



Civil Resolution Tribunal

Date Issued: September 21, 2023

File: CS-2022-009483

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Aichele v. Kawkawa Camp Society*, 2023 BCCRT 805

B E T W E E N :

ELMER AICHELE and FRED PETTERSEN

APPLICANTS

A N D :

KAWKAWA CAMP SOCIETY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about records access. The applicants, Elmer Aichele and Fred Pettersen, say they are members of the respondent society, Kawkawa Camp Society. The applicants allege that the respondent unjustifiably refused their request to view meeting minutes. They seek an order for the respondent to produce the records. As noted below, correspondence shows the applicants' request is about the minutes for

all board meetings and “special meetings” from September 1, 2021 to March 18, 2022.

2. The respondent says it was entitled to deny the request for the following reasons: 1) the respondent’s board required time to review the records before releasing them, 2) it had imposed a “cooling off period” that prohibited such requests, and 3) the applicants appeared in person and acted in an inappropriate manner to staff. The respondent also says that Mr. Aichele is a member, but Mr. Pettersen is only a volunteer and not entitled to request or inspect the records.
3. Mr. Aichele represents the applicants. A director represents the respondent.
4. For the reasons that follow, I find Mr. Aichele has proven his claim, though Mr. Pettersen has not.

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.

The Respondent's Late Evidence

9. The respondent uploaded 2 files as late evidence and a separate email explaining that through inadvertence, it had missed the deadline to provide evidence. The applicants did not object to the late evidence, but said it was irrelevant to the issue in this dispute.
10. I find the late evidence is relevant to the background of this dispute. As the applicants did not object, I have referred to some of it. However, my decision does not turn on the late evidence in any event.

ISSUE

11. The issue in this dispute is whether the respondent must produce copies of requested records to any of the applicants.

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
13. BC registry documents show that the respondent became incorporated on April 8, 2008. Its constitution, filed on December 14, 2016, says the respondent's purposes include establishing and maintaining a recreational camp and providing religious instruction.

14. The respondent's bylaws, filed on March 29, 2017, are relevant. Bylaw 11.2 says that all the respondent's records shall be stored in a safe and secure location at its registered address. Further, the respondent's members may view the records at the registered address during office hours with 2 business days' notice to the respondent's executive director and chair.
15. Bylaw 1.1 defines certain terms. The board means the board of directors. A director means a member elected or appointed to the board. The chair refers to the chair of the board. A member means a person who applies to the board for membership in the respondent and is in good standing.
16. I turn to the chronology. On the morning of March 21, 2022, Mr. Aichele emailed the respondent's chair, GC, and its executive director, WS. Mr. Aichele said that he wished to view the minutes for all board meetings and special meetings from September 1, 2021 to March 18, 2022. He added that he wished to view them on March 24, 2022 at the respondent's registered office. He noted the address, which matches that shown in BC registry documents. Mr. Aichele also specifically said he made his request under bylaw 11.2.
17. From reviewing a calendar, I find that Mr. Aichele provided the respondent 2 business days' notice as required under bylaw 11.2.
18. The applicants say they were both members of the respondent at the time of the March 2022 record request. The respondent says only Mr. Aichele was a member. On this issue, I agree with the applicants as they provided a membership list dated February 1, 2022. I find it clearly states that both applicants were members of the respondent at the time of the request. The respondent did not say the membership list itself contained errors or provide evidence to rebut it.
19. That said, I find only Mr. Aichele requested to view the records as the email did not refer to Mr. Pettersen or include him as a recipient or author.
20. The applicants both provided statements about what they say happened next. They attended the respondent's office on the morning of March 24, 2022. At the time, the

office was open and had staff working, so I find they attended during “office hours” under bylaw 11.2. Mr. Aichele requested the minutes. The staff refused and became emotional. Mr. Pettersen called GC and another board member, MB, to instruct staff to provide the records. It is undisputed that the respondent did not provide any records for inspection.

Must the respondent produce copies of requested records to any of the applicants?

21. As noted earlier, in the email Mr. Aichele requested the minutes for all board meetings and special meetings from September 1, 2021, to March 18, 2022. The parties disagree on whether the respondent was entitled to deny Mr. Aichele’s request in the circumstances.
22. As noted above, bylaw 11.2 expressly allows members to view records at the respondent’s address during office hours with the appropriate notice. I have already found that Mr. Aichele complied with bylaw 11.2. Among other things, he was a member at the time of the request, he provided the appropriate notice, and appeared at the appropriate time and place. So, I next consider the scope of documents in the request.
23. Section 20 of the *Societies Act* (SA) specifies certain records a society must keep. SA section 20(1)(i) says a society must keep the minutes of each general meeting, including the text of each resolution voted on at the meeting.
24. Section 20(2)(a) says that a society must also keep the minutes of each directors’ meeting, including a list of all directors at the meeting, and the text of each resolution voted on at the meeting.
25. Mr. Aichele requested the minutes of special meetings and board meetings. I find special meetings refer to special general meetings, and the term board refers to the board of directors. So, I find Mr. Aichele’s request included 1) the minutes of special general meetings including the text of each resolution voted on at the meeting, and 2) the minutes of directors’ meetings, including a list of all directors at the meeting,

and the text of each resolution voted on at the meeting. This is because the respondent must, at a minimum, keep such records under the SA.

26. The respondent says it was entitled to refuse the request in part because it instituted a “cooling off” period. The respondent describes the term in the correspondence. Prior to the records request, GC emailed Mr. Aichele on February 27, 2022 on behalf the respondent. The respondent said it had engaged another party to conduct a leadership review. It said that because of this, emotions were running “very high”. As such, the board had agreed to institute a cooling off period. It said this might include a temporary reduction of non-essential activities and a definition of what that entailed.
27. I find these submissions and the email unpersuasive. The bylaws do not allow the respondent discretion to refuse such requests. Further, the “cooling off” period was vaguely worded and did not specifically bar Mr. Aichele’s request in any event. I also find it speculative that providing the records would have caused any harm. The respondent did not make any specific allegations that producing the records would create a danger to people or property.
28. As noted earlier, the respondent also says it required more time to review the records. I find this was not the case. This is because Mr. Aichele complied with the notice required under bylaw 11.2, his request was focused on only certain types of records, and it was only for a specific time period.
29. The respondent also says the applicants were unpleasant when they attended the office. However, the applicants’ statements show that this was because the respondent refused their request, which I find Mr. Aichele was entitled to make. So, I put little significance on this.
30. Given the above, I find Mr. Aichele is entitled to a remedy. To expedite the resolution of this dispute, I find it preferable to order the respondent to provide copies of the requested records rather than to arrange an inspection. So, I order the respondent to, within 15 days, provide Mr. Aichele copies of the following:
 - a. all special general meeting minutes, including the text of each resolution voted on at any such meetings, from September 1, 2021, to March 18, 2022, and

- b. all board meeting minutes, including a list of all of the directors at each meeting and the text of each resolution voted on at each meeting, from September 1, 2021, to March 18, 2022.

- 31. I order that the respondent must not charge any fee for providing the above-mentioned records to Mr. Aichele.
- 32. As noted earlier, I have found that only Mr. Aichele requested inspection of the records. So, I decline to order the respondent to provide the records to both applicants.

CRT FEES AND EXPENSES

- 33. 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.
- 34. I find the applicants have been largely successful. So, I order the respondent to reimburse the applicants \$225 in CRT fees. The parties did not claim any specific dispute-related expenses.

ORDERS

- 35. I order the respondent to, within 15 days, provide Mr. Aichele copies of the following:
 - a. all special general meeting minutes, including the text of each resolution voted on at any such meetings, from September 1, 2021, to March 18, 2022,
 - b. all board meeting minutes, including a list of all of the directors at each meeting and the text of each resolution voted on at each meeting, from September 1, 2021, to March 18, 2022.
- 36. I order that the respondent must not charge any fee for providing the above-mentioned records to Mr. Aichele.
- 37. I order the respondent to, within 30 days, reimburse the applicants \$225 for CRT fees.

38. The applicants are entitled to post-judgment interest under the *Court Order Interest Act*.
39. I dismiss the balance of Mr. Pettersen's claims.
40. 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