



Civil Resolution Tribunal

Date Issued: September 15, 2021

File: CS-2020-008266

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Oakley v. Bridge River Valley Community Association*, 2021 BCCRT 1000

BETWEEN:

STEVE OAKLEY

APPLICANT

AND:

BRIDGE RIVER VALLEY COMMUNITY ASSOCIATION

RESPONDENT

AND:

STEVE OAKLEY

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about society membership and inspecting society documents. The applicant, and respondent by counterclaim, Steve Oakley, is a former member of the respondent, and applicant by counterclaim, Bridge River Valley Community Association (BRVCA), a society incorporated under the *Societies Act* (SA). Mr. Oakley requests an order that his membership be restored because BRVCA failed to automatically renew it. He also requests an order for BRVCA to produce several records that he requested while he was a member.
2. BRVCA says the CRT does not have jurisdiction to decide Mr. Oakley's membership termination claim. Further, it says that Mr. Oakley's membership expired, and he has not properly applied for a new membership or paid a new membership fee.
3. BRVCA also says that it has already disclosed most of the documents Mr. Oakley is legally entitled to inspect. BRVCA says that Mr. Oakley previously published BRVCA information online, including personal information of BRVCA members and contractors. BRVCA says it is willing to disclose a requested register of members and accounting records to Mr. Oakley if he is restricted from disclosing or misusing the information. Specifically, BRVCA counterclaims for orders that Mr. Oakley inspect any BRVCA records in accordance with BRVCA bylaws and policies and SA section 25(7), and that Mr. Oakley not publish or share the records and must keep them confidential. Mr. Oakley says he is entitled to the records without restrictions.
4. Mr. Oakley is self represented in this dispute. BRVCA is represented by a director.

JURISDICTION AND PROCEDURE

5. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize

any relationships between the dispute's parties that will likely continue after the CRT process has ended.

6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
7. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under CRTA section 131, 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.
10. Mr. Oakley says he has rights under the *Canadian Charter of Rights and Freedoms* (Charter) to voice his opinions of and frustration with BRVCA. I find Mr. Oakley does not directly allege that his Charter rights have been infringed, and does not seek a section 24(1) Charter remedy here. So, I find that his claims do not include a constitutional question, and are not excluded from the CRT's jurisdiction on that basis.

ISSUES

11. The issues in this dispute are:
 - a. Does the CRT have jurisdiction to decide whether Mr. Oakley's membership should be restored, and if so, is Mr. Oakley entitled to such a restoration?

- b. Is Mr. Oakley legally entitled to inspect any requested records withheld by BRVCA?
- c. Should I order Mr. Oakley to inspect BRVCA records in accordance with BRVCA bylaws and policies and SA section 25(7), and to keep the records confidential and not disclose them to anyone?

EVIDENCE AND ANALYSIS

- 12. In a civil proceeding like this one, Mr. Oakley must prove his claims on a balance of probabilities. BRVCA must prove its counterclaims to the same standard. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
- 13. BRVCA was first incorporated in 1996 under the name Bridge River Valley Economic Development Society. According to the society's constitution, BRVCA's purposes include encouraging and assisting economic development, government management, recreational facility improvement, and land and natural resource conservation of the Bridge River Valley, among other purposes.
- 14. I find the evidence shows that the background of this dispute involves Mr. Oakley's concerns about alleged BRVCA mismanagement, and his related requests for BRVCA records. However, none of the parties' requested remedies in this dispute turn on this alleged mismanagement. The dispute's background also involves BRVCA's concerns about Mr. Oakley's public and private behaviour relating to BRVCA, and his past publication of society information, including director and member information.

Does the CRT have jurisdiction to decide whether Mr. Oakley's membership should be restored?

- 15. Under SA section 109.2(5) and CRTA section 130(2)(a), the CRT does not have jurisdiction over society claims relating to membership termination.

16. On February 20, 2020, citing concerns about Mr. Oakley's actions involving the society, the BRVCA board of directors suspended his involvement in any BRVCA committees and events until he committed in writing to appropriate behaviour and signed the society's Code of Conduct and Code of Ethics. I find correspondence between BRVCA, Mr. Oakley, and his lawyer, showed that this suspension did not terminate Mr. Oakley's membership. Mr. Oakley does not describe, and I find the evidence does not show, that BRVCA denied Mr. Oakley any specific rights or entitlements required under the society's applicable bylaws or the SA. Mr. Oakley says the board's refusal to involve him in certain BRVCA activities was unfair, but I find that his claim for membership reinstatement does not turn on the fairness of that decision. My reasons follow.
17. Mr. Oakley says that BRVCA changed its membership bylaws specifically to exclude him from the society, because of his document requests discussed below. I find Mr. Oakley refers to the new society bylaws filed with the Registrar of Companies on July 2, 2020. The new bylaws said that membership terms were for 1 year and that the directors could set an annual membership fee. Mr. Oakley says that memberships used to be renewed automatically, and that this past practice should continue to be followed for his membership.
18. Mr. Oakley does not explain why the new bylaws should not apply to his membership. Further, he does not explain how the 1 year membership term or fee excludes him from membership. Mr. Oakley says that he is the first person to have his membership renewal "turned down", but did not provide supporting evidence or explain whether other members' renewals or applications were handled differently than his. Importantly, I find Mr. Oakley admits that he is no longer a BRVCA member, because he says BRVCA "denied" his membership and he asks for it to be "restored". BRVCA says Mr. Oakley's membership terminated because it expired under the new bylaws. SA section 69(1)(a) says a society membership terminates when the term of membership expires. Mr. Oakley does not deny that he has not applied for a renewal or a new membership, and has not paid a new annual membership fee.

19. On the evidence before me, I find Mr. Oakley's membership terminated on October 31, 2020, and he now seeks to have it reinstated. I find this request for reinstatement is related to Mr. Oakley's membership termination. As noted, the CRT does not have jurisdiction over such claims. I find the CRT does not have jurisdiction to consider Mr. Oakley's claim for BRVCA allegedly improperly terminating his membership, or failing to automatically renew it (see paragraph 68 of the persuasive but non-binding CRT decision *Pang v. Little Mountain Residential Care & Housing Society*, 2021 BCCRT 947).
20. I refuse to resolve this claim under section 10 of the CRTA.

Is Mr. Oakley entitled to inspect any records withheld by BRVCA?

21. SA section 20 requires a society to keep certain listed records. Section 24 allows a member to inspect records listed under section 20(1), and to inspect records listed under section 20(2) unless the bylaws provide otherwise. Section 24 also allows a person, other than a member or director, to inspect records listed under section 20 to the extent permitted by the bylaws, except for the register of members. I find the SA and bylaws do not require BRVCA to provide any other records inspections. As further discussed below, I find that at the time of Mr. Oakley's record requests, the BRVCA bylaws and directors' resolutions did not restrict access to any records as permitted under SA sections 24(2)(b) and 25(1).
22. Mr. Oakley requests an order for BRVCA to produce "all financial documents from 2014 to present", all documents related to a property purchase, and all documents related to contracts with 1 company and 1 individual. I find that none of those types of documents are identified in SA section 20 or must be made available for inspection under section 24, except for financial statements and auditor reports under section 20(1)(k) and accounting records under section 20(2)(c). Apart from those 2 exceptions, I dismiss Mr. Oakley's claim for those records.
23. Mr. Oakley also requests an order for BRVCA to produce all documents "as requested under the BC Societies Act provisions". He does not further identify those documents in his submissions. However, the evidence shows that Mr. Oakley requested access

to several section 20 documents from the Registrar of Companies on May 1, 2020. Correspondence in evidence shows that BRVCA received this request and provided reasons for withholding certain documents, so the Registrar did not order the society to provide those records. The requested section 20 records were:

- a. Current versions of the certificate of incorporation, constitution, bylaws, statement of directors and registered office, and register of directors.
- b. Records showing any disclosure by 2 individuals under SA section 56(3)(c) or 62(3)(c).
- c. The register of members, including contact information.
- d. Minutes of all 2018 and 2019 member meetings.
- e. 2018 and 2019 financial statements under SA section 35, and any related auditor report if applicable.
- f. Minutes of all 2018 and 2019 director meetings.
- g. Accounting records for the years 2014 through 2019.

24. On the evidence and submissions before me, I find that Mr. Oakley's claim for section 20 documents is for the above-listed documents requested from the Registrar of Companies.

25. In its submissions, BRVCA acknowledges that Mr. Oakley was a still a member when he requested the section 20 society records. BRVCA also admits that at the time of Mr. Oakley's requests, before July 2, 2020, its bylaws and policies did not restrict members' access to section 20 records, including the register of members. So, BRVCA does not object to sharing the requested section 20 records with Mr. Oakley, although it requests that I order him to use them only for certain purposes and not to disclose them to anyone, as discussed later.

26. I find that because Mr. Oakley requested access to documents while he was still a member and before there were any bylaws restricting record inspections, he remains

entitled to that inspection despite his subsequent membership termination (see *Sellers v. Kitty Cat P.A.L. Society*, 2020 BCCRT 376 at paragraphs 58 to 68, which is not binding on me but which I find persuasive).

27. BRVCA says that apart from the accounting records and the register of members, discussed below, it has already made the requested records available for Mr. Oakley to inspect. Mr. Oakley says, "I have NEVER been provided ANY documents that have been requested" (emphasis in original). Apart from this general statement alleging that BRVCA provided no requested documents, Mr. Oakley does not identify the specific documents that he says are missing.
28. Contrary to Mr. Oakley's statement, I find that most of the requested records were submitted as evidence in this CRT dispute, and have therefore been available for his inspection and copying. This includes the constitution, bylaws, statement of directors and registered office, register of directors, director and member meeting minutes for 2018, 2019, and other years (which BRVCA says include any conflict of interest disclosures), and financial statements for 2016 to 2019. Weighed together with Mr. Oakley's failure to identify specific missing records, I find that he has now had an opportunity to inspect all of the requested section 20 records except for 2014 and 2015 financial statements, accounting records for 2014 through 2019, and the register of members. So, apart from those exceptions, I dismiss his claim that I order an additional inspection of the requested section 20 records.
29. I allow Mr. Oakley's claim in part. Specifically, I order BRVCA to provide him with copies of the society's 2014 and 2015 financial statements including any auditor reports, its accounting records for 2014 through 2019, and the register of members as it existed on May 11, 2020 when Mr. Oakley reiterated his request for it in correspondence with BRVCA. As noted, there were no directors' resolutions restricting access to the register of members under SA section 25(1), and no applicable records restriction bylaws. Given that the society had an opportunity to provide these records earlier and did not, I order that no SA section 27 fee may be charged by BRVCA for these copies.

Should I order Mr. Oakley's use of BRVCA records to be restricted?

30. BRVCA counterclaims for orders that Mr. Oakley use its SA section 20 records as follows:

- a. Inspect the records in accordance with BRVCA bylaws and policies.
- b. Not publish, disseminate, share, or otherwise disclose the records.
- c. Not use the register of members except in accordance with SA s.25(7).
- d. Ensure the records are effectively protected in order to maintain the security, integrity, and confidentiality of such information and not permit unauthorized access to the records.

31. As noted, under SA section 24, a society may pass bylaws restricting members' access to most records listed under section 20(2). Under SA section 25(1), the directors may also pass a resolution restricting members' rights to inspect the register of members. Without such a bylaw or resolution, members' access to section 20 records is unrestricted under the SA. As noted, BRVCA admits that it had no such bylaws or resolutions when Mr. Oakley requested the records. So, I find that the SA and applicable bylaws and resolutions provide no basis for restricting Mr. Oakley's record inspections.

32. BRVCA says that any records inspection should be performed in accordance with its Access to Records Policy, adopted May 31, 2021. This policy outlines the times, location, and format for record inspections. Given that I have ordered copies of records rather than inspections, I find it is unnecessary to order Mr. Oakley to inspect records in accordance with BRVCA's bylaws and policies. It is undisputed that the policy pre-dates Mr. Oakley's records requests, and that its restrictions on inspecting certain types of records are not applicable to those requests.

33. Turning to the register of members, I find that the section 25(7) restrictions on using that information only apply where the directors restrict access to it by resolution, which was not the case here. So, I decline to order Mr. Oakley to follow section 25(7).

34. BRVCA also says that given Mr. Oakley's previous public disclosures of director and member names, among other information, it is concerned that he will disseminate personal and other information he obtains from BRVCA records, or use it to "harass and humiliate" persons associated with BRVCA. The society admits that disclosing records to Mr. Oakley does not necessarily violate the *Personal Information Protection Act* (PIPA), but says that further disclosures of that information by Mr. Oakley could violate PIPA or other laws. BRVCA says Mr. Oakley should be ordered not to disclose BRVCA records to anyone.
35. BRVCA correctly observes that ordering restrictions on Mr. Oakley's use of its records may be unnecessary because he must already follow legal requirements about those records' use. I find that at least some of the inspected information may not be freely distributed by Mr. Oakley (see, for example, SA section 26 that restricts the use of director contact information). I find that Mr. Oakley does not say that he intends to disclose any of the records at issue contrary to law. I find that BRVCA's concerns about Mr. Oakley misusing BRVCA records in the future are largely speculative. Further, SA section 24 and the applicable bylaws do not contemplate restrictions on using and disclosing records that are otherwise available for inspection. I find such orders are unnecessary and I decline to make them.
36. BRVCA says that orders restricting Mr. Oakley's use and sharing of its records will have the effect of a declaratory judgment, providing certainty of the parties' rights and obligations. To the extent that BRVCA's claims are for such a declaratory judgment, I find that the CRT has no equitable jurisdiction to grant declaratory relief on its own, as explained in the non-binding but persuasive decision *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379. As stated in paragraph 67 of *Fisher*, I find the CRT can make a declaratory order if it is incidental to a claim in which the tribunal has jurisdiction, but the scope for such orders is very narrow. Given that I declined to order redundant restrictions on Mr. Oakley's use and sharing of BRVCA records, I find that incidental declaratory orders about the same thing are also redundant, and I decline to make any.

37. BRVCA says that it intends to redact personal information from the 2014 to 2019 accounting records it provides to Mr. Oakley. Mr. Oakley does not directly comment on this, although he says he generally wants “full disclosure.” PIPA section 18(1)(o) authorizes the disclosure of personal information if authorized by another statute. I find SA sections 20 and 24 authorize the record disclosures ordered here, so they do not violate PIPA. As noted, there is no applicable bylaw or directors’ resolution restricting access to the requested BRVCA records. So, I find there is no authority in the SA, PIPA, or applicable bylaws and resolutions, for BRVCA to refuse to disclose or to redact those records. I find Mr. Oakley is entitled to unredacted copies of BRVCA’s records, not to different records created specifically for him.

38. I dismiss BRVCA’s counterclaims.

CRT FEES and EXPENSES

39. 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. I find Mr. Oakley was partly successful in his claim for records inspections, so I find he is entitled to reimbursement of half the CRT fees he paid for his claims, which equals \$112.50. BRVCA was unsuccessful in its counterclaims, but Mr. Oakley paid no fees for those counterclaims, so I order no fee reimbursement for them. Neither party claimed CRT dispute-related expenses.

ORDERS

40. Within 14 days of the date of this decision, I order BRVCA to provide Mr. Oakley with unredacted copies of the following records, and not to charge a fee for the copies:

- a. BRVCA’s 2014 and 2015 financial statements including any auditor reports, as described in SA section 20(1)(k),
- b. BRVCA’s 2014, 2015, 2016, 2017, 2018, and 2019 accounting records, as described in SA section 20(2)(c), and

c. BRVCA's register of members, as described in SA section 20(1)(h), as it existed on May 11, 2020.

41. Within 28 days of the date of this decision, I order BRVCA to pay Mr. Oakley \$112.50 in CRT fees.
42. I refuse to resolve Mr. Oakley's claim for an order reinstating his membership in BRVCA. I dismiss Mr. Oakley's remaining claims, and BRVCA's counterclaims.
43. Mr. Oakley is entitled to applicable post-judgment interest from the date of this decision.
44. 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.

Chad McCarthy, Tribunal Member