

CANADA / JUDGMENT

Farrish v. Delta Hospice Society

2020 BCSC 968

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 968 Farrish v. Delta Hospice Society

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Farrish v. Delta Hospice Society,

2020 BCSC 968

Date: 20200612

Docket: S205648

Registry: Vancouver

Between:

Sharon Farrish, Christopher Pettypiece and James Levin

Petitioners

And

Delta Hospice Society

Respondent

Corrected Judgment: The front page of this judgment was corrected on October 13, 2020.

Before: The Honourable Madam Justice Fitzpatrick

Oral Ruling Re Petition Brought Pursuant to the Societies Act Seeking Relief with Respect to a Proposed Meeting

In Chambers

Counsel for the Petitioners:

B.W. Dixon

S.T.C. Warnett

B. Reedijk

Counsel for the Respondent:

A. Polizogopoulos

I. Corbeil

Place and Date of Hearing:

Vancouver, B.C.

June 12, 2020

Place and Date of Ruling:

Vancouver, B.C.

June 12, 2020

Introduction

- [1] THE COURT: The petitioners, Sharon Farrish, Christopher Pettypiece and James Levin, are members in the respondent Delta Hospice Society (the "Society"). The petitioners have brought the hearing of the petition forward today on an urgent basis. The matter is urgent because the petitioners seek relief with respect to a proposed meeting of the members of the Society scheduled for next Monday, June 15, 2020, at 7:00 p.m. (the "Meeting").
- [2] The petitioners seek relief pursuant to ss. 80, 104 and 108 of the Societies Act, S.B.C. 2015, c. 18 (the "Act"). In substance, the petitioners seek an order cancelling or postponing the Meeting. They also seek various declaratory and ancillary relief relating to certain actions taken by the Society with respect to the Meeting. Alternatively, the petitioners seek relief pursuant to s. 102 of the Act, alleging that the actions of the Society have been oppressive or unfairly prejudicial toward them.

Background

- [3] The Society was founded in 1991. It is a not-for-profit community-based organization that offers compassionate care and support for persons in the last stages of living, primarily through the operation of the Irene Thomas Hospice. The Society also provides support for individuals dealing with life threatening illness and grieving loved ones through the Harold & Veronica Savage Centre for Supportive Care. The Society operates its facilities on lands leased from the Fraser Health Authority (FHA) in Delta, BC. The Society also owns commercial property in Tsawwassen, BC.
- [4] The fundamental debate at the core of these issues concerns "Medical Assistance in Dying" (MAiD), although it is not my role on this application to resolve that debate.

- [5] The history of the Society is not specifically in evidence before me. However, as relevant to the issues before me, I understand that euthanasia (now known as MAiD) has been discussed by the Society from time to time. I also understand that, in times past, the board of directors of the Society (the "Board") has expressed opposition to euthanasia/MAiD.
- [6] Since July 2016, MAiD has become lawful in Canada, as enacted by the federal government. As most people are aware, MAiD is an issue that invites passionately held views. Again, the validity of opposing views regarding MAiD is not before me, but those views do inform the overall context in which the issues on this application were argued.
- [7] The Society's response to the introduction of MAiD, and consequential community discussions and debate on that issue, have resulted in governance issues arising in the Society. From at least the summer 2019, the issue came to the forefront in terms of the Society. In July 2019, Ms. Farrish became executive director of the Society. At that time, there were approximately 160 members in the Society. At some point in 2019, which I take as principally arising from Ms. Farrish's leadership, there was an increasing view that MAiD should be offered by the Society.
- [8] On November 28, 2019, the Society held its 2019 Annual General Meeting (the "AGM"). The AGM was initially adjourned from late October, by which time the Society had received a number of new membership applications. On October 1, 2019 the Society had approximately 400 members. By the time of the AGM, the membership had grown to approximately 620 members. The clear inference is that the MAiD issue caused substantial interest in the community, and motivated people to get involved in the Society so that they could express their views at the AGM as members of the Society.
- [9] At the AGM, there was a contested election for the Board. There were sweeping changes to the Board and a number of new persons were elected. Many directors were elected but then subsequently either resigned or were terminated; Mr. Pettypiece was one of them. The new board included Angelina Ireland, who is currently the President of the Society and a deponent in these proceedings. The current Board also now includes Reverend Danielle Martel, who has sworn an affidavit in support of the Society's position.
- [10] The new Board quite clearly took a different view of the MAiD issue and set a course to oppose any change toward having the Society allow MAiD at its facilities. Following the AGM, Ms. Farrish's services as executor director were terminated. What also came to pass was a change in FHA's position with respect to the Society. FHA advised the Society that it was required to offer MAiD, failing which FHA would withdraw its support for the Society and, importantly, the significant funding that it provided for the Society's operations.
- [11] In February 2020, the Board was holding fast to its views with respect to the Society not providing MAiD. Accordingly, FHA advised the Society that it would terminate its support after a one-year grace period. Accordingly, as matters presently stand, in February 2021, the Society will lose FHA's support.

Recent Events

[12] The Society's current constitution (the "Constitution") and bylaws (the "Bylaws") appear to have been in place for some time now.

[13] Section 2 of the Constitution states that the purposes of the Society are:

2.1 To provide compassionate care and support for persons in the last stages of living, so that they may live as fully and comfortably as possible.

2.2 To utilize and co-ordinate community services, professionals, volunteers and family to care for the needs of the patient.

2.3 To support and counsel family members in their bereavement.

2.4 To recruit volunteers and provide training in palliative care. In addition, screen, supervise and support volunteers as well as co-ordinate volunteer/patient interaction.

2.5 To educate the community and provide resource material about hospice/palliative care and the aims of the society.

2.6 To promote public awareness about the society for the purpose of acquiring financial support.

[14] In spring 2020, the Board decided that it was time to propose significant changes to the constating documents of the Society.

[15] On May 22, 2020, Ms. Ireland, as President of the Society, sent a letter to the members (the "Notice"). In the Notice, Ms. Ireland stated that it had become "obvious that we must return to our roots and fully affirm our Christian identity". She asked the membership to vote "yes" to accepting two changes, namely, a new constitution and new set of bylaws. Ms. Ireland's letter enclosed a Notice of Extraordinary General Meeting of the Members of the Delta Hospice Society dated May 22, 2020, which set out the two special resolutions that the Board was going to put forward at a meeting on June 15, 2020 to effect these changes.

[16] Significant changes in the proposed new constitution as to the purposes of the Society included:

2a To function as a Christian community that furthers biblical principles governed by the Triune God.

...

2.1 To provide compassionate care and support for persons in the last stages of living, so that they may live as fully and comfortably as possible, until their natural death.

[17] The proposed new bylaws represent a wholesale change from the Bylaws, including:

- a) Mission & Values: The Society's mission was to be a "Christian Society" and to value the "dignity and sanctity of all human life in all its stages until its natural end"; the values of the Society were to provide support services "until life's natural end";
- b) Definitions: Include "euthanasia" and "palliative care";
- c) Members (Part 2):
 - i. Article 2.3 refers to "Eligibility for Membership" and requires, in part that a person is only eligible as a member if he or she:
 - (b) is committed to advancing the purposes as defined in the Constitution and supporting the activities of the Society;
 - ii. Article 2.8, "Acceptance of Membership Application", states that acceptance of new members and renewal of existing members is at "the sole discretion of the Board of Directors";
 - iii. Article 2.9 states that the Board may refuse or postpone an application for membership:
 - . . . for any reason, which, in the Board's view, is necessary or prudent to protect the reputation and integrity of the Society.
- d) General Meetings of Members (Part 3): Article 3.20 deals with "Methods of Voting" and specifically allows the Board to use its discretion to decide which method will be allowed, including by "mail-in ballot" (one of the issues addressed on this application);
- e) Society's Value Statements (Part 9): Principles include:

9.3 The Society upholds and defends the expert opinion that euthanasia, known as Medical Assistance in Dying (MAID), is not one of the treatments in the practice of palliative care. The Society therefore prohibits the provision of euthanasia on its premises.

The definition of "Special Resolution" in the proposed bylaws refers to any resolution at an AGM as requiring a 2/3 vote; save and except that any amendment, repeal or replacement of Article 9.3 (above) would require 100% of the votes cast.

[18] In summary, it is clear that the proposed constitution and bylaws represent a substantial rewording of the Constitution and the Bylaws and clearly affirm the anti-MAiD view that is held by the Board of the Society.

Relief Sought

[19] The focus of this petition proceeding has been on the Meeting scheduled for next Monday.

[20] The petitioners challenge the Board's actions leading up the scheduling of the Meeting on two main bases. They say that on either basis, interference by this Court is warranted under the sections of the Act that I have mentioned. Broadly speaking, the petitioners argue that:

- a) The voting process set forth in the May 2020 meeting materials is not allowed; and

- b) The composition of the Society's membership has resulted from improper actions on the part of the Board of directors. The petitioners argue that the Board has improperly denied memberships to certain persons, in breach of the Act and the Bylaws. Specifically, the petitioners argue that these actions were in breach of the directors' duty to act in good faith pursuant to s. 53 of the Act.

[21] The relevant provisions in the Act (ss. 53, 80, 104 and 108) are as follows:

53(1) A director of a society must, when exercising the powers and performing the functions of a director of the society,

- (a) act honestly and in good faith with a view to the best interests of the society,
 - (b) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances,
 - (c) act in accordance with this Act and the regulations, and
 - (d) subject to paragraphs (a) to (c), act in accordance with the bylaws of the society.
- (2) Without limiting subsection (1), a director of a society, when exercising the powers and performing the functions of a director of the society, must act with a view to the purposes of the society.
- (3) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors of a society.
- (4) Nothing in a contract or the bylaws of a society relieves a director from
- (a) the duty to act in accordance with this Act and the regulations, or
 - (b) liability that, by any enactment or rule of law or equity, would otherwise attach to the director in respect of negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the society.

...

80(1) On the application of a member or director of a society, the court may order that a general meeting be called, held and conducted on the notice, on the date, at the time, at the location or in the manner the court directs,

- (a) if it is not feasible to call, hold or conduct the meeting on the notice, on the date, at the time, at the location or in the manner required under this Act or the bylaws, or
- (b) for any other reason the court considers appropriate.

...

104(1) This section applies if

- (a) a person contravenes or is about to contravene a provision of this Act, the regulations or the bylaws of a society, or
- (b) a society is carrying on activities that are inconsistent with or contrary to its purposes.
- (2) On the application of a member or director of a society in relation to which this section applies or another person whom the court considers to be an appropriate person to make an application under this section, the court may make an order,
 - (a) in a case described in subsection (1) (a), directing the person who has contravened or is about to contravene a provision referred to in that subsection to comply with or refrain from contravening the provision, or
 - (b) in a case described in subsection (1) (b), directing the society to refrain from carrying on activities that are inconsistent with or contrary to its purposes.
- (3) If the court makes an order under subsection (2), the court may make any ancillary or consequential orders it considers appropriate.

...

108(1) In this section, "basic records", in relation to a society, means

- (a) the society's ...
- (v) register of members, ...
- (2) If information is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, a society's basic records, the society, a member or director of the society or another person whom the court considers to be an appropriate person to make an application under this section may apply to the court for an order that the basic records be corrected.
- (3) On an application under this section, the court may make any order it considers appropriate, including an order
 - (a) requiring the society to correct one or more of its basic records,
 - (b) restraining the society from calling or holding a general meeting or doing any other act before the correction is made,
 - (c) determining the right of a party to the application to have the party's name entered or retained in, or deleted or omitted from, basic records of the society, and ...

[Emphasis added.]

Method of Voting Issue

[22] The petitioners' first objection relates to the Board's proposed method of voting. They say that the voting procedure with respect to the two special resolutions to be tabled at the Meeting is contrary to the Act and the Bylaws.

[23] Section 83 of the Act provides:

- (1) Unless the bylaws of a society provide otherwise, a person who is entitled to participate in a general meeting may do so by telephone or other communications medium if all of the persons participating in the meeting, whether by telephone, by other communications medium or in person, are able to communicate with each other.
- (2) Subsection (1) does not obligate a society to take any action to facilitate the use of any communications medium at a general meeting.
- (3) If one or more members of a society vote at a general meeting in a manner contemplated by this section, the vote must be conducted in a manner that adequately discloses the intentions of the members.

[Emphasis added.]

[24] The Notice refers to voting by the membership via "Mail-in Ballot". The materials included with the Notice were a mail-in ballot and an addressed/stamped envelope. Each "Official Ballot" was numbered and referenced the name of the member to whom it was sent.

[25] The Society's counsel concedes that the Bylaws do not allow for voting by mail-in ballot. Bylaw 22 provides:

- (1) A member in good standing present at a meeting of members is entitled to one vote.
- (2) Voting is by show of hands.
- (3) Voting by proxy is not permitted.

[26] Section 84(5) of the Act provides that the bylaws of a society may authorize "voting by mail". Despite s. 84(5), the members of the Society chose not to adopt this method in the Bylaws. As such, the Bylaws do not allow the Board to adopt a mail-in ballot as part of the voting process.

[27] The Society's counsel argues that the Bylaws do not prohibit voting in this manner. I disagree. I am satisfied that the case law referred to me by the petitioners supports that, if the Board is to exercise any authority in that respect, it must be found in the Act or the Bylaws: see, for example, *De Guzman v. Philippine Community Centre Society*, 2007 BCSC 591 at para. 8.

[28] The global COVID-19 pandemic has, of course, raised issues about the practicalities in terms of holding meetings, particularly as contemplated by the Bylaws. I have been referred to Ministerial Order No. M116 ("MO116"), which addresses meetings under a "corporate enactment", such as the Act. Section 3(3) of MO116 reads:

Despite anything in a corporate enactment, a corporate meeting may be held solely by telephone or other communications medium if

- (a) in the case of a corporate meeting with respect to which notice must be given under a corporate enactment, notice of the meeting provides instructions for attending at or participating in the meeting by the communications medium, including, if applicable, instructions for how to vote at the meeting,
- (b) all of the persons participating in the meeting are able to communicate with each other and, if applicable, vote at the meeting, and
- (c) the person responsible for holding the meeting facilitates the use of the communications medium at the meeting.

[Emphasis added.]

[29] The Society's counsel argues that MO116 is silent regarding the method of voting, simply referring to "vote" and not mentioning "mail-in ballot".

[30] MO116 does not authorize the Board to use mail-in ballots. I do not accept the Society's submission that the MO116 provision quoted above is somehow ambiguous. It is clear to me that the BC government chose to allow some change in the meeting procedures to accommodate the realities of the COVID-19 pandemic. However, MO116 says nothing in respect of the means of voting. In my view, the result is that one must return to the Act and Bylaws in terms of what method of voting "at the meeting" the Society has approved.

[31] To resolve this issue, the Society's counsel suggests that the Society could only count the ballots of those people who actually attend the Meeting. However, as the petitioners' counsel pointed out, it may be that some of these votes have already been cast by this method. Given the circumstances that I will discuss in a moment, this may very well be the case. Accordingly, there is no guarantee that mail-in ballots will even be cast subsequent to the meeting, contrary to the idea that members would vote after listening with an open mind to the debate concerning the proposed resolutions.

[32] It does not appear that Ms. Ireland and the other Board members have even considered what other options might be available to them. Ms. Ireland simply states in her Affidavit #1 sworn June 10, 2020:

59. Because the Society's bylaws require that votes be made by show of hands, conducting any meeting over the telephone, in accordance with the Ministerial Order, is not feasible. As such, the Society determined that the most appropriate way forward would be to hold the meeting by telephone, where all members of the Society could ask questions and discuss the two motions, and to have the votes done by way of mail-in ballot, due June 26, 2020.
- [33] As the petitioners' counsel points out, the Bylaws do not afford the Board any discretion in term of deciding what is the "most appropriate way" of allowing voting to take place at the meeting.
- [34] I appreciate that the Court has some jurisdiction under s. 80 of the Act in terms of addressing the conduct of meetings of a society: see *Brio Industries Inc. v. Clearly Canadian Beverage Corp.*, [1995] B.C.J. No. 1441 (S.C.) at para. 12 and *Concept Capital Management Ltd. v. Oremex Silver Inc.*, 2013 ONSC 7820 at para. 95 confirming the Court's "broad discretion" under similar statutory authority in the corporate context. However, the Society has not brought forward any such application to address that issue.
- [35] As petitioners' counsel pointed out, the conduct of many annual general meetings, some involving thousands of participants, have been approved by this Court within the context of addressing the unique challenges that have arisen from the COVID-19 pandemic. I am aware from having granted previous orders that there are many Internet based platforms that allow alternative means of participating in meetings and voting at meetings. It does not appear to be the case, or at least there is no indication in Ms. Ireland's evidence, that the Board made any investigation in that respect. There is no evidence that a mail-in ballot is the only method to address present circumstances.
- [36] Accordingly, I conclude that the Notice, as reflecting the Board's decision to utilize mail-in ballots as a method of voting, was in violation of the Bylaws and the Act. On that basis alone, I conclude that the meeting scheduled for June 15, 2020 cannot proceed. It is necessary that the voting process for the Meeting be clearly set out to the members so that they are aware of how they may exercise that very important right. At this late stage, I am unable to see any basis on which I can salvage the process to the point that the Meeting could possibly proceed next Monday.
- [37] I am also not satisfied that there is any particular urgency to the meeting being held on Monday. The Society has not put forward any evidence to suggest that it is urgent that the Meeting proceed then. I appreciate that FHA's deadline is looming some eight months from now. However, there is no evidence that these governance issues cannot be properly put before the Society members within a reasonable period so as to allow timely consideration of the consequences of FHA's decision in light of the member's decision in that respect.

- [38] I acknowledge Ms. Ireland's evidence that cancellation of the meeting would result in approximately \$11,500 in "lost sunk costs" spent in scheduling and arranging for the Meeting. This is unfortunate; however, in my view, that unfortunate outcome can only be laid at the feet of the Board.

Membership Issue

- [39] The petitioners also argue that the Board has wrongly refused membership to many persons, while granting membership to others, in breach of the Bylaws and the Act. The petitioners argue that this conduct is again sufficient grounds to justify interference by this Court.
- [40] This argument warrants a closer review of the history of the matter.
- [41] As mentioned above, there were some 620 members by November 2019, when the AGM took place. From that time, it appears that the two respective camps within the Society - anti and pro-MAiD - recognized that, if they wanted to control the governance of the Society, they would have to, as the saying goes, "get out the vote". Following the AGM, the two competing camps set out to do just that through various membership drives.
- [42] However, the Board treated the results of those two membership drives in very different ways.
- [43] Ms. Farrish's pro-MAiD supporters and others of like-mind in the community began to organize. Many applied for membership in the Society as early as December 2019 and into 2020. It does not appear that the Board addressed many of those applications in a timely manner. It was months later, in late May 2020, when the Board "declined" a large number of memberships without any stated reason and returned the remitted membership fee.
- [44] Ms. Ireland confirms that 310 applications were rejected.
- [45] Conversely, memberships were granted for those persons applying from the anti-MAiD camp. In March 2020, the membership list consisted of approximately 600 members. By mid-April 2020, the membership list had increased to some 1,400 individuals, which list contained approximately 800 new names. Counsel for the Society now suggest that the number of members is around 1,500, so approval of memberships appears to be ongoing.
- [46] The question, then, is on what basis has the Board been dealing with these various applications for membership?
- [47] Both Ms. Ireland and Rev. Martel interpret the Constitution (quoted above) as excluding the provision of MAiD by the Society. However, it is clear enough that this interpretation is not shared by all members, including the petitioners.
- [48] Ms. Ireland states in her Affidavit #1 that the Board rejected many applications for membership for good reasons:

47. When the board of directors reviewed new applications for membership, it decided that it would only approve the applications for membership of those applicants who could be determined to be able to uphold the Constitution of the Society. If such a determination could not be made, or if it was clear that the applicant could not uphold the Constitution, the application was rejected. This review was based on the Societies Act which states that members must uphold the constitution and bylaws.

[49] The uncontradicted evidence is that, throughout the entirety of the Society's history, up to the events in 2020, membership has been dealt with on what is called an "open" basis. "Open" meaning that anyone who applied and paid the appropriate application fee was granted membership. All three of the petitioners, who have had significant roles in the Society for many years, confirmed such a practice. It was only in 2020, after the AGM, that this practice changed to address the various applications that arose from the competing membership campaigns.

[50] The Bylaws specifically address "Membership" in Part 2, as follows:

3 The members of the society are the applicants for incorporation of the society, and those persons who subsequently become members, in accordance with these bylaws and, in either case, have not ceased to be members.

4 A person may apply to the directors for membership in the society and on acceptance by the directors is a member.

5 Every member must uphold the constitution . . .

6 The amount of the first annual membership dues must be determined by the directors and after that the annual membership dues must be determined at the annual general meeting of the society.

7 A person ceases to be a member of the society

- a) by delivering his or her resignation in writing to the secretary of the society or by mailing or delivering it to the address of the society,
- b) on his or her death or, in the case of a corporation, on dissolution,
- c) on being expelled, or
- d) on having been a member not in good standing for 12 consecutive months.

8(1) A member may be expelled by a special resolution of the members passed at a general meeting.

- (2) The notice of special resolution for expulsion must be accompanied by a brief statement of the reasons for the proposed expulsion.

- (3) The person who is the subject of the proposed resolution for expulsion must be given an opportunity to be heard at the general meeting before the special resolution is put to a vote.

[Emphasis added.]

- [51] Historically, the Society's Board has interpreted the Bylaws as simply requiring that a person send in an application form and a fee as being the sole criteria upon which a decision as to membership was made. Bylaw 4 does not reference any other criteria for membership. Nor does Bylaw 4 endow the Board with any discretion as to the grounds upon which membership may be accepted or rejected. Bylaw 4 only says that on acceptance by the directors, a person is a member.
- [52] Petitioners' counsel referred to a number of authorities involving disputes as to membership in societies. The most relevant authorities are *Kaila v. Khalsa Diwan Society*, 2003 BCSC 1223 at paras. 13-14, 25 and 34-36; *De Guzman* at paras. 7-8; and *Yukon Government (Registrar of Societies) v. Humane Society of Yukon*, 2013 YKSC 8 at paras. 5(17) and 10-15. Briefly, all of those cases stand for the proposition that, unless the criteria for membership are set out in the bylaws, the directors do not have the discretion to deny membership on some other basis that they themselves determine.
- [53] It is clear enough from Ms. Ireland's affidavit alone that the Board has sought to screen membership, allowing only those that could be determined to uphold the Constitution as she and others on the Board interpret it. However, what the Board has also effectively done is deny membership to people who, in the past, would have been granted membership. The Board has done so with the express intention of preventing those who would have become "new" members from voting on what is to be a very important decision in the direction of the Society.
- [54] I do not accept the Society's submission that the Board has full discretion to determine membership under the Bylaws.
- [55] I also reject the Society's submission that Bylaw 5 allows the Board to exercise its discretion to screen membership applications by determining whether a person will prospectively, as a member, "uphold the Constitution". Bylaw 5 says that every member must uphold the Constitution and comply with the Bylaws. Such an argument was similarly rejected in *Peel (Regional Municipality) v. Greater Toronto Airports Authority* (1999), 5 M.P.L.R. (3d) 101 (Ont. S.C.J.), as discussed in *Yukon Government* at paras. 11-15. The court in *Yukon Government* rejected that the relevant bylaws allowed the directors to screen applicants for an "anticipatory breach" of the bylaws once that person became a member.
- [56] By dealing with memberships using this screening process, the Board has effectively ensured that people who do not share their views do not become members. This strategy has had the result of preventing any possible challenge to the Board's view, possibly at a Meeting scheduled to address the governance of the Society.

- [57] In my view, Ms. Ireland's evidence alone is sufficient to support a finding that the Board has not been acting in good faith in terms of admitting members on a proper basis. This is contrary to s. 53(1)(a) of the Act.
- [58] Rev. Martel's evidence also reinforces my view - and finding - as to the inappropriateness of the actions being taken by the Board in respect of determining membership. Rev. Martel states in her Affidavit #1 sworn June 10, 2020:
6. Rejected applications included applications by individuals who had been clearly opposed to the Purposes of the Society and its Constitution, including, but not limited to those individuals who swore affidavits in support of the petition. With others that were declined, we had to make decisions based on the abundance of caution because there was a campaign with Dying with Dignity Canada and an activist Facebook Group called the "Delta Hospice Discussion", which was set up to infiltrate the Society and go against our Constitution.
- [59] It is clear enough from those very stark words that the Board has sought to only allow people into the Society who they have confirmed as willing to vote in favour of the Board's interpretation of the Constitution or who might have a reasonable likelihood of doing that. Anyone who has indicated a contrary view or who cannot be confirmed to have the "correct" view is denied membership. The Board has sought to ensure that the new members only include those who share their views.
- [60] In my view, this is not the open and democratic process that is the objective for the Society as evidenced by the Act and the Bylaws. Simply, the clear inference from the circumstances here is that the Board has been attempting to manipulate the membership for voting purposes at the Meeting.
- [61] I conclude and find that the Board has acted contrary to the Bylaws and the Act. In addition, if the Board has any discretion under the Bylaws in respect of membership, I also find that the Board has acted with an improper purpose in determining membership and the Board's actions lacked good faith: see Yukon Government at paras. 16-37.
- [62] It is evident enough that the proposed changes to the Constitution and the Bylaws are significant and require adherence to the proper process to ensure fairness: *Gupta v. East Asia Minerals Corporation*, 2018 BCSC 214 at para. 61.
- [63] I make no comment on the appropriateness of the changes that are proposed. They are set out in the Notice and draft documents and the members will vote on them in due course. In my view, what must be allowed here is, as the petitioners' counsel states, a level playing field so that the community can participate in the Society, as they have been doing for decades now, and properly exercise their views as members toward the future direction of the Society. Whether that direction is pro-MAiD or anti-MAiD is up to the members to decide.

Summary and Disposition

- [64] In conclusion, I have accepted both of the petitioners' arguments. For reasons of urgency, I have given abbreviated reasons in the circumstances. However, I confirm that I have accepted all of the petitioners' arguments as set out in their petition and as stated by their counsel in their submissions today.
- [65] The result is sufficient to justify this Court interfering with respect to the Meeting. Either of my decisions, as above, is sufficient to justify this interference, but together they reinforce the other: *Hara v. Khalsa Diwan Society - New Westminster*, [1998] B.C.J. No. 2928 (S.C.), aff'd 1999 BCCA 409.
- [66] In light of my conclusions with respect to the granting of the relief under ss. 53, 80, 104 and 108 of the Act, I do not find it necessary to deal with the petitioners' arguments and authorities as relevant to the oppression remedy under s. 102 of the Act. That argument was advanced based on the same factual background.
- [67] Accordingly, I am granting the following relief in respect of Part 1: Orders Sought in the petition:
- a) I order that the Meeting be cancelled;
 - b) I declare that the Notice contravenes the Act and the Bylaws and does not conform to MO116;
 - c) I grant the order setting aside the Notice;
 - d) I order that, within 14 days of today, the Society provide the petitioners with a list of all members, including contact information, as of the date of this order. As current members of the Society, the petitioners are entitled to that information in any event;
 - e) I order that, within 14 days of today, the Society must provide the petitioners with a list of all persons, including their contact information, whose memberships were rejected by the Board on or after November 28, 2019. The Society's counsel has raised confidentiality concerns with respect to that list of members. However, since I am ordering that these persons be added to the membership list under (f), that information would then be disclosable in any event;
 - f) I order that, within 14 days of today, the Society rectify the register of members to include the names of all persons whose memberships have been rejected;
 - g) I am satisfied that, given the contentious nature of this matter and the somewhat uncertain way forward, further oversight by the Court is required. Accordingly, I order that the Society seek the directions of the Court, on notice to the petitioners, before giving notice of any later scheduled general meeting, including setting a date and time for that meeting;

- h) I decline to grant any order with respect to voting at the Meeting by mail-in ballot since the Meeting is cancelled in any event; and
- i) I adjourn the application for an order to appoint an independent chair for the Meeting. If and when an application for further directions concerning a further meeting is made, that matter can be addressed if there are still concerns about how the meeting might be conducted and by whom.
- [68] Mr. Dixon, I will start with you. Is there any clarification that you require with respect to what I have ordered?
- [69] MR. DIXON: No, My Lady.
- [70] THE COURT: I see you were also seeking costs in paragraph 3 of the petition. Are you still seeking that?
- [71] MR. DIXON: Yes, My Lady.
- [72] THE COURT: Mr. Polizogopoulos, any comments from you concerning the relief granted?
- [73] MR. POLIZOGOPOULOS: Well, the only clarification I would ask for, My Lady, is the legal basis upon which the court orders the admission of unknown applicants to the membership. If you could provide that. It does not need to be over the phone, but in your written reasons or in whatever transcript is produced, I think that would be helpful for the future.
- [74] THE COURT: I told you already. I am relying on ss. 53, 80, 104 and 108 of the Act.
- [75] MR. POLIZOGOPOULOS: To order the admission of members?
- [76] THE COURT: The rectification of the register.
- [77] MR. POLIZOGOPOULOS: Okay.
- [78] THE COURT: Do you have any submissions on costs?
- [79] MR. POLIZOGOPOULOS: Well, I mean, I am not prepared to deal with it. Perhaps it would be more appropriate to do it in writing once we see my friend's submissions.
- [80] THE COURT: Mr. Dixon has already made his submissions. He wants costs.
- [81] MR. POLIZOGOPOULOS: Well, okay. I would argue that, given the nature of the manner in which this has proceeded, the fact that the Society has now not only had to pay its own costs but also had to eat \$11,500 in lost funds cost, it is probably appropriate that each party bear their own costs in this matter.

[82] THE COURT: My ruling on costs is as follows. The Society will pay the petitioners their costs of this proceeding on Scale B. I am satisfied that a costs award is appropriate, particularly given my finding that the Board of directors has not acted in good faith and has proposed to act in breach of the Act and the Bylaws. All of that has necessitated, no doubt, that the petitioners incur significant expense in bringing forward these proceedings on an urgent basis.

"Fitzpatrick, J."

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