

Membership Disputes in Voluntary Associations

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Many community-minded people participate in voluntary organizations, such as common interest groups, professional organizations, sports leagues and religious organizations. Common interests bring these groups together. However, situations can arise where one member disrupts the organization by failing to follow the rules or guidelines, or otherwise gets in the way of the group's activities or governance.



Human nature being what it is, often the organization becomes reactive and simply bans the disruptive individual from participating in the organization's activities or operations. This reactive stance can be problematic from a legal perspective. It is important for these organizations to know the possible outcomes of these disputes, and what an organization can do to protect themselves.

Depending on the nature of the organization, members are entitled to certain procedural rights. If members are entitled to procedural rights and the procedural rights are not provided, the disciplined or former member may be successful in a court application to overturn the organization's decision. This can be so, regardless of the best intentions of the organizations in the dispute process. The result can be a court decision reinstating the disruptive member to his former participation or position.

When are "procedural rights" available to members of voluntary organizations? The first thing the courts look at is the nature of the organization. Organizations that regulate individuals' "property or civil rights"^[1] may be subject to review. "Property rights" are engaged, for example, when an organization regulates where an individual is entitled to live or own property. "Civil rights" can apply to organizations that regulate the practice of a profession. In other words, property and civil rights are engaged when a person cannot live in their home or work in their profession unless they are a member of the organization.

In examining whether association members are entitled to procedural rights, courts have occasionally extended the categories by describing these rights as "quasi-property" or "quasi-civil" rights. Membership in a yacht club that entitled members to moor their boats at the club was close enough to engaging property rights to entitle a member to procedural rights.^[2] Membership in a church organization that allowed members access to cabins was held to be "quasi-property" rights.^[3] "Quasi-civil" rights have included membership in a professional organization that does not directly regulate a profession,^[4] or membership in

an organization that impacts on business opportunities.^[5] Even sports organizations that corner the market on the ability to play the sport can be subject to the duty to conduct their activities fairly.

Assuming members are entitled to procedural rights the courts then determine what the disciplinary or dispute resolution process would have been and whether it was followed. The first step is the organization's dispute resolution or disciplinary process contained in its bylaws or other governing documents. The court also looks at whether the organization followed the rules of "natural justice." Did the member have notice of the case against them? Did they have the opportunity to respond? Were the individuals hearing the case biased in any way?

The courts do not lightly interfere with the workings of voluntary organizations. So long as the organizations have good quality by-laws in place, they follow their by-laws, and they conduct their business fairly, most times, organizations will be left alone to control their own processes.

Some important takeaways for voluntary organizations:

1. Under the common law, voluntary organizations may be required to follow basic procedural requirements consistent with the extent of the organization's control over or interference with property or civil rights.
2. Having a robust set of bylaws, disciplinary and dispute resolution procedures, and subjecting them to ongoing review and revision is key.
3. When an organization includes more extensive procedural requirements than the common law duties of fairness require, the organization will be saddled with its own rules, even if those rules exceed common law requirements.
4. In establishing its by-laws, the organization should consider its capacity (ie. funding, membership, time and commitment) to follow the dispute resolution or disciplinary process it includes in its by-laws. While a complex process may seem like a good idea at the time, the organization will only be making it more difficult for itself if it creates a complex or highly adversarial process that it would not otherwise be required to undertake at common law.

[1] See *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 SCR 165

[2] See *Schenk v. Bayshore Village Assn.*, 2001 CarswellOnt 3440

[3] See *Woloshyn v. Assn. of United Ukrainian Canadians*, 2013 ABQB 262

[4] See *Akhtar v. Canadian Board for Certification of Prosthetists and Orthotists*, 2015 MBQB 46

[5] See *Ferguson v. Canadian Counselling Assn.*, 2007 NBBR 46

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