ms. Kuan's name only after the litigation commenced, and in selected correspondence. Since her spelling mistake of "Chow" was not phonetically consistent with "Chee-a", which is how owners pronounced Ms. Kuan's first name, it is unlikely that it would have been made inadvertently.

[43] As early as April 2011, Mr. Kristiansen wrote a complaint letter to the Strata Council about Ms. Kuan. He also complained about a modification Mr. Beckett made to his eaves trough without permission. Although that modification was technically in breach of a bylaw, Mr. Beckett found Mr. Kristiansen's complaint petty. He also felt singled out because that change was made a while ago, and there was a possibility that he may be fined. Mr. Beckett noticed that other owners had made changes to common property without being fined by the Strata Council. This prompted Mr. Beckett and Ms. Kuan to expand their vigilance and record more bylaw infractions around the Strata, with the expectation that other owners would be fined. They believed they were behaving like responsible owners.

[44] Some owners thought that Mr. Beckett and Ms. Kuan were "prowling" around the Strata searching for bylaw violations. Other owners were intimidated by their picture-and-video-taking. Mr. Beckett felt offended by these characterizations. He explained that their cameras were used as self-defence. Ms. Kuan also believed that she was using her cameras as self-defence. She did not believe that she was intimidating other owners through her picture-and-video-taking. Sometimes, her cameras ran 24 hours a day. Other times, they were only running sporadically. Although the cameras remained visible, Ms. Kuan testified that she rarely left her cameras running when she was not home.

Notice of Human Rights Complaint

[45] The Strata Council was notified of this human rights complaint on July 4, 2011 by letter:

This letter will also serve as notice that we have filed a complaint with the Human Rights Tribunal against the Owners Strata Plan NW 2603. The council will receive official notice from the tribunal soon.

[46] The owners were notified of the human rights complaint at a Special General Meeting, which was held the following week on July 12, 2011. Mr. Kristiansen testified that the complaint “antagonized” matters. Mr. Lasanen testified being “shocked” by the human rights complaint. From his perspective, proceeding with the small claims action and human rights complaint “seemed like a double-barrel approach”.

Complaints against Mr. Knibbs

[47] Over time, Mr. Beckett and Ms. Kuan wrote more letters complaining about Mr. Knibbs to the Strata Council. They noted bylaw infractions regarding when he kept his dog off leash, and where he parked his vehicle. They also complained about incidents they believed amounted to harassment. Ms. Kuan could not recall a positive interaction with Mr. Knibbs. For example, Ms. Kuan recalled an incident where she was washing her car and observed Mr. Knibbs sitting on his steps, leering at her, and calling her a “fucking bitch”. She was unable to capture him swearing on camera. Mr. Beckett observed the incident from their window, and felt “livid” and “very angry”. At other times, Ms. Kuan observed Mr. Knibbs wave at her camera, gesticulate at her, and give her the “middle finger”. She described a number of incidents involving Mr. Knibbs which she interpreted as intimidating, harassing, and ridiculing.

[48] Mr. Knibbs acknowledges that “there was a lot of animosity” between them. He acknowledges showing the middle finger, the “proverbial bird” as he calls it, but denies directing the gesture at Ms. Kuan. Mr. Knibbs testified that it was always directed at the camera in the front window. In direct examination, Mr. Knibbs testified calling Ms. Kuan a “frigging twit”. He later admitted in direct examination, and again in cross-examination, that he called her a “fucking bitch”. Mr. Knibbs also denies leering at Ms. Kuan. Although he does not recall looking at her for longer than a few seconds, Mr. Knibbs testified that she was staring at him. Given the inconsistencies in his testimony, his propensity to downplay his own behaviour, and that his testimony was at times consistent with Ms. Kuan’s testimony, I prefer Ms. Kuan’s recollection of what Mr. Knibbs said and did.

[49] Mr. Knibbs eventually retained a lawyer who sent Mr. Beckett and Ms. Kuan several letters accusing them of harassment, invasion of privacy, defamation, and breach of a nuisance bylaw. Mr. Beckett interpreted these letters as bullying, and described Mr.

Knibbs as the “harasser calling us a harasser”. Mr. Beckett believed that Mr. Knibbs, through his lawyer, was going out of his way to “hit us with a pointed stick”. Ms. Kuan explained that, by recording Mr. Knibbs, she was simply standing up for herself.

[50] The conflict between Mr. Beckett, Ms. Kuan, on the one side, and Mr. Knibbs, Mr. Kristiansen, and Ms. Kristiansen, on the other side, escalated into an acrimonious feud at the Strata. The police eventually became involved and visited the Strata on a number of occasions. For example, that summer the RCMP was called to the Strata to respond to a complaint of “annoying circumstances”. The RCMP constable reported:

[...] Mr. Kristiansen has made lewd gestures when he walks by a video camera from the hallway that points towards a common area that Kristiansen walks by and is recorded on. Kristiansen is annoyed by the camera and feels it is disrespectful, so he grabbed his testicles in front of it (from outside his clothing) and has also taken a picture of the camera from outside the residence. [...]

In the report, the RCMP constable noted that the “camera is escalating the situation within the complex”.

[51] Mr. Beckett and Ms. Kuan continued to write complaint letters to the Strata Council about off-leash dogs and illegally-parked vehicles. In one posting, Mr. Beckett and Ms. Kuan wrote to the owners:

I was wondering if our vice-president [Mr. Knibbs] had applied for a permit to do repairs and park his truck in a visitor’s parking spot, next to his unit for a week [...] or whether he is exempt from adherence to this bylaw. [...] I object to him being allowed to turn our complex into a parking lot with cables hanging out the front of his vehicle. I also object to the poor example he sets for the other members of the community.

[52] At around this time, the Complainants received a note from Ms. Kristiansen in which she wrote:

I’m sorry you feel the way you do but, as [Mr. Beckett] says “this is a democracy” and people have the right not to agree with you and get upset when you chose to sue our council. People feel betrayed and used by you. That is all I have to say to you.

[53] Mr. Beckett and Ms. Kuan continued to post letters on the notice board of the club house. They also posted notices by their front door. In one handwritten notice, they wrote, “don’t forget to smile to our camera when you mess up our junk mails. Not for the delivery

boys!” Mr. Beckett and Ms. Kuan were frustrated with the lack of response from the Strata Council to their complaints of bylaw infractions. They continued to complain to the Strata Council about Mr. Knibbs and the Strata Council behaving like an “old boy clique”. Although the Strata Council wrote to Mr. Beckett and Ms. Kuan that they are making efforts to address their concerns, the Strata Council also wrote that their issues with Mr. Knibbs were a “private matter”. The Strata Council also took the position that, since the Complainants had filed a lawsuit and human rights complaint regarding their second-hand smoke issue, it would not be addressed by the Strata Council. Regarding the enforcement of bylaws, the Strata Council wrote to the Complainants:

With regard to your contention that this council is very poor at enforcing by-laws, your council has a petition on file signed by over 90% of the owners here who have indicated they are satisfied with the enforcement of by-laws.

Mr. Beckett and Ms. Kuan were not asked to sign that petition. Although the petition is undated, since Mr. Augustin signed the petition, it was likely circulated amongst owners before he moved out of the Strata. At the next annual general meeting, Mr. Kristiansen replaced Mr. Knibbs as vice president of the Strata Council. Mr. Lasanen continued to act as president of the Strata Council.

Anti-Bullying T-Shirt and More Litigation

[54] In February 2012, Mr. Beckett and Ms. Kuan purchased a pink anti-bullying t-shirt with the slogan “bullying stops here” (the “shirt”). They hung the shirt outside their storage door, so that it was visible to other owners. They felt that they were being bullied, and wanted to announce this to owners. Mr. Beckett considered this an urgent matter, as he recalled news reports about teenagers committing suicide due to bullying. Ms. Kuan wrote in a letter:

We have been shunned, stared at, watched, intimidated, harassed, bullied and insulted on an almost daily basis; sometimes several times a day in public; by neighbors, not one, not two but many, right after you, the council, was notified about the Small Claims Court’s claim. After a few months and a lot of self encouragement, I learned to stare back with my “camera”. Intensity rose, the persecution/accusations got worse and I spotted (recorded) inappropriate/violent behaviours from council members. My mental suffering escalated and reached a peak in December,

2011. While my safety, rights and dignity were being vandalized, all I had was my camera to stand between me and my potentially anonymous attackers.

[55] In March 2012, Ms. Kuan positioned one of her video cameras to face the shirt. She videotaped Ms. Kristiansen, when she was entering and exiting her home, fingering at the shirt, sneezing on the shirt, taking a photo of the shirt, scratching her butt, pointing down and singing “coo coo coo coo”. Ms. Kuan believed these incidents were directed at her, and added these incidents to the list of harassment allegations against Ms. Kristiansen. Mr. Beckett and Ms. Kuan eventually posted information on bullying on the notice board.

[56] The hanging of the shirt, along with their information sheet on bullying, provoked the ire of some owners. In March 2012, Ms. Walsh, another owner in the Strata, wrote a letter to the Complainants expressing her sentiments about their behaviour and litigation:

Enough already! I am highly insulted by the information sheet on bullying which you distributed to owners. [...] You seem to have your “insult antennae” operating at a very high frequency, constantly looking for perceived slights. [...] You have claimed to be feeling “shunned” by your neighbours. Perhaps you forget that you have SUED everyone in this complex – do you really expect to be greeted with open arms by your neighbours? Many people, myself included, have greeted you in passing, only to be rebuffed by a glare or total lack of eye contact. [...] Your constant onslaught of many and varied petty complaints to council, particularly those regarding dog owners who unleash their small dog part way up their stairs on the way to their front door is ridiculous. [...] Your tactic of taking photographs of owners who are doing nothing wrong (usually only chatting on common property) is a major affront, and I consider it a serious example of bullying behaviour on your part. [...]

[57] In a letter dated March 9, 2012, Ms. Kristiansen wrote a complaint letter about the shirt to the Strata Council. Since Mr. Lasanen was away on vacation, her complaint letter went to her husband, who was acting as president of the Strata Council at that time. Mr. Kristiansen responded within two days. On behalf of the Strata Council, Mr. Kristiansen sent a letter to the Complainants identifying the posting of their shirt as bylaw violations and requested that they “take the appropriate action to rectify this situation”.

[58] I find that Mr. Kristiansen abused his authority on the Strata Council when responding to his wife’s complaint. Mr. Lasanen testified that the Strata Council’s usual practice with respect to complaints is to note their receipt and deal with them at the next

Strata Council meeting. Although Mr. Kristiansen testified that a Strata Council meeting was held before he issued the letter, his testimony is not credible. There is no Strata Council meeting minutes to corroborate his testimony (the meeting minutes indicate that the next meeting occurred a few weeks later on March 28, 2012). When confronted with this discrepancy, Mr. Kristiansen testified that the date of the letter must be wrong, because they met before issuing the letter. Mr. Kristiansen also testified that he forgot to get permission to write the letter during the meeting, so he went around to the other Council members afterwards to obtain their approval. Although Mr. Kristiansen testified that he wrote this letter, he later admitted that his wife typed the letter. During his testimony on another matter, Mr. Kristiansen testified that his wife typed all of his letters because his English was not great. Although Mr. Kristiansen acknowledges that he had never chaired any meetings in his life, and that he did not know the exact procedure to follow on the Strata Council, he did not believe there was any conflict of interest in his approach. Ms. Kristiansen acknowledges that, in hindsight, her husband should not have been responding to her complaint.

[59] Mr. Lasanen acknowledges that Mr. Kristiansen did not follow protocol, and inappropriately referred to bylaw violations in the Strata Council's letter. (The letter incorrectly stated that the shirt violated two bylaws, and was sent prematurely before a notice of bylaw complaint was issued.) Mr. Lasanen testified that, although he was on vacation, he believed that he spoke with Mr. Kristiansen and Mr. Knibbs about the letter, because he was concerned that the dates did not allow for the Strata Council to meet and make a decision. I find that Mr. Lasanen's recollection was reconstructed. During his testimony, Mr. Lasanen acknowledges that he did not speak to other Strata Council members to confirm Mr. Kristiansen's account, and relied on his assurances that a meeting was held.

[60] By the end of March, Mr. Beckett and Ms. Kuan filed three separate small claims actions against Mr. Knibbs, Mr. Kristiansen, and Ms. Kristiansen, respectively. Their allegations against Mr. and Ms. Kristiansen dated from March 2011, while their allegations against Mr. Knibbs dated from June 2010. Mr. Beckett and Ms. Kuan also participated in confidential settlement meetings at the Human Rights Tribunal. The parties in attendance had the purported goal of settling the human rights complaint.

[61] On April 12, 2012, the Strata Council held a special meeting with the owners. Mr. Beckett thought the purpose of this meeting was to discuss their concerns about second-hand smoke (rather than their human rights complaint or small claims actions). Mr. Beckett was happy to attend the meeting, because he believed they had been cut off from communicating with the other owners. He wanted to tell their side of the story, and correct what he believed was misinformation being shared by the Strata Council. Many owners attended the meeting. Ms. Walsh agreed to act as moderator. The meeting was also recorded.

[62] Unfortunately, the meeting did not go as planned. Mr. Beckett asked Mr. Knibbs and Mr. Augustin to leave the room. From Mr. Beckett's perspective, they should not be there because of their small claims actions. Mr. Beckett's request provoked the ire of other owners. Ms. Walsh also made some remarks, which Mr. Beckett found to be "very negative" and "very opposed" to their perspective. Although she prepared written comments, Ms. Walsh does not recall whether she read them verbatim. Ms. Walsh testified that the meeting was supposed to give owners more information about the litigation. She recalls that many owners were bewildered, and although they knew they were being sued as a group, they did not know what they were being accused of. Ms. Walsh did not believe the Strata Council acted unreasonably. Her views of Mr. Beckett and Ms. Kuan, while often hostile, reflected the views of other owners. Among other things, Ms. Walsh said that "it is not the responsibility of the strata council to patrol the complex looking for bylaw infractions", "almost every complaint that has been received in the past year and a half has been from one source", and "everyone else seems satisfied with how the strata council is managing our complex". She described the Complainants' complaints as "small minded", "petty", and "vindictive". She also said:

Another contentious issue lately has been your habit of carrying a camera and snapping photos of owners who are doing nothing wrong on common property. You have also mounted cameras at your front door, in your kitchen window, and on your sundeck, facing the deck of your neighbours [...] I have seen photos of these cameras. This is an incredible invasion of privacy, and, in my opinion constitutes bullying and harassment. I understand that you had some most unpleasant responses to your picture taking from a couple of owners in particular. While I deplore their childish and confrontational behaviour, I can understand their frustration and resulting response. If I was having a camera shoved in my face every time

I walked up my stairs or out my front door, I can't guarantee that I wouldn't explode in the most uncharacteristic manner.

[63] Mr. Beckett and Ms. Kuan found the tone of the meeting inflammatory. They felt humiliated and made to look “foolish and small minded”. The meeting concluded acrimoniously.

[64] By letter dated April 12, 2012, the Strata Council sent the Complainants a notice of bylaw complaint regarding the posting of their shirt. This notice did not refer to the letter sent by Mr. Kristiansen the previous month, although it addressed the same issue. The Strata Council reminded the Complainants that the hanging of the shirt contravened the laundry bylaw, and that it had received a number of complaints about the shirt. No bylaw enforcement action was taken.

[65] By May 2012, Mr. Lasanen testified that the Strata Council's position was that the Complainants' video-and-picture-taking was a civil matter to be addressed between owners.

Retaliation Complaint

[66] In May 2012, Mr. Beckett and Ms. Kuan filed another complaint with the Tribunal against the Strata, claiming retaliation. The following week, the Strata Council was notified that the retaliation complaint had been accepted for filing by the Tribunal.

Strata Council Fines for Bylaw Violations

[67] Within weeks, the Strata Council decided to take enforcement action against the Complainants by issuing fines for bylaw violations in relation to the hanging of the shirt, for bylaw violations in relation to their video-and-picture-taking, and for violating Strata rules for not removing a posting from the notice board. By June 2012, Mr. Lasanen acknowledged that there was a “great deal of animosity” between the Strata Council and the Complainants. Mr. Lasanen believes that the Strata Council was being drawn into a confrontation, but claims that the Strata Council was following an “impartial approach”.

Anti-bullying Shirt

[68] After sending the notice for the hanging of the shirt, Mr. Lasanen testified that the Strata Council proposed to meet with Mr. Beckett and Ms. Kuan on June 7, 2012 to give

them an opportunity to respond to the notice. Mr. Beckett advised the Strata Council that they could not attend that meeting. By letter dated June 21, 2012, the Strata Council notified Mr. Beckett and Ms. Kuan of a special council meeting scheduled for June 25, 2012 where they would be given another opportunity to respond to the notice. The Strata Council warned the Complainants that if they did not attend, then it “will take whatever action we deem appropriate”. The following day, by letter dated June 22, 2012, the Complainants wrote to the Strata Council setting out their position on the shirt. They wrote that they were attempting to call attention to bullying, and that any actions taken by the Strata Council to remove their shirt would be an act of retaliation.

[69] On June 25, 2012, the Strata Council held a meeting. All seven council members were present, including Mr. Kristiansen. Mr. Beckett and Ms. Kuan did not attend the meeting. Mr. Lasanen testified that the Strata Council was not advised that they would not be attending, and he said he does not recall receiving their letter. The Strata Council meeting minutes do not acknowledge receipt of their letter. It appears that the letter may have been submitted into the “golden box”. Mr. Lasanen acknowledges not retrieving the contents of the “golden box” prior to their meeting. (When the Strata Council eventually reviewed the Complainants’ letter, Mr. Lasanen testified that they did not change their decision to issue fines). At this meeting, the Strata Council voted to take enforcement action against the Complainants for displaying their shirt by fining them \$50 every week until the shirt was removed. Mr. Lasanen testified that the Strata Council felt very strongly that the hanging of the shirt was a “very clear” violation of a laundry bylaw, and that the anti-bullying message on the shirt played no part in the decision to impose a fine. Mr. Lasanen testified that the Strata Council elected to impose a “relatively modest” fine of \$50, compared to the other fines that the Strata Council began imposing against the Complainants a short time later.

[70] After issuing the first fine on June 26, 2012, the Strata Council continued to fine Mr. Beckett and Ms. Kuan for posting the shirt on a weekly basis for the next four months (with the exception of one week when the Complainants briefly took down the shirt). By October 2012, the shirt had been hanging for approximately eight months, and the Complainants had been fined approximately \$750. After giving notice, the Strata Council removed the shirt “until such time as you commit to us in writing that this kind of violation

will not be repeated by you”. Mr. Beckett and Ms. Kuan responded by putting up a handwritten notice that a bully had stolen their shirt. They wrote, ‘shame on you’, as well as the following:

Congratulations
On your great victory
Supporting second hand smoke killer
The 1000 dead (including 286 children)
In Canada
In the next year
Salute you

Picture-and-Video-Taking

[71] The Strata Council also decided to take enforcement action against the Complainants for their picture-and-video-taking by issuing fines against them in violation of a nuisance bylaw.

[72] This decision was taken by the Strata Council in another meeting that was held on June 20, 2012. The Strata Council was purportedly responding to a series of complaints from owners. Although the Strata Council received five written complaints that month, they were all drafted by Ms. Kristiansen and Mr. Knibbs. Although Mr. Lasanen testified that he had received numerous complaints from other owners, his testimony is not corroborated by documentary evidence. In direct examination, Mr. Lasanen testified that he believed that the complaint letters were sent to the Strata Council independently because owners were getting extremely frustrated and demanding that the Strata Council take enforcement action. However, during cross-examination, Mr. Lasanen agreed that he might have suggested to Mr. Knibbs and Ms. Kristiansen that written complaints would be useful. Ms. Kristiansen denies that such a suggestion was made. She testified that she has “her own mind”. However, her explanation is not plausible given the timing of her complaints. Mr. Kristiansen was still vice president of the Strata Council at this time. The meeting minutes note receiving complaints, but do not reference any decision to proceed with enforcement action by issuing fines against Mr. Beckett or Ms. Kuan.

[73] Mr. Lasanen testified that the idea to enforce the nuisance bylaw against the Complainants was from the Condominium Home Owners Association, after extensive consultations. Mr. Lasanen testified that he brought this information to the Strata Council,

and they agreed to notify the Complainants of a bylaw violation. From Mr. Lasanen's perspective, the Strata Council had to proceed with a fine to reflect the seriousness of what the Complainants were doing. Mr. Lasanen testified that he mistakenly believed that the fine would dissuade the Complainants from taking further pictures or videos. Mr. Lasanen testified that the Strata Council was also in the process of developing a new bylaw to forbid the use of video, audio, or picture-taking of any person on common property or limited common property without the express written consent of that person. Although referenced in subsequent meeting minutes, the proposed new bylaw was not voted upon.

[74] On June 27, 2012, the Strata Council notified Mr. Beckett and Ms. Kuan that it had received complaints that they had been taking videos and photographs of owners without permission, and that this picture-and-video-taking was in violation of a nuisance bylaw.

[75] On July 12, 2012, the Strata Council held another special council meeting (Mr. Kristiansen was not recorded as present at this meeting). Among other things, the Strata Council passed a motion to fine the Complainants \$200 for "videotaping and the pointing of a camera at other owners", and to impose the fine every week "until the contravention is remedied". The Strata Council considered the "activities" of Mr. Beckett and Ms. Kuan to be "provocative". Mr. Lasanen testified that their picture-and-video-taking concerned many owners who felt that they were under "constant surveillance" while using common areas. The Strata Council notified Mr. Beckett and Ms. Kuan of the \$200 fine in a letter dated a few days later.

[76] The Complainants objected strenuously to the bylaw violation fine. In response to the Complainants' argument that the Strata Council had no evidence when they were actually taking pictures, the wording of the motion was changed to include pointing their cameras at other owners. The following week, in another letter dated July 24, 2012, the Strata Council notified Mr. Beckett and Ms. Kuan of a second fine on the basis that, over the past weekend, they had pointed their camera at another owner on common property without permission. There is no reliable evidence that the Strata Council held a meeting before issuing the second fine. Although it involved one incident, the violation was described as a "continuing bylaw violation". The Complainants argue that, given the change in wording, they did not get proper notice of the fine. Mr. Beckett and Ms. Kuan

strenuously objected to these fines. Among other things, they posted a notice to the owners:

[...] An owner stood in front of our home, in public, and swore at Ms. Kuan, on her little balcony, he threatened to stick objects into her body orifices, he shouted obscenities at her, and he insulted her intelligence and questioned her sanity, for almost half an hour. She did not shout obscenities, or threats, or insults back but she did videotape him and your council president videotaped her for the last 10 minutes, but DID NOT STOP the verbal assault [...] Your Council has fined Kuan \$200 for protecting herself. This is not justice!

[77] Several different formulations of the violation were used, including continuing to “take photos and video of persons and things on common property”. Regardless of the wording, the Strata Council continued to impose a weekly fine on Mr. Beckett and Ms. Kuan for their picture-and-video-taking.

Notice Board

[78] The Complainants were also fined in relation to one posting on the notice board. Notably, the posting consisted of a letter from the Tribunal accepting their retaliation complaint for filing, together with their commentary (the “Retaliation Posting”). The Complainants wanted to notify owners of their retaliation complaint, because the Strata Council had not yet advised owners of their complaint or provided details of their retaliation allegations. The Retaliation Posting was removed from the notice board several times. The Complainants believed the Strata Council was trying to prevent them from communicating with owners. They testified that, because the Retaliation Posting had been removed so often, and they had reposted it so often, the fourth time it was posted, they asked the Strata Council to inform them when to take it down. They wrote: “This is our fourth information bulletin. . . . Council, please write to us and inform us when to take it down”.

[79] At the special council meeting on June 25, 2012, the Strata Council addressed the posting of notices on the bulletin board. The Strata Council reported, “the only persons permitted to remove notices or information posted on the Notice Board are the owner who posted the notice or the Council if the posting owner is unable to do so. Please refrain from defacing postings unless they are your own.” Mr. Lasanen testified that Mr. Beckett and

Ms. Kuan were monopolizing the notice board with their messages, and were posting approximately four to five different notices at any given time. Mr. Beckett acknowledged posting at least one hundred notices on the notice board.

[80] At this point, the Strata's rules only required notices to be removed when they "expired". The Strata Council had not yet met to change the rules to the seven-day time limit being imposed on the Complainants. Nevertheless, by letter dated July 1, 2012, Mr. Lasanen advised the Complainants that their Retaliation Posting could stay up for seven days. Mr. Lasanen denies that he was acting arbitrarily, and explains that he was simply responding to the Complainants' request to be advised when their posting should be taken down. Mr. Lasanen testified that the Strata Council interpreted the Strata's rules to mean that it had discretion to impose a time limit on postings based on its express power to administer the notice board. A few days later, Mr. Lasanen on behalf of the Strata Council sent a reminder to Mr. Beckett and Ms. Kuan that they were required to remove their posting by July 7, 2012. Another notice of rules violation was issued to the Complainants a few days later.

[81] The Complainants responded to the notice. The Complainants explained that they had posted a new notice, containing the same information as the Retaliation Posting, on July 6, so they understood that they had a further seven days to keep it posted on the notice board. In their letter, the Complainants accused the Strata Council of treating them differently than other owners in relation to postings and other matters. They believed that Mr. Lasanen was acting arbitrarily, without proper authority of the Strata Council, against a posting directly related to their retaliation complaint before the Tribunal. They raised questions about the sudden decision to manage the notice board, and asked for the complaint against them to be referenced in Strata Council correspondence. The Complainants also noted that Mr. Lasanen had posted information about smart meters, which had been on the notice board for months. Mr. Lasanen acknowledges that his posting stayed up for a long time, and suggests that it was an information bulletin on an important public issue. He testified that it was only because the Complainants were abusing the notice board, with the nature of their postings (which he described as aggressive, libelous, and arbitrary) that the Strata Council had to bring about these administrative changes.

[82] In a letter, dated July 11, 2012, the Strata Council wrote to owners that it “has been forced” to impose, among other conditions, a seven-day time limit on postings due to “an adversarial occurrence between an owner and council and an acrimonious confrontation between an owner and the owner who posted a notice”. At a meeting on July 12, 2012, the Strata Council passed a motion to fine the Complainants \$50 for not removing their Retaliation Posting. At that meeting, the Strata Council also changed the rules regarding the notice board, including removal of notices after seven days, unless the Strata Council approved a longer posting.

[83] Mr. Beckett and Ms. Kuan were outraged. From their perspective, they were being fined for a posting that complied with an arbitrary time limit, and did not violate any Strata rules at the time. The Complainants were further outraged, because the Strata Council’s letter referenced an incident that had not yet occurred.

[84] I find that the incident referenced in the Strata Council’s July 11th letter occurred three days later on July 14, 2012. On July 14, 2012, Mr. Knibbs removed a newspaper article from the notice board that had been posted by the Complainants and reported another Tribunal decision ordering a strata corporation to compensate owners for not having appropriately accommodated their complaint of second-hand smoke (the “Vancouver Sun Article”). This resulted in an acrimonious confrontation between Ms. Kuan and Mr. Knibbs, which lasted several minutes, and was captured on video footage.

[85] Mr. Lasanen is “confused by the discrepancy in dates”. He does not understand why a Strata Council document refers to an event that had not yet occurred, but denies that anyone on the Strata Council would have “concocted minutes”. Given my credibility findings, I find Mr. Lasanen’s explanation implausible. I find that the Strata Council’s letter was drafted after the July 14th incident occurred. Regarding the July 14th incident, I find that Mr. Lasanen and Mr. Knibbs provoked Ms. Kuan into a confrontation that they wanted to record. For the following reasons, I do not accept Mr. Lasanen’s testimony denying such a provocation. Mr. Lasanen testified asking Mr. Knibbs to copy the Vancouver Sun Article, because on this particular occasion, his copier was not working. Mr. Lasanen explained that the Strata Council wanted copies of the Complainants’ postings given their litigation, and to ensure that they were in a position to defend all

claims. Mr. Lasanen recalls that Mr. Knibbs took a copy of the posting, emailed it to him, and told him that he should make an effort to come down to the club house. Mr. Knibbs testified that he took the posting down, returned to his home, and called Mr. Lasanen to suggest recording him returning the posting to the notice board. However, Mr. Knibbs also testified that he does not recall calling Mr. Lasanen, but perhaps he did. Mr. Lasanen acknowledged returning with Mr. Knibbs with his camera, and that his intention was to document Ms. Kuan's use of her camera. Mr. Knibbs and Mr. Lasanen both testified that their intention was to return the posting promptly. In hindsight, Mr. Lasanen regretted using the camera and described it as foolish. Mr. Lasanen testified that this was the only time he ever used his camera in this regard. Nevertheless, Mr. Lasanen believed that Ms. Kuan initiated the incident by “screaming” at Mr. Knibbs. He was “completely surprised” by her reaction.

[86] Mr. Beckett and Ms. Kuan believed that they were being targeted by the Strata Council to restrict their use of the notice board. They believed that none of the other owners were subject to the new rule created by the Strata Council. In several letters, Mr. Beckett and Ms. Kuan complained about the conduct of Mr. Knibbs when he removed their posting. While the Strata Council no longer accepted email correspondence from the Complainants, Mr. Knibbs emailed the Strata Council about the altercation. Among other things, he wrote:

Today I sunk to a new low and chewed [Mr. Lasanen] out as I'm tired of demeaning letters, lip service and covering ass instead of these people getting slammed. These whack jobs are really enjoying this for the moment. I know there is a job to be done, but holy crapola [...] it's not fair [...] period!

[87] Mr. Knibbs acknowledges that the Strata Council took up his suggestion regarding the rule. Although Mr. Knibbs denies being part of the Strata Council discussions, he did not recuse himself from these discussions, and acknowledges being privy to letters sent to the Complainants. The Strata Council did not respond to the Complainants' complaint letters for some time. The Strata Council eventually took the position that Mr. Knibbs' actions would be dealt with in court, that Mr. Knibbs had been advised by the Strata Council that his actions were inappropriate, and that the issue of Mr. Lasanen asking Mr.

Knibbs for a copy of their posting was “between them”. Mr. Lasanen testified that this was the only fine levied against the Complainants for their notice board postings.

Amendment of Retaliation Complaint and Small Claims Actions

[88] That summer, Mr. Beckett and Ms. Kuan amended their three small claims actions against Mr. Knibbs, Mr. Kristiansen, and Mrs. Kristiansen. They now claimed a total of \$75,000 against all three of them. Ms. Kuan explains that they sued them separately “to pursue them to the full extent”. The Complainants also amended their retaliation complaint several times. The Strata Council received notice of these amendments and filed amended responses with the Tribunal.

[89] That fall, there were several acrimonious altercations between Mr. Knibbs, Mr. Kristiansen, and Ms. Kuan. For example, while Mr. Knibbs was walking down the stairs with his dog unleashed, he saw Ms. Kuan and Mr. Beckett by their garage, and commented, “oh, my god”. Ms. Kuan responded by asking him, “where is your god?” Ms. Kuan recalls Mr. Knibbs yelling loudly at her, “fuck off, you twit”. Mr. Knibbs complained to the Strata Council about Ms. Kuan taking pictures of him. Among other things, Mr. Knibbs wrote:

I had done nothing to provoke this action. I was caught completely by surprise. This behaviour by these two is nothing short of irrational but worst of all most provoking a response of some sort.

[90] In another altercation, Ms. Kuan testified that Mr. Kristiansen and Mr. Knibbs pulled down their pants and mooned her, while she was in her car with Mr. Beckett and her mother. Mr. Beckett testified that Mr. Kristiansen pulled down his pants. Mr. Kristiansen testified that he did not pull down his pants and “moon” them and that Ms. Kuan’s allegation was an “outright lie”. Although he acknowledges that he may have bent over, Mr. Knibbs denies dropping his pants. Ms. Kuan’s recording of this event does not show Mr. Kristiansen or Mr. Knibbs mooning her. She explains that her camera was facing in a different direction at the time. Given my credibility findings, the propensity of each of these witnesses to embellish their recollection to serve their interests, and the lack of independent documentary evidence, I am unable to find that Mr. Knibbs and Mr. Kristiansen pulled down their pants and mooned the Complainants. However, the video

footage does show the men behaving badly and actively participating in a conflict with the Complainants.

[91] Another altercation occurred on a bridge where owners park recreational vehicles. The altercation was captured on video footage that was entered into evidence. The witnesses have varying recollections of what transpired. Ms. Kuan and Mr. Beckett testified that they were simply going for a walk with their video camera, when they were confronted aggressively by Mr. Kristiansen, who positioned himself at the end of the bridge and blocked their way. Mr. Kristiansen testified that he was told by the police that Ms. Kuan said something like, here they come. Ms. Kuan testified that Ms. Kristiansen warned Mr. Knibbs that the Complainants were coming, but Ms. Kristiansen denies this. Mr. Knibbs testified that he saw Mr. Kristiansen swat Ms. Kuan's camera away from his face, and ask them to get the camera out of his face. However, in a contemporaneous letter, Mr. Knibbs stated that he did not see this.

[92] The video footage of this incident clearly shows that Mr. Kristiansen was not initially hostile towards Ms. Kuan and was minding his own business. Mr. Kristiansen reacted after Ms. Kuan took some steps towards him with her camera. Mr. Kristiansen said words to the effect, "I told you not to take my picture". He advanced towards her, shoved the camera, and told them to get the camera out of his face. Mr. Lasanen testified that the Complainants' motives for walking into the park are disingenuous because the park does not lead anywhere and is used by owners to park recreational vehicles. Since the Complainants do not own a recreational vehicle, Mr. Lasanen believes that they deliberately walked into the park to provoke a confrontation that they could then record.

[93] In November 2012, Mr. Beckett posted a notice of a decision of the Human Rights Tribunal in another case, in which the Tribunal awarded \$8,000 in damages. The article also referred to a British Columbia Supreme Court decision. Mr. Beckett wanted to raise awareness with the other owners that smokers' rights did not dominate over the rights of non-smokers. They also posted a letter to the owners entitled `Significantly Unfair`, which read in part:

Somehow, it has always seemed unfair to us that while we were exposed to a life threatening situation from our neighbor, [Mr. Lasanen and the Strata Council] refused to investigate the dangers of Second hand smoke

and try to stop it with fines. (hazard not nuisance). BUT, after we refuse to die (stroke, caused by Second Hand Smoke, Bronchitis/Pneumonia caused by SHS) either from the TOXINS or later SUICIDE from BULLYING, when we do as [Mr. Lasanen and the Strata Council] (and Bill) has ordered us, protect ourselves, gather evidence for our claims against our persecutors/harassers, [Mr. Lasanen and the Strata Council] investigate (including signed confessions of invasion of privacy) this “nuisance” (carrying a camera with no evidence of picture taking) and fine us \$200/wk for doing what we were told to do (\$3600 and counting). We have filed 6 suits in Provincial Court against [Mr. Knibbs, Mr. Kristiansen, and Ms. Kristiansen] for nuisance for a total of over 200 incidents of Harassment (more to be added). These are the people who complained about us capturing their GUILT on camera. These are the people that [Mr. Lasanen and the Strata Council] are protecting. These are the people that suggest YOU pay [Mr. Lasanen] \$2000 in thanks for his extra hours! [...]

[94] Mr. Beckett and Ms. Kuan believed that they were being treated unfairly by the Strata Council. They were upset with Mr. Lasanen for not enforcing bylaws consistently, and with a recent decision by the Strata Council to pay Mr. Lasanen to perform his duties as president, presumably because of the extra work he was required to do in response to their complaints. Mr. Lasanen acknowledges receiving an honorarium of \$200 per month to perform his duties as president of the Strata Council. From his perspective, the honorarium acknowledged the extraordinary amount of work that he was now required to do as Strata Council president in responding to the issues raised by the Complainants. Mr. Knibbs acknowledges proposing the honorarium to the Strata Council, but denies that he was seeking to curry favour with Mr. Lasanen.

[95] In November 2012, Mr. Kristiansen stepped down as vice president of the Strata Council. He stayed on the Strata Council in the role of building maintenance. Mr. Knibbs returned to the Strata Council as vice president, and continued in that role for the next two years. Mr. Lasanen continued in his role as Strata Council president.

More Conflict and Litigation in 2013

[96] By February 2013, the Strata Council filed a civil suit against Ms. Kuan and Mr. Beckett for unpaid fines.

[97] Ms. Kuan continued to complain about owners exceeding time limits on the notice board. Recently, she had levied a complaint against Ms. Walsh for not dating a card that

she posted to thank owners for a plant given to her as she recovered from surgery. Apparently, the Strata had a “Sunshine Fund” that collected money from owners to buy gifts for other owners, when they were ill or convalescing. Given the age of many owners, it appears that the Sunshine Fund was used somewhat regularly. In fact, owners had used the Sunshine Fund to purchase a plant for Mr. Beckett after one of his hospital stays. In response to Ms. Kuan’s complaint, Ms. Walsh dated the card and wrote a letter, in which she referred to the Complainants’ “sick crusade”. Among other things, she wrote:

I have lived here almost 26 years, and over the years, owners have posted many notices and cards on our bulletin board, with no problem. Now, thanks to two people in one unit, with their regular posting of paranoid rants against the strata council and against their neighbours, we have a rule or bylaw requiring owners to get council approval before posting ANYTHING.

It saddens and angers me that we have been reduced to pandering to these pathetic, unhappy, unreasonable people. They seem to have their own (unlike any other) interpretation of our bylaws, and spend the majority of their time skulking around the complex looking for bylaw violations by their neighbours, and photographing people in an aggressive and offensive manner, without permission.

[98] A few days later, Mr. Beckett and Ms. Kuan posted a letter that they referred to as a public declaration. They referenced several Canadian teenagers who had committed suicide due to bullying. They also alleged that Mr. and Ms. Kristiansen had tried to break into their home. Among other things, they wrote:

WE WILL REFUSE TO KILL OURSELVES IN GLENWOOD ON THE PARK. WE ARE NOT PIGGY AND WE REFUSE TO BE PIGGY ON THE ISLAND OF GLENWOOD! WE WILL RESIST BULLYING VIGOUROUSLY AND ZEALOUSLY and to the LEGAL LIMITS of the IMPARTIAL COURTS! We will not bow to the pressure of the strata kangaroo, totally partisan, council. This is not our first declaration, but it will be our LAST, if anything happens to either of us, The investigation starts HERE!

[99] Ms. Kuan was becoming fearful that she may be killed by owners. She testified about walking in the middle of the road, because she feared that she would be shot by owners, and wanted her body to be visible and easily recovered should she be harmed.

[100] A few weeks later, Mr. Beckett posted a letter that he referred to as a newsletter. He believed that Mr. Knibbs was using strata fees to defend against their litigation, and that

Mr. Knibbs and Mr. Kristiansen were being paid by the Strata Council to fine them and take them to court, while at the same time, they were being told by Mr. Lasanen that their dispute was a “private matter”. Mr. Beckett accused Mr. Knibbs of abusing his power on the Strata Council, and wrote the following:

We will not put ourselves in front of YOU again, because you as a group have proven that you ARE NOT and CANNOT BE impartial. Our legal battles will continue until we regain the equality that you all take for granted. NOBODY DESIRES TO BE BULLIED, that NOBODY includes US ...

[...]

We don't understand why Knibbs and Kristiansens get the support of council and get paid by the strata to fine us and take us to court while we are told “it's a private matter”.

[...]

BUT they don't mind to TWIST THE TRUTH, POINT AT ..., and redirect your attention, to turn you all against us. WE ARE THE GOAT! BUT, THIS GOAT HAS TEETH AND BITES BACK. THE BAD GUYS CHOSE POORLY.

[101] In March 2013, the Strata Council held a special general meeting, which Mr. Beckett interpreted as “flagrantly anti us”. Since Mr. Lasanen was away on another vacation, Mr. Knibbs was acting president of the Strata Council. Mr. Beckett was upset because other Strata owners regarded them as harassing and invading the privacy of owners. At the meeting, the owners voted unanimously on a motion to obtain a court injunction against Mr. Beckett and Ms. Kuan. Although the motion was passed, no further action was taken.

[102] In April 2013, Mr. Knibbs complained that Ms. Kuan was videotaping him from her front window, repositioning her camera, and dancing behind the camera. He interpreted her behaviour as joyful and gleeful. A few weeks later, Mr. Knibbs complained about encountering the Complainants while walking his dog on a leash. According to Mr. Knibbs, Ms. Kuan had deliberately stood in front of him to obstruct his path. He believed that Ms. Kuan was trying to pick a fight with him. Ms. Kuan denies blocking his path. She testified that Mr. Knibbs was obstructing her path and trying to pick a fight with her.

[103] Over the years, the RCMP had been called to the Strata many times to address this conflict. After one visit, Mr. Beckett received information from the RCMP that made him feel “vindicated”. He posted a sign outside their front door, which was visible to other owners: “we win, you lose, ha ha ha”.

Tentative Settlement Agreement

[104] The parties eventually reached a tentative settlement agreement of the human rights complaint, which was subject to ratification by the Strata. A meeting to ratify the settlement agreement was held on August 19, 2013. (Although the settlement agreement was made on a confidential and without prejudice basis, both parties waived privilege and referred to the settlement discussions during the hearing). Mr. Beckett and Ms. Kuan wanted the owners to ratify the settlement agreement because they felt “beaten to the ground”. One of the terms of the proposed settlement was for them to move out of the Strata.

[105] A week before the meeting, Mr. Knibbs launched a t-shirt campaign against senior abuse. Several owners wore the t-shirt at the meeting. It was clear that Mr. Knibbs was trying to persuade owners to vote against the settlement agreement. Given my credibility findings, I am unable to determine the extent to which Mr. Knibbs influenced the vote. Mr. Kristiansen acknowledged that Mr. Knibbs created a t-shirt, which he eventually received, but denies wearing it around the Strata. Mr. Kristiansen does not recall whether he “took” it to the meeting. Mr. Kristiansen denies working against the settlement agreement, and believed that it was “nobody’s business” how he voted. He eventually acknowledged voting against the agreement. While Mr. Kristiansen wanted the Complainants to move, he did not want them to move “that badly” and observed that “they can move on their own dime, not mine”. Mr. Lasanen recalled that a few owners tried to convince others to vote “one way or another”, but minimized the significance of Mr. Knibbs’ campaign against the settlement agreement. I accept Ms. Silzer’s testimony that she did not remember whether Mr. Knibbs arrived with a poster, spoke out against the settlement, or wore the shirt. She ultimately voted against ratifying the settlement agreement. Most of the owners voted against ratifying the settlement agreement (40 voted against, 6 voted in favour). Ultimately, the settlement agreement was not ratified.

[106] Mr. Beckett and Ms. Kuan believed that Mr. Lasanen had negotiated in bad faith, and ultimately did not want the owners to ratify the settlement agreement. Mr. Lasanen denies that he negotiated in bad faith. However, I do not find Mr. Lasanen's testimony credible in this regard. Mr. Lasanen testified that he had his "own view of the settlement" but denies that he "expressed an opinion one way or another". Mr. Lasanen testified that he made it clear to the owners that it was up to them to make the decision. However, Mr. Lasanen's testimony is not consistent with a contemporaneous document prepared by him. Although Mr. Lasanen acknowledges writing to owners that the "complainants reneged on our final offer, with only minor changes", Mr. Lasanen disagreed that his information was slanted negatively to encourage owners to vote against the settlement agreement. By disclosing confidential information, Mr. Lasanen was not abiding by the Tribunal's mediation agreement which obligated participants to negotiate on a confidential and without-prejudice basis.

Conflict with New Neighbour

[107] Ms. Kuan continued complaining about bylaw infractions. Occasionally, she would place notices on parked cars in the Strata. She believed that if the Strata Council did not enforce bylaw infractions, then she would do so as a responsible owner. This eventually led to a conflict with Ms. Silzer.

[108] The previous year, Ms. Silzer had purchased Mr. Augustin's condo and moved into the Strata. She became the Complainants' downstairs neighbour. Ms. Silzer testified that she had very little interaction with owners until that summer, when the weather improved, and she spent more time outdoors. At the end of August 2013, shortly after 9 pm, Ms. Silzer was visiting with her sister and observed a dark figure outside her window with a camera. She observed a red flash, and discovered that it was Ms. Kuan. She confronted Ms. Kuan, and shortly thereafter, Ms. Silzer received a letter from Ms. Kuan, which read in part:

Before you moved in, the war had began. That's your choice, read or not to read our written voice on notice board. We take pictures and videos of 2 kinds, in this strata; 1 breaking bylaws, especially council members, 2. People harassing us. [...] Lastly, what makes you think we are interested in you and your unit unless you are one of the KIND? Tonight you

declared your position. I strongly recommend that you do your research and due diligence before you growl at us next time.

[109] Ms. Silzer responded to Ms. Kuan's letter, explaining that they had taken a picture in her unit at night, and had also left a nasty note on her sister's car, who was visiting from the United States, claiming that she had broken a bylaw. Ms. Silzer discovered that her sister had not, in fact, broken any bylaw. She wrote that that her sister "was very upset knowing that she had been under constant surveillance the whole time she was visiting and was afraid of what they might do to her car." Ms. Silzer added:

In the end, [Ms. Kuan] has highlighted a remark to me that I take exception to and I quote, "Tonight you have declared your position". So by the tone in her letter I take that to mean the Becketts have declared WAR with me. Keep in mind, this is all because "the Becketts" took a photo, looking into my unit, under the dark of night. Breaking the very by-laws they claim no one else is to break. They invaded my privacy into my home and when I confronted them, they accused me of and I quote "growling" at them. They take no responsibility for their actions and in fact blame me, and I quote, "I am not responsible for your emotional turmoil". This is insanity!

[110] Thereafter, Ms. Kuan and Mr. Beckett began complaining to the Strata Council about a strong odour of burning marijuana or cooking food emanating from Ms. Silzer's unit. Ms. Kuan made detailed observations about the frequency and strength of the odour. Ms. Silzer was incensed by these allegations and denied that anyone living or visiting her unit smoked marijuana or cooked odorous food. Ms. Silzer testified that her elderly mother lived in the Strata, and she often cooked in her mother's kitchen. She testified that her daughters are vegetarians and don't eat spicy food. Since they all worked full-time, they rarely cooked. She also strongly denied the accusation that anyone living in her home smoked marijuana. Ms. Silzer was proud that her daughters did not smoke marijuana and did not hang out with anyone who did. I find Ms. Silzer's evidence to be sincere and credible. Ms. Silzer had a clear recollection of events. Her testimony was unshaken during cross-examination. Where there is a discrepancy in the evidence between Ms. Silzer and Ms. Kuan, I prefer the evidence of Ms. Silzer.

[111] I observe that Ms. Silzer referenced making a complaint to the RCMP against Ms. Kuan in regards to this incident. The Complainants did not receive a copy of this document, and argue that the Respondent improperly did not disclose it to them. The

Respondent denies behaving improperly, and argues that it did not have knowledge of this document prior to Ms. Silzer's testimony. I find that the lack of disclosure of this document does not impact Ms. Silzer's credibility. However, since the Complainants argue that the lack of disclosure impacted their ability to cross-examine this witness, I have not relied on Ms. Silzer's evidence regarding her RCMP complaint or any criminal charges that may have resulted against Ms. Kuan.

More Litigation and Fines

[112] In December 2013, Ms. Kuan and Mr. Beckett launched a British Columbia Supreme Court action against the Strata. Ms. Kuan explained that they withdrew all of their small claims actions in exchange for this lawsuit.

[113] By October 2014, the fines against Mr. Beckett and Ms. Kuan levied by the Strata for their picture-and-video-taking totalled \$23,800. This included a week in which the Complainants dismantled their cameras. The Strata Council took the position that as long as the cameras were set up and pointing towards common areas, the fines would continue. The Complainants took the position that their picture-and-video-taking did not violate any bylaw, so they continued refusing to pay the fines.

IV ANALYSIS AND DECISION

(a) Second-Hand Smoke Complaint under s. 8 of the *Code*

[114] Mr. Beckett and Ms. Kuan allege that second-hand smoke infiltrated their unit, adversely affecting their disabilities, and that despite their complaints, the Strata Council did not respond appropriately to their concerns. Complaints by strata owners about the services of a strata corporation are covered by s. 8 of the *Code*: *Konieczna v. The Owners Strata Plan NW 2489*, 2003 BCHRT 38 ("*Konieczna*"); *McDaniel and McDaniel v. Strata Plan LMS 1657 (No. 2)*, 2012 BCHRT 167 ("*McDaniel*").

[115] The requirements of a *prima facie* case of discrimination were affirmed by the Supreme Court of Canada in *Moore v. British Columbia*, 2012 SCC 61 ("*Moore*"). To demonstrate *prima facie* discrimination, complainants must show, on a balance of probabilities, that they have a characteristic protected from discrimination, that they experienced an adverse impact in the delivery of a service customarily available to the

public, and that their characteristic was a factor in the adverse impact. Once a *prima facie* case is established, the burden shifts to the respondent to justify its conduct, on a balance of probabilities. If it cannot be justified, then discrimination will be found to occur.

[116] In this case, to demonstrate *prima facie* discrimination, Mr. Beckett and Ms. Kuan each must show, on a balance of probabilities, that they had a disability, that they experienced an adverse impact in relation to a service customarily offered by the Strata, and that their disability was a factor in the adverse impact.

[117] With respect to the adverse impact alleged in the specific circumstances of this complaint, Mr. Beckett and Ms. Kuan each must show that they had a disability, that they were exposed to second-hand smoke while living in the Strata, and that as a result, they experienced an adverse health impact related to their disability. As well, to engage the Strata's duty to accommodate, the Complainants must have brought these facts to the attention of the Strata.

[118] For the reasons that follow, I find that the Complainants have not established, on a balance of probabilities, a *prima facie* case of discrimination. Although I find that it is more likely than not that Mr. Beckett and Ms. Kuan were exposed to second-hand smoke while living in the Strata, I have been unable to make any findings regarding the level of second-hand smoke to which they were exposed. Although I find that Mr. Beckett has a physical disability under the *Code*, I find that Mr. Beckett has not shown, on a balance of probabilities, that he experienced an adverse impact from second-hand smoke exposure that was linked to his physical disability. I find that Ms. Kuan has not shown, on a balance of probabilities, that she has a disability under the *Code*. While I accept her testimony that second-hand smoke negatively affected her health, and that there is no risk-free level of second-hand smoke exposure, these health effects are shared by the public at large. Absent any link to a disability, health effects from second-hand smoke exposure do not engage the protection from discrimination within the meaning of the *Code*.

(i) Disability

[119] At the outset, it is not clear whether the Complainants claim that they each had a physical and mental disability, or just a physical disability, recognized by the *Code*. Although the Complainants filed their original complaint on the grounds of both physical

and mental disability, there is ambiguity in the Complainants' submissions. The Respondent's submissions presume that the Complainants are each alleging physical and mental disability. I will resolve this ambiguity in the Complainants' favour. I assume that the Complainants allege that they each suffered from a physical and mental disability recognized by the *Code*.

[120] The definition of disability under the *Code* is expansive and includes an involuntary physical or mental condition that has some degree of permanence, and impairs an individual's ability, in some measure, to carry out the normal functions of life: *Boyce v. New Westminster (City)*, 1994 B.C.C.H.R.D. No. 33, at para. 50; *Naser v. Zellers and McNally (No. 2)*, 2006 BCHRT 427, para. 95. In assessing whether an individual has a disability, the Tribunal must consider: the individual's physical or mental impairment, if any; the functional limitations, if any, which result from that impairment; and the social, legislative or other response to that impairment and/or limitations. As stated by the Tribunal in *Morris v. BC Rail*, 2003 BCHRT 14 ("*Morris*"):

The focus is on the third aspect, which is to be assessed in light of the concepts of human dignity, respect and the right to equality. Proof of impairment and/or limitation, while relevant, will not be required in all cases. (para. 214)

Mr. Beckett

[121] I find that Mr. Beckett has not established that he has a mental disability under the *Code*. Mr. Beckett testified about experiencing serious anxiety over second-hand smoke exposure towards the end of 2010 and beginning of 2011. Mr. Beckett stopped woodworking in his garage, and attributes this decision to his anxiety over second-hand smoke exposure. However, Mr. Beckett's assertion of anxiety is not, on its own, sufficient to constitute a mental disability under the *Code*. As stated by the Tribunal, "anxiety is a commonly experienced emotion" and "may be a symptom of a condition which may qualify as a disability, such as anxiety disorder": *Dow v. Summit Logistics and RWU Local 580*, 2006 BCHRT 158, para. 18. Mr. Beckett does not claim to have been diagnosed with an anxiety disorder during the relevant time period, and given my credibility findings, such a disorder cannot reasonably be inferred from his evidence. In the absence of an expert

medical opinion, I am unable to conclude that Mr. Beckett had a mental disability under the *Code*.

[122] I find that Mr. Beckett has a physical disability under the *Code*. Mr. Beckett testified to being a former smoker, with a long history of heart issues. He was diagnosed with a heart murmur in the early 1980s. In 1986, he lost part of his eye sight in one eye as a result of a retinal ocular inclusion. In 1991, he had surgery to replace a heart valve and install a pacemaker. Over the next two decades, his pacemaker was replaced several times. In October 2011, he had surgery to replace a pacemaker lead, which he described as a “close call”. Mr. Beckett also takes anticoagulant and cholesterol medications. The Tribunal has held that a series of surgeries required to correct a given condition can constitute a physical disability: *Naser v. Zellers and McNally (No. 3)*, 2007 BCHRT 245. Notwithstanding my credibility findings, the Respondent does not challenge Mr. Beckett’s testimony in this regard. Although the Respondent argues that Mr. Beckett was not sufficiently impaired or functionally limited to be physically disabled, the evidence relied on by the Respondent does not reasonably support this conclusion.

Ms. Kuan

[123] I find that Ms. Kuan has not established that she has a mental disability under the *Code* during the relevant time period. Ms. Kuan testified feeling anxious and agitated, and unable to sleep, by the smell of second-hand smoke. Her anxiety increased in the months prior to Mr. Augustin’s departure. Anxiety is a commonly experienced emotion, and without more, an assertion of anxiety is not, on its own, sufficient to establish the existence of a mental disability under the *Code*. Ms. Kuan’s medical chart does not record any mental health concerns from 2010 to 2011.

[124] The medical documents addressing Ms. Kuan’s mental health issues were created long after Mr. Augustin moved out of the Strata. For example, in November 2012, Ms. Kuan admitted herself to the hospital and was discharged shortly thereafter. While in hospital, it appears that she was assessed by a psychiatrist who administered a “global assessment of functioning scale”, which the Respondent relies on to argue that Ms. Kuan did not have any mental disability. However, I have not relied on the results of this psychiatric test because, in my view, it cannot reasonably be interpreted without expert

opinion evidence. More recently, in a letter dated March 2014, a mental health worker noted that Ms. Kuan was being treated for “longstanding issues with depression and anxiety”. However, it is not clear from the letter whether Ms. Kuan was diagnosed with a mental disorder, and if so, when. Without more, this letter cannot reliably be used to establish that Ms. Kuan had a mental disability recognized by the *Code* between 2009 and 2011.

[125] I also find that Ms. Kuan has not established that she had a physical disability under the *Code* during the relevant time period. Ms. Kuan argues that her physical symptoms were sufficiently severe and persistent to amount to a physical disability under the *Code*. Ms. Kuan testified that, between 2009 and 2011, her physical symptoms were persistent and included irritated eyes, a sore throat, cough, chest congestion, chronic post-nasal drip, bronchitis and pre-pneumonia. Ms. Kuan testified that her physical symptoms interfered with her normal activities and caused her to lose work. She found the smoke very strong and offensive, and felt very irritated and agitated. At times, she wore a mask when she worked at home. She testified that the mask reduced the quality and efficiency of her work, and enjoyment of her home.

[126] Given my credibility findings, I have not relied on Ms. Kuan’s testimony about her symptoms. Although Ms. Kuan submitted a medical chart into evidence, which covers the period from May 2010 to December 2011, it is not clear whether the entries detail Ms. Kuan’s reporting of her symptoms, rather than the doctor’s diagnoses. In some cases, Ms. Kuan’s testimony was not consistent with her medical chart. For example, Ms. Kuan testified that she developed “pre-pneumonia” as a consequence of second-hand smoke exposure. However, she also testified that her physical symptoms abated after Mr. Augustin moved out of the Strata. Her medical chart records “early pneumonia” in December 2011, approximately eight months after Mr. Augustin moved out of the Strata.

[127] Although Ms. Kuan described experiencing chest congestion, a fast heart rate, and shortness of breath by the end of 2009, she did not appear to consider these physical disabilities. Ms. Kuan testified that they did not reference any disabilities in their first complaint letter to the Strata Council in November 2009, because this had not yet happened in regards to her own health. Additionally, Ms. Kuan testified that she

experienced almost immediate relief from her symptoms when she was away from the Strata. For example, Ms. Kuan travelled to Taiwan, and while away, she testified having “very good respiratory health”. Upon her return in December 2010, she described gasping for air, chest congestion, and a throat infection. She went to see her doctor and apparently received a nasal spray. Her medical chart records that Ms. Kuan reported “post nasal drip” at around this time.

[128] Common ailments, such as a sore throat, runny nose, and cough, are not generally considered to be disabilities under the *Code*: *Mikolas v. Travelodge Hotel and others*, 2007 BCHRT 135, para. 48; *Ma v. Dr. Iain g. M. Cleator and another*, 2014 BCHRT 180, para. 244. The symptoms experienced by Ms. Kuan, and which are noted in her medical chart, are symptoms which are common in the general population, transient, and which have many potential causes. If they were related to a disability, this was not established on the evidence. Regarding her bronchitis in 2010 (or her diagnoses of rhinitis and early-pneumonia in 2011), there is no medical evidence to support a reasonable conclusion that these symptoms amount to a disability or were linked to second-hand smoke exposure from Mr. Augustin’s unit.

[129] In reaching my conclusions, I have not relied on the case law submitted by the Respondent. The Respondent relies on *Harton v. Strata Plan LMS 195*, 2010 BCHRT 132 (“*Harton*”) and *Arndt v. The Owners, Strata Plan LMS 1416*, 2011 BCHRT 213 (“*Arndt*”) to argue that the Complainants have failed to establish disabilities recognized by the *Code*. I distinguish *Harton* and *Arndt* on the grounds that they were preliminary decisions, and the Tribunal did not make any findings of fact. Contrary to the Respondent’s argument, the Tribunal in *Harton* did not make a finding of fact that the complainant did not have a disability. Furthermore, *Arndt* does not stand for the proposition, as alleged by the Respondent, that Mr. Arndt failed to provide medical evidence of a physical disability. Rather, the Tribunal dismissed Mr. Arndt’s complaint on the grounds that there was no reasonable prospect of establishing a connection between his disability and susceptibility to cigarette smoke.

(ii) Second-Hand Smoke Exposure

[130] I find that it is more likely than not that Mr. Beckett and Ms. Kuan were exposed to second-hand smoke while living in the Strata. My conclusion is based on circumstantial evidence, which is uncontroverted. The Strata complex is constructed of wood frame, and a former Strata Council member was aware that odours could pass between units. It is uncontroverted that some owners who lived in the Strata were smokers, a previous owner of the Complainants' suite was a smoker, and that Mr. Augustin, who lived in the suite directly below them, was also a smoker. Mr. Augustin smoked inside his suite, from time to time. At some point, he began smoking in his garage. Some of the visitors to Mr. Augustin's suite were also smokers. Taken together, this evidence supports a reasonable inference that Mr. Beckett and Ms. Kuan were exposed to second-hand smoke while living in the Strata. The circumstantial evidence in support of this conclusion renders such an inference more probable than the other possible inferences or hypotheses: *Vestad v. Seashell Ventures Inc.*, 2001 BCHRT 38, para. 44.

[131] In reaching this conclusion, I have not relied on the "sniff test", as it has been colloquially referred to by the parties. Mr. Beckett and Ms. Kuan testified that they smelled second-hand smoke in their suite. Given my credibility findings, I have not relied on their evidence in this regard. I did not find Mr. Beckett's testimony reliable, because he acknowledged that his "sniffer" was not as sensitive as Ms. Kuan's, that he did not notice the smell at first, and that Ms. Kuan had to point out the smell to him several times before he began noticing it. Mr. Beckett also acknowledged suffering an episode of olfactory hallucination. While Ms. Kuan may genuinely have believed that she smelled second-hand smoke in their suite, I find that her personal observations were not those of a reasonably objective observer. For example, Ms. Kuan complained to the Strata Council of over twenty incidents of a "distinct odor of burning marijuana or the strong odor of cooking food" which she believed was coming from Ms. Silzer's suite. However, I find that there were no such odours coming from her suite. For the reasons set out above, I prefer Ms. Silzer's testimony over the testimony of Ms. Kuan. While it may be possible that Ms. Kuan smelled these odours, but attributed them to the wrong suite, the timing of her accusation and the lack of other odour complaints does not reasonably support such a conclusion.

[132] Regarding the Respondent's "sniff test", the Respondent relies on evidence of five owners who did not smell second-hand smoke in the Complainants' suite. Likewise, I did not find the Respondent's evidence reliable. Four of those owners who performed the "sniff test" did not testify at the hearing (Mr. Lasanen was the only one). Although the Respondent argues that these owners were all non-smokers, Ms. Kuan was also a non-smoker. There is simply no evidence before me to assess the reliability of their olfactory function. In these circumstances, the "sniff test" is not a reliable method for detecting the existence of second-hand smoke.

[133] I have also not relied on the Complainants' urine test results. Ms. Kuan tested her urine for cotinine using TobacAlert testing strips, which had been purchased online. Ms. Kuan testified that cotinine is a metabolic by-product of nicotine and reliable indicator of recent tobacco exposure. Mr. Beckett testified that the tests are extremely accurate, with an accuracy rate of over 90%. Ms. Kuan took these tests over a period of approximately six months, from February 2011 to August 2011. Ms. Kuan submitted ten completed tests, and Mr. Beckett submitted one completed test, into evidence at the hearing.

[134] In my view, it is not possible to interpret the urine test results reliably without expert opinion evidence. The parties do not agree on how to interpret these test results. They disagree on how to interpret the number of discoloured bands on each strip. They also disagree on the length of time that cotinine is detectable in urine after tobacco exposure (the discrepancy varied from days to months after exposure). According to Ms. Kuan, her test results prove that she was exposed to second-hand smoke. The Complainants argue that eight tests taken by Ms. Kuan are positive for tobacco exposure at the 1.0 level. The Respondent argues that seven of those tests were actually indicative of no tobacco exposure (because they showed discolouration at the 0.0 level). Notably, Mr. Beckett's test result was indicative of no tobacco exposure (because it showed discolouration at the 0.0 level). Relying on the results of this test, the Respondent argues that Mr. Beckett was not exposed to second-hand smoke while living in the Strata. The Complainants do not appear to dispute the interpretation of Mr. Beckett's test result. Rather, the Complainants argue that it is unreasonable to suggest that Ms. Kuan was exposed to second-hand smoke and not Mr. Beckett, when they both lived together in the same home. The Complainants refer to the TobacAlert materials to reconcile this

inconsistency, and argue that individuals can vary in the speed at which they metabolize nicotine. In these circumstances, it is my view that the urine test results are open to more than one reasonable interpretation, which in the absence of expert opinion evidence, leads to different and inconsistent findings.

(iii) Adverse Effect and Nexus

[135] Although I find that it is more likely than not that Mr. Beckett and Ms. Kuan were exposed to second-hand smoke, I am unable to make any findings regarding the amount of second-hand smoke to which they were exposed. Given my credibility findings, I am unable to rely on the Complainants' evidence in this regard. Putting the Complainants' case at its highest, I am prepared to assume that there is no risk-free level of second-hand smoke exposure. This, on its own, however, is not sufficient to establish an adverse impact in relation to Mr. Beckett's physical disability.

[136] Mr. Beckett has not established, on a balance of probabilities, that his physical disability was a factor in any adverse impact he may have experienced from second-hand smoke exposure. At the outset, I accept the Complainants' argument that the focus in this analysis should be on the effect a disability has in any particular setting, which may include a heightened negative response to second-hand smoke exposure, or an increased risk of responding negatively to such exposure. I accept the Complainants' argument that second-hand smoke exposure is inherently toxic, that second-hand smoke exposure may create a negative response at some point in the future, that the increased risk of a negative response from second-hand smoke exposure should be considered in the context of a longer time frame, and that the negative response (or increased risk of negative response) should not have to be great to trigger the protection of the *Code*.

[137] Given my credibility findings, I have not relied on Mr. Beckett's personal observations about the impact of second-hand smoke on his health. It is clear that Mr. Beckett genuinely believed that second-hand smoke was a poison, and that he faced a special risk from second-hand smoke because of his cardiovascular conditions. Mr. Beckett testified feeling frightened and extremely anxious:

This stuff that everyone is taking very lightly could kill me or make me into a zucchini. I did not take it lightly at all. It was a life threatening situation.

[138] In November 2009, Mr. Beckett believed that he suffered a mini-stroke caused by second-hand smoke exposure. That day, Mr. Beckett described feeling weird, a headache, nausea, olfactory hallucination, double-vision, and facial numbness. He went to the hospital, was discharged, and seen for a follow-up consultation. Although he initially believed that he suffered a mini-stroke, Mr. Beckett was not given that medical diagnosis. Later, after a number of neurological tests, Mr. Beckett now understands this episode to have been related to a panic attack. In October 2011, Mr. Beckett had surgery to replace a pacemaker lead. He described experiencing life-threatening complications. He testified that the surgeon punctured his heart during surgery, which resulted in internal bleeding, and that he almost died. Mr. Beckett does not attribute the surgery, or complications resulting from surgery, to second-hand smoke exposure. No such conclusion can be reasonably inferred from the evidence.

[139] Mr. Beckett did not call a physician to testify about his medical conditions and the impact of second-hand smoke on his health. While documents signed by various physicians and medical professionals have been entered into evidence, most of these documents were in relation to Ms. Kuan. I have taken into account that none of the physicians or medical professionals were available for cross-examination, and that the factual underpinning to some of the medical documents was based on a subjective reporting of symptoms rather than a diagnosis.

[140] Mr. Beckett relies on information from the United States Center for Disease Control and Prevention, which among other things, concludes that: there is no risk-free level of second-hand smoke exposure; in adults, conditions caused by second-hand smoke include coronary heart disease, stroke, and lung cancer; second-hand smoke exposure has immediate adverse effects on the cardiovascular system; breathing second-hand smoke can have immediate adverse effects on blood and blood vessels, increasing the risk of a heart attack; even brief exposure to second-hand smoke can damage the lining of blood vessels and cause blood platelets to become stickier which can cause a heart attack; people who already have heart disease are at especially high risk of suffering adverse effects from breathing second-hand smoke and should take precautions to avoid even brief exposure; second-hand smoke causes breathing problems including being more congested and coughing more; and second-hand smoke irritates the skin, eyes, nose and throat.

[141] Although expert medical opinion evidence is not always required, given my inability to make any findings regarding the amount of second-hand smoke to which he was exposed, the evidence provided here is not sufficient to establish, on a balance of probabilities, that Mr. Beckett faced an increased risk of negative health effects from second-hand smoke exposure as a consequence of his physical disability. Given my credibility findings, I am unable to rely on Mr. Beckett's evidence that he is at greater risk of physical complications, and less able to tolerate second-hand smoke exposure, than someone without his underlying disability. Furthermore, the information Mr. Beckett obtained from the United States Center for Disease Control and Prevention, as well as other documentary evidence, liberally crosses the line into advocacy rather than medical opinion. Taking into account the increased risk of harmful effects of second-hand smoke exposure at some point in the future, there is no reasonable evidentiary basis to support a conclusion that second-hand smoke exposure impacted Mr. Beckett's health in a way that is linked to his physical disability. Absent any link to a disability, Mr. Beckett's increased risk of responding negatively to second-hand smoke exposure is shared by the public at large. In these circumstances, his increased risk does not engage the protection from discrimination within the meaning of the *Code*.

[142] For these reasons, the Complainants have failed to establish, on a balance of probabilities, a *prima-facie* case of discrimination under s. 8 of the *Code*.

(b) Retaliation Complaint under s. 43 of the *Code*

[143] At the time relevant to this complaint, section 43 of the *Code* provided as follows:

A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in a complaint or other proceeding under this *Code*.

[144] To establish a complaint of retaliation, the Complainants must prove that: a complaint was made under the *Code*, about which the Respondent was aware; the Respondent engaged in or threatened to engage in retaliatory conduct against the Complainants; and the Respondent intended to engage in retaliatory conduct or can reasonably have been perceived to have engaged in that conduct, with reasonable

perception being assessed from the point of view of a reasonable complainant: *Bissonnette v. School District No. 62 and Frizzell*, 2006 BCHRT 447 (“*Bissonnette*”), paras. 18-20; *Cariboo Chevrolet Pontiac Buick GMC Ltd. v. Becker*, 2006 BCSC 43, paras. 47-55; *Gichuru v. Law Society of BC*, 2010 BCCA 543 (“*Gichuru*”), para. 40; *Chiang v. British Columbia (Human Rights Tribunal)*, 2014 BCSC 1859 (“*Chiang*”), para. 14. What amounts to retaliatory conduct will depend on the circumstances in each case.

[145] The Complainants have identified a large number of incidents over a period of years that they believe are retaliatory. Although many incidents involve individual owners, the Complainants argue that the Strata Council was largely responsible for the retaliatory conduct directed at the Complainants. Among other things, the Complainants argue that individual owners took action against the Complainants and drew the authority of the Strata Council into those events; the Strata Council failed to address the high level of hostility by some owners; the Strata Council did not provide neutral information to owners; and when the Strata Council did act, it did so with extreme prejudice towards the Complainants. Because of the ongoing litigation in which the Strata was named, the Complainants argue that the Strata Council was also in a conflict of interest any time it acted against the interests of the Complainants including when it failed to act at their request. Even if some of the incidents are found not to be retaliatory, the Complainants argue that those incidents would still form part of the overall context and explain why the retaliatory incidents felt as stressful and daunting as they did to the Complainants. The Complainants argue that these incidents must be considered as a whole, and cumulatively, as they have had an enormous impact on them. The parties made extensive and detailed submissions on these issues.

[146] The Complainants have identified almost all negative interaction they experienced in the Strata as retaliation, from February 2011 onwards. It is not necessary to set out each of these allegations of retaliation. For the reasons set out below, none of the incidents that occurred prior to July 4, 2011 can amount to retaliation under s. 43 of the *Code*. The retaliation complaint is against the Strata, not against individual owners. Even assuming that all of the Complainants’ allegations post-dating July 4, 2011 amount to potential adverse conduct by the Strata Council, with one exception, the Complainants have not established that the third element of the *Bissonnette* retaliation test has been met. The

acrimony between the Complainants and individual owners, including Strata Council members, was part of an antagonistic feud that began before July 4, 2011. Ms. Kuan referred to it as a “war”. Although many individual owners behaved badly, this antagonistic feud was also due to the Complainants’ bad behaviour. With one exception, it is not possible to draw a reasonable inference that the Respondent intended to engage in retaliatory conduct or can reasonably have been perceived to have engaged in that conduct, with reasonable perception being assessed from the point of view of a reasonable complainant.

[147] For the reasons that follow, I have reached a different conclusion with respect to all of the fines that were issued by the Strata Council against the Complainants. I find that the Complainants have established that these fines amount to retaliation under s. 43 of the *Code*.

(i) Was a complaint made under the *Code*, about which the Respondent was aware?

[148] The Complainants filed two complaints under the *Code*, about which the Respondent was aware.

[149] First, the Complainants filed a human rights complaint under s. 8 of the *Code* on February 9, 2011 (the “First Complaint”). Approximately five months later, the Strata Council was notified of that complaint in a letter on July 4, 2011. The owners were advised the following week in a meeting. I find that the Respondent became aware of the First Complaint on July 4, 2011.

[150] With regard to the First Complaint, the Complainants argue that the Respondent’s awareness should be triggered from the date of filing rather than the date of service. The Complainants argue that, under a large and liberal interpretation of s. 43 of the *Code*, protections under s. 43 of the *Code* must be available from the date of filing, because the Respondent began retaliating against them as soon as the small claims action was filed and served and the human rights complaint was filed in February 2011. The Complainants argue that because the human rights complaint was filed at the same time as the small claims action, and the factual basis of both actions are similar, the retaliatory conduct is related to both matters equally. The Complainants argue that the retaliation they

experienced over a period of years was not attributable to one matter or the other, but was the result of both interchangeably.

[151] Notwithstanding a large and liberal interpretation of s. 43 of the *Code*, I do not accept the Complainants' argument for the following reasons. The Tribunal recognizes that s. 43 is a unique section of the *Code*. Although it uses the words "or otherwise discriminate" and is included as "discrimination" in the definition section of the *Code*, it is not necessary for the retaliatory conduct to relate to a protected characteristic or ground of discrimination: *Verslype v. Onyz Industrial Services and Crowe (No. 2)*, 2005 BCHRT 152, para. 18; *Bissonnette*, paras. 18-20. The retaliatory conduct may take a number of forms: *Bissonnette*, paras. 18-20. It also applies to any "person who complains or is named in a complaint, gives evidence or otherwise assists in a complaint or other proceedings under this *Code*": *Gichuru v. Pallai*, 2012 BCHRT 327 ("*Pallai*"), para. 77. Read as a whole, in my view, the purpose of s. 43 of the *Code* is to establish procedural protections for participants in a human rights proceeding, and to ensure that those persons who raise complaints under the *Code*, and those who assist them, are not retaliated against as a result: *Takkari v. Burnaby (City of)*, 2005 BCHRT 68, para. 29.

[152] Nevertheless, persons alleging a breach of s. 43 must prove that they were subject to retaliatory conduct "because" they participated in a proceeding under the *Code*: *Pallai*, para. 83. As recognized by the Court of Appeal, s. 43 contains a requirement of a nexus between a *Code* complaint and subsequent retaliatory conduct: *Gichuru v. Law Society of BC*, 2010 BCCA 543 ("*Gichuru*"), para. 41. In these circumstances, the Respondent's awareness of the Complainants' small claims action is not sufficient to establish such a nexus under s. 43 of the *Code*. Accordingly, none of the incidents that occurred before July 4, 2011 can amount to retaliation under s. 43 of the *Code* because they occurred before the Respondent was reasonably aware of the Complainants' human rights complaint.

[153] Second, the Complainants filed a retaliation complaint under s. 43 of the *Code* on May 11, 2012 (the "Second Complaint"). By letter dated May 17, 2012, the Strata Council was notified that the complaint had been accepted for filing by the Tribunal. I find that the Respondent became aware of the Second Complaint on May 17, 2012. The Complainants subsequently filed a number of amendments, which form part of its Second Complaint.

These amendments include the issuance of fines by the Strata Council. The Respondent was notified of these amendments, and filed several amended responses.

[154] In final submissions, the Complainants argue that the Strata Council decided to issue fines against the Complainants very soon after they were advised of the Second Complaint. The Complainants argue that the Strata Council began concocting support for these bylaw fines after being notified of the Second Complaint. According to the Complainants, it is reasonable to infer that this was done both to take action against the Complainants for filing a Second Complaint, and to prevent the Complainants from continuing to gather evidence in support of their retaliation complaint. The Respondents deny that the Strata Council's issuance of fines against the Complainants was retaliatory.

(ii) Did the Respondent engage in retaliatory conduct?

[155] I find that the Strata Council imposed fines on the Complainants for bylaw and rule violations that were not enforced against any other owners in the Strata. By October 2014, the Complainants had been fined over \$20,000 for bylaw and rule violations in relation to the hanging of their shirt, in relation to their picture-and-video-taking, and in relation to a posting on the notice board referring to their retaliation complaint. Fining the Complainants falls squarely within the s. 43 list of prohibited conduct if the Strata Council did so because the Complainants had filed a complaint under the *Code*. The onus is on the Complainants to prove this on a balance of probabilities.

(iii) Did the Respondent intend to engage in retaliatory conduct or can it reasonably be perceived to have engaged in that conduct, with reasonable perception being assessed from the point of view of a reasonable complainant?

[156] Since there will rarely be direct evidence of an intention to retaliate, what amounts to retaliatory conduct will depend on the circumstances in each case, and will most often be inferred from a review of all of the evidence: *Gichuru*, para. 43; *C.S.W.U. Local 1611 v. SELI Canada (No.3)*, 2007 BCHRT 423 at para. 17. In this case, there is no reliable direct evidence of the Respondent's intent to retaliate. The issue is whether the Strata Council can reasonably have been perceived to have levied fines against the Complainants "because" they filed a complaint under the *Code*. The element of reasonable perception is assessed from the point of view of a reasonable complainant.

[157] A reasonable inference could be drawn from the timing of the Strata Council's decision to levy fines against the Complainants for bylaw violations: *Pallai*, para. 97. The timing of the Strata Council's decision to take enforcement action against the Complainants supports a reasonable inference that the filing of the Second Complaint was a factor in the Strata Council's decision to begin imposing fines against the Complainants. The Strata Council's decision to fine the Complainants for bylaw violations was made within weeks of being notified of their Second Complaint.

[158] By May 2012, the Complainants had been picture-and-video-taking for over one year, posting material on the notice board for over one year, and hanging their shirt for three consecutive months. Despite complaints from Mr. Kristiansen, Ms. Kristiansen, and Mr. Knibbs over that time period, the Strata Council took no enforcement action against the Complainants. Mr. Lasanen testified that the Strata Council's position was that it would not involve itself in an ugly dispute between neighbours. As early as December 2011, Mr. Knibbs wrote to the Strata Council seeking to enforce a nuisance bylaw against the Complainants for their picture-and-video-taking. (His lawyer raised a similar issue earlier that summer). In January 2012, the Strata Council advised Mr. Knibbs that they had considered that option, but that enforcing a nuisance bylaw would not likely be valid. The Strata Council reported to Mr. Knibbs that the information they received was that the videotaping was not a bylaw violation. However, the Strata Council stated that if "indiscriminate videotaping" continued, it might consider it a bylaw violation and take enforcement action. No such enforcement action was taken for the next five months.

[159] Within weeks of the filing of the Second Complaint, the Strata Council began taking enforcement action against the Complainants in relation to three matters. On June 25, 2012, the Strata Council voted to fine the Complainants \$50 for displaying their shirt in violation of a laundry bylaw, and to continue fining them on a weekly basis until the shirt was removed. The Complainants had been fined on a weekly basis until October 2012 (with the exception of one week when the Complainants had briefly taken down the shirt), and were fined a total of \$750. The Strata Council also removed the shirt "until such time as you commit to us in writing that this kind of violation will not be repeated by you". On July 12, 2012, the Strata Council passed a motion to fine the Complainants \$50 for not removing their Retaliation Posting on the notice board in violation of a Strata rule, and to

impose that fine on a weekly basis until that rule is complied with. The Strata Council also passed another motion to fine the Complainants \$200 for the “videotaping and the pointing of a camera at other owners” in violation of a nuisance bylaw and to impose that fine on a weekly basis “until the contravention is remedied”.

[160] The circumstances require an explanation from the Respondent: *Pallai*, para. 97. When a respondent has other reasons for its conduct, this does not negate the possibility of finding a breach of s. 43 of the *Code*: *Pallai*, para. 90. The Complainants are still required to establish the elements of the *Bissonnette* test on a balance of probabilities.

[161] The Respondent argues that the fines were in direct response to the Complainant’s provocations, and not in retaliation for the filing of any human rights complaint. The Respondent also argues that the strata corporation had to comply with the British Columbia’s *Personal Information Protection Act*, S.B.C. 2003, c. 63 (“*PIPA*”) when the Complainants collected personal information of other owners without their consent through their picture-and-video-taking. The Respondent referred to case law under *PIPA* to argue that the Complainants were not acting reasonably when they took pictures and videos of minor bylaw infractions around the Strata. The Respondent argues that the Complainants’ picture-and-video-taking to document trivial perceived bylaw infractions was completely irrational, unwarranted, and a gross violation of owners’ privacy and personal rights, especially in light of the fact that the Complainants knew that such conduct was unwelcome. The Respondent argues that in these unprecedented circumstances whereby all owners were impacted or potentially impacted by the picture-and-video-taking of the Complainants, the Strata Council acted appropriately in taking the unprecedented step of fining the Complainants. However, the Complainants’ actions were regarded by owners as provocative for over a year. While these explanations address the Strata Council’s decision to levy fines, the Respondent has not provided a reasonable explanation for the timing of that decision.

[162] Other factors support a reasonable inference that the Strata Council decided to impose fines against the Complainants in June because of the filing of their Second Complaint in May. These factors include the lack of transparency in the Strata Council’s decision-making, and the lack of consistency in the enforcement of its rules and bylaws.

Mr. Lasanen was aware of the high level of hostility between some owners and the Complainants at this time. Although Mr. Lasanen testified that the Strata Council was following an “impartial approach”, his testimony is not consistent with the actions taken by the Strata Council at this time.

[163] Regarding the posting fine, the Strata Council levied a fine against the Complainants for not removing their Retaliation Posting when it did not violate the Strata rules as they were at the time. Mr. Lasanen imposed a time limit on the posting before such a rule was approved by the Strata Council. The letter circulated by the Strata Council to justify the creation of the rule referred to an acrimonious incident involving Ms. Kuan that had not yet occurred. It is clear that the Strata Council meeting minutes were drafted to blame the Complainants for changes in how the notice board would be managed. Notwithstanding the new time limit, there is no evidence that the notices of any other owner were ever subject to the new rule. Other owners had postings that exceeded the time limit, including Mr. Lasanen.

[164] Regarding the picture-and-video-taking fines, the Strata Council relied on owner complaints to justify its conduct that were found to be self-serving. I find that Mr. Lasanen orchestrated a sudden barrage of complaints from Mr. Knibbs and Ms. Kristiansen in June 2012 to create a foundation for the Strata Council to fine Mr. Beckett and Ms. Kuan over their picture-and-video-taking in the Strata. Mr. Lasanen agreed that he might have suggested to Mr. Knibbs and Ms. Kristiansen that written complaints would be useful. The Strata Council also relied on the nuisance bylaw to justify enforcement action against the Complainants. This suggestion was first made by Mr. Knibbs the previous year, considered by the Strata Council, and dismissed as not being valid.

[165] Regarding the shirt fines, Mr. Kristiansen was present at the Strata Council meeting to use the laundry bylaw to justify enforcement action against the Complainants. Although Mr. Lasanen testified that Mr. Kristiansen did not have any undue influence over decisions that were made by the Strata Council, I do not find his testimony credible in this regard. Mr. Kristiansen was embroiled in a personal litigation with the Complainants, and his animosity towards them was evident in the hostile interactions that were documented between them. Mr. Kristiansen used his position on the Strata Council to write a letter to

the Complainants within two days of receiving his wife's complaint about the shirt. Although no enforcement action was taken then, the letter was clearly not issued in accordance with the Strata Council's protocol for dealing with owner complaints.

[166] In my view, the reasonable complainant would not have accepted Mr. Lasanen's explanations for the timing of the Strata Council's decision to take enforcement action against the Complainants. I find that, but for the filing of the Second Complaint, the Strata Council would not have begun imposing bylaw and other fines against the Complainants in June 2012. There was a great deal of animosity between Strata Council members and the Complainants, much of which stemmed from conduct apart from the filing of a human rights complaint or retaliation complaint. The Complainants' conduct, especially their picture-and-video-taking, inflamed the situation in the Strata. It was reasonable that the Strata Council would want to address it. However, the timing of the Strata Council's decision to impose fines points to retaliation, as does the lack of transparency in the Strata Council's decision-making, and the lack of consistency in the enforcement of its bylaws. A reasonable complainant, apprised of these facts, would perceive the bylaw fines as retaliation. In these circumstances, I find that the Complainants have proven, on a balance of probabilities, that the Strata Council began issuing bylaw fines against them "because" they filed another complaint under the *Code*. The Complainants have established that the Respondent breached s. 43 of the *Code*.

V CONCLUSION

[167] I find that the Complainants did not establish a *prima facie* case of discrimination in respect of their second-hand smoke complaint under s. 8 of the *Code*. The Complainants were successful in establishing a retaliation complaint under s. 43 of the *Code* with respect to all fines that were imposed by the Strata Council against them.

VI REMEDY

i. Cease Contravention

[168] Pursuant to s. 37(2)(a) of the *Code*, I am required to order that the Respondent cease its discrimination and refrain from committing the same or similar contravention in the future. I order the Respondent to cease and refrain from imposing bylaw fines, or

similar conduct, against the Complainants in retaliation for them having filed a complaint under the *Code*. This order does not preclude the Strata Council from issuing bylaw fines against the Complainants in the future, provided that the Strata Council's conduct is consistent with its bylaws and treatment of other owners in the Strata so as not to be discriminatory.

[169] The Respondent argues that the question of the validity of these bylaw fines is currently before the provincial small claims court, and the Tribunal should not interfere with this process. Pursuant to s. 4 of the *Code*, the *Code* takes precedence over the *Strata Property Act*, from which the Strata derives its statutory powers in its small claims action. The question of whether the fines are a prohibited form of retaliation under the *Code* is properly before the Tribunal, and must be addressed before the fines can be enforced as an exercise of the Strata's statutory authority. The parties had notice of the issue of whether the fines were retaliatory, and vigorously argued that issue before me. Since I have found that all of the fines are retaliatory, they cannot be enforced, regardless of the statutory powers of the Strata. Given my order, as set out below, that the fines are retaliatory and void, and my order that the Respondent cease and refrain from committing the same or similar contravention, the Respondent must not seek to enforce the fines in provincial small claims court.

[170] The remainder of the remedies are discretionary.

ii. Declaration

[171] I grant the Complainants' request for a declaration. Pursuant to s. 37(2)(b) of the *Code*, I order a declaration that the Respondent's conduct in issuing fines against the Complainants was retaliatory.

iii. Ameliorate the effects of Discriminatory Practice

[172] I grant the Complainants' request for an order to ameliorate the effects of the discriminatory practice. Pursuant to s. 37(2)(c)(i) of the *Code*, I order the Respondent to take the following steps to ameliorate the effects of its retaliatory practices contrary to s. 43 of the *Code*:

- a) I order that all fines imposed by the Strata Council that I have found to be retaliatory are discriminatory and void.
- b) I order that the Respondent's Strata Council obtain one day of training on the obligations of strata corporations under human rights legislation from a recognized human rights training organization. I order that the training materials be made available to new members of the Strata Council.

iv. Lost Wages

[173] Since I have found that the Complainants have not established a *prima facie* case of discrimination in relation to their second-hand smoke complaint, there is no basis for ordering compensation to the Complainants for expenses arising from their complaint under s. 8 of the *Code*.

[174] I also decline to compensate the Complainants for lost wages under s. 37(2)(d)(ii) of the *Code* in respect of the retaliation complaint. The Complainants are seeking a total of \$77,419 (and interest) in lost wages over a period of four years from the interference with their ability to work as a consequence of the severe impact the retaliatory conduct had on them, including the emotional and psychological toll of that retaliatory conduct, and efforts required to document and respond to that retaliatory conduct. The Complainants argue that their earnings were significantly depressed after their human rights complaint was filed, and it is reasonable for the Tribunal to infer that the decline in their income was due to the human rights issues they were facing. The Complainants argue that Ms. Kuan undertook tremendous efforts to obtain proof of the retaliatory conduct against them.

[175] In my view, there is no reasonable basis for a finding that the Complainants suffered any income loss as a result of the Respondent's retaliatory issuance of bylaw fines. Based on a review of their income tax records, I accept that the Complainants' average incomes declined after 2010. However, I do not accept the Complainants' argument that there is no other reason for the decline in their cumulative income after 2010. Mr. Beckett testified that he began working with Ms. Kuan in her consulting business. Ms. Kuan testified that her consulting business required her to meet with clients outside of the Strata at their residences. The Complainants were involved in an acrimonious feud with Mr. Knibbs, Mr. Kristiansen, and Ms. Kristiansen that involved

litigation in other forums. It is my assessment that, to the degree that Ms. Kuan and Mr. Beckett suffered an emotional reaction, it related primarily to their inability to win their conflict with these owners and the Strata Council. Ms. Kuan spent a considerable amount of time reviewing video footage, making notes, patrolling the Strata complex looking for bylaw violations, corresponding with the Strata Council, and taking pictures and videos of owners who she believed were discriminating or retaliating against her. Ms. Kuan also devoted a considerable amount of time to document events in order to support six small claims actions which were commenced against Mr. Knibbs, Mr. Kristiansen, and Ms. Kristiansen, as well as the Supreme Court action which was commenced against the Respondent. However, none of this activity stemmed from conduct that I found to be retaliation. My finding of retaliation is based on the Strata Council's conduct starting in June 2012. To the extent that the Complainants' activities affected their income earning capacity, the Complainants must take personal responsibility for any loss of income arising. The Complainants have not established that the Respondent is responsible for such a loss.

v. Injury to Dignity, Feelings and Self-Respect

[176] The Complainants seek damages for the injury to their dignity, feelings and self-respect, pursuant to s. 37(2)(d)(iii) of the *Code*. The Complainants are seeking \$20,000 each. The Complainants argue that this is consistent with the Tribunal's awards in other cases where the harm of discrimination has substantially upset the orderly progression of a complainant's life with far-reaching consequences, and is far less than has been awarded in some cases where this has been the case: *Kelly v. UBC (No. 3)*, 2012 BCHRT 32 ("*Kelly*"); *Lowe v. William L. Rutherford and another (No. 3)* 2007 BCHRT 336 ("*Lowe*"); *Toivanen v. Electronic Arts (Canada) (No. 2)*, 2006 BCHRT 396 ("*Toivanen*"); *Senyk v. WFG Agency Network (No. 2)*, 2008 BCHRT 376 ("*Senyk*").

[177] The Complainants argue that the principle of proportionality, as cited by the Tribunal with respect to the length of the hearing, must also apply to remedies. The Complainants argue that the facts of this case were quite involved, because the allegations encompassed years of events, and the harm to the Complainants was extensive and far-reaching. The Complainants argue that substantial damages must be awarded if the

Tribunal is to remain accessible to individual complainants as is contemplated by the legislation. The Complainants argue that there is a danger that low awards will effectively prevent more complex cases from being argued, ensuring that more of the Tribunal's resources will be spent on less important cases. There is also a danger that low awards will cause the human rights system to lose its reputation as a rational means of obtaining redress and amelioration in more complex cases. The Complainants argue that this will drive matters to the courts, which is clearly not what the legislature intended when it drafted the *Human Rights Code*.

[178] I note first that *Kelly* was set aside by the Supreme Court on judicial review, and remitted to the Tribunal for reconsideration. I distinguish *Lowe*, *Toivanen*, and *Senyk* on the following grounds. First, I have found that the Complainant's complaint under s. 8 of the *Code* not to be justified. Second, I have found only a very small part of the Complainants' retaliation complaint to be justified under s. 43 of the *Code*. Third, the impact to the Complainants flows from their own conduct and their acrimonious feud with other owners. I accept that the principle of proportionality applies to remedies. However, the length of a hearing does not necessarily relate to the impact of discrimination, if found, on a complainant.

[179] An award under s. 37(2)(d)(iii) is meant to be compensatory to a successful complainant, not to punish an unsuccessful respondent: *Coreas and Coreas v. Tuyen* (No. 3), 2012 BCHRT 218, para. 45. Even where there has been no overt evidence presented, it has often been inferred based on the finding of a violation of the *Code*. That has not invariably been the practice however. In *Ingenthorn v. Overwaitea Food Group and Van Pelt* (No. 2), 2006 BCHRT 556, paras. 80-82, the Tribunal stated:

In my view, there is a strong presumption that a breach of one's rights under the *Code* will give rise to a compensable injury to one's dignity, but it is a presumption only, which may be displaced by the evidence: see *McDonald v. Schuster Real Estate*, 2005 BCHRT 177 at para. 31. In many cases, such injury may be inferred, despite the absence of direct evidence. However, there may be a number of circumstances in which no award would be given. For example, where a complainant expresses an objection to an award for injury to dignity being given, the Tribunal will not make one: see *Alexander v. PAL Vancouver* (No. 4), 2006 BCHRT 461, at paras. 69-70.

In addition, there are sound policy reasons for not treating an award for injury to dignity, feelings and self-respect as automatic. To treat such an award as mandatory in all cases may have unintended adverse consequences. First, a nominal award may be seen as insulting to the successful complainant. Second, making nominal awards regardless of circumstances may tend to trivialize the substantial injury to dignity, feelings and self-respect which many complainants suffer.

I therefore agree with *Overwaitea* that an award for injury to dignity, feelings and self-respect should not be considered automatic. In each case, the Tribunal must exercise its discretion with a view to fulfilling the remedial purposes of the *Code*, in a manner consistent with the evidence in the complaint before it.

[180] Ms. Kuan and Mr. Beckett testified in great detail respecting the personal impact of individual owners' and the Strata Council's behaviour on them. Ms. Kuan provided considerable evidence about feeling isolated and vulnerable. However, I did not find that this behaviour amounted to retaliation under s. 43 of the *Code*. Furthermore, Ms. Kuan and Mr. Beckett contributed, by their actions, to the escalation of the conflict in the Strata. It is my assessment that, to the degree that Ms. Kuan and Mr. Beckett suffered an emotional reaction, it related primarily to their inability to win their conflict with these owners and the Strata Council: *Garrow v. Strata Plan LMS-1306 (No. 3)*, 2012 BCHRT 4, para. 183.

[181] Although I observed no emotional impact on the Complainants in relation to the conduct I found to be retaliation, beyond indignation and irritation, I am prepared to infer that the financial exposure to fines would have had a negative impact on their dignity, feelings and self-respect. With a view to fulfilling the remedial purposes of the *Code*, in a manner that is consistent with the evidence, I am prepared to award \$1000 to each Complainant as compensation for injury to dignity, feelings, and self-respect in these circumstances.

vi. Costs

[182] The Complainants also seek an order pursuant to s. 37(4)(a) of the *Code* for costs in the amount of \$15,000. The Complainants argue that the Respondent engaged in improper conduct during the course of this proceeding. First, the Complainants argue that the Respondent did not disclose records by the Kristiansens, to which they both averred in their evidence, as well as information provided by Ms. Silzer to the police. The

Complainants argue that failure to produce these documents severely interfered with their cross-examination of Ms. Kristiansen and Ms. Silzer, as well as other possible witnesses.

[183] Second, the Complainants argue that costs may be awarded if a breach of s. 43 of the *Code* is found since retaliation is by its nature improper conduct in the course of a complaint. The Complainants rely on the principles set out in *Terpsma v. Rimex Supply* (No. 3), 2013 BCHRT 3 (“*Terpsma*”), para. 141. The Complainants argue that a costs award should be sufficient to signal the Tribunal’s condemnation of a party’s conduct and to serve the punitive purpose of such an award: *Bains v. Metro College Inc. and others* (No. 2), 2004 BCHRT 7. The Complainants argue that no participant in a human rights matter should be subjected to name calling or attacks on their character: *Stopps v. Just Ladies Fitness (Metrotown) and D* (No. 4), 2007 BCHRT 125, para. 43.

[184] The Complainants argue that most of the hearing time in this case was consumed by evidence of retaliation. The extensive history of retaliation placed a burden on the Complainants, emotionally and practically, and on the Tribunal. The Complainants argue that this was a simple matter that was immeasurably complicated by the host of retaliatory acts that occurred. The Complainants argue that the objectives of the *Code* are seriously harmed, along with the system created to attain those objectives, when complainants are treated as the Complainants have been here. The fundamental unacceptability of that to the Tribunal must be conveyed by a substantial costs award. The Complainants argue that if the Tribunal wants s. 43 to offer realistic protection to complainants, the Tribunal must take breaches of s. 43 very seriously. As the Tribunal has noted, “the Tribunal’s powers to order costs and to protect persons from retaliation are both central to the Tribunal’s ability to control its own processes” and “in light of the fundamental nature of the rights protected by the human rights legislation, the Tribunal’s ability to protect those who engage its processes from retaliation serves a vital societal interest”: *Mathison v. Musqueam Indian Band and Easton* (No. 2), 2006 BCHRT 204, para. 29.

[185] The Respondent argues that it produced an extensive volume of documents in this matter which represented all of the material documents in its possession. The Respondent did not have any knowledge of the records kept by the Kristiansens nor information provided by Ms. Silzer to the police. The Respondent disputes that the failure by the Strata

Council to produce these records compromised the Complainants' case in any measurable way. Given the difficulty that the Kristiansens had in recalling dates, the Respondent argues that these records very likely would have been useful to the Respondent in presenting its case had the Respondent known about these records. With regards to retaliation, the Respondent argues that no more than a small token for costs is warranted.

[186] The Respondent argues that the Complainants themselves failed to disclose a number of documents, including medical records and employment contracts. The Respondent also seeks costs against the Complainants for making a "plethora of retaliation complaints that prolonged the hearing" and "should not have been brought in the first place". The Respondent argues that the Complainants' conduct in terms of provoking and inciting owners with their use of cameras (which they translated into additional retaliation complaints) was clearly improper conduct. The Respondent argues that the Complainants' conduct is worthy of condemnation by the Tribunal.

[187] I decline to order costs against the Respondent. Retaliatory conduct may constitute improper conduct but not necessarily. The Tribunal has found retaliation under s. 43 of the *Code* and not awarded costs against a respondent. While I have found that all bylaw and other fines issued by the Strata Council amount to retaliation, none of the other incidents alleged by the Complainants amount to retaliation under s. 43 of the *Code*. I have taken the entire circumstances of the complaint into account, including the years of acrimony stemming from the Complainants' conduct. Applying the principles set out in *Terpsma*, I find that the Respondent's conduct does not amount to improper conduct in the course of this proceeding warranting sanction.

[188] I also decline to order costs against the Complainants. It is not appropriate for the Respondent to raise the Complainants' lack of disclosure in its final submission. Given that this issue was first raised in final submissions, without proper notice, I decline to consider the Respondent's allegation further. Regardless of whether the Respondent agrees with the Complainants' approach at the hearing, the Complainants are entitled to present their case and to describe for the Tribunal the conduct which they believe amounted to retaliation. The Complainants argue that it was critical to review the events before July 4, 2011, given the issue between the parties about who was responsible for the conflict among owners,

and the Complainants' decision to begin documenting the conduct of owners with moving and still images. The Complainants argue that the scope of the complaint was reasonable, regardless of whether the Tribunal ultimately accepts the Complainants' theory of the case, in whole or in part. Regarding the Respondent's claim for costs over the Complainants' conduct in recording other owners, it is inappropriate for the Tribunal to order costs against Complainants over some of the evidence they put forward in a hearing. This conduct was unrelated to the Tribunal's process, which is what s. 37(4) of the *Code* is designed to protect. The Respondent has provided no authority to support its claim, and awarding costs in these circumstances would be contrary to the purposes of the *Code*.

vii. No expenses to Complainants

[189] Pursuant to s. 37(2)(c) of the *Code*, I order that the Complainants not be subject to any levies, charges, or expenses imposed by the Respondent for payment of any monetary award or other remedy ordered by the Tribunal. I decline to extend this order to any legal or other costs incurred by the Respondent in respect of defending this complaint, other litigation, or the \$2,000 payment to the Strata Council president. The Complainants have not shown that these additional costs flow from my finding of retaliation.

SUMMARY OF FINDINGS AND ORDERS


[190] I dismiss the s. 8 complaint pursuant to s. 37(1) of the *Code*.

[191] I find that the Respondent retaliated against the Complainants through the issuance of fines contrary to s. 43 of the *Code*. The remainder of the s. 43 complaint is dismissed pursuant to s. 37(1) of the *Code*. A summary of my orders on remedy is as follows:

- Pursuant to s. 37(2)(a) of the *Code*, I order the Respondent to cease and refrain from imposing bylaw fines, or similar conduct, against the Complainants in retaliation for them having filed a complaint under the *Code*. Given my order that the fines are retaliatory and void, and that the Respondent cease and refrain, the Respondent must not seek to enforce the fines in provincial small claims court. This order does not preclude the Strata Council from issuing bylaw fines against the Complainants in the future, provided that the Strata Council's conduct is consistent

with its bylaws and treatment of other owners in the Strata so as not to be discriminatory.

- Pursuant to s. 37(2)(b) of the *Code*, I order a declaration that the Respondent's conduct in issuing fines against the Complainants was retaliatory.
- Pursuant to s. 37(2)(c)(i) of the *Code*, I order that all fines imposed by the Strata Council that I have found to be retaliatory are discriminatory and void. I order that the Respondent's Strata Council obtain one day of training on the obligations of strata corporations under human rights legislation from a recognized human rights training organization. I order that these human rights training materials be made available to new members of the Strata Council.
- Pursuant to s. 37(2)(d)(iii) of the *Code*, I order the Respondent to pay \$1,000 to each Complainant as compensation for injury to dignity, feelings and self-respect. I order the Respondent to pay post-judgment interest on the awards based on the rates set out in the *Court Order Interest Act*, R.S.C.B. 1996, c. 79 (the "*Act*"). Interest is to be calculated at the bankers' prime rate as published by the British Columbia Supreme Court Registry, in accordance with the *Act*, calculated at six-month intervals.



Diana Juricevic, Tribunal Member