

CANADA / JUDGMENT

Farrish v. Delta Hospice Society

2020 BCCA 359

COURT

British Columbia Court of Appeal

DECIDED

8 December 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCCA 359 Farrish v. Delta Hospice Society

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Farrish v. Delta Hospice Society,

2020 BCCA 359

Date: 20201208

Docket: CA46892

Between:

Sharon Farrish, Christopher Pettypiece, and James Levin

Respondents

(Petitioners)

And

Delta Hospice Society

Appellant

(Respondent)

Before:

The Honourable Mr. Justice Harris

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated

June 12, 2020 (Farrish v. Delta Hospice Society, 2020 BCSC 968,

Vancouver Docket S205648).

Oral Reasons for Judgment

Counsel for the Appellant

(via teleconference):

A. Polizogopoulos

I. Corbeil

Counsel for the Respondents:

(via teleconference)

B.W. Dixon

S.T.C. Warnett

Place and Date of Hearing:

Vancouver, British Columbia

December 7, 2020

Place and Date of Judgment:

Vancouver, British Columbia

December 8, 2020

Summary:

Application to stay an order of this Court pending an appeal to the Supreme Court of Canada.

Held: Application dismissed. The application does not satisfy the test for a stay since the proposed appeal does not satisfy the merits threshold for granting such a stay, irreparable harm has not been demonstrated, and the balance of convenience does not justify a stay.

[1] HARRIS J.A.: This is an application for a stay of a term of an order of this Court, pending an application for leave to appeal the judgment to the Supreme Court of Canada. The application for leave has not yet been made, but could be filed this week. The applicant says that the application for leave would be moot, if a stay is not granted.

[2] The test for ordering a stay in these circumstances is a modified version of the conventional RJR test (*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311) for a stay of proceedings:

- (a) the applicant has a serious question to be tried, as opposed to a frivolous or vexatious claim;
- (b) the applicant would suffer irreparable harm (harm not compensable or not easily compensable in damages) if the stay is not granted; and,

- (c) the applicant would, on the balance of convenience, suffer more harm if the stay is refused than the respondent would suffer if it were ordered.
- [3] The "serious question" aspect of the test is modified to take account of the chance of the Supreme Court of Canada granting leave, given the criteria it relies on in deciding whether to take a case on appeal.
- [4] In *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2018 BCCA 477 at para. 30 (Chambers), Justice Bennett adopted the merits test articulated by Justice Cromwell (as he then was) in *Nova Scotia (Minister of Community Services) v. B.F.*, 2003 NSCA 125 at para. 11:
- [30] "whether there is an arguable issue of law which could qualify for leave to appeal to the Supreme Court of Canada. [T]his requires that the applicants show that there is an arguable issue of public importance, an important issue of law or mixed law and fact, or that the matter is otherwise of such a nature and significance as to warrant decision by the Supreme Court of Canada as required for leave to appeal to that Court under s. 40 of its Act".
- [5] This is, in my view, another way of expressing essentially the same point as I made in *Byatt International SA v. Canworld Shipping Company Limited*, 2013 BCCA 558 at para. 12 (Chambers):
- [12] the merits test involves examining whether the issue raised on the appeal is one of public importance so that the Supreme Court might grant leave to hear an appeal. The issue is not directly whether or not the appellate court has made an error in its order. The test involves considering whether there is any likelihood that the Supreme Court of Canada will grant leave to appeal.
- [6] The order the applicant seeks to stay was pronounced by the Supreme Court of British Columbia, but was stayed pending the appeal. That stay is now vacated by the order of this Court, which dismissed the appeal and ordered the expiry of the stay effective the day the reasons were released: namely, November 13, 2020, 2020 BCCA 312.
- [7] The order in issue is one order in a series of orders pronounced on June 12, 2020: *Farrish v. Delta Hospice Society*, 2020 BCSC 968. Those orders are:
1. the extraordinary general meeting of the members of the Delta Hospice Society (the "Society") proposed to be held on June 15, 2020 (the "June 15 Meeting") is cancelled;
 2. the Notice of the June 15 Meeting dated May 22, 2020 (the "Notice") contravenes the Societies Act and the Society's bylaws and does not conform to the Ministerial Order No. M116 made pursuant to the Emergency Program Act, R.S.B.C. 1996, c. 111;
 3. the Notice is set aside;
 4. within 14 days of the date of this order, the Society shall provide to the Petitioners a list of all members of the Society, including contact information, as of the date of this order;

5. within 14 days of the date of this order, the Society shall provide to the Petitioners a list of all persons, including contact information, whose membership applications were rejected by the Society since November 28, 2019;
 6. within 14 days of the date of this order, the Society shall rectify the register of members to include the names of all persons whose membership applications were rejected by the Society since November 28, 2019;
 7. the Society shall seek the directions of this court, on notice to the Petitioners, before giving notice of any new general meeting of the Society;
 8. the application of the Petitioners for appointment of an independent chair for any new general meeting is adjourned; and
 9. the Petitioners shall have their costs of this proceeding on Scale B payable forthwith by the Respondent.
- [8] The applicant here seeks to stay order 6, namely that "within 14 days of the date of this order, the Society shall rectify the register of members to include the names of all persons whose membership applications were rejected by the Society since November 28, 2019". The effective date to comply with that order was thus 14 days after November 13, 2020. The order has not been complied with. I interpret the order to affect all applications rejected by the Society since November 28, 2019 without restriction or cut-off date.
- [9] The background to the underlying dispute was sufficiently set out by Justice Goepel, in 2020 BCCA 194, when he pronounced an interim stay pending appeal:
- [2] By way of background, this proceeding has arisen in the context of a dispute between two factions seeking control of the Society. The dispute has arisen in the context of whether the Society should provide medical assistance in dying ("MAiD") in its facilities.
- [3] On November 20, 2019, the then Board of Directors of the Society decided to approve the provision of MAiD in its facilities. On November 28, 2019, at the next scheduled Annual General Meeting, the membership voted out all members of the Board who had been up for re-election. The new Board then reversed the Society's decision to opt for services related to MAiD.
- [4] The dispute has lead to a dramatic increase of individuals seeking membership in the Society. In May 2020, the Board rejected, en masse, 310 applications for membership. It allegedly did so because the applicants were supporters of MaiD.
- [5] The Board scheduled a General Meeting for June 15, 2020. It was proposed that at the June 15 meeting, there would be a resolution to replace the current constitution and bylaws of the Society with a new constitution and bylaws.

- [6] The petitioners, on June 5, 2020, commenced this proceeding seeking to block the June 15, 2020 meeting. The petition was heard on short leave before Justice Fitzpatrick on June 12, 2020
- [10] The applicant referred to the petitioners as engaged in a hostile takeover, and used other pejorative terms to describe those whose membership applications have been rejected. I did not find the use of such terms helpful in the analysis I have to undertake. I see no reason to doubt the sincerity of the beliefs of individuals on either side of the debate about MAiD. And, I note that the membership exercised its rights in the Society to vote out the previous Board as recently as November 28, 2019, just as the petitioners, and individuals allied with the petitioners, seek to exercise membership rights to reverse the situation.
- [11] Justice Fitzpatrick made the orders set out above based on her interpretation of the Societies Act, S.B.C. 2015, c. 18 and the Constitution and Bylaws of the applicant Society. She dealt with the matter by applying what I shall call "corporate law" or "corporate governance" principles, as a shorthand. Neither she, nor this Court, considered it necessary to become engaged with the deeply held moral and religious views animating the dispute between the competing factions within the Society.
- [12] The many grounds of appeal raised in this Court were set out in para. 31 of its reasons for judgment. They were reframed by Justice Newbury at para. 79 as follows:

Non-Charter Arguments

- Did the judge wrongly fail to defer to "the members' interpretation.... of the Society's purpose", which is said to be a "non-justiciable matter of moral philosophy"?
- Did the chambers judge err in finding the Court had jurisdiction to intervene "without finding any bases to distinguish the jurisdictional bars" applied in Highwood?
- Did the chambers judge err in treating the Society's past practice regarding membership applications as "binding"?
- Did the chambers judge err in finding bad faith on the part of the Board?
- Did the chambers judge err in finding the Board did not have the discretion to reject membership applications "submitted by those opposed [or thought to be] to the society's purposes" and in ordering the "forced admission" of such persons?

Charter Argument

- Did the chambers judge err in failing to apply the Charter directly to this dispute, or in failing to consider the "Charter values" of freedom of association and freedom of conscience of the Society and/or its members?

A final issue raised by the Society as to the chambers judge's failing to strike out or 'read down' the relevant provisions of the Act as inconsistent with the Charter, falls to be considered in connection with the Notice of Constitutional Question near the end of these reasons.

- [13] Although the Court commented on certain of those issues, the case was decided on a narrower basis: namely, whether the judge erred in finding that the Board's conduct in rejecting applications for membership from those seen as pro-MAiD or potentially pro-MAiD, contravened the Act or Bylaws so as to justify the orders granted by the chambers judge. The Court concluded that the judge had not erred because the Board did not, under appropriate governance principles, have the authority to reject applicants for membership for reasons not authorized by the Bylaws. That, as I see it, is the ratio of the decision. The authority of the Board in the circumstances of the case derived from the Act and its Bylaws. The right to seek remedial relief is rooted in the statutory remedies. This is not a judicial review case. It does not turn on the private or voluntary nature of the Society. Nor does it depend on whether the Society is incorporated or not, save that its incorporation under the Societies Act brings into play the statutory rights relied on by the petitioners. The legal issues arising and engaged in this case must be understood in that legal context.
- [14] In clearing the undergrowth of issues raised on the appeal, the Court reached a number of conclusions that bear on this application. First, the Court rejected the argument that the chambers judge had preferred the views of one group to another; it was not her role, nor this Court's, to resolve the question of whether MAiD should be provided by the Society: at para. 81. Rather, the issues were legal ones relating to the Board's conduct in screening and rejecting membership applications based on criteria not set out in the Bylaws. In Justice Fitzpatrick's words, as quoted by Justice Newbury:
- [81] ... "Unless the criteria for membership were set out in the bylaws, the directors do not have the discretion to deny membership on some other basis that they themselves determine." (At para. 52.) This would have been the case regardless of whether the Society was a religious organization or not.

It would also have been the result regardless of the particular moral, religious, or ideological outlook of aspiring members.

- [15] Second, the Court rejected an argument that the Supreme Court of Canada's decision in *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, entailed that the Court did not have jurisdiction over a private society's membership decisions. *Highwood*, the Court concluded, had no application to the facts of this case, among other reasons, because the Societies Act conferred statutory rights that could be vindicated in court. In *Highwood*, the petitioners sought judicial review of a decision made by a voluntary association which was not incorporated and had no articles of association or bylaws. As such, there was no statutory basis for Mr. Wall's claims. It is a case about judicial review and justiciability of certain internal matters in the absence of statutory remedies. In this case, the petitioners relied on ss. 53, 80, 104, and 108 of the Societies Act, which afford

the courts jurisdiction to intervene where an incorporated society acts in bad faith or in contravention of its constitution and bylaws: at para. 82. It is important to underline that Highwood concerned the availability of judicial review in a voluntary and private organization. The point of distinction between that case and this is the availability of statutory remedies under the Societies Act, not whether an organization is incorporated or not. It is for this reason that the decision in this case is not inconsistent with the authorities relied on by the applicant set out below.

[16] Third, the Court rejected an argument that the judge had treated past practice regarding membership as binding. Past practice was not decisive of any issue of law: at para. 86. The Court observed, at para. 87, with respect to a finding of "bad faith" that:

[87] While in my opinion it would have been sufficient for the chambers judge in the case at bar simply to find that the Board had acted beyond its authority such that the remedial provisions of the Act were properly invoked, I cannot say her finding of "bad faith" was clearly and palpably wrong. I emphasize that Fitzpatrick J.'s characterization of the Directors' conduct was directed not to their conscientious beliefs concerning MAiD, but to their rejecting membership applications without any basis in the Bylaws for doing so.

[Emphasis in original.]

[17] Fourth, the Court considered arguments related to the application of the Charter or Charter values. The Court canvassed the authorities in relation to the application of the Charter to private disputes and court orders, noting the Supreme Court's recent endorsement of *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573 in Highwood, the views of Professor Hogg, and an open question relating to whether the Charter applies to judicial orders made in private disputes governed by statute law. Since the issue of direct application of the Charter had not been directly raised or fully argued, the Court refrained from ruling on it.

[18] The Court did deal, however, with the issue of Charter values in this way:

[101] In my opinion, the underlying Charter values of freedom of conscience and freedom of association simply do not fall to be so considered in this case. Neither the Act nor the Court's orders (which may or may not reflect the exercise of a "discretion" within the meaning of *Young v. Young*) restrict the right of anyone or any group to hold or express a particular belief or moral tenet; nor do the Act or the orders preclude anyone from associating with anyone else or declining to do so. Membership in the Society is entirely voluntary. Members or groups of members may come and go. Most importantly, neither the Act nor the orders affect the ability of the Society to restrict its activities or its membership eligibility on the grounds of religion, conscience or any other basis. This ability was not in question. What is threatened is the ability of the Board to control the outcome of the special resolutions proposed to be passed at the Extraordinary General Meeting.

- [102] With respect, in the absence of clear criteria in the Society's Bylaws, there is no such "right" of control. Those members who are now described as "dissenters" and those persons whose applications were excluded from membership also have rights of conscience and freedom of association under the Charter. The chambers judge did not prefer one view or the other; she merely found that the Directors had exceeded their powers in imposing their own views when reviewing membership applications. The appropriate remedy was to order the admission of the 310 rejected applicants and require the register of members to be rectified accordingly. If this court were to find that the Directors' conduct was justified because of the necessity to defend against what counsel for the Society described as a "hostile takeover", it would clearly be preferring one side over the other. Again, it is for the members to vote in accordance with their conscientious and/or religious beliefs in favour of or against the proposed Resolutions.
- [103] Accepting, then, that Charter values are "not to be ignored" by courts in resolving private disputes, I conclude that Charter rights of conscience and freedom of association do not equate to, or indeed support, a right of the Board to control the Society's membership lists on the basis of criteria not stated in the Bylaws. As the Attorney General suggests, any other disposition of this case would give the Court's imprimatur to acts of the Directors that were intended to exclude persons holding different views than theirs. I agree with the Attorney that this would be disrespectful of Charter values.
- [19] Finally, the Court declined to entertain a constitutional challenge to ss. 104 and 108 of the Act. This was a new argument on appeal. The Court concluded:
- [107] For this reason, I would decline to entertain the constitutional challenge at this late date. I must say also that it seems extremely unlikely the challenge to ss. 104 and 108 of the Act could have succeeded in any event. These provisions are designed simply to ensure that the rights of members are protected and that the Act is generally complied with. They do not have the purpose or effect of violating Charter rights of conscience or association. It is open to any group of people who have some belief or objective in common, to join together and pursue their clearly stated purposes. When they obtain the advantage of corporate personality in the form of a society under the Act, however, the society itself and its directors become subject to provisions such as ss. 104 and 108 and its members acquire contractual rights and obligations inter se that may be enforced by courts of law.
- [20] I turn now to the substance of the application. I reproduce the points asserted by the applicant to support its argument that it satisfies the merits threshold test. It says:

The Following are among the questions of public and national importance which make it reasonably likely that the Supreme Court of Canada will grant leave to appeal in this case:

- a. Whether judicial orders made pursuant to a statutory power are subject to Charter scrutiny under the Doré framework. (Appeal Judgment paras. 39-40, 42-45, 50, and 92-99). Peter Hogg and Ontario case law answers this question in the affirmative. The Appeal Judgment declined to settle the question, which the Appellant contends it was required to answer in order to avoid performing the Doré analysis which would have been required if the order below had been subject to Charter scrutiny.
 - b. Whether the principles in *Highwood Congregation of Jehovah's Witnesses v. Wall*, 2018 SCC 26, shielding membership decisions from the courts, apply to incorporated societies as well. Paras. 33-36 and 82 of the Appeal Judgment held that it did not, but in doing so did not distinguish decisions of other Courts of Appeal which applied *Highwood v. Wall* to incorporated societies as well, including *Bell v. Civil Air Search and Rescue Association et al*, 2018 MBCA 96, paras. 11-13 and *McCargar v. Métis Nation of Alberta Association*, 2018 ABQB 553, paras. 10-12, *aff'd* 2019 ABCA 172. These decisions were cited at Appellant's Factum para. 56 and included in the Appellant's condensed book;
 - c. Whether *Kaila*, *De Guzman*, and *Yukon Government*, adopted at paras. 61-77 and 89 of the Appeal Judgment, are wrongly decided on the basis that s. 53 of the Societies Act (which requires directors to exercise all discretion "with a view to the [constitutional] purposes of the society") empowers directors to reject applicants who reject a society's constitutional purposes even in the absence of express membership screening criteria in the bylaws. The model bylaws promulgated under the Societies Act do not contain any membership criteria, so the Appellant contends that constitutional purposes alone must be enough to authorize screening of membership applications on that basis. The Appeal Judgment is the first appellate affirmation in BC of these principles, which the Appellant contends leaves hundreds of societies powerless to prevent hostile takeovers such as occurred here; and
 - d. Whether it is a justiciable question for the court to determine whether the Society's Constitutional purposes do or do not prohibit MAiD (Appeal Judgment paras. 39, 46-51, 59-60, and 81). The Appellant contends that despite stating at para. 59 that what the constitution should mean is not justiciable, the Appeal Judgment nonetheless decided that the language is not effective to exclude MAiD. The Appellant contends that this is a question of moral philosophy outside the court's competence and jurisdiction under *Highwood v. Wall*, and is a question reserved for the Society to determine for itself.
- [21] I preface my analysis by acknowledging, again, that the issue before me on the threshold test has to do with whether the applicant has established that the case raises issues of a nature that renders it arguable that the Supreme Court of Canada might grant leave according to the criteria relied on by the Supreme Court of Canada in making that decision. This is not typically or directly a question of the substantive merits of a Court of Appeal decision. It is a question of whether the issues raised by the case are of national importance because, for example, there may be conflicting lines of appellate authority, or the Supreme Court of Canada considers it important to address a particular area of law to modernize it. These are but examples. I mention this, however, to underscore the point that the issues on

which leave is sought should be issues that genuinely and properly arise from the case, not issues extraneous to it.

- [22] I acknowledge that this Court, in a section dealing with the direct application of the Charter, concluded that the question of whether the Charter could apply to a dispute between private parties that is governed by statute is an open one: at paras. 97-98. One issue on this application, however, is whether it is arguable that the Supreme Court of Canada would grant leave to answer it in this case.
- [23] I am not persuaded that it would. The Supreme Court of Canada has recently, in *Highwood*, reaffirmed *Dolphin Delivery*, which held that "the Charter does not apply to private litigation": at para. 39. The Supreme Court of Canada has had many opportunities explicitly to address the "open question" over the years, since the issue arises repeatedly in cases involving private disputes regulated by statute, but has not chosen to do so. If anything, in my view, it has set its face against the proposition that the Charter would apply if a private dispute is governed by statute. As Justice Newbury said in this case at para. 96:
- in *Young v. Young*, the Court held that the Charter did not apply even though the case involved an order made under s. 16 of the Divorce Act. (At paras. 138-141).
- [24] I do not think there is a conflict of appellate authority within Canada on this question that the Supreme Court of Canada needs to resolve. The open question appears to exist more by virtue of some interesting academic commentary than as a result of conflicting or inconsistent decisions.
- [25] Indeed, the Society itself relied heavily on *A.B. v. C.D.*, 2020 BCCA 11, in support of its 'Charter values' approach. In that case, this Court stated that "[t]he law is clear that the Charter does not apply to judicial orders made in private disputes", citing *Dolphin Delivery* and *Young v. Young*, [1993] 4 S.C.R. 3: at para. 203. In *A.B.*, the two orders in question were made under sections of the Family Law Act, S.B.C. 2011, c. 25. The Court nonetheless held that the Charter did not apply, and followed a Charter values approach.
- [26] In our case, the Court did address the relevance of Charter values in informing the judge's exercise of discretion. I have set out the Court's reasoning above. The conclusion is worth repeating.
- [103] Accepting, then, that Charter values are "not to be ignored" by courts in resolving private disputes, I conclude that Charter rights of conscience and freedom of association do not equate to, or indeed support, a right of the Board to control the Society's membership lists on the basis of criteria not stated in the Bylaws. As the Attorney General suggests, any other disposition of this case would give the Court's imprimatur to acts of the Directors that were intended to exclude persons holding different views than theirs. I agree with the Attorney that this would be disrespectful of Charter values.

- [27] While I agree that the threshold question is not directly about the merits of the Court of Appeal judgment, I think the Court's reasoning can inform the question of whether the case does or does not give rise to an issue the Supreme Court of Canada might want to consider. Here, there does not seem to be a plausible argument that the Court was wrong to say that the underlying Charter values of freedom of conscience and freedom of association simply do not fall to be so considered in this case, for the reasons the Court gave.
- [28] I do not think it would be right to proceed on the basis that the Supreme Court of Canada would grant leave to consider an issue which is not actually a live issue or in any way determinative in the case.
- [29] The suggestion that the Highwood case establishes principles which were ignored by the Court, and are of sufficient importance the Supreme Court of Canada might grant leave, is not persuasive. As I have already indicated, the factual circumstances engaged in Highwood are materially different from a situation in which a statute provides for resort to the court to vindicate rights. Again, I think the applicant has failed to identify an issue which is truly live in the appeal. I do not think there is a conflict between the principles relied on by this Court, and the principles relied on by courts in other jurisdictions as cited by the applicant, because the applicant's cases did not involve statutory remedial rights.
- [30] I pause here to say that the applicant placed considerable weight on the implications of Highwood. It says that this case raises the extent of the right of a private, voluntary organization to determine its own membership, including the right to exclude potential members. It says this raises issues to do with the freedom to associate or not to associate. It suggests that this Court distinguished Highwood on spurious grounds. The gravamen of this Court's decision is found in paras. 88-89:
- [88] if particular religious or conscientious views were intended to be requirements of membership, that should have been made clear in the constating documents. In the absence of clear and specific provisions in the Constitution and Bylaws, it was not for the Directors to apply their own private criteria to keep out others who think differently than they. Like all societies under the Act, the Society is governed by majoritarian principles and is not frozen in time. New members may disagree with past practices and are entitled to seek to effect change, either within the confines of the constating documents, or by amending those documents if the requisite two-thirds majority is met. As Mr. Dixon argued, if the Directors were found to have had a discretion to apply criteria not specified in the Bylaws for membership, the relationship between the members and the Board would be "stood on its head", effectively putting them in charge of the composition of the membership and, indirectly, of the voting at general meetings. This is not the structure contemplated by the Act, which calls for the election of Directors by members and requires members' approval for the expulsion of members.

- [89] Of course the Society is a private body in the sense that it is not an agency of government, and membership is voluntary in the sense that it is not required by law. But this does not signify that the Directors are, under the present Constitution and Bylaws, entitled to deny membership applications for reasons not spelled out in the Bylaws. If the Constitution or Bylaws had stated clearly that membership was restricted to persons subscribing to a particular opinion, ideology, or religion, the situation would be different. Many of the cases that have been before British Columbia courts, for example, involved societies formed for the purpose of furthering the Sikh faith. In *Re Khalsa Diwan Society of Victoria*, the Court gave full effect to a provision in the bylaws authorizing the executive committee of the board to establish reasonable criteria for membership.
- [31] Respectfully, as I have said, the issues raised in *Highwood* are not engaged in this case. To repeat, the issue is simply one about corporate governance under a statutory regime that gives rise to remedial rights of a certain kind. It is not about the limits of judicial review. It is not about the general right of a private, voluntary organization to control its membership. I fail to see that the legal issue said to be worthy of review by the Supreme Court of Canada is engaged in this case.
- [32] Moreover, as I was advised during the course of argument, the issue of the justiciability of a private, voluntary, religious organization to control its membership and reject members in light of its theological or conscientious views is already before the Supreme Court of Canada in a case to be argued tomorrow and in a case in which the issue actually arises. I think it highly improbable that the Court would choose to grant leave on the same issue (even assuming it is engaged by the decision of this Court), a second time having heard argument and, presumably, reserved judgment.
- [33] In any event, if a society wishes to restrict membership to persons committed to a particular religion or set of moral beliefs, it is open to a society to achieve that end by following proper procedure and amending or changing its constating documents. It is also clear that many societies have done just that, or are explicitly religious in nature according to their constitution and bylaws. I am not persuaded by the argument that the Court's analysis opens the door to the dangers argued for by the applicant. Rather, the risk of evolving purposes as membership changes is no more than the result of the existing Constitution and Bylaws coupled with the majoritarian principle described by the Court in para. 88 of the reasons for judgment referred to above. I am not persuaded that the Court's decision gives rise to the dangers contended for. Those dangers, if that is what they are, result from the way the society was set up, not from the Court's decision.
- [34] In the result, I conclude that the applicant has not met the merits threshold test for a stay.
- [35] In any event of that conclusion, I agree with the respondents that complying with the order would not cause irreparable harm. Rectifying the register is only the first step in a series of steps that might lead to a change in the Board. Before that occurs, if it were to happen, various steps have to be taken, including: the Board would have to call a meeting or be

compelled to do so; and the Society is required to seek directions from the Supreme Court before doing so in any event under the terms of the order. A rectified register does not, without more, fetter the discretion of the Supreme Court to make directions.

- [36] I observe in passing that Justice Goepel, in granting a stay pending appeal, did not make a finding that irreparable harm would result if the stay was not granted. The situation as it confronted him is different from the current situation, not least because the existence of the Society and its assets is now at risk in a way that it was not before.
- [37] I do not agree, moreover, that refusing a stay renders the intended appeal moot. If the Society proceeds, and persuades the Supreme Court of Canada of the need for an expedited decision on leave, or otherwise, the leave application may be decided before a meeting is held. If leave is granted, the effect of the Court of Appeal judgment is stayed. The granting of leave would no doubt be a factor in the directions to the Supreme Court would consider issuing if an attempt is made to call a meeting. And further, if the Society should succeed on the merits in the Supreme Court of Canada, it is not apparent to me that any steps taken in the interim that alters the membership or potentially changes the Board could not be reversed.
- [38] Finally, the balance of convenience does not favour a stay. I was advised that the future existence of the Hospice is in doubt. The Hospice operates on land owned by the Fraser Health Authority, and its operation is funded by that Authority. The funding arrangements have been terminated because of the Society's position on MAiD. Funding will cease in late February. The Society's leasehold interest will fall with the ending of the operating or funding agreement. It seems to me that a resolution of issues of corporate control, whichever way that might unfold, is essential if there is to be a possibility that the Hospice will be able to continue to serve its patients on any basis.
- [39] Before concluding, I want to add my voice to those other judges who have been involved in this case. Nothing in these reasons should be taken as expressing any opinion on the moral or religious issues raised by MAiD, nor is the outcome of this application influenced in anyway by those issues. The issue before me is whether the legal issues actually raised by the case are capable of meeting the test for a stay of proceedings pending a determination of an application for leave to appeal to the Supreme Court of Canada, and whether the other components of the test for a stay have been met.
- [40] In my opinion, the test for a stay has not been met. The application is dismissed.

"The Honourable Mr. Justice Harris"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/20/03/2020BCCA0359.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/farrish-v-delta-hospice-society-2020-bcca-359>

Prepared on 29 October 2026 · Esheria