

CANADA / JUDGMENT

Brinkerhoff v. Leroux

2025 BCSC 2268

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2268 Brinkerhoff v. Leroux

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Brinkerhoff v. Leroux,

2025 BCSC 2268

Date: 20251119

Docket: S142201

Registry: Kelowna

Between:

Joyce Brinkerhoff, James Harley White, Sheila White, Sandra Devries

and Malcolm Petch

Petitioners

And

David Leroux, Michael McLoughlin, (Eddy) Matti Koopman

and Apostolic Resource Centre Society and New Life Church Kelowna

Respondents

And

Docket: S142120

Registry: Kelowna

Between:

Michael McLoughlin

Petitioner

And

Joyce Brinkerhoff, James Harley White, Sheila White, Sandra Devries,

Malcolm Petch and Steve Devries

Respondents

Before: The Honourable Justice G.P. Weatherill

Reasons for Judgment

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Place and Date of Hearing:

Kelowna, B.C.

April 23-25,

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September 18-19, 2025

Place and Date of Judgment:

Kelowna, B.C.

November 19, 2025

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I. Introduction

- [1] As is sometimes the case with registered societies, members and directors cannot agree on the direction the society should take, and the society becomes dysfunctional. Such is the case with two closely related religious societies, the Apostolic Resource Center Society ("ARCS") and New Life Church, Kelowna ("NLC"). Members of both have launched petitions seeking a resolution of governance and other issues.
- [2] At the core of the dispute is the control over the proceeds of the 2023 sale of a building located at 2041 Harvey Avenue, Kelowna, BC ("Main Street Property") for \$13.5 million ("Sale Proceeds") by ARCS to Impact Upstream Ventures Inc. ("IUVI"), the majority of which has yet to be received. Subject to its constitution and bylaws, ARCS's board of directors will decide the future use of the Sale Proceeds. This has sparked a dispute between two groups each seeking control of the ARCS board.
- [3] Those two groups comprise:
- a) Mr. Michael McLoughlin, Mr. David Leroux and Mr. Matti Koopman (the "Acting Directors"); and
 - b) Ms. Joyce Brinkerhoff, Mr. James White and Ms. Sheila White (together the "Whites"), Ms. Sandra Devries and Mr. Malcolm Petch (together the "Excluded Directors"); and Mr. Steven Devries.
- [4] The Acting Directors say they are the only three directors of ARCS because the Excluded Directors resigned from ARCS's board, their terms as directors expired and they are no longer members of ARCS. They assert that memberships and directorships of ARCS and NLC are inextricably linked such that a person can only be a member and director of ARCS if that person is also a director and elder of NLC. The Excluded Directors maintain that there is no connection to NLC contained in ARCS's bylaws, that they never resigned as members or directors of ARCS but only as directors of NLC and as such, they should be confirmed as ARCS's directors (the "Governance Issue").
- [5] The Governance Issue - namely who are ARCS's directors - is the main issue raised in the two petitions which, by agreement, the parties seek to have determined in advance of other issues raised. Those other issues will either become moot or, if required, be the subject of further submissions.

II. The Petitions

- [6] On November 18, 2024, Mr. McLoughlin, a member and director of both ARCS and NLC, filed petition no. S142120 (the "McLoughlin Petition") seeking various orders including:

- a) A declaration that the ARCS board of directors consists of the Acting Directors only;
 - b) A declaration that a purported October 15, 2024 ARCS director's meeting held by the Excluded Directors and Mr. Devries was unauthorized and invalid and that any motions passed or business conducted at that meeting are of no force or effect;
 - c) A declaration that the Excluded Directors are not proper or authorized directors of ARCS;
 - d) An order that the Excluded Directors and Mr. Devries comply with, and refrain from acting in a manner contrary to, or inconsistent with, the ARCS bylaws and the Societies Act, S.B.C. 2015, c. 18 [Act], including that they cease holding themselves out as directors of ARCS or NLC and cease stating or suggesting that the Acting Directors have been removed or terminated as members of ARCS's board;
 - e) An order enjoining the Excluded Directors and Mr. Devries from proceeding with any further actions or meetings on behalf of ARCS and enjoining the Excluded Directors from holding themselves out as directors of ARCS or NLC; and
 - f) Pursuant to s. 105 of the Act, orders to correct and validate "any defects, oversights or other irregularities in ARCS activities or affairs that the Petitioner may request. . ." including a declaration that all ARCS directorship terms ended when their NLC directorships ended or at the next ARCS annual general meeting.
- [7] In response, on November 27, 2024, the Excluded Directors filed their own petition under no. S142201 ("Brinkerhoff Petition") seeking orders protecting dissipation of the Sale Proceeds and seeking to invoke the court's jurisdiction to protect ARCS's money and its mission. Specifically, they seek, inter alia:
- a) A declaration that they are members and directors of ARCS;
 - b) A declaration that amended ARCS bylaws filed with the British Columbia Registrar of Societies on or about October 11, 2024 ("October 2024 Bylaws") are invalid and of no force or effect;
 - c) A declaration under s. 102(1)(a) of the Act that the activities or internal affairs of ARCS and NLC are being or were conducted, or the powers of the Acting Directors are being or were exercised in a manner oppressive to their members;
 - d) A declaration under s. 102(1)(b) of the Act that an act of ARCS and NLC has been done or is threatened, or a resolution of the directors was passed or is proposed, that is unfairly prejudicial to their members;
 - e) A declaration that the Sale Proceeds are impressed with a charitable purpose trust requiring that the monies be used only in accordance with ARCS's constitutional purpose, namely, to provide a facility for resourcing apostolic ministry and NLC;
 - f) The appointment of an investigator under ss. 102(2)(k) and 213(4)-(5) of the Act;

- g) An injunction restraining the distribution or encumbering of the Sale Proceeds; and
 - h) The production of various ARCS and NLC's financial and other documents.
- [8] All live issues were adjourned by consent pending the determination of the Governance Issue.
- [9] Depending on whose position is correct, control over the ARCS board, and the Sale Proceeds, will follow. The Acting Directors want to use the Sale Proceeds to fund NLC's expenses on an ongoing basis while the Excluded Directors seek to protect the Sale Proceeds from what they consider to be reckless, excessive and unauthorized spending by the Acting Directors. Their goal is to prevent the diversion of the Sale Proceeds into the hands of an ever-shrinking number of individuals at the expense of ARCS's future viability.
- [10] The McLoughlin Petition and the Brinkerhoff Petition (collectively, the "Petitions") came on for hearing before me on April 23-25, 2025. Due to insufficient time, the matter continued August 25, 2025, for five additional days which was still insufficient. Submissions were finalized over two additional days, September 18 and 19, 2025.
- [11] At the re-commencement of the hearing on August 25, 2025, counsel for the Excluded Directors brought an application ("Brinkerhoff Application") to further amend the Brinkerhoff Petition to include orders:
- a) requiring Mr. McLoughlin repay ARCS approximately \$107,000 used to fund his personal legal fees in the McLoughlin Petition; and
 - b) appointing a liquidator over ARCS in the event the Excluded Directors were not confirmed as members and directors of ARCS.
- [12] ARCS and NLC, who had previously taken no position on the Governance Issue, vigorously oppose the Brinkerhoff Application as it relates to the appointment of a liquidator.
- [13] After hearing submissions, all parties agreed that the Governance Issue should be decided first with the Brinkerhoff Application to be determined afterwards.

The Individual Parties

- [14] Mr. McLoughlin is a director of ARCS and NLC. Mr. Leroux is the chair of both boards of directors. Mr. Koopman is the pastor of NLC and is also on the board of directors of both societies.
- [15] Ms. Brinkerhoff, the Whites, Ms. Devries and Mr. Petch are all past directors and members of ARCS and NLC. Mr. Devries was added as a respondent in the McLoughlin Petition because he called a purported October 15, 2024, directors meeting of ARCS. All have had longstanding involvement in and have served in various roles with NLC.

III. Background

- [16] NLC, then known as New Life Vineyard Fellowship Church ("NLVFC"), started in 1986 and was registered as a society under a predecessor to the Act in January 1992. In its early days it rented facilities for church services. In March 1990, following an extensive fundraising campaign that included donations from its members, a church facility was purchased on Glenmore Road in Kelowna. Some of the original church members (including the Excluded Directors) had a vision to purchase another property as both a church investment and a facility to conduct church affairs. Years of fund raising and donations later, combined with the sale proceeds of \$2.2 million from the 1993 sale of the Glenmore property, that vision was realized and the Main Street Property was purchased on December 10, 1993. By that time, the church had a large and growing membership in the range of 350 members, with weekly attendances in the mid to high hundreds. The Main Street Property thereafter acted as a facility both: (i) for church services; and (ii) to support apostolic ministry locally and abroad.
- [17] By the early 2000's NLC had a membership of over 1,000 with many more non-members attending events and Sunday services.
- [18] In 2001, a working document, called "New Beginnings Document, Phase I, II and III" ("New Beginnings") was written by church leadership and adopted by members in 2004. It outlined a proposal for the church to be split into two distinct societies, ARCS and NLC with the elders of NLC becoming the members of ARCS and who would appoint the directors of ARCS. It also stated that ARCS directors would function like NLC's elders.
- [19] In 2004, the NLVFC's then executive and subsequently its membership endorsed the New Beginnings proposal that the church operations should be split into two societies, one holding the Main Street Property, and the other conducting the day-to-day operations of the church. In accordance with that plan, NLVFC changed its name to ARCS and NLC was incorporated as a new society. ARCS continued as the entity owning the Main Street Property and NLC became the operating church.
- [20] With the church's significant membership's donations, NLC was self-supporting and was able to pay salaries of church staff, rent to ARCS in the amount of its mortgage payment for use of the Main Street Property and other expenses.
- [21] Historically, ARCS and NLC's governance structures have been linked with the members of both boards of directors (also known and referred to as "elders") being identical. In practice, when a NLC director's term ended, so did his/her ARCS membership and directorship.
- [22] By 2016, membership in NLC had decreased to about 300 with others attending Sunday services.
- [23] Also in 2016, a rift developed between ARCS and NLC's founding leaders and the then board of directors. This culminated in a mediated settlement that was brokered by Rev. Michael Brodeur, a third-party reverend specializing in supporting and coaching churches and

mediating disputes. That settlement required the church's founding leaders to exit the church. Soon afterwards, Rev. Brodeur assisted NLC's then board in recruiting Mr. Koopman as its pastor. At the time, NLC's membership was in the 150 range with 250-300 people attending Sunday services every week. Following the mediation, Rev. Brodeur continued to advise the NLC and ARCS boards as needed.

- [24] Soon after Mr. Koopman became NLC's pastor, and for reasons the parties disagree on, NLC's congregation began to dwindle in size. The Excluded Directors attribute this decline to Mr. Koopman's leadership that caused disruption and strife because of the direction he was taking NLC, of which they did not approve.
- [25] In 2018, Mr. Petch took on the task of a wholesale re-drafting of ARCS's bylaws which were ratified at ARCS's annual general meeting held the same year ("2018 ARCS Bylaws"). In drafting the 2018 ARCS Bylaws, Mr. Petch drew from the Act's model bylaws and made changes regarding membership onboarding and duties. He also removed references to a director's term limits.
- [26] In May 2020, a leadership challenge within NLC's then board prompted the return of Rev. Brodeur who mediated another settlement. This settlement required Mr. Petch, the Whites and others to resign from the ARCS and NLC's boards. On July 12, 2020, in accord with that settlement, Mr. Petch, the Whites and others delivered notices of their resignations as directors to NLC's board. In their resignation letters, they stated that they would not be attending NLC but requested that their memberships "not be cancelled at this time". They did not specify that they were also resigning from the ARCS board. In fact, ARCS is not mentioned at all in their resignations. On July 17, 2020, Mr. Brodeur wrote a letter to the congregation explaining the mediated settlement and reasons for it. In it, he notes that as part of the settlement, all current directors agreed to resign. A "reconstituted" interim board of both ARCS and NLC, comprising Mr. Koopman, Rev. Brodeur and two members of Rev. Brodeur's team was to be ratified at a general meeting of NLC's members set for July 26, 2020.
- [27] On July 24, 2020, Mr. Petch and the Whites took the position that the proposed "reconstituted" board did not qualify as elders or directors of NLC because they were not members of NLC and their appointments would violate NLC's bylaws. They retracted their earlier resignations and reinstated themselves on both ARCS and NLC's boards temporarily pending a general meeting of members where directors could be appointed in accordance with NLC bylaws. The NLC general meeting set for July 26, 2020, was cancelled and rescheduled for September 13, 2020. At the September 13, 2020, NLC general meeting Mr. Petch and the Whites did not stand for re-election and their terms as directors officially ended. From that point, neither Mr. Petch nor the Whites participated in any NLC or ARCS board meetings.

- [28] Ms. Brinkerhoff, Ms. Devries and two others not involved in this litigation, were elected to the NLC's board for three-year terms expiring at the NLC's annual general meeting in 2023. Although he put his name forward, Mr. Koopman was not ratified as a director, although in a subsequent NLC general meeting held in December 2020, Mr. Devries, Mr. McLoughlin, Mr. Koopman and another member were ratified as elders/directors.
- [29] By the end of 2020, NLC's membership had reduced further to approximately 75 members, NLC's membership donations had dropped off and NLC was unable to sustain itself financially. Discussions began on what to do with the Main Street Property (in need of significant repairs), including whether it should be sold.
- [30] Around the same time, the 2018 ARCS Bylaws were amended to require sixty percent of NLC members to approve the sale of the Main Street Property ("2020 ARCS Bylaws").
- [31] In 2021, both ARCS and NLC boards were approached by at least one developer interested in purchasing and redeveloping the Main Street Property which culminated in the decision to sell. Financial pressures resulting from NLC's steadily decreasing membership, combined with assurances that the proposed redevelopment of the Main Street Property would include a new facility for ARCS and NLC to continue their purposes, culminated in the members of NLC overwhelmingly adopting a special resolution on November 20, 2022, to sell the Main Street Property to IUVI. The goal of the sale was to have the Main Street Property's redevelopment continue as "a blessing to the broader community", consistent with ARCS's purpose. The proposed new development was also to include low-income housing.
- [32] A series of negotiations followed culminating in ARCS and IUVI entering into a purchase and sale agreement dated May 24, 2023, the terms of which included a purchase price of \$13.5 million with \$2.5 million to be paid on closing, and \$11 million to be paid as a vendor takeback loan. The agreement gave ARCS an option for an early exit and be paid the balance of the purchase price and a further option to purchase a facility in the proposed new development. At the time, Ms. Brinkerhoff and Ms. Devries were active members of the ARCS board that developed and approved of the sale of the Main Street Property, including consultation with and obtaining the approval of the NLC membership.
- [33] The sale of the Main Street Property closed on May 31, 2023. From the down payment of \$2.5 million, approximately \$1.6 million was used to pay out ARCS's existing mortgage and the remainder was deposited in an investment account.
- [34] In October 2023, Ms. Brinkerhoff and Ms. Devries' terms on NLC's board ended and they declined to let their names stand for re-election.
- [35] The initial plan was that IUVI would demolish the Main Street Property and, together with ARCS and NLC, redevelop the property to include a new physical premises for NLC members to congregate and worship. That plan hit roadblocks when it became apparent that IUVI's redevelopment plans were incompatible with ARCS and NLC's expectations and what they felt IUVI had originally agreed to. That, combined with project delays and significant

cost overruns, prompted the ARCS board to exercise the early-exit option on July 4, 2024, requiring IUVI to pay out the \$11 million vendor takeback loan within 180 days. As of the September 2025 continuation of the hearing of the petitions, apparently because IUVI is disputing the exercise of the early exit option, IUVI has not made full payment and approximately \$10.7 million remains outstanding.

- [36] On October 10, 2024, and for the first time, the Excluded Directors alerted the Acting Directors of their position that they continued to be members and directors of ARCS. Mr. Devries called an ARCS directors meeting at which the Excluded Directors purported to pass a series of motions.
- [37] The next day, October 11, 2024, the Acting Directors purported to call a general meeting of ARCS members (albeit called a board meeting) to introduce an amendment to article 2.1 of ARCS's bylaws by adding the following:

For clarity, a person who ceases to be a director or elder of New Life Church Kelowna also ceases to be a member of [ARCS].

("October 2024 ARCS Bylaw Amendment")

- [38] The Excluded Directors and Mr. Devries promptly took the position that s. 17 of the Act requiring both a bylaw alteration application and a special resolution of ARCS's members was not complied with and therefore the October 2024 ARCS Bylaw Amendment is invalid.
- [39] On October 20, 2024, the Acting Directors called a general meeting of NLC's members (which by then had reduced to 43 members) and proposed a special resolution to change NLC's bylaws such that all NLC's future memberships would be annual memberships that would automatically terminate on December 31 of each year unless renewed and accepted by NLC's board. That is, members seeking renewals would be required to reapply for membership annually and membership acceptance would be at the discretion of NLC's board. At the time, NLC's board consisted of Mr. Koopman, Mr. McLoughlin and Mr. Leroux. That special resolution was approved and NLC's bylaws were changed accordingly ("October 20, 2024 NLC Bylaw Amendment").
- [40] None of the Excluded Directors have applied to renew their memberships in NLC and as such all are no longer members.
- [41] The McLaughlin Petition was launched on November 15, 2024, and the Brinkerhoff Petition was launched on November 27, 2024. Both were set for hearing on December 2, 2024.
- [42] On December 2, 2024, Justice Giaschi ordered, inter alia, that:
- a) The petitions be heard together;
 - b) Until further order, only the Acting Directors had authority to act, or purport to act, as directors of both ARCS and NLC;

- c) The Sale Proceeds be deposited into an ARCS investment account until January 31, 2025, or such other date as the parties may agree, or the court may order; and
 - d) Pending hearing of the Petitions, ARCS cannot amend its bylaws.
- [43] In accordance with the October 20, 2024 NLC Bylaw Amendment, all memberships in NLC were terminated unless renewal applications were made and approved by NLC's board. It is unknown how many, if any, memberships were renewed for 2025.
- [44] NLC's current membership is too small to fund NLC's monthly expenses. As a result, and on the basis that ARCS's constitutional objects are "to provide the facility for resourcing Apostolic Ministry and NLC" the Acting Directors have, since receiving a portion of the Sale Proceeds, been advancing significant monies to NLC to fund its shortfall, which the Excluded Directors take objection to.
- [45] The Excluded Directors' position is that although they either resigned as elders/directors of NLC or their terms as elders/directors of NLC have ended, they did not resign as members of ARCS and by virtue of the ARCS bylaws stating that all members of ARCS are also ARCS directors, they remain directors of ARCS. In other words, they maintain that the end of their terms as NLC elders/directors had no effect on their ARCS memberships.
- [46] This is the Governance Issue requiring determination.
- [47] Due to NLC's inability to operate without access to funding, NLC's directors have decided to cease NLC's operations and begin the process of winding up the society.

IV. Issues to be Resolved

- [48] As noted earlier, the core issue between the parties is how the Sale Proceeds ought to be disposed of. The Excluded Directors frame the issue this way:

Can three individuals (i) assume control of a multi-million-dollar asset, long held by a religious organization and to which many contributed, (ii) sell the asset, and (iii) use the proceeds contrary to the purpose of that religious organization?

- [49] By agreement, the first step is the determination of the Governance Issue. Secondly, the Excluded Directors seek a determination of the validity of the October 2024 ARCS Bylaw Amendment.
- [50] Additionally, during submissions, the Acting Directors, ARCS and NLC raised a limitation defence to the Brinkerhoff Petition ("Limitation Issue").
- [51] The issues that will be addressed in these reasons are first, the Governance Issue, second whether the October 2024 ARCS Bylaws are valid, third the Brinkerhoff Application and fourth the Limitation Issue. Other procedural issues will then be discussed.

V. Discussion

- [52] The Governance Issue and the validity of the October 2024 ARCS Bylaw Amendment, as framed by the parties, are to be determined by reference to the provisions of the Societies Act, ARCS bylaws and NLC bylaws.
- [53] From the well-researched, detailed, articulate and helpful written and oral submissions prepared by the parties, the following legal principles emerge:
- a) Courts recognize that society bylaws are contractual in nature and interpret and enforce them using the principles of contractual interpretation, applying the bylaws' true and ordinary meaning. The meaning of bylaws is not to be determined according to the subjective views of the parties, but according to the ordinary and grammatical meaning of the words used. Like any contract, the interpretation of bylaws turns on the parties' objective intention at the time they were made. If a society misinterprets or misapplies its bylaws in a manner that negatively affects a member's rights, judicial intervention is warranted: *Sidhu v. Kalgidhar Darbar Sahib Society*, 2024 BCCA 402 at paras. 39 and 43; *Kwantlen University College Student Association v. Canadian Federation of Students - British Columbia Component*, 2011 BCCA 133 at para. 32 [Kwantlen]; *Eli Lilly & Co. v. Novopharm Ltd.*, [1998] 2 S.C.R. 129, 1998 CanLII 791 at para. 54; *Farrish v. Delta Hospice Society*, 2020 BCCA 312 at para. 47;
 - b) Where there is a breach of the Act, or where there is a default in compliance with a society's constitution or bylaws, s. 85 of the Act allows the court to intervene in the affairs of a society: *Kwantlen* at para. 21; *Farrish* at para. 50;
 - c) The contractual relationship between a member and a society is dynamic. Membership changes over time, and external circumstances, such as shifts in law or social context, may affect how the bylaws operate. Like standard form contracts, the bylaws are supplemented and sometimes constrained by the Act which sets default rules such as director qualifications: *Farrish* at para. 48;
 - d) While courts are generally reluctant to interfere with the discretionary decisions of voluntary associations, they will intervene where a society exceeds its jurisdiction, breaches natural justice, or acts in bad faith. Courts also retain jurisdiction to interpret and enforce bylaws, especially when core membership rights are engaged: *Farrish* at paras. 49, 50; *Sidhu* at para. 38;
 - e) In exercising jurisdiction over societies, courts ensure society decisions are conducted in good faith, comport with natural justice and comply with the Society's bylaws. Courts are responsible for ensuring the society's decisions are carried out according to the applicable rules: *Farrish* at paras. 37, 42 and 49; *Sidhu* at para. 37;

- f) The Act allows the court to make orders to ensure that the rights of a society's members under its bylaws are not transgressed. Where the issue relates to the construction of the bylaws, the court has jurisdiction to intervene and need not defer to the bylaw interpretations espoused by the society. Where a bylaw criterion exists, a society does not have the authority to create additional qualifications beyond those explicitly stated: *Kwantlen* at para. 32; *Sidhu* at para. 41;
- g) Bylaws of an incorporated society operate as a contract between the society and its members, and the interpretation of a society's bylaws is a question of law to which the principles of contractual interpretation apply. One such principle is that bylaws are to be interpreted in the context of the intentions of the parties as is evident from the bylaws as a whole. A society does not have the authority to create additional qualifications beyond those explicitly stated: *Bhanda v. Khalsa Diwan Society of Victoria*, 2014 BCCA 291 at paras. 26-28; *Sidhu* at para. 42;
- h) Although past practise is not decisive on any issue of law and clear and specific provisions in a society's constitution and bylaws are to govern, a sufficiently well-established tradition or custom may be considered an implied term of a society's bylaws: *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165, 1992 CanLII 37 [Lakeside]; *Bains v. Garcha*, 2024 BCSC 884 at para. 48; *Farrish* at paras. 85, 88;
- i) Implying a term requires meeting the high threshold of necessity such that without the term, what was intended would not be effective. It must have a degree of obviousness to it: *Moulton Contracting Ltd. v. British Columbia*, 2015 BCCA 89 at paras. 53-57; *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, [1999] 1 S.C.R. 619, 1999 CanLII 677 at para. 29; and
- j) Societies, including religious ones, are subject to judicial oversight where bylaws or the Act are contravened: *Sidhu* at para. 36.
- i. The Societies Act

[54] The relevant sections of the Act provide as follows:

"member", in relation to a society, means

- (b) a person who becomes, in accordance with the bylaws, a member of the society and who remains a member of the society;

17(1) A society may alter its bylaws by filing with the registrar a bylaw alteration application.

- (2) A society must not submit a bylaw alteration application to the registrar for filing unless the alteration proposed by the application has been authorized by special resolution.

48(1) A director of a society ceases to hold office when any of the following occurs:

- (a) in the case of a director designated, elected or appointed for a term, the director's term of office expires;
 - (b) in the case of a director designated, elected or appointed without a term of office, unless the bylaws provide otherwise, at the close of the next annual general meeting after the director's designation, election or appointment;
 - (c) the director resigns or dies;
 - (d) the director is removed from office in accordance with section 50 (1) [removal of directors].
- (2) Unless the bylaws provide otherwise, for the purposes of subsection (1) (a), a director's term of office expires at the close of the next annual general meeting after the director's designation, election or appointment.

49 A director of a society who intends to resign must give the director's resignation to the society in writing, and the resignation takes effect on the later to occur of the following:

- (a) the receipt by the society of the written resignation;
- (b) if the written resignation specifies that the resignation is to take effect on a specified date, on a specified date and time or on the occurrence of a specified event,
 - (i) if a date is specified, the beginning of the day on the specified date,
 - (ii) if a date and time are specified, the date and time specified, or
 - (iii) if an event is specified, the occurrence of the event.

69(1) A member's membership in a society terminates when

- (a) the member's term of membership, if any, expires,
 - (b) the membership terminates in accordance with the bylaws,
 - (c) the member resigns,
 - (d) the member, in the case of an individual, dies or, in the case of a partnership or corporation, dissolves, or
 - (e) the member is expelled in accordance with the bylaws or under section 70 (2).
- (2) Unless the bylaws provide otherwise, the rights of a person as a member of a society, including any rights in the property of the society, cease to exist when the person's membership in the society terminates.

ii. ARCS Bylaws

[55] As was noted earlier, in 2018, wholesale amendments to ARCS' bylaws were drafted by Mr. Petch which were ratified by special resolution of ARCS' members on December 2, 2018. The 2018 ARCS Bylaws provide:

- a) 2.1 - Once a person is ratified as an elder of NLC, that person becomes a member of ARCS on the board's acceptance of the appointment;
- b) 2.4 and 2.6 - members can only be removed in the event of non-payment of member dues; and
- c) 4.2 - every member of ARCS currently in good standing is a director of ARCS.

[56] Articles 4 and 6 deal with who are the directors of ARCS:

4.1 The Society must have no fewer than 3 and no more than 15 directors.

4.2 The Board of the Society is made up of all the Society members currently in good standing.

6.1 Directors are appointed to the following Board positions in direct correlation to their roles on the Board of New Life Church Kelowna, and a director, other than the chairperson, may hold more than one position:

- (a) president, chair or chairperson;
- (b) secretary;
- (c) treasurer.

[57] From these bylaws the following propositions can be made:

- a) To become a member of ARCS, you must be an elder/director of NLC and be accepted as a member by ARCS' board;
- b) The minimum number of directors of ARCS is 3 and the maximum number of directors is 15;
- c) A member of ARCS loses that membership if he/she is not in good standing for a period of at least six months; and
- d) A member of ARCS is not in good standing if membership dues, if any, are outstanding for six months.

[58] Of note, historically, membership dues have never been charged to any ARCS member.

[59] According to Mr. Petch, underlying the 2018 ARCS Bylaws there was a deliberate intention not to have term limits on directors. He says this was because term limits on directors of ARCS and NLC was a live issue from 2004 through 2018, and it was therefore important to have organizational continuity for ARCS. He says that in drafting the 2018 ARCS Bylaws, he intentionally removed any reference to term limits.

iii. NLC Bylaws

[60] The relevant NLC Bylaws provide:

"directors" includes the persons who are either founding directors or Elders in accordance with these bylaws and who have not ceased to be directors

"Elders" means only those who are Elders in accordance with these bylaws and who have not ceased to be Elders

"members" means those persons who have become members in accordance with these bylaws and have not ceased to be members

...

3.4(b). A person shall immediately cease to be a member of the Society upon being absent for more than one year.

...

6.5 A person must be a voting member of the Church to be eligible to be a director of the Church.

...

6.7 The election of Elders shall be ratified by not less than 75% of the voting members present at a general meeting duly called for such purpose

6.8 The term of office of Elders shall be three (3) years. the term shall be deemed to commence at the close of the annual general meeting in which such Elder was elected

...

6.10 Directors shall retire from office at the close of the annual general meeting in the year in which his or her term expires.

...

6.13 A person shall immediately cease to be a director of the Church:

- (a) upon delivering his or her resignation in writing to the Secretary of the Church or to the address of the Church; or
- (b) upon ceasing to be a member; . . .

iv. Findings of Fact

[61] From the evidence, I have found the following facts:

- a) Ms. Devries became a member of NLC in 1987, was first ratified as an elder in 1996 and served in that role until 2006. She was again elected as an elder at the December 2020 NLC annual general meeting. At the October 15, 2023, NLC annual general meeting, she did not stand for re-election as a director of NLC and her directorship in NLC then ended;

- b) Mr. Petch has been an active member of NLC and its predecessor since 1986 and was first ratified as an elder in 2004, serving in that position until September 2020. He drafted the 2018 ARCS Bylaws which were subsequently approved by ARCS members. On September 13, 2020, he did not stand for re-election as an NLC director and his directorship in NLC then ended;
- c) The Whites were both first ratified as elders of NLC in 2014 and served in that position until September 2020 when they did not put their names forward for re-election as NLC directors. Their respective directorships in NLC ended September 13, 2020;
- d) Since the September 13, 2020, NLC annual general meeting, neither the Whites nor Mr. Petch have participated in, been involved in or had an association with either NLC or ARCS. The first time they asserted they continued to be members and/or directors of ARCS was in October 2024;
- e) Ms. Brinkerhoff has been a member of NLC (and its predecessor NLVFC) since 1990 and was first ratified as an elder in September 2020 after being approached by Mr. Koopman to let her name stand. She served as a NLC director until October 15, 2023, when she did not put her name forward for re-election. Her directorship in NLC then ended;
- f) Since October 15, 2023, neither Ms. Brinkerhoff nor Ms. Devries have participated in monthly ARCS board meetings or ARCS affairs;
- g) Mr. Koopman first came to NLC in 2016 when he was hired as its senior leader. He was first ratified as an elder/director of NLC in December 2020;
- h) Mr. Leroux became a member of NLC in 2013 and was first ratified as an elder of NLC on February 5, 2023;
- i) Mr. McLoughlin has been involved with NLC (and its predecessor NLVFC) since 1988. He served as an elder/director of NLC from 2000 to 2010 and again from 2020 to 2024;
- j) Since 2004, the directors of ARCS and NLC have been the same people. The undisputed custom and practice had been that when a NLC director's term ends, so did his/her corresponding term as an ARCS director. Membership in ARCS has always been tied to NLC eldership/directorship;
- k) ARCS and NLC had a longstanding tradition or custom that once eldership/directorship of NLC ended, so did that person's membership and directorship in ARCS. Accordingly, by virtue of that tradition, when the Excluded Directors' elderships in NLC ended and until October 2024, they treated that as the cessation of their membership and directorship in ARCS and they were thereafter no longer part of ARCS;

- l) As part of a mediated settlement brokered by Rev. Brodeur, Mr. Petch and the Whites resigned as NLC elders/directors on July 12, 2020. As part of the settlement, all parties understood that Mr. Petch and the White's resignations would be from both NLC and ARCS's boards;
- m) The sale of the Main Street Property took place amid a fundamental difference of opinion in ARCS and NLC's philosophy, values and leadership that developed between the Excluded Directors and the Acting Directors. This was the impetus for Ms. Brinkerhoff and Ms. Devries deciding to not stand for re-election as directors of NLC at its October 15, 2023, annual general meeting;
- n) Since the December 13, 2023, ARCS annual general meeting, the Acting Directors have been noted in the Act's registry as ARCS's directors;
- o) On October 10, 2024, and for the first time since their directorships in NLC ended, the Excluded Directors took the position that they continued to be directors of ARCS. By an email authored by Ms. Brinkerhoff dated October 10, 2024, sent to the Acting Directors, the Excluded Directors and Mr. Devries called a meeting of ARCS's board of directors to be held October 15, 2024. This email was purportedly pursuant to ARCS bylaw 5.1 that states:

A directors meeting may be called by the chair or by any 2 other directors.

- p) At a hastily called meeting of the ARCS board on October 11, 2024, the Acting Directors passed the October 2024 ARCS Bylaw Amendment adding the following to bylaw 2.1:

For clarity, a person who ceases to be director or elder of New Life Church Kelowna also ceases to be a member of the Society.

- q) At the October 15, 2024 ARCS board meeting, the Excluded Directors purported to pass various motions, including:
 - i. increasing the board's size from 3 to 8 to include the Acting Directors and the Excluded Directors;
 - ii. that Ms. Brinkerhoff and Ms. Devries be appointed to oversee an independent audit of ARCS and that all bank accounts be frozen; and
 - iii. that an ARCS annual general meeting be held on November 19, 2024, to appoint new directors and amend ARCS' bylaws to allow any person to apply to be an ARCS' member.
 - v. The Governance Issue - Are the Excluded Directors members and directors of ARCS?
- [62] ARCS and NLC take no position on the Governance Issue and are represented by counsel independent of the other parties.

[63] There is one requirement for membership in ARCS - being appointed or ratified as an elder or director of NLC. Duties of members include acting in good faith to uphold the interests of NLC as paramount. On its face, it seems clear that if a person is not an elder/director of NLC, that person cannot be a member of ARCS.

[64] The Excluded Directors contend, however, that the criteria for becoming a member in ARCS set out in s. 2.1 of the 2020 ARCS Bylaws, does not speak to cessation of membership and therefore once a member in good standing, always a member.

(1) Acting Director's Position

[65] The Acting Directors argue that the court must direct that they are the only ARCS directors, by virtue of a combination of: (i) the ARCS bylaws, the NLC bylaws and the Act; (ii) the long-standing historical practice and convention that only elders/directors of NLC were members and directors of ARCS; and (iii) the Excluded Director's resignations and other conduct in essentially ignoring ARCS since their elderships/directorship in NLC ended. To summarize their main arguments:

- a) First, they point to an ARCS Annual general meeting held December 13, 2023, and say that by virtue of s. 48 of the Act, the Excluded Directors' terms as directors would have ended then;
- b) Second, since 2004 it was always understood that membership in ARCS terminated upon resignation from NLC's board of directors. They say that prior to the Excluded Director's conduct in October 2024, no director who resigned from or whose terms concluded on the NLC board attempted to continue to act as a director of ARCS. It is explained this way in their amended response to the Brinkerhoff Petition:

Since the inception of the governance structure under which directors of NLC acted as directors of ARCS, membership to ARCS was, as a general practice, understood to be terminated upon resignation from the board of NLC. Indeed, membership to the board of NLC and ARCS has at all material times been treated as coterminous. Until the Petitioners' conduct in October 2024, no director who resigned from or whose terms concluded with NLC governance attempted to continue to act as director of ARCS.

- c) Third, relying on the Lakeside Colony line of cases where implied terms were added to a society's bylaws based on a longstanding tradition and practice, the evidence establishes that membership in ARCS has always been inextricably linked to, and has expired upon, the cessation of one's status as an elder/director of NLC and such a term, similar to the October 2024 ARCS Bylaw Amendment, ought to be implied into ARCS bylaws;

- d) Forth, upon becoming aware in October 2024 that the Excluded Directors, essentially out of the blue, purported to resume activities and hold themselves out as ARCS board members, the Acting Directors determined that to eliminate any potential ambiguity and codify the previous long-standing accepted practice, they must pass the October 2024 ARCS Bylaw Amendment;
- e) Fifth, the Excluded Directors' conduct in not attending ARCS members or directors' meetings for four years (in the case of Mr. Petch and the Whites) or two years (in the case of Ms. Brinkerhoff and Ms. Devries) reinforces and confirms that they knew they were no longer directors or members of ARCS;
- f) Sixth, in any event of the Excluded Directors' terms ending in September 2020 and October 2023, and in accordance with s. 48(1) of the Act that provides that a director ceases to hold office, "in the case of a director elected without a term of office, unless the bylaws provide otherwise, at the close of the next annual general meeting", at the latest, Mr. Petch and the Whites were no longer directors as at ARCS' 2022 annual general meeting and Ms. Brinkerhoff and Ms. Devries were likewise no longer directors as at ARCS' annual general meeting in 2024; and
- g) Lastly, to the extent the NLC and ARCS bylaws and ARCS meetings may not have been precise, the Acting Directors, as lay persons, ought not to be held to a standard of perfection, or to the same standard as professionals. Accordingly, an order pursuant to s. 105 of the Act validating any defects or irregularities in ARCS's activities would be appropriate.

(2) The Excluded Directors' Position

- [66] The Excluded Directors bring the Brinkerhoff Petition seeking to ensure that the Sale Proceeds are protected and remain available to be used as they were always intended, as a facility for worship. They say the Sale Proceeds are sacred and subject to a charitable purpose trust and are at risk of being dissipated by the actions of an ever-shrinking control group.
- [67] In effect, their concern is that they, as long-time members responsible for NLC's success and who were instrumental in securing the Main Street Property which in turn permitted its ultimate sale for \$13.5 Million, are being unceremoniously culled from NLC membership losing any say on what happens to the Sale Proceeds.
- [68] They point to ARCS's constitution, which appears simply to provide a physical facility for, not money to, NLC. This, they say, has always been the case prior to the sale of Main Street Property. Since the sale, ARCS has been providing what they say are unprecedented sums of money to fund NLC.

- [69] The crux of the Excluded Directors' position is that the Acting Directors are not legally entitled to remove them as directors of ARCS, assume control of ARCS and of the Sale Proceeds. Relying on the principles of statutory interpretation in respect of ARCS and NLC's bylaws, the Excluded Directors say that by operation of law, they are members and directors of ARCS and ought to be declared as such.
- [70] They advance a series of legal arguments in support:
- a) First, although acknowledging they are no longer elders/directors of NLC, they maintain that they never resigned either as members or directors of ARCS and therefore continue to be members and directors of ARCS;
 - b) Second, on a strict reading of the Act and both ARCS and NLC bylaws, steps taken by the Acting Directors to exclude them as members and directors of ARCS are illegal and of no force and effect. This includes steps taken since October 2024 to make resolutions and bylaw changes at meetings that were not legally constituted;
 - c) Third, membership eligibility in ARCS is governed by its bylaws - full stop. What the Acting Directors may think the bylaws mean based on historical practice is irrelevant. The correct interpretation and application of the plain text of the ARCS bylaws cannot be overtaken by the subjective understandings of the Acting Directors, historical practices notwithstanding;
 - d) Fourth, neither the Act nor the ARCS's bylaws impose any requirement of active participation on its members;
 - e) Fifth, an implied term based on history and practise is impermissible because it would add a membership eligibility criterion that does not exist in the ARCS bylaws and would be contrary to the rule in *Sidhu* and related authorities;
 - f) Sixth, on the plain meaning of s. 2.1 of the ARCS bylaws, a person who is ratified as an elder/director of NLC becomes a member of ARCS on the ARCS board's acceptance of that appointment. The Excluded Directors were each ratified as elders/directors of NLC and thereby became members of ARCS. Once a member of ARCS, you are automatically a director;
 - g) Seventh, on the plain meaning of sections 2.4 and 2.6 of ARCS bylaws, the only way for a member to cease being a member is if that member is not in good standing by failing to pay annual membership dues, if any. At no time were membership dues ever assessed and therefore, the Excluded Directors never lost their respective memberships in ARCS. In other words, based on the wording of the ARCS bylaws, once a member, always a member;
 - h) Eight, when they resigned from NLC, none of them put their minds to resigning from ARCS and there is no mention of ARCS resignations in any of the letters of thanks from NLC or otherwise. None of them intended to resign their ARCS memberships. Further, there is no evidence that any of them resigned from ARCS's board in writing, a requirement of s. 49 of the Act;

- i) Ninth, nowhere in the ARCS bylaws does it say to be a director, you must also be a director or NLC. The only point in time a person must be an elder/director of NLC to be a member of ARCS is at the time the ARCS board approves membership. Continuing membership/directorship is not dependent on being an elder/director of NLC;
 - j) Tenth, an implied term based on historical practice is not reflective of the ARCS bylaws. Even if such a practice was proven, which is not the case, the bylaw's plain text cannot be displaced. Active NLC eldership/directorship is not a criterion for continuing ARCS' membership and no authority has been provided that supports the Acting Directors' position that such an implied term can be added to a society's membership eligibility criterion. To the contrary, Sidhu and Farrish make it clear that membership eligibility is governed exclusively by the terms of the bylaws;
 - k) Eleventh, whether the December 13, 2024, purported ARCS annual general meeting was even held is questionable. Even if it was, the required notice of the meeting was never sent to them as members which invalidates the meeting; and
 - l) Lastly, s. 48(1)(b) of the Act does not apply because:
 - i. section 4.2 of the ARCS bylaws provides that all members in good standing are board members and s. 2.6 provides that memberships are only terminated if dues are outstanding. Therefore, a director's term is only limited by being a member in good standing;
 - ii. the Acting Directors' argument that s. 48(1)(b) mandates all director's terms must end at every ARCS' annual general meeting would be contrary to s. 4.2 of the ARCS bylaws, as the result would be that members would no longer be directors; and
 - iii. any potential application of s. 48(1)(b) requires the holding of an ARCS annual general meeting and there is no admissible evidence that an annual general meeting was held to defeat the directorships of the Excluded Directors. Section 77 of the Act requires that written notice of a general meeting be sent to every member of the society in advance of the meeting and there is no evidence that such notice was given. Even if such notice was given, the ARCS bylaws stipulate for a quorum of "3 voting members or 60% of the voting members, whichever is greater". At the purported ARCS AGM on December 13, 2023, there were at least eight members of ARCS and therefore at least five members would be required for a quorum. Accordingly, because only four persons attended, even if there was such a meeting, which is disputed, the requirement for a quorum was not satisfied and the meeting was not valid.
- [71] In short, the Excluded Directors argue that the end of their eldership/directorship in NLC had no effect on their membership in ARCS. It therefore follows, they say, that the Excluded Directors continue as members of ARCS in good standing, and by virtue of its bylaws, directors, and such a declaration should be made without further analysis.

(3) Conclusion

- [72] The principles of contractual interpretation apply to the interpretation of ARCS's bylaws. Contractual interpretation permits implying terms: *Lakeside Colony; Grewal v. Guru Gobind Singh Temple Association*, 2012 BCSC 1530 at paras. 26-27; *Bains* at paras. 44-51.
- [73] I conclude that the Governance Issue must be resolved by the incorporation of an implied term into ARCS's bylaws that confirms that membership in ARCS terminates when eldership/directorship in NLC ends.
- [74] The evidence seems clear that since 2004, it was always intended that ARCS membership and governance would be tied to and linked with NLC eldership/directorship such that the elders/directors of NLC would also be the directors of ARCS. The evidence confirming this long-standing practice includes:
- a) The New Beginnings Document that was adopted by NLC members;
 - b) A September 22, 2004, email written by Mr. McLoughlin and sent to the church congregation updating them on the status of ARCS and NLC, as well as a power point presentation to the congregation on October 7, 2005, stating: "We would make the Elders of New Life Church the members of the Apostolic Resource Centre (formally New Life Vineyard Fellowship)";
 - c) Since inception, the practice has been that the elders/directors of NLC acted as directors of ARCS and membership/directorship in ARCS was understood to be terminated when NLC eldership/directorship ended. There is no evidence that anyone has suggested otherwise until October 2024. All commencements and cessations of directorships in NLC were mirrored by commencements and cessations of directorships in ARCS and registered with the Registrar of Societies. There has never been an instance where an ARCS member remained a member after that member's term on ARCS board ended;
 - d) Mr. Petch confirmed that in 2017 and 2018 when the ARCS's board decided to update the ARCS Bylaws, the ARCS's board wanted the bylaws to reflect ARCS's practice dating back to 2005 and as described in the New Beginnings document that once a person is an elder of NLC, that person would sit on the ARCS board;
 - e) The 2020 ARCS Bylaws provided that any sale of the Main Street Property would require approval of 60% of NLC's membership, reinforcing the interconnection between the two societies;
 - f) Mr. Petch's July 24, 2020, letter reconstituting both the ARCS and NLC board suggests he was aware that his July 12, 2020, resignation letter applied to both NLC and ARCS. Mr. Petch states that when he resigned as an elder and director, he was only resigning his position in NLC and not ARCS. He says he did not turn his mind to whether he was resigning from ARCS's board. This is contrary to what he wrote in his July 24, 2020 letter to Mr. Koopman rescinding his resignation wherein he referred to the reconstituted board of directors of NLC and ARCS. The wording of this letter referencing both societies reinforces that his earlier resignation applied to the boards of both societies;

- g) Following their resignations from the NLC and ARCS's boards at the September 13, 2020, NLC annual general meeting, Mr. Petch and the Whites ceased attending NLC services and all participation in board meetings of either society. Section 3.4(b) of the NLC bylaws in effect at the time provides: "A person shall immediately cease to be a member of the Society upon being absent for more than one year". Given that their memberships in NLC ended in September 2021, so did their eligibility for memberships on the NLC/ARCS boards;
 - h) In accordance with NLC's bylaws, Ms. Brinkerhoff and Ms. DeVries' three-year terms as elders/directors of NLC ended at the October 15, 2023, NLC annual general meeting. Consequently, so did their directorships in ARCS. This is because membership/directorship in ARCS is tied to eldership/directorship in NLC. Thereafter, and until October 2024, neither participated in nor inquired about monthly ARCS meetings;
 - i) Until October 2024, no prior director of NLC attempted to continue to be a director of ARCS;
 - j) Typically, NLC and ARCS's board meetings are held back-to-back to streamline business;
 - k) After the termination of their respective terms as elders/directors of NLC, and until October 2024, none of the Excluded Directors took any part in or communicated with the Acting Directors respecting ARCS's affairs and none made any suggestion that they remained on ARCS's board or as ARCS's members or sought to be involved as such. This implies that they knew they were no longer members or directors of ARCS;
 - l) The minutes from the October 15, 2023, NLC annual general meeting appear to confirm that both Ms. Brinkerhoff and Ms. DeVries's eldership/directorship of both NLC and ARCS's boards ended, and they were thanked for their service;
 - m) The minutes of the September 17, 2020, ARCS annual general meeting, with Ms. Brinkerhoff present, states: "Explanation of ARC and how the board of NLC are the members of ARC and that the officers of the board are the same for both", and "Joyce moved that we accept Joyce Brinkerhoff as members of ARC and the officers being Joyce as Chair ". This underlines that Ms. Brinkerhoff was aware of the interconnection between members/directors of ARCS and elders/directors of NLC; and
 - n) The minutes of the November 15, 2023, ARCS board meeting states: "Determining NLC Board and Board roles. ARCS board made up of David Leroux, Mike McLoughlin, Matti Koopman and Chris Morey, Sandra DeVries and Joyce Brinkerhoff's ARCS board roles concluded at the NLC AGM on October 15, 2023. David Leroux to send thank you letters to both Joyce and Sandra". Again, this supports the long-standing practice and interconnection between member/directors of ARCS and elders/directors of NLC.
- [75] In addition, the following bolsters the ARCS and NLC's historical practice that membership in ARCS is inextricably tied to NLC eldership/directorship:

- a) Article 2.2 of the 2020 ARCS Bylaws provides that every member must, inter alia, act in good faith to uphold the interests of NLC as paramount. This confirms the otherwise clear connection between the two societies and mandates that NLC's interests are paramount. Accordingly, members of ARCS are required to put the interests of NLC first;
- b) Unlike directors, members are not required to resign in writing. Section 69(1) of the Act provides for termination of membership when, inter alia the member's term of membership, if any, expires. With an implied term that memberships in ARCS exists so long as the member is an elder/director of NLC, s. 69(1) would apply to terminate an ARCS membership when the members term as an elder/director of NLC ended;
- c) Mr. Petch's July 24, 2020 letter followed a mediated settlement that would allow NLC to move forward with a new team of elders and directors. At the September 13, 2020 AGM of NLC, Mr. Petch and the Whites ended their terms as elders and directors and ceased attending NLC's services, participating in NLC church activities and, importantly, ceased all participation in ARCS's board meetings. They made no inquiries about ARCS's operations or requested any documents or notices of ARCS's meetings until October 2024. In accordance with s. 3.4(b) of NLC's bylaws, they were no longer members of NLC after September 2021, thus were no longer eligible to be members of ARCS;
- d) Draft minutes from the October 15, 2023, NLC annual general meeting reference that Ms. Brinkerhoff and Ms. Devries resigned from both NLC and ARCS's boards;
- e) The minutes of the ARCS board meeting held November 15, 2023, note that Ms. Devries and Ms. Brinkerhoff's roles on ARCS's board ended at the NLC annual general meeting on October 15, 2023;
- f) The ARCS 2023 Annual Report filed with the Registrar list neither Ms. Devries nor Ms. Brinkerhoff as ARCS directors as of December 13, 2023;
- g) Ms. Brinkerhoff was ratified as an elder of NLC in September 2020 and served as ARCS and NLC's chair until January 2021. During her time as chair, or afterwards as a director, she made no effort to include Mr. Petch, the Whites or any historical member or director of ARCS, in ARCS's business or involve them in ARCS's meetings. There are no notes or correspondence in evidence from ARCS to Mr. Petch or the Whites during Ms. Brinkerhoff's tenure as an ARCS director. Indeed, there is no evidence that she reached out to anyone other than those who were NLC elders about ARCS's business matters; and
- h) Mr. McLoughlin's evidence is that neither Ms. Devries nor Ms. Brinkerhoff attended the 2023 ARCS annual general meeting or any subsequent ARCS board meetings and similarly, none of the other Excluded Directors attended any ARCS board meetings after September 2020.

- [76] I am thus persuaded that an implied term imported into the ARCS bylaws is necessary to ensure what was always intended, namely that membership is tied to NLC eldership as has been the historical custom and practice of ARCS since its beginning. Without such a term, what was obviously intended from the outset would not be effective.
- [77] The Lakeside Colony line of cases deal with giving effect to traditions and customs so firmly entrenched within a society that its members would reasonably treat them as terms of the contractual framework governing their relationship with the society, even absent their formal adoption. Here, there is convincing evidence of a longstanding and well-established tradition and custom that membership in ARCS exists only insofar as a person is an elder/director of NLC.
- [78] For these reasons, I find in favor of the Acting Directors on the Governance Issue and conclude that the Excluded Directors are neither members nor directors of ARCS.

(4) Limitation Act Defence

- [79] In defence of the Brinkerhoff Petition, the Acting Directors, ARCS and NLC raised a limitation defence for the first time during submissions. They argue that, as against the Whites and Mr. Petch, the two-year limitation period set out in the Limitation Act, S.B.C. 2012, c. 13, has intervened, and they are statute barred from claiming to be members or directors of ARCS.
- [80] Given my conclusion on the Governance Issue, it is unnecessary to rule on the Limitation Act defence.

vi. The Validity of the October 2024 ARCS's Bylaws

- [81] A society may alter its bylaws, but it may do so only in compliance with the process set out in s. 17 of the Act. If that process is not followed, any purported changes to bylaws are a nullity.
- [82] Bylaws can only be amended by special resolution of members: s. 17(2).
- [83] The Excluded Directors argue that the October 2024 Bylaws are of no force or effect because, contrary to the Act, they were not enacted by a bylaw alteration application submitted to the Registrar of Societies or approved by special resolution of the members of ARCS.
- [84] As earlier noted, the Acting Directors purported to pass the October 2024 ARCS Bylaw Amendment adding this sentence:

For clarity, a person who ceases to be a director or elder of New Life Church Kelowna also ceases to be a member of the Society.

- [85] The purported amendment was documented to be a "Consent Resolution of the Directors" and not a special resolution of ARCS's members.

[86] However, given my decision on the Governance Issue that the Acting Directors are the only members of ARCS, to the extent the October 2024 ARCS Bylaw Amendment purports to be a directors resolution rather than a special resolution of the members of ARCS, I conclude it was an irregularity on the conduct of ARCS affairs and exercise my discretion under s. 105(2)(b)(ii) of the Act and validate it as a special resolution of ARCS's members.

[87] In the result, the October 2024 ARCS Bylaw Amendment is declared valid and of full force and effect.

vii. The Brinkerhoff Application

[88] The parties agreed, as did I, that it made sense to defer my decision on the Brinkerhoff Application pending the resolution of the Governance Issue.

[89] Given my ruling, I am allowing the Brinkerhoff Application and grant the Brinkerhoff petitioner leave to further amend the Brinkerhoff Petition in the form attached as Schedule "A" to the notice of application filed August 22, 2025.

viii. Admissibility of Affidavits

[90] Objection was taken by the Acting Directors to the series of five affidavits filed by the Excluded Directors, namely:

- a) Affidavit #1 of Mr. White made September 5, 2025;
- b) Affidavit #1 of Mrs. White made September 5, 2025;
- c) Affidavit #3 of Mr. Petch made September 9, 2025;
- d) Affidavit #2 of Ms. Brinkerhoff made September 9, 2025; and
- e) Affidavit #1 of Ms. Devries made September 9, 2025,

(collectively, "the Contested Affidavits").

[91] Their objections are on the basis that the evidence contained in them should have been raised in the first instance and none of them are proper reply, are not responsive to the Acting Directors' affidavits, amount to case splitting and are manifestly unfair: *Mand v. Cheema*, 2025 BCSC 1595 at para. 26; *R. v. Krause*, [1986] 2 S.C.R. 466, 1986 CanLII 39 at para. 16; *Pollack v. Advanced Medical Optics Inc.*, 2011 ONSC 850 at para. 31; *Lost Lake Properties Ltd. v. Sunshine Ridge Properties Ltd.*, 2009 BCSC 938 at para. 67; *Tietz v. Cryptobloc Technologies Corp.*, 2021 BCSC 186; *G & G Education Development Corp. v. Langley Flying School Inc.*, 2018 BCSC 1796 at paras. 202-204.

[92] The nature of these hearings has evolved since April 2025. The Acting Directors were successfully able to amend their response to the Brinkerhoff Petition in late August 2025 and were able deal with the Affidavits during submissions. Mindful that this Court's task is to balance the truth-seeking function, fairness and prejudice, I am exercising my discretion under Rule 16-1(7) and am allowing the Affidavits to be admitted into evidence: *Victoria and District Cricket Association v. West Coast Cricket Organization*, 2024 BCSC 65 at para. 28.

ix. Affidavits filed in both Petitions

[93] The Excluded Directors seek an order that affidavits filed on their behalf in the McLoughlin Petition be admitted and stand as evidence in the Brinkerhoff Petition.

[94] It is evident that ARCS, NLC and the Acting Directors seek to do likewise.

[95] Given the overlapping nature of the two petitions and given Justice Giaschi's order that they be heard concurrently, there will be an order that the evidence filed in the McLaughlin Petition shall be evidence in the Brinkerhoff Petition and the evidence in the Brinkerhoff Petition shall be evidence in the McLoughlin Petition.

VI. Summary

[96] Whether or not there will be a happy ending to this dispute is unknown. This Court's role is not to intervene to protect either group, but rather to set down rules by which their relationship to the societies will be governed.

[97] In sum:

- a) Evidence filed in the McLaughlin Petition shall be evidence in the Brinkerhoff Petition and the evidence in the Brinkerhoff Petition shall be evidence in the McLoughlin Petition;
- b) There shall be a declaration that ARCS's board of directors consists of the Acting Directors only;
- c) There shall be a declaration that ARCS's membership only exists while the member is also an Elder/Director of NLC with an implied term to that effect being inserted into ARCS's bylaws;
- d) There shall be a declaration that the Excluded Directors are neither members nor directors of ARCS;
- e) There shall be a declaration that the purported October 15, 2024, ARCS director's meeting held by the Excluded Directors and Mr. Devries was unauthorized and invalid and that any motions passed or business conducted at that meeting are of no force or effect;
- f) There shall be an order enjoining the Excluded Directors and Mr. Devries from proceeding with any further actions or meetings on behalf of ARCS and enjoining the Excluded Directors from holding themselves out as directors of ARCS or NLC;

- g) There shall be an order that the October 2024 ARCS Bylaw Amendment is valid and of full force and effect; and
- h) The Contested Affidavits may be filed in the Brinkerhoff Petition.
- [98] The parties are at liberty to make further submissions on outstanding issues including whether the Sale Proceeds are impressed with a charitable purpose trust and whether Mr. McLoughlin be required to refund personal legal fees paid by ARCS on his behalf.

VII. Costs

- [99] Costs were not spoken to. Should they wish, the parties are at liberty to make submissions when next this matter convenes.

"G.P. Weatherill J."

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