



# Civil Resolution Tribunal

Date Issued: May 10, 2021

File: CS-2020-005890

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Harvey v. Lynn Valley Community Association*, 2021 BCCRT 493

BETWEEN:

JOHN HARVEY

**APPLICANT**

AND:

LYNN VALLEY COMMUNITY ASSOCIATION

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. The respondent, Lynn Valley Community Association (LVCA), is a society incorporated under the *Societies Act* (SA). The applicant, John Harvey, is a society member and former director.

2. Mr. Harvey says the LVCA has failed to provide several records and documents he requested and asks for an order that the LVCA give him those records. The LVCA says they have already provided the records Mr. Harvey is entitled to under the SA and the LVCA's bylaws.
3. Mr. Harvey says the LVCA's refusal to produce bank records indicates fraud and collusion and asks the CRT to order a full audit of the LVCA. He also claims \$10 as reimbursement for his LVCA travel expenses.
4. Mr. Harvey says the LVCA contravened the SA and its own bylaws. He also specifically refers to a November 1, 2018 Board of directors meeting during which the LVCA removed Mr. Harvey as a director. Mr. Harvey asks that the LVCA confirm his statements about the society, the president, and director B, and to inform him about why the president made certain decisions. The LVCA denies that it has contravened the SA or its own bylaws and asks that these claims be dismissed.
5. Mr. Harvey represents himself. The LVCA is represented by its president.

## **JURISDICTION AND PROCEDURE**

6. 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.
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(1) of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something or order a party to pay money. Section 131(2) authorizes the CRT to make an order directed at the society, or its directors, if the order is necessary to prevent or remedy an unfairly prejudicial action or decision.

## **PRELIMINARY ISSUES**

### **Audit - Jurisdiction**

10. Part 9 of the SA relates to society audits. SA section 110 says Part 9 applies to any society that is required to have an audit, or for which an auditor is appointed. As the LVCA's bylaws do not require it to have an auditor, I find Mr. Harvey is asking the CRT to order that an auditor be appointed under section 111 of the SA.
11. Section 130(2) of the CRTA says the CRT does not have jurisdiction, or legal authority, over claims respecting Part 9 (Audit) of the SA. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that is outside its jurisdiction. So, I find that I must refuse to resolve Mr. Harvey's claim for a "full audit" of the LVCA.

### **SA Part 8 Remedies - Jurisdiction**

12. In his final reply submissions, Mr. Harvey asks the CRT to make any order it deems necessary under section 102 of the SA, which includes a number of oppression remedies under Part 8 of the SA. Mr. Harvey did not amend his Dispute Notice to include the new remedies. I find it would be procedurally unfair to consider such requested remedies, given LVCA had no notice of them.
13. In any event, section 130(1) of the CRTA specifically excludes SA Part 8 (Remedies) from the CRT's jurisdiction. So, I find I must also refuse to resolve Mr. Harvey's claim for SA section 102 remedy orders.

## **Claims for Admissions and Explanations**

14. In his dispute application, Mr. Harvey requested 26 remedies for LVCA's alleged unprofessional and possibly unlawful actions, 8 of which are for production of LVCA records and 1 is for expense reimbursement, which I will discuss below. In his remaining claimed remedies, Mr. Harvey asks the LVCA admit it has not been following its bylaws or the SA and confirm statements of fact Mr. Harvey makes. Mr. Harvey also asks the LVCA president confirm further statements of fact and explain to Mr. Harvey various decisions, including why the November 1, 2018 director's meeting was held in camera. I find Mr. Harvey's requested admissions and explanations are either the very facts he is required to establish in order to prove his claims in this dispute or are completely unrelated to this dispute. In other words, Mr. Harvey is asking that the CRT order the LVCA to admit to facts or behaviours Mr. Harvey must establish in order to prove his claim that the LVCA acted contrary to the SA or its bylaws.
15. There is no requirement under the SA or the LVCA bylaws, or any other legal obligation, for the LVCA to agree to Mr. Harvey's statements, make the admissions he asks for, or answer the questions he raises about the president's decision making. I find the LVCA is not obliged to provide these things to Mr. Harvey, other than the 8 requests for record production and Mr. Harvey's request for LVCA expense reimbursement, which I address below.
16. Further, I find Mr. Harvey's requested admissions are essentially in the nature of declaratory relief which I find the CRT does not have the authority to grant in these circumstances. This is because the CRT can only make a declaration if it is incidental to a claim to grant declaratory relief in the narrow circumstance where the declaration is incidental to a claim over which the CRT has jurisdiction. I find Mr. Harvey's requested admissions are not incidental to his claim for record production or about his claimed travel expenses, which I find are the only claims the CRT has authority over.
17. For these reasons, I find the CRT does not have the authority to order the LVCA, or its president, to make admissions, confirm Mr. Harvey's statements of fact, or inform

Mr. Harvey why it made certain decisions. As I find the CRT does not have the jurisdiction to consider these claims, I refuse to resolve them under section 10 of the CRTA. For clarity, I refuse to resolve Mr. Harvey's claims for remedies 1 to 9, 11, 14, 16, 17, 19, 21 to 23, and 25 in the Dispute Notice.

### **Late Evidence**

18. The applicant did not submit any evidence until after the deadline to do so had passed. LVCA objects to Mr. Harvey's late evidence because it says he had ample time to gather and submit his evidence before the deadline. LVCA also says it provided Mr. Harvey with all the requested records he is entitled to prior to this dispute, which LVCA says demonstrates Mr. Harvey's disregard for due process.
19. Under the CRTA and CRT rules, I may accept any evidence relevant to the dispute. I find some of Mr. Harvey's evidence is relevant to the remaining issues I can consider. As LVCA had the opportunity to review and respond to the evidence, I find it was not prejudiced by the lateness of Mr. Harvey's evidence. Consistent with the CRT's mandate, which includes flexibility, I have allowed and considered the late evidence.

### **ISSUES**

20. The remaining issues in this dispute are:
  - a. Must the LVCA provide Mr. Harvey with any of the records he requested and, if so, which ones?
  - b. Must the LVCA reimburse Mr. Harvey for travel related expenses and, if so, how much?

### **EVIDENCE AND ANALYSIS**

21. In a civil proceeding such as this one Mr. Harvey, as the applicant, must prove his case on a balance of probabilities. I have reviewed the submissions of both parties

and weighed all evidence, but only refer to that necessary to explain and give context to my decision.

### ***Requested Records***

22. Section 20(1) of the SA says a society must keep records including a register of directors, a register of members, and minutes of members' meetings. SA section 24(1) says a member may inspect all records listed in section 20(1).
23. Section 20(2) of the SA says a society must also keep further records, including directors' meeting minutes, directors' consent resolutions, and accounting records. SA section 24(2) says a member may inspect the records listed in section 20(2) but a society may restrict inspection of the directors' meeting minutes under section 20(2)(b) through a bylaw. It is undisputed the LVCA has no such bylaw.
24. SA section 21 says a society must keep the records in section 20 for 10 years after their last alteration and so long as they are still relevant to the activities or internal affairs of the society.
25. SA section 27 says that, if a member who is entitled to inspect a record under section 24 requests a copy and pays any fee charged, the society must provide the copy within 14 days of the request and payment, if a fee was charged. There is no indication here that the LVCA charges fees for copies of records.
26. Mr. Harvey asks that the LVCA provide him with copies of its records in 8 categories. I will address each group of requested records in turn.
27. Mr. Harvey asks the LVCA to provide all emails between it and the North Vancouver Community Association Network (NVCA) from January 1 to December 31, 2018. The LVCA says it is not required to keep, or produce, these records and I agree. The SA or the LVCA bylaws do not require a society to keep copies of its correspondence, including emails, As there is no requirement to keep those documents, there is also no requirement to provide copies to a member, such as Mr. Harvey. So, I dismiss Mr. Harvey's claim for the emails.

28. Mr. Harvey asks for a copy of the Code of Conduct signed by director B. I find this is not a document listed under SA section 20 as a record and so the LVCA is not obliged to keep it, or produce it, as a record. In any event, the LVCA says it does not have a Code of Conduct signed by B. As the LVCA is not required to have such a record, I dismiss Mr. Harvey's claim for the signed Code of Conduct.
29. Mr. Harvey asks the LVCA to provide signed LVCA membership forms, for "contact information". Although a register of members is listed as a required record under SA section 20(1), copies of individual membership forms are not. I note that, after the deadline for all evidence and submissions, Mr. Harvey additionally asked that the LVCA produce his own signed membership form, without any explanation why. In any event, I find the LVCA is not required to keep, or provide copies of, any membership form including Mr. Harvey's. I dismiss Mr. Harvey's claim for copies of the membership forms.
30. Mr. Harvey asks for copies of each written letter of consent to act as a director, under SA section 42(4)(a). The LVCA says it only has written consent documents for those nominees who were not present at the meeting when the election was held. I find this approach is consistent with section 42(4) of the SA, which only requires written consent if the nominee is not present at the election or appointment meeting. As these written consents are listed in section 20(1) of the SA, I find Mr. Harvey is entitled to receive copies of them.
31. It is undisputed that Mr. Harvey has requested some records from LVCA directly, and indirectly through asking the BC Registry to order the LVCA to produce them. The LVCA says they have now complied with all record requests ordered by the BC Registry and, as Mr. Harvey does not dispute this, I accept LVCA's statement. However, neither party provided any evidence showing whether Mr. Harvey requested the section 42(4)(a) consent forms and whether the LVCA provided them or not. Nor did Mr. Harvey explain which years' consent forms he wishes to have.

32. In the interests of finality, I find it appropriate to order the LVCA to provide Mr. Harvey with copies of all signed section 42(4)(a) consent forms it has for the past 10 years, as that is the default retention period in the SA. If the LVCA has already provided Mr. Harvey with these consent forms, then I consider the intent of the order has been satisfied.
33. I dismiss Mr. Harvey's request for a copy of the May 3, June 7, and November 1, 2018 directors' meeting minutes, as he provided copies of those minutes in evidence. Based on the LVCA's October 2019 email to Mr. Harvey, I find it provided him with copies of all the directors' meeting minutes after May 1, 2017, and the May 8, 2018 "AGM" meeting minutes at that time. Further, the LVCA provided copies of the requested meeting minutes as evidence in this dispute. I find the LVCA has provided Mr. Harvey with the meeting minutes he requested. Harvey. I dismiss his request for these minutes.
34. Mr. Harvey asks for copies of all ordinary or special resolutions between May 1, 2017 and December 31, 2018. These records are listed under section 201(1) of the SA and so I find they must be kept by LVCA and Mr. Harvey is entitled to copies.
35. The LVCA says Mr. Harvey already has copies of all these resolutions because they are contained in the meeting minutes Mr. Harvey received when he was an LVCA director up to November 1, 2018. LVCA also says there were no resolutions between November 1 and December 31, 2018, but for Mr. Harvey's termination as a director. I have found that the LVCA already provided Mr. Harvey with copies of the requested meeting minutes, in October 2019. He does not dispute that those minutes include the text of ordinary and special resolutions, as required under SA section 20(2)(a). So, I find the LVCA has already provided copies of the resolutions requested by Mr. Harvey. I dismiss his request for copies of the resolutions.



36. Finally, Mr. Harvey asks for copies of LVCA bank account records from May 2017 to January 31, 2019 “of each transaction”. In his evidence, Mr. Harvey provided copies of signed and issued cheques as an example of what he asks for. The evidence shows that LVCA provided Mr. Harvey with its financial statements and “income/expense sheets” as provided by the membership in October 2019. LVCA told Mr. Harvey, at that time, that he was not entitled to copies of the bank account records.
37. The society is not required to specifically keep, or produce, bank account records. However, it is required to keep “adequate accounting records, including a record of each transaction materially affecting the financial position of the society”, under SA section 20(2)(c). I find this does not include bank account records, including issued cheque copies, so long as the society keeps other accounting records documenting each transaction. Mr. Harvey does not dispute that the LVCA has already provided those accounting records. Rather, I find he asks for bank records and cancelled cheques which I find he is not entitled to. I dismiss Mr. Harvey’s claim for bank account records.

### ***Director’s Expense***

38. Mr. Harvey asks that the LVCA pay him \$10 for travelling to get “identity tags” for an LVCA function. Based on the parties’ submissions and evidence, I infer Mr. Harvey refers to nametags he picked up on June 27, 2018. It is undisputed that Mr. Harvey was an LVCA director at that time.
39. LVCA bylaw 30 says a director must be reimbursed for all expenses reasonably and necessarily incurred by a director while engaged in the affairs of the society. Based on the evidence, I find Mr. Harvey paid \$56 for the nametags, and was reimbursed that amount by LVCA in June 2018. Mr. Harvey also asked for reimbursement of \$4 gas money. I infer his claim for \$10 now is for gas money, or mileage.
40. I find Mr. Harvey did not reasonably incur a \$10 expense in travelling from his neighbourhood to another one to pick up the name tags. First, Mr. Harvey admits in his June 2018 email that he forgot his wallet at home and so had to make 2 trips to

get the tags. Secondly, Mr. Harvey volunteered to pick up the tags because he said he would already be in the neighbourhood. I dismiss Mr. Harvey's \$10 claim for travel expenses.

41. Even if Mr. Harvey was entitled to gas money or travel expense reimbursement, I find his claim would be out of time under the *Limitation Act*. This is because he filed his dispute application in August 2020, more than 2 years after he reasonably should have discovered any claim for those travel expenses.

## **CRT FEES and EXPENSES**

42. 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. In this case, I find Mr. Harvey has been mostly unsuccessful in his dispute. He succeeded on only 1 of his 26 claimed remedies. Further, I find Mr. Harvey requested several extensions then ultimately failed to provide any evidence until after the deadline had passed. He later asked the LVCA to produce, as evidence, the very records the dispute was about. For these reasons, I find Mr. Harvey is not entitled to reimbursement of his CRT fees or any dispute-related expenses. Although the LVCA was substantially successful, it paid no CRT fees and claimed no dispute-related expenses.

## **ORDERS**

43. Within 30 days of this order, I order the LVCA to provide Mr. Harvey with copies of all signed section 42(4)(a) consent forms in its possession for 2011 to 2021.
44. I dismiss Mr. Harvey's \$10 claim for travel expenses.
45. I refuse to resolve the remainder of Mr. Harvey's claims.
46. 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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Sherelle Goodwin, Tribunal Member