



Civil Resolution Tribunal

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File: CS-2022-000362

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Wheatley v. Victoria Canoe and Kayak Club*, 2022 BCCRT 776

B E T W E E N :

MICHAEL WHEATLEY

APPLICANT

A N D :

VICTORIA CANOE AND KAYAK CLUB

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about whether a society can hold an electronic annual general meeting (AGM).
2. The respondent, Victoria Canoe and Kayak Club (society), is a society incorporated under the *Societies Act* (SA).

3. In his dispute application, the applicant, Michael Wheatley, says that on January 25, 2022, the society held its AGM online, with electronic voting. Mr. Wheatley says this violates the SA, as the society has no bylaw allowing electronic meetings or voting.
4. In his submissions to the Civil Resolution Tribunal (CRT), Mr. Wheatley raises additional arguments. He submits that the society failed to give proper written notice of the AGM and the special resolutions voted on at the AGM.
5. Mr. Wheatley requests the following remedies in this dispute:
 - a. An order declaring that all decisions made at the 2022 AGM, and any special resolutions passed at the AGM, are “null and void”.
 - b. An order that the society withdraw any documents filed pursuant to the AGM.
 - c. Answers to these questions:
 - i. Who decided to hold the AGM online, and by what authority?
 - ii. Who decided what special resolutions would be voted on at the AGM, and by what authority?
6. The society says the CRT should dismiss this dispute. The society admits it held its January 20, 2022 AGM electronically, using Zoom. It says it obtained legal advice about this in advance, and complied with the version of the SA in force at the time. It also says it gave sufficient notice of the AGM and the special resolutions.
7. Mr. Wheatley is self-represented in this dispute. The society is represented by its President.

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 *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.

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. 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.

New Arguments

12. As explained above, in his submissions Mr. Wheatley raised new arguments that the society did not give proper notice of its AGM, or the special resolutions voted on at the AGM. However, given my finding below that the 2022 AGM was invalid for other reasons, I find it unnecessary to decide the notice issue in this decision.

Available Remedies

13. As noted above, some of the remedies Mr. Wheatley requests in this dispute are answers to questions. Generally, the CRT does not order a respondent to answer questions as a remedy to a dispute. Also, SA sections 20 and 24 specify what records and information a society must keep and disclose. Other than meeting minutes, the information Mr. Wheatley seeks is not information the society must keep or disclose under the SA, so I would likely not make the requested order for that reason. In any event, the society answered the questions in its Dispute Response Form, so I find it unnecessary to order the society to answer Mr. Wheatley's questions.

ISSUE

14. Was the society permitted to hold its 2022 AGM electronically, and if not, what remedies are appropriate?

REASONS AND ANALYSIS

15. In a civil claim like this one, Mr. Wheatley, 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.

Electronic Meetings

16. Due to provincial restrictions on group gatherings at the beginning of the Covid-19 pandemic, in April 2020 the BC government enacted Ministerial Order M116 (MO116). MO116 permitted attendance at society general meetings by telephone or other electronic means during the pandemic, even if the society's bylaws provided otherwise.
17. The government repealed MO116 on May 20, 2021, and it was immediately replaced by the *Finance Statutes Amendment Act (No. 2), 2021* (FSAA). The FSAA had the effect of modifying the SA to permit electronic meetings, unless a society's bylaws provide otherwise.
18. In *Farrish v. Delta Hospice Society*, 2021 BCSC 1374, the BC Supreme Court (BCSC) interpreted and applied the new electronic meeting provisions of the SA created under the FSAA. The BCSC found that even though the default position in the newly-amended SA was to permit electronic meetings, the voting method used at the meeting must still be authorized in the bylaws. This means that electronic meetings are only permitted if some form of electronic voting is authorized by the society's bylaws.
19. In making this finding, the BCSC noted in paragraph 43 that the society bylaws at issue in *Farrish* referred to a meeting being held in a “place”, with members “present”,

and with votes by “show of hands”. The court said there was no bylaw authorizing electronic voting, and the “toggle” for voting on the Zoom platform was not a “show of hands”. The court also noted that the bylaws specifically prohibited proxy voting, which was consistent with a person having to be present at the meeting and cast their own vote. Based on those voting bylaws, the BCSC concluded that electronic meetings were not permitted under the society’s bylaws, despite the recent amendments to the SA allowing electronic meetings.

20. The reasoning in *Farrish* is binding on me. Therefore, in order to determine whether the society was entitled to hold an electronic AGM in January 2022, I must consider the society’s bylaws. As in *Farrish*, these bylaws were drafted and approved before Covid-19, and did not contemplate the general move towards online meetings for corporations, societies, and other organizations.
21. Bylaw 9(2) says voting at general meetings may be by a show of hands, or by secret ballot at the request of any voting member. Bylaw 9(3) says proxy voting is permitted by special resolution only, and there is no evidence that a special resolution permitted proxy voting for the 2022 AGM. Following the reasoning in *Farrish*, I therefore find that the only voting methods allowed under the society’s bylaws require in-person meeting attendance. So, I conclude that the society was not entitled to hold its January 2022 AGM electronically.
22. I also note that the draft AGM minutes indicate that voting was held electronically. Since the bylaws do not permit electronic voting, I specifically find those votes were invalid.

Remedies

23. As remedy, Mr. Wheatley requests an order declaring that all decisions made and special resolutions passed at the January 2022 AGM are “null and void”. He also requests an order that the society withdraw any documents filed pursuant to the AGM.
24. The CRT does not have authority to make declaratory orders unless they are incidental to another remedy: see *Fisher v. The Owners, Strata Plan VR 1420*, 2019

BCCRT 1379. I therefore do not make the declaration Mr. Wheatley seeks. However, CRTA section 131 says the CRT can order a society to do something or stop doing something. I therefore order the society to immediately stop relying on any decisions made or special resolutions passed at the 2022 AGM.

25. The evidence shows that the special resolutions purportedly passed at the 2022 AGM were bylaw amendments. I order that the society must not enforce any of these bylaw amendments, since they were not validly approved.
26. Mr. Wheatley asked for an order that the society withdraw all documents filed pursuant to the 2022 AGM. It is not clear from the evidence what those documents are, if any. I therefore do not make that order. However, since the society's 2022 budget was voted on at the AGM, and that the budget vote was invalid, I find it is appropriate to order the society to hold a new AGM within 60 days of this decision to approve a budget, and to re-vote on all resolutions, decisions, and elections voted on at the January 2022 electronic meeting. This meeting must be held in person, as required under the society's current bylaws.
27. Based on SA section 29(c), the society may provide written AGM notice by email to members who have provided an email address, and by mail or personal delivery to members who have not provided an email address.
28. It is open to the society to propose bylaw amendments to allow electronic meetings and voting.

CRT FEES AND EXPENSES

29. As Mr. Wheatley was successful in this dispute, in accordance with the CRTA and the CRT's rules I find he is entitled to reimbursement of \$225.00 in CRT fees. Neither party claimed dispute-related expenses, so none are ordered.

ORDERS

30. I order:

- a. The society must immediately stop relying on any decisions made or special resolutions passed at the 2022 AGM.
 - b. The society must not enforce any bylaw amendments passed at the 2022 AGM, and must instead act based on the bylaws as they existed before the AGM.
 - c. The society must hold a new, in-person AGM within 60 days of this decision. At that AGM, the society must approve a budget, and re-vote on all resolutions, decisions, and elections voted on at the January 2022 electronic meeting.
 - d. The society must immediately reimburse Mr. Wheatley \$225 for CRT fees.
31. Mr. Wheatley is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.
32. 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.

Kate Campbell, Vice Chair