



Civil Resolution Tribunal

Date Issued: October 13 2020

File: CS-2020-000309

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *H.T. v. R.C.B.A.*, 2020 BCCRT 1153

B E T W E E N :

H.T.

APPLICANT

A N D :

R.C.B.A.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about the governance of a society under the *Societies Act* (SA).
2. The respondent, R.T.B.A. (society) is a society incorporated under the SA. The society operates a non-profit baseball league.

3. The applicant, H.T., is a member of the society. He says the society failed to respond to his complaint about bullying and inappropriate discipline imposed on his minor son, who was a player on one of the society's baseball teams. The applicant seeks \$10,000 in punitive damages, plus a public apology.
4. The society says the applicant's allegations are false. It says it acted appropriately in the circumstances, consistent with its duties under SA section 53.
5. The applicant is self-represented in this dispute. The society is represented by J.F., who is a past or current society director.
6. The society requested that the parties' names be anonymized in the published version of this decision, to protect the privacy of minors. I agree that is appropriate in the circumstances, and have done so. For the same reason, I refer to the applicant's son by the anonymized initial D in this decision.
7. For the reasons set out below, I find the Civil Resolution Tribunal (CRT) does not have jurisdiction to decide this dispute. I therefore refuse to resolve it under section 10(1) of the *Civil Resolution Tribunal Act* (CRTA).

JURISDICTION AND PROCEDURE

8. These are the CRT's formal written reasons. The CRT has jurisdiction over certain society claims under section 129 of the 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. As discussed further below, CRTA section 130 sets out various society claims over which the CRT does not have jurisdiction.
12. Under CRTA section 131 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.

Mootness

13. The society says the applicant's claims are moot. It says there is no live issue between the parties, as D's suspension from baseball games is over, and the applicant did not file this dispute until 6 months after the matters in dispute were finished. The society relies on case law about mootness: *Binnersley v. BCSPCA*, 2016 BCCA 259 and *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R 342.
14. I find the issues in this dispute are not moot. The applicant seeks punitive damages and an apology for the society's conduct. The fact that the conduct is in the past does not affect these claims. The society says the applicant is seeking to compel it to conduct further investigations. That is not an order requested in the Dispute Notice, so I am not persuaded by this submission. I conclude the claims in this dispute are not barred due to mootness because they remain live issues.

ISSUES

15. The issues in this dispute are:
 - a. Does the CRT have jurisdiction to decide this dispute?
 - b. If so:
 - i. Is the applicant entitled to \$10,000 in punitive damages?
 - ii. Should the CRT order a public apology by the respondent?

EVIDENCE AND ANALYSIS

16. 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, the applicant must prove his claims on a balance of probabilities.

Does the CRT have jurisdiction to decide this dispute?

17. CRTA section 10(1) says the CRTA must refuse to resolve a claim that it considers not within its jurisdiction. I find the applicant's claims are not within the CRT's jurisdiction, so I refuse to resolve them.

18. The applicant has 2 related claims. First, he says the society failed to grant him and D procedural fairness when imposing discipline on D. He says D was wrongfully suspended from playing baseball on his team based on unproven allegations, and in any event he says the discipline was excessive. He says he and D were not given a proper opportunity to be heard or respond to the allegations, and the society failed to follow its written progressive discipline procedure.

19. Second, the applicant says the society failed to investigate and respond to his complaint that D was bullied by teammates.

20. The applicant says he is therefore entitled to punitive damages and a public apology.

21. I find there is a potential issue of standing in this dispute, as the applicant was not disciplined, and the bullying complaint was only about D. D is not a party to this dispute, and the applicant did not file the dispute as D's litigation guardian.

22. However, I find it is not necessary to decide the question of standing, as I have concluded that the CRT does not have jurisdiction to decide the applicant's claims for other reasons. Specifically, CRTA section 130(1)(c) says the CRT does not have jurisdiction over a claim that may be dealt with by the BC Supreme Court (BCSC) under Part 8 of the SA. I find that the applicant's claims may be dealt with under Part 8 of the SA, and therefore the CRT does not have jurisdiction. My reasons follow.

23. Part 8 of the SA deals with “remedies”. I find the applicant’s claims and requested remedies fall under SA, Part 8, specifically sections 102 and 108.
24. SA section 102 is subtitled “Complaints by Members”. It says a society member may apply to the BCSC for an order on the grounds that:
- a. the activities or internal affairs of the society are being or were conducted, or the powers of the directors are being or were exercised, in a manner oppressive to the member or to the member and one or more other members, or
 - b. an act of the society was done or is threatened, or a resolution of the members or directors was passed or is proposed, that is unfairly prejudicial to the member or to the member and one or more other members.
25. Under SA section 102(2)(g), the BCSC may order the society to compensate an aggrieved person.
26. SA section 105 sets out further remedies for “an omission, defect, error or irregularity in the conduct of the activities or internal affairs of a society”.
27. Since SA sections 102 and 105 are contained in SA Part 8, the CRT does not have jurisdiction over claims that “may be dealt with” under those provisions: see CRTA section 130(1)(c).
28. I find that prior BCSC cases establish that previous similar cases have been addressed by the BCSC under SA section 105. For example, *The Sol Sante Club v. Grenier*, 2006 BCSC 1804, the BCSC considered a case where the defendant’s probationary membership in a society was revoked without notice, a hearing, or reasons. In deciding the case, the BCSC relied on section 85 of the former *Society Act*, which is essentially the same as the current SA section 105. The BCSC said that under section 85 and the common law, the society owed the defendant a duty of procedural fairness, including a requirement to give him notice of possible expulsion and an opportunity to be heard by those making the decision to expel him.

29. Similarly, in *Barrie v. Royal Colwood Golf Club*, 2001 BCSC 1181 and *Turnbull-Spence v. Kamloops Long Blades Assn.*, 2004 BCSC 1500, the BCSC also found that under *Society Act* section 85, individuals were entitled to procedural fairness rights before their memberships were terminated.
30. More recently, the BCSC applied the current version of the SA in a case where 2 members of a religious society challenged the process by which individuals were appointed to an internal Religious Advisory Council by the society's executive. In *Gill v. Kalgidhar Darbar Sahib Society*, 2017 BCSC 1423, the plaintiff society members argued that the appointment process was irregular, defective, and unfair. They sought orders under SA sections 102 and 105 to nullify the appointments and direct a new selection process.
31. In *Gill*, the BCSC noted that section 85 of the previous *Society Act* was carried forward as section 105 of the new SA. The BCSC applied section 105, and concluded that there had been an omission, defect, error, or irregularity in the conduct of the society's activities or internal affairs. The BCSC granted the requested orders, under section 105(2). The BCSC also said the case might also have been decided under SA section 102, but did not apply that section because it was unnecessary and the parties did not make submissions about it.
32. Based on these BCSC cases, I find that disputes about a society's alleged failure to meet its duty of procedural fairness may be dealt with by the BCSC under Part 8 of the SA. This is summarized in *Brun v Deep Cove Yacht & Sport Club*, 2019 BCSC 1409, where the BCSC stated in paragraph 37:

The Yacht Club is a society within the meaning of the *Societies Act*. Hence the Yacht Club is subject to Part 8 of the *Societies Act* including court proceedings to address complaints by members of the society and other irregularities in the conduct of the society's internal affairs or governance.

33. Here, the applicant conceded in his submissions that the CRT does not have jurisdiction to decide a claim under SA section 102. He says his claim arises under SA section 53, which sets out the duty of care for a society's directors. Section 53

says a director must, when exercising the powers and performing the functions of a director of the society, act honestly and in good faith with a view to the best interests of the society, exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances, and act in accordance with the SA, regulations, and bylaws.

34. While I accept that section 53 may be relevant to this dispute, I find that the BCSC cases cited above establish that a claim about a breach of procedural fairness in imposing sanctions on a society member may be dealt with under Part 8 of the SA. Since the BCSC may deal with these claims, CRTA section 130(1)(c) provides that the CRT does not have jurisdiction over them.
35. I find this reasoning applies to both the applicant's requested remedies, for damages and for an apology. The damages claim is clearly a remedy under the sole jurisdiction of the BCSC to grant, under SA section 102(2)(c). Also the applicant's request for an apology is for the same alleged conduct by the society, and is based on his complaint that the society's actions were oppressive and unfair to him. For that reason, I find I have no jurisdiction to order either damages or an apology, under CRTA section 130(1)(c).
36. Also, even if the CRT had jurisdiction to decide the claim for an apology, I would not grant that order. As acknowledged by the applicant, the CRT generally does not order forced apologies, as they are unproductive and unhelpful: see *The Owners, Strata Plan BCS 983 v. Law*, 2018 BCCRT 214 at paragraph 32.
37. For all of these reasons, I refuse to resolve the claims in this dispute, under CRTA section 10(1).

CRT FEES AND EXPENSES

38. 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 see no reason in this case not to follow that general rule.

39. The society is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.

ORDER

40. I refuse to resolve the applicant's claims, and this dispute.

Kate Campbell, Vice Chair