



# Civil Resolution Tribunal

Date Issued: December 24, 2021

File: CS-2021-002553

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Dalglish v. Harrison Holiday Park Association*, 2021 BCCRT 1343

B E T W E E N :

CINDY DALGLISH

**APPLICANT**

A N D :

HARRISON HOLIDAY PARK ASSOCIATION

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about society meeting procedures during the COVID-19 pandemic.
2. The applicant, Cindy Dalglish, is a member of the respondent society, Harrison Holiday Park Association (HHP). HHP manages an RV park. Ms. Dalglish says the HHP contravened the *Societies Act* (SA) and its own bylaws in the way it held the

October 2020 and May 2021 annual general meetings (AGMs) and the April 2021 budget approval vote. Ms. Dalglish seeks an order that HHP hold a valid general meeting (GM) which includes a budget approval vote, in compliance with its constitution and bylaws and the SA.

3. HHP says it held the AGMs in accordance with guidance from BC Registry Services (Registry) and in the best and safest way it could during the pandemic. It says owners voted in the 2020 and 2021 AGMs and in April 2021 to approve the budget in a secure manner. I infer HHP says the AGMs and April 2021 budget vote were validly held and that this dispute should be dismissed.
4. Ms. Dalglish represents herself. HHP is represented by a director.

## **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). Section 2 of the CRTA 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.

## **PRELIMINARY ISSUES**

9. Section 129 of the CRTA grants the CRT jurisdiction over society claims concerning the interpretation of the SA or bylaws, or over an action, threatened action, or decision of the society or its directors in relation to a member. In her Dispute Notice and submissions, Ms. Dalglish says HHP directors behaved unprofessionally and inappropriately toward other members, and other directors and incorrectly closed the park to members without a vote. Ms. Dalglish provided no evidence that her entry to the park was refused. I find Ms. Dalglish has no standing (legal right) to bring a claim on behalf of other members or directors, but only on her own behalf in relation to actions or decisions taken against her or in relation to the interpretation of the SA or a bylaw.
10. Ms. Dalglish also alleges that HHP refused her invitation to attend an online meeting and behaved unprofessionally and incorrectly toward her. I find none of these allegations relate to Ms. Dalglish's requested remedy of ordering HHP to hold a properly constituted budget vote. I acknowledge that Ms. Dalglish included some of this information as background. However, I find it irrelevant to the issues before me in this dispute and so I will not consider Ms. Dalglish's allegations about the directors' behaviour or HHP's decision to restrict access to the park during the pandemic.

## **ISSUE**

11. The issue in this dispute is whether the AGMs and April 2021 budget approval vote complied with the SA and HHP's bylaws and, if not, what is the appropriate remedy.

## EVIDENCE AND ANALYSIS

12. As the applicant, Ms. Dalglish bears the burden of proving her claim on a balance of probabilities (meaning more likely than not). I have reviewed the parties' submissions and weighed the relevant evidence but only refer to that necessary to explain and give context to my decision.
13. According to its constitution, HHP's purpose is to organize and maintain a membership-based recreational camping club. It filed an amended set of bylaws in the Registry on February 27, 2017, which I find apply here. The parties agree that HHP has approximately 409 voting members, which I find is consistent with bylaw A2.
14. HHP generally holds its AGM around September each year, and another general meeting (GM) in April to discuss and approve its operating budget for the year. HHP's fiscal year runs from May 1 to April 30 each year. None of this is disputed.
15. It is also undisputed that the BC Provincial Health Officer issued an order under the *Public Health Act* on March 16, 2020, prohibiting gatherings of more than 50 people, due to the COVID-19 pandemic. I accept the order prohibited HHP from holding its usual AGM and GM in person in 2020 and 2021. I also accept that HHP attempted to find a way to obtain owner approval of its operating budget and resolutions, without holding an in-person meeting. However, such meetings must not only comply with provincial health orders but must also comply with the SA and HHP's bylaws.
16. SA sections 83 and 84 allow for electronic participation in general meetings, if authorized by the society's bylaws. I find HHP's bylaws do not authorize electronic participation. However, I find electronic participation in general meetings was allowed during the COVID-19 pandemic, as explained below.
17. On May 20, 2020 the government issued Ministerial Order 167/2020 (MO167) under section 10 of the *Emergency Program Act*. MO167 became a provision of the *COVID-19 Related Measures Act* (CRMA) on CRMA's enactment on July 8, 2020.

18. Section 4 of MO167 allows for participation in a statutory meeting by telephone or “other communications medium”, so long as all meeting participants are able to communicate with each other and, if applicable, vote in the meeting. I find “statutory meeting” includes society general meetings.

### ***October 24, 2020 AGM***

19. HHP held an AGM on October 24, 2020. Prior to the meeting, HHP emailed or mailed its AGM notice package to members, which included financial information, reports, and a set of ballots to vote on director nominations as well as various resolutions, including approving HHP’s 2020-21 operating budget. In the package, the treasurer explained that HHP was seeking retroactive approval for the budget, which had been in place since May 1, 2020 as HHP had been unable to hold its usual spring GM due to the COVID-10 pandemic. The package included instructions for members to complete and return their ballots, by mail or email. None of this is disputed.

20. Based on the October 24, 2020 meeting minutes, the only members who attended the meeting in person were the 7 directors and 12 volunteer scrutineers. It is undisputed that HHP did not provide for electronic attendance or proxy attendance at the meeting. The minutes indicate that the 2020-21 budget was approved by majority vote based on the members’ paper ballots.

21. I find the October 24, 2020 AGM did not comply with the SA or the CRMA because the meeting process did not allow for members to attend the actual meeting or communicate with each other, electronically or otherwise. As argued by Ms. Dalglish, I also find HHP did not have 10% of members present at the meeting to establish a quorum, as required under bylaw E2. So, I find the meeting was not validly held. Given my conclusion, I find I need not address Ms. Dalglish’s concerns about whether the received ballots were adequately secured by HHP.

22. As noted, Ms. Dalglish asks that another AGM be properly held, so that owners can vote on HHP’s operating budget. As HHP’s 2020-21 fiscal year is already ended, I find there would be no point in having members vote on the now completed budget. Ms. Dalglish has raised no concerns about any other resolution voted on at the

October 2020 AGM. So, although I find the meeting was not validly held, I find there is no remedy required to rectify the meeting results.

### ***April 30, 2021 Budget Vote***

23. The evidence shows that HHP sent members a 2021-22 budget information package around March 26, 2021. The package included a ballot for members to indicate a Yes or No vote on approving the budget, and a space for comments. Voting instructions asked members to email or mail their completed ballots to the HHP office by 4 pm on April 29, 2021.
24. Bylaw C4 requires HHP to obtain majority approval of a quorum of members at an AGM before increasing the members' annual dues. The information package shows that the 2021-22 proposed budget increased yearly membership fees by \$150. There is no indication a general meeting was held to discuss the proposed operating budget before the April 29, 2021 vote deadline.
25. The society says that members were invited to email the then treasurer any questions they had about the budget before voting on it. I find this does not satisfy the CRMA and SA requirements that participants be able to communicate with each other during an electronic meeting. I find the April 2021 budget vote did not comply with the SA, the CRMA, or HHP's bylaws.
26. It is undisputed that the 2021-22 budget was approved by a majority of owners who returned their ballots by the deadline. However, I find the approval cannot stand as I find the vote was invalid.
27. It is undisputed that HPP's 2021-22 fiscal year has not yet ended. So, I find HPP must hold another members' vote to approve the 2021-2022 budget, as set out below.

### ***May 23, 2021 AGM***

28. It is undisputed that the May 23, 2021 AGM was held on Zoom, an online video meeting platform. Members were invited to send any proposed resolutions to the HHP office in advance of the meeting, which were then included on the meeting agenda

and discussed at the meeting. I find the meeting process allowed participants to communicate with each other, thus complying with the CRMA and the SA.

29. The evidence shows that, prior to the May 23, 2021 AGM, HHP emailed or mailed each member paper ballots, to vote on the various proposed resolutions and nominated directors. It is undisputed that votes were not taken during the online meeting. Rather, HHP instructed members to complete their paper ballots and mail or email them to the HHP office by May 29, 2021.
30. I find this 2-stage process does not allow all meeting participants to “vote in the meeting”, as required under the CRMA. Rather, it allows members to vote after the meeting. I find the statutory provisions are intended to allow electronic voting to occur at the same time, and by the same people, who participated in the AGM and discussed the proposed resolutions to be voted on. There is no indication whether or how HHP ensured only members who participated in the May 23, 2021 Zoom meeting voted on the proposed resolutions. So, I find the May 23, 2021 meeting process did not comply with the CRMA or HPP’s bylaws.
31. As noted, Ms. Dalglish asks that HPP follow the statutory and bylaw requirements in holding a budget vote. It is undisputed that there was no budget vote at the May 23, 2021 AGM. Ms. Dalglish does not dispute the validity of the resolutions or directors voted on at the meeting. Nor does she request that any of those votes be considered anew in a validly constituted AGM. So, despite finding the May 23, 2021 AGM did not comply with the statutory requirements, I find Ms. Dalglish has not requested any remedy specific to that meeting. So, I find no remedy is required to rectify the meeting results.
32. Overall, I find HHP’s general meetings during the COVID-19 pandemic have not complied with the applicable laws or its own bylaws. I find HHP must hold another GM in compliance with the SA and its bylaws, for members to vote on the 2021-2022 budget within 90 days of this decision.

### ***General Meeting Requisition***

33. It is undisputed, and the evidence shows, that Ms. Dalglish emailed 51 member petitions to the HPP administrator on February 15, 2021, requiring HPP to hold a special general meeting. It is undisputed that HPP refused to hold the GM. To the extent that Ms. Dalglish argues that HPP erred in refusing to hold the meeting to discuss either proposed resolutions, or the budget vote, I find such an argument cannot succeed.
34. Under SA section 75, a society is required to hold a GM within 60 days of a valid member request for the same. However, SA section 75(1) requires such a requisition to be delivered or mailed by registered mail to the registered office of the society. It is undisputed that the February 15, 2021 petitions were not delivered in this way. So, I find HPP was not required to hold the requested GM under the SA.

### **CRT FEES and EXPENSES**

35. 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 therefore order HPP to reimburse Ms. Dalglish \$225 for her CRT fees. She claims no dispute-related expenses.

### **ORDERS**

36. I order HPP to:
- a. within 90 days of this decision, hold a GM in accordance with the SA and its bylaws for the purpose of allowing the members to vote, in person or electronically, on the 2021-2022 budget.
  - b. within 14 days of this decision, reimburse Ms. Dalglish \$225 in CRT fees.
37. Ms. Dalglish is entitled to post-judgment interest under the *Court Order Interest Act*.



38. 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.

  
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Sherelle Goodwin, Tribunal Member