

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## Wheatley v. Victoria Canoe and Kayak Club, 2022 BCCRT 1033

British Columbia Civil Resolution Tribunal, Kate Campbell, 20 September 2022

An application for access to the register of members of a society.

**Key words:** Incorporated Society, Canada, British Columbia, Member's Register, Access, Digital Form

1. Victoria Canoe and Kayak Club (the Society), is a society incorporated under the [Societies Act](#) (the Act).
2. Mr Wheatley (Wheatley) was a member of Society. He requested a copy of the register of members of the Society on 11 February 2022.
3. On 17 February 2022 the Society's directors passed a resolution restricting Wheatley's access to the member's register.
4. The Act requires a society to keep a register of members, and that a member may inspect the register without charge. A member is also entitled to a copy of the register after paying any applicable fee.
5. Section 25(1) of the Act permits a society, by directors' resolution, to restrict members' rights to inspect the register of members "if the directors are of the opinion that the inspection would be harmful to the society or to the interests of one or more of its members."
6. Section 25(2) of the Act requires that if members' rights to inspect the register are restricted by a directors' resolution, then a member may still access and copy the register if they agree in writing that the register information will only be used for the following purposes listed in section 25(7):
  - requisitioning or calling a general meeting under section 75;
  - submitting a proposal to consider a matter at an annual general meeting under section 81;
  - calling a general meeting under section 138 to fill a vacancy in the office of society liquidator; or
  - for an effort to influence members' voting.
7. On 19 February 2022 Wheatley provided a signed request document agreeing only to use the register for the purposes listed in section 25(7).

8. On 27 February the Society wrote to Wheatley denying his request because he refused to specify how he planned to use the register information, and because of his behaviour on social media, email, and in meetings.
9. The question before the Tribunal was must the society give Wheatley a copy of its register of members?
10. The Tribunal found that there was notation in the Act that allowed the Society to refuse register access based on a member's conduct.
11. As the Act does not specify the format in which copies of records must be provided, the Society may provide the register in any printed or digital form, as long as it is readable, that the Society may decide.
12. Wheatley argued that the society should restore his access to the Society's email system so he can email all society members. This was not ordered as the Act is silent on the matter.
13. The information about members to be disclosed is set out in the Act as member name, class of membership and contact information provided by the member.

## IMPLICATIONS



In Australia, a company, including a company limited by guarantee, must allow anyone to inspect its share or member's register, and members/shareholders can do so without fee. However, a person must not use or disclose information to contact members/shareholders unless it is approved by the company, or the use is relevant to the holding or shares or membership, or the exercise of rights attached to them. Refer *O'Brien v Sporting Shooters Association of Australia (Victoria) Ltd* (1999) 17 ACLC 1, 624.

In respect of incorporated associations, the matter of access and use of the member's register is a usually a matter for the rules of the association. In Queensland clause 14 of the model rules for incorporated associations is:

Prohibition on use of information on register of members

(1) A member of the association must not—

- (a) use information obtained from the register of members of the association to contact, or send material to, another member of the association for the purpose of advertising for political, religious, charitable or commercial purposes; or
- (b) disclose information obtained from the register to someone else, knowing that the information is likely to be used to contact, or send material to, another member of the association for the purpose of advertising for political, religious, charitable or commercial purposes.

(2) Subrule (1) does not apply if the use or disclosure of the information is approved by the association.

A case on access to records from Australia is [Nelson v Oakbank Racing Club Inc](#) [2021] SADC 160.

## VIEW THE CASE



This case may be viewed at <https://www.canlii.org/en/bc/bccrt/doc/2022/2022bccrt1033/2022bccrt1033.html>

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**Author:** McGregor-Lowndes, Myles & Hannah, Frances M.

**Email:** [acpns@qut.edu.au](mailto:acpns@qut.edu.au)

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