

# 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.



## ILCZASZYN V ASSOCIATION OF REGISTERED NURSES OF BRITISH COLUMBIA, 2017 BCSC 1260

**Supreme Court of British Columbia, Maisonville J, 20 July 2017**

This case concerned disclosure and production of documents belonging to the Association which could be used to inform the original petition about irregularities in an election process.

**Key words: Association, British Columbia, Nurses, Election, Irregularities, Disclosure**

1. The petitioners in this Canadian case, Elizabeth Ilczaszyn and Michelle Sordal, are registered nurses and members of Association of Registered Nurses of British Columbia (ARNBC). In their original petition, they claimed that irregularities in the election process dating back a number of years resulted in an improperly elected board of ARNBC. The petitioners also took issue with the measures ARNBC used to address such irregularities and asserted that the subsequent actions of the improperly elected board were invalid. However, that petition was not the subject of this case. This case concerned disclosure and production of documents belonging to the ARNBC which could be used to inform the original petition.
2. ARNBC was formed in 2010 and incorporated as a society in July of that year. Part of its mandate is to be an advocate for professional practice in health policy of the registered nurses of British Columbia. The stated purpose of the ARNBC is to establish a professional organization for registered nurses within the province and to be a provincial voice and forum for registered nurses that supports and advances the role of the nursing profession.
3. The petitioners sought the production of a large number of documents, including, inter alia, the ARNBC's register of members, voting records for board elections, nomination forms, documents relating to the conduct of elections, all directors' minutes and resolutions relating to a disputed extraordinary general meeting (EGM), video recordings relating to the EGM, minutes and records of meetings generally, management services agreements, and documentation containing or identifying legal advice sought and received by ARNBC up to and including 26 February 2015 relating to irregularities discovered by ARNBC and potential options to address such irregularities, or the calling of and the conduct of the EGM.
4. The petitioners argued that the documents were producible because they were relevant and there had already been a waiver of solicitor-client privilege in regard to some of the legal advice sought. The petitioners also sought a clause in the order that in the event that any of the documents which related to legal advice were no longer within ARNBC's power and control, that the list of such documents be provided to counsel for the petitioners. The

petitioners contended that without the documents sought, they would be required to prove their case without sufficient information.

5. The petitioners relied on section 85 of the Societies Act, RSBC 1996, c.443 (the Act, now replaced by the Societies Act, RSBC 2015, c.18, effective since 28 November 2016), and Supreme Court Civil Rules 1-3(1), 2-1(2)(b), 7-1(1), 16-1(18), and 22-1(4)(c). After consideration, the court held that only documents directly relevant should be produced. The petitioners had asked for documents beyond the relevance of their case (at [112]):

...this proceeding is unusual in that the petitioners seeking rectification under s. 85 of the Act are members of ARNBC not ARNBC itself. The request of the petitioners also covers vast swaths of disclosure, which, in my view, goes beyond what is contemplated for a petition proceeding under s. 85. However, I am persuaded to...[order] the production of some of the requested documents, only where those documents are directly relevant to the issues to be decided on the main petition proceeding, that is, whether the conditions for the granting of a remedy under s. 85 of the Act have been met and if so, whether that remedy should be granted.

6. Section 85 of the Act is concerned with the rectification of past errors, omissions or irregularities in a society's conduct that breach the Act, the constitution or the bylaws of the society, or render a general meeting ineffective. These documents ordered to be produced directly related to alleged irregularities or non-compliance with the bylaws of the society and were therefore documents which were directly relevant to the original petition proceeding.

7. On the additional question of waiver of legal privilege, the court concluded that it did not actually arise (at [127]):

I do not find that ARNBC has waived solicitor-client privilege here and, instead, find that ARNBC has not put its reliance on legal advice in issue such that there has been waiver, either implied or express, of legal privilege over the documents in question.

8. Petition proceedings under the Supreme Court Rules in British Columbia are meant to be summary proceedings to obtain declaratory relief. Extensive discovery is not usually involved. Thus the real question here was: should the court exercise its discretion to order extensive document production when the analysis was confined to section 85 considerations? Additionally, the Court had to consider whether there were specific documents sought, or whether the documents were of such a general nature that they are beyond that contemplated in the original petition proceedings. Much of what was requested was irrelevant or only 'tangentially relevant' so did not need to be produced (at [148]):

I find that that this application is ill-conceived in that relevance is but one aspect of the issue. Section 85 of the Act was not intended to be used as an attack on a society but is rather a remedial section for a society to have the court review and remediate any irregularities or errors related to breaches of the Act, a default in compliance with the constitution, bylaws, or proceedings at a general meeting. That being so, tangential relevance coupled with the nature of these proceedings being by way of petition do not allow for broad document discovery.

9. The documents which were relevant were ordered to be produced.

## IMPLICATIONS



The court would only allow discovery of documents that were directly relevant to the issues between the parties.

## VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc1260/2017bcsc1260.html>

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