Citation: Demiris et al v. Hellenic Community et al D

2000 BCSC 733

Docket No.:

Regist

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**PETER DEMIRIS, ANASTASIA MIRRAS, ARIS SOUKAS, ATHENA DEMOSTEN and DEMETRIOS PARTSAFAS**

AND:

**HELLENIC COMMUNITY OF VANCOUVER, ANGELO PAPPAS, ANGELOS GRAFFOS, MIKE KEFALAS, STATHIS BOZIKIS, HELEN KATEVATIS, ROULA LIASKAS, BILL PAN TSAKUMIS, JIM VASTARDIS, SAM PSIMOULIS, GEORGE KASKAMANIDIS, MIHAIL TSOLINAS, MIKE GEOI DIANA THOMOPOULOS, NICK KERASIOTIS, BILL ANAGNISTOPOULOS AND TEL TSOROMOCOS**

**REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE SHABBITS IN CHAMBERS**

Counsel for the Petitioners: Michael Ste

Counsel for the Respondents: Howard Sheri

Date and Place of Hearing/Trial: April 17, 18

[1] The Hellenic Community of Vancouver, B.C. Canada, (the "Society", or the "respondent Society") was formed under **The Societies Act** on November 19, 1927. Its aims on incorporation were declared to be that of "mutual help and understanding, and the bringing of the Greeks of the Community into contact with each other; also all possible advancement, moral and financial, of every other purpose of common and National welfare".

[2] The objects of the Society were altered on June 6, 1962, with the addition of clauses to its constitution. Those additions included:

4. To establish, maintain and conduct a church and organize a Parish which shall be known as the Greek Orthodox Parish of Vancouver, British Columbia and the Church thereof shall be known as St. George's Greek Orthodox Church.

9. To preserve and propagate purely and undefiled the Orthodox Christian faith and traditions in conformity with the doctrine, canons, administrative rulings, discipline, divine worship, usages and customs as formulated in accordance with Holy Scripture and Sacred Tradition by the seven Ecumenical Councils of the Undivided Church and the local synods approved by the Ecumenical Councils, and as interpreted by the Ecumenical Patriarchate.

11. To erect and maintain a church for the worship of God and any appurtenant annexes for the welfare of our communicants.

[3] At the same time, by extraordinary resolution, the bylaws of the Society were altered. Article III(5) paragraph j. provided that the powers and duties of the general meeting of the Society included the amendment of the "parish bylaws in conformity with the decisions adopted by the Clergy-Laity Congress, which decisions are binding upon the parish. Those bylaws refer to the respondent Society as a "parish".

[4] The Society has, both in its bylaws and otherwise, been referred to as either a community or as a parish or as a society.

[5] The 1962 amendments included as aims or objectives of the Society, matters both ecclesiastical and secular.

[6] The Society built a church at 7th Avenue and Vine in Vancouver, even though there was not yet any formalized connection between it and the Greek Orthodox Church.

[7] On September 1, 1965, the Archbishop of the Greek Orthodox Archdiocese of North and South America certified that the parish of St. George, Vancouver, British Columbia, had complied with the Regulations and Uniform Parish Bylaws of the Greek Orthodox Archdiocese, and was qualified to administer the rights, sacraments and ecclesiastical functions of the Greek Orthodox Church. The charter of that date was affixed with the official seal of the Greek Orthodox Archdiocese of North and South America. The charter reflects that compliance with the Regulations and Uniform Parish Bylaws of the Greek Orthodox Archdiocese was a condition precedent for the granting of the charter.

[8] In about 1971, the Society built St. George's Greek Orthodox Cathedral at 4500 Arbutus Street in Vancouver, and in about 1977 it completed the construction of an adjacent community centre.

[9] On March 17, 1977, the Society altered its objects, so that its objects then included:

1. To perpetuate the culture, language, mores, customs and traditions of the people of Greek descent;

2. To encourage Greek speaking . . . ;

3. To act as a charitable organization to assist persons of Greek descent . . . .;

7. To keep and proclaim pure and undefiled the Orthodox Christian Faith and traditions in conformity with the doctrine, canons, worship, discipline, usages and customs of the Greek Orthodox Church;

8. To administer the Gospel in accordance with the Orthodox Faith . . . . .

[10] The bylaws were, by extraordinary resolution, altered at the same time. S. 58 of the bylaws then read as follows:

> The bylaws of the society, save and except for Bylaws numbers 69 and 70 which shall be unalterable, may by extra-ordinary resolution (requiring at least a two-thirds majority) be amended at any general meeting providing that not less than ten (10) days notice of the amendments or proposed amendments shall have been given in such manner as may be prescribed by the Board of Directors and further provided that the written consent of Archdiocese is first obtained before voted on.

[11] The stipulation of a two-thirds majority, and the requirement for ten days notice, accorded with the provisions of **The Societies Act** then in effect.

[12] The bylaws were amended in 1983 and in 1996.

[13] After 1965, the structure of the Greek Orthodox Church in North America was changed. It is now the Greek Orthodox Metropolis or Archdiocese of Toronto which has governance of the Greek Orthodox parishes in Canada. It was in September of 1996, that the Bishop of the Greek Orthodox Diocese of Toronto was elevated to Metropolitan Archbishop of the newly created Greek Orthodox Metropolis of Toronto (Canada).

[14] The structure of the Greek Orthodox parishes in Canada, which includes that of the parish of St. George or St. George's in Vancouver (the parish having being referred to by both names), is that the needs of the people are administered to by the parish priest who is assisted by an elected parish counsel. The priest is assigned to a parish by the Metropolitan Archbishop. The Greek Orthodox Church itself is governed by procedures involving both clergy and laity. This consists, on the local level, of the elected parish council and the parish priest. On the diocese level, it is the clergy-laity assembly which is the highest authority, and on the Archdiocese level, it is the Clergy-Laity Congress. The 1962 bylaws required the Society's bylaws to be in conformity with the decisions of the Clergy-Laity Congress.

[15] In 1997, the Metropolis of Toronto circulated amongst the parishes in Canada a draft of proposed Uniform Community Regulations, which it suggested would govern the parishes of the new Archdiocese, including the parish of St. George of Vancouver.

[16] One of the standing committees of the respondent Society was that of the Constitutional Committee, which dealt with revisions to the constitution and bylaws of the Society. Because of concern as to the content of the proposed Uniform Community Regulations, the Constitutional Committee was expanded. It reviewed the Society's bylaws, and the proposed changes to the Uniform Community Regulations.

[17] The respondent Society continues to operate not only a church, but also a community centre. All of the members of the respondent Society are parishioners of the Greek Orthodox Church. All are anxious to maintain the strongest possible ties with the Greek Orthodox Church in ecclesiastical matters, but many members of the respondent society wanted the society to establish control over its non-ecclesiastical activities independent of the Greek Orthodox Church.

[18] On June 24, 1999, the bylaws of the respondent Society were amended by special resolution. It is the validity of those amendments which the petitioners challenge.

[19] The petitioners advance three reasons why they say the 1999 amendments are, on their face, of no effect.

[20] First, the Archdiocese did not provide its written consent to the amendments, as required by section 58 of the 1977 amendments to the Society's bylaws.

[21] Second, Article I, Section 8 of the Special Regulations makes obligatory for all parishes the acceptance and adoption of decisions of the Assembly of Communities (Parishes), after ratification by the Ecumenical Patriarchate. The amendments adopted on June 24, 1999, make compliance of the Society's bylaws with Archdiocesan regulations dependant upon the Society adopting them by special resolution.

[22] Third, the Society did not obtain the prior consent of the Diocesan Bishop to the amendments, as required by Part Three, Article I, Section 1 of the Uniform Parish Regulations of the Archdiocese.

[23] The petitioners seek an order setting aside the special resolution of June 24, 1999 by which the Society's bylaws were amended, a declaration that those amendments were invalid, and a declaration that the Society must, when amending its bylaws, adhere not only to the terms of its own bylaws, but also to the Archdiocese regulations.

[24] When the Society was made a parish of the Greek Orthodox Church by charter of September 1, 1965, the Society's bylaws did require that they be in compliance with Archdiocese regulations. The bylaws which the Society adopted by special resolution in June of 1962 imposed an obligation on the respondent Society to enforce the regulations of the Archdiocese in accordance with the decisions of the Clergy- Laity Congress. The obligation under the 1962 revisions to adhere to Archdiocese regulations was not limited to ecclesiastical matters.

[25] The respondent Society was entitled to have its bylaws mandate that they adhere to the Archdiocese regulations, and that they be consistent with the Uniform Parish Regulations. This was established with Madam Justice Newbury's

decision in ***Colettis et al v. Greek Orthodox Community of East Vancouver et al*** (1994) 107 D.L.R.(4th) 248. The issues before me were whether the members of the respondent Society were entitled to change its bylaws to remove those requirements, and whether the entrenchment of the Archdiocese' consent as a condition for future amendment was valid.

[26] In ***Ireland and Warren v. Victoria Real Estate Board*** (1987) 13 BCLR 2nd 97, Mr. Justice Bouck said this at page 103:

> By-laws of a society incorporated under the Society Act are much like the articles of association of a company. Articles of association of a company "constitute a contract between the company and the shareholders which every shareholder is entitled to insist upon being carried out": *Theatre Amusement Co. v. Stone* (1914), 50 SCR 32 at 37.

[27] At page 105, Mr. Justice Bouck, when summarizing the principles of law he was applying, said this:

> The board is an incorporated society and the relationship between the members and the society is based on a contract as described in the by-laws.

[28] In ***Nagra et al v. Khalsa Diwan Society of Victoria et al***, January 20, 1997, Docket 96/5103, Victoria Registry, Mr. Justice Bouck said this at paragraphs 15 and 16:

> At law, the bylaws of a society constitute a contract between the Society and its members. In contract law a party may be deemed to acquiesce in changes to the contract if the party sits idly by and accepts the changes: Re: Canadian Temple Cathedral of the Universal Apostolic Church (1971), 21 D.L.R. (3d) at 199. But I do not believe the same principle always applies to members of a society.
>
> First of all, one might say that in 1985, some or all of the members of the Society agreed specifically or by way of acquiescence to ignore the provisions of the bylaws requiring a secret ballot. Yet that agreement and that acquiescence did not necessarily bind all future members who were not members in 1985 and thus were not a parties to the 1985 agreement. The concept of acquiescence in contract law applies to the original parties to an agreement or their assignees. It does not fit well into a Society's relationship with an ever changing member base.

[29] I am of the opinion that the contracts as constituted by the Society's by-laws, were always subject to lawful change. The membership of the Society today is not the same as it was on incorporation, or in the 1960s or in the 1970s or in the 1980s, when earlier amendments were adopted. Even though the Society's bylaws constitute a contract between its members, and between it and its members, the issue remains that of whether the by-laws were lawfully amended.

If they were, then the petition must fail, notwithstanding that the by-laws were changed in a manner which the petitioners consider untenable.

[30] The petitioners submit that when the Society's by-laws were amended to permit the Greek Orthodox Church to grant the parish of St. George of Vancouver its charter, that that too constituted a contract, the breach of which the court ought not to continence. In ***Ukrainian Greek Orthodox Church v. Trustees of Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress***, Mr. Justice Crocket of the Supreme Court of Canada said this, at page 671:

> So far as the plaintiff's action is concerned, a perusal of the statement of claim shows that it is entirely founded upon two main pretensions: first, that the defendant corporation acquired the Cathedral in the year 1925 in trust for a congregation or parish of the unincorporated body known as "The Ukrainian Greek Orthodox Church of Canada" and was made a component part of the plaintiff corporation by the latter's Act of Incorporation...
>
> If the first of these pretensions is not made good the action cannot properly be maintained, for it is well settled that, unless some property or civil right is affected thereby, the civil Courts of this country will not allow their process to be used for the enforcement of a purely ecclesiastical decree or order.

[31] There is, within the report of this case in the Dominion Law Reports, this editorial comment:

> While it is true that the courts will not or, at least, are loath to, interfere with the spiritual functions of religious bodies, it is the duty of the Courts to construe the acts of the Legislature to determine the rights and duties flowing therefrom, and, as this case indicates, it is not always an easy matter to separate the former matter from the latter.

[32] Neither the Greek Orthodox Church, nor the Archdiocese of Toronto, nor the Archbishop of Toronto, are parties to this proceeding. The issue as to whether the Society, with the adoption of its 1999 bylaws, breached a contract which it earlier concluded with the Greek Orthodox Church, and which resulted in its receiving its 1965 Charter, is not before me. There is, in any event, no evidence before me that there was such a contract. Although it has been shown that a condition of the granting of the Charter was compliance with Archdiocesan regulations and bylaws, there is no evidence that the respondent Society agreed it would not change its bylaws otherwise. It is clear to me that all of the persons involved in this proceeding are anxious and concerned that the present ecclesiastical standing of the respondent Society and its members be maintained. The affidavits filed by and on behalf of the persons who were named as respondents include averments that the deponents wish to strengthen the ecclesiastical ties of the respondent Society and St. George's Greek Orthodox Cathedral with the Greek Orthodox Church, and that the intent of the 1999 bylaw changes was intended to do no more than establish local control over the non-ecclesiastical activities of the respondent Society.

[33] It may well be that if the Greek Orthodox Church considers that if one of the parishes to which it has granted a charter is no longer entitled to a charter, that a charter might be withdrawn. That, however, is a purely ecclesiastical matter, and not one on which I would comment. The issue before me is entirely one as to whether the manner in which the by-laws were amended in 1999 had the effect of lawfully amending them.

[34] S.23(1) of The Society Act reads as follows:

> A society may change its by-laws by special resolution and the resolution is effective on the day of its acceptance by the registrar as being in compliance with this Act or, if the resolution is accepted by the registrar and a later date is specified in the resolution, on that later date.

[35] In s.1 of the Act, "special resolution" is defined as follows:

(a) a resolution passed in a general meeting by majority of not less than 75% of the votes of those members of a society who, being entitled to do so, vote in person or, if proxies are allowed, by proxy (i) of which the notice that the bylaws provide, an not being less than 14 days notice, specifying the intention to propose the a resolution as a special resolution has been given, . . . .

[36] Before the 1999 amendments, s.58 of the bylaws provided that the bylaws could be amended by extra-ordinary resolution with a two thirds majority, at a general meeting of which not less than 10 days notice of the amendments was given in the manner prescribed by the Board of Directors, but only if the written consent of the archdiocese was obtained before the vote.

[37] By s.75 of the bylaws, which was adopted in 1983, there was a provision that a three quarters majority vote would be required to amend a bylaw, or to pass any business required to be passed by special resolution of the Society. This accorded with a change to **The Societies Act**. It would appear that s.58 was not changed in 1983 because of inadvertence.

[38] I am of the opinion that in 1999, the only requirements for amending the society's bylaws were those set out in s.23 of **The Societies Act**.

[39] S.23 provides that a special resolution changing the bylaws of a society is effective on the date it is accepted by the Registrar as being in compliance with the **Act**. The **Act** provides nothing further than that a special resolution is required for a change of the bylaws. That in turn requires that the resolution be passed in a general meeting by a majority of not less than seventy-five percent of the votes of those members who vote of which the notice of the bylaws provide and not being less than 14 days notice specifying the intention to propose a resolution as a special resolution has been given.

[40] S.58 of the bylaws required no more than 10 days notice of the amendments or proposed amendments. **The Societies Act** now requires that the notice that must be given is that which the bylaws provide, but not less than 14 days. It is clear to me that the amendment to **The Societies Act** requiring 14 days notice as a minimum, which amendment was enacted after the 1977 bylaw amendments, rendered invalid the 10 day notice provision. In 1999, the society's members

were given the requisite 14 day notice now required. The wording of s.23 of **The Societies Act** now dictates a minimum of 14 days notice.

[41] S.58 of the by-laws required an extra ordinary resolution of two-thirds majority. The 1983 provision contained in s.75 dictated a three quarters majority. Once again, it is the **Act** which is determinative of the matter. Notwithstanding the content of s.58 and s.75 of the bylaws, by 1983 the **Act** specified that a special resolution must be passed by a majority of not less than 75% of the votes of those members of the Society who being entitled to do so vote in person.

[42] An issue raised by the petitioners is that the written consent of the archdiocese was not obtained before the 1999 vote.

[43] After s.58 of the bylaws was adopted by the Society, there were other amendments before 1999 to which the archdiocese did not consent in writing. However, for the reasons expressed by Mr. Justice Bouck in the ***Nagra*** decision, (supra), I am of the opinion that the issue of acquiescence is not relevant, and that what was done on earlier occasions is not of assistance in assessing the validity of the 1999 amendments.

[44] In ***Sangam Educational and Cultural Society of B.C. v. Gounder***, (1990), B.C.J. No. 2778 Mr. Justice Spencer considered the effectiveness of a by-law of a society, which permitted the Board of Directors, with a three fourths majority vote of the Board, to remove a member of the Board of Directors.

[45] Mr. Justice Spencer said this:

> In my opinion there was no power to oust the directors in that way. Section 31 of The Society Act must govern in this case and it limits the way in which a director can be removed. It reads:
>
> > A director may be removed from office by a special resolution and another director may be elected or by ordinary resolution appointed, to serve during the balance of the term.

Special resolution is defined in section 1 of the Act to mean a resolution passed in a general meeting by a majority of not less than seventy five percent of the votes of the members of the society who are entitled to vote and vote in person or by proxy. Thus, a special resolution can only be passed by the membership and not by the directors.

Mr. Robinson submitted that the section should be read as if the word "may" is permissive only and that a society is free to adopt other ways of removing directors, as was done by by-law 23 in this case. With respect I do not think so. The purpose of the Act is to regulate the affairs of those Societies that seek its benefit by incorporation under its provisions. The members are entitled to that protection, and one of the ways in which they are protected is by ensuring that the directors who are elected by the members can only be removed by the members.

[46] Mr. Justice Spencer then concluded that By-law 23 of the Society was void because it contradicted the limitation put upon the removal of directors by s.31 of the **Act**.

[47] I am of the opinion that the members of the respondent Society were entitled to change its by-laws by acting in accordance with s.23 of the **Act**. The requirement that there be the written consent of the archdiocese before the vote, which an earlier amendment had sought to entrench, was void, and of no effect.

[48] It is open to a society to adopt objects which are unalterable. It was such a provision which Madam Justice Newbury considered in the ***Colettis*** decision (supra). However, the **Act** does not provide for the adoption of unalterable bylaws. To the contrary, it sets out the manner in which bylaws can be amended. The requirement that amendments be by resolution passed in a general meeting by a majority of not less than 75% of the votes of those members who being entitled to vote, do vote, is the protection to individual members and minority interests which the legislature has adopted. It is that that governs the affairs of all of societies incorporated under the **Act**, including those of the respondent.

**SUMMARY**

1. It is s.23(1) of The Societies Act, which determined the manner in which the bylaws of the respondent Society could be altered.

2. The earlier provisions of the respondent Society's bylaws which permitted the bylaws to be amended on a two thirds vote majority on 10 days notice to the members were altered by amendments to The Societies Act.

3. The requirement that the written consent Of the Archdiocese of the Greek Orthodox Church be obtained before a vote is taken on a resolution to amend the bylaws was void and of no effect.

4. The by-laws of the respondent Society do constitute a contract between its members, and between its members and itself. This contract can be amended by a lawful amendment to the bylaws of the Society.

5. The earlier provisions of bylaws of the respondent Society which required that its bylaws accord with the Special Regulations of the Archdiocese of the Greek Orthodox Church and with the Uniform Parish Regulations of the Archdiocese, were subject to amendment without regard to either the Special Regulations of the Archdiocese or the Uniform Parish Regulations of the Archdiocese.

6. The court will not comment on ecclesiastical matters, including the issue as to whether the respondent Society's amendment of its bylaws affects theCharter given the parish of St George by the Greek Orthodox Church.

7. It was the special resolution of the members of the Society, which effected the 1999 bylaw amendments. The content of the director's oath, required of the directors of the Society by its bylaws, is without relevance to the issue of the validity of amendments.

**THE VOTE ON THE 1999 AMENDMENTS**

[49] The petitioners submit that persons who ought not to have voted at the meeting at which the bylaws were amended did vote, and that there were other irregularities in the conduct of the meeting. The petitioners submit that in those circumstances, the amendments ought to be declared invalid.

[50] An analysis of the petitioners' complaints suggests to me that they can be placed in three categories:

1. That persons not entitled to vote were allowed to vote;

2. The conduct of the general meeting at which the vote was taken, prior to the vote, was improper;

3. The vote was conducted improperly.

**1. Entitlement to Vote**

[51] The petitioners identified six individuals who voted, who they submit, were not eligible to vote. When the petitioners filed their material, they were not satisfied as to the eligibility to vote of a number of other members of the Society who did vote. By the time of the hearing, the petitioners had satisfied themselves of the eligibility to vote of all but six persons. At least five of those persons were persons who took out a voting membership in the Society within the three months preceding the June 24, 1999, vote. When the respondent Society conducted the vote on June 24, 1999, it intended to follow an established practice of not allowing members to vote unless they had been fully paid up members for at least three months prior to the date of vote, unless they were young adults who were children of voting members and who had turned 19.

[52] S.35 of the 1983 amendments to the bylaws provided that in respect of the election of directors and auditors;

(b) new members must be members of the Society for at least three months before the elections in order to vote;

(c) an adolescent who reaches the voting age of 19 years before the election date and whose parents are currently enrolled and in good standing in the Society, may vote at the current election, provided he pays the adults dues anytime before the election.

[53] It was these two provisions that the respondent Society was seeking to apply to the vote at the June 24, 1999, general meeting.

[54] Bylaw s.35 is of application only to the election of directors and auditors. I am of the opinion that it was not of application to the vote of June 24th, 1999, and that the five members whose right to vote is challenged as not being "three month members" were entitled to vote.

[55] Those five persons do not, however, appear to me to be persons who would otherwise have fallen within the scope of s.35(c). It appears to me that that provision was intended to relate to adolescents who reached the voting age

within the three month window immediately preceding the election. Three of the persons whose right to vote is challenged appear to have been about 27 years of age in 1999; one was about 24, and another about 23. None of those members would appear to me to have been persons to whom bylaw s.35 (c) applied.

[56] The vote count however, was thus. There were 385 ballots cast, but two of those ballots were blank. Under the bylaws of the Society, Robert's Rules of Order were of application. Under those rules, the two blank ballots are not considered to be votes. Although the blank ballots were deposited in the receptacle in which the votes were collected, since the ballots were left blank, it is assumed that the persons that received those ballots and did not mark them, did not wish to vote and did not vote either yes or no, but deposited the ballots in the receptacle to maintain the appearance of having voted. I am of the opinion that not only is this interpretation of Robert's Rules of Order correct, but that the referance in the definition of "special resolution" in **The Societies Act** to members "being entitled to do so, vote in person" does not include persons who do not mark the ballot given to them.

[57] Of the remaining ballots, one was spoiled, 289 voted yes to the proposed amendments to the bylaws and 92 voted no.

[58] If it is accepted that none of the six persons whose right to vote is challenged were entitled to vote, there would have been only 377 persons voting, and not the 383 who did vote. If it is assumed that all six of those persons voted yes, there would have been 283 yes votes and not 289 yes votes. In those circumstances, the resolution to accept the amendments to the bylaws would still have been passed by not less than 75% of the votes of the members that did vote.

[59] S.44 of Robert's Rules of Orders provides that if there is any possibility that the ballots of persons not entitled to vote might have affected the result, the entire ballot vote is null and void, and a new ballot vote must be taken. I am of the opinion that even if all six of these persons ought not to have voted, there is no possibility that their ballots could have affected the result.

[60] I would not accede to the petitioners' submission that the vote ought to be set aside on the basis that persons who were not entitled to vote did vote.

**2. The Conduct of the Meeting before the Vote**

[61] The petitioners complain that the president of the respondent Society acted as chairperson of the June 24th meeting and that at that meeting he spoke in support of the amendments, and that his doing so was in contravention of Robert's Rules of Orders. I am of the opinion that this is not a substantial irregularity in the conduct of the vote. Although it is true that the president ought to have vacated the chair before speaking to the motion, I do not see that this irregularity affected the fairness of the vote, or that this could be deemed to be a substantial irregularity in the conduct of the vote.

[62] The petitioners submit that the president failed to read to the assembly the Archbishop's letter to the Board. I am of the opinion that this complaint is completely without merit. There was no obligation on the president to read anything to the meeting. The petitioners were themselves all present, and they

themselves had a copy of the letter. They could have themselves read the letter to the meeting, if they had wished that to have been done.

[63] The petitioners submit that the members of the respondent Society were not given an adequate opportunity to speak to the meeting, and that a two-minute time limit was eventually imposed on speakers by the chair. I am satisfied from the abundance of the material, that the meeting of June 24, 1999, was the culmination of an ongoing, protracted and thorough debate among the members of the Society as to whether the amendments ought to be adopted. As it was, the meeting of June 24, 1999, did not conclude until 11:25 in the evening. I think it unlikely that by the time of the vote on June 24, 1999, that there was anything left unsaid.

[64] In challenging the vote on such grounds, the petitioners are, in my opinion, grasping at straws. It is really the outcome of the vote with which they take exception. The 75% requirement for a bylaw amendment affords considerable protection to minority views. It cannot be shown that any of these "irregularities" affected the outcome or the fairness of the vote. It appears to me that those conducting the meeting were attempting to have the vote taken in an efficient and fair manner.

**3. The Conduct of the Vote**

[65] The petitioners complain as to the fashion in which a "voting committee" was struck at the meeting to conduct the vote. I am of the opinion that this complaint is without merit. There was no requirement in the Society's bylaws that a voting committee be established at all, or that that be done in any particular fashion. There is no evidence that the composition of the voting committee had any effect. There is no evidence that anyone in the voting committee did anything improper.

[66] The petitioners submit that not all members were required to sign for their ballots, that some persons received more than one ballot, and that some persons not on the voting committee assisted in the distribution of ballots. The petitioners complain that there were no voting booths available to afford members privacy when voting.

[67] Although not all members' signed for the ballots, the names of those who did not sign were struck off a list as ballots were distributed. There was no rule requiring signatures. The evidence is that there were a very few persons who did obtain ballots for someone else, that usually being for a spouse. It was a longstanding practice of the respondent Society, that if both such persons were present, the person going up for the ballots was given both ballots, with the names of both members then being crossed off the list or signed for. The persons who assisted the voting committee were members of the Board of Directors. They were entitled to assist. Finally, insofar as voting booths are concerned, there was no requirement under the bylaws that the vote be taken in secret, or by ballot. There was no requirement in either the bylaws or in **The Societies Act** to have voting booths. It was not the practice of the respondent Society to provide voting booths. The vote could have been by show of hands.

[68] Of fundamental importance to all of these complaints, is that there is absolutely no evidence to show that any person voted twice, or to show that any person (other than the six members referred to earlier) who ought not to have

voted did vote, or that any of the alleged "irregularities" had any impact on the outcome of the vote.

[69] S.85 of **The Societies Act** provides that 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 . . . 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. I have considered this provision, as well as ss.2, which requires a court, before making an order, to consider the effect of it on the Society and its members.

[70] I am of the opinion that to the extent that there were irregularities in the conduct of the affairs of the respondent society by which its bylaws were amended on June 24, 1999, that the order which I ought to make, and which I do make, is that the amendment of the respondents' bylaws as effected on June 24, 1999, is hereby validated.

[71] In making this order, I am mindful that the amendment to the respondents' bylaws was effected by a vote of 75% of its members, which by any measure is a "clear majority" or a "substantial majority" or an "overwhelming majority."

[72] In ***Dillon v Kahalsa Diwan Society*** (1997), 32 B.C.L.R. (3d) 248, Mr. Justice Sigurdson adopted the following language from ***United States Gold v. Atlanta Gold Corp***. (1989), 43 B.C.L.R. (2d) 71, where Mr. Justice Gibb said this:

> Mistakes in compliance are inevitable. It seems to me that by empowering the court to remedy omissions, defects, errors or irregularities s. 230 represents tacit recognition that there will be mistakes and that a simple method of correcting the mistakes or alleviating adverse consequences flowing therefrom is a necessary and integral part of a sensible and workable system of corporate law.

[73] I am of the view that that observation and the remedy I have applied are particularly apt to the kind of "irregularities" of which the petitioners complain.

[74] The petition is dismissed.

"S.J. Shabbits, J."
The Honourable Mr. Justice S.J. Shabbits