

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Garry Point Housing Co-Operative v.
O'Rourke,*
2024 BCSC 873

Date: 20240422
Docket: S232730
Registry: Vancouver

Between:

Garry Point Housing Co-Operative

Petitioner

And

Laurence O'Rourke and Timothy O'Rourke

Respondents

Before: The Honourable Mr. Justice Thomas

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

V. Rasidagic

Appearing on behalf of the Respondents:

T. O'Rourke

Place and Date of Trial/Hearing:

Vancouver, B.C.
April 19 and 22, 2024

Place and Date of Judgment:

Vancouver, B.C.
April 22, 2024

[1] **THE COURT:** This is an application by the Garry Point Housing Co-Operative (“Garry Point”), to terminate Laurence O'Rourke’s (“Mr. O'Rourke Senior”) membership for non-payment of arrears. Justice Doyle provided directions with respect to the exchange of materials prior to the hearing. Unfortunately, neither party was able to comply with Doyle J.'s directions.

[2] I proceeded on the basis that Mr. Timothy O'Rourke (“Mr. O'Rourke”) could rely on a large affidavit provided only shortly before the hearing. He stated that he was unaware of the hearing date until after the deadline to exchange materials set by Doyle J. and did his best to provide the materials as soon as possible.

[3] Although I allowed this affidavit into evidence, I indicated that if the information contained in Mr. O'Rourke's materials raised issues such that fairness required Garry Point an opportunity to respond, they would be provided an opportunity to provide additional materials and respond.

[4] I did not allow Garry Point to rely on an additional affidavit that they tendered, because they did not have a compelling reason for not providing the affidavit in compliance with Doyle J.'s directions.

[5] At the start of the hearing, Garry Point abandoned their claim for overholding against Mr. O'Rourke.

[6] There has been an ongoing dispute between the parties. The underlying basis of the dispute was set out by Justice Coval in *Garry Point Housing Co-Operative v. O'Rourke* (20 April 2022), Vancouver Docket No. S219856 (BCSC). Both parties relied upon this decision and a copy was entered into evidence.

[7] I have reviewed the facts set out in paras. 4-19 of that decision which provides background information. I find those paragraphs are accurate and in accord with the evidence provided in this application. I, therefore, make the findings set out in paras. 4-19 of that decision in this application and they form part of my reasons. They are as follows:

[4] The Co-operative was incorporated under the *Act* as a non-profit housing co-operative. It is located at 11631 7th Avenue, Richmond, British Columbia. It provides low-cost housing to its members.

[5] Timothy O'Rourke and his mother Milly O'Rourke lived in unit number 5 in the co-op starting in 1989. In 2000, when Milly O'Rourke passed away, her ex-husband, Laurence O'Rourke, moved into the unit with his son Timothy O'Rourke, and Laurence O'Rourke became a member of the Co-operative.

[6] In June 2020, due to poor health, Laurence O'Rourke moved from his unit into a care facility in Richmond where he has remained ever since. It appears that the directors of the Co-operative learned of his move in around June 2021.

[7] Timothy O'Rourke's circumstances are that he has lived in the unit almost his whole life, for over 30 years since he was five years old. He lives there now with his three-and-a-half-year-old son, for whom he has parenting responsibilities 50% of the time. His circumstances are very difficult, caring for his ill father and his son who has special needs. In November 2020, Timothy O'Rourke requested membership in the Co-operative, but it was not granted, and I will deal with that further below.

The Termination

[8] By letter of June 27, 2021, the Co-operative notified Laurence O'Rourke of his breach of the co-op rules, and the occupancy agreement that is part thereof, by failing to reside in his unit as his primary residence. They gave him 30 days to rectify this under s. 35.3(b) of the *Act* and Rule 5.1(c) of the occupancy agreement.

[9] Six weeks later, on August 21, 2021, the Co-operative gave Mr. O'Rourke ten days' notice of a directors' meeting on August 31 to consider terminating his membership under s. 36(1) of the *Act* and Rule 5.42, for failure to reside in his unit as his principal residence.

[10] On August 31, 2021, Timothy O'Rourke attended and spoke at this directors' meeting. After the meeting, the board considered the matter until September 2. On that date, 75% of the directors of the Co-operative voted to terminate Mr. Laurence O'Rourke's membership in the Co-operative and for occupants of his unit to vacate by October 15, all under s. 35(5) of the *Act*.

[11] It appears that after the board made its decision, it received a letter from Timothy O'Rourke's lawyer, dated August 31, 2021. That letter states in full:

August 31, 2021

Hand Delivered

Garry Point Housing Co-operative

11631-7th Ave

Richmond, BC

V7E 5V6

Attention: Board of Directors Dear Sirs/Madames:

Re: Denial of Membership to Timothy O'Rourke

We have been retained by Timothy O'Rourke to help him respond to your letter of August 21, 2021, denying him membership in Garry Point Housing Co-operative and asking him to vacate the unit by noon on September 30, 2021.

In our opinion, your approach to this situation is heavy handed and unhumanitarian.

Timothy has resided in Unit 5 for virtually all of his life with one or the other of his parents as a member. He has not had an easy time in life as his mother was schizophrenic and committed suicide in 2000 when he was only 16 and for the last several years, he has had to look after his father who suffers from Parkinson's disease and dementia.

In addition to looking after parents, he also has a three-year old son who is also disabled who lives with him halftime. His childcare responsibilities prevent him from being able to work full-time.

Now, on top of having to deal with these family issues, you have denied him membership and asked him to vacate the unit and find a new place to live in just over a month. As you know, that is likely next to impossible given our housing environment in Richmond and his limited financial resources and living situation.

I have reviewed the rules for eligibility for membership and there does not appear to be any reasonable basis on which to deny Timothy a membership of his own, which would allow him to stay in unit 5. It is clear from the Rules and past conduct of the Co-op that memberships are typically granted to the children of existing co-op members, including some of the current directors.

In your letter you give one of the reasons for denying his request to become a member in his own right is that he is not a member. That is completely illogical. Of course he is not a member, which is why he is applying. That same logic would apply to all new applications for membership. This cannot be grounds for denying the application.

You also refer to "past behaviours" and "lack of involvement" in the Co-op. You have provided no particulars of these allegations. That is not fair as it does not give Timothy an opportunity to respond to these allegations. Accordingly, we ask that particulars of the alleged past behaviours and lack of involvement be provided so that he can fully understand whether there are proper grounds for the denial of his application.

In terms of lack of involvement, it sounds like you are placing blame on him for the conduct of his parents, given that he has not been a member to date. That is not fair and a maybe a denial of natural justice. Timothy has offered to volunteer his time if he is granted status as a member and should be taken at his word.

Further, I understand that you are in the process of revoking his father's membership based on the fact that his father is in full time care. Legally, however, the unit remains his father's principal

residence, even while in care. That cannot be grounds for terminating the membership which would transfer to our client on his father's death under Rule 11.1.

In our view, Timothy's application for membership ought to be reviewed on its own merit and he should be given a chance to prove himself as a valuable member of your housing Co-operative. That is the right thing to do.

If you continue to refuse to allow his membership, we will have to consider his legal options including an application to the Supreme Court of British Columbia to review the denial of membership on principles of natural justice.

We look forward to your response.

Yours truly,

CAMPBELL FROM MAY & RICE LLP

Per: Katherine E. Ducey.

[12] By letter of September 9, 2021, the Co-operative gave written notice of its decision to terminate Laurence O'Rourke's membership and notice of his right to appeal, all as required under s. 36.2(3) of the *Act*.

[13] By letter of September 9, lawyers for the Co-operative replied to Timothy O'Rourke's lawyer's letter stating in part:

Your letter incorrectly asserts that Timothy has applied for membership. A review of the co-op's records confirms that Timothy has neither applied to the co-op for unit membership or even associate membership.

[14] And then further down in the letter:

Simply indicating he would like to be a member without following the process is not enough. Regarding the particulars of Timothy's past behaviours and their negative impact on the co-op, Timothy is well aware of the following ...

[15] The letter then sets out six complaints regarding Timothy. And further quoting the letter it says:

For the above-mentioned reasons, even if Timothy had properly applied for membership in the past, he would in all likelihood have been unsuccessful. The information you have provided to the co-op regarding Timothy's immediate family issues is largely being raised for the first time, and the decision regarding membership and termination has already been made. Timothy had ample opportunity to raise these points in the past prior to the termination process concerning Laurence, but he never did.

[16] On October 10, 2021, the board wrote to Timothy O'Rourke seeking inspection of the unit before the October 15 moving-out deadline.

[17] Mr. Timothy O'Rourke has remained in the unit. He did not file an appeal of his father's membership termination due to legal costs associated

with that and decided instead only to resist this application by the Co-operative for occupancy.

Timothy O'Rourke's Evidence

[18] In Mr. O'Rourke's affidavit filed December 3, 2021, he states in part the following:

7. I share custody of Connor, with his mother, who is also a long-time resident of Steveston Village. We have a shared custody agreement, and Connor resides with me 50% of the time.

8. Connor was diagnosed with Autism Spectrum Disorder, in October of 2020. Connor requires specialized care, a stable routine, and a safe and happy home.

...

12. My family has lived in the Co-op for 32 years, and we have never been in arrears with rent payments -- until the combination of the Pandemic, my father's poor health, and problems with his bank -- led to no rent payments being made for the period of June, July, August, and September 2020.

...

16. The evening of November 16, 2020, my family attended a meeting with the board of directors, where we were assured this had been a misunderstanding. When I directly asked to be considered for Associate membership or full membership status, I was explicitly told by Eric Hoyem to simply make an application and that there would be no problem.

17. It is common practice in Garry Point Co-op, for children of members to be awarded membership status, and their own units - including both of Eric Hoyem's children, who each have their own Units.

18. The Co-op incorrectly states in their affidavit that I made no Membership Application, even though the facts demonstrate otherwise.

19. My application was personally delivered to Eric Hoyem on July 16, 2021, and was also emailed to the Co-op on July 26 for consideration by the Membership Committee. My Co-op Application dated July 26 contained all the relevant and requested information as well as 5 glowing recommendation letters from past and current employers and educators (This is included as Exhibit D, E, F, G, H, and I).

20. For the duration of the pandemic, the Co-op office had been closed, and the office clerk had been terminated with no replacement. A notice was delivered to all units, asking for patience in dealing with office matters during this period, until a new clerk could be hired.

21. The Co-op accepted personal checks in my name, for the months of June 2021, and July 2021.

...

35. I cannot work full time hours in order to provide the required childcare necessary for a small child with ASD. Because of this, I was recently denied the opportunity to take on a management position with substantially higher wages that I was nominated for, because of the interference and demands in my home life. I cannot afford to move, and I greatly fear the ensuing disruptions will have severe and lasting negative effects on my son, Connor, my father Laurence, and my own health, both physical and mental.

The Co-operative's Evidence

[19] Mr. Eric Hoyem, president of the board of directors of the Co-operative, swore an affidavit filed November 10, 2021. It states in part:

17. The Co-op replied by letter dated September 9, 2021 that the Board would be enforcing the termination and Timothy's need to vacate per the Rules. Timothy had never applied to the Co-op for a unit or membership, which involves a detailed application process. Timothy's past behavior and their negative impact were noted: the failure to apply, a lack of involvement and failure to volunteer, a delay in providing required proof of insurance, past instances of arrears, the state of disarray and safety hazard of the unit, and repeated aggressive behavior. The Co-op noted that the details of Timothy's personal life were being revealed too late, as the decision had already been made. The Co-op further noted that all principles of natural justice were adhered to, as Timothy was given ample opportunity to apply and his position was considered at both the termination Meeting and in the past. Attached to this my affidavit and marked as Exhibit "G" is a true copy of a letter dated September 9, 2021 from the Co-op to Ms. Ducey.

...

24. In my experience with Timothy, he has been a problematic occupant of the Co-op. Respectfully, his past behavior has clearly demonstrated he was not someone the Co-op wished to have on the premises. In any event, Timothy failed to ever apply for membership and therefore has no entitlement to occupation. Although Timothy is the son of a member, the Board has ultimate discretion whether to allow family to become members themselves. Now that Laurence's membership has been terminated, Timothy has lost the right to occupy the premises. The Board truly believes that it is in the Co-op's interests for Timothy to cease residing at the Co-op.

[8] Justice Coval made the following determinations that are relevant to these proceedings at paras. 39-46:

[39] Given Laurence O'Rourke was no longer residing at the Co-operative as his primary residence, termination of his membership was available to the board pursuant to the *Act* and Co-operative rules and attached operation agreement. Under s. 172(3) of the *Act*, given the lack of appeal, the court

must grant the order of possession if his membership was terminated in accordance with natural justice.

[40] I find the decision to evict Timothy O'Rourke has extremely serious consequences for him and his young son. He is a low-income, single parent with 50% parenting responsibilities for a special-needs [child]. This had been his home for 32 years. He says he cannot afford to move and "greatly fears the ensuing disruptions will have severe lasting effects on my son, my father and my own physical and mental health." He cannot work full time, and so affordable housing is crucial for him. His affidavit says he can find nowhere else to go.

[41] Losing this home will make life very difficult for Timothy O'Rourke and his son, who already face difficult circumstances. It could have seriously negative impacts on their lives. It is in these circumstances that the duty of procedural fairness must be assessed.

[42] I find the board's termination of Laurence O'Rourke's membership was carried out pursuant to the *Act* and Co-operative's rules. I find, however, that there was procedural unfairness in the board's decision regarding termination of Mr. O'Rourke's membership. The unfairness is that the decision to terminate was made without consideration of the information regarding Timothy O'Rourke's difficult personal and family circumstances. The decision lacking this information is acknowledged in the Co-operative's lawyer's letter of September 9, 2021, and Mr. Hoyem's affidavit, paragraph 16.

[43] His affidavit says that the letter from Timothy O'Rourke's lawyer, Ms. Ducey, which contained the personal information, "requested that the board reconsider the need for Timothy to vacate based on his personal information and that he now wished to be a member."

[44] Given Timothy O'Rourke's extremely difficult and vulnerable circumstances, in my view it was unfair of the board not to reconsider its decision to terminate Laurence O'Rourke and evict Timothy O'Rourke, in light of this important new personal information about Timothy O'Rourke, particularly given he is someone who has lived in the Co-operative for over 30 years, being almost his whole life.

[45] In fairness, the board should have reconsidered whether these extremely difficult personal circumstances and severe consequences of being evicted justified exempting Laurence O'Rourke from the residency requirement, as the board was entitled to do under Rule 2.7, for long enough to give Mr. Timothy O'Rourke a reasonable opportunity to formally apply for membership, including with a description of his personal circumstances and the consequences of eviction. This is particularly so in circumstances where it appears membership in the Co-operative is often passed from one family member to another.

[46] Mr. Hoyem may be correct when he says the board gave Mr. O'Rourke opportunity to present his [situation], and that he believes it is in the Co-operative's interest for Timothy O'Rourke to cease residing there. His affidavit describes grievances with Timothy O'Rourke, the legitimacy of which Mr. O'Rourke disputes. But this decision has enormous ramifications for

Timothy O'Rourke, and the board should consider the situation taking all of that into account and knowing these difficult personal circumstances. The evidence indicates that that has not yet been done by the board.

[9] Mr. O'Rourke's circumstances have not improved since the hearing before Coval J. His son has been diagnosed with autism and he has been diagnosed with an attention disorder, which makes it difficult for him to regulate his emotions and interact and communicate with people. His cognitive and emotional difficulties increase when he is under stress.

[10] Justice Coval, in his reasons, made the following findings at paras. 47-50:

[47] I find that the termination of Mr. Laurence O'Rourke's membership was carried out pursuant to the *Act* and Co-operative rules. I find, however, that this termination of his membership was unfair and so not in accordance with natural justice. I therefore decline to make an order of possession in favour of the housing Co-operative. It was unfair because it was made without consideration of Timothy O'Rourke's difficult personal circumstances, which should have been reconsidered by the board when these circumstances were revealed in his solicitor's letter.

[48] This unfairness can be remedied by the Co-operative giving Mr. Timothy O'Rourke a reasonable time and opportunity to make formal application for membership and the Co-operative's directors to consider that application in good faith in conjunction with its decision of whether to terminate Mr. Laurence O'Rourke's membership.

[49] If Timothy O'Rourke does not make his application for membership within a reasonable time, or if that application is rejected by the board in accordance with the *Act*, Co-operative rules and governing case law, the Co-operative may, if necessary, reapply for the order of possession in these proceedings.

[50] Regarding the arrears of rent, the Co-operative is entitled to an order for arrears against Mr. Laurence O'Rourke of \$3,177 up to November 10, 2021, plus \$1,059 per month of any unpaid rent from that date forward.

[11] After receiving Coval J.'s reasons, Mr. O'Rourke indicated that he was concerned that the board had tried to evict him on numerous occasions and this was just part of an ongoing persecution. He stated his concern that any application that he made for membership would not be considered in good faith by the board.

[12] In an exchange with the bench, Coval J. observed as follows at para. 78 and at para. 66 where, in response to the question that the board may have been persecuting Mr. O'Rourke:

[78] I have not found that to be the case [which is bad-faith dealings]. I have not found any kind of bad-faith dealings with you in my reasons. But so you need to put in the new application, and as I have made clear in the reasons, I think one of the important factors in there is you need to put your personal circumstances in, the details regarding you and your father and your son and what it would mean if your father's membership was terminated and your -- and your application for membership not accepted. You need to explain all of that to the board. And even if you have done it before, you need to do it in a new application . . . as soon as reasonably possible. Is that clear?

...

[66] Yes, well, I think that is -- I think that is all water under the bridge now. Whether what you did before was a formal application or not, you need to do it again and you need to really do it properly under the Rules . . . I am sure the board will help you with that if you need help, but you need to make another application. That is what I have ordered, and you need to do that within a reasonable time, which means really you need to do it as [best as] you reasonably can.

[13] In my view, this indicated an expectation that Garry Point would at least assist Mr. O'Rourke to ensure that he was able to complete an application and recognize his challenging personal circumstances in the process. Justice Coval ordered that Garry Point was at liberty to reapply for vacant possession if Mr. O'Rourke was ultimately not provided membership.

[14] I am going to provide a brief summary of some of the milestone events that occurred after Coval J.'s order. This is based primarily on the facts provided by Mr. O'Rourke. I wish to stress that Garry Point has not had an opportunity to provide their side of the story.

[15] On June 19, 2022, the board denied Mr. O'Rourke's membership application and refused to consider him for an associate member because his father did not sponsor him. They also indicated that Mr. O'Rourke Senior had voluntarily terminated his membership in Garry Point. Mr. O'Rourke Senior suffers from dementia and may not have been competent to do this.

[16] Mr. O'Rourke Senior has since provided a letter in this application which indicates that it would not have been his intention to terminate his membership or voluntarily relinquish it.

[17] One basis for the denial of Mr. O'Rourke's membership application was that he did not earn enough income to qualify for the unit he was residing in. Mr. O'Rourke disputed this determination as he argued that since he was in the service industry, he made a significant amount of income in tips which the board refused to consider. Mr. O'Rourke may have quit his job to obtain a higher-paying job in order to meet the board's interpretation of his income requirements for his unit. I was unclear on the exact particulars of this.

[18] On August 25, 2022, Mr. O'Rourke Senior was provided a demand letter for the arrears order by Coval J. and advised that non-payment would result in the termination of Mr. O'Rourke's Senior's membership.

[19] On August 28, 2022, Garry Point advised that Mr. O'Rourke's application for membership was still outstanding and some additional materials were provided with respect to the application process.

[20] On September 2, 2022, Mr. O'Rourke was provided seven days' notice of a meeting scheduled to occur on September 22, 2022, for a resolution determining Mr. O'Rourke's Senior's membership.

[21] On September 22, 2022, the meeting occurred. At this meeting, Mr. O'Rourke attended and advised that he would pay his father's arrears at the rate of \$500 per month, and his father's housing charges of \$1,015 per month, if the board would accept his membership, that is Mr. O'Rourke's membership, into Garry Point. On September 23rd, Garry Point sent a letter to Mr. O'Rourke Senior stating that a resolution had been passed terminating his membership effective November 15, 2022, unless Garry Point was provided payment of \$500 and the housing charges of \$1,059 on the 1st of each month until March 1, 2025, after which the arrears would be paid off. No mention was made of Mr. O'Rourke's membership application.

[22] On November 8, 2022, Mr. O'Rourke went on a period of disability leave from his workplace. On November 9, 2022, Garry Point sent Mr. O'Rourke a letter scheduling a membership interview with him on November 22nd. On December 10, 2022, Garry Point advised Mr. O'Rourke that his membership application had been denied.

[23] Mr. O'Rourke then stopped paying his father's arrears and housing expenses. He said he did this for a number of reasons:

- 1) he felt the dismissal of his membership violated the agreement he had proposed to the board on September 22nd;
- 2) he felt his membership application had not been fairly assessed;
- 3) he felt the board was biased against him and limited the interview, and timed the interview with his period of disability, amongst other things that were unfair; and
- 4) because he was not working, the payment plan he proposed put him in significant financial distress, he could simply not afford it.

[24] On January 10, 2023, Garry Point sent Mr. O'Rourke Senior a demand for full payment of the arrears and advised that non-payment would result in termination of Mr. O'Rourke Senior's membership. On January 26, 2023, Garry Point sent a notice of directors' meeting to terminate Mr. O'Rourke Senior's membership. On February 10, 2023, Mr. O'Rourke did not attend the meeting and his father's membership was terminated.

[25] Mr. O'Rourke says he did not attend the meeting because there was no point. He felt his membership application and the process was a sham. The board was clearly biased against him with respect to the application process. The ultimate dismissal of his application and now his father's membership had been unfair. Due to these factors, he did not believe that he would get a fair hearing before the board with respect to their most recent attempts to evict him from Garry Point.

[26] In my view, Mr. O'Rourke was saying that he did not attend the meeting because he had a reasonable apprehension that the board was biased against him and his father, based on the manner in which they had previously attempted to terminate his father's membership and the way they had handled his membership application. Although Mr. O'Rourke did not attend the meeting, if a reasonable apprehension of bias is established, any decision made by the board would be invalid regardless of the rationale.

[27] The importance placed on procedural fairness by Coval J. have only increased since that hearing given the worsening of Mr. O'Rourke's personal conditions, his cognitive difficulties associated with stressful situations, his child's autism diagnosis, the directions made by Coval J. for Garry Point to provide Mr. O'Rourke with an opportunity to apply for membership in good faith, and what I find to be implied from his reasons is that Garry Point would assist Mr. O'Rourke if he had difficulties with completing his application, given his personal circumstances.

[28] Mr. O'Rourke did not appeal the rejection of his membership application to the Supreme Court because, as he did last time, he hoped to raise these issues when Garry Point brought their application to obtain vacant possession of Mr. O'Rourke Senior's unit.

[29] This approach is not necessarily inconsistent with the underlying legislation which requires a review of any decision by this court in order for Garry Point to obtain vacant possession of a unit. Nor is it inconsistent with the order of Coval J., who ordered that Garry Point could reapply if necessary in those proceedings for the order of possession. I specifically refer to paras. 47-49 of his reasons which I referred to earlier.

[30] Mr. O'Rourke's affidavit evidence, which I have admitted into evidence, raises issues of a reasonable apprehension of bias. Fairness will require Garry Point to respond to many of the issues raised in Mr. O'Rourke's materials. This will require an assessment of the procedural fairness and basis for rejecting Mr. O'Rourke's

membership into Garry Point as a general member, refusing to consider him as an associate member, and the termination of Mr. O'Rourke Senior's membership.

[31] A reasonable apprehension of bias will void an otherwise valid determination. For this, I will specifically rely upon and mention to the parties *Newfoundland Telephone Company v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84, of the Supreme Court of Canada, where it was held the following:

Everyone appearing before administrative boards is entitled to be treated fairly. It is an independent and unqualified right. As I have stated, it is impossible to have a fair hearing or to have procedural fairness if a reasonable apprehension of bias has been established. If there has been a denial of a right to a fair hearing it cannot be cured by the tribunal's subsequent decision. A decision of a tribunal which denied the parties a fair hearing cannot be simply voidable and rendered valid as a result of the subsequent decision of the tribunal. Procedural fairness is an essential aspect of any hearing before a tribunal. The damage created by apprehension of bias cannot be remedied. The hearing, and any subsequent order resulting from it, is void. In *Cardinal v. Kent Institution* . . . Le Dain J. speaking for the Court put [it] this way:

. . . I find it necessary to affirm that the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

[32] Given the intertwining of issues between Mr. O'Rourke's application for membership and the termination of his father's membership, and the remedy imposed by Coval J. to correct the procedural unfairness in the previous application, in my view, an assessment of procedural fairness in Garry Point's application for vacant possession requires an assessment of both Mr. O'Rourke Senior's termination of membership and Mr. O'Rourke's denial of membership.

[33] I order as follows:

- 1) Garry Point's claim for holdover against Mr. O'Rourke is abandoned and struck.

- 2) Garry Point amend their petition in these proceedings to add the basis for Mr. O'Rourke's denial of membership. They may also update any claim against Mr. O'Rourke Senior for outstanding arrears.
- 3) Mr. O'Rourke file a response once he receives this updated or amended petition indicating a lack of procedural fairness for both the denial of his application for membership and the termination of Mr. O'Rourke Senior's membership.
- 4) Garry Point provide a list of documents and copy of documents to Mr. O'Rourke containing documents relevant to inquiries, applications, and discussions with respect to applications for and membership into Garry Point by Mr. O'Rourke and the same with respect to Mr. O'Rourke Senior's membership since June of 2021. They have 60 days to comply with this order.

[34] In my view, this is necessary to provide an opportunity for Mr. O'Rourke to assess any further potential issues with respect to procedural fairness contained in documents in the possession of third parties.

[35] I direct as follows:

- 1) the parties schedule a minimum of a three-day hearing to have the petition heard, and will advise the registry of any audio or video equipment required in the courtroom for the hearing;
- 2) Garry Point will serve Mr. O'Rourke with all their application materials, including written argument, if they will rely on one at the hearing, no more than four weeks before the scheduled hearing date;
- 3) Mr. O'Rourke will provide his responsive materials one week before the hearing date; and
- 4) the matter be characterized as urgent with the registry and should be heard, if at all possible, before the end of this year.

[36] I am not seized of this matter.

[37] The costs will be assessed by the judge who hears the petition, and the registry will provide a copy of my oral reasons to the parties.

“Thomas J.”