

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



GILL V KALGIDHAR DARBAR SAHIB SOCIETY, 2017 BCSC 1423

Supreme Court of British Columbia, Riley J, 14 August 2017

Irregular notice provision for the election of Committee to Sikh Society as failure to supply qualifications necessary.

Key words: Religious Association, Canada, Election Process, Bylaws, Insufficient Notice, Irregularity

1. This Canadian case concerns the internal operations of a Sikh Society operating in Abbotsford, British Columbia, under the provisions of the *Societies Act*, S.B.C. 2015, c. 18 (the Act). The petitioners challenged the validity of the procedure by which the currently constituted Religious Advisory Council of the respondent Society had been appointed. The Society's Bylaws provide that the five members of the Religious Advisory Council are to be appointed biannually through a prescribed selection process conducted by designated members of the Society's executive.
2. The petitioners, both founding members of the Society, contended that the process by which the current Religious Advisory Council members were appointed was irregular, defective, and unfair. They sought an order under sections 102 and 105 of the Act to set aside or nullify the appointment of the current Religious Advisory Council members, and to direct the Society to conduct a new selection process and furnish specific directions as to the way that process should be conducted to ensure that it was done in compliance with the Society's Bylaws.
3. The Bylaws describe the roles and responsibilities of both the Executive Committee and the Religious Advisory Council. The Executive Committee consists of 13 Society members, and the Religious Advisory Council consists of five Society members. These proceedings arose from the appointment of the most recent Religious Advisory Council, for the two-year term commencing on 1 January 2017. The process began with a notice issued on 27 November 2016, notifying all Society members that the selection of the new Religious Advisory Council would take place on 18 December 2016. The process concluded with an announcement confirming the appointment of the new Religious Advisory Council on or about 1 January 2017.
4. The notice was issued properly, but contained the sentence: 'Please find attached the qualification requirements to be a Religious Advisory Council Member'. The petitioners claimed that there was no attachment to the notice they received by post. Later when the petitioners attended the Society's office to obtain the 'application form' referred to in the notice, they were handed a document entitled 'Religious Advisory Council Screening Questionnaire'. It emerged that there was no such document as an 'application form' nor a 'prescribed nomination

from' as required by the Bylaws (section 6.4). Rather the Society had always used the Questionnaire for the purpose. Was the use of the Questionnaire sufficient compliance with the bylaws?

5. There were a final seven nominees for the five positions on the Religious Advisory Council, including the two petitioners. The chosen five were picked from a container by the President in line with procedure in section 6.5 of the Bylaws. The petitioners were not chosen, and were notified in writing that they did not meet the requirements for the position because they did not say on the Questionnaire that they performed an extra prayer and recited an extra path of scripture daily as required (presumably under section 5(8)(b) of the bylaws). Both petitioners took issue with this determination, on the basis that this question was not in fact asked.
6. The petitioners ultimately claimed a remedy under section 105 of the Act. Section 102 (an oppression remedy) was not argued. Section 105 is an irregularity provision. His Honour held that there were irregularities with the procedure. Whilst the notice itself was properly issued, the failure to supply a list of qualifications necessary, to supply a nomination form, and to require prospective candidates to complete that form, amounted to an omission, defect, error or irregularity in the affairs of the Society, creating a 'default in compliance with the selection process outlined in the Society's bylaws.'
7. As to the ambiguity or otherwise of the Questionnaire, the court said that (at [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"...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.

8. Thus, there were substantial irregularities in the process because of the failure to follow the Bylaw procedure as to nomination forms. Moreover, most of the original 35 candidates for the five positions on the Religious Advisory Council were unsuccessful based on an 'eligibility' assessment, when the candidates were never furnished with the eligibility criteria (the missing attachment). The court concluded (at [55]):

I conclude, following the two-step analytical framework suggested by the elections irregularity jurisprudence, that (a) there has been "an omission, defect, error or irregularity in the conduct of the activities or internal affairs of a society", which irregularity resulted in a default in compliance with the Society's bylaws, and (b) the irregularity was calculated to affect the result of the selection process. On that basis, I find that there is a basis for the Court to intervene to remedy the irregularity under s. 105 of the Societies Act...

9. The court declared that the selection process was null and void, and ordered a new selection process be undertaken for which directions were issued.

IMPLICATIONS



The claim that the Society had conducted its election in the past with out the forms specified in the by-laws did not cure the irregularity in the process.

VIEW THE CASE



This case may be viewed at: <http://www.courts.gov.bc.ca/jdb-txt/sc/17/14/2017BCSC1423.htm>

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