



Civil Resolution Tribunal

Date Issued: October 31, 2023

File: CS-2022-008131

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Pridham v. Cross*, 2023 BCCRT 941

B E T W E E N :

STAN PRIDHAM, MARVIN BRAUN, BRIAN WRIGHT, JOHN WILLIAM
TOEWS, and FRED HALL

APPLICANTS

A N D :

GREGORY CROSS and KAWKAWA CAMP SOCIETY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicants, Stan Pridham, Marvin Braun, Brian Wright, John William Toews, and Fred Hall, are members of the respondent society, Kawkawa Camp Society (Kawkawa). The other respondent, Gregory Cross, is a director of Kawkawa.

2. The applicants say that in early 2022 the membership essentially became divided on how Kawkawa should be managed. They say Kawkawa subsequently engaged in wrongdoing that included manipulating the membership list. They seek an order for another list kept at Kawkawa's office to be used as the official membership list. They also say that membership applications in 2021 and 2022 were improperly rejected in 2022. They seek an order that these applications be reviewed again for acceptance, based on applicable standards and processes at the time.
3. The applicants also say that Kawkawa should remove some of its board directors. They seek an order that Mr. Cross, RC, CV, JM, AM, and AB be removed from their positions. Of these, only Mr. Cross is a named party in this dispute.
4. The applicants also say that a third party, FL, chaired the May 30, 2022 special general meeting (SGM) and June 25, 2022 annual general meeting (AGM) in breach of the bylaws. The applicants seek declarations that the resolutions at the May 2022 SGM and June 2022 AGM are invalid, and an order for Kawkawa to hold a new SGM to reconsider those resolutions and re-elect directors. They also seek a broader order that all resolutions made at any meetings run or chaired by FL be declared invalid and reconsidered at a new SGM. They also seek an order that the persons denied voting rights at the May 2022 SGM that are allegedly members as of 2021 be allowed to vote at any new SGM.
5. Finally, the applicants also seek an order to delay Kawkawa's AGM until I decide these issues.
6. The respondents deny any wrongdoing. In particular, they say the current membership list is valid and consists of members that completed the necessary paperwork under bylaw 2.2, discussed below. They say the current directors validly hold their positions. The respondents acknowledge that a FL member chaired the May 2022 SGM and June 2022 AGM. They say they were entitled to do so under bylaw 3.2(a), cited below.
7. Mr. Pridham represents the applicants. Mr. Cross represents the respondents.

8. For the reasons that follow, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain cooperative association claims under section 125 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.
10. 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.
11. 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.
12. 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 Parties' Additional Submissions

13. Under CRT rule 7.3(5), an applicant and respondent's arguments are generally limited per claim to 20,000 characters, and 10,000 characters for the applicant's final reply. Both the applicants and respondents provided additional submissions as uploaded documents that, in total, exceed the character limits. Given the complexity of the dispute and the lack of objections about this, I find it fair in the circumstances

to waive any breach of the character limit by the parties under CRT rule 1.2(2). I do so and consider all the submissions in my decision.

The Applicants' Claim for a Delayed AGM

14. As noted earlier, the applicants seek an order to delay Kawkawa's AGM until the release of this decision. CRTA section 61 allows the CRT to make preliminary decisions. It says the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.
15. The applicants first applied for dispute resolution on December 1, 2022. They amended the Dispute Notice on March 22, 2023. There is no indication that the applicants asked the CRT to make a preliminary decision under CRTA section 61. I find the applicants' request is essentially moot at this point. So, I dismiss the applicants' claim for this remedy.

The Applicants' Claims against Greg Cross

16. The applicants did not make any claims against Mr. Cross in his personal capacity. There are no allegations that he engaged in wrongdoing outside of his role as a director and representative for Kawkawa. I note that I may order Kawkawa to remove a director or accept their resignation, even if they are not a named party. So, I find it was not necessary for Mr. Cross to be a named party in this dispute. Given the above, I dismiss all claims against Mr. Cross.

ISSUES

17. The remaining issues in this dispute are as follows:
 - a. Are any meetings run or chaired by FL invalid?
 - b. Should I make any orders about the current member list?

- c. Should I order Kawkawa to review the 2021 and 2022 membership applications it rejected in 2022?
- d. Should I declare the resolutions made at the May 2022 SGM and June 2022 AGM invalid?
- e. Should I order that persons denied voting rights at the May 2022 SGM that are allegedly members as of 2021 be allowed to vote at any new SGM?
- f. Should I order Kawkawa to remove any directors from the board?

BACKGROUND, EVIDENCE AND ANALYSIS

- 18. 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. However, given the considerable length and number of arguments before me, I only refer to the evidence and arguments that I find relevant to provide context for my decision.
- 19. As I noted in my previous decision of *Aichele v. Kawkawa Camp Society*, 2023 BCCRT 805, Kawkawa became incorporated on April 8, 2008. Its constitution, filed on December 14, 2016, says Kawakawa's purposes include establishing and maintaining a recreational camp and providing religious instruction. Kawkawa's bylaws, filed on March 29, 2017, are relevant and I discuss them below.
- 20. The history of this dispute largely originates with 2 events. First, starting in October 2021, Kawkawa became concerned that its executive director, WS, was not properly monitoring its finances. This culminated in Kawkawa's decision to terminate WS in April 2022. Second, in mid November 2021, a storm caused severe damage to Kawkawa's property. Kawkawa's volunteers made efforts to repair and clean the damage. In December 2021, the board asked its volunteers to stop work.
- 21. Both these decisions proved unpopular with some members. Kawkawa's internal memos indicate that in January 2022 volunteers met with WS and others to draft a letter to the board. They felt unappreciated and disrespected. There was also some

discussion that they were considering a membership drive to help change the board's composition. The January 19, 2020 board meeting minutes show the board decided to hire a consultant, FL. The respondents say, and I accept, that it hired FL to provide recommendations about WS and the volunteers.

22. On January 25, 2022, WS emailed a new membership list for the board's approval. The list is dated January 24, 2022. As discussed below, Kawkawa's memberships last a year.
23. In a March 8, 2022 meeting, the board did not approve the January 2022 membership list, finding some or all the applications lacked a signed statement, as required by bylaw 2.2. The board decided to use the same membership list in place for the 2021 AGM as the "official list for communication purposes". I note that the parties have interpreted this to mean that Kawkawa treated it as the official membership list, though I find the wording in the minutes is vaguer.
24. In April 2022, several members decided to requisition an SGM for the following: 1) for the entire board to step down immediately, 2) to hold elections for an interim board, and 3) for the interim board to establish a date for the 2022 AGM. Kawkawa held the SGM on May 30, 2022. It provided its members notice of the SGM based on the 2021 membership list, discussed above. The minutes show that a person named DB from FL chaired the meeting. The following motions were all defeated: to remove DB as chair, to include "non-members" at the SGM, and to have the entire board to step down. As noted above, the applicants allege that Kawkawa used an incorrect membership list at the SGM to essentially "rig" the votes in the board's favour.
25. Kawkawa held its AGM on June 25, 2022. The minutes show that DB acted as chair again.

Issue #1. Are any meetings run or chaired by FL's representative invalid?

26. The minutes for the May 2022 SGM and June 2022 AGM show that DB from FL chaired these meetings. As stated above, the applicants say FL's representative,

which I find is DB, inappropriately chaired those meetings. The applicants say only members can chair general meetings under the bylaws.

27. The respondents disagree and say DB could chair the meetings under the bylaws.
28. Bylaw 3.2. outlines the order of business for general meetings. Bylaw 3.2(a) says that the board may elect an individual to chair the meeting, if necessary. The bylaws also refer to the term “Chair”, but this capitalized term specifically refers to the Chair of the Board.
29. The bylaws do not define the term “individual”. So, I find the individual chairing the meeting does not have to be a Kawkawa member. I find that someone like BD could chair the meeting.
30. The applicants also rely on bylaw 3.3(f). It says that if there is no Chair, Vice-Chair, or other director present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be the Chair. I find this bylaw does not assist the applicants as the minutes indicate that directors were present at the time.
31. Given the above, I find DB could act as chair for the May 2022 SGM and June 2022 AGM. I dismiss the applicants’ claim for a declaration that the resolutions at those general meetings are invalid and an order for Kawkawa to hold a new SGM to reconsider those resolutions and re-elect directors, on the basis that BD could not chair those meetings.
32. The applicants also say that FL’s representative could not run or chair any board meetings, as opposed to general meetings. The respondents disagree and rely on bylaw 6.1.
33. Bylaw 6.1 discusses board meetings. Bylaw 6.1(a) says that the board may meet at the times and places it determines to conduct business, adjourn, and otherwise regulate their meetings and proceedings.

34. Bylaw 6.1(e) says that the Chair is the chair of all directors' meetings, but if at a meeting the Chair is not present, the Vice-Chair must act as chair. If neither are present, the directors present may choose one of their number to be the chair at that meeting.
35. I find that under bylaw 6.1(e), DB could not chair directors' meetings. That said, Kawkawa did not address whether FL or DB chaired any directors' meetings. The board meeting minutes before me are silent on who served as chair after Kawkawa first hired FL in January 2022. The February 23 and March 8, 2022 board meeting minutes only state that DB and another person from FL, AS, attended as "guests". The bylaws do not expressly prohibit guests from attending board meetings. Given the evidence, I find it unproven that FL, DB, or AS chaired these directors' meetings in breach of the bylaws.
36. For those reasons, I also dismiss the applicants' claim for a declaration that all resolutions made at any meetings run or chaired by a FL representative are invalid and should reconsidered at a new SGM.
37. The applicants also raised other issues about FL. They say that board members JM and EK recommended hiring FL without disclosing their close relationship with FL or its parent organization. I find that this is a separate unrelated issue.
38. The applicants also say that FL provided bad advice to the board, and showed bias toward the board, both in its written reports and in the way it ran meetings. The minutes before me indicate that Kawakawa hired FL, so I find its obligations were owed to Kawakawa rather than the members.

Issue #2. Should I make any orders about the current member list?

39. As noted earlier, the applicants seek orders for the list at Kawkawa's office be declared as the official membership list. The applicants provided a copy of this list, dated February 1, 2022. From my review, it appears the be the same list WS emailed the board in January 2022.

40. The respondents that the membership list presented by WS was unacceptable because it lacked paperwork, such as a signed Statement of Faith.
41. Bylaw 2.2 outlines the requirements for admittance into membership. In particular, bylaw 2.2(a) says that membership in Kawkawa is available only to individuals who, among other things, subscribe annually in writing to Kawkawa's Statement of Vision and Mission and Value and Statement of Faith.
42. Kawkawa's 2022 Annual Report shows that the board approved a new member list at its May 30, 2023 board meeting. It has some additional names and some names missing as compared to the list the applicants prefer.
43. The bylaws required members to subscribe annually under bylaw 2.2(a). Based on the bylaws and Kawkawa's undisputed submissions, I find the memberships are essentially limited to a year. The evidence shows that since then, Kawkawa's board has created another membership list as of May 2023. So, I find the issue of choosing between the February 2022 list or the March 2022 list has become essentially moot. Either choice does not reflect what the membership should be today, given that memberships must be renewed annually.
44. In addition to that, I find the evidence before me falls far short of proving whether the applicants' February 2022 list or Kawkawa's March 2022 membership list was valid, or whether a combination of the 2 would have been appropriate. I say this in part because basic information, such as the actual application forms of each member, are not before me. As the information underlying the lists is not before me, I am unable to determine who the members should be.
45. For those reasons, I must dismiss this claim.

Issue #3. Should I order Kawkawa to review the 2021 and 2022 membership applications it rejected in 2022?

46. The applicants say that membership applications in 2021 and 2022 were improperly rejected in early 2022. They say that Kawkawa subsequently "stacked" the membership list with more than 70 new members that would favour the actions of

the board. The applicants seek an order that the rejected applications be reviewed again based on the requirements of the application form that was applicable at the time of their submission, and according to proper process.

47. Kawkawa disagrees with the requested remedy. It says that it rejected applications in good faith and that the forms lacked a signed Statement of Faith document, as required under bylaw 2.2, cited above.

48. I decline to make the requested order for essentially the same reasons as above. As year 2022 ended many months ago, I find that the opportunity to order a meaningful remedy has already passed. As noted above, Kawkawa already created a new membership list for the year 2023. Further, I lack the evidence to review both the accepted and rejected membership applications. So, I find the applicants' claim is unproven.

49. I dismiss this claim.

Issue #4. Should I declare the resolutions made at the May 2022 SGM and June 2022 AGM invalid?

50. As noted above, the applicants seek declarations that the resolutions at the May 2022 SGM and June 2022 AGM are invalid. They also seek an order for Kawkawa to hold a new SGM to reconsider those resolutions and re-elect directors.

51. I will first address the May 2022 SGM. The applicants say, among other things, that 1) Kawkawa failed to provide all members notice of the meeting, 2) the notice of the meeting did not state its purpose, 3) the chair of the meeting voted illegally, 4) FL denied some members from voting that should have, 5) FL did not give proper "regard" for long-term members, and 6) the meeting did not address the requested purpose.

52. Kawkawa says it held both general meetings appropriately and in compliance with the bylaws.

53. For the reasons that follow, I decline to make any orders about the May 2022 SGM.

54. The minutes show that members passed only 1 resolution at the May 2022 SGM. It was about amending the agenda. I find that nothing of ongoing consequence passed at the May 2022 SGM. So, I find that declaring it invalid or forcing Kawaka to hold it anew would hold no useful purpose. I note that members can still requisition another SGM if that is their wish.
55. The applicants say that if the May 2022 SGM had been run differently, Kawaka would not have lost so many employees and volunteers, experienced subsequent financial disorder, or incurred legal fees or the fees of FL. While I acknowledge this submission, I find that ordering a new SGM now would not remedy these alleged issues. So, I make no orders about the May 2022 SGM.
56. The applicants also say the May 2022 SGM notice had some flaws with it. However, I find there is little evidence on the issue from the parties, so I find this unproven.
57. I next consider the June 2022 AGM. The applicants say, among other things, that the June 2022 AGM had the following defects: 1) legitimate members were denied the ability to vote at the June 2022 AGM, 2) some members were wrongfully removed from the AGM after being granted permission to observe, 3) the AGM was run in a manner that was extremely biased towards the board, and 4) the AGM was very “divisive and restricting”, and 5) FL chaired the AGM, which I already addressed above..
58. In the non-binding decisions of *Rowbotham v. The Owners, Strata Plan VIS5996*, 2023 BCCRT 890, the Vice Chair declined to order a strata corporation to hold an SGM for members to vote again on a budget passed at the AGM. The Vice Chair found that invalidating the budget would have been pointless, in part because the 2022 fiscal year had passed.
59. Although *Rowbotham* is a decision about a strata corporation, I find similar principles about general meetings apply here. I find that there would be little purpose in ordering the June 2022 AGM to be held again. The minutes document that the board passed resolutions that largely had effects limited to the June 2022 AGM itself or for the year 2022. For example, the minutes show the motions passed

included the following: a time limit on presenting motions at the AGM, the AGM agenda, retaining an auditor for 2022, adopting the 2022 budget, and receiving financial statements.

60. I find there are only 2 events from the June 2022 AGM that continue to have an effect. The first is that the members approved and adopted the previous minutes for the May 2021 AGM and May 2022 SGM. While the applicants say the May 2022 SGM was held in an inappropriate manner, they did not say that the minutes for it required any corrections. So, I find it unproven that I should order Kawkawa to hold an SGM about the minutes.
61. The second is that members voted to elect 2 new members to the board. The first was a person named AW. The 2022 Annual Report indicates AW resigned before his term finished, and the applicants did not name AW as a director they wish to have resign, so nothing turns on this.
62. The second elected board member was RC. The bylaws and annual report indicate their term would extend from 2022 into 2025. The applicants say RC should be removed as a director. So, I find this is essentially the only live issue from the June 2022 AGM. I find that I can decide this separately below without ordering an SGM.
63. Given the above, I decline to declare all the resolutions at the May 2022 SGM and June 2022 AGM invalid. I decline to make any orders about those general meetings.

Issue #5. Should I order that persons denied voting rights at the May 2022 SGM that are allegedly members as of 2021 be allowed to vote at any new SGM?

64. The applicants seek an order that all members as of 2021 inappropriately denied voting rights at the May 2022 SGM be allowed to vote at any new SGM that I order.
65. Kawkawa denies any wrongdoing or the need for any remedy.
66. I decline to make the requested order. I lack the evidence to decide whether Kawkawa wrongly denied some members from voting at the May 2022 SGM, as alleged. I also lack the evidence necessary to decide between the competing

membership lists. As noted above, I have also found it unnecessary to order another SGM.

67. For all those reasons, I dismiss this claim.

Issue #6. Should I order Kawkawa to remove any directors from the board?

68. The applicants seek orders for the following directors to be removed from the board: Mr. Cross, AB, CV, JM, JM, and RC. Kawakawa disagrees.

69. The applicants provide different reasons for their requested order and some only apply to specific directors. So, I will discuss them in turn.

70. As background, the May 29, 2021 AGM minutes show that members elected MB, “Greg Cross”, EK, CM, JM, CV, and WK onto the board of directors.

71. Bylaw 5.1(c) says that directors are generally elected at the AGM.

72. Bylaw 1.1(c) says that a director is a member who is elected or appointed to the board.

73. The applicants say that Mr. Cross should be removed as a director because no individual named “Gregory Cross” was ever elected to the board or exists as a member on the membership list. The May 29, 2021 AGM minutes show that the members elected “Greg Cross” as a board member.

74. Kawkawa’s correspondence and other documents show that Mr. Cross often goes by “Greg Cross”. As to whether Mr. Cross is a member, his name appears on Kawkawa’s version of the membership list. So, I decline to make any order about Mr. Cross

75. The applicants say AB should be removed as a director because she was appointed just before the June 2022 AGM by an illegitimate board. The nominating committee’s 2023 report indicates that AB’s term concludes in 2024, so they are currently still a director.

76. Bylaw 5.1(f) says that the board may appoint a member in good standing as a director when a current director leaves the board between AGMs. There is little documentation about AB's appointment, but I find it likely they were appointed under bylaw 5.1(f) when AW resigned as a director midway through their term, as referenced in an annual report.
77. SA section 47(1) says that a director's act is not invalid merely because of a defect in the director's designation, election or appointment or in the qualifications of that director. SA section 47(2) says that a society's act is not invalid merely because fewer than the required number of directors have been designated, elected or appointed. Given this, I find that even if the board was "illegitimate" as alleged, AB's appointment was not invalid. So, I am not satisfied that the AB should be removed as a director.
78. The applicants say RC should be removed as a director because she was nominated by an illegally composed nomination committee.
79. Kawkawa's documents show that it uses a nomination committee to present potential board members for elections. Bylaw 4.1(a) says that the nomination committee shall consist of 5 persons including the board chair, two 2 directors, and 2 members that are not directors. Bylaw 4.4 says the nomination committee will make reports for each candidate. The documents show these reports are essentially short biographies about each candidate.
80. Kawkawa admits that the 2022 nomination committee was 1 director short of the composition required under the bylaws. Kawkawa says that at the June 2022 AGM, members brought the deficiency to the board's attention. As shown in the minutes, after the election the members voted on a motion to "discuss why it was acceptable that there were only 4 people on the nominating committee". The members defeated the motion. It says this, in effect, remedied any deficiency.
81. I find that ordering Kawkawa to remove RC from the board would be an undue interference in the society's internal affairs. I find this is not a situation where strict compliance was necessary. I find that the lack of a board member on the committee

would likely be of most concern to the board, rather than the general membership. However, there is no indication that, leading up to the June 2022 AGM, any board member objected to the composition of the 2022 nomination committee. I find it unproven that putting another board member on the committee would have changed the nominations. Further, the members still had the ultimately say on whether to elect RC as a board member. So, I decline to make any order about RC for those reasons.

82. The applicants say that CV, JM, and AM should be removed as directors because they were not members according to Kawkawa's own membership list, as approved at the March 8, 2022 board meeting.
83. Kawkawa admits this was the case. It says members elected those directors at the June 2021 AGM. Kawaka says that through its inadvertence, it did not provide the 3 proposed directors at the time with the needed paperwork to become society members. At some point, the board realized this mistake and filled out the required paperwork for them to be members. I find it unclear from Kawkawa's submissions or the evidence when exactly this occurred.
84. On balance, I find this is another situation where intervention is not warranted. I say this in part because it is undisputed that the 3 directors eventually became members. So, I find Kawkawa remedied the defect at some point.
85. Further, the nominating committee's 2023 report indicates that the 3 directors at issue are completing their first term and that it will expire in 2024. I find from this that there will be new board elections at the next AGM, likely in June 2024. So, while the issue is not entirely moot, I find most of their terms have already passed, and new elections will occur shortly. I find that if I were to order Kawkawa to hold new elections before the June 2024 AGM, this would likely occur some time in January 2024, a few months before the AGM. I find this would result in an additional administrative burden that does not appear warranted in the circumstances.
86. I also reach my conclusion in part because Kawkawa's undisputed submission is that the applicants Brian Wright, Stan Pridham, and Marvin Braun all were on the

board at the time and approved this process. As they previously assented to waiving these procedural irregularities, I find it is unfair of them to raise this objection now, when most of these directors' terms have passed.

87. The applicants also say that JM was “not up to the task” as treasurer. While the financial statements indicate that Kawkawa experienced some financial hardship in 2022, including a net loss of \$302,402, I find it unproven that JM was specifically to blame. I note that SA section 50(1) also allows a director to be removed by special resolution if the members find it appropriate to do so. So, this remedy remains available to the members.
88. The applicants also allege that the directors were corrupt and incompetent, and breached SA section 53. The provision says in part that a director of a society must, when exercising the powers and performing the functions of a director of the society, act honestly and in good faith, with a view to the best interests of the society, and exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.
89. As noted in the Vice Chair’s non-binding decision of *Canaday v. Promontory Lake Estates Homeowners’ Association*, 2022 BCCRT 1016, I find the fiduciary duties of society directors set out in SA section 53 are owed to the society and not to individual society members. So, I find the applicants cannot rely on an alleged breach of SA section 53 as a reason for me to order Kawkawa to dismiss these board members.
90. For those reasons, I dismiss this claim.

CRT FEES AND EXPENSES

91. 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 the applicants’ claim for reimbursement of CRT fees. The parties did not claim reimbursement for any specific dispute-related expenses.

ORDER

92. I dismiss the applicants' claims and this dispute.

David Jiang, Tribunal Member