



Civil Resolution Tribunal

Date of Original Decision: April 7, 2020

Date of Amended Decision: April 14, 2020

File: CS-2019-007340

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Sellers v. Kitty Cat P.A.L. Society*, 2020 BCCRT 376

B E T W E E N :

ERIN SELLERS and DOUGLAS RUNCHEY

APPLICANTS

A N D :

KITTY CAT P.A.L. SOCIETY

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about access to a society's records.
2. The respondent, Kitty Cat P.A.L. Society (society), is a society incorporated under the *Societies Act* (SA).

3. The parties agree the applicants, Erin Sellers and Douglas Runchey, were members of the society. The applicants say the society wrongfully terminated their membership, which the society disputes. The applicants say they are concerned about how the society is governed, and therefore ask for an order that the society provide the following records:
 - a. Minutes of all directors' and members' meetings since January 1, 2018
 - b. All ordinary or special resolutions since January 1, 2018
 - c. All accounting records from 2018 and 2019
 - d. A copy of all consent resolutions of directors since January 1, 2018
 - e. A copy of all records described in SA sections 56(3)(c) or 62(3)(c)
 - f. Register of members
4. The society says it has provided some of the requested documents already, and that some do not exist. The society also says the applicants are not entitled to some of the records, under the society's bylaws. The society says it has not provided the register of members to the applicants because several members requested that their contact information not be released, and because the applicants have previously emailed "false inflammatory statements" to members. The society requests reimbursement of \$2,769.98 for legal fees and time spent on the dispute.
5. The applicants are represented by Erin Sellers. The society is represented by AC, whom I infer is a director or employee.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over certain society claims under section 129 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships

between dispute parties that will likely continue after the tribunal's process has ended.

7. This dispute is about disclosure of society records. CRTA section 129(1)(a) says, in part, that the tribunal has jurisdiction over a claim concerning a request to receive a copy of a record of a society. Based on that provision, I find the tribunal has jurisdiction to decide this dispute.
8. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
9. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
10. Under section 131 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Must the society provide the following documents to the applicants?
 - i. Minutes of all members' and directors' meetings since January 1, 2018
 - ii. All ordinary or special resolutions since January 1, 2018
 - iii. All accounting records from 2018 and 2019
 - iv. A copy of all directors' consent resolutions since January 1, 2018
 - v. A copy of all records described in SA sections 56(3)(c) or 62(3)(c)

- vi. Register of members
- b. Are the respondentsⁱ entitled to reimbursement of \$2,769.98 for legal fees and time spent on the dispute?

EVIDENCE AND ANALYSIS

12. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities.

Society Membership

13. The applicants provided submissions and evidence about the society's governance and management. I have read that material, but I find those issues do not determine whether the applicants are entitled to the requested records. Rather, access to the records of an incorporated society is governed by the provisions in Division 2 of the SA.
14. The parties in this dispute disagree about whether the applicants are members. The parties agree the applicants were previously members. However, the society says the applicants' memberships were terminated. The applicants say the termination of their memberships was illegitimate or wrongful.
15. In October 2019, I issued a summary decision refusing to resolve a different dispute involving one of the applicants, Mr. Runchey, and the society. In that dispute, Mr. Runchey claimed the society unjustly terminated his membership. I found that the tribunal did not have jurisdiction to resolve that dispute, since CRTA section 130(2)(a) says the tribunal does not have jurisdiction over a claim or matter relating to the termination of membership in a society.
16. Based on CRTA section 130(2)(a), I find that in this current dispute I still have no jurisdiction to determine any matter relating to the termination of the applicants' membership in the respondent society. The parties provided copies of letters showing that Ms. Sellers' membership was terminated on September 19, 2019, and

Mr. Runchey's membership was terminated on September 26, 2019. In their written submissions, the applicants confirm receiving these letters. Again, regardless of the applicants' submissions about why the terminations were incorrect or wrongful, I have no jurisdiction to determine any matter relating to membership termination. Since I have no jurisdiction to find otherwise, I accept that Ms. Sellers was not a society member after September 19, 2019, and Mr. Runchey was not a member after September 26, 2019.

17. However, for the reasons explained below, I find nothing turns on whether the applicants were members after September 2019. Since Mr. Runchey requested the disputed records in August 2019, while the parties agree he was still a member, I find the subsequent termination of his membership is not determinative of the issues in this dispute.
18. Submissions from the parties suggest that the applicants are spouses. However, there is no evidence before me indicating that Ms. Sellers requested society records at any time before filing this dispute. I therefore find she is not entitled to disclosure of records.

Access to Records

19. The evidence before me establishes that Mr. Runchey made a formal, written request for the records at issue in this dispute on August 26, 2019. The parties agree that Mr. Runchey was a member of the society at that time.
20. SA section 20(1) sets out a list of records a society must keep, including a register of directors, a register of members, and minutes of members' meetings. SA section 20(2) sets out some additional records a society must keep, including directors' meeting minutes, directors' consent resolutions, and accounting records.
21. SA section 21 says a society must keep each record for 10 years after its creation or last alteration, unless it is no longer relevant to the society's activities or internal affairs.

22. SA section 24(1) says a member of a society may, without charge, inspect all records listed in section 20(1). SA section 24(2) sets out which records listed in section 20(2) a member may inspect.
23. SA section 27 says that if a person who is entitled under SA section 24 to inspect a record requests a copy of that record and pays a fee, if charged, the society must provide the copy within 14 days of the request and fee payment.
24. Here, there is no indication that the society requested any fees for copies of records, so I find no records fees are applicable in this dispute.
25. Having summarized the applicable legislation, I will now address the applicants' records requests in turn.

Members' Meeting Minutes

26. In his August 26, 2019 written request, and in this dispute, Mr. Runchey requests minutes of all members' meetings since January 1, 2018. The evidence shows that the society responded to that request on September 19, 2019, and provided copies of members' meeting minutes up to September 3, 2019.
27. Members' meeting minutes are listed in SA section 20(1)(i) as a record a society must keep. SA section 24(1) says a member may inspect a record listed in section 20(1). SA section 27(1) says a person entitled under section 24 to inspect a record is entitled to a copy of it on request. For these reasons, I conclude that since Mr. Runchey was a society member when he requested the members' meeting minutes on August 26, 2019, the society was required to provide them.
28. The society's September 19, 2019 letter says it provided copies of notes from members' meetings from January 10, 2018 to September 3, 2019. By this, and from the documents provided in evidence, I accept that the society kept its meeting minutes in the form of notes.
29. The society submits in this dispute that there are no further members' meeting minutes up to the date of the August 26, 2019 request that have not already been provided. The

applicants have not submitted otherwise, and have not provided any evidence about minutes from the relevant period that were not disclosed. In making this finding, I note that the applicants filed this dispute with the tribunal on September 10, 2019. I therefore find the applicants' claims in this dispute are limited to records created before September 10, 2019.

30. For these reasons, I do not order disclosure of any members' meeting minutes.

Directors' Meeting Minutes

31. On August 26, 2019, Mr. Runchey also requested minutes of all directors' meetings since January 1, 2018. In its reply correspondence, the society provided notes of directors' meetings from January 9, 2018 to August 11, 2019. It said there are no minutes from March 2018 or November 2018. It also said it would not provide the minutes of the May 2019 directors' meeting minutes because the entire meeting was an in camera session about confidential personnel issues.

32. Other than the May 2019 minutes, the applicants have not submitted that there are directors' meeting minutes which were not already provided. Therefore, I find the only question in this dispute about directors' meeting minutes is whether the society must provide the May 2019 minutes.

33. As previously discussed, Mr. Runchey was a member at the time he requested the records on August 26, 2019. SA section 20(2)(a) says a society must keep the minutes of all directors' meetings. SA section 24(2) says a member may inspect any record listed in section 20(2) unless the society's bylaws provide otherwise, or unless it evidences a disclosure of conflict of interest by a director or senior manager described in SA sections 56(3)(a) or 62(3).

34. The society's bylaw 8.2 says members of the society may not be permitted to access information required to be kept under SA section 20 unless permitted in writing by the Board of Directors.

35. There is no evidence that the society's directors granted written permission for either applicant to obtain the May 2019 directors' meeting minutes. Therefore, I find the applicants are not entitled to that document.
36. I also find the Mr. Runchey's request does not fall within the exception for minutes evidencing a disclosure of conflict of interest under SA sections 56(3)(a) or 62(3). There is no suggestion that the May 2019 minutes contained evidence of such a disclosure. In its September 19, 2019 letter, the society said there are no such conflicts. The applicants did not make submissions about this, or provide evidence about it. Since the applicants bear the burden of proving their claims, I find that the May 2019 directors' meeting minutes do not fall within the conflict of interest exception set out in SA section 24(2)(a).
37. For these reasons, I do not order disclosure of any directors' meeting minutes.

Ordinary or Special Resolutions

38. In his August 26, 2019 request, Mr. Runchey asked for disclosure of all ordinary or special resolutions, other than a resolution included in meeting minutes, voted on at a members' meeting since January 1, 2018. Such resolutions are required to be kept and disclosed to members under SA sections 20(1), 24(1), and 27(1).
39. In its September 19, 2019 letter the society said the society had not passed any ordinary or special resolutions with respect to amending the bylaws. I note that ordinary and special resolutions can be about matters other than amending bylaws. However, the applicants did not specifically respond to the society's submission that there were no ordinary or special resolutions that were not already included in meeting minutes. The society submitted that this claim for resolutions was therefore no longer in dispute. As the applicants have not submitted otherwise, or provided evidence suggesting that there are undisclosed resolutions, I do not order the disclosure of any ordinary or special resolutions.

Accounting Records

40. On August 26, 2019, Mr. Runchey requested copies of the society's accounting records for 2018 and 2019.
41. First, for the same reasons as above, I find that the applicants' claims in this dispute are limited to records created before they filed this dispute on September 10, 2019.
42. Second, for the following reasons I find that the applicants are not entitled to accounting records.
43. SA section 20(2)(c) says a society must keep adequate accounting records for each financial year, including a record of each transaction materially affecting the society's financial position. SA section 24(2) says a member may inspect any record listed in section 20(2) (with some exceptions not applicable here) unless the society's bylaws provide otherwise. Bylaw 8.2 says members of the society may not be permitted to access information required to be kept under SA section 20 unless permitted in writing by the Board of Directors.
44. Accounting records are listed in SA section 20(2). Thus, SA section 24(2) allows a society to restrict access to access to accounting records by bylaw. The society's bylaws say no access without written permission from the Board of Directors. There is no evidence in this dispute that the Board of Directors gave written permission for either applicant to access accounting records, and the society says there was no such permission.
45. I therefore do not order disclosure of any accounting records.

Consent Resolutions of Directors

46. On August 26, 2019, Mr. Runchey requested a copy of any directors' consent resolutions since January 1, 2018, and each of the consents to such resolutions.

47. Under SA sections 1 and 54(2), a “consent resolution of directors” is a resolution passed by a society’s directors without a meeting, by consent in writing or in another manner permitted in the bylaws. SA section 20(2)(b) requires a society to keep a copy of every directors’ consent resolution, and copies of each consent to that resolution.
48. For the same reasons as for the accounting records, I find the applicants are not entitled to directors’ consent resolutions. Bylaw 8.2 says written permission is required. Since directors’ consent resolutions are listed in SA section 20(2), and since the Board of Directors granted no permission for access, I do not order disclosure of any directors’ consent resolutions.

Conflict of Interest Disclosures

49. Mr. Runchey requested copies of any disclosures of conflict of interest by current directors, created under SA sections 56(3)(c) or 62(3)(c).
50. Section 62(3)(c) is about conflict of interest disclosures from a society’s senior managers. I find SA section 62(3)(c) is not relevant to this dispute, as Mr. Runchey’s August 26, 2019 written request specified he sought conflict of interest disclosures from society directors. Directors’ disclosures are governed by SA section 56(3)(c).
51. Broadly, SA section 56 says that when a director has a material interest in a contract, transaction, or matter to be considered by the directors, if that interest could result in the creation of a duty or interest that materially conflicts with the director’s duty or interest as a society director, the director must disclose that interest to the other directors. Section 56(3) sets out three options for documenting a director’s disclosure, including (a) directors’ meeting minutes, (b) a consent resolution, (c) a record delivered to the society’s delivery address, or sent by registered mail to its registered office.
52. The society says it has no section 56(3) records. The applicants, who bear the burden of proof in this dispute, did not specifically respond to that submission, and

did not provide evidence to the contrary. I therefore do not order disclosure of any records under SA section 56(3)(c).

Register of Members

53. The majority of the parties' submissions focused on the register of members. Mr. Runchey requested it on August 26, 2019. In its September 19, 2019 letter, the society said it would not provide it because the Board of Directors had passed a resolution restricting members' access to the register, in response to requests from members not to share their personal information.
54. SA section 20(1)(h) says a society must keep a register of members. As previously stated, section 24(1) says a member may inspect a record listed in section 20(1). However, SA section 25(1) says a society may, by directors' resolution, restrict members' rights to inspect the register of members "if the directors are of the opinion that the inspection would be harmful to the society or to the interests of one or more of its members."
55. The evidence shows that the society's directors passed a section 25(1) resolution on September 17, 2019. The resolution says the directors declined Mr. Runchey's request for the list of and contact information of society members. The resolution contained rationale in support, which I will not repeat here.
56. I find the September 17, 2019 directors' resolution is not determinative of Mr. Runchey's entitlement to the register of members. As previously explained, SA section 27 says that if a person who is entitled under SA section 24 to inspect a record requests a copy of that record, the society must provide the copy no later than 14 days after the request is made (subject to fee payment).
57. As noted, Mr. Runchey requested the documents on August 26, 2019. Email correspondence in evidence confirms that the society received Mr. Runchey's request by express post on Thursday August 29, 2019. Section 25(5) of the *Interpretation Act* says that in calculating time under any BC enactment (which includes the SA), the first day must be excluded. That means that the society was

required to provide any documents it was obligated to disclose by Friday September 13, 2019.

58. The evidence shows that Mr. Runchey was still a society member on September 13, 2019, when the society was required to provide the register of members to him. Also, the directors did not pass their resolution limiting Mr. Runchey's access to the register until September 17, 2019, after the deadline for disclosure had already passed. For these reasons, I find the September 17, 2019 resolution has no effect on Mr. Runchey's entitlement to the register. Rather, I find there was no resolution restricting Mr. Runchey's right to access the register during the relevant time period.
59. The society now submits that Mr. Runchey is not entitled to the register of members as a remedy in this dispute because his membership was terminated on September 19, 2019. I do not agree. Mr. Runchey was a member when he requested the register on August 26, 2019, and throughout the entire time period for disclosure expired on September 13, 2019. Mr. Runchey was a member during that period, and there was no directors' resolution restricting Mr. Runchey's access until September 17, 2019. Because of that, and pursuant to SA sections 24(1) and 27(1), I find Mr. Runchey was entitled to a copy of the register of members at the time he requested it.
60. I find it would be unfair and unreasonable to permit a society to impermissibly delay required disclosure until after terminating a person's membership, and then deny a remedy for that delay because the person is no longer a member. In effect, this would permit a society to block otherwise mandatory access to records by terminating membership.
61. In support of its position, the society relies on *Booth v. Hope Volunteer Search and Rescue Group*, 2018 BCSC 2495. In that case, the BC Supreme Court considered an expelled society member's request for records. In *Booth*, the applicant had been expelled from the society on June 22, 2016, and then requested access to records after that. In May 2017, Mr. Booth requested an order from the Registrar of Companies, ordering the respondent society to provide the contested records. The

Registrar issued the order, and the respondent did not provide the records, so the applicant sought a further decision on the matter from the Court. The Court considered SA section 24(1), and concluded that the applicant was not entitled to the records because he was not a member.

62. I find that *Booth* is distinguishable from the case before me because the Mr. Booth was not a member of the society when he first requested the records, or when he asked the Registrar of Companies to order disclosure. In this case, Mr. Runchey was a member when he requested the register of members, and continued to be a member throughout the required disclosure period. Therefore, I find that while *Booth* is a binding precedent, it is not determinative of this dispute because its reasoning was based on dissimilar facts.
63. The society also relies on *Fink v. Shalom Branch # 178 Building Society*, 2011 BCSC 1120. In *Fink*, the applicant asked the Court to make orders setting aside a society's decision to expel him from membership, and granting him access to society records. The court did not reinstate the applicant's membership, and so did not grant records access.
64. I find that *Fink* is distinguishable from this dispute because it was decided on the basis that the the applicant conceded he was entitled to access the records only if his society membership was reinstated (see paragraph 1). Therefore, the Court did not consider whether Mr. Fink was entitled to the requested records regardless of his membership termination. In the dispute before me, there is no such concession.
65. In this dispute, the society notes that SA section 24(1) allows a member to "inspect" records, not "request" them. The society says that even though Mr. Runchey was a society member when he requested access to the register of members, his membership has since terminated and he will therefore not be a member "at the time during which he purports to inspect the register."
66. I am not persuaded by this submission, because I find it ignores SA section 27(1), which permits a member to "request a copy of the record." The government form Mr. Runchey used for his August 26, 2019 request for the register specifically

indicates that he was “requesting” records. The society’s September 19, 2019 response provided copies of some of the requested documents, which I find confirms the society’s understanding that Mr. Runchey was seeking not just access to, but copies of the register.

67. If the society had provided a copy of the register when it was required to do so, Mr. Runchey would have had it while still a member, as was his right under SA section 27. To deny him a copy now would be to deny a remedy for the society’s breach of section 27.
68. For these reasons, I find the society must provide Mr. Runchey a copy of its register of members.
69. The society says I must consider other members’ privacy rights under the *Personal Information Protection Act* (PIPA) in determining whether to order disclosure of the register of members. The society says PIPA does not allow for disclosure of personal information of members, such as contact information, without the members’ consent or as otherwise permitted or authorized by law (PIPA sections 6 and 18(1)).
70. PIPA section 18(1)(o) says an organization may disclose personal information about an individual without their consent if the disclosure is required or authorized by law. As previously explained, I find that SA sections 20, 24, and 27 require the society to disclose the register of members to Mr. Runchey. SA section 20(1) specifies that the register of members must include “contact information provided by each member.” For these reasons, I find this disclosure is not prohibited under PIPA.
71. I note that PIPA section 9(5) says an individual may not withdraw consent for the collection, use or disclosure of personal information if withdrawal would frustrate the performance of a legal obligation. I find that keeping and disclosing the register of members is a legal obligation under the SA, so I find members cannot withdraw their consent in relation to the register.

72. In its submissions, the society relied on *Fawcett v. TLC The Land Conservancy of British Columbia*, unreported dated 3 July 2009, Victoria Registry No. 09-2153 (cited with approval in *Pearson v. Peninsula Consumer Services Cooperative*, 2012 BCSC 1725). In *Fawcett*, the Court confirmed in paragraphs 32-33 that PIPA does not prohibit the disclosure of a society's membership information:

...The *Society Act* contains very specific provisions against the more general provisions of the *Personal Information Protection Act*. The provisions of the two statutes can easily stand together without conflict. The *Society Act* requires a disclosure of the information to members and directors of the society, and the *Personal Information Protection Act* prevents disclosure beyond the needs of the organization.

I find that the *Personal Information Protection Act* does not prevent or prohibit the disclosure of membership information to members or directors of The Land Conservancy, but any disclosure by a member or director of the information beyond the organization may well infringe the purposes of the *Personal Information Protection Act*.

73. While *Fawcett* was decided under the previous *Society Act*, I find its reasoning about how PIPA applies to disclosure of society records applies equally to the current SA. While not determinative, I also note that all the emails the society provided from members objecting to disclosure of their personal information were dated in January 2020, long after the disclosure period for Mr. Runchey's request had ended and this dispute was filed.

74. For all of these reasons, I order the society to provide a copy of its register of members to Mr. Runchey within 10 days of this decision.

75. The society says one reason it should not provide the register of members is because the applicants previously emailed "false inflammatory statements" to members. The society has not provided evidence of such emails, so I am not persuaded by this submission. Nonetheless, I find it is appropriate in this dispute to place some limits on my order for disclosure of the register of members. This is

because SA section 25(7) effectively allows a society to require members to agree to limit their use of information from the register of members to the following 4 purposes:

- a. requisitioning or calling a general meeting under section 75,
- b. submitting a proposal under section 81,
- c. calling a general meeting under section 138, or
- d. an effort to influence the voting of members.

76. In a September 20, 2019 email to the society, Mr. Runchey agreed that he would not use any information from the register except as permitted under SA section 25(7).

77. In the context of this dispute, and based on the limits allowed in SA section 25, I order that Mr. Runchey may only use the information in the register of members in connection with the 4 purposes set out in SA section 25(7). Since Ms. Sellers did not request the documents in August 2019, I find she may not use the information in the register for any purpose.

Legal Fees and Time Spent

78. The respondent requests reimbursement of \$801.23 for legal fees, and \$1,968.75 for time spent on the dispute. I deny this request, for the reasons that follow.

79. Tribunal rule 9.4(3) says that except in extraordinary circumstances, the tribunal will not order one party to pay another party's legal fees in a society claim dispute. I find this dispute was not extraordinary, as it involves a standard claim for records access. It did not involve an usually large volume of evidence or submissions, and did not involve unusually complex legal issues. For this reason, I deny reimbursement of legal fees.

80. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. (See *Poulette v. Gerard Cohen-Tanugi (dba Mac's Auto Electric)*, 2020 BCCRT 206.) I therefore deny the respondent's claim for reimbursement for time spent on the dispute.
81. Also, I would not have ordered reimbursement in any event, as the respondent did not provide any evidence to prove the claimed amounts, such as invoices or time records.

TRIBUNAL FEES AND EXPENSES

82. The applicants were partially successful in this dispute. In accordance with the CRTA and the tribunal's rules I find they are entitled to reimbursement of half their tribunal fees, or \$112.50. The applicants claim for reimbursement of dispute-related expenses is addressed above. The society did not claim dispute-related expenses.

ORDERS

83. I order that:
- a. Within 10 days of this decision, the society must provide a copy of its register of members to Mr. Runchey.
 - b. Mr. Runchey may only use the information in the register of members in connection with the 4 purposes set out in SA section 25(7). Ms. Sellers may not use the information for any purpose.
84. I dismiss the applicants' remaining claims.
85. The applicants are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
86. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British

Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.

87. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, a party can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

Kate Campbell, Vice Chair

ⁱ Amendment Notes: I have amended paragraphs 11, 78, 80, and 81 of this decision, order to correct an inadvertent error in the original decision. I have made this amendment under the authority of CRTA section 64.