



Civil Resolution Tribunal

Date Issued: December 22, 2022

File: CS-2022-003578

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Neish v. Eagle Valley Arts Council*, 2022 BCCRT 1363

B E T W E E N :

JOSEPHINE NEISH

APPLICANT

A N D :

EAGLE VALLEY ARTS COUNCIL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Josephine Neish is a member of the Eagle Valley Arts Council (EVAC), which is a registered society. She alleges that the procedure for EVAC's 2022 annual general meeting (2022 AGM) contravened the *Societies Act* and EVAC's bylaws. In particular, she alleges that EVAC did not give the required 14 business days' notice under section 77 of the *Societies Act*. She also says that EVAC changed the voting process

to an advanced secret ballot, in contravention of section 84 of the *Societies Act* and EVAC's bylaws. She says that these errors invalidate the business done at the 2022 AGM. She asks for orders that the 2022 AGM be declared invalid and that EVAC hold a new AGM. She is self-represented.

2. EVAC says that it provided the required 14 calendar days' notice. EVAC also says that COVID-19 restrictions forced it to adopt a different voting procedure, which was consistent with the *Societies Act* and its bylaws. It asks me to dismiss Ms. Neish's claims. A board member represents EVAC.

JURISDICTION AND PROCEDURE

3. 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). 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.
4. 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.
5. 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.

6. 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.
7. Ms. Neish initially claimed against EVAC's current president, KH. She later withdrew that claim by amending the Dispute Notice. I have amended the style of cause accordingly.
8. In her submissions, Ms. Neish makes several allegations about EVAC's handling of the 2022 AGM and about its governance more generally. I find that the Dispute Notice only raised 2 issues: the timing of the notice and the voting procedure. The Dispute Notice exists to give EVAC notice about what Ms. Neish's claims are about. I find that it would be unfair to EVAC for me to consider any allegations that were not included in the Dispute Notice. I therefore will not comment on anything other than the AGM notice and voting procedure.

ISSUES

9. The issues in this dispute are:
 - a. Did EVAC provide proper notice for the 2022 AGM?
 - b. Did EVAC's voting procedure violate the *Societies Act* or EVAC's bylaws?
 - c. What remedy, if any, is appropriate?

BACKGROUND AND EVIDENCE

10. EVAC provided notice for the 2022 AGM at around 10:00am on February 5, 2022, by email. The AGM was scheduled for February 19, 2022, at 1:00pm.
11. EVAC included an agenda in the 2022 AGM notice. There was a proposed special resolution to add a new bylaw (bylaw 2.1(D)), which would create a new category of membership for families. The agenda also included routine business like the election of a new board of directors.

12. However, at a February 10, 2022 directors meeting, the board decided to use a new voting process that was different past years. Under the new process, members could nominate board members by email until February 17, 2022. EVAC would then email its members ballots for the board election and the proposed bylaw amendment. EVAC would accept completed ballots at the AGM's location from 10:00am to 11:30am on the day of the AGM (which, again, started at 1:00pm). The members would not vote on these matters at the AGM itself.
13. EVAC emailed its members the new voting procedure on February 11, 2022. One member emailed back asking why they could not vote by email. EVAC confirmed that the only way to vote would be by dropping off a completed ballot, in-person, at the specified time and place.
14. According to the 2022 AGM's minutes, the special resolution passed with 44 in favour and 11 opposed, which was based on the ballots the members had dropped off. During the AGM, members proposed amendments to the special resolution and eventually passed a revised version of bylaw 2.1(D). However, at a March 2, 2022 directors meeting, the board decided that it should not have allowed any amendments to the proposed bylaw. The board decided that the ballot vote on the original special resolution was valid and binding. On March 7, 2022, EVAC filed the original version of bylaw 2.1(D) with the registrar, as required by section 17 of the *Societies Act*.

ANALYSIS

Notice

15. Section 77(1)(a) of the *Societies Act* requires "at least 14 days" notice before an AGM unless the society's bylaws provide for a different amount of notice, which EVAC's undisputedly bylaws do not. I therefore find that EVAC was required to give at least 14 days' notice of the 2022 AGM.
16. Ms. Neish argues that EVAC gave insufficient notice because section 77 of the *Societies Act* requires 14 business days' notice. EVAC disagrees, and says that it

gave the required 14 calendar days' notice by emailing its members exactly 14 days before the 2022 AGM

17. The *Interpretation Act* governs how time must be calculated when interpreting statutes like the *Societies Act*. Section 25.2 of the *Interpretation Act*, which governs time periods expressed in days, requires calculation by calendar day, not business day. So, I disagree with Ms. Neish's argument that EVAC had to give 14 business days' notice.
18. Section 25.2(2) of the *Interpretation Act* says that to calculate a number of days, one must start with the day before the "reference day" (here, the 2022 AGM date) and count backwards. Applying this method, February 5 is 14 days before February 19. However, section 25.2(3) says that if the period is expressed as "at least" a certain number of days, one must add a day to the calculation under section 25.2(2).
19. As mentioned above, section 77 of the *Societies Act* requires "at least" 14 days' notice. So, section 25.2(3) of the *Interpretation Act* applies, requiring an additional day. That means that EVAC was required to give notice for the 2022 AGM on February 4, 2022. I find that EVAC's notice was a day late.

Voting

20. Ms. Neish says that EVAC's new voting method did not comply with section 84 of the *Societies Act* or EVAC's bylaws. Section 84(5) says that a society may authorize voting by mail or other means of communication, including electronic means, in its bylaws. EVAC has no bylaw to that effect. Instead, EVAC's bylaw 3.9 says that voting at an AGM must be by show of hands, oral vote, or "another method that adequately discloses the intention of the voting member". Bylaw 3.10 says that the AGM chair must then announce the outcome of each vote. Together, I find that these bylaws required EVAC to hold votes at the AGM, not beforehand. Also, bylaw 3.9 only allows secret ballots if requested by at least 2 members. There is no evidence of such a request for the 2022 AGM, so I find that a secret ballot was not permitted.

21. EVAC argues that it had to change its usual voting process because of gathering restrictions due to the COVID-19 pandemic. EVAC essentially says that in the face of the gathering restrictions, it had to come up with something that would safely and legally allow everyone to vote. I agree with EVAC that it had to hold the 2022 AGM in a way that complied with COVID-19 restrictions. However, the 2022 AGM still had to comply with EVAC's bylaws. EVAC argues that it did comply with its bylaws but did not explain how. I find that EVAC's voting procedure clearly contravened its bylaws, which required open, in-person voting.
22. I note that EVAC did have options on how it could safely hold the 2022 AGM while allowing everyone the opportunity to vote. To assist societies (and other organizations) navigate the COVID-19 pandemic, the government issued Ministerial Order 167/2020 (MO167) on May 10, 2020. Section 4 of MO167 allowed for participation in a general meeting by telephone or "other communications medium", so long as all meeting participants could communicate with each other and vote, even if a society's bylaws did not authorize electronic meetings. This ministerial order later became part of the *COVID-19 Related Measures Act*. This means that EVAC could have held the 2022 AGM with some members in person and others participating by phone or video conference, even though EVAC's bylaws did not authorize this method. I note that EVAC included in its evidence a printout from a law firm's website that explained the application of MO167 on societies.
23. Therefore, while EVAC may have been making a good faith effort to comply with COVID-19 restrictions, I find that EVAC breached its bylaws and the *Societies Act* by requiring advanced voting by secret ballot.

Remedies

24. As mentioned above, Ms. Neish asks for orders that the 2022 AGM be declared invalid and that a new 2022 AGM be held. With respect to the first order, the CRT does not have jurisdiction to make declaratory orders. So, I decline to make a declaratory order about the validity of the 2022 AGM.

25. That said, business conducted at an invalidly constituted meeting is generally a nullity. However, this does not necessarily mean that it is appropriate to order EVAC to hold a new AGM. In strata decisions involving invalidly constituted general meetings, the CRT has generally declined to make orders that would have no practical effect and serve no useful purpose. For example, in *Ferrer v. The Owners, Strata Plan LMS 3463*, 2022 BCCRT 759, the CRT concluded that an AGM was invalid because the strata had used an impermissible voting system. The applicant owner asked for an order that the AGM be redone. The CRT declined to make that order because the next AGM had already taken place, so there would be no point in revoting on things like the strata council (whose term had expired) and the budget (which had already been spent).
26. I adopt the same approach here. EVAC's fiscal year end is December 31. The evidence indicates that EVAC's AGM typically occurs in January. I find that if I ordered EVAC to hold a new 2022 AGM, it would likely occur at around the same time as the 2023 AGM, when a new board will be elected anyway. I find that this would be a pointless exercise. So, even though there was inadequate notice of the meeting and the vote contravened EVAC's bylaws, I decline to order EVAC to hold a new 2022 AGM to revote on the 2022 board of directors.
27. I reach a different conclusion about the special resolution amending the bylaws. I find that the members have not had a legitimate opportunity to vote on bylaw 2.1(D). I see no reason why EVAC could not revisit the issue at the 2023 AGM. I order EVAC to include on the agenda for the 2023 AGM a special resolution to amend its bylaws by adding bylaw 2.1(D). I also order EVAC to stop applying bylaw 2.1(D) unless and until the members pass a special resolution adopting it. Nothing in this decision prevents EVAC's members from proposing a different family membership bylaw following the process set out in section 81 of the *Societies Act*.

CRT FEES AND EXPENSES

28. 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. Even though I did not order the remedies she wanted, I find that Ms. Neish was the successful party in this dispute. I order EVAC to reimburse her \$225 in CRT fees. Ms. Neish did not claim any dispute-related expenses.

ORDER

29. I order:

- a. EVAC to include on the agenda for the 2023 AGM a special resolution to amend its bylaws by adding bylaw 2.1(D),
- b. EVAC to immediately stop applying bylaw 2.1(D) unless and until the members pass a special resolution adopting it, and
- c. EVAC to pay Ms. Neish \$225 in CRT fees within 30 days of this order.

30. Ms. Neish is entitled to post-judgment interest under the *Court Order Interest Act*.

31. I dismiss Ms. Neish's remaining claims.

32. 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

Eric Regehr, Tribunal Member