



Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Hawes v. Curl BC*, 2023 BCCRT 394

B E T W E E N :

TERRY HAWES

APPLICANT

A N D :

CURL BC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Terry Hawes, is a member and one of the former directors of the respondent society, Curl BC. Mr. Hawes says that Curl BC's chair of the board of directors, Neil Campbell, improperly suspended him from 3 committees. He seeks an order for Curl BC to set aside or quash this decision, apologize, and operate within its bylaws and policies on all matters including governance.

2. Curl BC disagrees. It says that Curl BC properly suspended him under both its policies and Mr. Campbell's discretion to protect Curl BC's interests. Curl BC also says that the Civil Resolution Tribunal (CRT) lacks jurisdiction to order an apology or to quash the decision. It also says that it is too complex or impractical for the CRT to order Curl BC to operate within its bylaws and policies. I briefly address this particular requested remedy below.
3. Mr. Hawes represents himself. Mr. Campbell represents Curl BC.
4. For the reasons that follow, I dismiss this dispute as moot.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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. Hawes' Late Evidence and Reply Submissions

10. Mr. Hawes provided as late evidence 1) an August 9, 2021 memo documenting his objection to an approved motion about signing authorities, and 2) a June 2, 2020 letter from an auditor to Curl BC. Mr. Hawes also uploaded his reply submissions in a document. He candidly advised the CRT he did so to avoid the character count limit in the online submission form. This limit is specified under CRT rule 7.3(5)(c).
11. Curl BC did not object to the late evidence or reply submissions and was provided the opportunity to respond to it. I find the evidence and submissions relevant to the issues in this dispute. I find there is no prejudice in admitting or considering them and do so. In any event, my decision does not turn on the late evidence or reply submissions.

The CRT's Jurisdiction

12. As noted above, Curl BC says the CRT lacks jurisdiction over this dispute. In its Dispute Response, it says that the CRT is unable to consider a complaint by a director, member, or committee member of a society like Curl BC. It says that Mr. Hawes must instead complain to the registrar of companies or file a petition in the BC Supreme Court. Curl BC did not cite any case law or legislative provisions to support its position.
13. Mr. Hawes disagrees and says that the CRT has jurisdiction over this dispute.
14. CRTA section 129(1)(b) and (c) together say that the CRT has jurisdiction over a claim in respect of the *Societies Act* (SA) concerning an action, threatened action, or a decision of the society or its directors in relation to a member. CRTA section 131(1)

says the CRT may order a party to (a) do something, (b) refrain from doing something, or (c) pay money. CRTA section 131(2) says that in resolving a society claim under CRTA section 129(1)(b) or (c), the CRT may make an order directed at the society or its directors if the order is necessary to prevent or remedy an unfairly prejudicial action or decision.

15. Although he did not use the term, I find Mr. Hawes essentially claims a remedy for an unfairly prejudicial decision. This is because he says Curl BC improperly suspended him from the 3 committees.
16. As I noted in my decision of *Iversen v. Burrard Yacht Club*, 2023 BCCRT 375 at paragraphs 24 and 25, the CRT has previously held that it has jurisdiction to consider claims of unfairly prejudicial conduct by a society under CRTA sections 129 and 131. While CRT decisions, including my own, are not binding, I find this reasoning still applies. I find that the wording of CRTA section 131(2) grants the CRT jurisdiction over allegedly unfairly prejudicial conduct. I note this is an exception to the general rule that the CRT lacks jurisdiction to consider claims under SA Part 8. Given this, I find I have jurisdiction to consider Mr. Hawes' claims.
17. Curl BC also says that the CRT lacks jurisdiction to order Curl BC to provide an apology, follow its bylaws and policies, or quash Curl BC's decision. I find these issues are about the appropriate remedy, rather than whether the CRT strictly has jurisdiction at all. I will discuss this below.

The Issue of Mootness

18. I have found it necessary to consider whether this dispute is moot. This is because, as discussed in the timeline below, Mr. Hawes' suspension and his directorship both ended after this dispute started.
19. Although neither party specifically said this dispute was moot, I decided not to return to the parties for further submissions for the following reasons. I find there is no dispute over the fact that the suspension and directorship are over, so further submissions on this matter would serve no practical purpose. I also find that the

parties discussed, in a general manner, the appropriateness of reversing the suspensions. Though these discussions were framed as jurisdictional, I find the parties were live to issue of whether the CRT could order the requested remedy.

20. In these circumstances, I find that asking the parties for further submissions would only delay resolving this dispute and would be contrary to the CRT's mandate. That mandate includes resolving disputes in a speedy and economical manner, as outlined under CRTA section 2(2). I find these considerations are particularly strong when the evidence shows the issue is moot, as discussed below.

ISSUES

21. The issues in this dispute are as follows:

- a. Is this dispute moot?
- b. If not, did Curl BC decide to suspend Mr. Hawes from 3 committees in an unfairly prejudicial manner, and are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

22. In a civil proceeding like this one, Mr. Hawes 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.
23. Curl BC is a society incorporated in August 2004. Its filed constitution says its purpose includes promoting and developing curling as a recreational and competitive sport in BC. Another purpose is to arrange and conduct playdowns, or playoff games, and championships to determine provincial championship teams. Curl BC's bylaws and various policies on governance are in evidence.
24. The following facts are undisputed. In January 2022, Mr. Campbell was a director and chair of the board of directors. Some of the evidence refers to the directors as governors, but Curl BC's bylaws define a governor to mean a director under the SA. Mr. Hawes was also a director at the time, and a member of 3 committees: executive,

governance, and finance and audit. He also served as chair for the finance and audit committee.

25. A chief umpire's report shows that Curl BC organized curling championships held in Kamloops from January 4 to 9, 2022. After they finished, Curl BC created a written debriefing report about the event. The report focused on reports that some players tested positive for COVID-19 after the event, and what changes Curl BC would make to its event protocols to control the spread of the disease.
26. The board held a February 24, 2022 meeting. Mr. Campbell summarized part of the meeting in a February 28, 2022 email to Mr. Hawes. In the email, he noted that Mr. Hawes rejected the report's findings and felt that new processes were required. Mr. Hawes also suggested litigation against Curl BC if this did not occur. Mr. Campbell disagreed with Mr. Hawes. Mr. Campbell also suggested that Mr. Hawes was in a conflict of interest that excluded him from rejecting the report. He said this was because Mr. Hawes' family member contracted COVID-19 at the January 2022 event. In the email, Mr. Campbell also asked Mr. Hawes to voluntarily resign as a board member.
27. Mr. Hawes ultimately refused to resign. In a March 22, 2022 email and attached letter, Mr. Campbell suspended Mr. Hawes from the 3 committees effective immediately, up to the next annual general meeting (AGM) in June 2022. Mr. Hawes wrote that he made the decision under a specific board policy, BG-10(6)(f), and after consulting with the other board members. Mr. Hawes submissions indicate that he instead suspended Mr. Hawes in the March 2022 correspondence, then advised the other board members after the fact.
28. Mr. Hawes replied in a March 24, 2022 email that the suspension was improper. He also denied that he was in a conflict of interest. Mr. Hawes applied for dispute resolution on April 29, 2022. It is undisputed that at the June 2022 AGM, Curl BC held elections for new board members, and Mr. Hawes chose not to stand for re-election.

Is this dispute moot?

29. A claim is considered moot when something happens after a legal proceeding starts that removes any “present live controversy” between the parties. Generally, moot claims will be dismissed. However, the CRT has discretion to decide otherwise moot claims if doing so would have a practical impact and potentially avoid future disputes. See *Binnersley v. BCSPCA*, 2016 BCCA 259.
30. Here, I find that there is no present and live controversy for several reasons. Mr. Hawes seeks a reversal an order to reverse or quash the March 2022 suspension decision. However, in his March 2022 letter, Mr. Campbell said that the suspension expired at the June 2022 AGM. So, I find that reversing or quashing the decision would serve no purpose. I find the live controversy has disappeared.
31. Consistent with my finding, Curl BC’s bylaws indicate that its directors serve for a term of 3 years until the end of the AGM for the final year of their term. It is undisputed that Mr. Hawes’s term expired at the end of the June 2022 AGM. He did not seek re-election as a board member at the time. He also did not claim reinstatement as a board member or committee member as a remedy in this dispute.
32. As other remedies Mr. Hawes sought an apology and for an order that Curl BC comply with its bylaws and policies. The CRT generally does not order apologies because a forced apology is unlikely to serve any useful purpose. For similar reasons, the CRT has generally held that ordering a strata corporation to comply with or enforce its bylaws serves no useful purpose, because under the *Strata Property Act*, a strata corporation must already do so. I find the same reasoning applies to societies. I would decline to order either of these remedies even if Mr. Hawes were successful and proved his claims. So, I find the claimed remedies are not a reason to conclude that a live controversy exists.
33. I might have come to a different conclusion if Mr. Hawes sought damages as a remedy. However, that is not the case here.

34. In summary, I find this dispute is moot. I now consider whether I should exercise my discretion to decide this dispute despite my finding. The 3 factors to consider are 1) whether there still exists the necessary adversarial context, 2) whether deciding the dispute is an appropriate use of resources as it might still practically impact the parties, preclude further, similar dispute, or raise an issue of public importance, or 3) whether pronouncing a judgment in this context would intrude into the role of the legislative branch. See *Binnarsley* citing *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), at paragraphs 22 to 28.
35. I start with the first factor. An adversarial context is necessary to ensure that the issues are fully argued by the parties who have a stake in the outcome. Here I find the parties fully argued their positions at length and provided evidence as if the dispute was not moot. So, I find the necessary adversarial context still exists.
36. I find the second factor of adjudicative resources suggests I should not decide this dispute. I find it would not practically impact the parties. As noted earlier, the suspension is over, and Mr. Hawes is no longer a director or committee member.
37. I also find that deciding this dispute would be unlikely to preclude a further, similar dispute. There is no indication that it will end any other disputes in general or at Curl BC. I also find the allegations and circumstances were largely specific to the parties. While I find the issues are of importance to the parties, I find they are fact specific and do not rise to the level of public importance. For example, they involve the interpretation of Curl BC's specific suspension policy rather than legislation or law with broader application to the public.
38. I therefore find that there is no reason before me that suggests I should depart from the regular role of the CRT to decline to decide a dispute in the absence of a live controversy.
39. For those reasons, I dismiss this dispute because it is moot.

CRT FEES AND EXPENSES

40. 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. Hawes' claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

ORDER

41. I dismiss Mr. Hawes' claims and this dispute.

David Jiang, Tribunal Member