

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20100105
Docket: S098885
Registry: Vancouver

Between:

B'Nai Brith Canada and Jack Chivo

Petitioners

And

**Leah Deslauriers, Izzy Fraeme, Samuel D. Hyman,
Stan Korsch, and Guy Seeklus**

Respondents

Before: The Honourable Mr. Justice Sigurdson

Oral Reasons for Judgment

Counsel for the Petitioners:

Howard A. Mickelson, Q.C.
Janet L. Gartner

Counsel for the Respondents, Leah Deslauriers,
Stan Korsch, and Guy Seeklus:

Ian Aikenhead, Q.C.

Place and Date of Hearing:

Vancouver, B.C.
December 10-11, 2009

Place and Date of Judgment:

Vancouver, B.C.
January 5, 2010

[1] THE COURT:

INTRODUCTION

[2] This is a petition brought by the petitioners, B'Nai Brith Canada ("BBC") and Jack Chivo in connection with the affairs of Lions' Gate B'Nai Brith Building Society (the "Society").

[3] The underlying dispute relates to the issue of who are properly members of the Society.

[4] The Society operates two buildings providing affordable housing and care for senior citizens, located at 1260 Howe Street ("B'Nai Brith Manor") and 1223 Haro Street ("Haro Park Manor").

[5] During the past year, while the dispute arose concerning membership in the Society, there was for a time competing meetings and possibly competing boards between the two factions (as I will call them) asserting different interpretations of what was required for membership in the Society.

[6] The long-standing members purported to conduct an annual general meeting ("AGM") on December 3, 2009; the competing faction's AGM set for December 1, 2009 was adjourned.

[7] On December 3, 2009, Mr. Justice Pearlman adjourned the petitioners' application for an injunction without prejudice to the petitioners' rights to apply to have any proceeding or resolution or bylaw accepted at the December 3, 2009 AGM set aside.

[8] The petitioners submit that the December 3, 2009 AGM was irregular because: the board purporting to call it was itself irregular; it was not called as required by the required number of members; and it conducted business such as reducing the quorum and admitting and changing the rules for admitting new members without proper notice.

[9] The petitioners now apply to have the AGM and all business conducted under it nullified, for the establishment of a caretaker board made up of three members of each faction and a mutually agreed upon seventh neutral member, and for directions for future proceedings in order to resolve the membership question.

[10] The respondents, essentially the long-standing members of the Society, dispute that in the particular circumstances that there have been significant irregularities such that the court should intervene. They say further that: the irregularities of the petitioners in their purported conduct of the affairs of the Society have been the same or far worse; the underlying motivation is a "take-over" of the Society by B'nai Brith Canada; and in the circumstance, the irregularities underlying the AGM should be seen as insufficient to attract the court's jurisdiction to make a remedial order, and the petition should be dismissed.

[11] The respondents' counsel, Mr. Aikenhead, says that I should be mindful of the cost of a protracted dispute. He suggests that the membership question is straightforward, and the petitioners' position on it is entirely without merit such that even if an irregularity is found, I should dismiss the petition.

[12] The petitioners no longer assert that the meetings that they purported to conduct or scheduled are regular. They say that what they term "the resolutions" at the irregular annual general meeting of December 3, 2009 should be set aside, and then the real issue, the question of membership, should be determined by the court if the parties are unable to agree.

[13] I will now set out the basic facts and discuss the alleged irregularities in connection with the December 3, 2009 AGM. Since the dispute and allegations underlying the recent conflict appear to relate to membership, as well as the calling of meetings and the appointment of directors, I will describe the relevant provisions of the bylaws as I relate the history and most importantly, the recent events concerning the Society.

FACTS

[14] The Society was formed in 1974. It has an interest in land with a long-term lease or leases and, through a management company, manages the housing facilities for the two seniors' homes.

[15] The object of the Society is said to be to operate as a charitable institution for the purpose of owning and/or managing one or more housing projects for senior citizens with such related services and other facilities as may be designated by CMHC and/or the Province of British Columbia. The constitution provides that upon the winding up or dissolution of the Society, any funds remaining shall be transferred to such organization or organizations affiliated with B'Nai Brith as may be decided by the members of the Society at the time.

[16] The bylaws provide that the AGM of the Society shall be in December each year upon not less than seven days notice given by the Directors, provided that twenty members of the Society may, in default of notice being given by the Directors by similar notice, summon the AGM. Twenty members constitute a quorum at any AGM or special meeting, and there are no proxies. The Board of Directors is said to consist of any honorary member who has signed a written consent and a minimum of seven members elected annually or each two years by Society members at the AGM.

[17] The bylaws provide that they may be altered by an extraordinary resolution by the members of the Society, passed by a three-quarters majority vote at a general meeting at which notice specifying the intention to propose a resolution amending the bylaws as an extraordinary resolution has been given.

[18] The bylaws of the Society provide, with respect to the terms of admission of members that

Any ordinary or life member (hereinafter called "member") in good standing of Lions' Gate Lodge #1716 of B'Nai Brith shall be eligible to be a member of the Society.

[19] The bylaws also provide that the President and the Executive Vice-President of the Supreme Lodge of B'Nai Brith, and the National Chairman of the Senior Citizens Housing Committee of B'Nai Brith, as well as those members of the B'Nai Brith Senior Citizens' Housing Committee from time to time residing in B'Nai Brith District Grand Lodge #4, shall be honorary members of the Society, and upon ceasing to hold the above offices shall cease to be members of the Society.

[20] There is evidence that Lodge #1716 of B'Nai Brith became less active in the last decade, and they had merged with another lodge. It is in issue between the parties whether any organization now established by B'Nai Brith Canada called Lodge #1716 can be the same organization as contemplated by the bylaws. I make only general observations about the membership dispute as it remains an issue. Nothing in these reasons should be taken as a determination of the membership dispute that presently exists. However, it appears that the most recent list of members of the Lodge was as of 2003 and the list of members of the Society was only current to 1999-2000.

[21] B'Nai Brith Canada is a federally incorporated not-for-profit organization which oversees lodges and building societies throughout Canada, and is a member of B'Nai Brith International ("BBI"). The chapter at Lodge #1716 was originally founded in 1910 and, in 1985, Lodge #1716 appears to have merged with another B'Nai Brith chapter, Lodge #668.

[22] According to the National Director of Legal Affairs of the BBC, Lodge #1716 was under the governance of the international organization, B'Nai Brith International ("BBI"). In 2008, BBI determined to redistribute the lodge affiliation and BBC became responsible for all lodges in British Columbia, including the Society.

[23] The perspective of BBC was that Lodge #1716 had, for all intents and purposes, ceased to operate, and there had been no evidence of meetings or current membership or dues collected from Lodge #1716 or the Society for many years.

[24] The Society has been run by long-term members who had in the past been members of Lodge #1716 before it merged with another chapter and ceased operation approximately a decade ago.

[25] In February 2009, Mr. Seeklus, a long-term member of the Society, asked Mr. David Herman, then the President of the Society, to call an annual general meeting, as they had not had one since 2003. However, Mr. Seeklus reported that Mr. Herman saw no need for an AGM as "everything was fine". Mr. Seeklus noted that there had been no meetings of Lodge #1716 for some years, no new applications for membership, and that the membership of the Society was based on the members who have been members in approximately 2000.

[26] Mr. Seeklus deposed that there was a meeting in February 2009 that Mr. Herman subsequently categorized as an AGM, although the membership was not notified. The Society's annual report was submitted showing six directors: Leah Deslauriers, Izzy Fraeme, Dave Herman, Samuel Hyman, Stan Korsch, and Guy Seeklus.

[27] Meanwhile, B'Nai Brith Canada appointed Mr. Salomon Rayek to be the regional chair of BBC to reinvigorate the lodge and building society, and to sign up members for both. For whatever reason, the approach was not well received by the long-term members of the Society.

[28] According to Mr. Seeklus, Mr. Herman refused to meet with anyone from B'Nai Brith Canada, although apparently Mr. Herman subsequently changed his view and agreed that the assets of the Society should be turned over to B'Nai Brith Canada and he became a governor of B'Nai Brith Canada.

[29] According to Mr. Seeklus, there was a meeting of the board of directors of the Society on August 20, 2009 at the Jewish Community Centre. The minutes of the August 20 meeting indicate that Mr. Herman, Ms. Deslauriers, Mr. Seeklus, Mr. Fraeme and Mr. Korsch were in attendance. The minutes also indicate that there was general agreement that the Society had not had a properly constituted

AGM for five years, and it was moved to hold a special general meeting and election of directors on October 5, 2009.

[30] In October, there were competing meetings, purportedly of members of the Society.

[31] There was what was styled as a special meeting of the Society on October 5, 2009. It appears that there were twenty members in attendance. It introduced the directors, and the minutes attached to the affidavit of Mr. Seeklus indicate that the directors were Mr. Herman who was President, Mr. Seeklus who was Vice-President, Ms. Deslaurier who was the Secretary-Treasurer, and Messrs. Hyman, Korsch and Fraeme. The minutes refer to the fact that the constitution states that there should be a minimum of seven directors, and that the Society needs more directors.

[32] According to Mr. Seeklus, and as appears from the minutes, there was also a board meeting on October 5, where the directors voted to add new directors. Those were Messrs. Friedlander, Moskovich, Rosenthal, and Haeber. The minutes indicate a "brief discussion of a possible date for the December AGM" but noted that "no date decided on at this time".

[33] The other faction, represented by Mr. Mickelson's clients, purported to hold an annual general meeting on October 5 and purported to elect directors and in fact filed a notice of directors as part of its society annual report, but Mr. Mickelson said that although there were 23 members allegedly present, he does not assert that his faction's board was properly elected.

[34] Mr. Mickelson suggests that the dispute in the Society should be resolved civilly. Mr. Aikenhead suggests that Mr. Mickelson is simply trying to put a good face on an aggressive attempt by a well funded organization to take over the Society.

[35] Nevertheless, there then was a board meeting on October 14, 2009. This purported to be a board meeting of the board elected by the long-term members of the Society. At a meeting of the board on October 14, 2009, in attendance were

Messrs. Seeklus, Korsch, Fraeme, Friedlander, Moskovich, Haeber and Ms. Deslaurier, several of whom were directors added by the directors in the earlier October board meeting. It was agreed that the AGM would be held the first week of December. The minutes indicate that there was discussion about changing some of the bylaws of the constitution around membership.

[36] A notice was prepared of an AGM for Thursday, December 3, 2009, which provided in part that:

WHEREAS:

- a) Membership in the Society is currently defined in Clause 1 a) of its By-Laws as: "Any ordinary or life member (hereinafter called "member") in good standing of Lions' Gate Lodge #1716 of B'nai Brith shall be eligible to be a member of the Society."
- b) The surviving membership of the Lodge consists of those listed from the 1999/2000 role;
- c) The Lodge is no longer active so new members are not being added which is the life-blood of any organization;
- d) The Society wishes to ensure its vitality by amending its By-Laws as set out in the following Special Resolution:

Resolved as a Special Resolution that:

Clause 1 a) of the By-Laws be deleted and replaced as follows: "Membership in the Society shall be restricted to those persons whose names are recorded as members as of the date that this Special Resolution to adopt this By-Law became effective and thereafter to those who are admitted as a member of the Society by an admittance resolutions and who have consented in writing to their admittance pursuant to the provisions and conditions specified in the admittance resolution."

[37] The competing faction also gave notice of a board meeting on Tuesday, December 1, but upon advice declined to proceed with that meeting. Therefore, for numerous reasons, the faction represented by Mr. Mickelson does not assert that their meetings of October and their proposed meeting for December are of any legal force or effect.

[38] Prior to the December 3, 2009 AGM, both sides retained counsel.

[39] After a flurry of correspondence between counsel which suggested that the real issue was who were the members, counsel for the long-term members as I will refer to them, in a letter dated December 2, 2009, after reciting the history said this:

...[T]he only members of [the Society] for some years have been members of that society who are accepted into membership in the society prior to the death of Lions' Gate lodge #668, as no further eligible persons can be created. That Lodge is dead.

We understand that in the past few months your client has attempted to create an organization entitled "Lions Gate Lodge #1716 of B'Nai B'rith Canada", which of course may have a similar name or may even have the identical name to the one referred to in the Bylaws of [the Society], but is not and cannot be the same organization.

[40] Counsel for the long-term members went on to say:

There is an obvious solution to all of this which was grasped by the long standing members of the society. That is to follow the Bylaws and to hold [an] annual meeting on December 3, 2009. The members met on October 5, 2009 at the [Jewish Community Center] and authorized that AGM meeting to be held and that meeting was called, that meeting has been announced, notice of that meeting has been served on all the members of the society of which the society is aware, and that meeting needs to proceed. ...

[41] The underlying dispute as I understand it is whether there can be new members of the Society or whether only the existing members from the lodge who are still members can be the only members until the bylaws are amended. The position taken by counsel for the historical or long-term members was "our position is that the historical members and those members accepted by the historical members are the actual members of the society and not those put forward by the petitioners".

[42] The meeting of December 3, 2009 proceeded by order of Pearman J. without prejudice to the right of the petitioners to challenge it.

[43] The minutes of the December 3, 2009 meeting indicate there was a motion as a special resolution that read:

Clause 1 a) of the By-Laws be deleted and replaced as follows: "Membership in the Society shall be restricted to those persons whose names are recorded as members as of the date that this Special Resolution to adopt this By-Law became effective and thereafter to those who are admitted as a member of

the Society by an admittance [resolution] pursuant to the provisions and conditions specified in the admittance resolution."

[44] The Society then moved to admit members, including Ms. Leah Deslauriers, who apparently had previously served as a director. It was also moved to elect ten directors, and passed a resolution to reduce the quorum to ten members.

DISCUSSION

[45] This petition was launched by B'Nai Brith Canada and by Jack Chivo, a person claiming to be entitled to membership in the Society as a member of the new lodge. I am satisfied both petitioners have sufficient interest to bring this proceeding under the *Society Act*, R.S.B.C. 1996, c. 433.

[46] It is apparent to me that leading up to the October and December meetings, the key issue was membership and who would be entitled as members to vote at the annual general meeting of the Society. That is the underlying dispute, and, of course, a crucial issue in the affairs of a society.

[47] As noted by Smart J. in *Samra v. Guru Nanak Gurdwara Society*, 2007 BCSC 882 in discussing a dispute over membership enrolment, at para. 2:

The requirements for membership in a society and the process by which determinations are made as to whether an applicant has met those requirements are matters of great importance to a society. Further, as it is only members who may vote at general meetings and at the election of a society's executive, the integrity of the membership enrolment process is closely connected to the integrity of the election itself. If membership enrolment is not conducted fairly, then it is unlikely that the election will be fair.

[48] The central question appears to be whether the new members who signed up for the new Lodge #1716, and who expressed their interest to be a member of the Society by their attendance at a purported October 5, 2009 annual general meeting, are or become members of the Society for the purposes of the annual general meeting. The petitioners say that they are, however that position is resisted by the respondents (the long-term members) and I have set out their position above.

[49] I think that the approach the Court should take to this application should be to determine whether the meeting of December 3 was irregular or not and if it was irregular whether the Court should make an order under the *Society Act*. If the respondents are correct that the Court should not intervene, given all the circumstances, that would effectively resolve the membership issue given the amendments to the bylaws that were passed at the December 3 meeting.

[50] The issue is whether there has been an irregularity in the affairs of the Society (an omission, defect, error or irregularity by which there is default in compliance with the constitution or bylaws of the Society) such that the Court should make an order.

[51] Section 85 of the *Society Act* states:

85(1) Despite anything in this Act, if an omission, defect, error or irregularity occurs in the conduct of the affairs of a society by which

- (a) a breach of this Act occurs,
- (b) there is default in compliance with the constitution or bylaws of the society, or
- (c) proceedings at, or in connection with, a general meeting, a meeting of the directors of the society or an assembly purporting to be such a meeting are rendered ineffective,

the court may

- (d) either of its own motion or on the application of an interested person, make an order
 - (i) to rectify or cause to be rectified or to negate or modify or cause to be modified the consequences in law of the omission, defect, error or irregularity, or
 - (ii) to validate an act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the omission, defect, error or irregularity, and
- (e) give the ancillary or consequential directions it considers necessary.

(2) The court must, before making an order, consider the effect of it on the society and its directors, officers, members and creditors.

(3) An order made under subsection (1) does not prejudice the rights of a third party who has acquired those rights for valuable consideration without notice of the omission, defect, error or irregularity cured by the order.

[52] It is clear that if there is an irregularity, I may make orders to rectify, modify or negate the consequences of the irregularity or, if appropriate, I may rule that the meeting or proceedings conducted are validated.

[53] Justice Hall in *Garcha v. Khalsa Diwan Society - New Westminster*, 2006 BCCA 140, referred with approval to these comments of Low J. (as he then was) in *Sargit Singh Gill v. Khalsa Diwan Society* (3 December 1999), Vancouver Registry, A993150 (B.C.S.C.):

The court must find irregularities or errors before it has jurisdiction under s. 85. In my opinion, there must be some connection between any irregularity proven and the relief sought. The authority under the section is to correct the problem and make necessary ancillary or consequential directions. The scope of the section is not very broad and the court's discretion is not unfettered.

The court is always reluctant to interfere in the internal affairs of any corporate body. The respondent society should be left to govern itself in a democratic fashion and make its own decisions, including what may be seen by some of its members to be mistakes. The court should not presume that those in executive charge of the society will conduct themselves contrary to the interests of the society or that they will breach the rules of natural justice to the extent those rules apply to the business at hand.

[54] The complaints made by the petitioners with respect to the calling of the December 3 meeting may in a sense be described as technical complaints.

[55] Ordinarily, the court would be reluctant to set aside the resolutions passed at an annual general meeting of a society where membership is closely held and irregularities in the affairs of the Society arise because the Society had for many years not precisely followed the provisions of the bylaws concerning meetings, electing directors or giving notice. However, in circumstances where a legitimate dispute over the interpretation of the Society's bylaws as to who was properly a member has arisen, I think that the context may make it more appropriate for the court to intervene, particularly where the alleged irregular meeting effectively resolves issues that were legitimately in dispute between the factions.

[56] What are the alleged irregularities?

[57] The petitioners say that the December 3 meeting was irregularly called. They rely on the fact that it was not called by the directors as contemplated by the bylaws, or called as required by a quorum of members.

[58] The provision provides precisely:

Annual general meetings of the Society shall be held in the month of December in each year upon not less than seven (7) days notice in writing given by the Directors of the Society; provided that any twenty (20) members of the Society may by similar notice summon the annual general meeting in default of notice being given by the Directors. Special meetings may be held at any time upon the same notice and shall be called in the same manner as annual general meetings.

[59] Have the petitioners demonstrated an irregularity as contemplated by the statute?

[60] It appears on the evidence that by at least August it was clear that there was a strong dispute as to who was, by the bylaws, entitled to be a member in the Society.

[61] My review of the evidence leads me to conclude that the AGM was set by the board on October 14. The board that did that was the board that was in place in February 2009 and as supplemented when that board purported to add additional directors at a meeting of the board on October 5, 2009. As I understand the petitioner's argument, the AGM may be called on notice by the Directors but I think that the petitioners are correct that the board that was purportedly constituted in February 2009 was irregular as there had not been a properly constituted annual general meeting to elect a board for at least five years (and in February 2009 it was simply a board appointing a board).

[62] , What of the purported addition of four directors according to the Board minutes of October 5, 2009? Those minutes of what is said to be a Board meeting of October 5, 2009 indicate that the directors discussed adding directors for the Society, and added Messrs. Haeber, Moscovich, Rosenthal and Friedlander. I did not understand the respondents to argue that these were proper fillings of casual vacancies in the board that may be filled in any year by the board from members of

the Society in good standing only until the AGM next ensuing. In any event, I do not think that the addition of four board members by the board in October was regular as the provision in the bylaws contemplates casual vacancies being filled by a validly elected board to the next election, not wholesale additions to the board by what is clearly not a regularly elected board given the absence of an AGM for over five years.

[63] As such, as of October 14, 2009, the board had been irregularly elected and to the extent that it purported to call an annual general meeting, that can be considered irregular.

[64] Therefore, I conclude that, to the extent that there was seven days written notice of the December 3, 2009 AGM, it was irregular in that the Board as constituted in February and through to December was, for the reasons I have stated, irregular.

[65] However, the bylaws allow the AGM to be called by the members, who can do so in default of notice being given by the Directors. The bylaws provide "provided that any twenty (20) members of the Society may by similar notice summon the annual general meeting in default of notice being given by the Directors".

[66] Was the AGM called by twenty members in October as contemplated by the bylaws? The respondents argue that there was a meeting on October 5, 2009 and they discussed an AGM, and that in effect the date was subsequently set by the board, notice went out, and that the petitioners did not attend.

[67] The minutes of the special meeting on October 5 do not show the calling of an annual general meeting, and show that it was adjourned to February 28, 2010, although it was suggested that part of the minutes was in error. There was, as I have noted, a directors' meeting also on October 5, but although there was discussion of a possible date for the meeting, the AGM was not set at that meeting. I do not think that there was a calling of the AGM by the members at the October 5 meeting.

[68] It appears that the board met on October 14, 2009 and agreed that the AGM would be held in the first week of December.

[69] Notice was prepared and sent that the AGM would be on December 3, and giving notice of a special resolution that membership thereafter would be those who were at the time of the resolution and those admitted by an admittance resolution and who have consented in writing to their admittance pursuant to the provisions and conditions specified in the admittance resolution.

[70] It appears to me that the petitioners' argument is correct that the calling of the meeting was irregular in that it was not called by a properly constituted board nor was it called by twenty members as contemplated by the bylaws.

[71] Although the respondents argue that there may have been irregularities with the February meeting and the appointment of the board, they say that in substance there was a desire of the more than twenty members of the Society to have a meeting in December that was subsequently set, and notice was given. They say that the petitioners are only arguing about technical defaults because they failed to attend the AGM.

[72] The petitioners reply that the meeting was not called as required by the bylaws, either by directors or members, and in any event it was clear that, given the position taken by counsel before the meeting, that attending the meeting would be futile in that the faction represented by Mr. Mickelson claiming to be members would not be entitled to vote on the resolution changing the rules for membership.

[73] The respondents also say that if there have been irregularities that the petitioners' faction is responsible for worse irregularities. They point to the irregularly called meetings in October and December by the other faction. There may be merit to that point but the petitioners have chosen not to rely on their purported election of a board at meetings that they purported to call in October and December.

[74] As I said, I have concluded that the meeting of December 3, 2009 was not called as required by the bylaws. I have concluded that the petitioners have established that there was an irregularity as contemplated by s. 85 of the *Society Act*.

[75] I have also taken into account that, given the lack of compliance with the bylaws for some time, it may be argued that the petitioners are asserting technical violations of the bylaws. However, the AGM and the resolutions changing the rules for membership took place in a particular context – that of a dispute between factions over who were members or eligible for membership in the Society. Given that the meeting of December 3 purported to resolve the serious and legitimate issue of who is a member of the society under the bylaws, I consider the irregularity to be significant, and that the appropriate order is that the meeting of December 3, 2009 be set aside, including all business conducted at that meeting. I think it is a reasonable inference to conclude that from the position taken by the respondent's counsel before the meeting, if the faction represented by Mr. Mickelson had attended they likely would have not been allowed to vote.

[76] If I set aside the meeting and the resolutions that were passed, that leaves for determination by the Court the issue of membership in the Society before a proper meeting can be held and a proper board elected. This is a situation where there essentially are two groups who claim to be members under the bylaws of the Society: those who belonged to the old lodge and became members and those who have joined the new lodge, in addition to the honorary members.

[77] The dispute about membership is a *bona fide* one. Nothing in these reasons amounts to a comment on the merits one way or the other. However, that issue ought to have been resolved essentially without one faction holding a meeting and resolving the issue. I see no prejudice in this order, other than cost, to the so called long-term members which I will discuss in a moment. If their position on membership is correct, they will ultimately prevail. I do not think that there will be unreasonable cost in connection with the resolution of this issue. If the parties meet

and cannot sort the question out and agree on a consent court order, I doubt that the court application will involve more than a further day.

[78] To simply dismiss the petition and validate what I have found to be an irregular meeting would be to unfairly resolve an issue that should be decided among the members and interested parties or, if there is no agreement, by the Court.

[79] I will be seized of this case. I urge the parties to meet and resolve this issue by agreement. I expect that possibly with the use of a mediator the sides can resolve this issue internally. Therefore, the order I make is that the meeting of December 3, 2009 is set aside and the parties may bring this matter back to me if they are unable to resolve the question of membership.

[80] It was argued by the parties whether the Society should be a party to the proceedings. I do not consider the failure to join the Society up to this point to be fatal to the petition. Clearly the Society has notice of these proceedings and my decision. I would prefer to hear submissions in principle why I should make an order one way or the other, and give liberty to either party to apply if they take the position that I ought to join the Society for further proceedings should they be necessary.

[81] In the meantime, I think that a caretaker board should be appointed along the lines proposed by Mr. Mickelson. The sides will each have three members on the board, and will agree on a seventh member. They may apply for directions if they cannot agree.

[82] As I understand it, Mr. Aikenhead has been retained by the Society. It is my intention in appointing a caretaker board that the reasonable legal fees of the respondents in dealing with this petition would continue to be paid by the Society until the conclusion of this litigation in the Supreme Court. That is part of my consideration in making the order that I have in imposing a caretaker board on the Society, pending the resolution of this dispute by the parties or the Court. I raise that issue because I do not want my order for a caretaker board to affect the ability of the

respondents to have their legal costs of responding to the petition covered by the Society.

"J.S. Sigurdson J."
The Honourable Mr. Justice J.S. Sigurdson