



Civil Resolution Tribunal

Date Issued: August 13, 2020

File: CS-2020-001430

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Grumpy Taxpayer\$ of Greater Victoria Society v. Greater Victoria Harbour Authority*, 2020 BCCRT 899

B E T W E E N :

Grumpy Taxpayer\$ of Greater Victoria Society

APPLICANT

A N D :

Greater Victoria Harbour Authority

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Luningning Alcuitas-Imperial

INTRODUCTION

1. The applicant, the Grumpy Taxpayer\$ of Greater Victoria Society (GTGVS), requests records of the respondent, the Greater Victoria Harbour Authority (GVHA). Both GTGVS and GVHA are registered societies under the *Societies Act* (SA). While GTGVS is a member-funded society, the GVHA is not.

2. The GTGVS seeks an order that the GVHA provide records of remuneration and benefits paid to 2 of GVHA's directors, BD and SB, for the fiscal year 2018-2019. The GTGVS says it requested the records from the GVHA, which refused to provide them.
3. In its Dispute Response, the GVHA states the following:
 - a. The requested records are not kept in the normal course of business.
 - b. The records are personal and confidential.
 - c. The records are not available to members.
 - d. The GVHA is not subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA).
 - e. The GTGVS is not a member of GVHA, so is not entitled to the requested records in any event.
4. The GVHA also said that the tribunal did not have jurisdiction to decide the dispute. In an April 3, 2020 preliminary decision, another member of the CRT) decided that the CRT has authority to decide this dispute. The dispute was to continue through the next phase of the CRT process.
5. GTGVS is represented by SB, whom I infer is a member or director. GVHA is represented by JE, its Chief Administrative Officer.
6. For the reasons that follow, I find that GTGVS is entitled to a copy of GVHA's financial statements for the fiscal year 2018-2019. While those financial statements will include the remuneration paid by GVHA to its directors, it will not include the names of specific directors nor the benefits paid to any directors.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the CRT. The CRT has jurisdiction over certain society claims under section 129 of the *Civil Resolution Tribunal Act*

(CRTA). 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.

8. 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.
9. Subsection 109.2(1) of the SA says that a society, or a member of a society, may request the CRT to resolve a dispute concerning a society claim. In the April 3, 2020 preliminary decision, the CRT member found that GTGVS is not entitled to file a dispute against GVHA under SA subsection 109.2(1). Although not binding upon me, I agree with the member's conclusions and adopt the member's reasons.
10. Subsection 109.2(2) of the SA says that "a person, other than a person referred to in subsection (1)," who claims to be entitled under SA section 24 to inspect a society's record, or claims to be entitled under SA sections 27 or 28 to receive a copy of a society's record, may request the CRT to resolve a dispute about inspecting or receiving a copy of the record.
11. In the April 3, 2020 preliminary decision, the CRT member found that GTGVS is a "person" and has standing under SA subsection 109.2(2) to make its claim for access to remuneration records. Although the member did not mention SA section 28 in those reasons and the preliminary decision is not binding upon me, I agree with the member's conclusions and adopt the member's reasons. I find that the exclusion of SA section 28 does not affect the validity of those reasons or the conclusion about GTGVS's standing under SA subsection 109.2(2).
12. Based on these provisions, I find the CRT has jurisdiction to decide this dispute.
13. The applicable CRT rules are those that were in place at the time this dispute was commenced (February 2020).

14. 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.
15. 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 may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
16. Under section 131 of the CRTA and the CRT 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.

ISSUE

17. The issue in this dispute is:

- a. Is GTGVS entitled to GVHA's records that show the remuneration and benefits paid to its 2 directors for the fiscal year 2018-2019?

EVIDENCE AND ANALYSIS

18. I read all the evidence and submissions 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 its claims on a balance of probabilities.
19. I begin with looking at what records or information the law requires a society to keep.
20. Section 20(1) of the SA requires a society to keep certain records. SA subsection 20(1)(k) identifies that one of the records that must be kept are financial statements (further referred to in SA section 35) and auditor's reports, if any, of those financial statements. Section 35 of the SA requires a society to present annual financial statements and auditor's reports to its members at each annual general meeting.

21. The law goes on to explain the required content of the financial statements.
22. Section 36(1)(a) of the SA says that those financial statements must include a note providing the information required by the regulations in respect of the remuneration, if any, paid by the society to the directors in the relevant period. SA section 36(2) says that the note in the financial statements need not identify the directors by name.
23. Section 8 of the *Societies Regulation* (SR) further defines the information to be included in the note under SA section 36(1)(a). The note must include a list of all directors who were paid remuneration for being a director or for acting in another capacity, including their position and title. Their names do not need to be included. The note should include the amount of remuneration and, if relevant, a description of the other capacity the director acted in.
24. I will now look at the law about who can access a society's financial statements.
25. The law makes distinctions between entitlement to inspect a society's records (SA section 24), entitlement to request a copy of a record (section 27), and entitlement to request a copy of financial statements (section 28).
26. I note that in the April 3, 2020 preliminary decision, there was discussion about SA section 24. However, I find that SA section 28 applies to the GTGVS's request, as it seeks an aspect of GVHA's financial information contained in its financial statements.
27. Section 28(2) of the SA says that when a person (other than those entitled under section 24) requests a copy of a society's financial statements and pays a fee, the society must provide the person with a copy of those statements. Section 6 of the SR outlines the maximum fee of \$10 plus additional charges for each page. Section 28(3) says that the society must provide the copy promptly and not later than 14 days from receipt of the request and payment of the fee.
28. 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. I note that a similar

conclusion was reached in *Drew v. Healing Breast Illness Society of North America*, 2020 BCCRT 762 (*Drew*).

29. I further find that a society such as GTGVS is a “person” for the purposes of section 28(2). I adopt the reasons of the member in the April 3, 2020 preliminary decision in paragraphs 22 to 24 to reach this conclusion.

30. I find that GTGVS is entitled to a copy of GVHA’s financial statements for the fiscal year 2018-2019, signed by one or more of the directors to confirm that the statements were approved by the directors. GVHA’s request was made on February 10, 2019. It is not clear if GTGVS paid any fee. Having regard to the small amount of the fee and in order to resolve this dispute, I order that the fee be waived. I order GVHA to provide a copy of the financial statements to GTGVS within 14 days of this decision.

31. I note that GVHA’s financial statements for the fiscal year 2018-2019 are available on its public website. However, I find that the fact that the document is already publicly accessible on the society’s website is not a defence to GTGVS’s request. I agree with the CRT member in paragraph 51 of *Drew* and adopt the member’s reasons. I find that the public availability of the financial statements on GVHA’s website does not override a person or member of the public’s entitlement to receive a copy of those statements.

32. I note that not all of the information requested by GTGVS will be covered in the financial statements. The law does not require a society to disclose the names of the directors who are paid remuneration. However, SR section 8 states that a list of all directors who were paid remuneration for being a director or for acting in another capacity, including their position and title, must be part of the note to the financial statements.

33. I examined the note attached to the GVHA’s financial statements for the fiscal year 2018-2019. In note #11, the total amount of remuneration paid to the directors is disclosed as \$186,801. GVHA states that this amount is 3% of the previous year’s revenues. However, no further information is listed. There is no information about

the amount paid to each director (including their position and title) and in what capacity they were paid for.

34. As such, GTGVS will not be able to distinguish from the financial statements the specific amounts and remuneration paid to BD and SB. Although the law does not require a society to disclose the names of the directors, I find that a society must provide the amounts paid to each director (including their position and title) and in what capacity they were paid for in the note to its financial statements.

35. I considered seeking submissions from GTGVS and GVHA about my authority to order additional information to be included in existing financial statements. I considered that these statements were already presented to the society's members at its annual general meeting. Keeping in mind the principle of proportionality in this dispute, I decline to seek further submissions on this issue. I find that I can remedy the situation without significant prejudice to either party, including any interference with GVHA's annual general meeting or meetings of its members. I order that GVHA prepare an additional separate page breaking down the amount of \$186,801 per director (position and title, but not name) and in what capacity the director was paid for (either as a director or in some other described capacity). This additional information should be signed by one or more of the directors to indicate the approval of the directors. I order GVHA to provide this additional information to GTGVS within 14 days of this decision.

36. GTGVS requested that the expenses and benefits paid by GVHA to its 2 directors be disclosed. "Remuneration" is not defined in the SA or the SR. "Expenses" and "benefits" are not mentioned in the SA or the SR. I looked at the Oxford English Dictionary for the meaning of these words. "Remuneration" is defined as "money paid for work or a service." "Expense" is defined as "the cost incurred in the performance of one's job or a specific task." "Benefit" is defined as "payment made by the state or an insurance scheme to someone entitled to receive it." In order for a director to be paid expenses and benefits, a society must reimburse the director for an expense or another entity pays the director under a benefit scheme. Both are different from "remuneration," which is more like the wages paid by an employer to

an employee. Based on the ordinary meaning of these terms, I find that a society is not required to include any expenses or benefits paid to a director in the note to a financial statement under SA section 36(1)(a). As such, GTGVS will not receive information about the benefits paid to any of GVHA's directors.

37. Although I have read them, I find it is not necessary for me to specifically address GVHA's arguments in reaching my conclusion. The law requires the GVHA as a society to prepare, retain, and provide public access to its financial statements. The GVHA's arguments do not address its obligations under the SA and SR.

CRT FEES, EXPENSES AND INTEREST

38. Under section 49 of the CRTA and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses.

39. GTGVS was partially successful in this dispute. I find that GTGVS is entitled to reimbursement of the CRT fees of \$225. Although GTGVS was only partially successful in this dispute, I find that full reimbursement of the CRT fees is warranted and I may deviate from the rule. The scope of the dispute is not wide and GTGVS's requests were not unreasonable. GTGVS did not claim any other dispute-related expenses. GVHA did not claim any dispute-related expenses.

ORDERS

40. I order that:

- a. GVHA provide a copy to GTGVS, within 14 days, of its financial statements for the fiscal year 2018-2019 (signed by one or more of its directors to confirm that the statements were approved by the directors).
- b. GVHA provide to GTGVS a separate page breaking down the amount of \$186,801 per director (position and title, but not name) and in what capacity the director was paid for (either as a director or in some other described

capacity) in the fiscal year 2018-2019. This additional information should be signed by one or more of the directors to indicate the approval of the directors. GVHA should provide this information to GTGVS within 14 days of this decision.

c. GVHA pay GTGVS \$225 within 14 days, in reimbursement of its CRT fees.

41. GTGVS is also entitled to post-judgment interest under the *Court Order Interest Act*.

42. 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.

Luningning Alcuítas-Imperial,
Tribunal Member