

CANADA / JUDGMENT

Sidhu v. Kalgidhar Darbar Sahib Society

2024 BCSC 1179

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 1179 Sidhu v. Kalgidhar Darbar Sahib Society

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sidhu v. Kalgidhar Darbar Sahib Society,

2024 BCSC 1179

Date: 20240703

Docket: S231567

Registry: Vancouver

Between:

Jit Singh Sidhu, Jagjit Singh Sidhu, Jagdev Singh Sahota, Nirmal Singh Aujla, Ravi Singh Sharma,
Balwinder Singh Batra, Ishar Singh Bhatti, Sarbjit Singh Sarai and Sukhpal Singh Boparai

Petitioners

And

Kalgidhar Darbar Sahib Society and Balbir Singh Banwait

Respondents

- and -

Docket: S242793

Registry: New Westminster

Between:

Santokh Singh Sidhu and Jarnail Singh Heer

Petitioners

And

Kalgidhar Darbar Sahib Society and Balbir Singh Banwait

Respondents

Joginder Singh Chahal, Jit Singh Sidhu, Jagjit Singh Sidhu, Jagdev Singh Sahota, Nirmal Singh Aujla, Ravi Singh Sharma, Balwinder Singh Batra, Ishar Singh Bhatti, Sarbit Singh Sarai, Sukhpal Singh Boparai, Gurmail Singh Brar, Daljit Singh Gill, Surdev Singh Jatana, Harpreet Singh Tatla

Interested Parties

- and -

Docket: S251993

Registry: New Westminster

Between:

Kalgidhar Darbar Sahib Society

Petitioner

And

Joginder Singh Chahal, Gurmail Singh Brar, Daljit Singh Gill, Surdev Singh Jatana, Harpreet Singh Tatla, Jagjit Singh Sidhu, Pargat Singh Atwal, Jaspal Singh Gill, Jit Singh Sidhu and Chintavar Singh Dhaliwal

Respondents

Corrected Judgment: The text of the judgment was corrected at the front page on July 11, 2024.

Before: The Honourable Justice Chan

Reasons for Judgment

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Introduction

[1] The Kalgidhar Darbar Sahib Society ("KDSS") operates the Gurdwara Sahib Kalgidhar Darbar, a Sikh temple (the "Gurdwara") in Abbotsford. Conflicts have arisen among the members of KDSS in recent years over the selection process for the governing councils. These conflicts have resulted in multiple court actions. In this hearing, there are three petitions before the Court. Petition VLC-S-S231567 (the "Vancouver Petition") challenges the most recent selection process in February 2023 of the Religious Advisory Council (the "RAC"), and seeks to replace that with the RAC that was chosen in a September 2022 process. Petition NW 251993 challenges the results of a special general meeting held in December 2023 where a new council was purportedly elected. Petition NW 242793 seeks to extend nunc pro tunc the term of the current Executive Committee (the "EC") for a period of time after the delivery of this ruling.

Factual Background

[2] The KDSS is registered under the Societies Act, S.B.C. 2015, c. 18. The purposes of KDSS as set out in its constitution include the practice and promotion of the Sikh religion, 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".

[3] The governance structure is set out in the bylaws. There are two governing bodies: the EC, consisting of 13 members, which runs the day to day operations, and the RAC, consisting of five members, which provides religious oversight. Both the EC and the RAC serve for terms of two years. The EC starts its term in September following selection, and the RAC starts its term in January following selection. A member cannot be on both the EC and the RAC at the same time, though they can serve subsequent terms. The top five members of the EC holding the offices of the President, the Vice President, General Secretary, Assistant General Secretary and Treasurer, select the RAC. If there are more than five members running for the RAC, the names are placed in a container and five names are randomly selected by the President. In turn, the RAC selects the next EC.

- [4] There has been a history of court challenges to the selection of these governing bodies. Listed here are only some of the court actions. There appears to have been other petitions filed over the years that have not been pursued.
- [5] In 2017, Justice Riley ordered a new selection process for the RAC: *Gill v. Kalgidhar Darbar Sahib Society*, 2017 BCSC 1423.
- [6] In 2019, a few members of KDSS challenged the selection of the RAC. This resulted in a settlement between the parties, where a consent order setting out the members of the EC was approved by Justice Armstrong on March 28, 2019. However, no attempts were made to select a RAC.
- [7] Some members of the EC resigned in 2020 and were replaced, as permitted under the bylaws. As a result, the composition of the EC changed.
- [8] In January 2022, two members (Jarnail Singh Heer and Santokh Singh Sidhu) were dismissed from the EC. Nominations for the RAC were called for on January 20, 2022. On February 10, 2022, Mr. Heer and Mr. Sidhu challenged their dismissal in court and obtained a stay of the RAC selection process from Justice Macintosh. Mr. Heer had been in the position of the Assistant General Secretary before his dismissal, so he would have been entitled to take part in the RAC selection process.
- [9] On August 15, 2022, Justice Blok ordered Mr. Heer and Mr. Sidhu reinstated, that the composition of the EC is restored temporarily to what it was in January 2022, and that the term of the EC is to expire on September 30, 2022, to allow time to select the RAC: *Sidhu v. Kalgidhar Darbar Sahib Society*, 2022 BCSC 1382.
- [10] On August 28, 2022, a notice was sent to all members regarding the selection of the RAC on September 11, 2022. The selection date was subsequently moved to September 18, 2022. New notices for this selection date were posted.
- [11] On September 18, 2022, the EC met for the selection of the RAC. However, Mr. Heer and Jasbir Singh Pannu, two of the top five members of the EC, did not take part in the selection process. They were replaced by two other members. The selection process occurred in the gallery of the Gurdwara before the Sri Guru Granth Sahib Ji, which I understand is the holy book in the Sikh religion. The president Balbir Singh Banwait drew names witnessed by all those present. The selected RAC consists of the following: Sukhpal Singh Boparai; Tarlochan Singh Sidhu; Harpreet Singh Tatla; Jagjit Singh Sidhu; and Ravi Singh Sharma (the "September 2022 RAC").
- [12] Shortly after the selection process, Mr. Heer, Mr. Pannu and others protested that the selection process was flawed, as the bylaws require the top five members of the EC to select the RAC. At the same time, some members raised issues with the proper composition of the EC that was restored temporarily by Justice Blok. Communications were received from counsel for KDSS to the effect that the September 2022 RAC was null and void.

[13] Mr. Sidhu and Mr. Heer filed a court application, seeking to nullify the September 2022 RAC and various other relief. A hearing was held before Justice Blok on November 7, 2022. It resulted in an order declaring certain persons as members of the EC, certain members as holding office in the EC, directing the EC to hold an annual general meeting (AGM) as soon as possible and that the term of the EC will expire on January 15, 2023. For the sake of completeness, the following are the declared EC members:

- Balbir Singh Banwait (President);
- Jasbir Singh Pannu (Vice President);
- Randhir Singh Grewal;
- Hardev Singh;
- Baljit Singh Dhaliwal;
- Santokh Singh Sidhu;
- Nirmal Singh Toor (Treasurer);
- Jarnail Singh Heer (Assistant Secretary);
- Manjit Singh Grewal (Secretary);
- Manmohan Singh Heer;
- Eqbal Singh Swaich;
- Santosh Kaur Power aka Santokh Kahlon (Recording Secretary); and
- Gurbaksh Kaur Gill (Assistant Treasurer).

[14] I understand there may be some members who are not satisfied with this list of declared EC members. Jasvir Singh, Jaspal Singh Gill and Kirpal Kaur Dhaliwal were previously on the EC and removed from this list of EC members.

[15] One of the agenda items for the AGM was a proposal to amend the bylaws to change the governance structure, to abolish the RAC and to elect the members of the EC. If the special resolution failed, then the AGM was to be adjourned to February 5, 2023, for the selection of the RAC. There were some delays in scheduling the AGM due to various complaints. Though it was originally scheduled for December 4, 2022, the AGM was eventually held on January 29, 2023. The special resolution failed.

[16] Nominations were then accepted by the EC for the RAC. The candidates had to complete a nomination form and a screening questionnaire. A total of 26 members applied. One member withdrew his candidacy, leaving 25 candidates.

- [17] On February 4, 2023, the selection committee conducted interviews with the candidates. These interviews were not conducted in the gallery of the Gurdwara, but in an office there. Jasbir Singh Pannu led the interviews, with Nirmal Singh Toor and Manjit Singh Grewal writing down the answers. Mr. Pannu deposed that the screening interviews do not have to take place in front of the Sri Guru Granth Sahib Ji, but only the selection of names from the container. Mr. Pannu deposed that his recollection was that in the past, such interviews took place in an office or other locations of the Gurdwara. Nineteen candidates attended for interviews, which were each approximately five to ten minutes long.
- [18] However, the petitioners in the Vancouver Petition deposed that this was the first time a screening took place in an office, and that previously screenings were done at the gallery in the presence of Sri Guru Granth Sahib Ji and all other applicants. The applicants did not have notice that there would be an interview, and did not have notice of the questions asked.
- [19] Members of the selection committee deposed to the following procedure. They deposed that they all agreed on the questions to be asked and the candidates were all asked the same questions during the interviews. The selection committee put together a set of 30 questions based on the contents of the nomination form, the screening questionnaire and s. 5 of the bylaws, which set out the eligibility requirements to be on the RAC. At the end of each interview, members of the selection committee reached a unanimous consensus regarding the eligibility of each applicant based on the nomination form, screening questionnaire and answers to the interview questions.
- [20] On February 5, 2023, the names of the seven candidates who were determined by the selection committee to be qualified were read out at the continuation of the AGM. These seven names were placed in a container. Jasbir Singh Pannu announced that any member who was found not qualified could arrange for a meeting with him to discuss. None of those found ineligible arranged for any such discussion.
- [21] Balbir Singh Banwait, the president of the EC, drew five names. This was done in front of the Sri Guru Granth Sahib Ji. The following members were selected for the RAC: Karnail Singh Tut; Manjit Singh Minhas; Harminder Singh; Mandeep Singh Gill; and Tarlochan Singh Sidhu (the "February 2023 RAC").
- [22] Mr. Minhas has since resigned his position on the RAC.
- [23] The petitioners applied for injunctive relief, seeking an order that the February 2023 RAC be prohibited from selecting a new EC. The petitioners' position is the selection process was flawed, as the interview questions were not consistent with the eligibility criteria for the RAC as set out in the bylaws. Justice Loo granted the injunction on March 31, 2023: *Sidhu v. Kalgidhar Darbar Sahib Society*, 2023 BCSC 501.

Legal Framework

[24] These petitions are brought pursuant to ss. 102 and 105 of the Societies Act. Section 102 is the oppression remedy and s. 105 allows the Court to correct irregularities:

Complaints by members

102 (1) A member of a society may apply to the court for an order under this section on the grounds that:

(a) the activities or internal affairs of the society are being or were conducted, or the powers of the directors are being or were exercised, in a manner oppressive to the member or to the member and one or more other members, or

(b) an act of the society was done or is threatened, or a resolution of the members or directors was passed or is proposed, that is unfairly prejudicial to the member or to the member and one or more other members

Court may remedy irregularities

105 (1) This section applies if an omission, defect, error or irregularity in the conduct of the activities or internal affairs of a society results in

(a) a contravention of this Act or the regulations,

(b) the society acting inconsistently with or contrary to its purposes,

(c) a default in compliance with the bylaws of the society,

(d) proceedings at, or in connection with, a general meeting or a meeting of directors, or an assembly purporting to be such a meeting, being rendered ineffective, or

(e) a resolution consented to by members or directors of the society, or records purporting to be such a resolution, being rendered ineffective

[25] Section 102 allows a member of a society to apply to the court for a remedy for an oppressive or unfairly prejudicial conduct. In *Dalpadado v. North Bend Land Society*, 2018 BCSC 835, Justice Brundrett set out the parameters of s. 102:

[106] In order to maintain an action for oppression, the petitioner must establish harm to his or her peculiar interests, and that harm must be distinct from the interests of others: *Jaguar Financial Corp. v. Alternative Earth Resources Inc.*, 2016 BCCA 193 at para. 179. Moreover, the contractual force of conduct permitted by a company's (or here, a society's) founding articles cannot be ignored when determining whether conduct is oppressive or unfairly prejudicial: *Walker v. Betts*, 2006 BCSC 128 at para. 81.

- [107] The omission in the Societies Act of a residual ability to grant an oppression remedy where it is just and equitable to do so, means that the broader or more liberal approach to assessing conduct that may have impacted a shareholder's rights is missing in this context. Thus, the inquiry must concern itself with whether oppression or a harmful effect upon a member's legal or proprietary rights has been established: Walker at paras. 80-90.
- [26] Section 105 allows the Court to correct an omission, defect, error, or irregularity in the conduct of the activities or internal affairs of a society. Justice Riley in Gill at para. 33 sets out that where the irregularities relate to the conduct of an election, the petitioner must show "substantial irregularity, calculated to affect the result": see also Bector v. Vedic Hindu Cultural Society, 2014 BCSC 230 at para. 10, citing Leroux v. Molgat, 67 B.C.L.R. 29 at para. 31, 1985 CanLII 229 (B.C.S.C.). The courts have adopted a cautious approach or "healthy reluctance" in relation to the applicability of the irregularity provision: Bector at para. 8; Gill at para. 33(d).
- [27] Under both ss. 102 and 105, the Court has the power to grant various remedies. If oppression is found, the Court can direct or prohibit an act, regulate the conduct of the society, remove a director, and vary or set aside a transaction among other remedies. If an omission or irregularity is found, the Court can correct, negative or modify the consequences of the omission, or validate an act that has been affected by the irregularity.

The Selection of the RAC: the Vancouver Petition

Section 102: Oppression and Prejudice

- [28] While the petitioners made wide-ranging submissions on the conduct of the affairs of KDSS, I take their main submissions relate to the constitution of the RAC. As I understand their position, the petitioners argue the actions of KDSS have been unfair by setting aside the September 2022 RAC without process and conducting the February 2023 RAC selection process using criteria outside the eligibility requirements in the bylaws. The petitioners also argue it was improper for the EC to propose a special resolution to abolish the RAC in January 2023, and complains the current EC has been operating outside its mandate, as it expired on January 15, 2023.

September 2022 RAC

- [29] The petitioners argue there was no basis to declare the September 2022 RAC null and void. They argue KDSS did not obtain a court order declaring the results of the September 2022 RAC invalid. Counsel for KDSS and counsel for some of the members made the decision that the selection process was flawed, and that is not sufficient to set aside the results.
- [30] In my view, the September 2022 RAC selection process was improper, as the wrong individuals were involved in the selection process. The bylaws state the top five members of the EC are to select the RAC, and two of those individuals did not participate in the selection process. It was appropriate for the EC to nullify the results. In my view, a court order is not

required. A society must have the ability on its own to nullify processes conducted incorrectly, contrary to its bylaws. If the petitioners wished to challenge the nullification, they ought to have done so at the time. The evidence is they did not challenge the decision to nullify the results of the September 2022 RAC. The petitioners participated in the selection process for the February 2023 RAC, implicitly accepting the nullification. I do not find the actions of KDSS invalidating the September 2022 RAC to be oppressive or unfairly prejudicial to any of the petitioners' peculiar interests.

February 2023 RAC

- [31] The petitioners argue the February 2023 RAC selection process was unfair, as they had no notice of the additional questions in the interview, the interview was conducted in a room in the Gurdwara and not in the gallery, the interview questions were not related to the eligibility criteria in the bylaws and there is no evidence that consensus was reached by all members of KDSS on the interpretation of any theological questions.
- [32] In my view, there was no requirement of notice with respect to the screening interview. No such requirement is set out in the bylaws. The applicants were provided with the nomination form and screening questionnaire. Even accepting the petitioners' evidence that screening interviews were not conducted in past selection processes, that by itself does not necessitate notice. While they did not say this, I take the petitioners to argue as the directions provided by Justice Riley in Gill did not include a screening interview, having one was unfair. However, I do not take Justice Riley's directions to preclude the use of a screening interview. The bylaws set out eligibility requirements to be a member of the RAC, and it is appropriate for the EC to take some steps to determine eligibility. Once found eligible, the names were placed in a container for a random draw, as set out in the bylaws. With respect to the screening occurring in a room and not the gallery of the Gurdwara, I do not find that made the process unfair or prejudicial.
- [33] The qualifications to be a member of the RAC are set out in the bylaws. The qualifications include being a baptized Sikh, doing morning and evening prayers, being able to recite prayers orally or from Gutka as prescribed, with extra prayers needed daily. The member must not attend any function which may affect the Sikh morality and must have knowledge of Gurbani and authenticated history of the Sikh Gurus. A male must not tie or dye his beard and females must not dye their hair. The member must not wear caps or hard hats. The member must not eat meat. The member must not be involved politically or affiliated with any other religious group that would jeopardize his or her religious commitment to the KDSS.

- [34] There were 30 questions for the interview portion. The questions included how many times do you visit the Gurdwara a week; why do you wish to be on the committee; how many baniyan (which I understand refers to oral prayers) have you committed to memory and how many do you recite on a daily basis; and have you previously been a member of a committee and if so, were there significant issues that resulted in harm to the committee.
- [35] The petitioners were rejected for various reasons as noted on the selection committee's forms. These forms were filled out in Punjabi, then translated into English. Some of the petitioners were rejected as the selection committee was of the view they were not truthful in their answers to the screening questionnaire, which required answers with a solemn affirmation. Some petitioners were found not able to recite certain prayers orally. Some petitioners were found not to be able to resolve disputes, which is one of the functions of the RAC.
- [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. Members of the selection committee have provided evidence that each applicant was asked the same questions, that the questions are related to the RAC position and that the selection process was conducted in good faith. 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. The petitioners argue there is no evidence the selection committee formed a consensus with all members of KDSS as to theological questions, as Justice Riley directed: Gill at para. 61. However, there is no evidence before me that any of the questions involved interpretation of religious doctrine. I adopt the comments of Justice Riley in Gill:
- [48] The Court is in no position to resolve doctrinal disputes about the proper answers to the questions posed in the Questionnaire. Courts are reluctant "to interfere with the internal affairs of any corporate body" (Garcha, at para. 9), and absent some manifest "omission, defect, error or irregularity in the conduct of the activities or internal affairs" (s. 105 of the Act), the Society must be left to govern itself and make its own decisions, including decisions with which some individual members of the Society may disagree. The mere existence of internal debate - particularly on matters of religious doctrine - is no basis for the court to interfere. I am therefore unable to apply any judicial scrutiny to the content of the Questionnaire, or the manner in which the presiding Executive Committee members interpreted or applied it. I cannot accept the argument that the selection process was somehow invalidated by virtue of any alleged ambiguity in the Questionnaire itself.
- [37] The petitioners also complain that the February 2023 RAC is flawed, as two members who were found eligible and selected by random draw are expelled members with no ability to take part in KDSS affairs. They are Karnail Singh Tut and Manjit Singh Minhas. Mr. Minhas has now resigned from the RAC.

- [38] There is no evidence that Mr. Tut was expelled from KDSS. Mr. Tut was the subject of a restraining order in 2007 which prevented him from coming within 100 metres of the Gurdwara. He has provided evidence that he was publicly welcomed back to the Gurdwara in January 2021 in a religious ceremony before the Sri Guru Granth Sahib Ji and the congregation. KDSS has indicated it is not enforcing the restraining order. In my view, there is no requirement that Mr. Tut obtain a court order to be reinstated, as there is no evidence he was expelled. Mr. Tut's position in the February 2023 RAC is valid.
- [39] I do not find the selection process for the February 2023 RAC to be oppressive or unfairly prejudicial to any of the petitioners' peculiar interests.

Special Resolution to Abolish RAC in January 2023

- [40] The petitioners take issue with the EC proposing in the January 2023 AGM a special resolution to abolish the RAC. It is difficult to understand the petitioners' complaint about this, as this special resolution was put to a vote and defeated. I infer as the petitioners believed there was a valid September 2022 RAC, this proposal was repugnant to them. After the resolution was defeated, there is no evidence any steps to abolish the RAC were taken by the EC. I do not see how a proposal to change the governance structure which was defeated can be unfair or prejudicial to the petitioners.

The Term for the Current EC has Expired

- [41] The petitioners argue the EC has overstayed its term, and continued to act without authority. They argue the EC has been able to promote its own agenda, and is changing the manner in which the congregation practices their faith and spiritual values. I infer from the evidence that there are ideological differences among the members.
- [42] The evidence is the EC has attempted to return to court to apply to extend its term. The delay of the selection process for the February 2023 RAC was due to complaints by various members about the notice of the AGM. After the February 2023 RAC selection process, the petitioners obtained an injunction prohibiting that committee from selecting a new EC until this petition was heard. The parties appeared before Justice Blok in September 2023 to address the matter. Justice Blok granted a temporary extension and ordered that the EC can continue for ordinary business only. However, unfortunately, the date set by the court for the hearing of the application was a statutory holiday. In the meantime, other issues had arisen requiring urgent court applications. I do not find the circumstances of the EC staying on to be oppressive or unfairly prejudicial to any of the petitioners' peculiar interests.

Conclusion on Oppression

- [43] In my view, the petitioners have not shown any of the actions of KDSS, alone or cumulatively, to be oppressive or unfairly prejudicial to any of their peculiar interests. The petitioners have not shown any actions of the KDSS that have harmed their interests,

distinct from the interest of others. The evidence is the September 2022 RAC was selected contrary to the bylaws. The selection process for the February 2023 RAC conformed with the bylaws and has not been shown to be unfair to the petitioners. The Court grants no remedy pursuant to s. 102.

Section 105: Omission, Defect, Error or Irregularity

- [44] The petitioners argue the selection process for the February 2023 RAC was not consistent with the process set out by Riley J. in Gill at paras. 57-62. I have discussed these concerns under my analysis of the oppression remedy.
- [45] I do not find any of these complaints to be an omission, defect, error or irregularity. Proper notice was provided of the selection process, accompanied by a statement of qualifications. Candidates were asked to complete a nomination form and a screening questionnaire. The members of the selection committee considered the content of the nomination form, the screening questionnaire and the interview to determine eligibility. The names of those found eligible were placed in a container, and the president drew five names at random. I do not find any substantial irregularities in the selection process that were calculated to affect the result.
- [46] The main thrust of the petitioners' dissatisfaction stem from the questions posed during the screening interview. They believe the questions were not related to the eligibility criteria in the bylaws. However, the Court is reluctant and ill-equipped to scrutinize the decisions made by the selection committee. The questions posed do not seem to be inappropriate. The selection committee has provided evidence the questions relate to eligibility, the same questions were asked of each candidate, and the assessment was conducted in good faith. The Court does not find using a screening interview to be a substantial irregularity that is calculated to affect the result.
- [47] The February 2023 RAC was selected after the expiry of the EC's term in January 15, 2023. In my view, this is the type of defect that can be remedied by the Court. The court order that set the term to expire on January 15, 2023 was intended to allow time for the RAC to be selected, which in turn can select the next EC. Due to delays in scheduling an AGM, the selection process occurred a few weeks late. Notwithstanding the expiry of the EC's term at the time of selection, the Court finds the February 2023 RAC valid.

The Special General Meeting: NW Petition 251993

- [48] KDSS applies for a remedy pursuant to s. 105 to declare the results of the resolutions passed at the Special General Meeting of December 2023 null and void.

- [49] Joginder Singh Chahal, Gurmail Singh Brar, Daljit Singh Gill, Surdev Singh Jatana and Harpreet Singh Tatla oppose KDSS's application (the "Respondents"). As I understand it, the other respondents are interested parties. It is not clear if they take any position on the petition.

Factual Background

- [50] In July and August 2023, some of the KDSS members, led by Joginder Chahal, gathered signatures for a requisition for a general meeting to remove the members of the EC. A requisition was delivered to the EC on September 1, 2023, seeking the calling of an AGM (the "Requisition"). This resulted in Santokh Singh Sidhu and Jarneil Singh Heer filing an application seeking an extension of Justice Blok's order allowing the EC to continue beyond the expiry date of January 15, 2023.
- [51] On September 18, 2023, the application to extend the EC was heard by Justice Blok. Counsel for KDSS, counsel for Mr. Sidhu and Mr. Heer, counsel for the petitioners in the Vancouver Petition, and Joginder Chahal attended the hearing. Justice Blok ordered that the hearing of the application for an extension be adjourned to October 2, 2023, and that the existing EC shall remain in office to continue the ordinary business of KDSS but may not conduct any extraordinary business nor call any extraordinary general meeting.
- [52] After the hearing, the parties realized October 2, 2023 was a statutory holiday. The parties attempted to reschedule the hearing. There was much back-and-forth between counsel and Mr. Chahal discussing available dates. At one time, it was set to be heard on October 25, 2023, but that date became unavailable to counsel.
- [53] On November 20, 2023, Mr. Chahal delivered correspondence to the EC and counsel, expressing his view that as KDSS has not called an AGM in response to the Requisition, a special general meeting ("SGM") was being called on December 10, 2023. Counsel for KDSS responded that Justice Blok's order restricted the EC from conducting any extraordinary business, including the SGM, without leave of the court. Mr. Chahal indicated his intention to proceed with the SGM on December 10, 2023.
- [54] KDSS filed an urgent court application seeking to prohibit the holding of a SGM. Short leave was granted and the hearing was to be held on December 7, 2023. However, there was a lack of court time on that date.
- [55] Some members attempted to hold the SGM at the Gurdwara on December 10, 2023. The EC had hired security and alerted the Abbotsford police. There is evidence that Mr. Chahal and others arrived at about 1:30 p.m. and started pushing through the security personnel. There was "pushing, shoving and shouting" for one and a half hours. However, Mr. Chahal denies there was any physical tussle. There was no quorum and it was announced the SGM would be held on December 17, 2023.

- [56] KDSS tried to have its application prohibiting the holding of the SGM heard in court on December 15, 2023. However, again there was no court time.
- [57] On December 16, 2023, there was a meeting at the Gurdwara with Mr. Chahal, members of the EC and the police, about the holding of the SGM. On December 17, 2023, Mr. Chahal and others arrived at the Gurdwara. However, the police prevented them from entering the gallery to hold the SGM. Mr. Chahal and the others went to a nearby park. The evidence about what occurred in the park differ.
- [58] Bhag Singh Grewal deposed that he attended the park. There were about 40 people in attendance, some of whom were not members of KDSS. Mr. Grewal deposed five names were read out as forming a committee, and that the group was asked if any member had any issues about these individuals being selected, and to raise their hands if they agreed. Mr. Grewal did not raise his hand. After that, there was an announcement that a 13-member committee was being selected. Mr. Grewal's name was called to be on the committee, but he declined. The names of this committee were then announced and Mr. Grewal saw people raising their hands.
- [59] Mr. Chahal prepared notes of the SGM. According to his notes, 72 members were present, sufficient for quorum. All proposed resolutions were passed unanimously. A special resolution removing the EC was passed. Nominations were taken from the floor. Gurmail Singh Brar was elected as president. Daljit Singh Gill was elected vice president. Surdev Singh Jatana was elected as general secretary. Joginder Singh Chahal was elected as recording secretary. Harpreet Singh Tatla was elected treasurer. A litigation committee of five was created. A proposal to settle the Vancouver Petition by selecting a new RAC was passed.
- [60] KDSS has filed this petition to declare the December 17, 2023 and the resulting resolutions null and void.

Position of the Parties

- [61] KDSS argues the SGM ought not to have occurred, as the EC was restricted by court order to conducting ordinary business at that time. Mr. Chahal delivered the Requisition to the EC on September 1, 2023, seeking to have an AGM. An application was made to court on September 18, 2023 to extend the term of the EC. Justice Blok granted an order extending the term temporarily, with the condition that only ordinary business can be conducted. KDSS argues Mr. Chahal was present in court, and consented to the extension. Mr. Chahal never raised the issue of the SGM with the court on that date or any subsequent dates. KDSS argues it was clear to all parties and their counsel that KDSS was not to conduct anything beyond the day to day operations until their application for an extension could be heard in full. After Mr. Chahal indicated he planned to hold the SGM on December 10, 2023, KDSS filed an urgent court application to prohibit the meeting, but was not able to be heard on two occasions due to lack of court time. KDSS' position is the SGM was contrary to court orders and ought to be

set aside.

- [62] KDSS also argues the resolutions passed at the SGM are contrary to the bylaws. One of the resolutions that was passed was for the EC to be elected. This is contrary to the bylaws, which state the EC is to be selected by the RAC. No amendments have been made to the bylaws which allow for election of the EC. Further, KDSS argues the SGM was procedurally flawed. The SGM was not conducted at the venue in the notice and one week later than originally scheduled. There is conflicting evidence about whether memberships were verified and if all the votes were unanimous.
- [63] The Respondents argue they followed proper procedure to call and hold the SGM. Pursuant to s. 75 of the Societies Act, they gathered the appropriate number of signatures to pass the requisition threshold of 10% of members, and sent the Requisition for a general meeting to the EC on September 1, 2023. As the EC did not call a general meeting within 21 days of receiving the Requisition, the requisitionists called the meeting within 60 days after the expiry of the 21-day waiting period. They argue the meeting had to be called within 60 days, not held within 60 days. They called the meeting on November 20, 2023. It was set for December 10, 2023, then subsequently held on December 17, 2023. The resolutions passed were proper, as pursuant to s. 50 of the Societies Act, the members can remove directors by a special resolution, notwithstanding the bylaws may require a different threshold. A special resolution is defined in the Societies Act as 2/3 of the votes cast at the general meeting. Section 11(6) of the Societies Act set out that no society can have a higher threshold for the removal of a director than that stated in s. 50(1)(a).
- [64] With respect to KDSS' argument that the SGM was improper as the matter was before the courts, the Respondents' position is the term of the EC had expired, and the existence of outstanding litigation did not bar them from exercising their membership rights pursuant to the Societies Act. Mr. Chahal in communications with the EC took the position that Justice Blok's order prevented the EC from conducting extraordinary business, but not the membership.

Analysis

- [65] In my view, the Respondents take an overly narrow approach to the effect of Justice Blok's order. In my view, it is clear that the purpose of the order was to prohibit anyone, not just the EC, from conducting extraordinary business on behalf of the KDSS. Mr. Chahal needed to obtain leave of the court to hold the SGM. While the parties do not require a court order for every action, in circumstances where the parties have applied to the court for relief, and do not agree on the proposed action, it is improper to take alternative steps without seeking leave of the court. The underlying application which the court had not decided yet was whether the term for the EC should be extended. That was the purpose of the court application. The purpose of the SGM was to defeat that extension, by a resolution to remove the directors. The court ought to have been advised at the least of the purpose of the SGM.

- [66] Further, one of the resolutions passed, that the EC will be elected, was contrary to the bylaws. This is a substantial irregularity that cannot be remedied pursuant to s. 105. The bylaws need to be amended before such a resolution can be passed.
- [67] Because of the different views between the EC and the Respondents about the propriety of holding the SGM, and possibly also among other members of KDSS, the Court cannot be confident the SGM was attended by all who otherwise might have wanted to attend. In my view, this is a substantial irregularity that cannot be remedied.
- [68] The resolutions passed at the December 2023 SGM are declared null and void.

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- [69] KDSS seeks to extend the term of the EC nunc pro tunc to expire on the 40th day after delivery of the Court's ruling. The injunction has prevented the selection of a new EC. In the meantime, the Gurdwara needs to be maintained.
- [70] As the Court has determined the February 2023 RAC is valid, a mechanism is now in place for the selection of a new EC. As such, in my view, extending the term of the EC to expire on the 40th day after delivery of these reasons is appropriate, so there will be no gap in governance.

Conclusion

- [71] The Vancouver Petition is dismissed in its entirety. The February 2023 RAC is valid.
- [72] The two NW petitions are granted. The SGM held on December 17, 2023, is declared invalid, and the resolutions passed at the SGM are null and void.
- [73] The term of the EC, as set out in the order of November 7, 2022, is extended nunc pro tunc to expire on the 40th day after delivery of these reasons.
- [74] Counsel for KDSS and the Vancouver petitioners requested the Court to provide directions on how KDSS ought to conduct its affairs. With respect, the Court declines. The Court agrees with counsel for the Respondents, the requisitionists, that well-meaning directions may cause unintended consequences. However, the Court will respectfully make one comment. It is clear that there are many members devoted to KDSS. The difficulty with the current governance structure is patently obvious. The special resolution in January 2023 failed but the resolution in the December 2023 SGM passed. An option may be to keep the current selection process for the RAC and change the EC to an election process.
- [75] As KDSS has been successful, KDSS is entitled to costs of the three petitions at the ordinary scale.

"Chan J."

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