

CANADA / JUDGMENT

Farrish v. Delta Hospice Society

2020 BCCA 194

COURT

British Columbia Court of Appeal

DECIDED

25 June 2020

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2020 BCCA 194 Farrish v. Delta Hospice Society

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Farrish v. Delta Hospice Society,

2020 BCCA 194

Date: 20200625

Docket: CA46892

Between:

Sharon Farrish, Christopher Pettypiece, and James Levin

Respondents

(Petitioners)

And

Delta Hospice Society

Appellant

(Respondent)

Before:

The Honourable Mr. Justice Goepel

(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 Registry File S205648).

Oral Reasons for Judgment

Counsel for the Appellant,

appearing via teleconference:

A. Polizogopoulos

I. Corbeil

Counsel for the Respondents,

appearing via teleconference:

B.W. Dixon

S.T.C. Warnett

Place and Date of Hearing:

Vancouver, British Columbia

June 25, 2020

Place and Date of Judgment:

Vancouver, British Columbia

June 25, 2020

Summary:

The appellant Delta Hospice Society applies for an order staying the order of a chambers judge who ordered rectification of the register of members. Held: application allowed. The interests of justice mandate a stay pending hearing of an expedited appeal.

[1] GOEPEL J.A.: The appellant, Delta Hospice Society (the "Society"), applies pursuant to s. 18 of the Court of Appeal Act, R.S.B.C. 1996, c. 77, for an order staying para. 6 of the order of Justice Fitzpatrick, dated June 12, 2020, in which she ordered:

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.

[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. In oral reasons delivered that day she made the following orders:
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.

- [7] Justice Fitzpatrick's reasons have been ordered but not yet transcribed. Today's application proceeded without the benefit of those reasons. In the hearing I was told that the gist of her reasons was a finding that the Board did not have a legal basis to reject the applications for membership.
- [8] The Society has now appealed and seeks a stay of para. 6 of the order which requires rectification of the register to include the names of all persons whose membership applications were rejected by the Society since November 28, 2019. It submits that para. 6 went beyond what is necessary to address the urgent relief sought in the petition and short leave order. It submits that para. 6 orders the Society to admit into membership hundreds of applicants whose objective is expressly contrary to the existing membership's understanding of the Society's constitution. It says para. 6 has the effect of not preserving the status quo but disturbing the status quo by forcing a majority membership faction upon the Society, which would result in irreversible fundamental changes to the stated purposes and positions of the Society on a matter of fundamental importance to its members, which goes to the core of the reason for the Society's existence. It submits that staying para. 6 pending the appeal would cause little, if any, prejudice to the respondents, whereas failing to do so will essentially leave the Society without an effective remedy should it be successful on its appeal.
- [9] The respondents oppose the stay. They submit that the Society has failed to establish irreparable harm if the stay is refused, and that is fatal to the application. They submit that if a stay is granted, any appeal should be expedited and the Board should be prohibited from approving any new memberships until the appeal is concluded.
- [10] The test most commonly applied by this Court on a stay application is the three-part test from *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110. In *Coburn v. Nagra*, 2001 BCCA 607, this Court noted:
- [7] Whether the criteria for an injunction is two part or three may be a topic of debate for scholars. In British Columbia the common test for injunctions has been two-pronged since *B.C. (A.G.) v. Wale* (1986), 9 B.C.L.R. (2d) 333 (C.A.), with the issue of irreparable harm being subsumed into the discussion of balance of convenience (or inconvenience). As Madam Justice McLachlin (now C.J.C.) noted in *Wale*, the distinction is likely without practical effect. The question in most cases is the relative weight of the convenience and inconvenience of the order sought, always considering the paramount measure, the interests of justice.
- [11] The legal issue for determination on the appeal concerns the Board's authority to reject members. Paragraph 4 of the Society's constitution, is as follows:

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

- [12] The Society submits that pursuant to that section, the admission of new members is at the sole discretion of the Board. The respondents argue otherwise and further submit that in any event, the Board's refusal to admit the contested members was done in bad faith.
- [13] The respondents have referred me to trial decisions which would appear to support their position. It does appear, however, that there is no appellate authority on point. I am satisfied the ground of appeal raised by the appellant has sufficient merit that it cannot be said that the appeal has no prospect of success.
- [14] In the circumstances of this case, it is difficult to assess irreparable harm. If the stay is not granted, 310 individuals will become members of the Society with all of the rights that follow, including the right to call a general meeting. While it was suggested in submissions that any attempt to do so would likely be challenged, in my view what the Society needs at this point of time is less litigation, not more. If the order is stayed, it is not suggested that the proposed members will suffer any prejudice. As noted by Justice Saunders in Coburn, one must consider the relative weight of the convenience and inconvenience of the order sought, always considering the paramount measure, the interests of justice.
- [15] In my view, the interests of justice in this case favour the stay. It is clear that the affairs of the Society will be in limbo until the appeal is determined. The best course to follow is to maintain the status quo pending an expedited appeal. The proposed members will not be unduly prejudiced by a short delay.
- [16] Accordingly, I would direct that para. 6 of the order of Justice Fitzpatrick be stayed, pending the hearing of the appeal or further order of the Court. The appeal will be set for August 17, 2020. Whether the stay should be continued past the hearing will be a matter for the division to determine. I would further order, as a condition of the stay, that the Society is prohibited from accepting any new members until the hearing of the appeal.
- [17] The costs of today's application will be in the cause.
- [Discussion with counsel for the respondent regarding filing schedule.]
- [18] The appellant shall file its appeal book, appeal record and factum by July 17, 2020. The respondents' material is to be filed by July 31, 2020.

"The Honourable Mr. Justice Goepel"

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Prepared on 25 October 2026 · Esheria