



# Civil Resolution Tribunal

Date Issued: April 27, 2020

File: CS-2020-007306

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Gill v. Lot 46 Management Society*, 2021 BCCRT 434

B E T W E E N :

DAVID GILL

**APPLICANT**

A N D :

LOT 46 MANAGEMENT SOCIETY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. The respondent, Lot 46 Management Society (society), is a society incorporated under the *Societies Act* (SA). The applicant, David Gill, is a society member.

2. Mr. Gill says the society has failed to send him notices, including notification of annual general meetings (AGMs), despite reminders and providing his address by registered letter. He says this has excluded him from voting. As remedy, Mr. Gill requests an order that the society send all its communications to him at his mailing address, and not by email.
3. The society says it adopted a “paperless format”, and created a bylaw allowing all its correspondence with society members to be distributed by email only. The society says Mr. Gill asked not to be contacted by email, but will receive all society correspondence if he gives permission to receive emails.
4. The society also says it has sent notices to Mr. Gill by postal mail. Mr. Gill says he has not received any society notices by mail for at least 3 years.
5. Mr. Gill is self-represented in this dispute. The society is represented by a director.
6. For the reasons set out below, I find the society must send Mr. Gill all required documents by postal mail to his Sicamous, BC address.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.
9. 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.

10. 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 Issue***

11. In his final reply submission, Mr. Gill asks for remedies that were not included in his dispute application or initial submission. These are:

- An order that the society must, in its bylaws or constitution, clarify the time period of a “term of membership”.
- An order that the society must rescind an August 5, 2018 motion about a \$50.00 charge for paper correspondence.
- An order that the society stop using the directors’ powers in an oppressive and prejudicial manner against Mr. Gill.

12. These remedies were not requested until the final reply submission, so the society had no opportunity to respond to them. I therefore find it would be procedurally unfair to address these requests, and have not done so.

### **ISSUE**

13. Must the society send Mr. Gill notices and other correspondence by postal mail?

### **EVIDENCE AND REASONS**

14. I have read all the evidence and submissions provided but refer only to material I find relevant to provide context for my decision. As the applicant in this civil dispute, Mr. Gill must prove his claim on a balance of probabilities.

15. Mr. Gill says he has requested the society to communicate with him by postal mail only, but it will not, so he has not received its notices for the past 3 or 4 years. Mr. Gill admits that he has received financial reports and minutes mailed by the society, but only upon request, and only after the AGMs have occurred.
16. Mr. Gill says he cannot receive the society's emails due to technical issues. He says his computer is "vintage" and he is not "tech savvy". He says he has worked with paper correspondence for 55 years, and prefers it. He also says his society fees include any costs for printing and mailing.
17. The society says it has been mailing notices to Mr. Gill's provided postal address in Alberta, and the society cannot control whether he receives them. The society says the simplest solution is for Mr. Gill to provide an email address, either his own or that of a neighbour.
18. I find that in order to decide the issue before me in this dispute, I do not have to decide whether or not Mr. Gill received postal mail the society says it previously sent. Rather, the question is whether, under the SA and its bylaws, the society must in future send notices and other required correspondence to Mr. Gill by postal mail.
19. Having said that, I find that Mr. Gill has provided the society with inconsistent instructions about where to mail documents. In a January 9, 2019 letter, Mr. Gill told the society to mail documents to an address in Alberta. However, in a letter to the society dated September 8, 2019, Mr. Gill specifically told the society that his mailing address is in Sicamous, BC.
20. Mr. Gill's submissions in this dispute have also been inconsistent about which address he prefers. In his dispute application to the CRT, which lists Alberta as his contact address for the purposes of the dispute, Mr. Gill says he has always requested that the society send documents to his "registered address" in Alberta. However, in his final reply submission, Mr. Gill asked for an order that the society mail notices to his Sicamous address.

21. In a January 20, 2021 letter, the society offered to mail documents to the Sicamous address.
22. Since the parties have, in effect, agreed that records will be mailed to the Sicamous address, I find the issue in this dispute is essentially moot. However, for clarity and a final resolution of this matter, I will summarize the applicable law and make a formal order.
23. SA section 77(2) sets out specific provisions about how a society with more than 250 members may send notices of general meetings. Since the parties agree the respondent society has only 17 members, I find section 77(2) does not apply.
24. SA section 29 governs how the society must send notices and other required documents (records) to members. It says that a record must be sent to a member either:
  - i. In the manner, if any, agreed to by the sender and the intended recipient,
  - ii. if there is no agreement, in the manner specified in the society's bylaws.
25. I find the evidence establishes there was no agreement between Mr. Gill and the society about how to send records. Therefore, I find the society may send Mr. Gill correspondence in the manner specified in the bylaws.
26. The society filed bylaws with the Registrar of Companies (registrar) in December 2016. Bylaw 56 says:

A notice may be given to a member, either personally, by e-mail or by mail to him at his registered address.
27. Based on bylaw 56, I find the society generally has the discretion provide records, including notices and other required correspondence, by email or mail, at its choice. However, in his submissions, Mr. Gill says he does not consent to receiving records by email, and has difficulty receiving emails. The parties disagree about the extent to which Mr. Gill was able to participate in this CRT proceeding via email. In any event,

I find there is nothing in the SA or bylaws that requires a society member to consent to receiving records by email. For example, a society member could simply refuse to provide an email address, and nothing in the SA or current bylaws requires them to do so.

28. I find it is would be unreasonable to interpret bylaw 56 to mean a society member cannot revoke their consent to receive emails. Rather, I find a reasonable interpretation is that a member must provide either a mailing address or an email address, since in-person delivery is not always possible. I also find that under the current version of bylaw 56, a member may change their contact information, including by saying they no longer agree to receive records by email.
29. Nothing in this decision prevents the society from altering its bylaws, as permitted in SA section 17.
30. The society argues that it is financially onerous to send documents by postal mail. However, the society provided no evidence of the cost, or about its overall finances. Also, as explained above, I find the current bylaws permit a member to opt for postal mail.
31. For this reason, I find it is appropriate in the circumstances to order the society to send Mr. Gill all required records by postal mail, to his Sicamous, BC address. I use this address because that is what Mr. Gill specifically requested in his final reply submission.

## **CRT FEES AND EXPENSES**

32. Under the CRTA and the CRT's rules, the CRT will generally order an unsuccessful party to reimburse the successful party for dispute-related fees and expenses. Mr. Gill is the successful party. However, since the society agreed in writing to the requested resolution before any submissions were provided in this dispute, I find it is appropriate to order no reimbursement of CRT fees. Neither party claimed dispute-related expenses, so none are ordered.

## **ORDERS**

33. I order that the society must send all required notices and other correspondence to Mr. Gill by postal mail at his Sicamous, BC address.
  
34. 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.

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Kate Campbell, Vice Chair