



Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *MacDonald v. Cowichan Valley Alano Club*, 2020 BCCRT 1077

B E T W E E N :

BARBARA MACDONALD

APPLICANT

A N D :

COWICHAN VALLEY ALANO CLUB

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about the election of directors in a registered society.
2. The respondent, Cowichan Valley Alano Club (society), is a society incorporated under the *Societies Act* (SA).

3. The applicant, Barbara MacDonald, is a member of the society, and former member of its board. She says the society has not followed its bylaws in electing new directors. Specifically, she says that some of the directors were not qualified for election under the bylaws, as they had not yet been members of the society for 6 months. She also says that non-members were permitted to vote.
4. Ms. MacDonald requests an order that the society remove the disputed directors from office, and an order that the society hold a new election that complies with the bylaws.
5. The society admits it has a longstanding practice of not complying with the bylaw, which requires 6 months of membership for director candidates. It says this is because of a lack of willing, qualified candidates. The society says Ms. MacDonald agreed with the election of the disputed directors while she was on the board. It also says it resolved the issue when the newly-elected board voted at a March 10, 2020 board meeting to confirm the election results and follow the bylaws in future.
6. Ms. MacDonald is self-represented in this dispute. The society is represented by SR, whom I infer is an officer, director or employee.
7. For the reasons set out below, I find in favour of Ms. MacDonald in this dispute. I find the evidence shows that the disputed directors were not members for 6 months before their election. I therefore order the society to immediately remove each of them as director, or alternatively accept their resignations.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (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.

9. 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.
10. 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.
11. 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.

ISSUES

12. The issues in this dispute are:
 - a. Were any society directors elected contrary to the bylaws?
 - b. If so, what remedies are appropriate?

BACKGROUND FACTS

13. 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, as the applicant Ms. MacDonald must prove her claim on a balance of probabilities.
14. Society bylaw 7.2 says that to be eligible for election as a director, an individual must have been a member of the society for no less than 6 months preceding the annual general meeting (AGM) where the election occurs. It also says the board will be made up of 9 members, of whom 5 must be recovered alcoholics.

15. The society's bylaws were filed with the BC Registrar of Companies in November 2018. Based on section 17(3) of the SA, I find that the filed bylaws are in effect, and govern this dispute.
16. Bylaw 4.2 says that any individual who subscribes to the purposes of the society may be admitted as an active member, by applying to the secretary or society representative, agreeing to abide by the constitution and bylaws, and paying the prescribed dues. Children of active members may become associate members of the society.
17. Bylaw 4.3 says active members have the right to vote at all general meetings. Associate members have the right to vote if a special resolution has been passed allowing them to participate in that vote.
18. Bylaw 6.5 says that only acting members of the society have the right to vote at general meetings, except as provided for elsewhere (such as in bylaw 4.3).
19. Bylaw 5.4 says the society must keep a register of members, including members' names and the date they became a member.

REASONS AND ANALYSIS

20. Ms. MacDonald says the directors' election held at the March 1, 2020 AGM was "illegal" because non-members voted, and because 3 people who did not qualify under bylaw 7.2 were elected as directors.
21. The society does not assert that the disputed directors were qualified under the bylaws. Rather, it submits that it is impossible to tell whether they were members for 6 months before the election, because the society had not kept the membership records required under bylaw 5.4. The society also submits that due to the COVID-19 pandemic, it faces financial and other challenges, and is at risk of closing. It says it currently has no income as its grants and other revenue sources have been suspended.

22. The society also relies on the decision made by the board at its March 10, 2020 meeting. The minutes show the following:
- Ms. MacDonald said some of the elected directors had not been members for 6 months prior to the election, contrary to the bylaws. Ms. MacDonald suggested the election be considered invalid.
 - The directors voted on a motion to “stay with the election results and going forward abide with the bylaws.” The motion passed, with 6 votes in favour and 1 opposed.
23. The society submits that the March 10, 2020 motion was appropriate because a “multitude” of bylaws had not been followed before the March 1, 2020 election.
24. I find there is insufficient evidence before me to determine Ms. MacDonald’s claim that non-members voted in the election. Specifically, there is insufficient about who voted, or whether they were society members. However, I find the evidence does establish that directors P, A, and K were not society members for 6 months prior to their election.
25. While the society says the records are inadequate to prove this question either way, I disagree. Ms. MacDonald is the former treasurer, and provided receipts of membership dues paid from January 1, 2019 until the election. As specified in bylaws 4.1 and 5.1, an individual must pay dues to be a member, and ceases to be a member in good standing if their dues become 6 months in arrears. There are no dues receipts in evidence from P, A, or K.
26. It is possible that some dues receipts not provided by Ms. MacDonald. However, I place significant weight on the fact that the society admitted in its Dispute Response Form that bylaw 7.2 had been breached “for many years.” Also, the society did not provide any contrary evidence showing that the disputed directors had been members for 6 months, such as receipts, statements from the impugned directors or other witnesses, or meeting minutes. For these reasons, I accept that directors P, A,

and K were not eligible to be directors under bylaw 7.2, as they had not been members for 6 months when they were elected.

27. I accept the society's arguments about its important purposes, and financial stress due to COVID-19. However, I note that the disputed election occurred before the provincial state of emergency had been declared on March 18, 2020. Also, the society's important purpose, and a failure to follow bylaws in the past, do not exempt the society from following its bylaws now. The provisions of the SA are always mandatory. SA section 43(1) says that a person must not be a director of a society if they are not qualified under SA section 44 or the bylaws. Section 43(2) says that a director who is not qualified under section 44 or the bylaws must "promptly resign."
28. The SA is clear that a person who is not qualified under the bylaws to be a director cannot continue to be a director. There is no available exception. Since P, A, and K were not qualified to be directors under bylaw 7.2, they must not be directors as currently elected.
29. Since P, A, and K are not parties to this dispute, I cannot order them to resign. Instead, I order the society to immediately remove them from their director positions, or alternatively accept their resignations.
30. I make this order under the authority of CRTA section 131(2), which says that in resolving a society claim, the CRT can make an order directed at a society or its directors, if the order is necessary to prevent or remedy an unfairly prejudicial action or decision. I find that electing directors contrary to bylaw 7.2 was an unfairly prejudicial action by the society, and my order is necessary to remedy that action.
31. I leave it to the society to determine whether and when to hold a new election, and whether to appoint new interim directors as permitted under bylaw 7.1. The society must follow its bylaws in taking these actions. Nothing in this decision prevents P, A, or K from standing for election again, if they meet all requirements of the SA and the bylaws. Also, it is open to the society to amend its bylaws, again by following the requirements of the SA and the bylaws.

CRT FEES AND EXPENSES

32. As Ms. MacDonald was successful in this dispute, in accordance with the CRTA and the CRT's rules I find she is entitled to reimbursement of \$225.00 in CRT fees. She did not claim dispute-related expenses, so none are ordered.

ORDERS

33. I order the following:

- a. The society must immediately remove P, A, and K from their director positions, or alternatively accept their resignations.
- b. The society must immediately pay Ms. MacDonald \$225 as reimbursement of CRT fees.

34. Ms. MacDonald is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

35. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

Kate Campbell, Vice Chair