Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *MS v. ABC Housing Co-operative*, 2024 BCCRT 549

B E T W E E N :

MS and NG

**APPLICANT**

A N D :

ABC HOUSING CO-OPERATIVE

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Eric Regehr, Vice Chair

## INTRODUCTION

1. At a December 2022 general meeting, the ABC Housing Co-operative banned basketball hoops. There are basketball hoops in three driveways in the co-op. Two of those basketball hoops belong to the applicants, MS and NG. The applicants are co-op members who live in separate units with their families. The applicants say that the

basketball hoop ban is unfair. They also say the ban discriminates against their children who need exercise to manage their medical conditions.

2. The applicants ask either for an order that the co-op exempt their basketball hoops from the ban, with a reasonable restriction on playing times, or reimburse them $960 for the hoops' cost. MS represents the applicants.

3. The co-op says that an overwhelming majority of members oppose having basketball hoops, and that the resolution banning them is binding on the co-op. It asks me to dismiss the applicants' claims. The co-op is represented by a director.

4. I have anonymized the parties' names in the public version of this decision to protect the identities of minor children.

## JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.

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. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. There are no credibility issues about any important facts. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.

7. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court. The co-op objected to the applicants' reply submissions and sent CRT staff additional evidence. CRT staff told me about the co-op's objection and new evidence but did not provide them to me or the applicants. Given my conclusion dismissing the applicants' claims, I decided not to view the co-op's new materials or provide them to the applicants for further submissions. This is because as the successful party, the co-op was not prejudiced by anything in the applicants' reply submissions.

8. Under CRTA section 127 and the CRT rules, in resolving this dispute I 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.

## ISSUES

9. The issues in this dispute are:

    a. Did the co-op treat the applicants in an unfairly prejudicial manner by banning basketball hoops?

    b. Does the ban contravene the *Human Rights Code* (Code)?

    c. If so, what remedy is appropriate?

## BACKGROUND AND EVIDENCE

10. The co-op was established in 1995. It consists of 73 townhouse-style units in 11 buildings, most of which surround a grass courtyard. The applicants are both co-op members. They reside in separate residences with their families.

11. The applicants both put portable basketball hoops up on their driveways in 2022: NG in June and MS in October. Some of the applicants' submissions say this happened in 2023 but it is clear from the other evidence this is a mistake. There is (or was) a third basketball hoop that a resident put up in 2020. That resident is not a party to this dispute.

12. The co-op says it received two written complaints about the basketball hoops. The first is from April 2022 and is about the non-party resident's hoop. The complaining resident said that their neighbour's son played basketball "constantly", sometimes late into the evening. They said that the children sometimes darted into the road to chase the ball. They noted that there is a public basketball court next to the co-op that children should use.

13. The second complaint is from November 2022 and is about MS's hoop. The complaining resident said that they were "listening to bouncing balls continuously", which interrupted their work. They also suggested the children should play basketball in the adjacent park.

14. The co-op says that other members had asked questions about the hoops without making formal complaints. So, the co-op's board of directors decided to put the issue of the whether to allow basketball hoops to the members at its upcoming general meeting.

15. On December 9, 2022, the co-op sent an agenda for a general meeting scheduled for December 19. I note that the applicants take issue with the amount of notice, but because the meeting was not an annual general meeting, section 146(2) of the *Cooperative Association Act* (CAA) required at least 7 days' notice. So, I find there was adequate notice.

16. MS emailed the co-op that she would be out of the country on December 19. She asked if she could attend by Zoom, but the co-op said no. MS believes that the co-op should have facilitated a hybrid meeting, but nothing in the CAA or the co-op's rules required the co-op to offer an electronic attendance option. MS also asked about having a proxy attend. However, co-op rule 16.3 prohibits proxies. So, I find that the co-op complied with its rules and the CAA in holding an in-person-only meeting with no proxies. MS also said it was "poor form" to hold the meeting so close to Christmas when many people would be travelling. However, I find that it was within the directors' discretion to decide when to hold the meeting. I also note that 38 members attended the general meeting, well over the required quorum of 20% of the members.

17. According to the meeting minutes, there was a consensus that the basketball hoops created loud noises and safety concerns. The directors canvassed whether the members would agree to move the basketball hoops to the co-op's designated street hockey area, but the members said no. The directors also discussed allowing the existing basketball hoops to be exempt from any new rule, but again the members said no. The members voted overwhelmingly in favour of the resolution banning basketball hoops in the co-op. I note that the original minutes said the vote was unanimous, which the applicants dispute based on one resident's assertion that they had not voted for the resolution. The co-op later amended the minutes to remove the word "unanimous". I find nothing turns on this because co-op rule 17.2 requires only an ordinary resolution to adopt new policies. CAA section 1(1) says that an ordinary resolution requires a simple majority to pass. The applicants do not suggest that the ban was close to failing on that threshold.

18. MS made efforts after the general meeting to try to persuade the directors to allow her to keep her basketball hoop with conditions, such as restricted hours. The directors maintained that the members had made a decision and the co-op was bound to follow it.

## ANALYSIS

### *Unfair Prejudice*

19. Under CRTA section 127(2), the CRT can make orders to remedy an unfairly prejudicial action. The applicants do not frame it this way, but I find this is the main legal basis for their claim. To succeed, the applicants must prove that the co-op failed to meet their reasonable expectations, which had an unfairly prejudicial effect. The applicant does not have to prove that the co-op acted in bad faith or had an improper motive, but the co-op's conduct must be inequitable or unjust.[1]

[1] See *Harding v. Meadow Walk Housing Co-operative*, 2021 BCCRT 1103, and *Watson v. Lore Krill Housing Cooperative*, 2022 BCCRT 1167.

20. The co-op relies heavily on the fact that the decision to ban basketball hoops was democratic. That is a relevant consideration, but I find that a democratic decision can still be unfairly prejudicial to a member. This is consistent with strata property law, where democratic decisions are generally entitled to deference but are still subject to court or CRT intervention if they are significantly unfair.[2] I find that this principle applies to co-ops.

21. The applicants' expectation is that the co-op should allow them to keep their basketball hoops. They consider it unfair that the resolution banning basketball hoops would apply to their hoops, which they had recently obtained. They rely heavily on the fact that the co-op is a "family oriented" community. They provided photos showing children playing in the co-op's common areas. They point out that the co-op has a designated, fenced street hockey area next to some of the units. In that context, they say they reasonably expected that the co-op would be similarly open to basketball. After the resolution passed, they say the co-op should have engaged with them in good faith about ways to regulate basketball in a way that answered members' concerns without imposing an outright ban.

22. I appreciate that in some sense, it might seem arbitrary for the co-op to allow street hockey, volleyball, slip-and-slides, and other rambunctious children's play but prohibit basketball. The nature of all children's play is that it can sometimes be loud. However, I do not agree that it is reasonable for the applicants to expect that members must accept all play equally. Some sports are louder and more disruptive than others. There is no evidence that anyone ever complained about noise from any other children's activities. In contrast, the noise from basketball bothered at least two members enough to complain in writing, and once the matter was put to a vote, almost everyone present agreed to the ban. The community has indicated through that vote that driveway basketball crosses the line of acceptable noise levels for children's play. As noted, democratic decisions are entitled to some deference because they express a community sentiment.

[2] See *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, at paragraph 24, and *Radcliffe v. The Owners, Strata Plan KAS1436*, 2014 BCSC 2241, affirmed 2015 BCCA 448, at paragraph 61.

23. I also find that the members reasonably considered safety concerns. The photos in evidence show that the co-op's driveways are short. I find it likely that children playing basketball on a driveway would often end up in the co-op's roadway retrieving the ball, as one resident observed. This concern is not answered by restricted hours.

24. Also, I find it noteworthy that the co-op did not attempt to immediately enforce its "Good neighbour" rule against the applicants when members started complaining. Instead, it deferred to the membership and held a vote. I find that this was a reasonable and measured approach.

25. The applicants also argue that the co-op's decision was arbitrary or unreasonable because bouncing a basketball is quieter than the leaf blowers the co-op's landscapers use. I find that the two types of noise are not the same, and the co-op is entitled to treat them differently. Landscaping noise is inevitable at certain times of year, and is relatively infrequent, so it makes sense that the community would be more tolerant of it. The applicants also say that not all members accept the noise level of the leaf blowers, which I find undercuts the applicants' argument on this point.

26. I also find that the applicants' expectation of an exemption from the ban is unreasonable. In such a dense community, it would defeat the ban's purpose if the three basketball hoops could remain. The residents living near the applicants would continue to complain about the basketball noise, leaving the co-op in an impossible situation because it would be unable to enforce its rules about noise. I also find that allowing an exemption would leave the co-op's safety concerns unaddressed.

27. The applicants rely on a previous CRT decision about basketball hoops in a co-op.[3] In that dispute, the applicants wanted the CRT to order a co-op to remove a basketball hoop because it was too noisy. The CRT dismissed the applicants' claims, allowing the basketball hoop to remain. However, that case was different because the majority of members in that co-op accepted the basketball hoop. Here, basketball hoops appear to enjoy little popular support.

[3] *Kirkwood v. Arlington Grove Housing Co-operative*, 2021 BCCRT 174.

28. I find this case is much more similar to a CRT strata dispute about a basketball hoop.[4] There, the strata had received multiple complaints about noise from a basketball hoop, so the strata had it removed. The CRT found that the strata was justified based on the complaint history, even though there was evidence that the strata community was family-oriented and included many playing children. The CRT concluded that the noise from repetitive basketball bouncing created qualitatively different noise than the other games children played. I find that the same reasoning applies here.

29. In summary, I find that it was not unfairly prejudicial for the co-op to ban basketball hoops and to apply that ban to the applicants' existing hoops.

30. That said, nothing in this decision prevents the co-op from adopting a new policy about basketball hoops, such as allowing them with restrictions or placing them in the street hockey area. To that end, I acknowledge the applicants' submissions that the co-op has unfairly prevented them from raising the issue at general meetings. However, I find that neither the CAA nor the co-op's rules allow a single member (or two members) to force the co-op to add an agenda item. Instead, CAA sections 150 and 151 provide a mechanism for members to force the co-op to call a special general meeting to consider a specific resolution. To do so, the applicants must submit a written requisition signed by at least 20% of the co-op's members. This ensures that there is at least some popular support for the applicants' desired resolution.

### *The Human Rights Code*

31. The applicants also argue that the co-op's decision to ban basketball hoops contravened the Code because their sons both have a disability. The Code undisputedly applies to co-ops. Under CRTA section 114, the CRT has discretion to apply the Code, meaning I could decide not to resolve this part of the applicants' claim. I find it appropriate to consider this claim. I note that the CRT regularly applies the Code in strata disputes, which is a similar context.

[4] *Estrin v. The Owners, Strata Plan LMS3758*, 2023 BCCRT 350.

32. At the outset, I note that the applicants do not have standing to bring human rights claims on behalf of their children. “Standing” refers to a person’s legal right to bring a legal claim. Typically, a minor’s legal claims must be brought in their own name with an adult (often a parent or guardian) acting as a “litigation guardian”. This is true in the human rights context. See, for example, *Student (by Parent) v. School District*, 2023 BCHRT 237. That alone is a reason to dismiss the applicants’ claims based on the Code. However, given the CRT’s mandate to recognize ongoing relationships and to avoid possible future litigation, I will also address the claims on their merits.

33. Under section 8 of the Code, co-ops have a duty to accommodate people with physical and mental disabilities, unless doing so would create undue hardship.

34. The first thing the applicants must prove is that their children have disabilities. The Code does not define what a disability is. The applicants each provided evidence from medical practitioners. That evidence says NG’s son has ADHD and MS’s son has anxiety. The Human Rights Tribunal has recognized both of these conditions as disabilities that require accommodation. While I do not have detailed medical evidence, I find for the purposes of this dispute that the applicants’ children both have disabilities.

35. Next, the applicants must prove that the children suffered an adverse impact because of the way the co-op’s rule affected them. The medical evidence for both children says that strenuous physical exercise helps them manage their symptoms. I accept that is true. However, I find that this falls short of proving an adverse impact. The co-op has not prevented the children from engaging in strenuous physical exercise. As noted, the evidence shows that children engage in other types of outdoor play within the co-op. I find that the co-op’s obligations under the Code do not require it to ensure that the children can play their favourite sport within the co-op.

36. Also, as noted, the co-op’s street hockey court connects via a gate to a public park, which contains a basketball court. The applicants say that their children are not always comfortable using this court because there are older teenagers and adults there. While

that may be true, I find that it does not mean that the co-op has prevented the applicants' children from getting adequate exercise when the park's court is occupied.

37. Finally, the applicants say that the use of the basketball hoops is important to their children's ability to exercise because the applicants can more easily supervise them in their driveways. I accept that driveway basketball would be the most convenient way for the applicants' children to get exercise. However, this does not mean that the co-op's actions have prevented the children from getting adequate exercise.

38. I dismiss the applicants' claim under the Code.

39. I note that the co-op in submissions asked that the applicants be required to remove the basketball hoops within seven days of my decision. The co-op did not file a counterclaim, so I cannot make that order.

## CRT FEES AND EXPENSES

40. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicants were unsuccessful, so are not entitled to reimbursement. The co-op did not pay CRT fees or claim dispute-related expenses.

## ORDER

41. I dismiss the applicants' claims, and this dispute.

Eric Regehr, Vice Chair