

CANADA / JUDGMENT

# Sidhu v. Kalgidhar Darbar Sahib Society

2024 BCCA 402

## COURT

British Columbia Court of Appeal

## DECIDED

4 December 2024

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2024 BCCA 402 Sidhu v. Kalgidhar Darbar Sahib Society

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Sidhu v. Kalgidhar Darbar Sahib Society,

2024 BCCA 402

Date: 20241204

Dockets: CA50021, CA50040

Docket: CA50021

Between:

Jit Singh Sidhu, Jagjit Singh Sidhu, Nirmal Singh Aujla, Ravi Singh Sharma, Balwinder Singh  
Batra, Sarbjit Singh Sarai, Sukhpal Singh Boparai

and Jasvir Singh

Appellants

(Petitioners)

And

Kalgidhar Darbar Sahib Society and Balbir Singh Banwait

Respondents

(Respondents)

- and -

Docket: CA50040

Between:

Joginder Singh Chahal

Appellant

(Respondent)

And

Santok Singh Sidhu and Jarnail Singh Heer

Respondents

(Petitioners)

And

Kalgidhar Darbar Sahib Society and Balbir Singh Banwait

Respondents

(Respondents)

Before:

The Honourable Chief Justice Marchand

The Honourable Madam Justice Newbury

The Honourable Madam Justice Fisher

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

dated July 3, 2024 (Sidhu v. Kalgidhar Darbar Sahib Society, 2024 BCSC 1179, Vancouver Docket S231567 and New Westminster Docket S242793).

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Place and Date of Hearing:

Vancouver, British Columbia

September 24, 2024

Place and Date of Judgment:

Vancouver, British Columbia

December 4, 2024

Written Reasons by:

The Honourable Chief Justice Marchand

Concurred in by:

The Honourable Madam Justice Newbury

The Honourable Madam Justice Fisher

Summary:

Appeal from order declaring the selection process for a society's religious council had not violated the Societies Act ("Act"). Held: Appeal allowed. The chambers judge erred in law in concluding she could not scrutinize whether the selection process complied with the society's bylaws. She may not have been able to understand the criteria for a religious leader, but she was required to examine different elements of the selection process to ensure they did not impose qualification criteria not found in the society's bylaws. Had she done so, she would have found some of the interview questions and the decisions to disqualify certain applicants relied on qualification criteria not found in the bylaws, a violation of s. 105 of the Act. Orders made to facilitate selection of new council.

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### Introduction

- [1] The respondent, Kalgidhar Darbar Sahib Society (the "Society"), operates a Sikh temple in Abbotsford called the Gurdwara Sahib Kalgidhar Darbar. The respondent, Balbir Singh Banwait, is the current president of the Society. The appellants are members of the Society.
- [2] Although the Society's purposes are directed towards the harmonious practice, protection and promotion of the Sikh faith, the Society has been beset by years of internal conflict in the selection of its two key governing bodies, namely its Executive Committee ("EC") and its Religious Advisory Council ("RAC").
- [3] In this, the most recent governance dispute, the appellants maintain a court-ordered temporary Executive Committee ("TEC") improperly disqualified them from appointment to the RAC in February 2023. They petitioned the court under ss. 102 and 105 of the Societies Act, S.B.C. 2015, c. 18 [Act]. They applied to set aside or nullify the appointment of the February 2023 RAC, and to direct the Society to conduct a selection process consistent with its bylaws.
- [4] In what I will refer to as the "Vancouver petition", the chambers judge declined to grant the relief sought by the appellants. She was not convinced the TEC's selection process had violated the Society's bylaws or had been oppressive or unfairly prejudicial. The judge's reasons for judgment are indexed at 2024 BCSC 1179.
- [5] In response to what I will refer to as the "New Westminster petition", the chambers judge made an order extending the TEC's term to 40 days after the delivery of her reasons for judgment. She made that order to ensure there would be no gap in the governance of the Society pending the February 2023 RAC selecting a new EC. As a result of a stay granted by this Court on July 29, 2024, the term of the TEC was extended to the hearing of this appeal: 2024 BCCA 289. At the conclusion of the hearing of the appeal, the division extended the stay

until the delivery of its reasons.

- [6] On appeal, the appellants seek orders declaring the February 2023 RAC invalid and requiring the TEC to undertake the selection of a new RAC within 45 days of the release of this Court's judgment, subject to certain directions. They maintain the chambers judge erred by:
1. misapprehending the court's role in reviewing the TEC's selection of the February 2023 RAC;
  2. erroneously finding there had been no defect, error or irregularity in the TEC's conduct resulting in a breach of the Society's bylaws under s. 105 of the Act; and
  3. declining to remedy conduct that was "oppressive" or "unfairly prejudicial" in the appointment of the February 2023 RAC under s. 102 of the Act.
- [7] The respondents maintain the chambers judge did not err in declining to make orders under ss. 102 or 105 of the Act. They submit the chambers judge correctly recognized the Society's RAC appointment bylaws implicate religious doctrine. They claim courts have neither the legitimacy nor capacity to consider the merits of religious tenets.
- [8] For the reasons that follow, I would allow the appeal.

## Background

- [9] Although there is a long history of conflict and litigation involving the Society and some of its members, the scope of the appeal is narrow. I will therefore set out only the relevant background. It is not in dispute.

## The Society and its Governance Structure

- [10] The Society is registered under the Act. The Society's constitution sets out its purposes, including to practice and promote the Sikh religion and its traditions, and "to foster understanding and cooperation and to avoid internal political conflict such that all members of the Executive Committee and Religious Advisory Council shall be selected through the procedures set out in the bylaws, and not elected".
- [11] The Society's governance structure is set out in its bylaws. It has two governing bodies. The EC consists of 13 members of the Society and is responsible for its day-to-day operations. The RAC consists of five members and provides religious oversight to the Society.
- [12] Members of the EC and the RAC serve for two-year terms. Members of both committees must meet certain eligibility criteria established in the bylaws. Five specified members of the EC select the RAC every second year. Any member of the Society who meets the RAC eligibility criteria may put their name forward for selection. If more than five qualified members of the Society do so, a random draw is held to select the five members of the RAC. In turn, the RAC selects the next EC, also every second year.

## Procedural History

- [13] As a consequence of court proceedings, on August 15, 2022, Justice Blok ordered the creation of the TEC to allow time to select the RAC: 2022 BCSC 1382. On November 7, 2022, Justice Blok made further orders prescribing certain roles within the TEC and directing the TEC to hold an annual general meeting to select a new RAC.
- [14] In late January and early February 2023, the TEC conducted a screening process for the new RAC. It involved members of the TEC asking the same 30 interview questions to each person seeking to serve on the RAC. Ultimately, only seven of the 25 applicants were deemed qualified for selection. Mr. Banwait, in his role as president of the TEC, selected the new RAC on February 5 (the "February 2023 RAC") by drawing the names of five of the seven applicants.
- [15] The appellants were all members of the Society who had sought appointment to the February 2023 RAC. Following the screening process, all were disqualified from serving by the TEC. They were not amongst the seven applicants involved in the random draw.
- [16] The appellants filed the Vancouver petition to challenge the selection process for the February 2023 RAC. On March 31, 2023, they obtained injunctive relief from Justice Loo enjoining the February 2023 RAC from selecting a new EC until the determination of their challenge: 2023 BCSC 501.
- [17] In the New Westminster petition, the Society sought to extend nunc pro tunc the term of the TEC for a period of time after the delivery of the chambers judge's decision.
- [18] In May 2023, the chambers judge heard the Vancouver and New Westminster petitions (along with a third that is not at issue on appeal).

## Reasons for Judgment of the Chambers Judge

- [19] The chambers judge found the February 2023 RAC selection process did not violate the Act. She concluded there was nothing improper about the screening interviews according to the Society's bylaws: paras. 31-35. She then stated: "I cannot accept that the Court has a role to play in assessing how the selection committee scrutinized and evaluated each applicant for the RAC" and noted the court was not in a position to fully understand the criteria for a religious leader in a Sikh temple: para. 36.
- [20] The chambers judge did not find the selection process for the February 2023 RAC to be oppressive or unfairly prejudicial to any of the appellants' peculiar interests (per s. 102 of the Act): para. 39. Nor did she find "any substantial irregularities in the selection process that were calculated to affect the result" (per s. 105): para. 45.

- [21] On July 3, 2024, she dismissed the Vancouver petition and granted the New Westminster petition. In other words, she upheld the selection of the February 2023 RAC and extended the term of the TEC to give the RAC time to select a new EC. As noted above, this Court has granted two stays to keep the TEC in place until the delivery of these reasons for judgment.

### Position of the Parties on Appeal

- [22] The appellants claim the chambers judge erred in her understanding of the court's role in scrutinizing the TEC's selection process for the February 2023 RAC. Relying on *Farrish v. Delta Hospice Society*, 2020 BCCA 312, the appellants argue the chambers judge misunderstood the degree to which the court may interfere in the internal affairs of societies, including religious societies. The appellants read *Farrish* as holding that courts, although unable to deal with theological issues or the merits of religious tenets, may intervene to enforce the contractual commitments found in a society's constitution or bylaws.
- [23] The appellants argue this error of law "was fundamental to her decisions under both ss. 102 and 105 of the Act." According to the appellants, had the chambers judge applied the proper degree of scrutiny to the TEC's actions, she would have found they were contrary to both ss. 102 and 105.
- [24] The appellants submit the TEC contravened the Act by imposing qualifications for appointment to the RAC not found in s. 5(8) of the bylaws. They cite several examples where they claim they were disqualified on grounds not found in the bylaws. They submit the chambers judge erred in determining these disqualifications did not constitute omission, defect, error, or irregularity under s. 105 of the Act.
- [25] In the alternative, the appellants submit the chambers judge erred in concluding the selection process for the February 2023 RAC was not oppressive or unfairly prejudicial under s. 102 of the Act.
- [26] The appellants argue this Court should apply the correctness standard in reviewing the chambers judge's decision. They contend the chambers judge made an error of law or in principle when she misdirected herself as to the court's ability under the Act to scrutinize the RAC selection process. Even if the question before the chambers judge is characterized as one of mixed fact and law, the appellants argue this error of interpretation is an extricable legal one, still reviewable on the correctness standard.
- [27] The respondents submit the chambers judge did not err in declining to make orders under ss. 102 or 105 of the Act. According to them, having found the TEC was not precluded from using screening interviews and that it was appropriate for the TEC to take steps to determine RAC eligibility, she correctly held there had been no irregularity or oppression.

- [28] The respondents argue there is a long line of authorities that counsel reluctance on the part of judges to consider issues relating to religious institutions. Also citing Farrish extensively, they submit courts have neither the legitimacy nor capacity to consider the merits of religious tenets.
- [29] The respondents maintain the chambers judge correctly recognized the Society's RAC appointment bylaws implicate religious doctrine. They claim neither this Court nor the court below has the knowledge or jurisdiction to review the 30 interview questions to determine their breadth and scope in a doctrinal context. The same applies to the TEC's decision to disqualify certain applicants. According to the respondents, this is particularly the case given the TEC did not expand on its written reasons for rejecting certain applicants nor relate applicant answers to ss. 5 and 6 of the bylaws in those reasons, nor should they have been required to do so. For the Court to inquire into the particulars of each decision of the TEC would, in the respondents' submission, lead the Court into a long and fruitless task inevitably intertwined with religious and moral issues.
- [30] The respondents further submit the interview questions were relevant to the criteria for, and duties of, the RAC as defined in the bylaws. They argue the TEC cannot be precluded from taking steps to ensure those who are ultimately selected possess the attributes and religious knowledge required under the bylaws. If it was, then it would serve no real function in the selection process.
- [31] The respondents maintain the applicable standard of review is palpable and overriding error. They argue the issue is one of fact. According to the respondents, it was the chambers judge's findings of fact that led her to conclude the selection process did not violate the bylaws. Even if the application of the facts to the bylaws is construed as an issue of mixed fact and law, the respondents submit there is no extricable question of law and the standard of review remains palpable and overriding error.
- [32] In the event this Court determines the standard of review is one of correctness, the respondents submit the chambers judge's decision was correct.

## Discussion

Did the chambers judge misapprehend the court's role in reviewing the TEC's selection of the February 2023 RAC?

## The Societies Act

- [33] Under ss. 102 and 105 of the Act, society members may apply to the court to remedy alleged misconduct within a society.
- [34] Under s. 102, a member may apply for a court order to remedy alleged oppressive or unfairly prejudicial conduct on the part of the society, its members or its directors.

- [35] Section 105 applies where an omission, defect, error or irregularity in the activities or internal affairs of a society leads to, among other things, a contravention of the Act, the society's purposes or its bylaws. Where such a defect is identified, a court must then determine whether to exercise its discretion to remedy the irregularity: *Delta Patriots Cricket Club v. West Coast Cricket Organization*, 2021 BCCA 433 at para. 13.
- [36] In *Farrish*, this Court surveyed the jurisprudence related to several sections of the Act. The Court concluded the "British Columbia courts have found it necessary and appropriate on many occasions to 'interfere in the internal affairs' of societies where and to the extent that the bylaws or the Act are being contravened. This includes societies that have express religious purposes": *Farrish* at para. 50 (emphasis in original).
- [37] The relationship between a society and its members is essentially contractual: *Farrish* at para. 46. Accordingly, the bylaws codifying that contract are "just as much subject to the jurisdiction of these courts as any other contract": *Kwantlen University College Student Association v. Canadian Federation of Students - British Columbia Component*, 2011 BCCA 133 at para. 27, citing *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329 at 341, [1952] 1 All E.R. 1175(C.A.). In exercising jurisdiction over societies, courts are called upon to ensure society decisions are conducted in good faith, comport with natural justice and comply with the Society's bylaws: *Farrish* at para. 37.
- [38] It is true courts will refrain from interfering with a society's discretionary decisions or policy interpretations: *Farrish* at para. 49; *Kwantlen* at para. 31. Similarly, the respondents are correct in noting courts have neither the legitimacy nor the capacity to consider the merits of religious tenets: *Farrish* at paras. 37, 42.
- [39] However, where a religious organization has a written constitution or bylaws, courts are responsible for ensuring decisions of the organization are carried out according to the applicable rules: *Farrish* at paras. 37, 42, 49; see also *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26 at para. 37. Religious societies are, therefore, not exempt from scrutiny: *Farrish* at para. 50. As this Court succinctly put it in *Kwantlen*:
32. [W]here the matter brought before the court is an issue of the construction of provisions of the bylaws that define the fundamental rights of members in respect of the society's operations, it is clear that the court has jurisdiction to intervene, and need not defer to the bylaw interpretations espoused by the society.
- [40] The Court in *Farrish* ultimately held the board of a society may not exercise discretion to screen society applicants unless the society's bylaws explicitly provide it with such discretionary powers: at paras. 81, 85. As the respondents point out, and unlike the present case, *Farrish* concerned society bylaws that did not set out any specific criteria for membership and gave no discretion to the board for accepting or rejecting membership applications: *Farrish* at paras. 5-6, 64.

- [41] Yet in situations--such as the one faced by the chambers judge--where bylaw criteria exist and are in dispute, courts do not simply defer to the interpretations provided by the society or its agents. Rather, if a society incorrectly construes and applies a bylaw provision in a way that negatively impacts a society member, that member has recourse to the court "for the simple reason that [they have] only agreed to the [society] exercising jurisdiction according to the true interpretation of the rules, and not according to a wrong interpretation": Kwantlen at para. 28, citing Lee at 343-44.
- [42] Where bylaw criteria exist, a society does not have the authority to create additional qualifications beyond those explicitly stated: Farrish at para. 90, citing *De Guzman v. Philippine Community Centre Society*, 2007 BCSC 591 at para. 8. Similarly, a society may not exercise discretion to exclude certain candidates beyond that granted to it in its bylaws: *Peel (Regional Municipality) v. Greater Toronto Airports Authority*, 5 M.P.L.R. (3rd) 101 at para. 60, 1999 CarswellOnt 3022 (ONSC), aff'd. 130 O.A.C. 68, 2000 CanLII 5648 (ONCA). This is the case even where the society fears the candidate would cause future harm to the Society and believes it is acting in good faith to protect its interests: Peel at para. 67; see also Farrish at paras. 75-76, citing *Yukon Government (Registrar of Societies) v. Humane Society of Yukon*, 2013 YKSC 8 at paras. 8-15. Courts therefore have an important role to play in scrutinizing decisions made by societies--discretionary or otherwise--to ensure they stay within the bounds of what their constitution and bylaws allow.
- [43] In doing so, courts construe bylaws using the rules of contractual interpretation, consistent with the intention of the parties and the scheme of the bylaws as a whole: Farrish at para. 47; Kwantlen at paras. 37-41. They are not to be "determined according to the subjective views of the parties, but according to the ordinary and grammatical meaning of the words used": Farrish at para. 47.

### The Court's Role in the Present Case

- [44] The chambers judge was confronted with the difficult task of interpreting a religious society's bylaws and examining the conduct of one of its governing bodies to determine whether that governing body exceeded its powers.
- [45] The chambers judge was correct in much of her analysis. Examining the procedures employed by the TEC, she first concluded at para. 32 that:
1. the bylaws did not include a requirement of notice with respect to screening interviews;
  2. screening interviews were not in and of themselves unfair; and
  3. the screening occurring in a room and not the gallery of the Gurdawara did not make the process unfair or prejudicial.

[46] The chambers judge next summarized the bylaw eligibility criteria, the interview questions and the reasons why the TEC rejected different applicants: paras. 33-35. She determined each applicant was asked the same questions, the questions were related to the RAC position and the process was conducted in good faith: para. 36. None of this was problematic.

[47] However, the chambers judge then held:

[36] I cannot accept that the Court has a role to play in assessing how the selection committee scrutinized and evaluated each applicant for the RAC. The Court cannot make any findings as to whether the interview questions are related to the eligibility requirements, as the Court is in no position to fully understand the criteria for a religious leader in a Sikh temple. While the petitioners may disagree with the results, that is not sufficient for the Court to intervene.

[Emphasis added.]

[48] In my respectful view, the judge erred in concluding she could not make any findings as to whether the interview questions were related to the RAC eligibility criteria. She similarly erred in determining she had no role to play in assessing why and how the TEC excluded certain RAC applicants. These constitute errors of law.

[49] The judge's role extended beyond scrutinizing society decisions for bad faith and procedural fairness. She was also obliged to ensure those decisions complied with the Society's rules: Farrish at para. 37; Kwantlen at para. 32. Although the judge may not have been in a position to fully understand the criteria for a religious leader in a Sikh temple, the Vancouver petition did not call on her to determine who would make a good religious leader. Rather, she was required to:

1. apply ordinary principles of contract interpretation to determine the meaning of the bylaws, including whether any of the qualification criteria involved questions of religious doctrine;
2. examine the interview questions to assess whether they related to the qualification criteria in the bylaws;
3. ensure the TEC's screening process did not impose qualification criteria on the applicants that were not found in the Society's bylaws; and
4. scrutinize how the TEC evaluated each applicant to ensure the TEC did not stray from the bylaws in excluding certain applicants.

[50] In scrutinizing the TEC's decision-making only for good faith and procedural fairness, the chambers judge left the ultimate interpretation of the RAC qualification criteria--i.e., "the construction of provisions of the bylaws that define the fundamental rights of members in respect of the society's operations"--up to the TEC, rather than where it belonged, with the court: Kwantlen at para. 32. As a result, she did not fulfill her role of determining whether the TEC adhered to its duties as defined by the bylaws.

Did the chambers judge err in finding there had been no defect, error, or irregularity in the TEC's conduct resulting in a breach of the Society's bylaws?

#### The RAC Qualification Criteria

[51] Section 5(8) of the bylaws establishes the qualifications for being a member of the RAC:

#### Section 5 - The Religious Advisory Council

[ ]

8. Each Council member must have the following qualification:
  - a. The council Member must be baptized Amritdhari Sikh and Nitt-Nemi of Five Baanees in the morning and Rehraas and Kirtan Sohila in the evening as prescribed by Five Pyaras. Morning Baanees are: Japuji Sahib, Jap Sahib, Savaiye, Chaupai, and Anand Sahib.
  - b. The member must be able to recite Baanees orally or from Gutka as prescribed. In addition, he must do one Path of Japuji Sahib and one Path of Sri Sukhmani Sahib Ji, daily;
  - c. The member must not attend any function which may affect the Sikh morality.
  - d. The member must have knowledge of Gurbani and authenticated history of the Sikh Gurus.
  - e. If male, he must not tie or dye his beard. Ladies must not dye their hair.
  - f. The members must not wear caps or hard hats under any circumstances.
  - g. The member must not eat meat. The Council Member shall not be involved politically or affiliated with any other religious group that would jeopardize his religious commitment in performing duties of the Society.

[52] As I stated above, the TEC did not have the authority to create additional qualifications for RAC candidacy nor disqualify applicants based on a fear they would cause future harm to the Society unrelated to any of the listed qualifications. Instead, the terms of the society's bylaws must be read to determine RAC eligibility: Farrish at para. 76, citing Yukon Government at para. 14.

[53] This is so even if the TEC acted in an effort to protect the society and its interests. Such "anticipatory disqualification" of potentially harmful applicants is not permitted except where a society's bylaws explicitly provide for such discretion: Farrish at para. 67, citing Peel at para. 67.

[54] Two elements of the process are in contention: the interview questions used to assess RAC applicant eligibility, and the reasons provided for rejecting certain applicants.

## The Interview Questions

- [55] As noted earlier, the screening process was not per se improper. The TEC was required to evaluate whether particular applicants met the qualification criteria. Given the nature of the criteria at issue, some type of screening process was needed to enable the TEC to discharge this task.
- [56] The TEC was free to use any or all of a nomination form, written screening questionnaire and screening interview. No issue arises with respect to the nomination form and written screening questionnaire. Each appears to have been (mostly) directed to establishing basic qualifications, such as whether the applicant was a baptized Amritdhari Sikh and did not eat meat, wear a hard hat or colour their hair.
- [57] The screening interview process is in issue. It consisted of the TEC asking each applicant 30 standardized questions. I see the questions as falling into three categories.
- [58] First, some of the 30 questions were plainly linked to what I would characterize as "yes/no" eligibility requirements. For example, question 28 asked whether the individual had "ever worn a hard hat for safety purposes while working" and question 21 asked whether the individual had "ever consumed meat or meat products, either directly or indirectly".
- [59] Second, other questions were directed to helping the TEC determine whether the member satisfied more evaluative qualifications.
- [60] According to the bylaws, a member seeking to serve on the RAC must: not attend any function which may affect the Sikh morality (s. 5(8)(c)); have "knowledge of Gurbani and authenticated history of the Sikh Gurus" (s. 5(8)(d)); and refrain from being "involved politically or affiliated with any other religious group that would jeopardize his religious commitment in performing duties of the Society" (s. 5(8)(g)).
- [61] These qualifications provided considerable discretion to the TEC. They required the TEC to collect information, evaluate it and then exercise judgment.
- [62] It appears a number of the interview questions were designed to help the TEC determine whether these qualifications had been met. For example, question 27 asked "[h]ow many Astpadiyan, Saloks, Raags, Bhagatan Di Bani, and Guruan Di Bani are included in Sri Guru Granth Sahib Ji" and question 30 asked whether the individual could "list the names of the 10 Sikh Gurus, the Panj Pyare, the Chaar Sahibzaade, and the Panj Takhts".
- [63] Third, other questions, however, were unrelated to the criteria in s. 5(8). Without intending to be comprehensive, some obvious examples follow:
1. Why are you interested in joining the Dharmic committee?
  2. Have you taken any measures to enhance the functioning of the dharmic committee if you are concerned about its current state?

[ ]

6. Do you have an understanding of the responsibilities held by the Dharmic Committee?

[ ]

8. During the COVID-19 pandemic, the Gurdwara committee released a notice stating that every member was required to donate \$50.00 per month to ensure the Gurdwara's expenses were covered. Did you comply with this regulation?

[ ]

12. Are you currently involved in any ongoing police cases or legal proceedings, and if so, what is your role in the matter?

[ ]

16. As a committee member, how much time are you able to devote to the Gurdwara?
17. Have you previously been a member of a Gurdwara committee, and if so, were there any significant issues that resulted in harm to the committee?
18. If you were made aware of someone causing harm to the gurdwara society, what actions did you take to prevent it?

[ ]

- [64] These questions appear to be aimed at assessing applicants' moral standing and fitness for the RAC role.

- [65] The respondents acknowledge as much. They contend the qualifications for appointment to the RAC under s. 5(8) need to be read in light of the RAC's principal duties (as outlined elsewhere in s. 5) to: review all functions of the Society from a religious point of view; enforce the religious code of conduct; and play a major role in resolving disputes within the Society. The respondents say the role therefore requires knowledge, integrity, honesty and commitment. According to their factum:

33. From these enumerated duties it is clear that a member of the RAC should:
- a. possess a knowledge and understanding of the purposes and objectives of the Society found in the Constitution;
  - b. possess a knowledge and understanding of the religious underpinnings of the Society;
  - c. be proficient and effective in the dispute resolution process and dealing with differences of opinion that arise in the life of the Society.

[Emphasis added.]

- [66] The problem, however, is the purported qualifications a. and c. from para. 33 of the respondents' factum are not found in s. 5(8) of the bylaws. Nor do any of the existing qualifications or the bylaws as a whole provide a basis for reading in these additional requirements.
- [67] Moreover, the selection process for the governing bodies established by the bylaws is consistent with the purposes identified in the Society's constitution, including avoiding internal political conflict within the community. According to the bylaws, in the event there are more than five applicants for the RAC, the names shall be placed in a container and randomly selected. They are designed to prevent members of the TEC taking it upon themselves to effectively conduct job interviews and pass judgement on who they think would be good members of the RAC. As the bylaws are currently drafted, that is simply not the role of the EC (or TEC) in the RAC selection process.
- [68] On the respondents' interpretation of the bylaws, the EC (and TEC) would have the discretion to exclude RAC applicants based on the EC's (or TEC's) subjective views about the applicants' character and conduct measured against the EC's (or TEC's) understanding of the doctrinal principles of the Sikh religion and the Sikh way of life. Yet, this would mean the EC (or TEC) could limit access to the RAC to only those applicants the EC (or TEC) sees as fit. In turn, the RAC members select the EC members. As the appellants explain, this could lead to one political faction within the Society obtaining effective control of the Society by "screening out" those with opposing points of view.
- [69] That said, I recognize the nature of the qualifications for the RAC, being based on religious doctrine, allows the EC (or TEC) some latitude in evaluating whether the criteria are met in each case. For this reason, I do not suggest the court's role is to minutely scrutinize interview questions. However, whatever evaluation process is undertaken must remain within the limits established by the bylaws.
- [70] I understand the respondents' concern about the potential for an unsuitable member of the RAC to harm the Society. However, that concern is squarely addressed in the bylaws. Under s. 5(6), registered members have the right to remove any RAC member who has acted immorally or improperly in their role by a 75% vote after a full inquiry into the member's conduct.
- [71] Similarly, if the Society wants to add additional RAC qualification criteria, a mechanism exists for amending the bylaws. Under s. 8(2), such an amendment requires the support of 75% of the registered membership.
- [72] As it stands, however, the EC (or TEC) does not have the authority to impose additional criteria not found in the bylaws: Yukon Government at paras. 13-14; De Guzman at para. 8. The qualification criteria are limited to those found in s. 5(8).

#### The TEC's Reasons for Rejecting Certain Applicants

- [73] The appellants challenge the TEC's determinations that certain applicants were not qualified to serve on the RAC.
- [74] In my view, some of the decisions of the TEC fall within the scope of the bylaws. For example, the TEC rejected Ravi Singh Sharma and Jagdev Singh Sahota's nominations for the RAC because they are followers of the Nawan Nanaksar Thath Bulandpuri Sahib and its leader, Baba Baldev Singh Ji. In addition, Mr. Sahota was rejected because he was also a director of the Gurmat Center Society, a tenant of the Society.
- [75] According to the TEC, Mr. Sharma and Mr. Sahota were not qualified to serve on the RAC because "their commitment to their leader, Baba Baldev Singh Ji, would jeopardize their religious commitments in performing duties of the Society". With respect to Mr. Sahota, the TEC further concluded "it would be a conflict of interest for someone to be a director of the Gurmant Center Society and a member of the RAC, at the same time."
- [76] These determinations align with the qualification outlined in bylaw 5(8)(g), which states a RAC member "shall not be involved politically or affiliated with any other religious group that would jeopardize his religious commitment in performing duties of the Society." A court is not in a position to "second guess" or disturb these determinations.
- [77] Conversely, the TEC's reasons for disqualifying other applicants bear no relation to the s. 5(8) bylaw qualifications. Instead, the members of the TEC relied on their personal views of whether certain applicants would adequately fulfill their responsibilities under s. 5(5) of the bylaws. That subsection provides "[t]he [RAC] shall play a major role in resolving any disputes or differences of opinion as and when they arise in the Society."
- [78] In an affidavit made on February 8, 2023, a member of the TEC, Jasbir Singh Pannu, swears the TEC "reached a consensus that if applicants had previously caused disputes at the Society in their role as members of the RAC and/or EC, or as members of the Society, then they would not be eligible for the RAC, as per section 5(5) of the By-Laws" (emphasis added). That section provides "[t]he Council shall play a major role in resolving any disputes or differences of opinion as and when they arise in the Society."
- [79] On this basis, the TEC disqualified Sarbjit Singh Sarai and Balwinder Singh Batra. Mr. Sarai and Mr. Batra were accused of wrongfully expelling several members of the Society while previously serving on the RAC. The TEC also disqualified Ishar Singh Bhatti who, while serving as a Director of the EC, is alleged to have illegally transported an Indian Sikh preacher from Canada to the United States. Finally, the TEC disqualified Nirmal Singh Aujla because he was alleged to have ripped down posters he did not agree with on the wall at the Gurdwara.
- [80] The problem here is the TEC has, by its own admission, created and applied RAC qualification criteria not found in s. 5(8) of the bylaws. Section 5(5) of the bylaws pertains to the role of the RAC, not the qualifications for nomination to the RAC.

- [81] At the risk of repeating myself, societies may not engage in disqualification based on criteria not stated in the society's bylaws: *Farrish* at para. 76; *Yukon Government* at para. 13-14; *De Guzman* at para. 8. This is so even where the disqualification is based on the society's belief it was acting to protect itself against the risk of future harm posed by the applicant: *Peel* at para. 67; *Yukon Government* at paras. 8-15; see also *Farrish* at paras. 85-87.
- [82] A number of authorities relied on by this Court in *Farrish* are illustrative.
- [83] In *Peel*, an individual met the bylaw qualifications for nomination to the board of the Greater Toronto Airport Authority. Criteria included possessing the requisite knowledge to operate the authority. Despite meeting the criteria, the board disqualified the applicant because it was concerned he had a conflict of interest and would not always represent the best interest of the authority. The court ruled against the board. It held the board may not infer it has a general power to screen applicants just because the appointment process relied on the board's approval. Rather, such a discretionary power to reject a nominee for an anticipated conflict of interest would need to be clearly stated in the bylaws: *Peel* at para. 60.
- [84] In *Yukon Government*, the directors of the Humane Society of Yukon denied membership to applicants based on what they understood to be the best interests of the society. According to the directors, the membership applicants had acted in ways detrimental to the Humane Society of Yukon, including by engaging in litigation against the society: *Yukon Government* at para. 8.
- [85] Much like respondents in the present case, the Humane Society argued a power to screen applicants could be implied from elsewhere in its bylaws. They pointed to s. 4, which stated "every member shall uphold the constitution and comply with these by-laws". From this, the society concluded the board could reject a membership application if it believed an applicant would not do so: *Yukon Government* at para. 11. According to the society, "so long as the [directors] honestly believed that they were acting in the best interests of the society, and providing they were motivated by loyalty to the society, were free of conflict of interest, and were acting in good faith, then their decisions to deny memberships must be upheld": *Yukon Government* at para. 8.
- [86] The court rejected this argument. It concluded the terms of the bylaws, not the society representatives' subjective belief they were acting in the society's best interests, was what mattered: *Yukon Government* at paras. 9, 14. The court held parties may not engage in a "tortured interpretation of the bylaws" to infer a power not expressly provided: *Yukon Government* at para. 14, citing *Kaila v. Khalsa Diwan Society*, 2003 BCSC 1223 at para. 25. Rather, "the exact terms of the [society's] bylaws must be read to determine membership eligibility": *Yukon Government* at para. 14, citing *Kaila* at para. 13.

[87] In *De Guzman* at paras. 7-8, the court considered the ability of directors of the Philippine Community Centre Society to deny membership applications. The bylaws of the society provided that any Filipino national by birth, affinity, or sanguinity who resides in the Province of British Columbia may apply to the directors for membership and, on acceptance by the directors, shall be a member. The bylaws provided two additional criteria for determining whether applications would be accepted:

1. a person should have participated in at least one Philippine Community Centre Society scheduled or unscheduled event or project; and
2. a person should have shown interest in promoting the goals and objectives of the Philippine Community Centre Society and promise to uphold its good name.

[88] The second criteria provided the directors with considerable discretion. This is akin to qualifications c, d and g in s. 5(8) of the bylaws in the present case. Confronted with discretionary criteria, the court still limited the Society to those criteria:

[8] As I interpret the bylaws, the only power that the directors have in relation to membership is to consider whether or not an applicant meets the specifications set forth in the bylaws, namely, the attributes associated with birth, affinity, or sanguinity, participation in scheduled or unscheduled events or projects, and demonstration of an interest in promoting the goals and objectives of the society. It is not open to the directors, as I construe the bylaws in their present form, to consider any other bases upon which to approve, or refrain from approving, an application for membership.

[Emphasis added.]

[89] Similarly, the fact s. 5(8) includes several qualification criteria that require evaluation and the exercise of judgement did not provide the TEC with carte blanche authority to add new criteria or apply a "tortured interpretation" to the existing ones.

[90] It may very well be the Society would benefit from having the EC (or TEC) screen applicants for honesty and integrity. Similarly, it may make sense to disqualify applicants who are seen to cause, rather than help resolve, conflict within the Society. However, those are not requirements found in s. 5(8) of the bylaws.

[91] So long as the bylaws do not include RAC qualification criteria pertaining to honesty, integrity, dispute resolution capabilities, or the like, it is not within the EC's (or TEC's) powers to exclude applicants based solely on the ground the EC (or TEC) "believed the [applicant] would not in future always act in the best interest of the [Society]": *Farrish* at 67 (emphasis in original).

Did the chambers judge err by declining to remedy conduct that was "oppressive" or "unfairly prejudicial" in the appointment of the February 2023 RAC?

[92] Having concluded the judge erred in finding there had been no defect in the TEC's conduct resulting in a breach of the Society's bylaws, there is no need to consider the appellants' alternative argument regarding oppression and unfair prejudice under s. 102 of the Act.

## Disposition and Remedy

[93] The chambers judge misapprehended the court's role in scrutinizing the TEC's selection process of the February 2023 RAC. Had she properly interpreted the bylaws and applied the required scrutiny, it is clear she would have found the selection process was defective. Some of the interview questions were unrelated to the qualification criteria, but more importantly, the decisions to disqualify certain RAC applicants relied on qualification criteria not found in the bylaws.

[94] This Court has jurisdiction to make an order remedying the TEC's violations of the bylaws under s. 105(1)(c) and 105(2)(a) of the Act. Although the TEC was acting in good faith and followed an appropriate procedure, its breach of the bylaws resulted in the exclusion of qualified applicants for the RAC. This was a substantive and substantial irregularity justifying court intervention.

[95] I would therefore allow the appeal and make the following orders:

1. The February 2023 RAC is declared invalid;
2. The TEC shall, within 45 days of the issuance of this Court's judgment and in accordance with the Society's constitution and bylaws, undertake the selection of a new RAC, the term for which will expire on December 31, 2026;
3. By March 31, 2025, the new RAC shall, in accordance with the Society's constitution and bylaws, select an EC to replace the TEC; and
4. The term of the EC selected by the new RAC shall end on August 31, 2027.

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Madam Justice Newbury"

I AGREE:

"The Honourable Madam Justice Fisher"

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