



Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Kraus v. Nanaimo Hungarian Cultural Society*, 2021 BCCRT 1207

B E T W E E N :

EDITH KRAUS JR., ANDREA BONKOWSKI, EDITH KRAUS, OTTO KRAUS, DUDLEY HOLIFIELD, KENNETH CRIPPS, MARIA ALEXANDER, GRAHAM ALEXANDER, LOUIE HORVATH JR., LEONA HORVATH, LOUIE HORVATH, and MARYANN HORVATH

APPLICANTS

A N D :

NANAIMO HUNGARIAN CULTURAL SOCIETY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicants, Edith Kraus Jr., Andrea Bonkowski, Edith Kraus, Otto Kraus, Dudley Holifield, Kenneth Cripps, Maria Alexander, Graham Alexander, Louie Horvath Jr.,

Leona Horvath, Louie Horvath, and Maryann Horvath are members of the respondent, Nanaimo Hungarian Cultural Society (NHCS). NHCS is a society registered under the *Societies Act* (SA).

2. The applicants filed 5 claims in this dispute that are primarily over the society's governance.
3. As set out in the Dispute Notice, the first claim is about an alleged filing error in September 23, 2018 related to the NHCS's status as a "member-funded" society. The applicants seek an order that NHCS correct the alleged error by filing a Corporate Register Correction Form (Form 37).
4. Next, the applicants claim the directors developed a new set of bylaws without properly consulting the membership and they ask for an order that the directors "rescind a call to vote" on the proposed bylaws.
5. In the applicants' third claim, they allege the NHCS directors and "core supporters maintain control through a longstanding practice of oppression". They seek an order that the directors "cease the oppression and intimidation of existing members, to accept new members without oppressing their opinions, and restore the members who have been unjustly expelled".
6. The fourth claim is about the election of NHCS's directors at a February 2, 2020 Annual General Meeting (AGM). The applicants claim the existing directors did not follow the bylaws and influenced the election process to remain in power. They seek an order that the NHCS conduct a fair and inclusive election for the NHCS board of directors and require an impartial chair to oversee the election process to ensure no interference or obstruction.
7. Lastly, the applicants say NHCS might have improperly used either NHCS or private trust funds to defend a legal action against the directors. They seek an order that the directors not use NHCS or private trust funds to finance their defence against legal challenges.

8. Above, I described the claims and requested orders based on the remedies requested in the Dispute Notice. In argument, the applicants asked to revise their claims and change some of the requested orders, which I address in the body of my decision.
9. NHCS denies the applicants' claims. It says the Civil Resolution Tribunal (CRT) does not have jurisdiction over most of the applicants' claims. Jurisdiction means the CRT's authority to resolve a dispute. It also says the applicants' claim over the member-funded status is out of time under the *Limitation Act* and the claim about the bylaw amendments is moot.
10. The applicants are represented by Edith Kraus Jr. and NHCS is represented by a director.
11. For the reasons that follow, I dismiss the applicants' claim about the bylaw amendments. I refuse to resolve the applicants' remaining claims as I find they are outside the CRT's jurisdiction.

JURISDICTION AND PROCEDURE

12. These are the CRT's formal written reasons. 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.
13. 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.

14. 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.
15. 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.
16. Under CRTA section 10, 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.
17. The CRT's jurisdiction over society claims is relatively novel and technical. I found these unrepresented parties' initial arguments did not address certain jurisdictional issues. So, I invited the parties to make further submissions about whether the CRT has jurisdiction over the applicants' claims.
18. I have received and reviewed all the parties' submissions and discuss my conclusions in the reasons that follow. However, I refer only to that necessary to explain and give context to my decision.

ISSUES

19. The issues in this dispute are:
 - a. Does the CRT have jurisdiction to resolve the applicants' claims?
 - b. Does the *Limitation Act* apply to bar the applicants' claim about the member-funded status?
 - c. Is the applicants' claim over the proposed bylaw amendments moot? If so, should I resolve it anyway?
 - d. Have the applicants proven any claims that fall within the CRT's jurisdiction and if so, what are the appropriate remedies?

EVIDENCE AND ANALYSIS

20. In a civil claim such as this one, the applicants have the burden to prove their claims on a balance of probabilities (this means “more likely than not”).

Member-Funded Society Status

Background

21. NHCS was incorporated in 1986 under the former *Society Act*. The *Society Act* was replaced with the SA on November 28, 2016.

22. The new SA created a special category of member-funded society that did not exist under the *Society Act*. SA section 190 defines “member-funded society” as a society whose constitution contains a prescribed statement in SA section 191(1). Unlike an ordinary society, a member-funded society has restrictions on receiving funding and it is allowed to disburse its property to the members on dissolution or liquidation.

23. After the SA came into effect, there was a 2-year transition period where all pre-existing societies had to electronically re-file their constitution and bylaws with BC Registry Services. SA section 242 permitted a society to elect to become a member-funded society when filing the transition documents so long as:

- a. the membership first passed a special resolution at a general meeting to add the section 191(1) constitution statement, and
- b. the society was not a prohibited type of society, such as those who receive public donations or government funding over a prescribed amount and some other society types.

24. Once the 2-year transition period expired, an ordinary society who wished to become a member-funded society had to apply to the BC Supreme Court (BCSC) under SA section 193 (Altering constitution to become member-funded society).

25. A NHCS director electronically filed NHCS’s transition documents with the registry on September 23, 2018. That director undisputedly stated “yes” to the question: “Does

your society qualify and want to become a member-funded society?”. Based on the director’s answer, the parties’ records state the Registrar amended NHCS’s constitution to add the section 191(1) constitution statement. However, NHCS had not first passed the necessary special resolution approving the constitution change to a member-funded society as required under SA section 242. This is not refuted.

26. According to the directors’ internal communications, they had not understood that they first needed membership’s approval before saying “yes” to the question. After becoming aware of the mistake, the NHCS membership voted on a special resolution at a March 2019 AGM for NHCS to be a member-funded society, which allegedly passed.
27. In August 2019, the former director reported to the membership that he spoke with an “Examiner” from the Registrar’s office. The director reported that the Examiner concluded that NHCS effectively became a member-funded society by its 2018 filing. He reported that NHCS could revert back to an ordinary society by passing a special resolution and filing a correction to the constitution.
28. I note that under SA section 192, a society can “cease” to be a member-funded society by altering its constitution to remove the 191(1) statement. SA section 15 says a society may alter its constitution if authorized by special resolution, which means 2/3 votes cast by voting members at a general meeting or that is consented to in writing by all voting members.
29. The applicants argue that the SA did not permit retroactive approval and NHCS could not correct the filing error by allegedly approving the status change at the March 2019 AGM. They also argue that the vote was invalid for alleged lack of notice and other reasons.
30. According to an April 1, 2021 email from Registry Services, its staff informed the applicants that NHCS could correct an error made in its records by filing the Corporate Register Correction Form 37. In that form, NHCS would need to state that the NHCS did not obtain a special resolution of its members to become a member-funded

society and ask the Registrar to remove the section 191(1) statement from NHCS's constitution.

31. The applicants argue that the NHCS must correct the 2018 filing error to revert back to an ordinary society. They bring this CRT claim for an order requiring NHCS to file the Form 37 for that purpose and without requiring another special resolution.
32. NHCS says the directors cannot file the form because the majority of the membership already decided the status of NHCS as a member-funded society. NHCS says the claim is also out of time under the *Limitation Act*.

Does the CRT have jurisdiction to resolve the applicants' claim over the member-funded status?

33. CRTA section 129 grants the CRT jurisdiction (authority) over society claims concerning the interpretation of the SA or bylaws, or an action, threatened action, or decision of the society, or its directors, in relation to a member. CRTA section 130 sets out claims beyond the CRT's jurisdiction. CRTA section 131 sets out the type of orders that are available to the CRT in resolving a society claim.
34. I acknowledge the Registry Services staff recommended to the applicants that they resolve this claim through the CRT process, but the staff's recommendation is not determinative. The CRT's jurisdiction over society disputes is prescribed by the CRTA. I cannot make a finding or grant an order about a claim that is outside the CRT's jurisdiction.
35. With a limited exception for "unfairly prejudicial" claims, CRTA section 130(1)(c) specifically excludes from the CRT's jurisdiction those claims that may be dealt with by the BCSC under Part 8 [Remedies] of the SA. See discussion in *Pang v. Little Mountain Residential Care & Housing Society*, 2021 BCCRT 947 at paragraphs 27 to 31, which is not binding on me, but I find the reasoning persuasive. The applicants do not argue that their claim is about unfairly prejudicial conduct under CRTA section 131(2) and so I have not discussed this section any further in my decision here.

36. I find the applicants' claim to correct the 2018 filing error effectively falls under the BCSC's authority in Part 8 sections 105 and 108(1) of the SA.
37. Section 105 says the BCSC can make orders to correct or validate omissions, defects, errors or irregularities in a society's conduct of activities or internal affairs.
38. Section 108(1) says the BCSC has authority to make any order it considers appropriate to correct a society's basic records, including its constitution, where information is alleged to be wrongly entered, retained in, deleted, or omitted.
39. I find the CRT has no concurrent jurisdiction to do what is necessary to "correct" NHCS' constitution to change its status. I draw no conclusion on whether the NHCS's records require the requested correction.
40. CRTA section 130(1)(d)(i) says the CRT does not have jurisdiction "in relation to a claim" to alter a constitution to become a member-funded society (SA section 193). I find the contested 2019 AGM vote discussed above was for the purpose of becoming a member-funded society. For this reason, I find I cannot decide the related issue of the validity of NHCS's 2019 AGM vote to alter its status either.
41. Taking all these provisions together, I conclude that the CRT does not have jurisdiction to decide the applicants' claim over the member-funded status or to correct an alleged error in its constitution. I find I must refuse to resolve this claim under CRTA section 10.
42. Considering this conclusion, I have not addressed NHCS's *Limitation Act* argument.

Proposed Bylaws Amendments

43. In about 2020 NHCS went through a process of modifying and developing a new set of proposed bylaws. The evidence shows that NHCS's directors consulted with the membership. The applicants say the new bylaw development process was inadequate and lacked transparency. As set out in the Dispute Notice, the applicants initially asked for an order that NHCS not vote on the proposed new bylaws.

44. Since commencing this dispute, the membership voted on a special resolution to adopt the new bylaws and that resolution was defeated. Thus, NHCS did not amend its bylaws and NHCS's bylaws are still those registered in 2018.

45. An issue is said to be moot where, after a dispute is started, events occur that affect the parties' relationship so that no "present live controversy" exists affecting their rights: see *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342, and *Binnarsley v. BCSPCA*, 2016 BCCA 259 at paragraphs 22 and 23). In determining mootness, the courts have set out a 2-step analysis:

First, has the live issue disappeared, and any remaining issues theoretical or academic?

Second, if there is no live issue, should the court (or CRT) exercise its discretion to hear the case anyway?

46. I conclude that the applicants' claim about the proposed bylaws is now moot because the live issue disappeared when the vote was defeated. The SA and bylaws have no requirement for a certain type or level of membership consultation in developing new bylaws and I find no reason to decide this claim anyway. I therefore dismiss this moot claim.

47. In argument, the applicants ask that I resolve an additional claim about the proposed bylaw amendments. They allege NHCS is applying the defeated (proposed new) bylaws rather than the filed bylaws in the conduct of its business. The applicants ask for an order that the directors only apply "policies and procedures that exist in the current NHCS bylaws that are on file with BC Registry Services".

48. I find NHCS has not had a reasonable opportunity to respond to the applicants' new claim because it was brought too late in the process. So, I conclude that it would be procedurally unfair to decide it. I also find the applicants' requested remedy would serve no practical purpose since NHCS is already required to follow the filed bylaws. For these reasons, I decline to resolve this new claim.

Alleged Membership Oppression and Terminations

49. The applicants claim that NHCS's directors have maintained control of the NHCS through a longstanding practice of oppression. In argument, they provided several examples of the alleged oppression. In the Dispute Notice, the applicants requested an order that the directors "cease the oppression and intimidation of existing members, to accept new members without oppressing their opinions, and restore the members who have been unjustly expelled".
50. As discussed, CRTA section 130(1)(c) excludes from the CRT's jurisdiction those society claims that may be dealt with by the BCSC under SA Part 8. Part 8 contains section 102(1)(a) that says a society may apply to the BCSC for an order under this section on the grounds that 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.
51. SA section 109.2(5) and CRTA section 130(2)(a), say the CRT does not have jurisdiction over society claims relating to membership termination.
52. After bringing the provisions to the parties' attention, the parties all agree that the oppression claim is outside the CRT's jurisdiction. However, the applicants argue the CRT still has jurisdiction to decide that part of their claim that deals with NHCS revoking memberships and expelling members who allegedly challenge the directors' actions. They argue that CRTA section 130(2)(a) only precludes the CRT from ruling on membership termination matters "if" the NHCS followed the proper procedures during the expulsion process. They say NHCS did not follow the SA or bylaws and so in their view, the CRT has jurisdiction to rule on this issue. I disagree with the applicants' interpretation of the CRT's jurisdiction.
53. SA section 109.2(5) says a member may not make a request for resolution by the CRT "with respect to any matter relating to the termination of membership in a society". I find this includes the question of whether NHCS followed the SA, bylaws or proper procedures when terminating members, whether through expulsion or membership revocation. I conclude that the CRT has no jurisdiction over this claim.

54. As a separate but related issue, SA section 109.2(1) states that only a society or member of a society may make a request for resolution by the CRT. I find this section does not permit members to bring an application on behalf of non-members who are not parties to this dispute to have their memberships approved or restored. This means the applicants have no standing in any event to bring this claim to the CRT on behalf of other people.
55. Under CRTA section 10, I must refuse to resolve the applicants' claims over membership terminations and for an oppression remedy because they fall outside the CRT's jurisdiction.

Director Elections

56. As mentioned, the applicants allege the directors did not comply with the bylaws and influenced the February 9, 2020 AGM election process to get re-elected. The applicants seek an order that NHCS conduct a fair and inclusive election for the NHCS board of directors and require an impartial chair to oversee the election process to ensure no interference or obstruction. NHCS denies the claim and says it already uses an impartial chair to oversee the elections.
57. Under bylaw 26, the elected directors "retire from office" at each AGM and their successors are then elected. This means there might be a new or different board of elected directors since this dispute was initiated in 2020. I note the SA and NHCS's filed bylaws are silent on the inclusivity and impartiality of director elections.
58. As discussed above, the CRTA excludes the CRT from resolving a claim about a society's general conduct and internal affairs. I find the CRTA does not otherwise grant the CRT authority to intervene to direct the NHCS's internal processes and handling of its further elections. I refuse to resolve the applicants' claim under CRTA section 10.

Funding Allocations

59. The applicants' last claim is about the administration and distribution of funds originating from a private trust. NHCS says neither the applicants nor the CRT have jurisdiction over how this private trust fund is administered. The trust fund is allegedly managed by trustees who are not parties to this dispute.
60. The applicants point to a provision in a copy of the Will that created the trust. It states the deceased' residuary estate is for NHCS's "own use absolutely". The applicants argue that this provision means the membership should have a say in how the private trust funds are used and they do not currently have any say.
61. The applicants submit that the trust funds should not be used where the NHCS's directors' have shown "flagrant disregard" for the SA and bylaws. As mentioned, they seek an order that the directors not use NHCS funds or the private trust funds to finance their legal defences.
62. I note the SA has provisions that regulate the indemnification of directors and payment of legal and other fees for certain legal actions. While the applicants' claim is not entirely clear, they do not reference these SA provisions. They also did not submit evidence showing that NHCS is funding the defence of an action against a director. So, I find this claim is likely over the applicants' disagreement with the distribution of funds from a private trust fund. For the applicants to bring a claim against the trustees, they would have to name them as respondents and they have not.
63. Further, I find the administration or distribution of funds from a private trust is not a claim concerning the interpretation of the SA or bylaws, or an action, threatened action, or decision of the society, or its directors, in relation to a member (CRTA section 129). For this reason, I agree with the NHCS that this claim falls outside the CRT's society claims jurisdiction.
64. I refuse to resolve this claim under CRTA section 10.

CRT FEES AND EXPENSES

65. 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. As the unsuccessful parties, I find the applicants are not entitled to reimbursement of their paid CRT fees.
66. None of the parties claimed any other dispute-related expenses.

ORDER

67. I dismiss the applicants' claims over the bylaw amendments and CRT fees.
68. I refuse to resolve the applicants' remaining claims in this dispute.
69. 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.

Trisha Apland, Tribunal Member