

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *BC Tree Fruits Cooperative (Re)*,
2026 BCSC 229

Date: 20260212
Docket: S245481
Registry: Vancouver

**In the Matter of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, as amended**

and

In the Matter of the *Cooperative Association Act*, S.B.C. 1999, c. 28

and

**In the Matter of BC Tree Fruits Cooperative, BC Tree Fruits Industries Limited,
and Growers Supply Company Limited**

Petitioners

Before: The Honourable Justice Gropper

Reasons for Judgment

Counsel for BC Tree Fruits Cooperative
members:

M. Buttery, K.C.
C. Garton

Counsel for Growers Supply Company
Limited:

P. Reardon
K. Strong

Place and Date of Hearing:

Vancouver, B.C.
January 12, 2026

Place and Date of Judgment:

Vancouver, B.C.
February 12, 2026

Introduction

[1] This is an application by former members of BC Tree Fruits Cooperative (BCTFC) seeking to prevent the current members from holding a special general meeting to consider and vote upon a proposed special resolution amending Rule 125 of the governing rules of the BCTFC. If such a resolution is passed, it would prevent any distribution of the remaining assets of the BCTFC to former members.

[2] The former members rely on the provisions of the *Cooperative Association Act*, S.B.C. 1999, c. 28 (*Act*), particularly s. 156(a) and (b) and s. 157 asserting the current members are conducting the affairs of the BCTFC in a manner that is oppressive to the former members and that the proposed special resolution is unfairly prejudicial to the former members.

[3] The former members also rely on s. 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (*CCAA*).

Background

[4] In August 2024, the BCTFC filed a petition seeking creditor protection under the provisions of the *CCAA*. For a variety of reasons, the BCTFC faced a liquidity crisis, and was insolvent.

[5] On August 13, 2024, I granted an initial order under the *CCAA* that, among other things, appointed Alvarez & Marsal Canada Inc. as monitor of the petitioners with certain enhanced powers and granted an initial stay of proceedings for a period of ten days. The stay has been extended on several occasions.

[6] BCTFC ceased its operations at that time.

[7] On August 26, 2024, upon the application of the current members, and supported by the monitor, I granted, among other orders, the Representative Counsel Order: (i) appointing Mr. Amarjit Singh Lalli as the representative of all the voting members of BCTFC; (ii) appointing Osler, Hoskin & Harcourt LLP as representative counsel for the current members; and (iii) granting a charge in the

amount of \$100,000 over the petitioners' assets as security for the payment of the current members' counsel's fees.

[8] Since the initial order was granted, the monitor has marketed and sold nearly all of the petitioners' assets. In particular, the monitor has applied for and obtained eight sale approval and vesting orders. On May 16, 2025, I approved the sale of all the remaining real property and other assets. The sale completed in July 2025.

[9] In its thirteenth report, dated July 9, 2025, the monitor advised it "expected there to be significant surplus funds remaining in the estate after payment, in full, of all the Proven Claims of creditors, and professional costs associated with the CCAA proceedings." The monitor then addressed distribution of the surplus funds under Rule 125.

[10] On July 9, 2025, the current members requested the board of the BCTFC to schedule a special general meeting. It was signed by 38 of the current members of the BCTFC. As noted, the members' requisition seeks to pass a special resolution that would delete Rule 125 entirely and replace it with a provision that deletes reference to "and former members".

[11] On July 31, 2025, I granted the Representative Counsel Order that the former members be represented in these CCAA proceedings: (i) appointing Mr. Steve Day as the representative of all the former members of BCTFC; (ii) appointing Nathanson, Schachter and Thompson LLP as representative counsel for the former members; and (iii) granting a charge in the amount of \$50,000 over the petitioners' assets as security for the payment of the former members' counsel's fees.

[12] The monitor confirms that there is a significant surplus after making distributions to pay in full the outstanding proven claims of all the petitioners' creditors. The remaining matter in the CCAA proceedings is the distribution of the approximately \$12-\$15M of surplus funds.

[13] There are 180 former members and 178 current members. Under Rule 125, the current members are entitled to 68% of the surplus funds and the former

members to 32%. The monitor advises that there are \$4M in funds that would be distributed to the former members in accordance with the current Rule 125.

[14] The current members and the former members disagree about the role that each played in the financial collapse of the BCTFC.

[15] Mr. Lalli deposes that the current members are of the view that the departure of the former members from the BCTFC was a significant factor in the financial collapse of BCTFC: it decreased revenues, increased overhead costs for remaining members, and “in many cases involved Former Members breaching their fruit supply agreements with the BCTFC.” He does not provide details.

[16] Douglas Pankiw was the interim chief executive officer and the chief financial officer of the BCTFC’s assets when the petition was filed. At paras. 13 and 20 of his affidavit, he refers to the nature and purpose of the BCTFC:

13. BCTFC currently consists of approximately 290 local fruit grower and orchardist families (the “Growers”) that work together as part of a larger community. Each grower nurtures their orchards to create the best possible fruit, and is responsible for the care, picking of, and transporting the fruit to BCTFC. In return, BCTFC provides expertise in receiving and storage, sorting and packing, marketing and then transporting the product to customers...

20. BCTFC constantly works to improve the quality of the fruit the Growers produce. This includes assistance with sales, marketing, accounting, technology, shipping and regulation compliance. BCTFC ensures that the Growers have state of the art equipment, are replacing tress and varieties when needed, and taking active steps to better serve its customers.

[17] Mr. Pankiw deposed that the following factors led to the financial collapse of the BCTFC:

- a) membership discord associated with proposed property sales and governance changes, which caused delays in property divestments resulting in increased interest costs and decreased returns on property sales (associated with the declining real estate market);
- b) the unexpected and significant crop reduction caused by unusually severe weather patterns in 2024;

- c) declining apple volumes in preceding years, especially the staggering 50% reduction in projected apple volumes for 2024 versus 2023 (apples are the largest commodity of the BCTFC, comprising 89% of the 2023 crop); and
- d) increased competition from independent packers and Washington State farmers.

[18] Mr. Day adds that the “staggering” drop in apple volumes was the result of current members withholding their crop estimates in protest of the leadership being provided by directors of the BCTFC which made it impossible to budget and plan for the 2024 year. He points to the exhibits in the Pankiw affidavit.

BCTFC Rules

[19] The BCTFC has governing rules established under the *Act* (the “Rules”).

[20] The Rules (and s. 68 of the *Act*) provide that they can be amended by the current members. An amendment requires a special resolution, passed by a 2/3 majority of the current members at either an annual general meeting (“AGM”) or a special general meeting. Current members have the sole power to requisition a special general meeting; former members do not. The former members are not entitled to vote under the Rules or the *Act*.

[21] Rule 17(1) states “[w]hen a member withdraws from membership, or a membership is terminated or ceases for any reason, all rights and privileges attached to membership cease” (except for requiring the BCTFC to redeem the former members’ membership share).

[22] Rule 125 provides:

After setting aside the amount required as a reserve and paying any dividend permitted by these Rules, the Association must, but only in the year in which it intends to permanently cease operations, distribute the whole of its then accumulated surplus, including all amounts realized from the sale or other disposition of its assets (but after setting aside an amount equal to the aggregate paid up capital of all its outstanding shares), to the members and former members of the Association (including the heirs, executors, administrators, successors and assigns) in the same proportion that the

tonnage of tree fruits accepted by the Association from each of them (or from the grower through whom the member or former member derives or derived membership) in the previous 6 years bears to the total tonnage of tree fruits accepted by the Association from all its growers during those same 6 years.

[Underlining added.]

[23] Mr. Pankiw deposed that the assets of the BCTFC are the product of contributions of original fruit grower cooperatives' members since 1936. They were built over many decades by generations of farmers. In 2008, four packing house cooperatives amalgamated into the entity now known as the BCTFC (then known as the Okanagan Tree Fruit Cooperative): Okanagan Similkameen Cooperative Growers Association, B.C. Fruit Packers Cooperative, Sun Fresh Cooperative Growers and Okanagan North Growers Cooperative. In the discussions around the amalgamation, there was considerable deliberation regarding the Rules that would govern, significantly, about what would become Rule 125.

[24] Steve Day, the representative of the former members, deposes that the following emerged from those discussions as the rationale for Rule 125: the other bylaws of BCTFC provided active growers with the ability to offer new growers membership for no charge other than a \$1 share fee and a minimal production requirement; Rule 125 provided assurance to exiting members (those who retired or left for any other reason) that they will retain a six-year stake in BCTFC's equity, to which they had contributed; six years was viewed as a reasonable amount of time such that growers would receive their fair share of equity; and Rule 125 was intended to prevent the current growers from deciding to cash out the remaining equity in the BCTFC for themselves.

Statutory Provisions

[25] For the reasons that follow, I have determined that the matter fits squarely within s. 156 of the *Act* and it is unnecessary to refer to the provisions of s. 157. I have also determined that it is unnecessary to decide this matter under s. 11 of the *CCAA*, and I will not refer to that section either.

[26] I begin by referring to s. 8 of the *Act* that provides:

8 (1) An association must be organized and operated and must carry on business on a cooperative basis.

(2) An association, other than as described in subsection (3), is organized, operated and administered on a cooperative basis if it is substantially organized, operated and administered on the following principles and methods:

- (a) membership in the association is open in a non-discriminatory manner to persons who can use the services of the association and are willing and able to accept the responsibilities of membership;
- (b) subject to sections 40 (3) and (4), 42 (1) and 45, each member or delegate has one vote;
- (c) members contribute to the capital of the association;
- (e) surplus funds arising from the association's operations are used for any or all of the following purposes:
 - (vi) distribution among its members as a patronage return;

[27] Section 156 provides:

156 (1) Despite the rules of an association, but subject to subsection (2) a member or investment shareholder of the association may apply to the court for an order on the ground that

- (a) the affairs of the association are being conducted, or the powers of the directors of the association are being exercised, in a manner oppressive to one or more of the members or investment shareholders, including the applicant, or
- (b) an act of the association has been done, or is threatened, or a resolution of the members has been passed or is proposed, that is unfairly prejudicial to one or more of the members or investment shareholders, including the applicant.

...

(3) On an application under subsection (1), the court may, with a view to bringing to an end or to remedying the matters complained of, make an interim or final order it considers appropriate, and, without limiting this, the court may

- (a) direct or prohibit any act or cancel or vary any transaction or resolution,
- (b) regulate the conduct of the association's affairs in future,
 - (i) order the association to compensate an aggrieved person...

(5) For the purposes of this section, a reference to a "member" or an "investment shareholder" must be read as including

- (a) a beneficial owner of a membership share or an investment share in the association, and

(b) any other person who, in the discretion of the court, is a proper person to make an application under this section.

Preliminary Issue

[28] The current members assert that this application for oppression relief under s. 156 of the *Act* is premature: it is an attempt to prevent the current members from meeting and voting how the BCTFC should govern its affairs.

[29] As the current members point out, they have been prevented from holding any meeting, including AGMs or any special general meetings since before the commencement of the petition under the *CCAA* in August 2024. The current members have, throughout the proceedings, asserted their rights to hold meetings.

[30] The current members say that the former members' application seeking to prevent the current members from holding the special general meeting and voting on the proposed resolution presupposes a result that the current members will obtain the two-thirds vote to pass the resolution, without the current members having an opportunity to discuss and consider it, or giving them the opportunity to have the appropriate regard to the required interests. The current members argue that their autonomy and that of the directors of the BCTFC are of paramount consideration here, not whether their actions may be oppressive or unfairly prejudicial to the former members.

[31] The *Act* refers to threatened action, or a resolution of the members has been proposed. It does not require that the action be taken or that the proposed resolution passed, before the Court can intervene to determine if the current members' proposed resolution contravenes the *Act*.

[32] I appreciate that the current members may or may not pass the proposed resolution, however I am satisfied that the time to deal with whether the proposed resolution is oppressive or unfairly prejudicial is on this application. There is simply no point in requiring the former members to reapply if the resolution passes and then determine whether it is oppressive or unfairly prejudicial. This is a dispute that is ripe for adjudication on this application.

Discussion

Are the former members “proper person[s]” to bring this application?

The Law

[33] In *N'Quatqua Logging Co. v. Thevarge*, 2006 BCSC 1122, Justice Pitfield considered “appropriate person” in the context of s. 227 of the *Business Corporations Act* S.B.C. 2002, c. 5 [BCA] at para. 19:

The reference to an appropriate person is intended to provide a remedy for persons who are not shareholders but who, by virtue of their relationship to, or dealings with, the company, have an interest that is not dissimilar to that of a shareholder. Such is the position in which the dissidents who are Band members find themselves.

[34] Pitfield J. continued at para. 25:

Section 227(1) [of the *BCA*] makes it clear that the court is granted discretion to determine whether an applicant is an “appropriate person”. The discretion must be exercised judicially. The overriding concern must be whether an applicant should be afforded the benefit of the remedy conferred by s. 227 in order to achieve justice and equity in the circumstances of a particular case.

Positions of the Parties

[35] The former members assert that they are proper person[s] to bring this application. They say that while they are not current members of the BCTFC, “by virtue of their dealings with the Association since 2018 (the earliest year in which tonnage contributed is taken into account under Rule 125)”.

[36] The former members argue that they have a direct financial interest in the BCTFC’s affairs. They analogize their position to that of a minority shareholder in a corporation, in that they have no legal right to influence or change what they see as abuses of management or conduct contrary to the BCTFC’s interest. They have a written entitlement to surplus funds under Rule 125.

[37] The current members did not take a position on the question of standing.

Analysis

[38] As Rule 125 stands, the current and former members are in the same position regarding the distribution of the surplus funds. The proposed resolution seeks to change that.

[39] I am satisfied that the former members are the proper person[s] to bring this application. Simply put, they have a claim for a share of the surplus under the current Rule 125 that the current members, by special resolution, seek to remove. I find that they should be afforded the opportunity to assert that justice and equity is offended in these circumstances.

Does the current members' proposed requisition and special resolution meet the test for oppressive or unfairly prejudicial conduct?

The Law

[40] In *Potter v. Vancouver East Cooperative Housing Association*, 2019 BCSC 871, Justice Marzari noted at para. 91:

Overall, the authorities establish that the legal test for relief under s. 156(1) of the Act should be informed by the same legal framework as the reasonable expectations test for oppression and unfair prejudice under the *BCA* and the [*Canada Business Corporations Act*, R.S.C. 1985, c. C-44] with appropriate regard to the housing cooperative context.

[41] At para. 93 Marzari J. applied that two-part test set out in *BCE Inc., 1976 Debentureholders*, 2008 SCC 69 at para 68:

1. Does the evidence support the reasonable expectation asserted by the claimant; and
2. Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms “oppression”, “unfair prejudice” or “unfair disregard” of a relevant interest?

[42] *Potter* sets out some of the relevant factors in considering reasonable expectations:

- a) ...the purpose and nature of the Co-op is a significant factor, as is the relationship between the parties, past practices of the Co-op, and representations to and agreements with various members (at para. 98).

- b) In a case that pits certain member interests against others, the fair resolution of conflicting interest between stakeholders is a significant factor in defining reasonable expectations. Here, consideration must be given to the full context, including the need to weigh competing interests, while fulfilling a mandate to provide a fair distribution to stakeholders in the context of a winding up (at para. 99).

[43] In *Collins Barrow Vancouver v. Collins Barrow National Cooperative Inc.*, 2015 BCSC 510, aff'd 2016 BCCA 60, Justice Fisher referred to these relevant factors at para. 116:

... general commercial practice, the nature of the corporation or cooperative, the relationship between the parties, past practice, steps the claimant could have taken to protect itself, representations and agreements, and the fair resolution of conflicting interests between stakeholders

[44] In respect of the second prong, the applicant must establish a harmful effect or prejudicial consequences (or a threatened act that will have those consequences) on their own particular interests that has been caused by the breach of a reasonably held expectation.

[45] In *Potter*, the Court summarized the oppressive and unfairly prejudicial thresholds:

103. Oppressive conduct has been variously described as conduct that is coercive or abusive; "burdensome, harsh, and wrongful"; a "visible departure from standards of fair dealing"; or an abuse of power: see *BCE* at para. 92. Unfair prejudice requires less; it is generally concerned with what is unfair or inequitable. The key case on the meaning of "unfairly prejudicial" in British Columbia is *Diligenti v. RWMD Operations Kelowna Ltd.*, 1976 CanLII 238 (BC SC), [1976] B.C.J. No. 38, 1 B.C.L.R. 36 (S.C.), in which Justice Fulton applied dictionary definitions and noted that they supported the "instinctive reactions that what is unjust and inequitable is obviously also unfairly prejudicial".

104. Examples of unfair prejudice or unfair disregard in the corporate context include: squeezing out a minority shareholder, preferring some shareholders with management fees, paying directors' fees higher than the industry norm, favouring a director, improperly reducing a shareholder's dividend, et cetera: see *BCE* at paras. 93-94.

[46] *Potter* then addresses the role of good faith and proper purposes as primary considerations at paras. 105 and 106:

105. Equity and fairness are the primary considerations with which to assess directors' actions. In each case, "the question is whether, in all the circumstances, the directors acted in the best interests of the corporation, having regard to all relevant considerations, including, but not confined to, the need to treat affected stakeholders in a fair manner, commensurate with the corporation's duties as a responsible corporate citizen": *BCE* at para. 83.

106. However, the inquiry is not driven solely by the motive of the Board or the manner in which the breach of reasonable expectations was committed. Rather, the focus is on the result or effect of the decision or conduct complained of.

[47] Further, as Marzari J., noted at para. 109:

In summary, bad faith is not a requirement to establish oppression, but any lack of good faith is a factor in considering both the existence of reasonable expectations and whether conduct was oppressive or unfairly prejudicial. In this regard, the question is whether, in all the circumstances, the Board acted in the best interest of the Co-op, having regard to all relevant considerations, including, but not confined to, the need to treat affected stakeholders in a fair manner. Even if the Board acted in good faith, the *result* or *effect* of a practice or policy may still be oppressive or unfairly prejudice the interests of the members in a way that calls for a remedy.

[Emphasis in original.]

Positions of the Parties

Former Members

[48] The former members assert that they meet the two-part test set out in *BCE*. They say that the proposed special resolution is designed to give an "unearned windfall to growers who happened to be current members when [BCTFC ceased operations]". They argue that there is no legitimate business purpose to the special resolution as the BCTFC ceased its operations in 2024. The special resolution is designed to leave former members who contributed to the growth and operation of the BCTFC with nothing.

[49] The former members say that they had a reasonable expectation that the BCTFC would comply with Rule 125 upon a winding up. Rule 125 reflects the agreement between members and former members, as well as the BCTFC, as to how their interests would be dealt with when and if the BCTFC ceased operations.

The proposed changes cannot be said to be in the best interests of the BCTFC nor to reflect a fair resolution of conflicting interests.

[50] Between 2018 and 2023, all the growers contributed tree fruit to the BCTFC on the understanding they were entitled to certain rights and interests, including those in Rule 125. The former members say that the special resolution, if passed, would eliminate those rights and interests.

[51] The former members say that the special resolution:

... contemplates an arbitrary, harsh and wrongful change to Rule 125, which wholly eliminates any entitlement of Former Members to surplus funds. It does so without any ability of Former Members to participate in the vote and without any recognition of their contribution to the Cooperative's remaining equity.

[52] The former members are of the view that the factors contributing to the BCTFC's financial decline were because of the current members' actions. Further, they argue that current members have already benefited from a return of BCTFC equity when the BCTFC had insufficient operating income to pay the 2023 returns and funded those returns using debt or proceeds from real estate sales.

Current Members

[53] The current members say that the former members' alleged expectations are unreasonable. The former members left the BCTFC voluntarily, fully aware that the BCTFC's rules could change with a vote of the current members. The current members point out that having left the BCTFC, the former members gave up their ability to vote on amendments to the Rules.

[54] The current members argue that the fact that Rule 125 has not previously changed is irrelevant. The current members say that there can be no reasonable expectation that an organization's past practices will not change.

[55] The current members say that they do not propose to exercise their voting rights in an oppressive or unfairly prejudicial manner. They seek to hold a meeting to discuss and vote on a rule amendment. Even if oppression principles require current

members to consider the expectations of former members, the law does not require them to reach any particular conclusion. The law protects the current members' right to exercise their business judgment within a range of reasonable outcomes.

Analysis

[56] The current members' position on the preliminary matter is carried through in their argument on whether the current members' requisition is oppressive and unfairly prejudicial. The current members argue that their autonomy and that of the current members and directors of the BCTFC must be considered first, not whether their actions may be oppressive or unfairly prejudicial to the former members.

[57] They say that nothing has happened, and that they intend to consider all aspects of the special resolution. This Court ought not to presuppose what will happen at the special general meeting where the resolution to amend Rule 125 is discussed.

[58] It is clear that the resolution, if passed, will mean that the former members cannot participate in the distribution of the surplus funds.

[59] It was only after the monitor determined that there were surplus funds to be distributed, that the current members sought a special general meeting to discuss and vote upon the resolution that if passed, would disentitle the former members from receiving any share of the surplus funds. The current members who requisitioned the special general meeting have been frank about the object of the special general meeting: that is to consider and if seen fit, to pass the resolution that prevents the former members from participating the distribution of the surplus funds.

[60] This resulted in the former members seeking to be represented in this CCAA matter as the current members no longer represented the best interests of the former members. Instead, they drew a line in the sand.

[61] I agree with the current members that the former members have no role to play in the governance of the BCTFC and that they gave up their right to vote when

they left. I also agree that the former members could not have a reasonable expectation that there would not be any changes to the Rules after they left.

[62] The history of the Rule is not irrelevant, however. Some of the former and current members describe the history of the Rule. I refer again to Mr. Day's affidavit where he described Rule 125 as providing assurance to exiting members (those who retired or left for any other reason) that they will retain a six-year stake in BCTFC's equity, to which they had contributed and that six years was viewed as a reasonable amount of time such that growers would receive their fair share of equity. Rule 125 was intended to prevent the current growers from deciding to cash out the remaining equity in the BCTFC for themselves.

[63] Obviously if the current members are entitled to change the Rule as proposed, these assurances to former members would no longer exist.

[64] The current members take the position the departure of the former members from the BCTFC was a significant factor in the financial collapse of BCTFC. Mr. Day blames the financial collapse on the current members.

[65] Mr. Pankiw deposed that there was a combination of factors that led to the financial collapse of the BCTFC including membership discord, significant crop reduction, decreased apple volumes and competition.

[66] I cannot find that it was the current members or the former members that caused the financial collapse, but there was a confluence of factors, including external factors. I am not satisfied with Mr. Lalli's explanation that the need to consider the proposed resolution is because the former members were the cause of the financial collapse.

[67] With that element lacking, there is no explanation for why the current members are seeking to pass the resolution excluding former members from the distribution of the surplus funds, beyond that the current members believe that they are entitled to the whole of the distribution, or that they do not wish to share the

surplus funds with the former members, because it means more money for each of the current members.

[68] The former members had reasonable expectations that each would share in the distribution of any surplus finds, in accordance with Rule 125. They had those reasonable expectations until the current members' requisition seeking to exclude them in July 2025.

[69] I adopt the *Potter* definitions of oppressive conduct and unfairly prejudicial.

[70] I find that the proposed resolution qualifies as oppressive conduct, it is "burdensome, harsh, and wrongful"; a "visible departure from standards of fair dealing and an abuse of power". It creates unfair prejudice to the former members that is unfair and inequitable. It arbitrarily and improperly reduces the former members' rightful share in the surplus funds.

[71] It is unnecessary for me to find that the current members are acting in bad faith in attempting to proceed to a vote on the proposed resolution. Suffice it to say that the proposed resolution does not evince good faith on the part of the current members.

Conclusion

[72] Having found that the special general meeting has been requisitioned with the express object of considering and voting on the proposed resolution, which I have found to be oppressive and unfairly prejudicial conduct of the current members to the obvious detriment of the former members, I grant the relief sought by the former members:

- a) A declaration pursuant to s. 156(1)(a) of the *Act* that the affairs of the BCTFC are being conducted in a manner oppressive to the former members.

- b) A declaration pursuant to s. 156(1)(b) of the *Act* that the special resolution proposed in the members' requisition delivered to the directors of the BCTFC on July 9, 2025 is unfairly prejudicial to the former members.

[73] I make the following orders under s. 156(3) of the *Act*:

- a) Prohibiting or restraining the directors of the BCTFC from convening a special general meeting to consider the special resolution; and
- b) Directing Alvarez & Marsal Canada Inc. to comply with the existing Rule 125 in making any future distributions of surplus funds to current and former members.

[74] Because the legal costs of both the current members and the former members are secured by a charge on the BCTFC assets, I will not make any order in respect of costs.

“Gropper J.”