

CANADA / JUDGMENT

Dhami v. Samra

2025 BCSC 1468

COURT

Supreme Court of British Columbia

DECIDED

10 June 2025

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2025 BCSC 1468 Dhami v. Samra

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dhami v. Samra,

2025 BCSC 1468

Date: 20250610

Docket: S254348

Registry: New Westminster

Between:

Manjit Singh Dhami, Devinder Singh Grewal, Parmjit Singh Sandher,

and Gurdawara Sahib Dasmesh Darbar

Petitioners

And:

Gurdip Singh Samra, Gurdawar Singh Sahota, Surjit Singh Natt,

Jasbir Singh, Bawa Singh Hunjan, Sucha Singh Johal, Piara Singh Panesar,

Sohan Singh Bains, Santokh Singh Samra, Rampaul Singh Dhadwal,

Kulwant Singh Gill, Parmjit Singh Johal, Tirath Singh Sidhu, and John Doe

Respondents

Before: The Honourable Madam Justice Francis

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

G.S. Badh

Counsel for the Respondents:

J. Kinghorn

Counsel for the Applicants Dineshpal Dhillon, Baljinder Singh Khera, Ranjit Singh Sandher and Sukhvinder Singh:

S. Uppal

Place and Dates of Hearing:

Vancouver, B.C.

May 20 and June 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 10, 2025

- [1] THE COURT: There are three applications before me relating to the governance of a Gurdwara in Surrey. The parties initially set the applications down for a one day hearing. While the parties understood that they would not be able to complete all three applications in a single day, they agreed to proceed on discrete issues before me. However, as the day progressed, the interconnectivity of the issues before the Court became apparent, and the parties scheduled a second day of hearing before me, today, so that I could hear argument on all the issues raised in two of the three applications. Notwithstanding the somewhat unconventional manner in which this application proceeded, I am satisfied that I am able, after two days of hearing, to fairly adjudicate the matters raised in the two applications.
- [2] By way of background, the personal petitioners are three of the directors of the Gurdwara Sahib Dasmesh Darbar (the "Society"). The respondents are members of the executive of the Society. In July 2024, the petitioners brought a petition seeking various orders under the Societies Act, S.B.C. 2015, c. 18.
- [3] By way of a final consent order dated August 28, 2024, Justice Gibb-Carsley made an order that directed the Society to conduct an election for directors, and set out a process for the election to take place (the "Gibb-Carsley Order").

- [4] In September 2024, the petition respondents brought an application seeking directions with respect to the verification of membership in the Society (the "September 2024 Application"). That application was heard, and only partially determined, by Justice Taylor in November 2024. The September 2024 Application is one of two applications before me today.
- [5] In December 2024, certain members of the Society, who are not parties to the petition (the "Standing Applicants"), brought an application seeking to be added as parties (the "December 2024 Application"). This is the second application before me today.
- [6] In a third application, filed April 14, 2025, the petition respondents seek leave to cross-examine Manjit Dhami, one of the petitioners, on his affidavits filed in this proceeding. That application is being adjourned generally.

Background to the dispute

- [7] The Society has not had an AGM in 15 years. The petitioners, in their capacity as directors of the Society, brought the petition seeking court orders with respect to an election for directors.
- [8] The membership list of the Society has been and continues to be an issue for the Society. The bylaws state that the total number of members in good standing as at January 31, 2010, was 313. The list of those members was attached as an appendix to the bylaw (the "January Membership List"). However, as part of the settlement process of a previous court matter, a different membership list was prepared in September 2010 (the "September Membership List") which included the names of 13 individuals not found in the January Membership List.
- [9] In the petition, the petitioners sought:
1. A declaration that the personal respondents have breached the fiduciary duty owed to the Gurdawara Sahib Dasmesh Darbar ("the Society");
 2. A declaration that the tenure of the personal respondents as executive of the Society ended on April 30, 2024;
 3. A declaration that the acts of the personal respondents preventing the petitioners from performing their duties under the bylaws of the Society, including selecting the new executive committee of the Society, amount to oppression, and are also breach of the bylaws of the Society;
 4. An order directing the petitioners, as directors of the Society, and as per the bylaws, to assume conduct of the management of the Society and to select the executive of the Society, with any ancillary directions to that effect to be issued by the court; and
 5. An order directing the Society to hold its annual general meeting within 60 days of the date of the selection of the executive of the Society as per para. 4 above; or

6. In an alternative to paras. 4 and 5, an order that the Society be directed to conduct elections for the positions of the directors of the Society, as follows:
- (i) The election shall be restricted to only 5 positions of directors as has been the norm in the past;
 - (ii) This election process shall be undertaken and supervised by a neutral third party, preferably David Ennis, who has considerable experience in conducting elections;
 - (iii) This election process shall be by way of a secret ballot;
 - (iv) This election process shall be held at a neutral location (preferably, the school building belonging to Sikh Academy, located at 12895 85 Avenue, Surrey, British Columbia);
 - (v) The Society shall bear the expense for conducting the elections;
 - (vi) The elections shall be conducted within 45 days of passing this order;
 - (vii) An order directing the Society to complete the selection process of a new executive committee as per the bylaws of the Society, within 30 days of the election of the directors of the Society;
7. An order directing the Society to hold its annual general meeting within 60 days of the selection of the new executive committee.
8. A declaration that the membership list of the Society is the membership list prepared in September 2010, and any updates to the said membership list made according to the bylaws in May 2023.
- [10] In their response to petition, the petition respondents opposed all relief except the relief sought at paragraph 6 of the petition (the terms of an election).
- [11] As I understand the issues, there were two primary problems with the membership list that were ultimately resolved by the Gibb-Carsley Order: (1) the membership status of the 13 people on the September Membership List who were not on the January Membership List; and (2) how to deal with deceased members.
- [12] The terms of the Gibb-Carsley Order reflect the alternative relief sought at paragraph 6 of the petition. Additionally, paragraphs four and five of the Gibb-Carsley Order contain detailed provisions about how the disputed membership list issue would be resolved by Mr. Ennis, the individual who was appointed under that order to run the election.
- [13] It can only be inferred from the terms of the Gibb-Carsley Order that the petitioners and the respondents reached a negotiated compromise for a process by which the two main disputed membership issues would be resolved. The Gibb-Carsley Order clearly appears to reflect a compromised solution between the parties to address all the issues raised by the petitioners in the petition. As such, the petitioners' position was, and remains, that the petition has been resolved by final order and the court is functus officio with respect to the

petition.

- [14] After the Gibb-Carsley Order was made, in accordance with the terms of the order, Mr. Ennis reviewed the two membership lists and compiled a consolidated list of members, which included names of the 13 individuals not found in the January Membership List but found in the September Membership List. He highlighted those individuals in green. Individuals whose names were in the January list but not the September list were highlighted in red. Only the green highlighted names were in issue.
- [15] Notwithstanding the fact that the Gibb-Carsley Order appeared to contemplate a plan for dealing with the two lists, and Mr. Ennis' work being well underway, the parties found themselves back in court over membership lists in November 2024. This is because the petition respondents had filed the September 2024 Application seeking verification of the current membership of the Society, or in the alternative, certification the January Membership List subject to verifying whether certain members had paid their membership fees, or in the further alternative, an audit.
- [16] On November 20, 2024, the September 2024 Application came on for hearing in front of Justice Taylor. He ordered that the 13 individuals highlighted in green needed to be given notice of the September 2024 Application. He did not deal with the remainder of the application, and I understand it was adjourned generally.
- [17] I am advised that notice was then given to the 13 people in the manner prescribed by Justice Taylor's order. None of these people has responded or participated at any stage in this litigation. The petitioners and the petition respondents now appear to agree that these 13 individuals should be struck from the membership list and that the January 2010 Membership List should prevail.
- [18] Meanwhile, on December 20, 2024, the Standing Applicants brought the December 2024 Application to be added as parties. The Standing Applicants are not the 13 members highlighted in green by Mr. Ennis, but rather a different group of members who take the position that they ought to have been given notice of the petition and they should be granted standing and permitted to apply to set aside the final order of Gibb-Carsley J.
- [19] On January 10, 2025 Justice Dion ordered that the September 2024 and the December 2024 Applications should be heard together in long chambers.

Is the Court Functus?

- [20] Before I turn to the applications, there is an overriding issue that impacts both applications, which is whether, as a result of the Gibb-Carsley Order, the court is now functus officio so that no further applications may be brought in this petition.
- [21] In *Canadian Broadcasting Corporation v. Manitoba*, 2021 SCC 33, the Supreme Court of Canada considered the doctrine and Justice Kasirer held:

- [33] In its contemporary guise, *functus officio* indicates that a final decision of a court that is susceptible of appeal cannot, as a general rule, be reconsidered by the court that rendered that decision (see *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 S.C.R. 848, at p. 860; *Reekie v. Messervey*, 1990 CanLII 158 (SCC), [1990] 1 S.C.R. 219, at pp. 222-23; *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 S.C.R. 3, at paras. 77-79). A court loses jurisdiction, and is thus said to be *functus officio*, once the formal judgment has been entered (*R. v. Adams*, 1995 CanLII 56 (SCC), [1995] 4 S.C.R. 707, at para. 29; *R. v. Smithen-Davis*, 2020 ONCA 759, 68 C.R. (7th) 75, at paras. 33-34). After this point, the court is understood only to have the power to amend the judgment in very limited circumstances, such as where there is a statutory basis to do so, where necessary to correct an error in expressing its manifest intention, or where the matter has not been heard on its merits (*Chandler*, at p. 861, citing *Paper Machinery Ltd. v. J.O. Ross Engineering Corp.*, 1934 CanLII 1 (SCC), [1934] S.C.R. 186; *R. v. H. (E.)* (1997), 1997 CanLII 418 (ON CA), 33 O.R. (3d) 202 (C.A.), at pp. 214-15, citing *The Queen v. Jacobs*, 1970 CanLII 143 (SCC), [1971] S.C.R. 92; see also *R. v. Burke*, 2002 SCC 55, [2002] 2 S.C.R. 857, at para. 54).
- [22] More recently, in *Esteghamat-Ardakani v. Taherkhani*, 2023 BCCA 290, our Court of Appeal extensively discussed the concept of *functus* as it pertains to consent orders. At para. 110, the Court reviewed the authorities and held, citing the earlier decision of *Prairie Hydraulic Equipment Ltd. v. Everest Equipment Inc.*, 1998 CanLII 6426 (BC CA):
- a consent judgment, undischarged by mutual agreement and unreduced by court order, "is as effective as an order of the Court made otherwise than by consent and not discharged on appeal": at para. 34. Accordingly, such an order must be obeyed, and further litigation concerning the same matter is impermissible.
- [23] It is therefore incorrect, as argued by the Standing Applicants, that the court is not *functus* because the order in question is a consent order.
- [24] The Standing Applicants also argue that the court is not *functus officio* because there remain outstanding issues raised in the petition that have not been determined by the court. This submission also misunderstands the nature of the doctrine. The issue is not whether all matters in the petition were dealt with in the Gibb-Carsley Order. The issue is whether the Gibb-Carsley Order was a final decision with respect to the matters it dealt with. As noted by Justice Harvey in *Brennan v. Singh*, 2001 BCSC 1812 (a case relied on by the Standing Applicants): the court "becomes *functus officio* on an issue between the parties when an order or judgment with respect to that issue is entered" (at para. 25). In other words, the question is whether an order was entered that dealt with an issue, not whether there are other issues on the pleadings that are unresolved.
- [25] This is not to say that the court is *functus* on issues that the Gibb-Carsley Order expressly contemplates will be subject to later judicial determination. Paragraph 5 of the Gibb-Carsley Order invites parties to seek directions from the court if there are issues with respect to replacing family members in place of deceased members. If such an issue arose, the court

would obviously not be functus officio on that issue. But to argue that the Gibb-Carsley Order is not a final order but rather a "preliminary determination" and therefore somehow open to being relitigated, is, in my view, misconceived.

- [26] I therefore agree with the petitioners that, as it pertains to the determination of whether an election should be held and the process for dealing with the election, including the resolution of the two competing membership lists, the court is functus officio and, outside the context of an appeal, no party is able to apply to the court and ask for a different determination on those issues that were conclusively dealt with in the Gibb-Carsley Order.

December 2024 notice of application

- [27] The Standing Applicants seek to be added as petition respondents. They argue that they have a statutory basis to seek to amend the Gibb-Carsley Order, namely, Rule 8-5(8), which says that, on the application of a person affected by an order made without notice, the court may change or set aside the order.
- [28] The Standing Applicants seek to be added because they say they should have been served with the petition in the first place, as persons whose interests may be effected by the order sought (Rule 16-1(3)). They rely on a case, *Oswald v. Royal Trust Corp. of Canada*, 1991 Carswell BC 2410, at para. 8, in which contingent trust beneficiaries were required to be served with notice of petition proceedings with respect to a trust.
- [29] The trust context is not analogous to the directors of a society commencing a petition on behalf of the society without giving notice to all society members, because society directors and members do not have an analogous relationship to trustees and beneficiaries. Beneficiaries are beneficial owners of trust property and therefore must have notice of trust proceedings that might impact their interests. Members of a voluntary organization do not own the society's property and therefore do not have the same interest in it.
- [30] A more analogous context would be the directors of a corporation commencing a petition on behalf of a company without giving notice to all shareholders. There is no general principle of law that says that directors of a corporation must serve all shareholders with notice of litigation commenced on behalf of the corporation.
- [31] The directors of the Society, like the directors of a corporation, are charged with a fiduciary duty to act in the best interests of the Society. It is because of this fiduciary duty that they are empowered to act for the benefit of the Society, including as it pertains to litigation on behalf of the Society. There is no basis in the Societies Act, the bylaws of the Society, or the common law for imposing a requirement on society directors that they serve all members of a society with notice in all proceedings brought on the society's behalf.
- [32] While conceding that there is no general principle of law that society members should be served with notice of all legal proceedings undertaken by a society's directors, the Standing Applicants in this case argue that they were entitled to notice of the petition because the

relief sought by the directors of the Society would impact their legal rights under s. 108 of the Societies Act. Section 108 empowers "the society, a member, a director, or another person with whom the court considers to be an appropriate person to make an application under this section" to apply to court for an order that the records of the society be corrected.

- [33] The Standing Applicants have not made an application under s. 108, but they say their ability to do so is compromised by the Gibb-Carsley Order. While there is very little jurisprudence under s. 108 of the Societies Act, it seems to me that s. 108 does not give all members of a society a broad right to sue the society if they take issue with the membership list, nor does it give any member the right to demand an audit. Section 108 may well give an individual member with a personal interest in a society's records, such as, for example, the 13 members at risk of losing their membership status, a right to seek relief from the court, but these are not the circumstances of the Standing Applicants. The Standing Applicants have no personal interest in the petition, they are simply members who appear to feel strongly about this issue. As such, I disagree that the Standing Applicants' legal rights were altered in any way by the Gibb-Carsley Order.
- [34] The Standing Applicants also argue that, had they been given notice, they would have disputed the Gibb-Carsley Order and they intend to apply to set aside the Gibb-Carsley Order on the basis that the petitioners were not properly appointed as directors in the first place.
- [35] If the Standing Applicants, as members of the Society, believe that the petitioners were not properly appointed as directors in the first place, there are remedies under the Societies Act for dealing with that. A petition to the court seeking an order for a society election, which has already been finally determined, is not the correct forum for members to seek to oust what they say are invalidly appointed directors. I decline to order that the Standing Applicants should have been given notice of the petition on this basis.
- [36] For similar reasons, I decline to order that the standing applicants be joined as parties under Rule 6-2(7). Societies, like corporations, have governance structures and rules for holding directors accountable. The directors were entitled to pursue litigation they believed to be in the best interest of the Society. They did that and there is now a final order. If the members were unhappy, the Societies Act has remedies available for dealing with directors who the membership believes are not acting in the best interest of the Society. Those remedies remain available to any member unhappy with the actions of the directors.
- [37] It is relevant in this case that the Standing Applicants' position is identical to the position being taken by the petition respondents. Counsel for the Standing Applicants argues that they need to be separately represented because his clients do not trust the petition respondents and their positions may not remain the same. However, there is no difference at all in the position taken by the Standing Applicants and the petition respondents on any of the applications before me.
- [38] The December 2024 Application is dismissed.

September 2024 Notice of Application

[39] The September 2024 Application seeks three items of relief:

1. Direction from the Court for a process to verify the current membership of the Society;
2. In the alternative, an order to certify the January 2010 Membership List is a valid membership list subject to the 30 identified members who have not paid their membership fees unless proof of payment is provided;
3. In the further alternative, the Court provide directions to have Mr. Ennis commission an audit of the membership to determine the members in good standing with the society.

[40] The Gibb-Carsley Order put in place a process for how the conflict between the January Membership List and the September Membership List must be resolved, as well as for how to deal with deceased members. To the extent that the petition respondents seek, in the September 2024 Application, an order for the same relief, (namely, to have the court put in place a process for verifying the current membership of the Society), I find this is a collateral attack on the Gibb-Carsley Order.

[41] With respect to the question of the 30 members who allegedly have not paid their fees, it was open to the respondents to make this a term of the process the parties agreed to in the Consent Order for ascertaining the final membership list. They did not. Rather, they agreed to a process whereby the only members whose membership was in question were the 13 members highlighted in green (paragraph 4 of the Gibb-Carsley Order) and deceased members (paragraph 5 of the Gibb-Carsley Order).

[42] Counsel for the petition respondents argues that the challenges with the membership list have become more complex since the Gibb-Carsley Order, and suggests that the only way to accurately determine the membership list is a court ordered audit. However, the evidence filed on behalf of the respondents suggests that the complexities about the membership lists were known to the respondents at the time they consented to the Gibb-Carsley Order. In their response to petition, the respondents say:

The Executive is not opposed for the meeting being organized and overseen by a Third Party.

However, it will be necessary to confirm the membership list and the documentation is not clear. It will likely require all members to verify their membership status with proof of payment or transfer from family member in accordance with the bylaws and presentation of a membership card for the purpose of voting.

[43] After filing this response, the respondents then consented to an order that said the final membership list was to be determined by Mr. Ennis after dealing with the 13 members highlighted in green and undertaking the process set out at paragraph 5 of the Gibb-Carsley Order for dealing with deceased members. Had the respondents wanted to also insist on an audit, or some other process for ensuring that all members on the January Membership List had paid their dues, it was open for them to do so prior to consenting to the Gibb-Carsley

Order. They did not, and they are bound by the order they consented to.

- [44] In my view, adding additional criteria to membership at this point would amount to a collateral attack on the Gibb-Carsley Order, as would an order for an audit.
- [45] As such, I see no basis for granting the relief sought by the petition respondents in the September 2024 Application and the application is dismissed.
- [46] I will add this: I have decided this application on the basis of the terms of the Gibb-Carsley Order, and my refusal to make an order that amounts to a collateral attack on an order of this court. However, I have reviewed the two versions of the translated minutes of the January 2010 AGM of the Society, in which the bylaws were passed that implemented and incorporated the January Membership List. The minutes reflect a unanimous resolution that the 313 members would remain members, irrespective of any inquiry into whether they had paid membership fees. Therefore, it is not clear to me what further steps would need to be taken by the Society with respect to unpaid fees, even absent the Gibb-Carsley Order.
- [47] Once paragraph 5 of the Gibb-Carsley Order is implemented by Mr. Ennis, the Society will be in a position to hold an election. On the basis of the evidence before me, I can see no reasonable basis for anyone to commence further litigation about the membership of the Society.

Application to cross examine

- [48] I did not hear submissions on the cross-examination application, so that application is now adjourned generally, although given my findings on functus, I think it would be wise for counsel to take a close look about whether that application has any prospect of success.

[SUBMISSIONS RE COSTS FROM 3:36:47 TO 3:39:18 P.M.]

- [49] THE COURT: Okay. With respects to Mr. Uppal's application, I cannot see any conduct worthy of rebuke by the court that would give rise to special costs. His clients were entitled to take a shot, and simply because they were not successful certainly does not give rise to special costs. So with respect to that application, ordinary costs are payable at Scale B.

[Discussion re timing of costs payment]

- [50] THE COURT: Yes, okay. So payable forthwith.

[Further discussion re: costs]

- [51] THE COURT: With respect to the application of the petition respondents, I am going to order regular costs payable by the petition respondents to the petitioner at Scale A.

"Francis J."

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