



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Drew v. Healing Breast Implant Illness Society of North America*,
2020 BCCRT 762

B E T W E E N :

GREG DREW

APPLICANT

A N D :

HEALING BREAST IMPLANT ILLNESS SOCIETY OF NORTH AMERICA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Herb Morton

INTRODUCTION

1. This dispute is about access by a member of the public to a society's records.
2. The respondent Healing Breast Implant Illness Society of North America (society) is a society incorporated under the *Societies Act* (SA). The society is represented by ND, one of its directors.
3. The applicant, Mr. Drew, is a member of the public. He is self-represented. On November 5, 2019, he requested copies of records from the society.
4. The society has not provided Mr. Drew with copies of any records. On February 24, 2020, he filed a dispute notice with the Civil Resolution Tribunal (CRT).
5. Mr. Drew asks for an order that the society provide copies of the following records:
 - a. All financial statements and audits of the society;
 - b. Certificate of incorporation of the society;
 - c. Constitution, bylaws and statement of directors and registered office of the society;
 - d. All confirmations, certificates or certified copies of records furnished to the society by the Registrar;
 - e. A copy of orders made in respect of the society by any court or tribunal in Canada or elsewhere, or a federal, provincial, or municipal government body, agency or official, including the Registrar;
 - f. The society's register of directors, including contact information provided by each director;
 - g. Each written consent to act as, or resign as, a director of the society;
 - h. Minutes of each meeting of members of the society, including text of each resolution voted on; and,

- i. Accounting records for the society, including a record of each transaction materially affecting the financial position of the society.
6. The society says that a member of the public is not entitled to receive copies of any records other than its financial statement, which the society posted to its website prior to December 31, 2019.
7. Mr. Drew says that the society has not cited legal authority that posting its financial statement to its website is sufficient compliance with the SA.

Claims not included in Dispute Notice

8. In Mr. Drew's written submissions, he asks for an order that the society not contact him outside of this claim. He also asks for orders that the society refrain from bullying, intimidation, defamation or harassment of him and his family.
9. These requests for orders concern new claims that were not set out in the Dispute Notice. While the *Civil Resolution Tribunal Act* (CRTA) and the CRT's rules allow an applicant to request that a Dispute Notice be amended, this did not occur.
10. While the CRT's mandate includes flexibility, I find it is appropriate not to decide the additional claims raised in Mr. Drew's submissions that were not mentioned in the Dispute Notice. The CRTA says that a person must request resolution using the prescribed form, and the CRT will review the claims before ordering service of the Dispute Notice to the respondent. The CRTA also sets out a mandatory case management phase, in which CRT staff facilitate resolution by agreement, or prepare for hearing by an adjudicator. I find that by raising new claims after the facilitation phase, Mr. Drew bypassed the facilitation process, and did not give notice of all claims to the strata in the required manner.
11. For these reasons, I will not address Mr. Drew's requests for orders which were raised in his submissions but not in the Dispute Notice.

Jurisdiction and Procedure

12. These are the formal written reasons of the CRT. The CRT has jurisdiction over certain society claims under CRTA section 129. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
13. This dispute is about disclosure of society records. CRTA section 129(1)(a) says, in part, that the CRT has jurisdiction over a claim concerning a request to receive a copy of a record of a society.
14. SA section 109.2(2) says, that a person, other than a society or a member of a society, who claims to be entitled:
 - under SA section 24, to inspect a record of a society,
 - under SA section 27, to receive a copy of a record of a society, or
 - under SA section 28, to receive a copy of a record (financial statement) of a society,may make a request under section 4 of the CRTA asking the CRT to resolve a dispute concerning a society claim that relates to the person inspecting or receiving a copy of the record.
15. Based on these provisions, I find the CRT has jurisdiction to decide this dispute.
16. The CRT 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.
17. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The

CRT also asks the parties and witnesses questions and informs itself in any way it considers appropriate.

18. Under section 131 of the CRTA and the CRT's rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

19. The issue in this dispute is whether the society must provide Mr. Drew with copies of its records as listed in paragraph 5(a) to (i) above.

EVIDENCE AND ANALYSIS

20. 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 applicant must prove his claims on a balance of probabilities.
21. On November 5, 2019, Mr. Drew requested copies of records from the society. His request was sent by email, and he asked that the records be provided to him by email within 14 days.
22. In an email on November 10, 2019, the society told Mr. Drew that its financial year end was September 30, 2019, and its deadline for filing financial documents was December 31, 2019. The society advised that its financial statement would be completed by its accountant and would then be uploaded to the society's website. With respect to Mr. Drew's other requests, the society referred to the fees which it would charge, including fees for sending the documents by certified and registered post. The society also requested copies of Mr. Drew's identification documents, questioning whether he was a real person.
23. On November 27, 2019, Mr. Drew asked the society to advise him of the reasonable fee, and said he would forward payment. He said that the SA did not require that he prove his identity.

24. On December 5, 2019, Mr. Drew emailed the British Columbia Registrar requesting assistance in obtaining copies of the society's records. His email was copied to the society.
25. The society responded on November 27, 2019 and December 6, 2019, without providing copies of any records.

Access to Records

26. SA section 20(1) sets out a list of the records a society must keep. The list of records requested by Mr. Drew corresponds to the list contained in SA section 20.
27. 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.
28. SA sections 24(1), (2) and (3) concern the rights of a member or a director of a society to inspect its records.
29. SA section 24(4) further says that a person, other than a member or director, may, if and to the extent permitted by the bylaws, inspect a record a society is required to keep under section 20, other than the register of members.
30. 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.
31. SA section 28 says that if a person, other than a person who is entitled under section 24 to inspect the financial statements of a society, requests a copy of the financial statements and pays the fee, if any, the society must provide the person with a copy of those financial statements within 14 days.
32. SA section 38 provides that a society must not issue, publish, or distribute the financial statements required under SA section 35 unless the financial statements have been approved by the directors and signed by one or more directors to confirm

that the approval was obtained, and have attached to them the auditor's report, if any, on those financial statements.

33. Having summarized the applicable legislation, I will now address Mr. Drew's requests for the society's records.
34. Mr. Drew filed this dispute with the CRT on February 24, 2020. I find his claims in this dispute are limited to records created before February 24, 2020.
35. Mr. Drew is not a member or director of the society. He does not claim any right of access beyond that to which any member of the public is entitled. Accordingly, I find it unnecessary to address the society's concern as to whether Mr. Drew is related to or acting on behalf of another person. Mr. Drew has provided passport and credit card information confirming his identity.

Records Other than Financial Statements

36. A member of the public may, if and to the extent permitted by the society's bylaws, inspect a record the society is required to keep under SA section 20, other than the register of members.
37. SA section 11 sets out a list of matters on which a society must have bylaws. There is no requirement that a society have a bylaw dealing with the right of a member of the public to inspect documents maintained by the society.
38. The society's bylaws are the model bylaws set out in Schedule 1 of the Societies Regulation (Regulation). The model bylaws have no provision permitting an inspection of any records of the society by a member of the public.
39. Based on SA section 24(4) and the society's bylaws, I find that there is no right of public access (by inspection, or copies of documents) to the records the society is required to keep under SA section 20. This concerns all of Mr. Drew's requests for records, apart from the society's financial statements.
40. I find that Mr. Drew, as a member of the public, has no right to inspect or receive copies of the society's records which it is required to keep under SA section 20. His

request for an order that the society provide copies of these documents is dismissed.

41. Mr. Drew's request for copies of financial statements is addressed below.

Financial Statements

42. As described by the society, an unaudited financial statement dated August 31, 2019 is posted on its website together with a cover letter (entitled "Notice to Reader") dated November 8, 2019 from a firm of chartered professional accountants.

43. The financial statement has a line at the bottom which says "Approved on behalf of the Director." There is no signature on the posted page to show such approval. ND states the financial statement was prepared, approved, and uploaded to the society's website prior to December 31, 2019 which is what is due to the public.

44. SA section 28 says that if a person, other than a person who is entitled under SA section 24 to inspect the records of a society, requests a copy of the financial statements and pays the fee, if any, the society must provide the person with a copy of those financial statements. This refers to the financial statements a society must maintain under SA section 35, and the auditor's report, if any, on those financial statements.

45. This means that a member of the public is entitled to request and obtain copies of a society's financial statements, on payment of an applicable fee.

46. SA section 195 says that SA section 28 concerning copies of financial statements does not apply to member-funded societies. The society requests donations on its website. It is not a member-funded society. Accordingly, SA section 28 applies to the society.

47. Mr. Drew, as a member of the public, was entitled to be provided with a copy of the society's financial statements. The society says, in effect, that this is unnecessary as these records were posted on its website by December 31, 2019.

48. SA section 29 concerns how a record is sent. A record may be sent in the manner, if any, agreed to by the sender and the intended recipient. It may be sent in a manner specified in the society's bylaws. A record may also be sent by mail to the intended recipient's most recent known mailing address. If the intended recipient has provided an email address or fax number for that purpose, a record may be sent by email or fax.
49. In Mr. Drew's November 5, 2019 email to the society, he requested that the copies of records be sent to him by email. The society's bylaws (which adopt the model bylaws) contain no provision concerning the manner in which a record may be sent by the society.
50. There is no provision in the SA or Regulation to say that a society does not have to provide a copy of a document if it is already publicly accessible. In comparison, section 19 of the *Freedom of Information and Protection of Privacy Act* says that the head of a public body may refuse to disclose information that must be published or released to the public under an enactment, or that is to be published or released to the public within 60 days. No similar provision is included in the SA or Regulation.
51. It is not evident why a person would wish to request a copy of a society's financial record which is already publicly accessible on the society's website. Nevertheless, I find that a member of the public is entitled to request copies from a society of the financial records it is required to maintain under SA section 35. The fact that the document is already publicly accessible on the society's website is not a defence to such a request.
52. I find that Mr. Drew is entitled to receive a copy of the society's financial records, signed by one or more directors to confirm that the statement was approved by the directors.
53. Under section 6 of the Regulation, the maximum fee which may be charged for sending a document by email is \$0.10 per page. Mr. Drew had offered to pay the applicable fee. Having regard to the small amount in question, and in the interest of resolving this dispute, I order that the applicable fee be waived.

CRT FEES AND EXPENSES

54. Mr. Drew also requests reimbursement of the fees (\$225.00) he paid to the CRT, and any other expenses allowed under the CRT Rules and the CRTA.
55. Mr. Drew was partially successful in this dispute. In accordance with the CRTA and the CRT's rules I find he is entitled to reimbursement of half his CRT fees, or \$112.50.

ORDERS

56. I order that.
- a. The society must provide Mr. Drew with copies of its financial records, signed by one or more directors, by email within 14 days, without charge.
 - b. The society must pay Mr. Drew \$112.50 within 14 days, in reimbursement of half his CRT fees.
57. I dismiss Mr. Drew's remaining claims.
58. Mr. Drew is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
59. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Herb Morton, Tribunal Member

