



# Civil Resolution Tribunal

Date Issued: February 4, 2022

File: CS-2021-004731

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Fowler v. Quesnel Rod and Gun Club*, 2022 BCCRT 133

B E T W E E N :

MICHAEL FOWLER

**APPLICANT**

A N D :

QUESNEL ROD AND GUN CLUB

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This dispute is about society governance.
2. The respondent, Quesnel Rod and Gun Club (society), is a society incorporated under the *Societies Act* (SA). The applicant, Michael Fowler, is a former director of the society.

3. Mr. Fowler says the society's board of directors (board) has repeatedly violated the society's bylaws by taking actions without a vote of the membership, and by undemocratically removing and replacing directors who object to these actions.
4. As remedy for his claims, Mr. Fowler requests an order that the board stop ignoring the society's constitution and bylaws. He also requests an order that the society hold an annual general meeting (AGM) with an "unbiased" election to replace all officers at the earliest opportunity.
5. The society denies Mr. Fowler's claims, and says it did not violate any bylaws.
6. Ms. MacDonald is self-represented in this dispute. The society is represented by its president.

## **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. 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.
9. 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.

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.

## **ISSUES**

11. The issues in this dispute are:
- a. Should the CRT order the society to “stop ignoring” its constitution and bylaws?
  - b. Should the CRT order the society to hold an AGM, including a directors’ election?

## **REASONS AND ANALYSIS**

12. In a civil claim like this one, Mr. Fowler, as applicant, must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ evidence and submissions, but below I only refer to what is necessary to explain my decision.
13. In his submissions, Mr. Fowler argues that the society’s board breached bylaw 4(n) by deciding to permit a contractor to harvest Crown-owned timber on society property without a vote by the society’s membership. Bylaw 4(n) says the board will have full control of the management of all the society’s lands and premises. It also says the board will not commit the society in any major undertaking or in any way convey, mortgage or otherwise charge the said property except on order of the majority of sustaining members in attendance at an AGM.
14. Mr. Fowler says the timber harvest was a “major undertaking”, as contemplated in bylaw 4(n), and the society says it was not. Both parties provided substantial evidence about the timber harvest, and the decision leading to it.

15. Also, Mr. Fowler says the society breached its bylaws by removing him and others from director positions and “replacing them with hand picked appointees”.
16. Bylaw 4(e) requires an “extraordinary resolution” to remove a director. The current SA does not mention extraordinary resolutions. However, the former *Society Act*, which was repealed in November 2016, said in section 100(2) that if an existing society’s bylaws provided for an extraordinary resolution, this must be taken to mean a special resolution. In both the current SA and the former *Society Act*, a special resolution means a resolution passed in a general meeting, by delegate or mail voting if permitted, or consented to in writing by every society member. Under the SA, which is binding, such a vote requires a 2/3 majority to pass. There is no indication in the evidence that the society membership approved a special resolution to remove any directors, including Mr. Fowler. Rather, the society’s Dispute Response Form says the vote to remove Mr. Fowler as director was taken at a board meeting. This would not meet the requirements of the society’s bylaws to remove a director.
17. Although I have reviewed all the parties evidence and submissions, I find it is not necessary for me to decide whether the society breached its bylaws about major undertakings or removing directors. This is due to my conclusions below about the remedies Mr. Fowler requests in this dispute.

### ***Order to stop ignoring bylaws and constitution***

18. Mr. Fowler seeks an order that the board stop ignoring the society’s constitution and bylaws. I find this is equivalent to an order that society follow its constitution and bylaws. I do not make this order, for the following reasons. The society is already required to follow its bylaws and act in a manner consistent with its constitution. A CRT order to do so would not change this legal obligation, and therefore would have no practical effect.
19. Also, an order to do something or stop doing something is known as injunctive relief. An injunctive order cannot be vague and ambiguous. It must give the parties proper notice of the obligations imposed on them and clearly define the expected standard of compliance (see *Nova Scotia v. Dourcet-Boudreau*, 2003 SCC 62). The CRT has

authority under CRTA section 131 to make injunctive orders in society disputes. However, I find the order Mr. Fowler requests is too vague to be enforceable. For these reasons, I do not order the society to stop ignoring its bylaws and constitution.

***Order to hold and AGM and elect directors***

20. Mr. Fowler also seeks an order that the society hold an AGM with an “unbiased” election to replace all officers at the earliest opportunity. In its submissions, the society said it planned to hold an AGM in November 2021. As some time has passed since the parties provided their submissions, it is unclear whether the AGM occurred. However, the society admits it did not hold AGMs for a long period, in part due to the Covid-19 pandemic. The evidence before me does not clearly show when the last AGM was held, although it appears to have been in 2019.
21. SA section 71, which is mandatory, says the directors of a society must hold an AGM in each calendar year. This requirement was not suspended due to Covid-19, although Ministerial Order M116, which took effect on April 21, 2020, permitted societies to hold meetings by telephone, videoconference, or other communications medium. In its Dispute Response Form, the society says it planned to hold an AGM “as soon as practical after Provincial Health Orders permit.” I find this does not meet the requirements of SPA section 71 and Ministerial Order M116. The legislation does not allow a society to defer its AGMs due to the Covid-19 pandemic. Also, bylaw 4(b) requires the directors to be elected by ballot for a 1 year term at each AGM. It appears the society did not follow this requirement for 2020-21.
22. Also, the meetings the society refers to in its documents and minutes as “general meetings” do not appear to meet the notice requirements for general meetings under the SA. SA in SA section 77 sets out the written notice requirements. Some of these problems appear to stem from the fact that the society did not transition its bylaws to comply with the SA after it came into force in 2016. The society may wish to seek advice on that matter.
23. Since the society admits it did not hold an AGM in 2020, I find it is appropriate to grant the order Mr. Fowler requests, on a conditional basis. If the society has not done so

in 2021 or 2022, I order that within 90 days of this decision, the society must hold an AGM. The AGM procedures must comply with all SA provisions, including section 77 notice. The AGM agenda must include election of directors as provided for under the bylaws.

## **CRT FEES AND DISPUTE-RELATED EXPENSES**

24. Mr. Fowler requests reimbursement of \$225 he paid in CRT fees, and the society requests reimbursement of \$720, as compensation for 8 hours its president spent on this dispute.
25. CRT rule 9.5(1) says the CRT will usually order the unsuccessful party to pay the successful party's tribunal fees and reasonable dispute-related expenses. I find that the parties each had mixed success in this dispute, so I find it is not appropriate to order reimbursement to either party.
26. Also, I would not order reimbursement for the society's time spent on this dispute in any event. CRT rule 9.5.(5) says the CRT will not order compensation for time spent dealing with a CRT proceeding except in extraordinary circumstances. I find there are no extraordinary circumstances here. Also, I find the \$90 per hour rate the society claims is arbitrary.

## **ORDERS**

27. I dismiss Mr. Fowler's claim for an order that the society stop ignoring its constitution and bylaws. I dismiss the society's claim for compensation for time spent on the dispute.
28. If the society has not already held an AGM in 2021 or 2022, I order that within 90 days of this decision, the society must hold an AGM. The AGM procedures must comply with all SA provisions, including section 77 notice. The AGM agenda must include election of directors as provided for in the bylaws.

29. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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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Kate Campbell, Vice Chair