



# Civil Resolution Tribunal

Date Issued: September 20, 2022

File: CS-2022-002201

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Wheatley v. Victoria Canoe and Kayak Club*, 2022 BCCRT 1033

B E T W E E N :

MICHAEL WHEATLEY

**APPLICANT**

A N D :

VICTORIA CANOE AND KAYAK 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 whether a society must provide a copy of its register of members.

2. The respondent, Victoria Canoe and Kayak Club (society), is a society incorporated under the *Societies Act* (SA). Mr. Wheatley is a society member.
3. In his dispute application, the applicant, Michael Wheatley, says the society has refused to provide him with a copy of its register of members (register), contrary to the SA. He requests that the Civil Resolution Tribunal (CRT) order the society to disclose a digital copy of the register, so he can communicate directly with society members.
4. The society says Mr. Wheatley is not entitled to access the register, based on SA section 25(7). The society also says disclosing the register to Mr. Wheatley would be contrary to its statutory duty to act in the society's best interests.
5. Mr. Wheatley is self-represented in this dispute. The society is represented by a volunteer.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.
8. 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.

9. 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.

## **ISSUE**

10. Must the society give Mr. Wheatley a copy of its register of members?

## **REASONS AND ANALYSIS**

11. 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.
12. SA section 20(1)(h) says a society must keep a register of members. Section 24(1) says a society member may, without charge, inspect a record listed in section 20(1). SA section 27 says a person who is entitled under SA section 24 to inspect a record is entitled to a copy of the record upon request, after paying the applicable fee (if any).
13. The parties agree that Mr. Wheatley is a society member. A email in evidence shows he first requested a copy of the register on February 11, 2022.
14. SA section 25(1) says a society may, by directors' resolution, restrict members' rights to inspect the register of members “if the directors are of the opinion that the inspection would be harmful to the society or to the interests of one or more of its members.”
15. Minutes in evidence shows that at an emergency meeting on February 17, 2022, the society's directors passed a resolution restricting Mr. Wheatley's access to the register.
16. However, this restriction under SA section 25(1) is not a total bar to access. Rather, SA section 25(2) says that if members' rights to inspect the register are restricted by

directors' resolution, "members may not inspect the register of members **except in accordance with this section**" (my emphasis added). So, section 25(2) means that a society may not entirely restrict members' access to the register, even with a directors' resolution. Instead, the directors' resolution triggers sections 25(3) to (7), which require a written application from the member stating that the register information will only be used for the following purposes listed in section 25(7):

- a. requisitioning or calling a general meeting under SA section 75,
- b. submitting a proposal to consider a matter at an annual general meeting under SA section 81
- c. calling a general meeting under section 138 to fill a vacancy in the office of society liquidator, or
- d. an effort to influence members' voting.

17. Minutes in evidence shows that the society's directors passed a resolution restricting Mr. Wheatley's access to the register at an emergency meeting on February 17, 2022. Further evidence shows Mr. Wheatley provided the society with a signed request document, in which he agreed to only use the register information for the purposes listed above, on February 19, 2022. The society refused Mr. Wheatley's request. In a February 27, 2022 letter, the society president wrote that Mr. Wheatley's request was denied because he refused to specify how he planned to use the register information, and because of his behaviour on social media, email, and in meetings. Also, in its submissions in this dispute, the society argues that Mr. Wheatley should not have access to the register because of his past conduct and alleged future intentions.

18. I find the society was not entitled to refuse Mr. Wheatley access to the register. There is nothing in the SA that requires a member to tell the society how they plan to use the register information, other than agreeing in writing to use it only for the purposes listed in section 25(7). Mr. Wheatley did that, so the society must provide the register. There is also nothing in the SA that allows the society to refuse register access based on a member's conduct.

19. Mr. Wheatley notes that that he first requested access to the register in writing before the directors passed the resolution to restrict his access. He argues the resolution may be invalid, since it did not exist at the time of his initial request on February 11, 2022. I find I do not have to decide that issue, since in any event Mr. Wheatley was entitled to access the register after he provided written confirmation on February 19, 2022 that he would abide by the section 25(7) conditions.
20. As remedy, Mr. Wheatley requests an order that the society give him a copy of the register, including any member contact information “in non-proprietary digital form.” Again, SA section 27(1) says a person who is entitled under SA section 24 to inspect a record is entitled to a copy of the record upon request. The SA does not specify the format in which copies of records must be provided, so I find that is up to the society to decide. I find the society may provide the register in any printed or digital form, as long as it is readable.
21. Alternatively, Mr. Wheatley requests an order that the society to restore his access to the society’s email system so he can email all society members. There is nothing in the SA that requires the society to provide this access to Mr. Wheatley. So, I do not make that order.
22. As for the content of the register, SA sections 1(1) and 20(1)(h) say a society must keep a “register of members, organized by different classes of member if different classes exist, including contact information provided by each member”. So, this is the information the society must disclose to Mr. Wheatley.
23. SA section 27(3) says a society may charge a reasonable fee for providing records. The society did not provide evidence or submissions about records fees. Also, since the society is the unsuccessful party in this dispute, I find it appropriate to order that the society may not charge Mr. Wheatley any fee for providing a copy of the register. Future requests may be subject to a fee, and I make no findings about that.

## **CRT FEES AND EXPENSES**

24. As Mr. Wheatley was successful in this dispute, under 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 I order none.

## **ORDERS**

25. I order that within 14 days of this decision:

- a. The society must give Mr. Wheatley a copy of its current register of members, as defined in SA section 20(1)(h).
- b. The society must not charge Mr. Wheatley a fee for providing the copy of the register ordered above.
- c. The society must reimburse Mr. Wheatley \$225.00 for CRT fees.

26. I order that Mr. Wheatley may only use the information in the register for the purposes listed in SA section 25(7).

27. Mr. Wheatley is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

28. 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