



Civil Resolution Tribunal

Date Issued: February 26, 2021

File: CS-2020-004899

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Advent Booster Academy Society v. Port Coquitlam Sports Alliance Society*, 2021 BCCRT 234

B E T W E E N :

ADVENT BOOSTER ACADEMY SOCIETY dba ADVENT SWIM
ACADEMY (ADVENT)

APPLICANT

A N D :

PORT COQUITLAM SPORTS ALLIANCE SOCIETY dba POCO
SPORTS ALLIANCE (PCSA)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a request for a society's records under the *Societies Act* (SA).

2. The applicant, Advent Booster Academy Society Dba Advent Swim Academy (Advent), is a member of the respondent, Port Coquitlam Sports Alliance Society Dba Poco Sports Alliance (PCSA). Both Advent and PCSA are societies registered under the SA.
3. Advent says PCSA failed to provide it with copies of PCSA's records requested under the SA. Advent seeks an order that PCSA provide Advent with all requested records, and that PCSA publish certified copies of its constitution and bylaws on its website. Advent makes several additional claims that I have not resolved as discussed in my reasons below.
4. PCSA says it has complied with Advent's request for records under the SA. It says the "vast majority" of Advent's requests are for records that PCSA has no obligation to maintain or provide under the SA. PCSA says it has posted its constitution and bylaws on its website but had no obligation to do so. PCSA asks that I either dismiss or refuse to resolve Advent's claims.
5. Advent is represented by a member. PCSA is represented by its lawyer, Matthew Bujar.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. 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.
7. 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.

8. 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.
9. 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.

PRELIMINARY MATTERS

Anonymization Request

10. Advent requests that the CRT anonymize the published version of this decision or take other steps to protect Advent members' privacy. PCSA did not similarly request anonymization of the decision.
11. The CRTA requires the CRT to post all final decisions on its website. In exceptional circumstances, the CRT may remove or obscure personal information with anonymous identifiers as authorized under CRTA section 86(3).
12. Advent says that anonymization is necessary because its members are minors or similarly vulnerable individuals. However, the dispute does not involve Advent members' records or require any discussion of individual members. I am not satisfied that disclosing the society's name would adversely impact a vulnerable person.
13. I find Advent has not established exceptional circumstances apply to anonymize the society's name so as to outweigh the goal of transparent CRT proceedings. So, I have not anonymized the society's name in this decision.

CRT Summary Decision – October 14, 2020

14. On October 14, 2020, a CRT Vice Chair issued a summary decision refusing to resolve some of Advent's claims set out in the Dispute Notice. Advent had originally

brought this dispute against PCSA, the City of Port Coquitlam (City), and a city employee, Lorie Bowie.

15. The CRT Vice Chair held that none of Advent's claims against the City or Lori Bowie fell within the CRT's jurisdiction over society claims listed under section 121(1) of the CRTA. Section 10(1) of the CRTA says the CRT must refuse to resolve a claim that it considers not within its jurisdiction. The Vice Chair refused to resolve Advent's claims against the City and Lori Bowie under CRTA section 10(1). Following the Vice Chair's decision, the CRT removed the City and Lori Bowie as respondents in this dispute.
16. In addition to the record production discussed above, Advent alleged that some PCSA board members were in a conflict of interest. It also alleged that PCSA disciplined Advent's members with no reason, violated its constitution, misled members and the community, engaged in harassment, and discriminated by not treating all members and applicants equally.
17. The CRT Vice Chair found the only claims against PCSA that fell within the CRT's jurisdiction under CRTA 121(1) were Advent's requested orders that PCSA provide copies of its records and that it publish its constitution and bylaws on its website.
18. The Vice Chair concluded that Advent's remaining claims fell within the BC Supreme Court's exclusive jurisdiction under Part 8 of the SA. CRTA section 130(2) says the CRT does not have jurisdiction over a claim that may be dealt with by the BC Supreme Court under Part 8. Accordingly, the Vice Chair refused to resolve Advent's remaining claims against PCSA on the basis that they are outside the CRT's jurisdiction.
19. I find the only claims before me are Advent's claims against PCSA related to record production and publishing documents on its website.

Request to Re-Open Claims

20. Advent asserts that the CRT has jurisdiction to decide all the claims against PCSA in the July 23, 2020 Dispute Notice and asks that I "re-open" its claims. If Advent believes the Vice Chair's October 14, 2020 decision was wrong in law, its option is to

apply to the BC Supreme Court for Judicial Review. I have no authority to reconsider the Vice Chair's decision. I deny Advent's request to "re-open" any of the claims that the Vice Chair refused to resolve in the October 14, 2020 decision.

New Claims

21. In its submissions, Advent seeks additional records and other remedies against PCSA primarily based on events that occurred in September through December 2020. These claims are not in the Dispute Notice. Several matters relate to a December 2020 Annual General Meeting (AGM) that happened after the CRT's facilitation stage was complete and after the parties moved into the tribunal decision phase. PCSA says it would be prejudicial to PCSA and inconsistent with the CRT's rules for the CRT to decide these new claims. I agree.
22. Under CRT rule 1.17 the CRT will only amend a Dispute Notice after the dispute has entered the tribunal decision process where exceptional circumstances apply. I find no exceptional circumstances before me to add new claims or remedies at this late stage in the CRT process.
23. The CRT's rules are based on the principle of administrative fairness that a party must have an opportunity to respond to the case against them. I find PCSA has not received fair notice of Advent's new claims or a reasonable opportunity to provide evidence and submissions in response. I find it would be contrary to the CRT's rules and a breach of procedural fairness to decide Advent's new claims. Accordingly, I have not resolved the additional claims. I have also not placed any weight on Advent's late evidence related to the additional claims as I find it is irrelevant to the issues before me.

ISSUES

24. The remaining issues in this dispute are:
 - a. Did PCSA provide Advent the requested records as required under the SA? If not, what records, if any, must PCSA provide to Advent?

- b. Does the CRT have authority to deal with a dispute over an order by the Registrar of Companies (Registrar)?
- c. Must PCSA publish certified copies of PCSA's constitution and bylaws on its website?

EVIDENCE AND ANALYSIS

25. In a civil proceeding like this one, the applicant Advent must prove its claims on a balance of probabilities. While I have reviewed all the parties' evidence and submissions, I refer only to what I find relevant to provide context for my decision.

Statutory Framework

- 26. Part 3, section 20(1) and (2) of the SA set out detailed lists of the records a society must keep. 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.
- 27. SA section 24(1) says a society member may, without charge, inspect all records listed in section 20(1). Section 24(2) sets out which records listed in section 20(2) a member may inspect without charge.
- 28. Section 24(3) 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.
- 29. SA sections 27 (records) and 28 (financial statements) say that if a person who is entitled under SA section 24 to inspect a record requests a copy of that record and pays the applicable fee, if charged, the society must provide the copy within 14 days of the request and fee payment. A member is entitled to receive, without charge, one copy of the society's most current constitution and bylaws and the most recent financial statements and auditor's report, if any.

30. SA section 109.2 says a person may request the CRT resolve a dispute concerning a society claim. A person may request CRT resolution whether or not the person has also applied to the Registrar for a records order under SA section 107. The CRTA section 129 says the CRT has jurisdiction over a claim in respect of the SA or a regulation, constitution or bylaw including a request to inspect, or to receive a copy of a society's record.
31. Based on CRTA section 129 and SA section 109.2, I find the CRT has authority to decide a claim over requests for copies of a society's records made under Part 3 of the SA. I turn then to Advent's record requests.

Did PCSA provide Advent the requested records as required under the SA?

32. In January and February 2020, Advent asked PCSA to provide it with certified copies of PCSA bylaws and a current statement of directors and registered office of records, plus a list of all PCSA's programs and services. It also asked PCSA for its application process for new members and phone and email contacts for its directors.
33. At the time of these requests it is undisputed that Advent was not yet a member of PCSA. PCSA declined to provide copies of requested records and information. However, it directed Advent to its website for information about PCSA, its board members, its membership application process, and for a copy of its posted bylaws.
34. I find PCSA's bylaws filed with the Registrar on December 22, 2017 apply to this dispute. The bylaws contain no provision requiring PCSA to provide access or copies of records to non-members as contemplated in SA section 24(1). So, I find the SA did not require PCSA to provide copies of its records to Advent when it was a non-member.
35. After Advent applied and became a member, Advent asked PCSA to provide it with copies the following records on April 17, 2020 and May 8, 2020:
- A Registrar-certified copy of the PCSA "constitution, bylaws, statement of directors, including the directors' contact information".

- A list of all programs and services the PCSA provides for competitive swimmers.
- A list of contributions from other club members.
- All complaints about Advent received by the PCSA.

36. PCSA says it has responded to Advent's request to the extent required under the SA.

37. PCSA says its constitution, bylaws, and a list of directors are already published on its website. It says it also provided Advent copies of PCSA's bylaws and constitution. However, I find the submitted copies contain no registry filing date or society incorporation number or other indication that they were certified copies. So, I find they are likely not records certified by the Registrar.

38. Under SA section 20(1)(b), I find PCSA was required to keep a certified copy, furnished to the society by the Registrar, of the society's constitution, bylaws, and statement of directors and registered office. As a member, I find Advent was entitled to request a copy of these 3 records in Registrar-certified form. I find SA section 27(2) required PCSA to provide Advent with a copy of the 3 records in Registrar-certified form within 14 days of Advent's request and I find it failed to do so. I note that fees are not at issue here.

39. I conclude that PCSA must provide Advent a certified copy of each of the following records as furnished by the Registrar at no fee:

- a. PCSA's constitution as certified prior to May 8, 2020 (last request date prior to Dispute Notice)
- b. PCSA's bylaws as certified prior to May 8, 2020
- c. PCSA's statement of directors and registered office of the society as certified prior to May 8, 2020

40. I find Advent did not specifically request that PCSA provide it a "registry of directors" under SA section 27. However, it did request the director's contact information. Under

SA section 20(1)(e) a society must keep a registry of directors with “contact information provided by each director”. I find PCSA effectively sent Advent its registry of directors in July 2020 by providing a copy of PCSA’s “dashboard” current to June 2020. The dashboard includes the name and mailing address for each director.

41. Advent had also requested the PCSA directors’ phone numbers and emails. The SA does not specify what kind of information the directors must provide to the society. For this reason, I find Advent has not established that PCSA was required to provide it with the directors’ phone numbers and emails as well.
42. I find a society’s list of programs and services, application process, list of club-member contributions, and complaint logs are not records that a society must keep under SA section 20. SA sections 35 through 38 defines a society’s requirements to prepare financial statements. I find there is no requirement in the SA that a society’s financial documents include a list of their club-member contributions. I find PCSA had no statutory requirement to provide this information to Advent. I dismiss Advent’s claims for this additional information.
43. As I explained in the preliminary section above, I find Advent’s additional record requests made after the Dispute Notice was filed are not part of Advent’s claims before me and so, I have not addressed them.

Does the CRT have authority to deal with a dispute over a Registrar’s order?

44. On April 17, 2020 Advent applied to the Registrar for a copy of every type of record a society is entitled to keep under SA section 20. On June 9, 2020, the Registrar ordered PCSA to provide the Registrar with “whichever of the following the Society [PCSA] considers appropriate”.
45. In this CRT dispute Advent says PCSA failed to provide it with copies of all the records listed the June 9, 2020 Registrar’s Order. Advent says it is seeking an order from the CRT that PCSA “provide a full record and copies of all requested documents including account records (bank statements) with audits related to the PCSA operation at all

times". PCSA's says it complied with the Registrar's Order and it asks that I dismiss PCSA's claims.

46. As mentioned, CRTA section 130(1) says the CRT does not have jurisdiction in relation to a claim that may be dealt with by the court under Part 8 of the SA.
47. Part 8, Division 2 of the SA deals with proceedings about records. Specifically, SA section 107(1) says a society or other person who claims to be entitled to inspect or receive copies of records may apply in writing to the Registrar for an order if the society does not provide the person with access to the record or a copy of the record as the case may be. Where an applicant claims that a society failed to comply with a Registrar's order, the applicant may apply to the court for a remedy under SA section 107(7). The court may make an order under SA section 107(8) against the non-compliant society, including that it provide access to a record or a copy of the record.
48. I find Advent's claim over PCSA's compliance with the Registrar's Order is a matter that may be dealt with by the court under Part 8. Therefore, I find the CRT does not have authority to resolve such a claim as stated in CRTA section 130(1). For these reasons, I refuse to resolve Advent's claim about PCSA's compliance with the Registrar's June 9, 2020 Order. I have also not addressed Advent's requests for records made only in its section 107(1) Registrar request because I find they are not requests under Part 3 of the SA and so are not properly before me.

Must PCSA publish certified copies of PCSA's constitution and bylaws on its website?

49. I find PCSA is not required under the SA to publish either certified or non-certified copies of its constitution and bylaws on its website. In any event, PCSA says it already publishes its constitution and bylaws on its website. I dismiss Advent's claim that PCSA publish the certified copies on its website.

CRT FEES AND EXPENSES

50. 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.
51. Although I have ordered the PCSA to produce copies of 3 types of records, I find that Advent was primarily unsuccessful in this dispute. In these circumstances, I find Advent should not be reimbursed for CRT fees. Advent did not claim any dispute-related expenses.
52. PCSA seeks an order that Advent pay an unspecified monetary award, on the basis of costs or expenses incurred by PCSA. PCSA did not pay any CRT fees and there are no receipts before me for any dispute-related expenses. In any event, PCSA was also partially unsuccessful in this dispute. I make no order that Advent reimburse PCSA for any dispute-related expenses.

ORDERS

53. Within 14 days of this order, I order PCSA to send Advent, at the mailing address set out in the Dispute Notice, a certified copy of each of the following records as furnished by the Registrar:
- a. PCSA's constitution as certified prior to May 8, 2020,
 - b. PCSA's bylaws as certified prior to May 8, 2020,
 - c. PCSA's statement of directors and registered office of the society as certified prior to May 8, 2020.
54. I order that PCSA must not charge Advent a fee for sending the records in paragraph 53 above.
55. I refuse to resolve Advent's claim about PCSA's compliance with the Registrar's June 9, 2020 Order and for claims that arose after the Dispute Notice was filed.

56. I dismiss Advent's remaining claims.

57. I dismiss PCSA's claim for dispute-related expenses.

58. 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.

Trisha Apland, Tribunal Member