



# Civil Resolution Tribunal

Date Issued: May 22, 2024

File: CS-2023-002136

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Knezevic v. Wirsz*, 2024 BCCRT 468

BETWEEN:

MLADEN KNEZEVIC

**APPLICANT**

AND:

NICOLETTE WIRSZ, KELLEY HEATH, JAMES ROBERT  
SCHELLENBERG, JERRY FLETCHER, and CULTUS LAKE HOLIDAY  
PARK ASSOCIATION

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The applicant, Mladen Knezevic, is a member of the respondent society, Cultus Lake Holiday Park Association. Mr. Knezevic says the society paid its directors – respondents Nicolette Wirsz, Kelley Heath, James Robert Schellenberg, and Jerry Fletcher – for volunteer work contrary to the *Societies Act*. He wants those four

directors to pay that money back to the society. He initially also wanted those four directors removed from the society's board of directors, but he later withdrew that requested remedy.

2. The respondents collectively deny that paying the society's directors was contrary to the *Societies Act*. They also say the Civil Resolution Tribunal (CRT) does not have jurisdiction over Mr. Knezevic's claims. The respondents made joint submissions.
3. Mr. Knezevic represents himself. The directors represent themselves. Nicolette Wirsz represents the society. As I explain below, I find the CRT does not have jurisdiction to decide this dispute, and I refuse to resolve it.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. 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.
5. 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. 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.
6. 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.
7. As discussed further below, CRTA section 130 sets out various society claims over which the CRT does not have jurisdiction.

## ISSUES

8. The issues in this dispute are:
  - a. Does the CRT have jurisdiction to decide this dispute?
  - b. If so, what remedies, if any, are appropriate?

## EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Knezevic must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. On September 10, 2022, the society's board of directors passed four consent resolutions approving paying three directors (and another director's company) for services provided between 2020 and 2022. Those are the four directors named as respondents in this dispute.
11. Mr. Knezevic says by paying directors, the society contravened section 46 of the *Societies Act*, which says that unless permitted by the bylaws, a society must not pay a director for being a director.
12. The society says it did not pay the directors for duties carried out as directors, but rather for duties beyond the scope of their duties as directors, such as administrative and caretaking services.
13. Aside from section 46 of the *Societies Act*, Mr. Knezevic also relies on section 53. That section provides, in part, that a director must act honestly and in good faith with a view to the society's best interests when acting as a director. Mr. Knezevic suggests that the four respondent directors have breached this duty. If the CRT had jurisdiction over this dispute, a significant hurdle for Mr. Knezevic would be establishing that he has standing, meaning the legal right to bring a claim in his name. The fiduciary duties of a society's directors set out in SA section 53 are owed to the society and not to

individual society members (see the CRT vice chair's reasoning in *Canaday v. Promontory Lake Estates Homeowners' Association*, 2022 BCCRT 1016). However, as I explain below, the CRT does not have jurisdiction over this dispute, so it is not necessary to determine whether Mr. Knezevic has standing to bring this claim.

***Does the CRT have jurisdiction to decide this dispute?***

14. The only remedy Mr. Knezevic seeks for the alleged breaches of the *Societies Act* is for the directors to pay the society money. Directors' liability for money distributed contrary to the *Societies Act* or a society's bylaws is set out in section 59(1). That provision says directors who vote for a resolution or consent to a consent resolution authorizing distribution contrary to the *Societies Act* or a society's bylaws are jointly and severally liable to the society. This is precisely what Mr. Knezevic alleges has happened here. Section 59(5) says that if the society or a member applies, the court may order payment to the society or make any other order the court considers appropriate. *Societies Act* section 1 says "court" means the BC Supreme Court.
15. Section 130(1)(a) of the CRTA says the CRT does not have jurisdiction over section 59 of the *Societies Act*. This means that only the BC Supreme Court has can grant the remedies under section 59.
16. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that is outside the CRT's jurisdiction. As I find that Mr. Knezevic's claim is for an order that only the BC Supreme Court can make, I refuse to resolve Mr. Knezevic's claim.
17. Under section 49 of the CRTA and the CRT's rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The society was successful, but it did not pay CRT fees and does not claim any dispute-related expenses, so I make no order.

## **ORDER**

18. I refuse to resolve Mr. Knezevic's claims and this dispute.

---

Micah Carmody, Tribunal Member