



# Civil Resolution Tribunal

Date Issued: August 4, 2022

File: SC-2021-007648

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Leis v. Holtby*, 2022 BCCRT 885

B E T W E E N :

HERBERT HOWARD LEIS

**APPLICANT**

A N D :

LESLIE HOLTBY and CHILLIWACK CURLING CLUB

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. The applicant, Herbert Howard Leis, was a member of the respondent Chilliwack Curling Club (CCC), a society that operates a curling facility. In October 2020, Mr. Leis paid CCC \$350 in dues to participate in a curling league in the 2020-2021 season. Partway through the season, the CCC cancelled the league's remaining

games due to COVID-19 restrictions. The CCC gave players a pro-rated credit for the 2021-2022 season for the cancelled games.

2. Mr. Leis subsequently developed vertigo, which prevents him from safely participating in curling. Shortly after developing vertigo, Mr. Leis asked the CCC for a refund, but the CCC refused. He says that there is no realistic prospect of him ever returning to the sport. So, he says that a credit towards future curling dues is worthless to him. He asks for an order that the CCC refund him \$225, which is undisputedly the value of the cancelled portion of the 2020-2021 season. Mr. Leis is self-represented.
3. The CCC says that it adopted a new refund policy for the 2020-2021 season. Under that policy, the CCC would only provide credits, not refunds, if it had to suspend or cancel the 2020-2021 season due to COVID-19. The CCC says that its club manager, BR, fully explained this to Mr. Leis before he paid his dues. The CCC asks me to dismiss Mr. Leis's claim. BR represents the CCC.
4. The other respondent, Leslie Holtby, is the CCC's current president. Ms. Holtby takes the same position as the CCC. She is self-represented.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). Section 2 of the *Civil Resolution Tribunal Act* (CRTA) states that 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. Section 39 of the CRTA 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.

7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

### ***Jurisdiction***

8. The CRT has jurisdiction over small claims for debts and damages up to \$5,000 under section 118 of the CRTA. I find that Mr. Leis's claim fits within this definition. The CRT also has jurisdiction over claims about unfairly prejudicial actions or decisions that a society has made in relation to a member under section 129 of the CRTA. I find that Mr. Leis's claim also fits within this definition.
9. Section 1(2) of the CRTA says that a small claims dispute that may also fall under another category of CRT jurisdiction must be decided under the other jurisdiction. Because Mr. Leis's claim could be decided as either a small claim or a society claim, I find that it must be decided under the CRT's society claim jurisdiction. Therefore, even though Mr. Leis filed this dispute as a small claim, I have decided it under the CRT's society claims jurisdiction.
10. Because neither party made submissions about whether the CCC's refund policy was unfairly prejudicial to Mr. Leis, I gave them both the opportunity to make further submissions about this issue. Neither party made substantive submissions about whether the CCC's actions were unfairly prejudicial.
11. Where permitted by section 131 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

## **ISSUES**

12. The issues in this dispute are:

- a. Was the CCC's decision not to give Mr. Leis a refund unfairly prejudicial?
- b. If so, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, Mr. Leis as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. Mr. Leis had been a CCC member for around 20 years before 2020. It is undisputed that prior to the 2020-2021 season, the CCC had a refund policy that allowed for partial refunds if a player had to withdraw for medical reasons.
15. At an October 3, 2020 board meeting, the CCC says that it amended the refund policy to account for the COVID-19 pandemic. According to BR, the CCC needed to incur significant upfront costs to ready the ice surfaces and hire staff. The CCC was concerned that if it had to cancel or suspend its season, it would not have the cash reserves to provide refunds. The CCC therefore decided that if the 2020-2021 season were cancelled or suspended, the CCC would provide members a pro-rated credit for the next season but no refunds. The CCC emailed the new "no refund policy" to its members on October 4, 2020.
16. It is undisputed that Mr. Leis does not have a computer, so he did not receive this email. BR says he knew this, so he explained the new policy to Mr. Leis in person when Mr. Leis paid his first \$200 in dues on October 26, 2020. Mr. Leis does not deny that BR told him about the new policy, but he says that BR did not specify that the policy would apply even if a member got sick or died. I find that BR likely told Mr. Leis about the new policy, but the parties did not specifically discuss what would happen if Mr. Leis got sick after the CCC cancelled the season.

17. As it turned out, this is exactly what happened. On December 3, 2020, the Public Health Officer (PHO) ordered a stop to all indoor adult sports. The CCC maintained the ice for several weeks hoping to restart the season. On January 7, 2021, with no foreseeable end to the prohibition on indoor adult sports, the CCC decided to cancel the rest of the season.
18. On January 31, 2021, Mr. Leis wrote to the CCC that he had developed vertigo. He said that it was no longer safe for him to curl and asked for a refund. The CCC refused. The CCC provided Mr. Leis with a credit for the 2021-2022 season, which Mr. Leis did not use. The CCC later decided to allow members to extend their credit for a further season. Mr. Leis's credit therefore rolled over to the 2022-2023 season. However, Mr. Leis says that his condition will likely permanently prevent him from curling. A note from his doctor confirms that while his condition has improved, he still has bouts of imbalance and dizziness. I accept that unpredictable vertigo episodes make curling unsafe for Mr. Leis.
19. The CCC says that other members requested refunds because they moved away from the Chilliwack area, but the CCC refused. BR and Ms. Holtby both confirm this in written statements. I accept this evidence is true.
20. I turn then to the applicable law. I find that to be successful, Mr. Leis must prove that the CCC failed to meet Mr. Leis's reasonable expectations and, if it did, that this resulted in an unfairly prejudicial consequence. This means that it is not enough for Mr. Leis to prove that the conduct was prejudicial to him. There must also be an element of inequity or unfairness to the conduct's effect on him. See *Dalpadado v. North Bend Land Society*, 2018 BCSC 835.
21. Mr. Leis argues that because a non-COVID illness prevented him from curling, he should receive a refund. He essentially argues that the new policy applied only to people who would have kept playing if the season had continued. In other words, he argues that he had a reasonable expectation that he would receive a refund if he could not continue playing for medical reasons, even if COVID-related restrictions forced the CCC to cancel the season.

22. I disagree with Mr. Leis. The CCC created the new policy to address the financial uncertainty of attempting to run an entire season of curling when COVID restrictions were possible. The CCC determined before the season started that if it had to cancel its season, it would not have the funds to provide refunds. I find that the CCC told Mr. Leis that there would be no refunds after a COVID-related cancellation. In that context, I find that Mr. Leis did not have a reasonable expectation that he would receive a refund after COVID restrictions had forced the CCC to cease operations.
23. I also find that the CCC's actions towards Mr. Leis were not unfair or inequitable. The CCC applied the policy equally to everyone, including other people who had no use for the credits. I find that it would be unfair for the CCC to provide Mr. Leis a refund when it denied refunds to other members.
24. For these reasons, I find that Mr. Leis is not entitled to a refund. I dismiss his claim.
25. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Leis was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Neither respondent claimed any dispute-related expenses.

## **ORDER**

26. I dismiss Mr. Leis's claims, and this dispute.

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Eric Regehr, Tribunal Member