



Introduction

The Britannia Yacht Club (“the Club”) has members who have dinghy, keel sailing boats and power boats. On occasion boats are abandoned, that is the ownership of these boats cannot be established. This policy details the Club’s position with respect to abandoned boats and the course of action to be taken.

Definitions

“Abandonment” occurs when there is “a giving up, a total desertion, and absolute relinquishment” of private goods by the former owner. It may arise when the owner with the specific intent of desertion and relinquishment casts away or leaves behind his property” (R.A. Brown, *The Law of Personal Property*, 2nd ed. Chicago, 1955, quoted in Bruce Ziff, *A Property Law Reader*, at page 305).

Background

The Supreme Court of Canada, in *Senez v. Montreal Real Estate Board*, held that the obligations created by club by-laws and regulations are contractual in nature.

All members, including those who own boats, are required to enter into a membership agreement when they join the Club. This agreement includes an agreement to follow the Club regulations. Section B (a) of the Club’s Membership Agreement includes that the member will obey all of the Club Regulations. Club regulation 3.7.1 states that “Items not suitably identified will be collected and may be disposed of by the Club without notice or redress.”

Operationally boats are identified by means of a name on the boat and ownership information with respect to the boat on file with the Club.

The Ontario Court of Appeal, in *Foran v. Kottmeier*, held that the administrators of an association or club were provided with a wide discretion so long that it was exercised in good faith.

A court will consider the boats to be abandoned if the Club can show that the people who owned the boats intended to relinquish ownership of them. The following factors can be considered in determining an intention to abandon: (1) passage of time; (2) nature of the transaction; (3) the owner's conduct.

Policy

On an annual basis (at launch time or at other times where appropriate) all boats will be checked to establish their ownership. If a boat, located on Club property (property owned or leased by BYC), cannot be properly identified the Club will make every effort to identify the owner.

If ownership cannot be established after 12 months the boat will be determined to be "abandoned". Once a boat is deemed abandoned then the original owners will not have any claim to them and the Club will be considered the owners. Boats deemed abandoned may be re-located to a storage area as needed.

Each spring a list of 'abandoned' boats will be posted for members to view, requesting that the owners identify themselves to the Club administration. The Club may take the following action with boats on the 'Abandoned Boat' list:

- Lend the boats out to members.
- Auction off the boat
- Dispose of the boat if it is not seaworthy

If member ownership can be established within 12 months the boat will be removed from the 'abandoned boat' list provided that the original owner pays all outstanding fees and any costs incurred by the Club related to the boat in question.

Timelines for an 'abandoned' boat:

- Year 1 in spring
 - o Attempt made to establish ownership
- Year 2 in spring
 - o boat ownership is not established despite attempts to locate owner,
 - o boat is deemed 'abandoned' and ownership is assumed by Club
 - o boat may be relocated to a storage area
- Year 3 in spring
 - o Abandoned boat list posted
 - o Boat may be lent out to members, auctioned off or disposed of if it is not seaworthy