



# Civil Resolution Tribunal

Date Issued: March 27, 2023

File: CS-2022-005282

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Ericson v. Cultus Lake Holiday Park Association*, 2023 BCCRT 256

B E T W E E N :

DAVID ERICSON

**APPLICANT**

A N D :

CULTUS LAKE HOLIDAY PARK ASSOCIATION

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The respondent, Cultus Lake Holiday Park Association (society), is a society incorporated under the *Societies Act* (SA). The applicant, David Ericson, is a member of the society.

2. Mr. Ericson wants copies of every cheque written to a director or former director of the society since 2019. He says “Associa”, which undisputedly manages some of the society’s financial matters but is not a party to this dispute, writes these cheques. So, Mr. Ericson wants an order for the society to compel Associa to give him copies of the cheques. Mr. Ericson represents himself.
3. The society says I should dismiss the claim because it has no legal obligation to provide copies of cheques. A director represents the society.
4. As I explain below, I dismiss Mr. Ericson’s claim.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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.

### ***Scope of dispute***

9. In his submissions, Mr. Ericson requests several additional remedies that were not included in the Dispute Notice. Those remedies include:
  - a. Orders that any director found to have accepted “illegal payments” be:
    - i. Dismissed,
    - ii. Banned for life from holding a director position in the society, and
    - iii. Required to repay the illegal payments to the society.
  - b. An order that the board of directors repay the society the “money spent on lawyer fees out of their own personal expenses.”
  - c. A waiver of any fees for production of materials.
  - d. Dismissal of the society’s current board of directors.
  - e. Appointment of a temporary board “from 2022 AGM nominee” until the society can vote on a permanent board.
  - f. An order to freeze the society’s bank accounts and monies until a new board is in place.
  - g. A “cease-and-desist” order against Associa.
  - h. An order preventing Associa from destroying evidence.
  - i. The “direct referral for prosecution” to the appropriate authorities.
10. Because these remedies were not raised in the Dispute Notice, I find it would be procedurally unfair to consider them in this decision. The purpose of a Dispute Notice is to define the issues and provide notice to the respondents of the claims against

them and remedies sought, so they have an adequate opportunity to respond. I find the society did not have an adequate opportunity to respond to these late-raised remedies. It was open to Mr. Ericson to request an amendment to the Dispute Notice under the CRT's rules, but he did not do so. I also find that adjudicating these late-raised remedy requests would undermine the purposes of the CRT's facilitation process. Moreover, many of the late-raised remedies involve entirely distinct issues and claims that are outside the CRT's society claims jurisdiction under CRTA sections 128-131. For these reasons, I have not addressed any claims or remedies not identified in the Dispute Notice.

## **ISSUE**

11. The issue in this dispute is whether Mr. Ericson is entitled to access to or copies of the society's cancelled cheques to directors or former directors since 2019.

## **EVIDENCE AND ANALYSIS**

12. The society was registered in BC in June 1976. Its constitution says its purpose, in part, is to operate and maintain a "recreational camping club," which Mr. Ericson describes as an RV park. It is a member-funded society.
13. SA sections 20(1) and (2) set out detailed lists of the records a society must keep. The provision Mr. Ericson relies on is section 20(2)(c), which says a society must keep "adequate accounting records for each of the society's financial years, including a record of each transaction materially affecting the financial position of the society."
14. SA section 24(2)(b) says a society member may, unless the bylaws provide otherwise, inspect such records. The society's bylaw H(1) (which the parties refer to as 8(1)) says any society member may inspect the society's "accounts and books" with 30 days' written notice. So, I find the bylaws neither restrict nor expand access to the accounting records in SA section 20(2)(c).

15. SA section 27 says that if a member who is entitled to inspect a record under section 24 requests a copy and pays any applicable fee, the society must provide the copy within 14 days.
16. Mr. Ericson says he requested “copies of every cheque written to a society director since 2019.” There is no record of that request before me, but I find that is what he seeks in this dispute. The question, then, is whether cancelled cheques fall within “adequate accounting records [...] including a record of each transaction materially affecting the financial position of the society” under SA section 20(2)(c). If they do not, Mr. Ericson is not entitled to inspect or request copies of them, and his claim must be dismissed.
17. The term “accounting records” is not defined in the SA. The society relies on 2 CRT decisions considering cancelled cheques, which I address below. Other CRT decisions are not binding on me.
18. In *Wright v. Back Country Horsemen Society of British Columbia*, 2022 BCCRT 334, the applicant requested a copy of a cancelled cheque. The CRT concluded that this was not a record that must be kept under the SA section 20(1) and did not order the society to provide it. It does not appear that the CRT considered whether the record fell under SA section 20(2), so I find the decision is of little assistance here.
19. In *Harvey v. Lynn Valley Community Association*, 2021 BCCRT 493, the CRT found that SA section 20(2)(c) did not require a society to keep bank account records, including issued cheque copies, so long as the society keeps other accounting records documenting each transaction. Here, the society’s accounting records are not before me. However, Mr. Ericson does not allege that the society does not keep other accounting records documenting each transaction, or that he asked for them and did not receive them.
20. Mr. Ericson says these CRT decisions are wrong. He says financial institutions refer to cheques as the “primary document” for transactions. He says cancelled cheques are considered a “source financial document” and must be retained as they are critical

to uncover fraudulent financial activity. He refers to a Canada Revenue Agency (CRA) webpage, though he did not provide a copy of it.

21. The *Income Tax Act* and the SA have different purposes. This means that one may require societies to keep records that the other does not. That said, I agree with Mr. Ericson that CRA information can assist in understanding the term “accounting records”. In *Woodford v. Johnston*, 2000 CanLII 5362 (NB KB), the New Brunswick Court of King’s Bench had to determine what constituted “accounting records” under the New Brunswick *Business Corporations Act*. The court referred to a CRA circular stating that records and books of account must be supported by source documents that verify the information in the records and books of account. It went on to say that source documents include items such as invoices, receipts, contracts, delivery and deposit slips, work orders, cheques, bank statements, tax returns, and general correspondence.
22. I find that *Woodford* did not definitely confirm whether accounting records include source documents like cancelled cheques. I say this because although the applicant in *Woodford* was granted access to numerous documents, the court said the documents were source documents to financial statements, as opposed to source documents to accounting records. The only documents the applicant in *Woodford* requested that were clearly source documents to an accounting record were invoices. The court did not grant access to the invoices, without explanation. The applicant in *Woodford* did not ask for access to cancelled cheques.
23. Two recent BC Supreme Court decisions considered section 196 of the *Business Corporations Act*, which says that a company must keep its “accounting records” available for inspection and copying by any director (*Chen v Dang*, 2023 BCSC 354, and *Carr v. Cheng, Dorset College Inc.*, 2007 BCSC 1693). The decisions are not of great assistance because it is not specified in either decision exactly what type of documents the party seeking records was requesting. However, both decisions referred with approval to the discussion of “accounting records” in a Saskatchewan Court of Appeal case, *Roles v. 306972 Saskatchewan Ltd.*, 1993 CanLII 9137 (SK CA). In that case, the court accepted the following definition:

The accounting records shall disclose with reasonable accuracy, at any time, the financial position of the company at that time, and shall contain a record of the assets and liabilities of the company and entries from day to day of all moneys received and paid out and of the matters in respect of which these payments occurred...

24. The Saskatchewan Court of Appeal added that it is reasonable to suppose that adequate accounting records include “entries from day to day of all moneys received and paid out and of the matters in respect of which these payments occurred.”
25. The above definition and the court’s comments suggest that cancelled cheques are not the accounting records. The accounting records are daily records of transactions, which are supported by cancelled cheques, receipts and other source documents. This is consistent with the CRA’s information.
26. I acknowledge that there are some cases where the term “accounting records” has been interpreted broadly enough to include cancelled cheques (see *Leggat et al v. Jennings et al*, 2013 ONSC 903, and *Tyler v. Envacon Inc.*, 2012 ABQB 631). Those decisions are not binding on me because they are from courts of other provinces. It is also likely that the scope of accounting records relevant to a director under business corporation legislation is broader than the scope of accounting records relevant to a member under the SA. I say this because a director of a corporation is responsible for supervising the corporation’s business and affairs, owes the corporation a fiduciary duty, and can be personally liable for the corporation’s debts in certain circumstances. None of these apply to members of a society.
27. On balance, I find the above cases indicate that the phrase “accounting records” does not include source documents such as cancelled cheques.
28. I also find if the legislature intended to give society members access to cancelled cheques, it could have done so explicitly. The *Strata Property Act* (SPA) provides an example. SPA section 36 gives owners access to the documents listed in section 35. Section 35(1)(d) says that strata corporations must prepare “books of account” showing money received and spent and the reason for the receipt or expenditure. I

find this is effectively the same thing as “accounting records” that document each material transaction under SA section 20(2)(c). SPA section 35(2)(l) then specifically requires the strata corporation to retain copies of bank statements, cancelled cheques and certificates of deposit. The SA’s omission of any mention of bank statements and cancelled cheques suggests members do not have a right to those documents, despite having a right to accounting records.

29. I acknowledge Mr. Ericson’s argument that members of a member-funded society govern the society and therefore have a stronger claim to access to information provided that the bylaws allow it. However, he provided no legal authority in support of this proposition. The SA does not distinguish between member-funded societies and other societies when it comes to keeping and inspecting records, other than financial statements, which are not at issue here.
30. For these reasons, I conclude that cancelled cheques are not included in the “accounting records” that the society is required to keep under SA section 20(2)(c). It follows that Mr. Ericson does not have a right to inspect or receive copies of the society’s cancelled cheques. I therefore dismiss his claim.

## **CRT FEES AND EXPENSES**

31. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The society was successful but did not pay any CRT fees. I dismiss Mr. Ericson’s claim for CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**



32. I dismiss Mr. Ericson's claims and this dispute.

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Micah Carmody, Tribunal Member