

# 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.



## BAINS V. KHALSA DIWAN SOCIETY OF ABBOTSFORD, 2021 BCCA 159

**Court of Appeal for British Columbia, Dickson J, DeWitt-Van Oosten J, Voith J, 19 April 2021**

An appeal from a decision concerning expulsion from membership of a religious society and ban on entering the premises

**Key words: Expulsion, Canada, Societies Act, Khalsa, AGM, Natural Justice, Bias, Ban from Premises**

1. This was an appeal from the case of [Bains v. Khalsa Diwan Society of Abbotsford](#), 2020 BCSC 181. The judgement was delivered by Voith J, with Dixon J and DeWitt-Van Oosten concurring.
2. A Khalsa is a Sikh community instituted by Guru Gobind Singh on 30 March 1699. This particular Khalsa (the Society) has over 8400 voting members with two gurdwaras (places of worship and assembly) in Abbotsford, British Columbia. It is a society under the *Societies Act*, S.B.C. 2015, c. 18.
3. After an unruly AGM was cancelled in 2018 the Society executive suspended a member, expelled 11 other members and subsequently banned 6 of the expelled from the society's premises. Some of the affected members (the respondents) sought to overturn these decisions by application to the Court.
4. The chambers judge found that the Society had failed to provide the respondents with adequate notice of the particulars of the allegations and that there was a reasonable apprehension of bias. The judge allowed the respondents' petition under the *Societies Act* and ordered that their expulsions, suspensions, and/or bans be set aside and that they be reinstated as members.
5. The Society appealed this decision on the basis that the chambers judge erred in principle by failing to address necessary considerations in the procedural fairness analysis of the case.
6. After discussing broadly the principle of natural justice broadly in the law, the Appeal Court noted that (at [41]):

These various discrete principles, all of which arise in the context of voluntary associations or societies, have a unifying theme. Broadly speaking, courts are often reluctant to interfere in or oversee the activities of such organizations. Though the requirements of natural justice clearly extend to such voluntary associations and societies, the actual content of those various requirements is often more attenuated, and in some instances markedly more attenuated, than they are in the courts or with different statutory tribunals.

7. In relation to notice and opportunity to be heard, the Appeal Court found the issue concerned what level of detail, explanation, or particularization of the allegations underlying the potential expulsion of the respondents was required in the notices that they received, and in the circumstances of this case (at [52]).
8. The Appeal Court found that the chambers judge’s conclusions imposed an unrealistic standard for adequacy of notice in light of the context of the case and the reluctance of the courts to apply a “too exacting standard to the activities of many voluntary associations or societies, [so that] notices of possible expulsion in that context may require relatively little detail or explanation” (at [54]). The hearings of the Society were not in the nature of civil or criminal proceedings, proceedings before a statutory body, or regulatory proceedings. Nor did they engage interests of property or the livelihood of the respondents.
9. In relation to the finding that there was bias present in the decision to expel, the Appeal Court found that the chambers judge erred in principle by failing to engage in a context-informed assessment of the content of the procedural entitlement at issue before determining whether that entitlement had been breached (at [84]). Some of the context included that the bylaws provided for the executive to oversee the proceedings, but did not provide for an alternative in the event of a conflict. The Act did not provide for this either, and the bylaws gave the executive shared overlapping adjudicative and prosecutorial roles. This tempered a strict application of the bias rule.
10. The appeal against banning of persons from the Society’s premises was upheld by the Appeal Court as those who were banned were given no notice of any intended hearing and no ability to participate in that decision. Further, there was no evidence in the record of how and when the decision was made by the executive before they posted the notice advising members that they were banned.
11. The Appeal Court found that the expulsions were valid. It confirmed the decision of the lower court that the banning was invalid.

## IMPLICATIONS



This appeal decision is notable for its discussion and application of the law in respect of the standard of procedural fairness required in voluntary associations. In Canada, the requirements of natural justice will depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, and the subject matter which is being dealt with. There is a spectrum or continuum to the various requirements of procedural fairness that applies less strictly to voluntary associations and societies because of their generally less formal and less well-resourced nature.

## VIEW THE CASE



This case may be viewed at <https://canlii.ca/t/jfdm1>

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