

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Samra v. Guru Nanak Gurdwara Society
et al.,***
2007 BCSC 882

Date: 20070501
Docket: S067263
Registry: Vancouver

Between:

Sadhu Singh Samra

Plaintiff

And:

**Guru Nanak Gurdwara Society, Sukhchain Singh Sidhu
and Darshan Singh Sandhu**

Defendants

Before: The Honourable Mr. Justice Smart

Oral Reasons for Judgment

In Chambers
May 1, 2007

Counsel for the Plaintiff

H. A. Mickelson
J. D. Tweedale

Counsel for the Defendant Guru Nanak
Gurdwara Society

D.E. Gruber
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Sidhu and Darshan Singh Sandhu

L.I. Barron

Date and Place of Hearing:

March 26-30 and April 10-11, 2007
Vancouver, B.C.

I. INTRODUCTION

[1] This hearing concerns the membership enrolment process that occurred in 2006 at the defendant Guru Nanak Gurdwara Society. At issue is

whether certain applications for membership in the Society should have been accepted, and others rejected.

[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.

[3] This Court's jurisdiction to intervene in the affairs of a society, including membership enrolments or elections, is limited. It is circumscribed by s.85 of the **Society Act**, R.S.B.C. 1996, c.433. In accordance with s. 85, this hearing requires me to determine whether there have been irregularities in the conduct of the affairs of the defendant Society by which there has been a default in compliance with the constitution or bylaws; and, if so, what, if any, order I should make, after considering the effect of such an order on the Society and others.

[4] This hearing was originally scheduled to take three days. It took more than six. In addition to numerous affidavits from members of the Society, I was provided with hundreds of questions and answers from the examinations for discovery of Balwant Singh Gill, the Society's president, and Sadhu Singh Samra, the Society's vice-president. I was also provided with minutes of meetings of the executive committee, correspondence between counsel, the Society's bylaws and numerous other documents, including hundreds of pages of original membership applications as well as receipt books recording monies received for membership fees.

I. BACKGROUND

[5] The Gurdwara and the defendant Society that operates it are located on 120th Street in Surrey, British Columbia. The constitution of the Society states that its "operations are to be primarily carried out in Surrey, Delta and White Rock". Section 2(d) of the bylaws requires members to be residents of one of those three communities.

[6] The bylaws of the Society govern its operation. The present bylaws have been in place since October 1997. They were amended by a Special Resolution on December 29, 2002. Chapter 2 of the bylaws states the requirements for membership in the Society. Chapter 3 provides for an executive to manage the Society. The executive consists of 19 members which includes a president, senior vice-president and a number of other officers. Pursuant to para. 25 of the bylaws, the "executive may delegate any of its powers and authority to committees or subcommittees ...".

[7] The Special Resolution of December 29, 2002, decided that membership in the Society would "terminate on June 30, 2006, unless renewed after March 1, 2006, in accordance with the bylaws".

[8] In recent years, the election of the executive has been by acclamation. However, beginning in approximately December 2005 or early 2006, two factions appear to have emerged - one which identified with the current president, Balwant Singh Gill, and the other which identified with the current senior vice-president, the plaintiff, Sadhu Singh Samra. Mr. Gill had the support of the majority of the executive. Mr. Samra had the support of the

minority. The minority represents 6 of the 19 members on the executive committee. I will describe these two factions, as counsel have, as the "majority group" and the "minority group". In doing so I recognize that there is some disagreement in the evidence as to whether there is such a division.

[9] As memberships in the Society were scheduled to expire at the end of June 2006, the executive committee began discussing in early 2006 a process for enrolling members. The process was of particular importance to the Society given that the election of the executive was going to be contested and the group which could attract more supporters to be members would enhance its chances of being successful at the election, scheduled for later in the year.

April Resolution

[10] On April 2, 2006, the executive committee passed a motion establishing a process for applying for membership in the Society. The process applied to both present members and new members. This motion, described as the "April Resolution", imposed certain requirements that had to be met by applicants for membership. One of those requirements was the payment of a membership fee of \$25. The payment of a membership fee was required by para. 2(g) of the bylaws.

[11] The Resolution also stated that membership forms could only be received for acceptance at the Gurdwara office and only by the president, Mr. Gill, or the recording secretary, Mr. Brar. Both Mr. Gill and Mr. Brar are members of the majority group. This process was problematic as it failed to provide for participation or oversight by the minority group, so as to ensure that the enrolment was conducted fairly and could be seen by both sides to be conducted fairly. In addition, this two-person membership committee was contrary to the bylaws, which required a minimum of three persons on any such committee.

[12] There is disagreement as to whether the minority group supported the April Resolution. However, it is clear that at least by May, the minority group wanted to have a representative on the membership committee and to participate in the membership enrolment process (examination for discovery of Mr. Gill, question 152, and the executive committee minutes for May 11, 2006).

[13] At the June 4 meeting of the executive committee, it was determined that Sunday, September 10, would be the deadline for the registration of votes; in other words, it would be the last day to enrol new members. The minutes of the June meeting also reflect that Mr. Gill reiterated that only he and Mr. Brar were entitled to receive membership application forms. Only they, therefore, could determine which applications for membership would be accepted and which would be rejected.

[14] In July, a third member was added to the membership committee in order to comply with the three person bylaw requirement. The third person was Salinder Singh Basi. Mr. Basi is not a member of the minority group.

Events Leading Up To August 9

[15] The minority group was dissatisfied with the membership enrolment process and they were suspicious that the bylaw requirements for membership were not being consistently followed. On Sunday, July 9, they had a number of their supporters attend the Gurdwara to apply for membership. This

was one of the scheduled days for membership enrolment. It was cancelled at the last moment. The minority group believed that the cancellation was done to frustrate their efforts to enrol members supportive of their group. They decided to retain counsel, Mr. Mickelson. Mr. Mickelson, together with counsel for the Society, Mr. Gruber (of the law firm of Blake Cassels), attempted to negotiate a resolution of the concerns raised by the minority group. Both Mr. Mickelson and Mr. Gruber are experienced in dealing with similar problems at other gurdwaras in the Lower Mainland.

[16] The result of their efforts was that the executive committee on August 6, 2006, adopted what has been described as the "transparent process". This new process to enrol members increased the membership committee to four members - two members from the majority group and two members from the minority group. This permitted both groups to oversee and participate in receiving membership application forms at the sign-up table at the Gurdwara and to ensure that the requirements for membership were met by all applicants.

[17] The transparent process was in effect from August 9 until September 10. The process worked well. Approximately 2,200 members were enrolled. The validity of these memberships is not in dispute. This process is a model for future enrolment because it ensures that all members can be confident that there has been compliance with the Society's bylaws.

[18] Prior to August 6, minority group members on the executive had been collecting membership forms. They argued that their membership forms should also be accepted by the Society. Negotiations on this request continued after August 6. As this was occurring, another group came forward. They have been described as the "third group". They are represented by the defendants Mr. Sidhu and Mr. Sandhu. The minutes of the August 17 meeting of the executive committee state that a lawyer for Mr. Sandhu and Mr. Sidhu had contacted the president, Mr. Gill. The lawyer told Mr. Gill that the third group should be allowed to submit the approximately 1,400 membership forms they had collected. The lawyer also requested that a member of this group be added to the membership committee. This latter request was agreed with and Mr. Sidhu was added as a fifth member on the membership committee.

[19] I note that in the minutes of the August 6 meeting, Mr. Shamsher Singh Uppal, a member of the minority group, said he had gathered 3,000 membership forms and that these applications should be accepted by the Society. The minutes reflect that the president, Mr. Gill, made the following response:

Mr. Balwant Singh Gill told the committee that those forms were collected in an unconstitutional way. Hence, those forms could not be allowed to be enlisted. Those people whose forms are these ones can deposit those forms personally, but he also added that if we allow these forms to be submitted, then we also have to allow all the other forms collected by any other members, which is unconstitutional.

[20] The minutes of the August 17 meeting of the executive committee reflect that Mr. Gill made a similar response when the third group requested acceptance of their 1,400 membership forms.

[21] Counsel continued to negotiate the dispute concerning the validity of the membership application forms collected other than through the transparent process. Each group was suspicious of the validity of the membership forms collected or approved by the other group. When the third

group emerged in August, the minority group were not only suspicious of their forms, but also believed they were working together with the majority group.

[22] Ultimately, a process to resolve the validity of the membership forms was agreed upon by the executive. It is recorded in a document entitled "Unanimous Resolution." Although dated August 28, it was not until approximately September 7 that it had been signed by 16 members of the executive.

[23] I will now address the interpretation of the Unanimous Resolution and then briefly describe the bylaws.

The Unanimous Resolution

[24] The Unanimous Resolution described the membership forms already received and accepted by the membership committee pursuant to the April 2 Resolution, as the "previously accepted forms". These forms were to be delivered to the offices of Blake Cassels "as soon as practicable" for review. They were "deemed" to have been validly accepted by the Society unless the new membership committee determined otherwise.

[25] All other membership forms received and accepted by members of the executive other than the "previously accepted forms", were described as "provisional forms". They too were to be delivered to the offices of Blake Cassels, "as soon as practicable". Concurrent with their delivery, the membership fees received with the membership forms were to be delivered to the treasurer of the Society and held in a segregated fund until it was determined whether those forms should be accepted. These membership forms were therefore not presumptively valid but, rather, were also to be reviewed by the membership committee in order to determine whether they should be accepted.

[26] Mr. Gruber argues that the Unanimous Resolution did not prevent membership forms from being collected and accepted after August 6 other than pursuant to the transparent process. In other words, the transparent process was only one method by which membership forms could be validly received by the Society after August 6. I disagree with Mr. Gruber's interpretation. Such an interpretation would defeat the whole purpose of the transparent process and is inconsistent with para. 4 of the preamble, which states:

And Whereas all members of the Executive wish to ensure that the process for taking memberships is fair and transparent and to avoid litigation and its attendant costs.

[27] It is also inconsistent with how the parties conducted themselves. Why would they be backdating membership forms so as to make them appear to have been dated on or before August 6, if Mr. Gruber's interpretation is correct? Mr. Gruber suggests that this occurred because the parties were embarrassed. There is no evidence supporting that submission and I do not find it persuasive. Further, Mr. Gruber's interpretation is inconsistent with the president, Mr. Gill's interpretation as explained at his examination for discovery. In my view, the correct interpretation is the same one held by the parties who signed the Resolution; namely, that all membership applications submitted after August 6 were to be received through, and only through, the transparent process.

Bylaws

[28] Paragraph 2(A) states:

The following qualifications and conditions are required of an applicant for membership or removal of membership in the Society:

- (d) He/she must be a resident of Surrey, Delta or White Rock, British Columbia;
- (e) He/she must apply for membership in writing by submitting a complete and signed Application for Membership in such form as may be prescribed by the Executive from time to time.
- (f) Every applicant for membership in the Society is required to submit his/her own application form to the Society's office. However, an applicant may have his/her own form submitted by his or her immediate family member provided he/she lives in the same residence as the applicant and has the same surname. The person submitting the forms on behalf of other family members shall verify and sign each family member's form in the presence of a member of the Executive and shall be given a receipt ...
- (g) He/she must pay any fee established by the Executive from time to time.

[29] As stated, the April Resolution resolved that the membership fee was \$25. There is no disagreement that it was intended that it be paid by the applicant. The purpose of (g), like (d), (e) and (f), was to ensure a genuine commitment and connection to the Society by those applying for membership in it. The Society wanted to discourage individuals who might be recruited from throughout the Lower Mainland, or elsewhere, by a particular candidate or slate of candidates, signed up as members and then transported to the Gurdwara on election day to vote.

[30] In order, therefore, to apply or reapply for membership in the Society, the bylaws required that the applicant:

- (1) be a resident of Surrey, Delta or White Rock;
- (2) apply for membership at the Society office in person or have an immediate family member living at the same residence apply on their behalf at the Society office; and
- (3) personally pay the \$25 membership fee or have a family member pay it on their behalf.

II. **EVENTS BETWEEN SEPTEMBER 10 AND NOVEMBER 4, 2006**

[31] On September 12, Mr. Mickelson delivered the minority group membership forms to the offices of Blake Cassels. He also delivered cheques for the membership fees of those applicants to Blake Cassels. The Unanimous Resolution required the fees to be delivered to the Treasurer. In my view this was an oversight of no consequence.

[32] There were ten cheques delivered. Nine of the cheques were for amounts between \$25 and \$250. The tenth cheque was for \$93,810. This cheque was drawn on the account of the plaintiff, Sadhu Singh Samra. The source of these funds is a matter of dispute and ultimately was the basis upon which the

minority group's forms were rejected by the majority of the membership committee.

[33] The "previously accepted forms" of the majority were delayed in their delivery to Blake Cassels. The explanation for the delay was that they were held up at "data entry" where the information had to be processed and entered into the Society's records. On September 12, counsel for the plaintiff wrote opposing counsel regarding this delay and expressed his concern over the possibility of the "padding" of membership forms; that is, additional membership forms continuing to be collected in violation of the Unanimous Resolution.

[34] On September 21, Mr. Mickelson wrote Mr. Barron expressing his concern that the number of membership forms that the third group had estimated in August they would be submitting had now increased from 1,400 to 1,500 to approximately 3,000. Mr. Mickelson also stated that he had information that on September 14, Sukhchain Singh Sidhu was still attempting to collect new membership forms. He expressed his concern that the minority group's forms had still not been delivered to Blake Cassels.

[35] On September 25, Mr. Mickelson wrote to both Mr. Gruber and Mr. Barron expressing his concern that most of the third group's forms had only been delivered that day and requesting evidence that the required membership fees had also been collected, or at least that the gross amount of \$75,000 had been deposited with the treasurer when the forms were delivered.

[36] The next day, September 26, Mr. Goheen wrote back to Mr. Mickelson. He enclosed a "Receipt" for the third group's membership fees. The receipt states:

This is to confirm that I have received \$74,500 from Darshan Singh and Sukhchain Singh Sidhu for membership fees of 2,980 forms today, 22nd day September, 2006.

It is signed by Mr. Sekhon, the treasurer, and by Salinder Singh Basi, the assistant treasurer.

[37] On October 5 and October 19, Mr. Gruber and Mr. Goheen wrote to Mr. Mickelson and Mr. Barron. They stated that Mr. Gill and Mr. Brar, the majority group members on the membership committee, wished evidence as to the source of funds for Mr. Samra's personal cheque and for the "substantial cash payment for the third group's membership forms." They wrote that they were "looking for some evidence that the source of the funds tendered for a particular membership application was the applicant named on the form and not some other individual." Neither the third group nor the minority group offered any evidence regarding the source of their funds.

[38] On November 4, the majority of the membership committee rejected the minority group's membership forms and accepted the third group's forms. They stated that the minority group's forms were not approved because the only evidence as to the source of the membership fees was the personal cheque from Mr. Samra and because the bottom portion of the form had been improperly detached. In addition, all members on the committee agreed that all membership forms from any group that were not signed by the applicant would not be accepted.

[39] The executive committee provided an opportunity for those applicants whose forms had been rejected to re-apply between November 12 and November 16. An election date of December 17, 2006, was set.

[40] On November 8 the plaintiff filed the petition which commenced this action.

[41] In providing this general overview of events, I am aware that I am omitting some details and that some details that I have included are in dispute. My purpose is to provide some of the background to the issues I must resolve.

III. THE PETITION

[42] The petition was filed on behalf of Mr. Samra and Mr. Shamsher Singh Uppal. It named the Society as the respondent. On November 17, a consent order was obtained delaying the election of the executive and maintaining the status quo until the petition was resolved. The order also converted the petition into a writ of summons and the proceedings into a trial. The trial was scheduled to be heard on January 22, 2007 and to proceed under Rule 18A.

[43] On January 17, I heard an application by the third group, through their representatives Mr. Sidhu and Mr. Sandhu, to be added as a party pursuant to subrule (5) of Rule 15. The plaintiffs opposed the application. The defendant Society took no position. I determined that the third group should be added even though it would result in a delay of the trial. The trial was ultimately rescheduled for March 26, 27 and 28, 2007. I was assigned as the trial judge.

[44] Mr. Mickelson argues that permitting applicants whose membership forms were rejected the opportunity to reapply is not a fair solution. He submits that such a process will result in the loss of members, as not all applicants who did apply will be able to or prepared to reapply on the scheduled dates and times at the Gurdwara. As a result, one group will lose members while another group, who is not subjected to this reapplication process, will not. He also submits that perception is reality and it will be perceived by some that one group has lost, and has misconducted itself, while the other has not. This will undermine that group's support at the upcoming election.

IV. ORDERS SOUGHT

[45] The plaintiff, Sadhu Singh Samra, in his Revised Notice Of Motion seeks the following orders:

- (1) that an order be made pursuant to Section 85 of the **Society Act** that all membership forms received by the society defendant other than those received pursuant to the process commencing August 9, 2006, as set forth in the unanimous resolution of the Society's executive dated August 28, 2006, be invalidated;
- (2) that an order be made pursuant to Section 85 of the **Society Act** for directions in respect of procedural guidelines for new membership enrolment and election procedures for a future election to be held as soon as practicable;
- (3) that an order be made pursuant to Section 85 of the **Society Act** , appointing a neutral caretaker body to

oversee the Society's affairs until the completion of the Society's membership enrolment procedures and election;

- (4) in the alternative to the orders sought in the preceding paras. (1), (2) and (3), that an order be made pursuant to Section 85 of the **Society Act** validating the membership forms submitted by the Plaintiff, Sadhu Singh Samra, other than those that were not signed by the applicant, pursuant to the Unanimous Resolution ...

[46] The defendants Sukhchain Singh Sidhu and Darshan Singh Sandhu oppose the orders sought by the plaintiff. The defendant Society also opposes the orders, but, as a result of further evidence produced at this hearing, takes "no position" with respect to the validity of the third group's membership forms.

[47] I will now consider the limitations placed on me by Rule 18A in relation to making findings of fact and then review the applicable law with respect to the application of s.85 of the **Society Act** to the issues raised. I will then address what appear to me to be the five main issues that I must resolve:

- (1) are there material defects or irregularities in the membership application forms of the third group?
- (2) are there material defects or irregularities in the membership forms of the minority group?
- (3) are there material defects or irregularities in the membership forms of the majority group?
- (4) if so, does the decision of the membership committee to accept or reject these forms result in an infringement of s.85(1)(b) of the **Society Act**? and
- (5) if so, pursuant to s.85(1)(b) and (e) and s.85(2), what, if any, orders should I make.?

V. RULE 18A.

[48] There are many decisions regarding the limitations placed on a judge when making findings of fact based on conflicting affidavit evidence. Counsel have referred me to a number of these decisions, including *Cotton v. Wellsby* (1991), 59 B.C.L.R. (2d) 366, 50 C.P.C. (2d) 138, 4 B.C.A.C. 171; *Jutt v. Doehring* (1993), 82 B.C.L.R. (2d) 223, 24 B.C.A.C. 313; and *Orangeville Raceway Ltd. v. Wood Gundy Inc.* (1995), 6 B.C.L.R. (3d) 391, 59 B.C.A.C. 241, as well as numerous decisions of this Court. They all emphasize that a judge must exercise caution when faced with conflicting affidavit evidence. However, none of these cases resile from the following statement of Chief Justice McEachern in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) at para. 55:

... a judge should not decide an issue of fact or law solely on the basis of conflicting affidavits even if he prefers one version to the other. It may be, however, notwithstanding sworn evidence to the contrary, that other admissible evidence will make it possible to find the facts necessary for judgment to be given. For example in an action on a cheque, the alleged maker might by affidavit deny signature while other believable evidence may satisfy the court

that he did indeed sign it. Again, the variety of different kinds of cases which will arise is unlimited. In such cases, absent other circumstances or defences, judgment should be given.

[49] All of the membership enrolment and election decisions provided to me appear to have proceeded under Rule 18A. The reason, I expect, is the cost and inherent delay in proceeding with a full trial. Further, even after a full trial, conflicting testimony may not be easy to resolve.

[50] I believe this matter can be determined under Rule 18A. I believe I can make the necessary findings of fact. I will rely on those facts that are not in dispute and the documentary evidence upon which I find that I can place reliance. I will only give as much weight as is appropriate to affidavit or discovery evidence that is in conflict with other affidavit or discovery evidence, when it is supported by other evidence upon which I can rely.

[51] I recognize that it is alleged that some members of the executive have lied under oath or have been parties to backdating documents or creating false documents. These are serious allegations. I have been reminded by counsel of the need for a level of proof commensurate with such allegations.

VI. SECTION 85 OF THE SOCIETY ACT

[52] Section 85 states, in part:

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.

VII. APPLICABLE CASE LAW

[53] Membership enrolment and elections at various gurdwaras in British Columbia have unfortunately resulted in much litigation and numerous decisions from this Court and the Court of Appeal. Counsel have referred me to a number of these decisions.

[54] Plaintiff's counsel placed particular reliance on Mr. Justice Sigurdson's decision in *Garcha v. Khalsa Diwan Society - New Westminster* (July 28, 2005 and September 14, 2005), appeal dismissed, 2006 BCCA 140. Counsel for the Society reviewed a number of other decisions and placed particular reliance on the decision of Mr. Justice Wilson in *Kaila v. Khalsa Diwan Society*, 2004 BCSC 1399. Both Mr. Mickelson and Mr. Gruber were counsel at the *Kaila* Hearing. I have read these decisions carefully as well as the others provided to me.

[55] In *Khangura v. Johal* (1997), 36 B.C.L.R. (3d) 338, 93 B.C.A.C. 283, Mr. Justice Goldie for the Court emphasized that s.86 (now s.85) requires a court to find both "an omission, defect, error, or irregularity ... in the conduct of the affairs of a society" and one or more of the consequences identified in subsection 1(a), (b) or (c). As Mr. Justice Goldie stated at paras. 14 and 15 of his decision:

In construing s-s. (1) of s.86 particular attention must be paid to the introductory words "where" and "whereby." "Where" introduces a clause descriptive of classes of injurious acts. "Whereby" introduces paragraphs (a), (b) and (c) of s-s. (1) a description of legal consequences resulting from the happening of one or more of the described injurious acts. The clause and the paragraphs so introduced are limitations on the court's discretionary power to make an order. The scope of the court's powers is further defined by paragraphs (d) and (e). Their effect is to direct the judge's mind to the purpose for an order. The clauses preceding the authorizing power speak to what has occurred.

I think the whole may be described as follows: "The court may make any order to correct an injury caused by an irregularity which has one or more of the three [described] consequences".

[56] I note that he also emphasized the need to look at the purpose underlying s.86 when construing that section. As he stated at para. 10:

Section 86 was the third of three sections of the *Society Act* comprising Part 9 - Special Procedures. Respectively, the sections were intended to relieve against the consequences of imperfect compliance; to permit investigation of a society operating in a manner contrary to the public interest and to remedy irregularities. These sections are clearly remedial and are to be given a construction consistent with their purposes.

[57] I repeat that I appreciate that my jurisdiction to intervene in the internal affairs of a society is limited and I should be hesitant to do so unless I find that what has occurred falls squarely within the language and purpose of s.85, and that there is a clear need to intervene.

[58] As stated by Mr. Justice Low (as he then was) in *Sarjit Singh Gill v. Khalsa Diwan Society* (December 3, 1999), Vancouver Registry No. A993150 (S.C.) and quoted by Mr. Justice Hall at para. 9 of *Garcha*:

This 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.

[59] I recognize that in each of these decisions to which I have been referred, the circumstances, as well as the precise language of the bylaws of the society, may vary.

[60] Finally, I note that in upholding Mr. Justice Sigurdson's decision in *Garcha*, Mr. Justice Hall stated at para. 19:

In my opinion, the process ordered by Sigurdson J. was the fair and appropriate one to ensure that members of the Society could have confidence that the Society's elections would be conducted in a fair and orderly manner.

VIII. APPLICATION OF SECTION 85 TO THE ISSUES RAISED

[61] Mr. Mickelson argues that the conduct of the defendants gives this Court the jurisdiction, pursuant to s.85(1)(b) of the *Society Act*, to invalidate the November 4 decision of the membership committee. He directs me to the requirements of paras. 2(e), (f) and (g) of the bylaws.

[62] Mr. Mickelson also emphasizes para. 86 of the bylaws, which states: "The Election Committee shall conduct a proper and fair election". He submits that in order to have a fair election there must be "a proper and fair" membership enrolment process. He argues that it is implicit in the bylaws' delegation to the executive of the power to manage the affairs of the Society, that it must do so in the best interests of the Society. He submits that the bylaws therefore implicitly require the executive to ensure a proper and fair membership enrolment process, as well as a proper and fair election.

[63] With the exception of an affidavit from Shamsher Singh Uppal, there is no evidence, and it is not argued, that the membership applications at issue in this hearing are fictitious - that is, that memberships have been applied for in the name of a non-existent person or without the consent of the applicant. Rather, the question is whether the membership applications comply with paras. 2(f) and (g) of the bylaws. While the defendant Society argues that the plaintiff's group violated 2(f) as well as 2(g), it is the latter, the membership fee requirement, that the Society considers material.

[64] Mr. Gruber argues that to accede to Mr. Mickelson's submissions, I must find that the Society's president, Mr. Gill, and others, have lied in their affidavits and that Mr. Gill also lied at his examination

for discovery. He submits that there is a lack of such evidence. He states that it is not surprising that there are "mistakes" in some of the applications, given that English is the second language of many of the applicants.

[65] Finally, he argues that even if I do not agree with his interpretation of the Unanimous Resolution and I find that there has been backdating, a violation of the Unanimous Resolution is not a violation of the Society's bylaws and does not fall within the purview of s.85(1)(b) of the **Society Act**.

[66] Mr. Barron, on behalf of the third group, submits that there has not been a violation of bylaw 2(g) by his group, but even if there has been, the orders sought by the plaintiff did not seek to single out his client's forms for invalidation. Rather, the plaintiff seeks either validation of its membership forms or the invalidation of all membership forms. Mr. Barron argues that the essence of the plaintiff's claim is that the minority group's forms were treated unfairly when contrasted with the treatment given to the third group's forms. This is an allegation of bias that Mr. Barron submits requires a consideration of s.25 of the **Society Act**. He argues that such an allegation cannot be resolved on a Rule 18A hearing.

[67] There is also a challenge to the admissibility of the bank deposit forms. I am satisfied that the deposit forms attached to Mr. Tweedale's affidavit of November 7 are properly admissible. I am satisfied as to their authenticity. They were delivered to plaintiff's counsel by the defendant Society's counsel. The Society has a responsibility to keep such records. They were referred to and reviewed in the examination for discovery of the Society's president, Mr. Gill. They are documents which were in the possession of a party to this proceeding, in addition to being admissible under the **Evidence Act**, R.S.B.C. 1996, c.124.

[68] I will now consider the validity of the membership forms of each group.

IX. THIRD GROUP

[69] The minutes of the executive committee meeting of August 17, 2006, state that the third group had approximately 1,400 forms which it wished to submit for approval. According to the Unanimous Resolution, these "provisional forms" had to be delivered "as soon as practicable" to the offices of Blake Cassels. They were not. They were delivered on September 25, almost two weeks after the minority group's forms and only after a demand from counsel for the minority group.

[70] The Society's membership forms require an applicant to provide their name, address, telephone number and driver's licence number, and to date their application. The applicant must also sign the form acknowledging that he or she is solemnly affirming the truth of certain information on the form. At the bottom of the form, the date when the application was approved is to be entered. Space is also provided to enter the membership number assigned to the applicant and for the president and secretary to sign the form. The receipt number given to the applicant, acknowledging payment of his or her \$25 membership fee, is to be handwritten on the application.

[71] Mr. Tweedale has reviewed the third group's forms. They were organized into eight binders. He randomly selected five of the binders. These

binders contained 1,484 membership application forms. Mr. Tweedale states that of the 1,484 forms he reviewed, he found that:

- (1) On 1,364 forms the date of the application was blank;
- (2) On the remaining 120 forms a substantial percentage exhibited irregularities, including "late" forms or "backdated" forms; that is, they were either dated after August 6 or dated after August 6 and overwritten to appear to have been dated earlier.
- (3) On 26 of these 120 forms the date on the application is between August 9 and September 10.
- (4) On 19 of these 120 forms the date on the application is between September 12 and October 10.

[72] As Mr. Tweedale notes, 92% of the 1,484 forms are back dated. Of the remaining 8%, 50% of those are either late or back dated. I note that nine of the "late forms" are dated September 12.

[73] I have an affidavit from Ranjit Gill. It was filed on November 6. Mr. Gill states that on September 12, he was approached by Mr. Sidhu and Mr. Basi in the parking lot of the Gurdwara. They asked him to get membership forms over the next three or four days and give the forms to them. Although this allegation is disputed by Mr. Sidhu, the fact that there are nine forms dated September 12 provides some support for Mr. Gill's evidence.

[74] It is clear that a substantial number of the third group's membership forms were obtained in violation of the Unanimous Resolution. I am also satisfied that a substantial number of these forms were obtained in violation of para. 2(f) of the bylaws. I repeat Mr. Gill's statement concerning the minority group's forms:

Mr. Balwant Singh Gill told the Committee those forms were collected in an unconstitutional way; hence, those forms cannot be allowed to be enlisted. Those people whose forms are these ones can deposit those forms personally. He also added that if we allow these forms to be submitted, that we also have to allow all the other forms collected by any other members, which is unconstitutional.

[75] The second issue concerning compliance with the bylaws is the source of the membership fees. It was this alleged violation of para. 2(g) which was the basis for the rejection of the minority group's forms.

[76] As stated earlier, on September 25, Mr. Mickelson wrote to Mr. Barron and Mr. Gruber requesting proof that \$75,000 for membership fees was deposited with the treasurer at the time of the delivery of the third group's forms. I have already referred to the "receipt" which was sent the following day and to the letters of October 5 and October 19 sent by Mr. Goheen and Mr. Gruber, requesting "some evidence" of "the source of the substantial cash payment from Mr. Sidhu and Mr. Sandhu". No evidence was provided prior to November 4 when the decision was made to accept the third group's forms.

[77] The explanation provided by Mr. Gruber for accepting one group's forms and not the others, is that the membership committee trusted Mr. Sidhu and Mr. Sandhu but not Mr. Samra. Mr. Gruber reviewed Mr. Samra's alleged past misconduct referred to in the affidavit material. While Mr. Gruber's submission provides some basis for distinguishing between the two groups, it does not, in my view, provide a reasonable basis. No evidence as to

the source of the funds paid by the third group was provided. The membership committee knew by November 4 that many of the third group's forms were obtained in contravention of the Unanimous Resolution and bylaw 2(f). As Mr. Gill stated in answer to question 986 at his examination for discovery, it was his personal belief that the third group "continued to collect forms even after August 6 and that's why the third group's forms doubled."

[78] Even if the decision to accept the third group's source of funds was reasonable at the time it was made (which I am satisfied that it was not), at this hearing further evidence as to the source of funds was admitted.

[79] Mr. Basi, the assistant treasurer, swore an affidavit on March 19, 2007. He attached 11 receipts which he stated he gave to Mr. Sidhu between June 4 and September 9 for the payment of membership fees. He stated that these funds were kept in the Society's safe until approximately September 22 or 25, when they were deposited into the Society's bank account at the Canadian Imperial Bank of Commerce.

[80] The receipts for June 4, 11, 18 and 25 total \$14,625. The receipts for July 2, 9, 16, 23 and 30 total \$40,100. The August 6 receipt is for \$8,100 and the September 11 receipt is for \$6,225. The total of all the receipts is \$69,050, of which \$62,825 was apparently received by August 6. This amount would be sufficient to pay for over 2,500 memberships, which is surprising given that Mr. Sidhu estimated in mid-August that his group had collected between 1,400 and 1,500 memberships.

[81] For security reasons, it also seems improbable that this large amount of cash would have been kept in the Society's safe for such a long period of time. This is even more improbable given that the Society funds kept in the same safe were regularly deposited at the bank.

[82] Surely Mr. Basi, as the senior vice-treasurer and the third person added to the membership committee in July, would have spoken up about these payments before March 19, 2007. A number of these receipts were dated at a time when he was a member of that membership committee. Nowhere in the minutes is there any mention that he was collecting membership fees from the third group - memberships which were being collected in contravention of the April resolution. It makes no sense that, when Mr. Gruber and Mr. Goheen requested some evidence of the source of funds, Mr. Basi or Mr. Sidhu would not have provided copies of these receipts, along with the explanation that Mr. Sidhu had been providing cash intermittently over many weeks to the assistant treasurer.

[83] I also note that Mr. Gill in his examination for discovery (questions 988 and 989) said that the reason given by the third group for not handing in their membership fees before September 22 was that the money was with their counsel.

[84] Finally, these 11 receipts appear to be inconsistent with the wording of the receipt referred to above for \$74,500 and signed by Mr. Basi and Mr. Sekhon.

[85] Faced with this additional evidence, Mr. Gruber on behalf of the Society took no position as to whether I should declare the third group's membership forms invalid.

[86] If individuals were prepared to violate bylaw 2(f) and the Unanimous Resolution in order to enrol new members who they believed were supportive of their group, then it seems probable that they would also have been prepared to violate bylaw 2(g).

[87] It is a matter of common sense that it will be easier to enrol new members if those being asked to enrol are not required to come to the Gurdwara. It requires less of a commitment from them. This is one of the reasons underlying the 2(f) requirement in the bylaws. Similarly, if potential members are not required to personally pay the \$25, it will be easier to persuade such individuals to agree to sign up. Again, this is one of the reasons underlying the 2(g) requirement in the bylaws.

[88] Looking at all of the evidence and bearing in mind the caution I must exercise in relying on conflicting affidavit evidence, I am satisfied that at least a substantial number of the third group's membership forms fail to comply with para. 2(f) and (g) of the bylaws. This is a defect, error or irregularity in the conduct of the affairs of the society by which there has been default in compliance with the constitution or bylaws. I will consider s.85(1)(d) and (e) and ss.(2) later in these Reasons.

X. MINORITY GROUP'S FORMS

[89] I will be brief. Mr. Mickelson agrees that there has been substantial backdating and other defects in the minority group's forms. I am satisfied that the decision of the majority of the membership committee that 2(g) of the bylaws was not complied with was a reasonable decision. Subject to the issue of fairness in rejecting this group's forms and not the others, I agree with their decision.

XI. MAJORITY GROUP'S FORMS

[90] On November 6, Rajinder Dhaliwal swore an affidavit stating that on September 10, the president, Mr. Balwant Gill, approached him in the parking lot of the Gurdwara and told him that if he had any forms that he wanted to submit, he would accept them and would take care of the membership fees.

[91] On November 6, Kamaljit Singh Kang swore an affidavit stating that in approximately May 2006, Mr. Gill came to his house to collect his membership form as well as the membership forms for his immediate family. He stated that Mr. Gill told him that he did not have to give him any money as he would take care of the membership fees.

[92] One of the receipts in Exhibit 10 is No. 59823. It is dated May 28, 2006. It appears to have been completed and signed by Mr. Gill. It states that there is a cash payment of \$200 from Kamaljit Singh Kang.

[93] Mr. Gill, in an affidavit sworn January 11, 2007, denies the allegations of both Mr. Dhaliwal and Mr. Kang.

[94] On November 7, Mr. Tweedale swore an affidavit stating that between September 12 and early October he inspected the majority group's membership forms. Like the third group's forms, they were organized into binders. Mr. Tweedale determined from the membership forms he examined that "a substantial number" had the date of the application left blank. Of the 2,300 membership forms contained in binders 1, 4, 10, 12 and 13, he found that almost 600 forms did not have the date of the application completed and approximately 220 did not have a receipt number written on the form. He found that of the 2,800 forms in binders 1, 4, 7, 10, 11 and 12, over 1,800 of them had the "date approved" left blank. Of the 2,900 forms found in binders 1, 4, 7, 11, 12 and 13, 1,700 of them were missing the signature of the president or secretary.

[95] Mr. Tweedale attached to his affidavit examples of membership forms which had the date of the application changed from a date after August 6, to a date prior to August 6. He attached approximately 90 membership forms to his affidavit and explained the irregularities in these forms in paras. 40 through 51 of his affidavit. He stated, for example, that membership forms assigned cards #5158, #5159 and #5160 appear to have been dated August 12, 2006, but the 12 was overwritten to make it appear to be dated August 02. I have looked at the originals of these three membership forms. I agree with his conclusion.

[96] Not only have the dates of the applications been changed from August 12 to August 2, they state that they were approved on August 6. They were also assigned a receipt number for a receipt dated August 6. If the August 12 date is correct, then the approved date and the receipt date are not. This undermines the reliance I can place on the dates of other receipts and the dates of approval on other membership application forms.

[97] Mr. Tweedale's affidavit also provides me with copies of the membership forms for membership cards #5627 and #5628. They are both dated August 8 but both state they were approved August 6. The receipt #64394 is also dated August 6. Again, if the membership application date of August 8 is correct, then the date approved and the receipt date are not.

[98] The membership form for card #8567 is dated September 14, 2006. It is stamped as approved July 28, 2006. The receipt #69849 is dated July 2, 2006.

[99] Membership forms for cards #8615 and #8616 appear to have been originally dated August 11 but overwritten so as to make them appear to have been dated August 4. Both membership forms are stamped as approved July 28. They are for a Mr. and Ms. Vahra. The receipt is #69860. It is dated July 2006. The specific date in July has not been written. All of the receipts in the receipt book immediately before and after #69860 are dated July 2. I am confident, therefore, that the Vahra receipt date was intended to be July 2, 2006.

[100] Membership forms for cards #7742, #7743 and #7744 are for Lashkar Singh Gill, Resham Kaur Gill and Baljinder Kaur Gill, respectively. They are all dated August 4, 2006. There is no date given as to when they were approved. They all have membership receipt #69434. This receipt is dated July 2, 2006.

[101] Having reviewed the documents myself, I agree with most of Mr. Tweedale's conclusions at paras. 40 to 51 of his affidavit.

[102] I also find that it is significant that the total number of the majority's membership forms increased from the August 6 estimate of 6,400 to approximately 8,700 when they were delivered in September to Blake Cassels.

[103] I am satisfied that the backdating is not merely the result of innocent error. This inference is further supported when one considers the "source of funds" for these membership forms.

[104] Mr. Tweedale states in his affidavit that he has reviewed the bank deposit slips relating to deposits made between May 4 and September 12 for the membership fees for the majority's forms. He states that the deposits between May 4 and August 18 total \$122,920; enough to pay the fees for slightly in excess of 4,900 memberships, not the 8,700 that were received.

[105] Mr. Mickelson directs me to portions of Mr. Gill's examination for discovery. Mr. Gill has been the president of the society since 1998. He is

not the treasurer and does not make the Society's deposits at the bank. He is, however, familiar with the procedure in relation to fees paid and is one of the individuals who collects membership fees.

[106] Mr. Gill stated that when the \$25 was received from an applicant, a receipt was completed and a copy given to the applicant. The receipt number was written on the membership form and the bottom portion of the form given to the applicant. The date the membership was approved was also written on the form (examination for discovery of Mr. Gill Q. 201 to Q. 214).

[107] Mr. Gill stated that the membership fees (cash and cheques) would then be turned over to the treasurer once they were counted. The treasurer would also be given the receipts. The membership committee would leave it to the treasurer to complete the deposit slips. Mr. Gill stated that the treasurer went to the bank probably once a week. Sometimes he was assisted by Mr. Basi (examination for discovery of Mr. Gill Q. 294 - 311). In the meantime he kept the money in the safe in his office. Mr. Gill said that the money would not sit in the safe for two weeks and he was not aware of money sitting in the safe for more than one week. He agreed that he would expect any membership fees received on or before August 6 to have been deposited in the bank "no later than August 18" (examination for discovery of Mr. Gill Q. 431-432). Mr. Gill could offer no explanation as to why there was only a total \$134,000 deposited at the bank by August 21, enough for 5,360 forms, not 8,700 forms (examination for discovery of Mr. Gill Q. 478).

[108] Mr. Gruber argues that the "late" deposits do not demonstrate that the majority did not receive the fees or the membership forms. However, the lack of congruence between the dates on some of the applications and the dates of approval and the dates of receipts places me in a position where it is difficult to rely on those documents. If supporters of the majority were prepared to backdate application forms and go out into the community to gather forms, would they not be prepared to also pay the \$25 membership fee? After all, that is the very allegation that the majority has made with respect to the minority group's forms.

[109] In considering the evidence concerning the source of funds for the majority's forms, I must not look at any one piece of evidence in isolation. I must also be cautious about relying on sworn evidence where it conflicts with other sworn evidence.

[110] I am satisfied that a significant number of the "previously accepted forms" approved by the majority violated one or both of bylaws 2(f) and 2(g). I consider a deliberate, repeated violation of either bylaw to be serious, particularly when done in an effort to advantage one group over another.

[111] In making this finding I am giving some weight on the affidavit evidence of Mr. Dhaliwal and Mr. Kang. I do so because of the support I find in documentary evidence upon which I can rely. I would, however, have made the same findings in the absence of their evidence, because what I find most significant is the evidence provided in Mr. Tweedale's affidavit of November 7, confirmed by my own review of the original documents - the membership forms (Exhibits 2 and 3), and the receipt books (Exhibit 10).

[112] I have found backdating of forms and misdating of receipts for membership fees, as well as the dates on which forms are said to have been approved. There are a substantial number of forms that were approved despite being undated or containing other material omissions, as identified in Mr. Tweedale's affidavit. Further, there is the very significant increase in membership forms from the majority's estimate on August 6 of 6,400 forms to the

total of 8,700 forms, submitted in September. This is an increase of over one-third. I appreciate that the other group's numbers increased even more on a percentage basis, but that does not detract from the inference that the increase was the result of additional forms being gathered after August 6, outside the transparent process.

[113] In addition to the above, there is the significant discrepancy between monies deposited by the Society for membership fees and the total number of membership forms submitted. The discrepancy is significant. There is a substantial shortfall in monies deposited by August 18 compared to the number of forms stated to have been collected by August 6. The amount of monies deposited is more consistent with the August 6 estimate of 6,400 forms than with the 8,700 forms that were actually submitted in mid-September.

[114] When these pieces of evidence are weighed together, I find each piece supports and strengthens the other. It is the cumulative weight of all of the evidence that leads me to the conclusion that the majority group, or some of them, were committing the same violations of the bylaws that the other groups were committing. The majority's decision to accept the third group's forms despite the obvious material deficiencies on the face of the forms, the non-compliance with 2(f), and the lack of evidence as to the source of funds, provides no comfort that they applied any higher standard of compliance when accepting their own forms.

[115] The rejection of the minority group's forms smacks of partisanship. They applied a higher standard of compliance with the bylaws when assessing the minority group's forms, than their own, because it was in their political interests to do so. The decision to reject the minority group's forms was the correct one, but it is difficult to conclude that it was made for the right reasons.

[116] I am satisfied, therefore, that a substantial number of the majority group's forms were obtained in violation of paras. 2(f) and 2(g) of the bylaws, just as occurred with the minority group's forms and the third group's forms. I believe that each group came to the conclusion that they were being disadvantaged by the conduct of the other groups. This created a state of mind where they concluded that they were justified in violating the bylaws and the Unanimous Resolution because the others were doing the same.

XII. WHAT ACTION SHOULD THE COURT TAKE?

[117] In considering what action, if any, I should take, I must consider the effect of any order I might make on the Society and its directors, officers, members and creditors. I am mindful, as Mr. Barron submits, that the minority group has not come to Court with clean hands. I am also mindful, as Mr. Gruber argues, that the minority group were prepared to overlook the transgressions of the other groups if their own transgressions were overlooked and their own forms accepted. However, s.85(1)(b) states that I may make any order on my own motion if appropriate. I believe it is appropriate that I do so, despite the conduct of the minority group.

[118] As I stated at the commencement of these reasons, if the membership enrolment process is not fair, how can the election be fair? The enrolment process should be transparent. This lack of transparency may have been the catalyst that started the process by which each side deliberately and deceitfully attempted to avoid the requirements of the bylaws and the Unanimous Resolution.

[119] In my view this is the kind of irregularity and the kind of misconduct which requires a court to intervene. The message should be clear to all members of the executive and their supporters that membership enrolment in elections must be fair and proper and conducted according to the society's bylaws; and if there are material irregularities, a court will intervene.

[120] I do not know how many membership forms were obtained in violation of the bylaws. I do not know if the plaintiffs were more or less culpable than the other groups. I also do not know whether 50 or 100 votes for one side or the other may make a significant difference at the next election. It seems to me, therefore, that other than those membership forms approved pursuant to the transparent process, all others should be invalidated so that everyone starts again on an equal footing. In my view, to condone what has occurred would encourage a repetition of such conduct in the future.

[121] I note that article 2(d) of the Society's constitution states that the Society shall "take steps to create goodwill, harmony, unity and cooperation among all human beings alike, by adherence to the Sikh way of life." It appears to me that the members of the Society have until recently been able to apply those principles to the management of the Society. I encourage them to do so again.

[122] I order that all the membership forms, other than those obtained pursuant to the transparent process, are invalid. I will leave it to counsel and the parties to determine the best process for allowing those applicants whose forms are invalid to reapply for membership and to deal with the tax implications that may result from my decision.

[123] The parties have been well served by their counsel. While I have been critical of the conduct of at least some members of each group, such misconduct has occurred despite the best efforts of their counsel. I encourage the Society and all groups in the Society to seek the advice of their counsel and to follow that advice.

[124] This hearing has been unusual. As I have stated, the conduct of the plaintiff, who commenced this proceeding, appears to have been no better than that of the defendants. I am not inclined to order costs against any party, but I am prepared to hear submissions on the issue if counsel wish.

[125] Finally, I want to thank all counsel for their thorough, helpful and considered submissions.

Smart, J.