
**MEMBERSHIP TERMINATION – PRINCIPLES OF
NATURAL JUSTICE**

Section 35 of the *Co-operative Association Act*, SBC 1999, c. 28 (the “Act”) outlines the situations in which a housing co-operative can terminate a members membership within the Co-op (i.e. the member has engaged in conduct detrimental to the Co-op). A member may appeal the termination to the Court on several grounds, including, that the housing co-operative failed to observe the principals of natural justice in terminating the membership.

The Act does not outline what the principles of natural justice are. It is not uncommon for a co-op to embark on the lengthy process of terminating a member’s membership, only to find out later that the entire process may have to be recommenced because of a failure to adhere to the principles of natural justice.

Natural justice means procedural fairness. At its most basic level, the principles of natural justice require the right to notice, the right to a hearing, the right to know the case to be met and to answer it, and the right to an unbiased tribunal.

The most common error made by Co-ops during the termination process is the failure of the Co-op to provide the member with copies of all evidence the Board of Directors are relying upon when considering the members termination. Many Co-ops believe that they do not have to provide copies of complaints made against the member because of privacy legislation. This is incorrect. If the Co-op intends on relying on the complaints made by other members to terminate a member, then the member being terminated is entitled to a copy of the complaint and the name of the complainant. If the member is not provided with this information, they have no way of challenging the truth of the complaint.

Therefore, if the Board of Directors intends on using member complaints as a basis for the reasons for a termination, they must obtain the consent of the complaining member

to release the complaint and their identifying information to the member. If the complaining member refuses to grant permission, the Board of Directors cannot rely on that complaint as a basis for the termination.

An unbiased board is another central requirement of natural justice. However, given the close relationship amongst members in a housing co-operative, it is highly likely that members of the Co-op will have had some previous contact with the issue in question, and at least an indirect interest in the outcome of the termination.

The courts have recently examined the issue of bias in the context of a housing co-operative in *Roberts v. Lore Krill Housing Co-operative*. The Court in *Roberts* held that bias will only be found if it can be shown that members of the board of directors acted out of personal animosity against the member. The fact that the directors have knowledge of the circumstances involving a member being terminated will not, in the circumstances of a housing co-operative, equate to bias on the part of the board of directors.

A recent court case found that incorrect facts relied upon by a Board to support a termination was a lack of natural justice. The co-op in *Sunshine Housing Co-operative v. Hengari* sought to terminate the member for arrears. However, the co-op's financial records were in disarray. There was no question that the member was in arrears as of the date of the directors termination meeting, but the amount of arrears later found to be due and owing as of that date was substantially less than the amount the directors had before them. This, reasoned the court, amounted to a breach of natural justice and the court overturned the termination without addressing the fact the member was in arrears at the time of the director meeting.

BY GRANT HADDOCK

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