



Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Iversen v. Burrard Yacht Club*, 2023 BCCRT 375

B E T W E E N :

WILLIAM ALEXANDER IVERSEN

APPLICANT

A N D :

BURRARD YACHT CLUB

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, William Alexander Iversen, is a member of the respondent society, Burrard Yacht Club (BYC). Mr. Iversen says BYC wrongly decided he had breached its bylaws by engaging in unbecoming conduct. He alleges that BYC breached the principles of natural justice by 1) providing inadequate notice of a disciplinary hearing,

- 2) being biased against him, and 3) failing to provide a fair hearing. BYC suspended his use of its facilities for the month of July 2022, preventing him from mooring his boat. He seeks damages of \$2,351.35, which he says is equal to the cost of using public transient moorage for the suspension period.
2. BYC disagrees. It says it conducted a thorough investigation, provided appropriate notice, held an investigative meeting and a separate hearing both attended by Mr. Iversen, and reached a reasoned decision.
 3. Mr. Iversen represents himself. The member and legal director for BYC, JG, represents it.
 4. For the reasons that follow, I dismiss Mr. Iversen'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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.

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.

Mr. Iversen's Late Evidence, Late, Submissions, and New Claims

10. Mr. Iversen provided as late evidence 1) a confidentiality agreement with the date, name, and signature fields left blanks, 2) a list of BYC's directors, committee members, and their duties, and 3) moorage rates for different public marinas. Mr. Iversen also provided further submissions after completing his reply submissions.
11. BYC objected to the late evidence and said it was irrelevant to the issues in the Dispute Notice. It also said that Mr. Iversen was improperly raising a new issue of whether BYC breached any confidentiality agreements or obligations. It also said that Mr. Iversen's new submissions were largely duplicative and an attempt to exceed the CRT's character count limit on submissions.
12. I find the evidence and submissions are relevant to this dispute. BYC had the opportunity to view the late evidence and submissions and commented on them. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice in allowing the late evidence and submissions. I reach this conclusion regardless of whether the submission exceed the CRT's character count limit outlined under rule 7.3(5). In any event, my decision does not turn on the late evidence.
13. However, I agree with BYC that I should not consider any claims about breached confidentiality. I reach this conclusion for 2 reasons. First, Mr. Iversen did not raise the issue of breached confidentiality in the Dispute Notice. The CRT has previously declined to consider claims or remedies not raised in the Dispute Notice. This is because raising a claim late deprives a party of an adequate opportunity to respond

and undermines the purpose of the CRT's facilitation process. See *Lynden-Burch v. Skeena Senior Citizens Housing Society*, 2023 BCCRT 238 at paragraphs 11 to 15 and *Deyneko v. Avalon Housing Co-operative*, 2021 BCCRT 1196 at paragraphs 12 to 13. CRT decisions are not binding but I find the same considerations apply here. I find this concern is enough reason, on its own, to decline to consider the breached confidentiality claims.

14. Second, Mr. Iversen did not request any specific remedy for breach of confidentiality. So, I would decline to consider the claim for this reason as well.

ISSUES

15. The issues in this dispute are as follows:

- a. Did BYC engage in unfairly prejudicial conduct?
- b. If so, is the applicant entitled to damages of \$2,351.35?

BACKGROUND, EVIDENCE AND ANALYSIS

16. In a civil proceeding like this one, Mr. Iversen as the applicant must prove his claims on a balance of probabilities. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision.
17. BYC is a BC society incorporated in 1956. Its filed constitution says that its objects include providing and maintaining clubhouse and mooring facilities for member use.
18. On May 3, 2022, BYC held a special general meeting (SGM), which undisputedly was contentious. On May 19, 2022, KG, a member, complained in writing about Mr. Iversen. KG alleged that Mr. Iversen swore at her and called a liar.
19. BYC then formed an investigative committee composed of members FM and JG. On May 26, 2022, it emailed Mr. Iversen KG's complaint, the witness statements of JO, KL, and DG, and the committee's report on the allegations. Having read the attachments, I find the witness statements as a whole corroborate KG's complaint.

20. The committee asked Mr. Iversen to meet on either May 27 or May 28, 2022, to discuss the matter. Mr. Iversen chose to meet on May 27 through a text message. The parties' submissions and the committee's report indicate that Mr. Iversen declined to comment substantively on the allegations.
21. After the meeting, the committee forwarded its report to the board of directors. On May 29, 2022, BYC's secretary emailed Mr. Iversen asking if he could attend a June 7, 2022 meeting with the board to discuss the allegations. Separately, on May 31, 2022, JG also emailed Mr. Iversen and warned Mr. Iversen that the board could suspend or expel him under bylaw 10(3)(a).
22. Bylaw 10(3)(a) says that the directors may suspend or expel a member whose conduct, in the directors' opinion, is unbecoming, if the directors pass a majority resolution at a meeting called specifically for that purpose.
23. The board held the June 7, 2022 meeting. Mr. Iversen attended and spoke. In a June 16, 2022 decision letter, BYC's board found the allegations proven. It suspended Mr. Iversen's use of all outstations for July 2022, placed a letter about the incident "on file", and recommended that Mr. Iversen write a letter of apology to CG. It also said that the matter would be kept confidential.

Did BYC engage in unfairly prejudicial conduct?

24. I will first consider the applicable legal principles. As noted above, Mr. Iversen says that BYC breached the principles of natural justice, which I find overlaps the concept of procedural fairness. The CRT has previously held that it lacks jurisdiction to consider claims about breaches of procedural fairness. This is because CRTA section 130(1)(c) says the CRT lacks jurisdiction over a claim that may be dealt with by the BC Supreme Court under Part 8 of the *Society Act* (SA). See *H.T. v. R.C.B.A.*, 2020 BCCRT 1153.
25. More recently, CRT decisions have held that the CRT has jurisdiction to consider claims of unfairly prejudicial conduct by a society under CRTA sections 129 and 131. See *Pang v. Little Mountain Residential Care & Housing Society*, 2021 BCCRT 947.

CRT decisions are not binding, but here I agree with and adopt the reasoning in *Pang* at paragraphs 28 to 31. I find that the wording of CRTA section 131(2) grants the CRT jurisdiction over allegedly unfairly prejudicial conduct as an exception to the general rule that the CRT lacks jurisdiction to consider claims under SA Part 8.

26. Although Mr. Iversen does not use the term, I find his claims are substantively about unfairly prejudicial conduct. So, I will use this legal framework to consider BYC's handling of KG's complaint was unfairly prejudicial to Mr. Iversen.
27. I find that to succeed in his claim, Mr. Iversen must establish that BYC failed to meet his reasonable expectations and that, on an objective basis, that failure involved prejudicial consequences. See *Dalpadado v. North Bend Land Society*, 2018 BCSC 835. The focus is on the effect of the allegedly unfairly prejudicial conduct on the society member, rather than on the intention of the society in its conduct. See *Surrey Knights Junior Hockey v. The Pacific Junior Hockey League*, 2018 BCSC 1748 (*Surrey Knights*), citing *Nystad v. Harcrest Apt. Ltd.*, 1986 CanLII 999 (BCSC). It is not enough for Mr. Iversen to prove the conduct was prejudicial to him. There must also be an element of inequity or unfairness to the conduct's effect. See *Dalpadado*.
28. Our courts have said that a society's obligation to adhere to the principles of procedural fairness lies on spectrum. On one end are purely social clubs, which require a less rigorous "fair play" or "good faith" standard of review of disciplinary proceedings. On the other end lie voluntary organizations that wield significant power over their members in areas like employment, such as labour unions. See *Surrey Knights* at paragraphs 83 to 85, citing *Barrie v. Royal Colwood Golf Club*, 2001 BCSC 1181.
29. Here, I find that BYC lies further on the spectrum towards a purely social club. This is because BYC does not affect Mr. Iversen's employment. I find there is, at most, a modest financial interest at stake. This is because the bylaws refer to a member "entrance fee". From my review of the bylaws, I find this fee is generally not refundable to an expelled member. However, the submissions and evidence do not say how

much the fee is, so I find it unproven to be any significant amount. I find a less rigorous “fair play” or “good faith” standard applies.

30. Mr. Iversen says he had insufficient notice as he only had 5 hours to prepare for the disciplinary hearing. He also says the board failed to hold a proper investigation, failed to appropriately weigh evidence, failed to share all evidence it considered with Mr. Iversen, and kept several witnesses in the hearing room, which influenced its decision-making. He also says that several board members demonstrated bias against him. I find from these specific allegations that Mr. Iversen’s overall expectation was that the process would be procedurally fair, and that the board’s conclusion would be reasonable. I find that this was an objectively reasonable expectation, subject to my comments above that a less rigorous standard of review applies. So, I will consider whether Mr. Iversen’s allegations are proven and if so, what effect the conduct had on Mr. Iversen.

Alleged Insufficient Notice of the May 27, 2022 Meeting

31. Bylaw 10(3)(b) says that BYC must give at least 1 week’s notice to a member of a meeting where the directors are considering suspending or expelling the member under bylaw 10(3)(a). The evidence shows that the board did not vote on any resolution at the May 27, 2022 meeting. In a May 29, 2022 email, said it told Mr. Iversen it would do so on June 7, 2022. So, I find that bylaw 10(3)(b) did not apply to the May 27, 2022 meeting. As such, I find BYC complied with the bylaw.
32. I note that BYC provided sufficient notice of the June 7 meeting under the bylaw as it provided notice in the May 29, 2022 email. More generally, I find BYC complied with the most elementary principles of notice by telling Mr. Iversen in substance what would happen at the June 7 meeting and giving him an opportunity to respond. See *Surrey Knights* at paragraphs 91 to 92.

Lack of Disclosed Evidence before the May 27, 2022 Meeting

33. BYC emailed KG’s complaint, 3 witness statements, and the report before the May 27, 2022 meeting. It also emailed a second statement from JO on May 29, 2022.

34. Mr. Iversen says BYC should have provided all its evidence prior to the May 27, 2022 meeting. However, there is nothing in the bylaws that says BYC was obligated to do so. Further, as noted earlier, BYC did not suspend Mr. Iversen at the May 27 meeting. He still had the opportunity to address the matter and present evidence at the June 7 meeting with the witness statements in hand. So, I find BYC did not breach any reasonable expectations or fail to act in good faith.

Allegations of Insufficient Investigation, Bias, Procedural Unfairness, and Misapprehension of Evidence

35. Mr. Iversen says that BYC failed to investigate KG's allegations. I find that the committee only had to act reasonably. This is because the bylaws do not require BYC to investigate every possible lead and, as noted above, I find a good faith standard applies to BYC, rather than perfection.
36. Overall, I find BYC acted reasonably in the process leading up to the hearing. Witnesses corroborated KG's initial complaint. So, I find it was reasonable for the committee to speak to Mr. Iversen as the next step. Mr. Iversen declined to address the allegations at the May 27 meeting. So, I find that the committee did not ignore or neglect to follow up on any leads provided by Mr. Iversen. I find BYC did not breach any reasonable expectations and likely acted in good faith in the circumstances.
37. Mr. Iversen also says that FM and JG were biased against him. He says they both assumed his guilt and should not have voted at the June 7, 2022 hearing. Courts have held that an unbiased appearance is an essential component of procedural fairness. So, I find that if a reasonably informed bystander could reasonably perceive bias on the part of the FM or JG, that would disqualify the entire board decision. See *Surrey Knights* at paragraphs 97 to 98.
38. Overall, I find Mr. Iversen's allegation speculative and unsupported by evidence. Mr. Iversen says that FM and JG demonstrated bias by failing to reasonably investigate KG's allegations, but I have already found this was not the case. Mr. Iversen says that FM and JG should not have voted at the June 7, 2022 meeting. I disagree for 2 reasons.

39. First, there are no bylaws or rules that prohibited them from doing so. Second, I reviewed the committee's report, drafted by JG. The report contains no conclusions about Mr. Iversen's guilt or the likelihood of KG's allegations. Similarly, JG's May 31, 2022 email to Mr. Iversen states, "No decision has been made by anyone in regard to the complaint and none will be made until you have been given the opportunity to address the board." So, I find that there is no indication that FM or JG refused to keep an open mind. For those reasons, I find BYC did not breach any of Mr. Iversen's reasonable expectations and likely acted in good faith.
40. Mr. Iversen also says that at the June 7, 2022 hearing was held in a procedurally unfair manner. He says the board was influenced by the presence of KG in the room, along with the witness JO and committee member FM.
41. Case law holds that if a person disqualified by bias is present at a hearing and sits or retires with the tribunal, the decision may be set aside even if that person took no part in the decision and did not actually influence it. See *Surrey Knights* at paragraph 98 citing *Sparvier v. Cowessess Indian Band No. 73*, 1993 CanLII 2958 (FC).
42. Here, the June 16, 2022 letter states that the board asked KG and JO to recuse themselves before deliberations. So, I find it likely they did not sit or retire with the board during its decision making. As such, I find it unlikely their presence had any impact or otherwise "poisoned the well". In any event, Mr. Iversen was present at the meeting as well. It is unclear why KG's or JO's presence would unduly influence the board, but Mr. Iversen's would not. Here as well, I find it unproven that BYC breached any reasonable expectations or failed to act in good faith.
43. Mr. Iversen also says the board misapprehended or failed to reasonably weigh his evidence. I disagree as the June 16, 2022 letter explain the board's reasoning. It shows that the board preferred the evidence of KG and the 3 witnesses over the evidence provided by Mr. Iversen and the witnesses who supported his account. The board ultimately concluded that Mr. Iversen's witnesses were too far away to hear at the time he swore at KG, which I find was a rational basis to discount their evidence.

44. For those reasons, I find that BYC provided Mr. Iversen with the required degree of procedural fairness and came to a reasoned conclusion. I find that Mr. Iversen has not shown that BYC failed to meet his reasonable expectations.
45. Given the above, I find BYC did not act in an unfairly prejudicial manner. I dismiss Mr. Iversen's claims.

CRT FEES AND EXPENSES

46. 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 dismiss Mr. Iversen's claims for reimbursement of CRT fees. The parties did not claim any dispute-related expenses.

ORDER

47. I dismiss Mr. Iversen's claims and this dispute.

David Jiang, Tribunal Member