



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Mishra v. Fiji-Canada Association*, 2023 BCCRT 323

B E T W E E N :

SANJAY DEEPAK MISHRA and RAJENDRA NATH

APPLICANTS

A N D :

FIJI-CANADA ASSOCIATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicants, Sanjay Deepak Mishra and Rajendra Nath, are members of the respondent society, Fiji-Canada Association (FCA). This dispute is about the procedures used in connection with FCA's June 26, 2022 special general meeting (SGM).

2. The applicants say that FCA 1) provided insufficient notice for the June 2022 SGM under the *Societies Act* (SA) and the bylaws, 2) voted to amend the bylaws and constitution in a form not included in the notice (amendments), and 3) wrongfully filed the amendments. It says this led to invalid elections at the August 14, 2022 annual general meeting (AGM). The applicants seek a declaration that the August 2022 AGM and its elections for the board members are invalid. They also seek orders for FCA to 1) withdraw the amendments filed on June 26, 2022 with the bylaws previously filed in October 2018, 2) hold an AGM within 90 days to elect a new board of directors, and 3) discipline the specific person who filed the amendments.
3. FCA denies any wrongful conduct. It says it provided members “effective notice” of the June 2022 SGM and conducted the August 2022 AGM and elections properly. It says that the orders requested, including holding a new AGM and elections, would be wasteful and unlikely to lead to a different result. FCA also says that FCA’s secretary, TR, filed the amendments in good faith and should not be disciplined. FCA also says that it only amended the bylaws in June 2022, and the constitution remains unchanged.
4. Mr. Mishra represents the applicants. TR represents the FCA.
5. For the reasons that follow, I find the applicants are partially successful.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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.

ISSUES

10. The issues in this dispute are as follows:
 - a. Did FCA provide proper notice for the June 2022 SGM?
 - b. Are any remedies appropriate?

BACKGROUND, EVIDENCE, AND ANALYSIS

11. A BC registry search shows that FCA was incorporated as a society in 1968. FCA provided copies of the written notice and attached agenda, dated June 9, 2022, it sent out to members for the June 26, 2022 SGM meeting. The notice shows that FCA intended to amend numerous bylaws. The amendments are lengthy and for brevity I do not list them here. I note that bylaw alterations must be authorized by special resolution under SA section 17(2) and filed with the registrar under SA section 17(3).
12. FCA submits, and I find, that FCA hand delivered some of the notices to members. It also says that on June 12, 2022, it mailed the rest to 128 members who had not yet received notice personally.

13. The June 26, 2022 minutes show that FCA held the SGM to approve the amendments. In total 81 voting members attended, which was undisputedly enough for a quorum. According to the agenda, there was only 1 special resolution to vote on, to adopt all the amendments in full. However, minutes show members voted to approve the amendments to each bylaw separately. Ultimately, FCA withdrew 2 of the proposed amendments. The applicants say this is impermissible and I will return to this topic.
14. Mr. Mishra complained to FCA's directors in a June 28, 2022 letter about insufficient notice. He also said that FCA breached bylaw 5.7(2) by voting on the special resolution by a show of hands. A copy of the October 2018 bylaws is in evidence, and I find that they were in force at the time. Bylaw 5.7(2)(c) said that voting is by show of hands, except when voting on a special resolution. I discuss this below.
15. TR registered a copy of the amended bylaws on June 29, 2022. TR says she mistakenly included the first page of FCA's 2015 constitution. A copy of the bylaws registered on September 25, 2022 shows TR registered the amended bylaw again, without the page from the 2017 constitution. So, I accept TR's explanation that she originally included the page as an inadvertent error.
16. The August 14, 2022 AGM minutes show that Mr. Mishra attended and raised the issue of insufficient notice for the June 2022 SGM. He also complained that the constitution had been wrongfully amended, based on TR's mistaken filing. TR said at the time that FCA mistakenly included the 2015 constitution page, and it would be removed. The AGM became chaotic. Mr. Mishra "shouted and yelled" for the president to "rescind" the June 2022 SGM. The police attended to keep order. FCA also held elections for a new board of directors at the time. There is no indication or submission before me that the June 2022 amendments directly affected the election.

Issue #1. Did FCA provide proper notice for the June 2022 SGM?

17. The applicants say FCA provided insufficient notice. FCA does not deny this, and says it sent notices late by one day unintentionally. I will first consider whether the notices are actually late.

18. A copy of the October 2018 bylaws is in evidence. Bylaw 3.1(3) defines every general meeting, aside from AGMs, as an SGM. Bylaw 4.1(1) says that notice of a general meeting must a) include the place, date, and time of the meeting, b) any special resolution to be proposed at the meeting, and c) be given to members not less than 14 days before the meeting. Bylaw 4.5 says that a notice sent by mail from FCA's business office is deemed received 2 days after being mailed to an address in the Greater Vancouver Regional District (GVRD) or 5 days for any other address.
19. Bylaw 4.2(1)(a) says notice of a general meeting must be given to every member shown on the register of members on the day notice is given. Bylaw 4.3 allows FCA to provide notice by various means, including by mail or personally. Bylaw 4.1(2) states that the accidental omission to give notice of a general meeting to, or the non-receipt of notice by, any of the members entitled to receive notice does not invalidate proceedings at that meeting.
20. Similarly, SA section 77(1) says that a society must provide "at least 14 days" notice before a general meeting unless the society's bylaws provide a different amount of notice. Here, the bylaws say FCA must give the same amount of notice, so I find FCA had to give members at least 14 days notice of the June 2022 SGM.
21. As noted in *Neish v. Eagle Valley Arts Council*, 2022 BCCRT 1363, the phrase "at least" is governed by the *Interpretation Act*. It requires a society like FCA to provide an additional day. Although CRT decisions are not binding, I agree with this reasoning. So, I find that FCA was required to provide notice of the June 26, 2022 by June 11, 2022. FCA's own submission is that it sent out notice on June 12, 2022, to 128 members who had not yet received notice personally. So, I find FCA did not provide the required notice for the June 2022 SGM. It was already 1 day late. Mr. Mishra also provided a copy of the envelope enclosing the notice. It was postmarked June 14, 2022, so I find this notice was already 2 days late as well.
22. I note that SA section 77(2) provides for additional ways for societies of more than 250 members to provide notice to its members. These include notice by email and publishing the notice in a newspaper or website. FCA says, and I accept, that it has

over 250 members. However, there is no submission that FCA used this provision for the June 2022 SGM.

23. FCA relies on SA section 77(3) and bylaw 4.1(2). They both state that the accidental omission to send notice of a general meeting to, or the non-receipt of notice by, any of the members entitled to receive notice does not invalidate proceedings at that meeting. I find these provisions do not apply as this is a situation where the FCA has provided late notice, rather than omitted to send notice at all.

Issue #2. What are the appropriate remedies?

24. The parties disagree on the severity of the breach. In *Neish*, the CRT found that business conducted at an invalidly constitute meeting is generally a nullity. That said, as a general principle, courts and by extension the CRT, should be reluctant to intrude into a society's affairs and impose resolution. In general, society members should control their own affairs. See *Hong and Jung v. Young Kwang Presbyterian Church*, 2006 BCSC 376.
25. Here, I agree with the reasoning in *Neish* and find the lack of notice is sufficient to entitle the applicants to a remedy. I also find there were some other irregularities that support my conclusion, though they are of lesser importance.
26. First, as noted earlier, bylaw 5.7(2)(c) excluded voting by a show of hands at the June 2022 SGM. FCA says that the members voted on each bylaw amendment by a show of colored cards. I find this was essentially the same as voting by a show of hands, in breach of the bylaws.
27. Second, I find that it was improper for FCA to have members vote on essentially a modified version of the special resolution at the June 2022 SGM. As stated earlier, the members voted on the bylaw amendments individually instead of as a whole, and 2 specific amendments were withdrawn. The text of special resolutions should generally not be amended at a general meeting. See *Armstrong v. Clark et al*, 2002 BCSC 730 at paragraph 30. I find it was open to FCA to adjourn the SGM and send out notices for a new meeting with the new text, which would have been proper.

28. I would add that, had FCA provided proper notice, I might have considered these 2 irregularities or breaches insufficient to warrant a remedy because of the principles discussed in *Hong and Jung*. I say this partly because I find that FCA did not substantially change the amendments to be voted on at the June 2022 SGM. However, as FCA did not provide proper notice, I find a remedy is warranted.
29. The June 2022 SGM minutes show the amendments passed with limited objections. So, I find the members should still have the opportunity to vote on them. I order FCA to hold an SGM within 120 days to vote on a special resolution to adopt the bylaw amendments invalidly passed at the June 26, 2022 SGM, unless it holds its AGM within that time, in which case it must include a vote at the AGM to adopt the previously mentioned bylaw amendments.
30. I also order FCA to immediately stop applying the same bylaw amendments unless and until members pass a special resolution adopting them.
31. As stated above, the applicant also seek an order for FCA to hold within 90 days an AGM or general meeting to elect a new board of directors. I decline to make this order for 3 reasons. First, I find the principles stated in *Hong and Jung* suggest that I should be reluctant to impose such an intrusion. Second, FCA will presumably hold its next AGM in August 2023. I find that ordering an election, so that another election would occur a few weeks later, would serve little useful purpose. Third, I find there is little connection between the validity of the June 2022 SGM and the August 2022 AGM. On the evidence before me, there is no indication that the bylaw amendments from June 2022 affected the August 2022 AGM or election in any significant way.
32. The applicants also seek a declaration that the August 2022 AGM and the elections of board members are invalid. As stated in *Neish* at paragraph 24, the CRT generally lacks the jurisdiction to make declaratory orders. So, I decline to make a declaratory order about the validity of the August 2022 AGM. If I had the jurisdiction to do so, I would find it unproven on the evidence in any event.
33. The applicants also say I should order FCA to discipline TR. I decline to make this order for 3 reasons. First, the evidence before me indicates that TR made an

inadvertent filing error that caused no lasting harm. So, I find it unnecessary to order any remedy. Second, there is already a method available for the applicants to seek discipline against TR. SA sections 70(2) and bylaw 2.9 both allow a member to be expelled or suspended by special resolution. The applicants have not attempted, under SA section 75, to have members requisition the directors to call a general meeting about such a special resolution. So, I find it would be premature to make the requested order. Third, I find the applicants' requested remedy vague. It does not say what punishment FCA should impose on TR. So, I decline to make the order for this reason as well.

CRT FEES AND EXPENSES

34. 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. I see no reason in this case not to follow that general rule. I find the applicants have been partially successful. So, I order FCA to pay the applicants \$112.50 as partial reimbursement of CRT fees. As I find at least some of the applicants' claim had merit and necessitated starting this proceeding, I dismiss FCA's claims for reimbursement of dispute-related expenses. These include its reimbursement claims for \$220 in room rental fees, \$122 for toner, and \$8 for copier paper. I also decline these fees because I do not find them reasonably necessary, given that the CRT is an online tribunal.

ORDERS

35. I order FCA to hold an SGM within 120 days to vote on a special resolution to adopt the bylaw amendments invalidly passed at the June 26, 2022 SGM, unless it holds its AGM within that time, in which case it must include a vote at the AGM to adopt the previously mentioned bylaw amendments.

36. I order FCA to immediately stop applying the above-mentioned bylaw amendments unless and until members pass a special resolution adopting them.

37. Within 30 days of the date of this order, I order FCA to pay the applicants a total of \$112.50 in CRT fees.
38. The applicants are entitled to post-judgment interest as applicable.
39. 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.

David Jiang, Tribunal Member