



Civil Resolution Tribunal

Date Issued: July 19, 2021

File: CS-2020-009784

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Reith v. South Cariboo Farmers Market Society*, 2021 BCCRT 786

BETWEEN:

BONITA REITH

APPLICANT

AND:

SOUTH CARIBOO FARMERS MARKET SOCIETY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The respondent, South Cariboo Farmers Market Society (society), is a society incorporated under the *Societies Act* (SA). The society operates a local farmer's market. The applicant, Bonita Reith, is a former director and member of the society.

2. Ms. Reith says the society has expelled members, intentionally “dropped” members from the membership list and refused to provide requested copies of the membership lists to another member, MP. She says the society incorrectly held the 2019 annual general meeting (AGM) late, did not allow all eligible members to vote on the 2019 AGM business, and incorrectly counted votes. Ms. Reith also says the society incorrectly passed new bylaws in September 2020.
3. Ms. Reith asks the CRT to order the society to revoke the new bylaws. She also asks that the society hold an election conducted by an independent third party and allowing all members from the 2019 season to vote. I infer she asks for the 2019 AGM to be held again with new votes taken on all issues including the election of the society’s directors.
4. The society acknowledges that it held the 2019 AGM late but denies improper vote counting or any other irregularities. It says it correctly held the AGM by email to address 2019 business and pass much-needed bylaw amendments. I infer the society asks that this dispute be dismissed.
5. Ms. Reith is self-represented. The society is represented by a director, RG.
6. As explained below, I refuse to resolve Ms. Reith’s claims about membership termination and society records as I find Ms. Reith has no standing to bring those claims and I have no jurisdiction to address membership termination. I order the society to stop enforcing its new bylaws as I find they are invalid. Although I find the society’s 2019 AGM election results invalid, I find there is no practical remedy.

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 ISSUES

11. Ms. Reith initially named 2 directors of the society in this dispute, RG and RH. Ms. Reith has withdrawn her claim against those directors personally and so I have amended the style of cause to reflect that withdrawal. I will consider Ms. Reith's claims against the society.

Membership Records Request

12. In her final reply submission, Ms. Reith asked that the society be ordered to provide copies of its current membership list and its 2019 membership list. Ms. Reith did not ask for this remedy in her dispute application or initial submission and so I find the society had no opportunity to respond to Ms. Reith's request for membership records. I find it would be procedurally unfair to address this request and decline to do so.
13. Even if I had found it fair to address Ms. Reith's request for membership records, I would have found that Ms. Reith lacked standing to bring such a claim. The evidence shows that another society member, MP, requested the membership lists from the society, and not Ms. Reith. While Ms. Reith provided an email from MP saying that he consented to her bringing a claim on his behalf, I find this insufficient to

demonstrate that Ms. Reith has any legal right or interest to bring a legal claim on MP's behalf. So, I would have refused to resolve Ms. Reith's claim for membership records in any event.

Membership Termination - Jurisdiction

14. Ms. Reith alleges that the society expelled, or removed, 2 members, without due process. Section 130(2)(a) of the CRTA says the CRT does not have jurisdiction over a matter relating to the termination of membership in a society. So, I find the CRT has no authority to consider Ms. Reith's claim that the society terminated any memberships.

15. The society denies that it terminated any society memberships but acknowledges that it did suspend the rights of 2 members to participate in the farmer's market. Even if Ms. Reith's claim is for termination of member's rights, rather than termination of membership in the society, I find I still cannot consider Ms. Reith's claim about other members' rights. This is because I find Ms. Reith has no standing to bring her claim for membership termination, removal, or suspension, on behalf of other members who are not parties in this dispute.

16. For the above reasons, I refuse to resolve Ms. Reith's claim about membership termination under section 10(1) of the CRTA.

ISSUES

17. The remaining issues in this dispute are:

- a. Whether the society's new bylaws passed in September 2020 are invalid and, if so, what is the appropriate remedy?
- b. Whether the 2019 AGM was held late or included incorrect voting procedures and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

18. In a civil dispute such as this one Ms. Reith, as the applicant, has the burden of proving her claims on a balance of probabilities. I have reviewed the parties' submissions and weighed the evidence but only refer to that necessary to explain and give context to my decision.
19. Much of the evidence and submissions in this dispute relate to what appears to be a group of society members and former directors in conflict with the current directors and other society members. I acknowledge that conflict and accept that it has likely influenced decisions made by various directors in recent years. However, I have only considered the evidence relevant to Ms. Reith's allegations about the 2019 AGM, the new bylaws, and the records requests.
20. According to the society's constitution, filed in 2017, the society's purposes are to operate a local farmers' market, stimulate and improve local agricultural production and consumption, networking, and promoting community food self-sufficiency. The evidence shows that the main purpose of the society is to operate a local farmer's market.
21. The society is managed by a Board of Directors (Board) that is elected, or appointed, from amongst the society members, in accordance with section 42 of the *Societies Act* (SA), and the society's bylaws.
22. The society says its members approved a new set of amended bylaws in September 2020 (2020 bylaws) but provided only an unfiled copy of the bylaws. In its 2020 AGM notice package the society says it filed the amended bylaws. It is unclear whether the society means it filed the 2020 bylaws with the Registrar of Companies (Registrar), or just posted them online for its members. In any event, CRT staff confirmed that, as of March 16, 2021, the most recent set of bylaws filed with the registry were those filed on October 20, 2017 (2017 bylaws).
23. Section 17(3) of the SA says bylaw amendments do not take effect until the amendments are filed with the Registrar. As the 2020 bylaws have either not been

filed, or were filed after March 16, 2021, I find they do not apply to this dispute. I find the filed 2017 bylaws apply to this dispute.

24. Ms. Reith was a society director since 2011, and previously acted as the society's secretary. She resigned from both positions in July 2019. None of this is disputed.
25. Based on the submissions of both parties and the correspondence between members in evidence, I find Ms. Reith and other society members fundamentally disagree with the direction and leadership of the society's current Board of directors, including RH and RG.

2020 Bylaws

26. Ms. Reith says the society failed to comply with the SA or its own bylaws in passing the 2020 bylaws.
27. According to a March 11, 2020 notice, the society called a special general meeting (SGM) for March 31, 2020 to vote on a special resolution for the amended set of bylaws. It is undisputed that the SGM was adjourned due to the March 16, 2020 provincial public health order prohibiting gatherings of more than 50 people, in response to the COVID-19 pandemic.
28. In a September 26, 2020 letter emailed to the members, the society advised it would conduct its necessary 2019 AGM business via email. I will refer to this as the 2019 AGM, as the parties do.
29. In its letter the society asked members to vote on the proposed bylaws circulated on March 11, 2020. The society asked members to vote "yay" or "nay", by email, up until October 16, 2020. The society wrote that any member who did not respond to the email would be considered a "yay" vote. As explained below, I find the society's voting procedure contravenes the SA and the society's bylaws.
30. SA section 17(2) requires any bylaw amendments to be authorized by special resolution. SA section 1 defines "special resolution" to include one passed by at least 2/3 of the votes cast in accordance with the society's bylaws if those bylaws allow

indirect or delegate voting or voting by mail, email, fax, or another means of communication. Otherwise, the special resolution must be passed at a general meeting by at least 2/3 of the votes cast, or must be consented to in writing by all of the voting members.

31. SA sections 83 and 84 allow for electronic participation in general meetings, if authorized by the society's bylaws. I find the society's 2017 bylaws do not authorize electronic participation as the bylaws require voting by a show of hands (bylaw 22) or by ballot in the case of a director's election (bylaw 26). However, I find electronic participation in general meetings was allowed during the COVID-19 pandemic, as explained below.
32. On May 20, 2020 the government issued Ministerial Order 167/2020 (MO167) under section 10 of the *Emergency Program Act*. MO167 became a provision of the *COVID-19 Related Measures Act* (CRMA) on CRMA's enactment on July 8, 2020. Under section 35(a) and Schedule 1 of the CMRA, this provision remains in effect until September 28, 2021, which is 90 days after the provincial state of emergency ended on June 30, 2021.
33. Section 4 of MO167 allows for participation in a statutory meeting by telephone or "other communications medium", so long as all meeting participants are able to communicate with each other and, if applicable, vote in the meeting. I find "statutory meeting" includes society general meetings and so applies to the 2019 AGM. However, I find the society did not comply with the CRMA and MO167 because I find the participants, or society members, were not able to communicate with each other during the 2019 AGM.
34. The society's September 26, 2020 letter invites members to reply by email if they have any questions about the proposed motions. The society did not set out any communication method for the members to communicate with each other. Although neither party provided a copy of the society's actual email sending the letter, I infer the director did not openly convey the members' email addresses to all other members. This is because, as noted above, member MP asked the society for the

membership list, including emails and addresses, in an October 29, 2020 email, after the 2019 AGM letter was sent. So, I find it likely that the society did not provide each member with the ability to electronically communicate with all other members. For this reason, I find the society's 2019 AGM did not comply with the electronic attendance provisions of the CRMA and MO167.

35. Even if I had found the 2019 AGM was validly held, I would find that the bylaw amendment special resolution did not pass by a 2/3 vote, as required under the SA. In an October 27, 2020 letter to members the society reported that it "reliably contacted" 84 out of 89 members and received 5 nay votes for the bylaw amendments. It did not report how many yay votes it received. I infer the society considered the remaining 79 non-votes as yay votes, following the process described in its September 26, 2020 letter. I find this is contrary to the SA, which requires a special resolution to pass by 2/3 of the **votes cast**, regardless of whether the votes are taken in person or by electronic attendance (emphasis added). I find that a non-vote or lack of response cannot be considered a vote cast on the special resolution.
36. On balance, I find the 2020 bylaws have not been approved by the membership. I order the society to immediately refrain from enforcing the 2020 bylaws. I also order the society to refrain from filing the 2020 bylaws with the Registrar if it has not already done so.
37. It is open to the society to hold another vote at another general meeting on the 2020 bylaws or any other proposed bylaw amendments, so long as the meeting is held in accordance with the SA and the 2017 bylaws.
38. Given my conclusion above, I find I need not address Ms. Reith's allegations that the society incorrectly counted the votes cast against the bylaw amendment special resolution.

The 2019 AGM

39. Ms. Reith says, and the society does not dispute, that the society held an AGM on January 19, 2019. I infer this AGM covered the 2018 market business and so I will refer to it as the 2018 AGM.
40. Bylaw 14 requires the society to hold an AGM at least once in every calendar year and not more than 15 months after the last AGM. I find the society was required to hold the 2019 AGM no later than April 18, 2020 and that it failed to do so.
41. The society says it is not required to hold an AGM every 15 months, under the SA, so long as it holds an AGM every calendar year. While I agree that SA section 71 only requires an AGM every calendar year, the society is still required to follow its own bylaws, to the extent that they do not conflict with the SA. I do not find bylaw 14 conflicts with SA section 71 but, rather, it sets out further requirements for AGM timing. So, I find the society held the 2019 AGM later than required under its bylaws. However, given my findings above about the 2020 bylaws, and below about the director election, I find nothing turns on the society holding the meeting late.
42. In its September 26, 2020 letter the society explained the only business to be dealt with at the 2019 AGM was electing directors and passing the bylaw amendment resolution set out in the March 11, 2020 AGM notice. As I addressed the 2020 bylaws above, I will now consider whether the director election.
43. In the September 26, 2020 letter, the society asked the members to vote on 2 motions approving the appointments of RG and JM as society directors. In its 2019 AGM report, dated October 27, 2020, the society reported that each member received 4 nay votes and so concluded the motions were carried. Again, no yay votes were noted. For the same reasons explained above, I find that the election result votes are not valid as there is no indication there were any yay votes cast for either proposed director. Further, as noted above, I find the 2019 AGM electronic attendance did not comply with the CRMA and MO167. On balance, I find the motions voting RG and JM in as directors did not pass in the 2019 AGM.

44. What then is the appropriate remedy?
45. Ms. Reith asks that the society be ordered to hold a “free and fair” election governed by an independent third party, and with all 2019 members being eligible to vote. For the following reasons, I decline to order this remedy.
46. First, there is no requirement, under either the SA or the 2017 bylaws that an independent third party govern any general meeting, or the AGM. Rather, bylaws 18 and 19 require the society’s president, vice-president, director, or member to chair any general meeting, including the AGM.
47. Second, in asking that all 2019 members be eligible to vote in another directors’ election, Ms. Reith is essentially asking that any memberships that have ceased, or been terminated, in 2020 or 2021, be automatically reinstated for the purpose of voting. I find membership can cease for non-payment of membership fees or dues under bylaws 7 and 9, or a member can be expelled under bylaw 8. In either event, I find reinstating ceased or terminated members, even for voting purposes on specific motions, is outside of the CRT’s jurisdiction, as noted above. Further, I find reinstating membership would be contrary to 2017 bylaw 4, which says any member application must be accepted by the directors.
48. Third, I find the society scheduled its 2020 AGM for April 15, 2021, according to its 2020 AGM notice package. The package also included director nominee information, noting that 2 new directors would win by acclamation and 2 directors would continue to hold their positions. There is no indication that there were any other nominees for director. I find the 2020 AGM election results override, or replace, the 2019 AGM results, which I found were invalid. So, even if I ordered the 2019 AGM election to be held again, I find it would have no practical impact on the society’s directors.
49. For the above reasons, I decline to order the society to repeat its 2019 AGM directors’ election. I have already addressed the bylaw amendment special resolution proposed at the 2019 AGM. I find no further business was addressed at the 2019 AGM and so I find no further remedy is required, or appropriate here.

CRT FEES, EXPENSES AND INTEREST

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. I find Ms. Reith was mostly successful in her claim and so I order the society to reimburse her \$225 in CRT fees.

ORDERS

51. I order the society to:

- a. Immediately refrain from enforcing its 2020 bylaws,
- b. Refrain from filing the 2020 bylaws with the Registrar, if it has not already done so, and
- c. Reimburse Ms. Reith \$225 in CRT fees within 14 days of this decision.

52. Ms. Reith is also entitled to post-judgment interest, as applicable.

53. 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.

Sherelle Goodwin, Tribunal Member