IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20120327
Docket: S131266
Registry: New Westminster

Between:

The Owners, Strata Plan LMS 2629

Petitioner

And:

Chad Blondin and Andrea Johnstone

Respondents

Before: The Honourable Madam Justice Ker

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	S. Smith
Counsel for the Respondents:	K. Frempong
Place and Date of Hearing:	New Westminster, B.C. February 15, 2012
Place and Date of Judgment:	New Westminster, B.C. March 27, 2012

[1] **THE COURT:** These are oral reasons for judgment. Following the usual practice, I reserve my right to edit them to ensure they properly reflect my reasons, but the result will not change.

[2] The petitioner Strata Corporation (the "Strata Corporation") seeks a declaration that Mr. Chad Blondin and Ms. Andrea Johnstone (the "respondents"), owners of one of the Strata Corporation's units, violated its bylaws (the "Bylaws") when in April 2008 they adopted a dog, Millie, that grew to exceed the height restriction contained within Bylaw 4(1) (the "Pet Bylaw").

[3] The Strata Corporation also seeks a permanent injunction restraining the respondents from bringing Millie back onto the common property of the Strata Corporation or keeping her in their strata unit.

[4] The Strata Corporation also seeks judgment in the amount of $8,400 for fines it levied against the respondents for the alleged violation of the Pet Bylaw at the rate of $200 a week.

[5] The respondents, by way of notice of application, challenge the validity of the decisions of the Strata Corporation finding them in breach of the Pet Bylaw and in levying fines for the breach. They argue the decisions were made in circumstances that amount to a breach of the rules of natural justice.

BACKGROUND

[6] The Strata Corporation is comprised of 92 residential strata lots or strata units and ten commercial strata lots in a three-storey apartment style building commonly known as "The Davenport". It is located at 19750 64th Avenue in Langley, B.C.

[7] The Strata Corporation is subject to the *Strata Property Act*, S.B.C. 1998, c. 43 ("the Act"). The Strata Corporation and its owners, tenants, and occupants are governed by the Bylaws which provide for the control, management, maintenance, use and enjoyment of the strata units, common property, and common assets of the Corporation. The Strata Corporation's Bylaws are enforced through the strata council (the "Strata Council").

[8] The respondents purchased their residential strata unit number 107 in or about January 2008 and moved in shortly thereafter. In April 2008, the respondents adopted a dog, Millie, from the Vancouver SPCA.

[9] Before doing so, the Respondent Blondin approached one of the members of the Strata Council, Gar Anderson, then the vice president, and asked for approval to have a dog in their unit. The handwritten note indicated the respondents were "approved for dog in unit #107". Mr. Anderson signed it without much thought as there was no reference to the breed or size of dog to be adopted and he understood the note to simply be a prerequisite for adoption from the SPCA.

[10] As part of the SPCA's adoption policy, if a potential adoptive parent lives in a condominium complex within a Strata Corporation, they must provide the SPCA with a written approval that shows they are allowed to have a dog in the strata unit.

[11] The copy of the handwritten note in the materials is of rather poor quality and is undated. It consists of the following script:

> BC SPCA
>
> Vice President
>
> Strata Council member Gar Anderson
>
> Signature _____
>
> Phone
>
> Approved for dog in unit #
>
> Chad Blondin, Owner
>
> Signature _____ Phone
>
> Adoption of Casey
>
> Australian Sheppard

[12] The name Casey is scratched out. This was done by Mr. Blondin after Mr. Anderson signed the note because the dog the respondents wanted to adopt, Casey, had been adopted by the time Mr. Blondin returned to the Vancouver SPCA. He maintains that the words "Australian Sheppard" were in the note at the time Mr. Anderson signed it. Mr. Anderson denies this.

[13] Mr. Blondin provided the note to the Vancouver SPCA and was permitted to adopt three-month-old Millie, an Australian Shepherd puppy.

[14] The respondents maintain this note was an authorization or exemption to have a dog that exceeded the height restrictions for pets contained in the Pet Bylaw.

[15] The Strata Corporation's Pet Bylaw governs the issue of size and number of pets as well as the responsibilities of pet owners. The relevant provisions engaged in this case are Bylaw 4(1) and Bylaw 4(10) of the Pet Bylaw which provides as follows:

> 4(1) An owner, tenant or occupant shall be entitled to keep one, but not more than one, domestic pet in a strata lot. An owner, tenant, or occupant that keeps a pet must comply with these By-laws and any rules enacted by the Strata Council on behalf of the Strata Corporation pursuant to By-law 3 with respect to the keeping of pets. The height at the shoulder of any pet will not exceed fourteen (14) inches (36 cm) when fully grown. The pet must not exceed 20 kg (44 lbs). Existing pets, which are considered domestic pets, on date passage may remain, but cannot be replaced, if the total number of pets in the strata lot exceed one.
>
> 4(10) Anything other than a domestic pet must be approved in writing by Council.

[16] "Domestic Pet" is a defined term in the definition section of the Bylaws which provides as follows:

> **Domestic Pet** a cat, a dog, or a bird.

[17] Mr. Blondin was aware of the height restriction when he adopted Millie but says he was also aware that the Strata Council had the power to permit an owner to adopt a dog that exceeded the height restriction in the Pet Bylaw. He relies on subsection (10) of the Pet Bylaw as the provision under which the respondents obtained approval to own Millie and have her reside in their strata unit.

[18] At the time the respondents were attempting to adopt a dog, another Australian Shepherd named Casey, from the SPCA, they were never asked by the SPCA if the Strata Corporation had any height restrictions on pet size. Mr. Blondin never asked Mr. Anderson for a specific exemption on the height restriction and the height of the dog was never brought up when the note was presented to Mr. Anderson.

[19] Given that Mr. Blondin crossed out the name Casey on the original note after Mr. Anderson signed the note, coupled with the positioning of "Australian Sheppard" on a separate line away from the name Casey, I accept Mr. Anderson's evidence that "Australian Sheppard" was not written on the note until after Mr. Anderson signed it. Even if it was on the note, by simply referring to the breed, that in and of itself would not constitute any sort of appropriate notice as to the potential size of the dog to be adopted given the variability of dog size even within a breed.

[20] The handwritten note makes no mention of size of the dog the respondents were proposing to adopt and does not purport to be a request for an exemption from the height restriction in the Pet Bylaw. Moreover, the written approval signed by Mr. Anderson could hardly constitute, in the circumstances, approval by the Strata Council authorizing an exemption to the height restriction.

[21] At its highest, the note is simply what the SPCA required from the respondents to permit the adoption, written confirmation that dogs were allowed in the building by the Strata Corporation and that Mr. Blondin was allowed to have one.

[22] The ordinary meaning of the words of the Pet Bylaw, when read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Bylaws, makes three things clear:

1. owners are permitted to have one pet;
2. the pet must not be over 14 inches in height measured from the shoulder;
3. if an owner seeks to have any pet that is not a domestic pet, that is, not a cat, a dog, or a bird; for example, a rabbit, a pig, or a ferret, such a pet must be approved in writing by the Strata Council.

[23] The Pet Bylaw as written and reviewed, by implication, does not necessarily admit of an interpretation that would allow a dog exceeding the height measurement. However, the owners and the Strata Corporation appear to interpret Bylaw 4(10) as the route to obtain an exemption on the height restriction as evidenced by the

contents of the September 21, 2010 letter from counsel for the Strata Corporation written to the respondents' counsel.

[24] What is clear from Bylaw 4(10) is that any exemption or permission must be obtained in written format from the Strata Council, not simply from an officer like the vice president or a member of the Strata Council.

[25] By May 2009, the Strata Council had received complaints about Millie being a dog that exceeded the height restriction of the Pet Bylaw. By letter dated May 14, 2009, the agent for the Strata Corporation, Sheryl MacDonald, wrote Mr. Blondin bringing the matter to his attention and providing him with an opportunity to respond to the complaint in writing, including the right to request a hearing.

[26] On April 6, 2010, the Respondent Ms. Johnstone made a presentation to the Strata Council on the oversized dog and Pet Bylaw issues in the building. It should be noted that Mr. Blondin was present in his capacity as treasurer of the Strata Council.

[27] After Ms. Johnstone's presentation, the Strata Council determined that the matter of the height restriction and the debate it was generating within the building, and whether it should be amended, ought to be put forward as a resolution for consideration by all owners at the next Annual General Meeting of the Strata Corporation and to address any amendment with a three quarter vote approval.

[28] On June 22, 2010, the respondents sent a typewritten note to the Strata Council requesting "special permission to keep Millie". They explained that the basis for the request was Millie's medical condition and the original permission they had been granted, presumably a reference to the handwritten note with Mr. Anderson's signature on it.

[29] The Strata Corporation's Annual General Meeting (the "AGM") was held on June 22, 2010. At that time a resolution was put forward and seconded by the respondents to amend the Pet Bylaw by removing the height and weight restriction for dogs and to add a vicious animal section to the Pet Bylaw. Forty strata lot

owners attended the meeting in person and a further 19 attended by way of proxy for a total of 59. After a thorough discussion of the issue, the question was called and the proposed resolution was defeated with 17 in favour of the resolution and 42 opposed to it. Thus, the Pet Bylaw as drafted remained as the governing provision for the Strata Corporation.

[30] On July 14, 2010, the Strata Manager, Mark Davis, wrote Mr. Blondin again pointing out that his dog violated the height restriction of the Pet Bylaw and invited either a written response or a request for a hearing at the next Strata Council meeting scheduled for July 21, 2010.

[31] At the next Strata Council meeting on July 21, 2010, Mr. Blondin, still a member of Strata Council, made a presentation in the form of a hearing on the issue of his violation of the Pet Bylaw by continuing to have Millie in his strata unit notwithstanding the June 22, 2010 AGM.

[32] After his presentation and in accordance with s. 136 of the Act, Mr. Blondin was asked to leave the room when the matter was discussed by the Strata Council and voted upon.

[33] The Strata Council considered all the requests and the hearing materials on the oversized dog issue and determined to uphold and enforce the Pet Bylaw. The vote was carried with five in favour, one abstention, and Mr. Blondin not present for the vote.

[34] Although Mr. Blondin had to be excused from the vote, Gar Anderson, another member of the Strata Council, remained for the vote and discussion. It is Mr. Anderson's presence and participation in the vote that the respondents challenge as unfair and in breach of the rules of natural justice.

[35] On July 26, 2010, Mark Davis, the Strata Manager of the Strata Corporation, wrote the respondents advising them that the Pet Bylaw height restriction remained in place and that the Strata Council was requesting that Millie be removed by August 9, 2010. The respondents were advised that failure to remove the dog would result

in a fine of $200 being levied and the fine would continue to accrue for each seven-day period the dog remained on the property in violation of the Pet Bylaw.

[36] On September 21, 2010, counsel for the Strata Corporation wrote to counsel for the respondents advising them that the Strata Council remained unchanged in its conclusion and that the respondents were in breach of the Pet Bylaw height restriction.

[37] Fines for the breach of the Pet Bylaw were levied by the Strata Corporation starting on September 9, 2010 and continued to be levied on a weekly basis through May 5, 2011 for a total of 35 weeks representing an amount of $7,000 in fines for the infraction of the Pet Bylaw.

[38] The Strata Corporation initiated this proceeding by means of Petition on November 10, 2010 and the respondents filed their Response on December 10, 2010.

[39] On February 21, 2011, counsel for the respondents wrote counsel for the Strata Corporation advising that the respondents were challenging the validity of the Strata Corporation's ability to initiate the proceedings contrary to s. 171(2) of the Act, which required a three quarter vote approval at an annual or special general meeting.

[40] The Strata Corporation took the position that it was proceeding under s. 173 of the Act and did not require a three quarter vote to approve the proceedings, but decided that it did not want to incur extra legal expenses over the three quarter vote issue and decided to hold a three quarter vote on the issue of ratifying the Petition.

[41] At the March 30, 2011 AGM of the Strata Corporation, Mr. Blondin was given an opportunity to address the owners about the issue, including presenting a package of information for those who wished to review it. He had also circulated a memo to the owners prior to the meeting outlining his position.

[42] At the AGM he was given an opportunity to fully explain his position and answer questions from the owners. Mr. Blondin then had to leave as required by s. 136 of the Act. Mr. Anderson remained for the discussion, a matter that the respondents claim was in breach of the principles of natural justice. There was then a 30-minute discussion on the resolution that included at least one person who strongly advocated Mr. Blondin's position and urged the owners to discontinue the Petition. The resolution to ratify the Petition was then voted on and passed with 43 votes in favour, 10 opposed and 6 abstentions.

[43] On March 15, 2011, the respondents submitted a hardship request seeking approval to rent their strata unit. The request was initially denied by the Strata Council due to insufficient information to properly assess the request. The Strata Manager, Mark Davis, wrote Mr. Blondin on March 21, 2011 advising of the reason for the initial denial and outlined the type of information the Strata Council needed to make an informed decision on the issue. Mr. Blondin was given an opportunity to reapply.

[44] At the time of the swearing of his affidavit on April 13, 2011, Mr. Davis deposed that further information had been submitted by Mr. Blondin and the matter was being considered by the Strata Council.

[45] On May 6, 2011, Mr. Justice Groves granted an interim order prohibiting Millie from being brought into the respondents' strata unit and adjourned the matter for at least two months.

[46] The respondents moved out of The Davenport sometime in May 2011. Their strata unit is now the subject of a certificate of pending litigation filed on September 28, 2011, as well as a Petition for foreclosure on the property that has been instituted by the respondents' lender. From that Petition, it appears the respondents are alleged to have stopped making their mortgage payments as of June 8, 2011.

ISSUES AND POSITIONS OF THE PARTIES

[47] The Strata Corporation argues that by the respondents adopting Millie and having an oversized dog in their strata unit without a prior exemption, they are in violation of the Pet Bylaw and it seeks a declaration that the respondents were in breach of Bylaw 4(1).

[48] The respondents argue they obtained written approval from Mr. Anderson, a member of the Strata Council at the time, permitting them to have an oversized dog and it in essence constitutes an exemption under Bylaw 4(10). Thus argue the respondents, they are not in breach of the Pet Bylaw and the Strata Corporation should be stopped from enforcing the Bylaw against them.

[49] By their notice of application, the respondents attack the validity of the July 21, 2010 Strata Council decision finding them in breach of the Pet Bylaw as having been made contrary to the rules of natural justice in that Mr. Anderson was permitted to stay and participate in the Strata Council decision when he had an interest in the matter. They seek to have this decision quashed and all fines levied as a result of this decision set aside.

[50] The respondents also argue that the three quarters vote at the AGM of March 30, 2011 should be set aside as having been obtained in breach of the principles of natural justice. They seek to have this decision quashed as well.

[51] The Strata Corporation argues that the decisions made by the Strata Council were done in accordance with the provisions of the Act and that the respondents were given an opportunity to state their case, had advocates present after they had to leave, and that accordingly the decision of the Strata Council on July 21, 2010 and the owners at the AGM on March 30, 2011 were not made contrary to the principles of natural justice.

ANALYSIS

[52] I will address each issue in turn below.

Were the Respondents in Breach of the Pet Bylaw?

[53] It is clear from the background outlined above that the respondents did not obtain a proper exemption from the Strata Council authorizing them to have a dog that exceeded the height restriction of Bylaw 4(1).

[54] The handwritten note is, at best, a note advising the SPCA that the respondents were allowed to have a dog in their strata unit. Nothing in the note adverts to a request for an exemption from the height restriction of the Pet Bylaw.

[55] Mr. Blondin never advised Mr. Anderson of the height of the dog he was seeking to adopt when he approached him for permission.

[56] Moreover, the permission note is not one that has been approved and authorized by the Strata Council.

[57] No formal request for an exemption from the pet height restriction was ever made by the respondents to the Strata Council as a whole prior to their adoption of Millie.

[58] Although Bylaw 21 of the Strata Corporation authorizes the Strata Council to delegate some or all of its powers and duties to one or more Council members and may revoke the delegation, there is no evidence that the Strata Council did so in this case or in respect of this Bylaw. Thus, Mr. Anderson on his own could not authorize an exemption from the pet height restriction. That is a matter that had to be addressed by the Strata Council as a whole at a properly constituted Strata Council meeting and the answer had to come from the Strata Council in writing.

[59] In order for the approval of Strata Council to have been given, a meeting would have to have been convened and Minutes of the Strata Council meeting would demonstrate that a meeting was held, the issue discussed, voted on, and permission granted or refused. None of that occurred in this case.

[60] Insofar as the sufficiency of the handwritten note signed by Mr. Anderson is concerned, at a minimum the respondents would have had to address the note to

the Strata Council as a whole and specifically included in their written note a request that they be exempted from the height restriction, and that the Strata Council specifically authorized them to own and have an oversized dog. The respondents had an obligation to ensure they were either adopting a dog that fit within the height description of the Pet Bylaw or that they obtained the requisite written exemption from the Strata Council. They did neither.

[61] Mr. Anderson's signature on the note constitutes nothing more than an acknowledgement that the respondents were permitted to have a dog, a prerequisite to adoption with the SPCA. It does not constitute an exemption under Bylaw 4(10).

[62] Accordingly, the respondents are in breach of the Pet Bylaw, specifically Bylaw 4(1), by having an admittedly oversized dog without obtaining any written exemption from the Strata Council.

Should the Decisions Made by the Strata Council Finding the Respondents in Breach of the Pet Bylaw and Levying Fines for the Bylaw Infraction be Set Aside?

[63] The respondents advance three related points under this issue. I will address them in turn:

1. Did Mr. Anderson have an "indirect interest" in the issue and therefore improperly participate in the Strata Council decision in violation of s. 32(b) of the Act?

[64] Section 31 and 32 of the Act provide as follows:

Council member's standard of care

31 In exercising the powers and performing the duties of the strata corporation, each council member must

(a) act honestly and in good faith with a view to the best interests of the strata corporation, and

(b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

Disclosure of conflict of interest

32 A council member who has a direct or indirect interest in

(a) a contract or transaction with the strata corporation, or

(b) a matter that is or is to be the subject of consideration by the council, if that interest could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member,

must

(c) disclose fully and promptly to the council the nature and extent of the interest,

(d) abstain from voting on the contract, transaction or matter, and

(e) leave the council meeting

(i) while the contract, transaction or matter is discussed, unless asked by council to be present to provide information, and

(ii) while the council votes on the contract, transaction or matter.

[65] As I understood the respondents' argument, they allege that because Mr. Anderson signed the permission note, he had an "indirect interest" in the matter before the Strata Council and ought not to have participated in the July 21, 2010 decision about whether the respondents were in violation of the Pet Bylaw. As he did participate in the decision and purportedly had an indirect interest in the matter, the respondents argue the decision was made in violation of s. 32(b) of the Act and must be quashed.

[66] Counsel for the respondents relies upon the decision in *King v. Nanaimo (City)*, [1999] B.C.J. No. 83 (S.C.), at para. 35, as providing an example of the definition of indirect interest.

[67] In that case, Bouck J. was dealing with an issue of whether an elected City Councillor ordered removed from Council ought to be reinstated to Council. Mr. King applied for an order from the Court that he was qualified to hold office as a member of the Nanaimo City Council. The City of Nanaimo had removed him from office due to his failure to file a disclosure statement revealing his campaign contributions and on the basis of an alleged conflict of interest. The alleged conflict involved Mr. King having received a campaign contribution from a construction company which he later voted for in a Council vote to award a municipal contract. When Mr. King was advised that his disclosure statement was in error, he filed an amended disclosure

statement showing various campaign contributions, including the contribution from the construction company.

[68] Mr. Justice Bouck dismissed Mr. King's application on the basis that there was a connection between the construction company's campaign contribution to King and King's vote in favour of the company to award it a municipal contract such that King violated s. 201(5) of the *Municipal Act*, R.S.B.C. 1996, c. 323.

[69] Mr. King was found to have deliberately voted on the contract when he knew of the campaign contribution. Mr. King also acted in bad faith by failing to disclose the campaign contribution in his disclosure statement prior to casting his vote.

[70] At para. 35 of the decision, Mr. Justice Bouck stated as follows:

> [35] The word "indirect" means:
>
> Not straightforward; not fair and open; crooked, deceitful, corrupt ... not directly aimed at or attained; not immediately resulting from an action or cause: Shorter Oxford English Dictionary, p. 1058.
>
> Circuitous, not leading to aim or result by plainest course or method or obvious means, roundabout, not resulting directly from an act or cause but more or less remotely connected with or growing out of it: Black's Law Dictionary, 6th Ed. p. 773.

[71] Counsel for the respondents argues that Mr. Anderson had an indirect interest in the decision because as a member of the Strata Council he has an obligation to uphold the Bylaws but in issuing an exemption without the Strata Council's approval of the matter, he was placed in conflict with his duties under s. 31 of the Act. Counsel suggests the emails between the Strata Council members, including Mr. Blondin, demonstrate the difficulty Mr. Anderson found himself in as between Council and Blondin and because of the serious credibility problems raised in the emails, Mr. Anderson ought to have recused himself from participation in the decision. His failure to do so, argues respondents' counsel, brought him in contravention of s. 32(2)(b) of the Act.

[72] With respect, I cannot accede to the respondents' argument on this point. I have already found that the handwritten note signed by Mr. Anderson did not constitute an authorized exemption to the height restriction in the Pet Bylaw. His

participation in the decision on whether the Bylaw should be enforced against the respondents and whether fines should be levied in no way resulted in a conflict between his own interests and his duties as a member of Strata Council.

[73] The test under s. 32 is whether the Council member has an indirect interest in a matter that is the subject of consideration by the Strata Council and if that interest could result in the creation of a duty or an interest that materially conflicts with that Strata Council member's duty or interests as a Strata Council member.

[74] The primary purpose of s. 32 of the Act is to prevent a person who is in a conflict of interest from profiting from a contract or transaction with a strata corporation (see *Extra Gift Exchange Inc. v. Chung*, 2006 BCSC 526).

[75] Within the context of condominium living where owners, tenants, and occupants are subject to bylaws that govern the day-to-day communal living arrangements, and where owners and tenants also serve as members of the governing Strata Council, there will always be an element of potential difficulty where an owner *qua* resident has a difference of opinion as to the application and enforcement of the bylaws than an owner *qua* Strata Council member.

[76] In this case, Mr. Anderson had a marginal interest in the matter as to whether he had signed the note and granted an exemption. However, that is largely irrelevant to the matter as Mr. Anderson could not, on his own, grant such an exemption. Thus, Mr. Anderson's duty or interest as a Strata Council member enforcing the Bylaws did not materially conflict with his own interests such that he had an "indirect interest" in the matter that required recusal pursuant to s. 32 of the Act.

[77] Even if it could be said that Mr. Anderson should have recused himself in the circumstances, the result would likely have been no different as out of the six votes cast, five were in favour of finding an infraction and levying the fine. Mr. Anderson's absence would have meant that only five votes were cast and four would have found in favour of the same result.

[78] Mr. Blondin's removal from the Strata Council meeting during the discussion and vote was required by s. 136 of the Act. He was a member of the Strata Council at the time. A complaint had been received by the Strata Council that a member of Strata Council, that is, Mr. Blondin, had a dog that exceeded the height restriction contained in the Pet Bylaw. He requested a hearing on the matter and was given an opportunity to put his case forward before the Strata Council voted on the matter. However, s. 136 of the Act mandated that Mr. Blondin could not participate in the decision as the complaint of a Bylaw violation was levelled against him.

[79] I would not accede to this branch of the respondents' argument. Mr. Anderson did not participate in a decision where his personal interests materially conflicted with his duties and interests as a member of the Strata Council. Section 32(b) of the Act was not breached by Mr. Anderson participating in the discussion and voting on the matter.

2. Did Mr. Anderson's participation in the Strata Council discussion and decision on July 21, 2010 violate the rules of natural justice such that the decision of the Strata Council ought to be set aside?

[80] Counsel for the respondents asserts that the rules of natural justice apply within the context of decision making by private bodies including decisions made by a Strata Council about bylaw infractions.

[81] No authority was cited to support this proposition apart from the suggestion that because the power of a Strata Council to act derives from a provincial statute, the rules of natural justice must apply.

[82] As I understood this facet of his argument, counsel urged that the rules of natural justice had been abrogated in this case due to the apprehended personal bias of Mr. Anderson and his participating in a decision in which he had an indirect interest.

[THE COURT ACKNOWLEDGES MR. FREMPONG'S ARRIVAL]

[83] The argument is premised in part on the assertion that the handwritten note signed by Mr. Anderson constituted an exemption from the height restriction contained in the Pet Bylaw. As I have already noted, it did not. Mr. Anderson had no authority to issue such an exemption; only Strata Council as a whole could do this. Mr. Blondin was a member of Strata Council at the time and either knew or at the very least ought to have known that Mr. Anderson could not provide such an exemption, and that the respondents had to seek the exemption from the Strata Council as a whole.

[84] The notion of apprehended bias is summarized in *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369. The question to be asked as to whether there is an apprehension of bias is that it must be a reasonable one held by reasonable and right-minded persons applying themselves to the question and obtaining thereon the required information. In the words of that test then, what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude? Would he or she think that it is more likely than not that Mr. Anderson, whether consciously or unconsciously, would not decide fairly?

[85] Counsel for the respondents urges that the materials demonstrate a general bias by the Strata Council towards the respondents based on:

1. a letter of complaint directed to them about an incident with a cleaning lady and another Council member (from March 7, 2011, sometime after the July 2010 Council meeting in issue); and

2. the denial of the hardship request to rent their condominium.

[86] On the contrary, the materials demonstrate no such evidence of bias. Insofar as the complaint about the cleaning lady was concerned, the letter simply brings the matter to the attention of the respondents and seeks an explanation. Similarly, on the rental issue, the Strata Council was not outright rejecting the respondents' request. Rather, it sought further particulars in order for it to make a reasoned determination on the issue.

[87] Insofar as Mr. Anderson's participation in the Strata Council decision of July 2010 is concerned, I do not think that a reasonable person properly informed of the circumstances, including the purpose and function of the Strata Council and its responsibility to enforce the Bylaws, viewing the matter realistically and practically – and having thought the matter through – would find that Mr. Anderson's participation in the decision breached the principles of natural justice.

[88] Mr. Blondin was given an opportunity to make his case for an amendment of the Pet Bylaw at the AGM on June 22, 2010. Notwithstanding the supporters of the proposed amendment and their position on the issue, the proposed amendment was defeated. Thereafter, Mr. Blondin was advised in a letter dated July 14, 2010 that his dog Millie exceeded the height restriction in violation of the Pet Bylaw. He accepted the opportunity to state his case to the Strata Council at its July 21, 2010 meeting. His request for an exemption was rejected and he was found to be in breach of the Pet Bylaw. Mr. Anderson participated in the hearing and in the decision.

[89] The circumstances, considered in the context of running a Strata Corporation with Strata Council members administering the Bylaws, do not give rise to an apprehension of bias.

[90] Sections 135 and 136 of the Act certainly incorporate elements of the principles of natural justice in that they give an aggrieved party a right to be heard. And that was done in this case.

[91] Section 136 prohibits a Strata Council member from participating in a decision where there is a complaint that that same person has breached the Bylaws. To that end, the rules against bias are incorporated within the legislation, but in this case the complaint about a bylaw breach was not levelled against Mr. Anderson, it was levelled against Mr. Blondin.

[92] The context within which this complaint arises cannot be forgotten. The content of the principles of natural justice is flexible and depends on the

circumstances in which the question arises. However, the most basic requirements are that of notice, an opportunity to make representations, and an unbiased tribunal: see *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 [*Hutterite Brethren*]. In this case there was notice of the issue and an opportunity to make representations.

[93] On the issue of an unbiased tribunal, however, like the circumstances in *Hutterian Brethren*, given the close relationship amongst all the members of the Strata Corporation and the Strata Council, it seems entirely likely that members of the Strata Council will have had some contact or dealings with the issue in question. Moreover, given the structure of the Strata Council consisting of some of the owners within the context of a Strata Corporation which is comprised of all the owners of the units within the Strata Corporation, it is almost inevitable that the members of the Strata Council will have some interest or viewpoint in the outcome and resolution of the issue.

[94] Since all Strata Council members live within the Strata Corporation, it cannot be said that they are completely independent of the issues that they must address to maintain the day-to-day functioning of the Strata Corporation. Accordingly, a complete absence of bias may not exist and the principle of necessity may well govern in these circumstances.

[95] Indeed, the situation of policymakers also being enforcers does not necessarily offend the principles of natural justice. In *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, the Supreme Court of Canada considered whether liquor inspectors who both investigated compliance with the governing legislation and then determined enforcement penalties constituted a breach of the principles of natural justice. In doing so, it said the following at paras. 20 to 22 and 40 and 41:

> [20] This conclusion, in my view, is inescapable. It is well established that, absent constitutional constraints, the degree of independence required of a particular government decision maker or tribunal is determined by its enabling statute. It is the legislature or Parliament that determines the degree of

> independence required of tribunal members. The statute must be construed as a whole to determine the degree of independence the legislature intended.
>
> [21] Confronted with silent or ambiguous legislation, courts generally infer that Parliament or the legislature intended the tribunal's process to comport with principles of natural justice: *Minister of National Revenue v. Coopers and Lybrand*, [1979] 1 S.C.R. 495, at p. 503; *Law Society of Upper Canada v. French*, [1975] 2 S.C.R. 767, at pp. 783-84. In such circumstances, administrative tribunals may be bound by the requirement of an independent and impartial decision maker, one of the fundamental principles of natural justice: *Matsqui, supra* (per Lamer C.J. and Sopinka J.); *Régie, supra*, at para. 39; *Katz v. Vancouver Stock Exchange*, [1996] 3 S.C.R. 405. Indeed, courts will not lightly assume that legislators intended to enact procedures that run contrary to this principle, although the precise standard of independence required will depend "on all the circumstances, and in particular on the language of the statute under which the agency acts, the nature of the task it performs and the type of decision it is required to make": *Régie*, at para. 39.
>
> [22] However, like all principles of natural justice, the degree of independence required of tribunal members may be ousted by express statutory language or necessary implication. See generally: *Innisfil (Corporation of the Township of) v. Corporation of the Township of Vespra*, [1981] 2 S.C.R. 145; *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301; *Ringrose v. College of Physicians and Surgeons (Alberta)*, [1977] 1 S.C.R. 814; *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105 ...
>
> . . .
>
> [40] ... The mere fact that senior inspectors functioned both as investigators and as decision makers does not automatically establish a reasonable apprehension of bias. ... The apprehension of bias in *Régie* resulted from the possibility of a single officer participating at each stage of the process, from the investigation of a complaint through to the decision ultimately rendered. ...
>
> [41] ... However, as Gonthier J. cautioned in *Régie*, "a plurality of functions in a single administrative agency is not necessarily problematic" (para. 47). The overlapping of investigative, prosecutorial and adjudicative functions in a single agency is frequently necessary for a tribunal to effectively perform its intended role: *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623. ...

[96] In drafting the Act in the manner it did, the Legislature intended to modify the principles of natural justice insofar as the issue of bias is concerned. By allowing the Strata Council, who are also all owners in the Strata Corporation, to determine whether or not another owner has breached a bylaw, the Legislature created a situation where true independence cannot exist. Every Council member has some

sort of interest in a decision that is made and will come with some preconceived ideas about the situation.

[97] It is also important to keep in mind that a Strata Council is not a tribunal established by the government – such as the Residential Tenancy Branch – to carry out a particular mandate and so the application of the principles of natural justice must be flexibly applied with that in mind as well.

[98] The concerns of the respondents are addressed through the provisions of ss. 32 and 164 of the Act which provide for disqualification of a Strata Council member from participating in a decision where the Strata Council member has a conflict of interest and for an owner to apply to the Court for a remedy to prevent a significantly unfair decision of Strata Council. I have already addressed the s. 32 issue previously. I will address the s. 164 issue under the next argument advanced by the respondents.

[99] Suffice it to say, I conclude that the issue of apprehended bias has not been made out in the circumstances of this case when considered in the context of the mandate of the Strata Council and how it functions.

3. Was the decision of the Strata Council significantly unfair to the respondents such that it must be quashed?

[100] Section 164 of the Act provides the following:

> **164** (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair
>
> (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or
>
> (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
>
> (2) For the purposes of subsection (1), the court may
>
> (a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,
>
> (b) vary a transaction or resolution, and

(c) regulate the conduct of the strata corporation's future affairs.

[101] The respondents argue that the July 21, 2010 decision of the Strata Council finding them in breach of the Pet Bylaw and levying fines was significantly unfair because Mr. Anderson participated in the decision and the decision could well have been different had he not participated in it.

[102] Counsel argues that by Mr. Anderson participating in the decision where he had an interest in the outcome, and in light of the email exchanges showing a level of animosity between Mr. Anderson and Mr. Blondin, the Strata Council decision was significantly unfair. Counsel relies upon the following authorities to support his position: *Strata Plan VR1767 (Owners) v. Seven Estate Ltd.*, 2002 BCSC 381, at para. 47; *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 [*Reid*]; and *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259*, 2004 BCCA 597 [*Ernest*].

[103] In *Reid* at para. 27, Madam Justice Ryan addressed the concept of "significantly unfair" as the term is employed in s. 164 of the Act and endorsed the comments of Masuhara J. in *Gentis v. The Owners, Strata Plan VR 368*, 2003 BCSC 120 [*Gentis*].

[104] In *Gentis*, Masuhara J. wrote:

> [27] The scope of significant unfairness has been recently considered by this Court in ***Strata Plan VR 1767 v. Seven Estate Ltd.*** (2002), 49 R.P.R. (3d) 156 (B.C.S.C.), 2002 BCSC 381. In that case, Martinson J. stated (at para. 47):
>
> > The meaning of the words "significantly unfair" would at the very least encompass oppressive conduct and unfairly prejudicial conduct or resolutions. Oppressive conduct has been interpreted to mean conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith. "Unfairly prejudicial conduct" has been interpreted to mean conduct that is unjust and inequitable: ***Reid v. Strata Plan* LMS 2503**, [2001] B.C.J. No. 2377.
>
> [28] I would add to this definition only by noting that I understand the use of the word 'significantly' to modify unfair in the following manner. Strata Corporations must often utilize discretion in making decisions which affect various owners or tenants. At times, the Corporation's duty to act in the best interests of all owners is in conflict with the interests of a particular owner, or group of owners. Consequently, the modifying term indicates that court should only interfere with the use of this discretion if it is exercised

> oppressively, as defined above, or in a fashion that transcends beyond mere prejudice or trifling unfairness.
>
> [29] I am supported in this interpretation by the common usage of the word significant, which is defined as "of great importance or consequence": ***The Canadian Oxford Dictionary*** (Toronto: Oxford University Press, 1998) at 1349.

[105] Section 164 is remedial. It addresses that, despite using a fair process and holding a democratic vote, the outcome of majoritarian decision-making processes may yield results that are significantly unfair to the interests of minority owners.

[106] Section 164 provides a remedy to an owner who has been treated significantly unfairly by co-owners or the Strata Council that represents them. Although the outcome of any council or AGM vote is but one factor to be considered in determining if the impugned action is unfair, courts should give considerable deference to the democratic decisions of a Strata Corporation and its council: *Gentis*, at para. 34; and *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, at paras. 24 and 64 [*Dollan*].

[107] In *Dollan*, Madam Justice Smith, albeit dissenting in the result but writing the majority opinion on the approach to s. 164, noted that the correct three-part test for assessing whether the conduct of the Strata Corporation was significantly unfair was as follows:

> ... first, to identify the decision under attack; second, to assess all the facts relevant to the fairness of that decision; and third, to assess whether the decision was, in all the circumstances, significantly unfair to the applicant.

(see *Dollan*, at para. 53).

[108] As I understand the respondents' argument, the process in this case was not only unfair but significantly so, such that it was oppressive and unfairly prejudicial, because Mr. Anderson participated in the decision when he should have abstained or removed himself as he was the person who purportedly granted permission to the respondents to have Millie. However, as already noted, that is not what Mr. Anderson did.

[109] Moreover, Mr. Blondin's conduct in this case can hardly be said to be a case of clean hands or good faith in how he addressed the issue. He made no mention of the size of the dog or that he was seeking an exemption to the height restriction nor did he endeavour to obtain such an exemption from the Strata Council as a whole. Moreover, he was a member of the Strata Council at the time he adopted Millie and therefore knew or ought to have known that he needed to be entirely transparent in what he was endeavouring to do. He was not.

[110] The bylaws of a Strata Corporation provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the Strata Corporation. The Strata Council is charged with ensuring the bylaws are observed. One of the ways of ensuring that the bylaws are observed is through a decision made by the Strata Council that an owner or tenant is in breach of a particular bylaw. As part of the powers to enforce its bylaws, the Strata Corporation through its Council can impose a fine for bylaw breaches. Thus, through its own bylaws and the provisions of the Act, a Strata Corporation manages the day-to-day affairs of the strata complex. Owners have a say in the Strata Corporation's decisions through their right to vote on bylaws and resolutions at Strata Corporation meetings and through their representatives on Council. If an owner feels that an action taken by the Strata Corporation or Council is significantly unfair, the owner can apply to the Court and seek an appropriate remedy through s. 164 of the Act. In this way, the courts act as a final check on the powers of the Strata Corporation.

[111] Certainly some actions and decisions of the Strata Corporation and the Strata Council will be viewed to be unfair to one or more strata lot owners as the will of the majority may often serve the interests of the majority of the owners to the detriment of one of the owners or the minority of owners. But unfairness is not the test. Rather, an owner must establish significant unfairness (see *Ernest*, at paras. 23 and 24). Moreover, unfairness must be determined with regard to all of the circumstances of the case and in light of the balancing of competing interests that must be undertaken by the Strata Council (see *Gentis*, at para. 41).

[112] Mr. Anderson's participation in the decision might not have been the wisest course of conduct in the circumstances. However, given the nature of Strata Councils which essentially consist of volunteers from the pool of strata lot owners assuming the responsibility of administering the day-to-day affairs of the Strata Corporation, coupled with the fact the Council and Corporation often have to balance competing interests among owners and act in the best interests of all owners, it is difficult to conceive how the actions of the Strata Council in this case results in something more than mere prejudice or trifling unfairness.

[113] In this case, there had been sufficient discussion of the issue; the respondents endeavoured to obtain an amendment of the Pet Bylaw to remove the height restriction. The proposed amendment was fully debated at the June 22, 2010 AGM of the Strata Corporation and was defeated. Thereafter, Mr. Blondin requested and was granted a hearing before the Strata Council to address the issue and presumably seek an exemption. Both Mr. Blondin and Mr. Anderson were permitted to present their views before Strata Council before the Strata Council addressed the issue.

[114] In the context of the Strata Council's overriding duty to enforce the Pet Bylaw, which had not been amended despite a proposed resolution that was fully debated, coupled with the respondents' deceptive conduct from the outset in their acquisition of Millie, it might be said that the situation in which the respondents find themselves is unfortunate, but I do not conclude that the decision or the process employed in reaching it rises to the level of being significantly unfair as required by s. 164 of the Act as interpreted by the jurisprudence.

[115] Even if I were to find the process employed to reach the July 21, 2010 decision was significantly unfair, I still would have exercised my discretion to not invalidate the Strata Council's decision in this case.

[116] Even where the court finds that the Strata Corporation acted in a manner that is significantly unfair, s. 164 is discretionary. In *Clarke v. The Owners, Strata Plan VIS770*, 2008 BCSC 347 [*Clarke*], Mr. Justice Macaulay found at para. 9 that a

denial of proxy votes in that case was significantly unfair pursuant to s. 164 of the Act. However, he declined to exercise his discretion to interfere with the affairs of the Strata Corporation, concluding there was no bad faith and the fact that the allowance of the proxies would have made no difference to the outcome of the decision. At para. 10 of *Clarke*, Macaulay J. wrote:

> [10] That is not the end of the matter. In my view, before exercising my discretion to invalidate an election under the Act, I must consider what is just in all of the circumstances. Three factors deserve particular consideration; whether:
>
> 1. the misconduct was due to bad faith;
> 2. the misconduct materially affected the outcome of the election; and
> 3. there was unreasonable delay in bringing the application challenging the validity of the election.

[117] Applying those principles to the case at bar, I must consider what is just in all the circumstances. Here, any misconduct by the Strata Council was not done in bad faith. Mr. Blondin was given every opportunity to present his case to both the owners as a whole in the AGM, where he supported a resolution to amend the Pet Bylaw, and in addressing the Strata Council prior to it making its decision on July 21, 2010. Nor can it be said that, if there was any misconduct in Mr. Anderson participating in the decision on July 21, 2010, it materially affected the outcome. In other words, the result would necessarily have been the same, even if Mr. Anderson had not participated in the decision as there would still have been four votes in favour of finding a breach and the one abstention.

[118] In the end, I conclude that the decisions made by the Strata Council finding the respondents in breach of the Pet Bylaw and levying fines for the Bylaw infraction were valid decisions and ought not to be set aside. The respondents' application is dismissed.

[119] The respondents also argue that if the July 21, 2010 decision of the Strata Council was found to be invalid, then the three quarters vote at the AGM on March 30, 2011 ratifying the Strata Corporation's decision to launch its petition in this case was also invalid and had to be set aside. I need not address this issue as I have not

found the Strata Council decision of July 21, 2010 to be invalid and have dismissed the respondents' application on that point.

CONCLUSION

[120] The petitioner Strata Corporation is entitled to a declaration that the July 21, 2010 decision of the Strata Council finding the respondents had breached the Pet Bylaw by keeping Millie, a dog that exceeded the height restriction of the Pet Bylaw in their strata unit, was a valid decision and accordingly the respondents were in breach of the Strata Corporation's Pet Bylaw.

[121] The petitioner argued that fines in the amount of $8,400 had been levied against the respondents. However, from the limited evidence in the materials, it appears that weekly fines in the amount of $200 a week were levied between September 9, 2010 and May 5, 2011, for a total of 35 weeks, which would represent a total amount of $7,000. Accordingly, the petitioner is entitled to judgment in the amount of $7,000 representing the accumulated fines for the repeated weekly breaches of the Pet Bylaw that the respondents engaged in.

[122] There will also be a permanent injunction enjoining and restraining the respondents from bringing Millie back into the common property of the petitioner or into their own strata unit.

[123] The respondents' notice of application to have the Strata Council decision quashed is dismissed.

[124] The petitioner is entitled to its costs.

K. M. Ker, J.

Ker J.