

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Macdonald v. The Friends of Monterey  
Centre Society,*  
2025 BCSC 79

Date: 20250120  
Docket: S247375  
Registry: Victoria

2025 BCSC 79 (CanLII)

Between:

**David Macdonald**

Petitioner

And:

**The Friends of Monterey Centre Society**

Respondent

Before: The Honourable Justice Morley

## **Reasons for Judgment**

**(Petition under s. 105 of the *Societies Act*)**

The Petitioner Appearing on  
His Own Behalf:

D. Macdonald

Counsel for the Respondent:

K. Hamilton  
R. Rogers

Place and Dates of Trial/Hearing:

Victoria, B.C.  
December 18 - 19, 2024

Place and Date of Judgment:

Victoria, B.C.  
January 20, 2025

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**I. OVERVIEW**

[1] As with many legal proceedings, this petition arises out of an underlying dispute that is not primarily legal in nature.

[2] The Monterey Recreation Centre is a facility provided by the District of Oak Bay for recreation, education and social events.<sup>1</sup> The respondent Society represents users of the Centre 50 years of age or older.<sup>2</sup> The petitioner David Macdonald is the club representative for the Chinese Brush Painting Club, which meets at the Centre and is affiliated with the Society. He opposes a number of decisions made by or on behalf of the Society in 2024 that changed the relationship between Oak Bay, the Society and the clubs that meet at the Centre.

[3] The most important controversy is whether the clubs should be managed by Oak Bay, a local government, or by the Society. Between 2017 and 2024, the Society managed the clubs. The directors<sup>3</sup> of the Society advocated transfer of the management of the clubs based on their conclusion that the administrative and burdens associated with managing the clubs was beyond the capacity of volunteers. Mr. Macdonald responds that these administrative burdens are themselves the product of the Society and Oak Bay becoming excessively “risk averse” in the aftermath of the COVID-19 pandemic. He thinks it is important that the clubs avoid becoming a local government program and retain their autonomy.

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<sup>1</sup> I will refer to the Monterey Recreation Centre as the “Centre” throughout. I will refer to both the District and its department of Parks, Recreation and Culture as “Oak Bay”.

<sup>2</sup> The original name of the respondent was the Oak Bay Seniors Recreation Association. When it incorporated under the present *Societies Act*, S.B.C. 2015, c.18 in 2017, it changed its name to the “Monterey Recreation Activity Association”. One of the issues in this petition is the validity of a subsequent 2024 name change to “The Friends of Monterey Centre Society”. I will refer to the respondent throughout as the “Society”.

<sup>3</sup> I will refer to the directors, acting collectively, as the “Board”. One of the issues in the proceeding is whether the directors were, at the material times, legally entitled to act as directors. My references to “director” or the “Board” will be agnostic as to this issue. The directors on the Board are divided between “executive directors”, consisting of a president, vice president, treasurer, recording secretary and member-at-large, and “club directors”. I will use “Executive” to refer specifically to the executive directors.

[4] Who is right in this debate – its *substance* – is for the members of the Society, not me, to decide. It is not a legal issue. In this petition, however, Mr. Macdonald makes a number of objections to the *process* for determining the democratic will of the Society, saying these violated its bylaws and that the decisions are therefore ineffective. These *are* legal issues because these rules provide a legal underpinning to make sure that decisions are democratic and orderly. My responsibility is to evaluate whether Mr. Macdonald has established “irregularities” in the process, whether any such irregularities were significant enough to render the decisions “ineffective”, and, if so, what should be done about it.

[5] For reasons I will develop at greater length below, I find that a number of the irregularities Mr. Macdonald alleges either have not been established or are too minor to render the relevant decisions ineffective. However, Mr. Macdonald has shown that the current executive members of the Board continued on in office, after their terms of office expired, without new elections as required by the Society’s bylaws. In my view, this is an irregularity that renders its decisions “ineffective” as that term is used in the *Societies Act* from September 6, 2022, when elections should have been held, until June 24, 2024, when the bylaws were amended to create an interim board and one was appointed by the 2024 annual general meeting (“AGM”).

[6] In general, I find that the alleged irregularities associated with the 2024 AGM, which enacted many of the changes Mr. Macdonald objects to, were either not established or were too minor to render it ineffective. The AGM was, in substance, a fair and democratic expression of the views of the members. However, the vote to approve the change of name was passed in reliance on a vote that should not have been counted, and therefore the resolution changing the Society’s name was ineffective. Moreover, because the Board was not effectively elected, and the ratification of the transfer of management was conducted on the basis that the Society and Oak Bay had already agreed to it, this was not effective either.

[7] The question then is what should be done about these process problems. Under s. 105(2) of the *Societies Act*, even if an irregularity has been established and even if it renders past decisions legally ineffective, there is still a choice. The court can either correct or validate the actions taken and can make ancillary orders. This discretion must of course be exercised judicially, with an aim to the interests of the Society and ensuring the most democratic possible outcome.

[8] In this case, neither immediately “correcting” the irregularities by giving Mr. Macdonald his preferred outcome nor permanently “validating” everything that would be done seem appropriate to me. Neither would respect the democratic process.

[9] I reject across-the-board validation because it would ignore the fact that the Board retained office for years after its mandate expired. It would not respect the democratic self-government of the Society to just validate a decision promoted by a Board years after it should have faced re-election. On the other hand, that decision cannot be responsibly undone without a democratic mandate for a workable alternative. *Someone* must manage the clubs. The current leadership has concluded that this is not practical. They certainly are not going to do so.

[10] If Mr. Macdonald’s alternative is to be realized, there would have to be *both* a new leadership willing to conduct the necessary management *and* demonstrated confidence from the members that such a leadership was up to the task and it was something they wanted to take on. Maybe Mr. Macdonald and like-minded people are willing to do the necessary work and can show they have the necessary support. Maybe not. To just “correct” everything the Board did without finding out first would be irresponsible because it would render club governance – and therefore the recreational and educational services they provide – impossible.

[11] The right forum for making this decision is the next annual general meeting (“AGM”), scheduled to occur in March 2025. That AGM can consider whether to validate the past decisions in their entirety, go off in the direction Mr. Macdonald advocates, or make some other decision entirely. What I can do is provide some

guidelines so that neither proposition is given an unfair advantage based on past errors. I have tried to do this by requiring certain propositions to be put to the 2025 AGM and providing for results depending on whether validation of the changes in 2024 or returning to the *status quo* in the seven years before that receives majority support.

**II. BACKGROUND**

**A. The Centre, the Clubs and the Society**

[12] The Monterey Recreation Centre is one of the recreation centres operated by the District of Oak Bay through its Parks, Recreation and Culture department. A key feature of the Centre is that it is a place for recreational and educational clubs, including those exclusively or largely oriented towards older adults.

[13] The clubs that meet at the Centre have varied over the years. The 2024 list includes clubs for languages (French and Spanish), games and indoor sports like table tennis, artistic and musical activities, book clubs (one general and one for mysteries), crafts and discussion groups. The clubs have volunteer leaders, known as “club representatives”.

[14] These activities play an important role in the social and mental lives of many older adults living in Oak Bay and elsewhere in the Capital Regional District. There is no doubt that this is important for the mental and physical health and well being of all those who participate.

[15] In 1980, some of the older participants in activities at the Centre set up the Oak Bay Seniors Recreation Association, a non-profit voluntary organization that was the predecessor of the Society today. Since then, the Society has been run by volunteers, all of whom are 50 years of age or older. The Society is a registered charity.

[16] The *status quo* that Mr. Macdonald seeks to restore and that the Board sought to change last year was set up in 2017. That year, the Society incorporated under the current version of the *Societies Act*, S.B.C. 2015, c. 18 and changed its

name to the “Monterey Recreation Activity Association”. In addition, Oak Bay transferred management of the recreational and educational clubs meeting at the Centre to the Society. The constitution registered in 2017 reflected this, stating that the purpose of the Society was to “provide learning and recreation activities for members of the Oak Bay Monterey Recreation Centre who are at least age 50.”

[17] There is no explicit evidence of the reasoning for the transfer of management of the clubs to the Society in 2017 before me. I can infer that those involved in bringing it about saw it as desirable for there to be some degree of self-management of an important set of civil society activities.

[18] Of course, because Oak Bay continued to own and operate the Centre, there had to be cooperation. Oak Bay and the Society entered into a memorandum of understanding (“MOU”) setting out their respective roles, which has been updated a number of times since then. The earliest one I have is dated 2021, but it does not seem to have represented any substantial change from the arrangement previously, so I will assume it essentially reflected the situation from 2017 until the recent reforms that are the basis for this litigation.

[19] Under the 2021 MOU, the Society was responsible for establishing an application process to form new clubs, for setting the criteria for approval of a club, for approving changes to existing clubs, and for approving and monitoring the content of the clubs’ activities. One aspect of this was that it was responsible to ensure that club activities were hobby-based and not operated for members’ personal financial gain. The Society was responsible for the direct costs of the clubs and fundraising for them. It maintained directors’ and officers’ liability insurance for the activities and fundraising of the clubs.

[20] Membership of the Centre and the Society were “paired”. Under the 2017 bylaws, anyone who joined the Centre, was up-to-date on their dues, and was 50 or older automatically became a member of the Society. Oak Bay administered the membership application process. At least by 2021, Oak Bay was supposed to

ensure that the application form for membership at the Centre provided for applicant consent to join the Society.

[21] Oak Bay was responsible for the facility and equipment, and agreed to assist the Society in various ways. However, the management of the clubs was not its responsibility or within its authority and instead was left with the Society.

[22] I do not have minutes of the 2017 AGM, but it appears that the transition to incorporation under the current *Societies Act* and the transfer of management of the clubs to the Society were approved at that time.

**B. Board Elections Delayed After COVID-19**

[23] Under the Society's bylaws, directors are elected at annual general meetings. Directors serve for a two-year term. Every member has the right to vote for executive directors. The Board is constituted by the directors and governs the Society between AGMs. Executive directors are elected without portfolio and the Board then decides on which role they will play.

[24] At the 2017 AGM, the current president of the Society, Gail Hughes, was elected into that role. As I mentioned, I do not have minutes from that meeting.

[25] I do have minutes from the March 11, 2019 AGM. They show that eight persons were nominated to be directors. An advance vote was conducted, and additional votes were made at the meeting. In the result, six of the nominees were elected to the Board: Gail Hughes, Joyce Bevan, Sandy Cotton, Gail Dawson, John Herbert and Doreen Richards.

[26] An AGM occurred early in March 2020, immediately before the COVID pandemic was declared to be a health emergency by the Provincial Health Officer. I do not have minutes of that AGM either. At that point, the directors elected in 2019 still had a year to go in their terms, so it is not surprising that no election appears to have taken place.

[27] As a result of COVID, and the difficulty of setting up an electronic meeting in light of the lack of technical sophistication of many of the Society's members, no AGM took place in 2021, so the Board continued in office.

[28] Strictly speaking this may have been contrary to the bylaws, but Mr. Macdonald takes no objection to the decision and there are obvious reasons for it. In any event, I will presume that the Board continued to have a *de facto* mandate and I would certainly not invalidate any decisions it made during this period.

[29] An AGM was, however, held on September 6, 2022, and it is at this point that Mr. Macdonald objects to the Board remaining in office without an election.

[30] In fairness, it is important to note that this was no secret. In her opening remarks to the sixty two members assembled, Ms. Hughes said the following:

Some of you may notice that this AGM is a bit different from our earlier AGMs. This year there are no elections or resolutions. But this AGM will still serve as a report card to you on what the Board has done since the last one in March 2020, when just a few days later, the world shut down.

[31] The justification for why the 2022 AGM was "different" in not having elections or resolutions was not made explicit by Ms. Hughes, but was implicit. Ms. Hughes pointed to the difficulties of maintaining the Society as an active organization through the COVID pandemic.

[32] In her president's report, delivered towards the end of the 2022 AGM, Ms. Hughes stated that there would be a return to normality the following year:

The next AGM is tentatively scheduled for May, 2023 and at that time the executive positions (the President, Vice President, Treasurer, Recording Secretary and Director-at-Large) will be up for election. I strongly urge all of you to consider becoming a Board or committee member.

[33] However, this did not happen. The next AGM was in fact held on September 12, 2023. More importantly the executive positions were not, in fact "up for election."

[34] The Society originally argued that there was an election by acclamation of the executive directors at the 2022 or 2023 AGM. It abandoned this position in oral argument, and I find that it is not sustainable.

[35] This can be seen easily from the fact that five club director positions *were* put up for election at the 2023 AGM. Jill Garnett, Joan Wells, Sharon Belton, Cher Owen, and Diane Hanson were nominated. Since the number of nominees was the same as the number of positions, these members were acclaimed for two-year terms as club directors. So the club directors were elected by acclamation. This was not the course taken for the positions of president, vice president, treasurer, recording secretary and director-at-large.

[36] As in 2022, this was not a secret. Ms. Hughes was, in her own words, “blunt”:

I will be blunt. The past twelve months have been tense. In my last AGM report I had stated that the 2023 AGM was tentatively scheduled for May 2023 and the executive positions (the President, Vice President, Treasurer, Recording Secretary and the Directors-at-Large) would be up for election. And I had planned to step down as president. Well, things happen and things change [...]

[37] Ms. Hughes’ justifications for the delay in the timing of the AGM and the lack of new executive elections were based on complaints from members of one of the clubs that led to threats of a lawsuit:

The Board and MRAA faced an issue that pretty much took up all of our time and energy for several months. There was a complaint from two members of a club and, instead of coming to the Board, the complaint went to the Director of Oak Bay Recreation and to the Oak Bay Mayor. What followed was a series of many meetings: many, many, emails, an increase in our insurance payment plus a search for a lawyer because the term “lawsuit” was bandied about a few times. That issue is why we are now asking members to sign a waiver. The issue was resolved by a review of the formal complaint. The results of that review were presented to the Board and the Board unanimously voted to dismiss the complaint.

[38] The reference is apparently to an incident in 2023 where a table tennis player was injured.

[39] Ms. Hughes explained the change in the date of the AGM and the lack of elections for executive positions as a consequence of this issue:

The issue is also why the date of the AGM was changed from May to September and instead of an election for the Executive positions, the call for nominations was for the Club Director positions. I truly believed, and still do, that it would have been unfair to expect a new president and other new executive officers to step in and deal with the issue and its potential fall-out.

[40] As Ms. Hughes noted at the time, the executive directors were not elected by acclamation. Rather, the “call for nominations” was restricted to the club director positions, and no such call was made for the executive positions. “Acclamation” occurs when the number of people nominated to elected positions is less than or equal to the number of positions available. It is of course quite common in non-profit voluntary associations. But it can only occur if there is a nomination process, and that was what the Board specifically decided not to do in 2023.

[41] I find that this was a deliberate decision. There is no particular reason to think that election by acclamation would have materially complicated the AGM or the business of the Society. The reasonable inference is that the Board wanted to avoid the possibility of a *contested* election, which would have required some investment of volunteer time, given the possibility of advance voting. The Board presumably thought this would not be in the interest of the Society. They may also have thought it would not be in the interests of the Society to have a different leadership that was not up-to-speed on what they saw as complex issues arising from the potential lawsuit. This is my interpretation of Ms. Hughes’ statement that it would be “unfair” to expect others to deal with the problems that had arisen.

[42] But this was not her call to make. Of course, she could decide to postpone her plans to step down, but she and the other executive directors still had to face the possibility of an election. If no one else stood up (i.e. was nominated and accepted the nomination), then the existing directors presumably would have been acclaimed, as occurs in societies all the time. But if others had been nominated, accepted the nominations and been elected, then they would be the new Board. Of course, in that

case, there would be nothing “unfair” about expecting them to address the business of the Society, however difficult or unfinished.

[43] By “unfair”, Ms. Hughes must have meant “unwise”. She was entitled to her opinion in this respect, but the Board could only be democratically legitimate if that opinion had been ratified by the membership. The option that was *not* available under the bylaws was not having an election at all.

[44] The Society emphasizes the apparent fact that the members, including Mr. Macdonald, acquiesced in this result at the time. I accept the Society’s submission that there is no evidence that there were factional disagreements within the Society in 2023 about its fundamental direction or about the job the directors were doing, as is often the case in litigated cases under the *Societies Act*.

[45] However, I am not prepared to find that the result would have been the same if nominations for executive positions had been called for. As I will discuss when I get to the law, the onus to establish this would be on the Society. I do not think it is a reasonable inference from the fact that no one apparently challenged the lack of an election at the 2022 or 2023 AGM that the incumbent executive directors would necessarily have been re-elected if an ordinary nomination process had been conducted.

[46] There is all the difference in the world between an election by acclamation and no election at all but without contemporaneous protest. It is not democratic to expect would-be dissenters to challenge the legality of not holding an election. Rather, the democratic expectation is that the existing leadership will make it clear that it can be challenged and that it will only continue with the endorsement of the members, either through acclamation or by prevailing in a contest. Believing, however sincerely, that an election is not in the interest of a society is no substitute for such a mandate. This is not to dispute that good faith on the Board’s part and acquiescence on the part of the membership might matter with respect to how I might exercise discretion under s. 105(2) of the *Societies Act*. I will address that later.

[47] In any event, I find as a fact that there were no elections for the executive directors at either the 2022 or 2023 AGM and that this was contrary to the Society's bylaws.

**C. Controversy with Mr. Macdonald**

[48] By all accounts, Mr. Macdonald's involvement in the Society was largely confined to his participation in the Chinese Brush Painting Club until the end of 2023. There is no evidence that he was in opposition to the incumbent Board prior to that point or raised concerns about the lack of elections.

[49] In December 2023 and January 2024, however, Oak Bay communicated to the club representatives, alternative club representatives and other club officers that, in its view, they had to submit a police information check to Oak Bay by the end of February or resign their positions. A police information check with "vulnerable sector screening" includes not only a record of criminal convictions, but other information in police databases, whether the individual was charged or not. Mr. Macdonald objected to this requirement, pointing to the April 2014 Investigation Report F14-01 of then Information and Privacy Commissioner Elizabeth Denham on the "Use of Police Information in British Columbia", 2014 BCIPC 14. He also objected to the Society's failure to object or to assert its authority.

[50] I find that the Board's failure to support Mr. Macdonald in his objections was the origin of Mr. Macdonald's concern about how the Society was operated, and it no doubt led him to the inquiries that led to this petition. I will address later whether this makes any legal difference.

[51] Oak Bay is not a party to this petition. The legality and reasonableness of this requirement by Oak Bay may be the subject of other proceedings. These are, therefore, issues I should not comment on. The only significance, if any, to this petition is that Mr. Macdonald's concerns led him to be skeptical of the incumbent Board when it did not agree with those concerns.

**D. The Transfer of Club Management to Oak Bay**

[52] In February and March 2024, the Board decided to ask Oak Bay to manage club operations, instead of the Society. The directors were concerned with the increasing time, complexity and demands of addressing new administrative and legal requirements, the amount of time to support members with these responsibilities and their desire to focus on fundraising and philanthropic objectives instead.

[53] On March 27, 2024, the Board met with Parks, Recreation and Culture staff of Oak Bay to formally request the transfer of management of the clubs.

[54] On April 19, 2024, by email, the Board unanimously approved a resolution proposed by Ms. Hughes. Motion 1 called for a name change of the Society. Motion 2 called for a change to the purpose of the Society. Both of these were proposals to be put to the AGM. Motion 3 stated the following:

The Board of Directors have come to realize that MRAA does not have the technical, administrative, financial expertise, infrastructure or resources to “operate” and “manage” existing and future clubs at the Monterey Recreation Centre. While we will continue to support MRC clubs and their leadership, the Board believes that the operational management and administration of the clubs should be returned to OBPR&C.

[55] A follow up meeting occurred with Oak Bay on April 25. I infer that Oak Bay and the Board reached at least a tentative agreement to make the transition by the conclusion of that meeting.

[56] The Board’s perspective on the proposal was set out in a newsletter made available to members on May 31, 2024. In it, Ms. Hughes told the members that the proposal had been accepted by Oak Bay and described it as follows:

1. to turn the operation and management of clubs over to OBPR&C [Oak Bay Parks, Recreation & Culture] due to liability, safety and high administrative requirements [...]
2. to refocus MRAA as a fundraising association to assist members 50 years+ within the facility; and
3. to change our names to “The Friends of Monterey Centre Society”.

[57] The May 2024 newsletter indicated that these changes would require “updating” governance documents, including bylaws and the purpose set out in the constitution. It indicated that there would be an AGM on June 24, 2024, and that these changes, along with a new name and new Board format, would be voted on at that time.

[58] Mr. Macdonald was opposed to the transfer of management from the Society to Oak Bay, which he saw as exacerbating the concerns he had developed as a result of the controversy about police information checks.

[59] A “town hall” meeting was held at the Centre on June 13, 2024, organized and hosted by Oak Bay. The director of Oak Bay Parks and the Society’s Board of Directors were present to address questions. Feedback collated by the Centre’s coordinator indicate concerns from some members of the Society about the change, including loss of autonomy for the clubs. It is of course impossible to say how representative these concerns were, but I accept that they were not limited to Mr. Macdonald personally.

[60] While the Board and Oak Bay had clearly come to an agreement that management of the clubs would be transferred to Oak Bay before the AGM was held, no MOU or other formalization of the agreement had yet occurred.

**E. The June 24, 2024 AGM**

[61] A “Notice Calling the 2024 Annual General Meeting” was distributed in the Centre, and was emailed to members of the Society on June 4, 2024. It included a number of special resolutions, including to adopt a new name, to adopt a new purpose statement in the constitution, and to make a number of bylaw changes.

[62] The pre-existing purpose was “to *provide* learning and recreation activities for members of the Oak Bay Monterey Recreation Centre who are at least age 50.” The new proposed purpose was “Our mission is to support, promote and fund raise on behalf of the Monterey Centre members and on behalf of the Monterey Recreation Centre, its clubs and its volunteer-led activities.” This was clearly intended to align

the Society's purpose with the transfer of management of the clubs that provided the learning and recreation activities. As I have mentioned, the name change was intended to reflect this as well.

[63] I will not discuss the proposed bylaw changes in detail. Some of them reflected the proposed change of purpose. Some followed from the name change. Membership was proposed to be redefined to include a requirement of "consent" prior to becoming a member, reflecting Oak Bay's unwillingness to exchange information unless this occurred. The number of directors was proposed to be changed, with the club director and executive director elections being staggered. Club directors would no longer be elected only by members of the representative clubs, but by the entire membership.

[64] The new Board structure would begin with the 2025 AGM, with the first term of the new club directors being a single year so as to initiate the staggered structure. The special resolution proposed creating an "interim board of directors", including the existing board members for a nine-month term to manage until the 2025 AGM could be held. It is expected to occur in March 2025.

[65] Mr. Macdonald made an audio recording of the AGM, apparently without telling the meeting, and has transcribed passages. No objection has been made to the admissibility of this material, but it would be prudent to regard it with caution, particularly where meaning might depend on context. The passages do, however, indicate that Mr. Macdonald was able to argue against the name change, the change in membership and the changes related to the purpose of the Society.

[66] The name change was announced by Ms. Hughes, as chair of the AGM, to have been passed 37-20. Since there was a requirement of a 2/3 majority, that was an error. It was subsequently clarified that there were 3 advance votes in favour of the name change, which, if valid, would put the resolution just at the necessary threshold because it would pass 40-20.

[67] There is no issue that two of these advance votes were valid. However, one of them was received the morning of the AGM, contrary to the requirement set out in the notice that advance votes had to be sent to the recording secretary at least 48 hours before the AGM.

[68] After the name change resolution, the change to the constitution to provide for a new “mission statement” was debated and approved. Then the amendment to the bylaws to reflect the change in purpose was heard. Mr. Macdonald argued against it, but the amendment passed.

[69] After Mr. Macdonald spoke against the next amendment to the bylaw, a member moved that all the bylaw amendments be voted as a block. That was approved and the remaining bylaw amendments were all approved. This included the bylaw amendment providing for an interim board of directors.

[70] The other resolutions, including the appointment of the interim board of directors, were approved. The reports were heard and then the meeting adjourned.

**F. Events After the 2024 AGM**

[71] On June 26, 2024, shortly after the AGM, Ms. Hughes signed an MOU with Oak Bay providing for it to manage the clubs on behalf of the Society under the name “The Friends of Monterey Society”.

[72] On July 18, 2024, the Society filed new bylaws. These included the amendments approved at the AGM and reflected the new name.

[73] This petition was filed on July 10, 2024. On July 11, Mr. Macdonald signed the consent form required of members based on the changed definition approved at the AGM. On August 6, Ms. Hughes sent him an email stating, “Please be advised that, until the issue of your petition against the Friends of Monterey Centre Society has been resolved, your membership application to the Society is on hold.”

### III. ANALYSIS

#### A. Legal Framework

[74] Mr. Macdonald applies under s. 105 of the *Societies Act*. It states as follows:

##### **Court may remedy irregularities**

**105** (1) This section applies if an omission, defect, error or irregularity in the conduct of the activities or internal affairs of a society results in

- (a) a contravention of this Act or the regulations,
- (b) the society acting inconsistently with or contrary to its purposes,
- (c) a default in compliance with the bylaws of the society,
- (d) proceedings at, or in connection with, a general meeting or a meeting of directors, or an assembly purporting to be such a meeting, being rendered ineffective, or
- (e) a resolution consented to by members or directors of the society, or records purporting to be such a resolution, being rendered ineffective.

(2) Despite any other provision of this Act, if an omission, defect, error or irregularity described in subsection (1) occurs,

- (a) the court may, either on its own motion or on the application of a person whom the court considers to be an appropriate person to make an application under this section, make an order
  - (i) to correct or cause to be corrected, or to negative 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
- (b) the court may make any ancillary or consequential orders it considers appropriate.

(3) Unless the court orders otherwise, an order under subsection (2) does not prejudice the rights of a third party who has acquired those rights for valuable consideration and without notice of the omission, defect, error or irregularity that is the subject of the order.

[75] Section 105 thus sets three questions:

- a) Has there been an omission, defect, error or irregularity in the conduct of the society's affairs? These terms are essentially synonymous and

so it is convenient to pose the question as to whether there has been an “irregularity”.

- b) If there has been one or more irregularity, did the irregularity or irregularities result in one or more of the circumstances listed in paras. (a)-(e) of s. 105(1). In other words:
  - i. Were the irregularities in breach of the *Societies Act* or its regulations or the society’s constitution or bylaws?
  - ii. Did they render a resolution or proceedings of the society, or of its directors, ineffective?
  - iii. Did they result in conduct contrary to the society’s purposes?
- c) If there was an irregularity and if the answer to question (b) is “yes”, is it appropriate for the court to exercise its discretionary authority to correct the irregularity or should it be validated upon considering the effect of either order on the society and its stakeholders? In this regard, the fundamental issues are respect for the society’s purposes, for the interests of its members and for the fairness and democratic integrity of its processes.

See *Gill v. Kalgidhar Darbar Sahib Society*, 2017 BCSC 1423 at paras. 33-34.

[76] In applying this test, courts must be aware of certain principles:

- a) *The principle of restraint.* Courts must be cautious in interfering in the internal affairs of a society: *Surrey Knights Junior Hockey v. The Pacific Junior Hockey League*, 2018 BCSC 1748 at para. 78 [*Surrey Knights Junior Hockey*].
- b) *The principle of non-interference in the absence of a legal right.* The courts have a role in ensuring that processes are fair and internal democracy is respected, but they may only interfere if legal rights are

at stake: *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26 at para. 12.

- c) *The principle of proportionality*. The appropriateness of legal intervention must be approached on a spectrum, based on the nature of the interests at stake. A society's obligation to adhere to principles of procedural fairness lies on a spectrum, depending upon the nature of the society that the court is examining. The proceedings of a purely social club lie at the one end of the spectrum and a member risking loss of employment or livelihood lies at the other: *Surrey Knights Junior Hockey* at para. 83.

[77] These principles arise out of the recognition that a flourishing civil society is an important good that can be threatened by excessive legalism as well as by arbitrary internal conduct, and it is important to find a balance.

[78] As a result, while finding an "irregularity" is *necessary* for the court to intervene, it is not *sufficient*. At the second part of the test, the court must engage in real scrutiny to determine whether an irregularity really meets the standards of one or more of paras. 105(1)(a)-(e). In particular, a "default in compliance" with the bylaws of a society does not mean any formal failure to meet every precise rule to the letter, but only those breaches that can reasonably be interpreted to require court intervention. Similarly, a resolution or proceedings either of a society or its directors are rendered "ineffective" under ss. 105(1)(d) and (e) if they result in a problem with the process that might have affected the result.

[79] For example, it has long been held that an irregularity renders an election "ineffective" when it is "calculated to affect the result": *Bector v. Vedic Hindu Cultural Society*, 2014 BCSC 230 at para. 10, citing *Leroux v. Molgat*, 67 B.C.L.R. 29 at 31, 1985 CanLII 229 (S.C.). The same presumably applies to other votes, such as concerning resolutions. At the same time, because it is important that democratic processes be followed, when an irregularity in an election or other meeting has been established, the onus shifts to the society to show that this irregularity did not affect

the result. If there is doubt, then the election or resolution was ineffective, and the analysis must shift to what the appropriate remedy should be under s. 105(2).

[80] Further, at the third part of the test, the court must again employ the principles of restraint and proportionality. In deciding on a remedy, the court must consider both the principle of restraint and the interest of a challenger in fair and democratic processes. The court can consider the effect of correcting or validating the irregularity on the ability of the society to fulfill its purposes, the interests of the members and the maximization of democratic participation.

[81] In this case, it makes sense to analyze each of the irregularities Mr. Macdonald alleges to determine whether they were in fact irregularities and, if so, whether they resulted in a breach of the society's constitution or bylaws, or rendered a resolution or proceedings of the society, or of its directors, ineffective, or resulted in conduct contrary to the society's purposes. Once I have done that, I will consider what remedy is appropriate in the totality of the circumstances, trying to recognize the importance of balancing the need to abide by transparent and fair processes with the need to respect society autonomy and the practicalities facing this particular society in pursuing its purposes.

**B. Continuation of Executive After Terms Expire**

[82] Mr. Macdonald's strongest argument is that the executive directors continued in office after they had no electoral mandate. I will consider first the period between the 2022 and 2024 AGMs and address the issue of the legitimacy of the creation and appointment of an "interim board" at the 2024 AGM later.

[83] The Society now concedes that the failure to have an election of directors at either the 2022 or 2023 AGMs, despite the requirement of the bylaws that these take place, was an irregularity. But it argues this was in the nature of a procedural problem and that it did not render the subsequent actions of the Board "ineffective" within the meaning of ss. 105(1)(d) and 105(1)(e). I disagree.

[84] In *Grewal v. Khalsa Diwan Society of Abbotsford*, 2022 BCSC 2433 at para. 13, Justice Groves observed, in *obiter*, that it is “logical” that an executive which does not hold an election as required, is no longer an executive with the legal authority to act in that capacity. In my view, that observation is indeed a necessary corollary of the principle of democratic governance. If problems in an election can render the directors’ subsequent recorded decisions “ineffective”, surely no election at all does so.

[85] I accept that the failure to hold an election was not secretive or a “power grab”. It was done openly and any member who took an interest could see that no election was being held. There is no evidence anyone objected. However, once an irregularity as significant as not holding required elections has been established, the onus shifts to the Society to show that this would not have affected the result. I do not think that is a safe inference to make from the mere fact that no one tried to challenge the process at these AGMs or afterwards. Indeed, it is difficult to see why the Board would not have proceeded with an election if it was a sure thing that it would have been decided by acclamation. I therefore have to conclude that the failure to hold an election was calculated to “affect the result” of who would constitute the executive directors.

[86] If directors are not elected at all when they need to be under a society’s bylaws, then their subsequent resolutions are ineffective. Arguments from necessity, reliance, delay by challengers or acquiescence from the membership as a whole need to be considered under s. 105(2).

### **C. The 2024 AGM**

[87] Mr. Macdonald has leveled a number of complaints about both the process of the 2024 AGM and the consistency of what it decided with the *Societies Act*.

[88] Before reviewing these complaints individually, I note that he conceded that he was able to put his views in opposition to the special resolutions at the AGM and that he was given a fair hearing, although he feels that the membership was influenced by the fact that he was disagreeing with the Board. I agree with this

observation, which has important implications for whether the results of the AGM were “effective”. This was, in substance, a democratic process.

***The Order of Business***

[89] Mr. Macdonald’s first argument is that the order of business found in the notice is different from that laid out in Society Bylaw 9.4.1.4. I do not agree that this was an irregularity. It is true that the bylaw puts consideration of financial statements and the financial review report and receiving directors’ reports before new business, while the 2024 Notice put the new business, including the proposed special resolutions, before the financial issues and director reports. However, the AGM considered this issue, and decided to proceed as the members present decided to proceed in accordance with the agenda as set out in the 2024 Notice. In my view, this was their right.

[90] Mr. Macdonald’s unofficial transcript shows he raised the issue at the 2024 AGM, presumably when the agenda was discussed. Ms. Hughes responded, saying she did not think the order in the bylaws had to be precisely followed, and that “we usually go with the bylaws first because they’re usually the items that people generally have questions about.” I infer, based on the presumption of regularity, that the meeting decided to confirm the agenda after hearing this exchange.

[91] It is a general principle of deliberative bodies that they can control their own processes, including the order in which they take up business. It would require clear language to depart from this presumption. I do not interpret Society Bylaw 9.4.1.4 as providing this clear language. Rather, it just sets a default order of business, which does not prevent a meeting from consciously deciding to proceed differently.

[92] If I am wrong and proceeding contrary to the order of business in the Society’s bylaws was an irregularity, I would find that it did not render the meeting process “ineffective” since I am satisfied that no different result would have occurred had matters proceeded in the original order. On this alternative basis, I would find that there is no basis for court interference with the result of the 2024 AGM based on the order in which matters were considered.

***Timing of Notice***

[93] Mr. Macdonald argues that the notice for the June 24, 2024 AGM was irregular because Society Bylaw 9.4.1.1 requires that notice be given “no less than 21 days in advance of the meeting”. For the following reasons, I agree that this was an irregularity, but I am satisfied that it did not render the AGM ineffective.

[94] I find, as submitted by Mr. Macdonald, that the effective date of notice was June 4, 2024. Ms. Hughes, in her affidavit, indicates that notice of a kind was given in the May 2024 newsletter, but this did not include all the information that the bylaws require in a notice of a general meeting, so it would not be “notice” in the relevant sense. She also indicates that the notice was made available at the Centre, but she does not say when this happened. Ms. Hughes’ affidavit evidence is that the notice was emailed on June 4, 2024. On that basis, I accept that Mr. Macdonald has established, on a balance of probabilities, that notice was not given before that day.

[95] Bylaw 9.4.1.1 says, “The Board must give notice no more than 60 days and *no less than 21 days* in advance of the [annual general] meeting.” To consider both whether there has been an irregularity and the extent of it, I must therefore determine whether, and by how long, the notice actually provided failed to meet that requirement.

[96] I agree with Mr. Macdonald that the Society’s bylaws are a “legal instrument” within the meaning of s. 25(2) of the *Interpretation Act*, R.S.B.C. 1996, c. 238, and therefore its rules for the computation of time are applicable. Unfortunately, those rules are rather technical. They were amended in 2018 with the *Interpretation Amendment Act*, S.B.C. 2018, c. 5, s. 3. This was intended to create a more precise statement than had previously existed. But it does take some care to apply these rules.

[97] In relevant part, the *Interpretation Act* states the following:

**General rules for determining beginning or end of periods of time**

25(1) In sections 25.2 to 25.4, “reference day” means any of the following by reference to which the beginning or end of a period of time must be determined:

[...]

- (b) a day on which a specified [...] event [...] occurs;

[...]

(3) A period for doing an act that is determined under section 25.2, 25.3 or 25.4 to [...] end on a holiday [...] ends, [...]

[...]

- (b) if the reference day is after the period, on the previous day that is not a holiday.

[...]

**Determining the beginning or end of periods of days or weeks**

25.2(2) Subject to subsection (3), the [...] end of a period of [...] consecutive days [...], expressed in relation to a reference day, is to be determined as follows:

[...]

- (b) if the reference day is after the period, by counting backward from and including the day before the reference day.

(3) If a period described in subsection (2) is expressed as [...] “not less than” a number of days [...],

- (b) the beginning or end of the period, as determined under subsection (2)(b), is one day earlier.

[98] The day set for an annual general meeting in a bylaw under the *Societies Act* is an example of a “reference day” as defined in s. 25(1)(b) of the *Interpretation Act*, because it is a day on which a specified event occurs. In this case, therefore, the “reference day” is June 24, 2024.

[99] The period of “no more than 60 days and no less than 21 days in advance of the meeting” is an example of a “period of consecutive days”. The end of such a period is determined by s. 25.2 of the *Interpretation Act*. It is thus determined by “counting backward from and including the day before the reference day”. Thus, we must begin counting backwards with June 23 as the first day until we reach 21 days, which gets us to June 3, 2024.

[100] So far, the *Interpretation Act* has an intuitive result, if perhaps stated in a non-intuitive way. In contemporary Canadian culture, June 3 is ordinarily thought of as being 21 days before June 24.

[101] However, there is a trap for the unwary. Because the phrase “not less than” is used, s. 25.2(3)(b) states that the period begins one day earlier, which would be June 2. In other words, “not less than” is equated with “more than”, as opposed to “equal to or more than”.

[102] This may not be intuitive for people not familiar with the technical timing rules in the *Interpretation Act*. In mathematics and in common sense, if A is equal to B, A is “not less than” B. The Legislature, however, chose to make a distinction between the two in s. 25.2(3) of the *Interpretation Act*. If an enactment or private legal instrument uses the phrase “not less than” in the context of prior notice, the notice must occur *one day earlier* than it would if that phrase was not used and so a period that is equal to 21 days is *not* “not less than” 21 days.

[103] The Legislature may have been concerned that on its way of counting under s. 25.2(2), 4 p.m. on June 3 would be 21 days earlier than 10 a.m. on June 24. This would be contrary to a “measure” view of days as 24-hour periods, which perhaps the “not less than” language invites to a greater degree than language merely stipulating the period. The Legislature could rationally have weighed potential confusion on the part of the person entitled to notice more heavily than that of the entity with control over when to give notice, perhaps on the assumption that a notifier will generally have more access to legal advice than the person being notified. In any event, in the absence of a constitutional challenge, the Legislature is entitled to stipulate definitions as it wants, even if those are contrary to ordinary usage.

[104] Since the Legislature has spoken, “not less than 21 days before” must be interpreted as, in law, meaning the same as “22 days before.” However, particularly where the party required to give notice is staffed entirely by volunteers, with no expectation of legal knowledge and with limited ability to access legal advice, the

departure between common usage and the legislated rules should be taken into account as an excusing factor.

[105] In this case, the legislated rules create a further trap that volunteer organizations might be forgiven for not recognizing. June 2, 2024 was a Sunday. Paragraph (a) of the definition of “holiday” in s. 29 of the *Interpretation Act* includes Sundays. Since the “reference day” here is after the “period of consecutive days”, s. 25(3)(b) of the *Interpretation Act* applies and so the “period” ends on the previous day that is not a holiday, which is June 1, 2024. Of course, to realize this would require not only being aware of these provisions but also making the correct calculation based on the “not less than” wording in s. 25.2(3).

[106] Since the legal requirements binding on the Society required that notice for the AGM be given on June 1 and it was not in fact given until three days later, Mr. Macdonald has established an irregularity. But, in part because of the technicality of the *Interpretation Act* rules for calculation of time, I do not agree that this irregularity rendered the AGM “ineffective”.

[107] Whether an irregularity renders an otherwise-democratic process “ineffective” must be considered in a purposive way. It comes down to whether the process was rendered unfair as a result. However, there is no evidence at all of anyone who did not participate in the 2024 AGM because of lateness of notice. The purpose of notice is to make sure people are aware of what is going on and have time to respond appropriately. In this case, the evidence is that the notice for the 2024 AGM, even though it was technically late, fulfilled this purpose.

[108] I acknowledge that once Mr. Macdonald has established an irregularity, the onus shifts to the Society to show that it made no material difference. But given the technical nature of calculation of time under the *Interpretation Act*, courts should hesitate to make such a finding in the context of good faith errors. The absence of any such evidence plus the shortness of the delay satisfies me that no harm was done.

[109] Further, in this case, the notice of the general meeting was not the only way the members found out about what was at stake. The May newsletter, while not constituting “notice” under the bylaw, did indeed set out what the Board was trying to accomplish at the general meeting. There was also an information meeting sponsored by Oak Bay. In light of these circumstances, there is good reason to think that members received more effective notice of what was at stake than would be the case in most annual general meetings of non-profit societies.

[110] In the event I am wrong about this, these considerations would drive me to exercise my authority under s. 105(2) of the *Societies Act* to validate the notice in any event.

### ***The Name Change Vote***

[111] Mr. Macdonald’s next challenge is to the resolution that approved the Board’s proposed change of name to “The Friends of Monterey Centre Society”. As I have mentioned this barely passed the 2/3 threshold if all the advance votes were counted, but one of the advance votes was made after the cut off found in the notice of the AGM. On this point, I agree that there was an irregularity and that it rendered the resolution ineffective.

[112] The notice explicitly spelled out that advance votes were to be provided to the Recording Secretary 48 hours ahead of time. While a society is entitled to set its own voting procedures, it is important that they be applied consistently, especially where there are very close votes.

[113] I accept that this irregularity was in good faith and the Society has relied on it in its subsequent communications using the new name: these are factors that should be addressed in fashioning a remedy, but the name change was still approved through an irregularity that rendered the resolution ineffective.

### ***The Process of Approving the Bylaw Changes***

[114] The AGM initially approached each bylaw change individually, but then decided to vote for the bulk of them on block. Mr. Macdonald says this is an

irregularity, but I disagree. It was just the operation of a deliberative body's power to decide on its own processes. If I am wrong and it was an irregularity, I am satisfied it did not render these resolutions ineffective.

***The Approval of the Transfer of the Clubs***

[115] The larger concern is that the change in the mission statement and the part of the bylaw dealing with the way the Society fulfills its purposes was presented as arising out of the Board's agreement with Oak Bay to transfer management of the clubs, but, as I have found, the Board did not in fact have the authority to make this agreement. The vote was thus made on a false assumption.

[116] In my view, this does not apply to the other bylaw changes. However, it was potentially important in the context of the transfer of the management of the clubs. All the communications indicate that this was a decision that had *already* been made, and what was in process was a transition, which included making changes to the constitution and bylaws. The fact that the (apparently valid) executive did not want to continue to manage the clubs might well have weighed heavily on the members' decision in this regard.

[117] In the case of all the other bylaw changes, even if the fact they were put forward as Board resolutions was an irregularity, this irregularity would not render those changes ineffective because I see no basis to conclude the result would have been different. But where, as with the transfer, the rationale was very much tied to Board capacity and the decision was presented as one that had already been made, I am not satisfied that the Society has met its onus to show there would have been no difference in result. I find that there was both an irregularity and that it rendered the resolutions in this regard ineffective.

[118] To be sure, there was still a democratic approval of these changes and it was made after hearing Mr. Macdonald's arguments against precisely this course of action. I am certainly not satisfied that the 2024 AGM would have decided differently if it had been aware of all the facts. But, since the onus is on the Society once an irregularity has been established, uncertainty is resolved against the Society at this

stage of the analysis, although the positive vote remains a consideration at the remedial stage.

***Appointment of an Interim Board***

[119] Mr. Macdonald disputes that the existing interim board has a democratic mandate. However, the amendment of the bylaws to create this interim board to address the transition to a staggered board was approved by the necessary supermajority, and the existing interim board was appointed in accordance with that bylaw change. I therefore do not see an irregularity, let alone one that would render the acts of the interim board ineffective.

[120] As a result, the mandate that was lost at the time of the 2022 AGM was regained after the 2024 AGM for the interim board. Thus, there is an effective Board now and has been since that AGM.

***Other Alleged Irregularities***

[121] Mr. Macdonald argues that the bylaw changes set out in the notice were not adequately spelled to because “only those elements that were to be changed” were shown, thereby detracting from necessary “context”. There is, however, nothing in the bylaws specifically about how bylaw amendments are to be set out. Providing the entire bylaws might be more confusing. Courts should defer to societies about issues of this kind. I see no irregularity in this regard.

[122] Mr. Macdonald also notes that the bylaw changes approved at the AGM did not include all the alterations to the name of the Society in the bylaws. This is not an irregularity. Once the Society approves a change in name, then that name can be used. Uses of the former name in existing documents do not make those documents ineffective, and changing the name is an editorial task that can be done by the Board when submitting bylaws to the registrar. There is no merit in this submission.

[123] Mr. Macdonald argues that there was an irregularity in that the bylaws contemplate advance voting by email or fax, but no email for that purpose was actually provided. I do not agree that this is an irregularity since I do not interpret the

bylaws to require an option of email voting, just to permit it. If I am wrong about this, however, I find that the lack of email voting did not render the AGM ineffective.

[124] Mr. Macdonald argued that the new purpose of the Society is contrary to s. 2(2) of the *Societies Act*, which prohibits, as a purpose, “carrying on of a business for profit or gain”, although it exempts “carrying on a business to advance or support the purposes of a society”. Mr. Macdonald says the reference to “fundraising” amounts to carrying on a business for profit or gain. There is no merit in that submission. Fundraising is, of course, a major part of what non-profit societies do, and is not a problematic purpose so long as the funds raised are for a legitimate non-profit purpose. The purpose is not now carrying on a business for profit or gain. Any issues regarding tax status are not properly before me and I decline to comment on them.

#### **D. Membership**

[125] Mr. Macdonald argues that the change in the definition of “membership” to include a “consent” amounted to termination of the existing members, requiring them to apply again, with those applications at the discretion of the Board. To be fair to him, Ms. Hughes seems to have interpreted the changes the same way, referring to Mr. Macdonald’s signature of the consent as a “membership application”, which the Board could “put on hold” as a result of his bringing this petition.

[126] There is no merit to this interpretation, either by Mr. Macdonald or Ms. Hughes. The relationship between a society and its members is contractual: *Whittall v. Vancouver Lawn Tennis and Badminton Club*, 2005 BCCA 439 at para. 42. It would be a breach of contract to take away membership based on retroactive application of a rule change for membership.

[127] However, precisely because of the presumption that members have a contract, the amendment should not be interpreted to deny existing members the right to continued participation, unless that interpretation is irresistible. By contrast, the wording of the amendment here is more reasonably understood as providing an *option* to all members in good standing of the Centre over the age of 50 to consent

to being members of the Society as well, at their own non-reviewable choice. That would not be a breach of contract because the promisee continues to have all the rights he or she previously had. Adding an option is not a breach of contract.

[128] Interpreted properly, then, the new definition of “member” does not provide any discretion on the part of the Society to refuse consent. If a person is 50 years of age and older and is a member of the Centre, it is their option to consent, and membership cannot be denied unless the person has been duly expelled under the bylaws.

[129] Mr. Macdonald should not have been told that his “application” was under review. Whether he wanted to sign a consent and thereby fit within the definition of “member” was solely his own choice. It is understandable that the Board was not happy about the petition, but it was not a lawful basis to refuse him the rights of a member. This was conceded by the Society at the hearing. Since there has been confusion on this score, I will provide declaratory relief and require that consent forms be available at the upcoming AGM. On the other hand, I do not think the bylaw change was an irregularity.

**E. Discretion Under Section 105(2) of the *Societies Act***

[130] When it comes to exercising discretion, I must balance the following:

- a) While the Board should not have cancelled elections at the 2022 AGM or the 2023 AGM, it acted in good faith and its leadership was accepted by the members in practice.
- b) The fundamental issues were debated at the 2024 AGM, albeit under the false assumption that the Board had the authority to make decisions, including the decision to transfer management of the clubs.
- c) While Mr. Macdonald believes that a reconstituted Board could provide the appropriate management functions for the clubs, I do not have evidence that there is a group of would-be directors willing to do this or

that such a group would in fact be accepted by the membership. If I simply reverse the transfer, then I find the existing Board would not be willing to do what they consider to be the necessary administrative work, which means the clubs would not be able to operate at all. That cannot be in the interests of the Society or fulfil its purposes.

[131] That being said, I do not accept the Society's arguments that the irregularities were not significant or that the petition was not appropriately brought. The Society argues that the overarching purpose of the petition is unclear since the "petition has not suggested that any damage has occurred as a result of any alleged error or omissions of the Society". However, in my view, a charitable reading of the petition makes it clear that Mr. Macdonald is worried that the self-governing nature of the clubs has been or is being lost, and he challenges the democratic mandate of the Board to go in this direction. These are important issues.

[132] The most important element in my consideration of discretion is the fact that there is a new AGM scheduled for March 2025. Ms. Hughes is not eligible to run again and indicated in court she had no intention to do so anyway. It is clear to me that the appropriate way to decide the underlying issues is to take them to the membership. The key question is how to set things up so that the membership can make the requisite decisions in a fair and democratic way as possible, recognizing that there are legitimate arguments on both sides.

[133] I could just validate everything and then expect Mr. Macdonald to bring a member proposal and perhaps a slate of directors. I reject this option, however, because it would give the benefit of being the *status quo* to some of the changes I have found were not authorized.

[134] I could also just "correct" all the decisions I have found to be irregularities that rendered the resolutions ineffective and leave it to the interim board to obtain validation by the 2025 AGM. I think this would be impractical because it would give rise to questions about retroactivity of that validation that a court can address, but an AGM would necessarily leave hanging.

[135] Moreover, in my view, it is appropriate that the critical issues – the transfer of the clubs and the name change – be determined on a simple majority basis, since a decision has to be made, and in my view, it is not fair, in the circumstances, to give either perspective the benefit of being the *status quo*.

[136] I have made a number of orders with the purpose of having the 2025 AGM decide the fundamental issues, while avoiding a vacuum that would be at the expense of the Society, its purposes and its members.

#### **IV. COSTS**

[137] In my view, neither party has had substantial success on this petition, and I provide that each party bear his or its own costs.

#### **V. ORDERS AND DECLARATIONS**

[138] I therefore make the following orders:

- a) A declaration that the failure to hold elections for the positions of executive directors at the September 6, 2022 annual general meeting of the respondent Society, or thereafter, is an omission in the internal affairs of the respondent Society that renders records purporting to be resolutions of the directors or Board from September 6, 2022 to June 24, 2024 ineffective.
- b) A declaration that the creation of, and appointments to, an interim board with a term of nine months at the June 24, 2024 annual general meeting was valid.
- c) An order temporarily validating the purported resolutions of the directors, as recorded, from September 6, 2022 to June 24, 2024. This validation is to continue in effect until the next annual general meeting of the Society.
- d) An order directing the interim board to hold an annual general meeting no later than March 31, 2025.

- e) An order directing the interim board to provide consent forms at the next annual general meeting and providing that anyone who attends the meeting, is over the age of 50, has joined the Centre, and signs the consent form at or before the calling to order of the meeting must be permitted to participate in the meeting, unless they have been duly expelled in accordance with the Society's bylaws.
- f) A declaration that there was an irregularity in the approval of the change of name of the Society at the June 24, 2024 annual general meeting in that one advance vote in favour of the resolution was counted, despite being submitted too late, and this vote was the decisive vote.
- g) An order that the following resolutions must be put forward at the next annual general meeting of the Society:
  - i. A resolution validating the recorded resolutions of the *de facto* directors from September 6, 2022 to June 24, 2024. This resolution may be amended on the floor. It may be passed or defeated by a simple majority.
  - ii. A resolution confirming that the name of the respondent Society is "The Friends of Monterey Centre Society". This resolution may not be amended on the floor. It may be passed or defeated by a simple majority.
  - iii. A resolution, which can be amended on the floor and can be passed or defeated by a simple majority, confirming the following:
    - i. The change of the purpose of the Society at the 2024 AGM.

- ii. The bylaw change at the 2024 AGM amending the means of achieving the purpose of the respondent Society. This resolution may be amended on the floor. It may be passed or defeated by a simple majority.
  - iv. The election of new directors.
- h) An order that:
  - i. If the resolution referred to in para. (g)(i) is passed without amendment, the temporary validation of the resolutions of the *de facto* directors from September 6, 2022 to the June 24, 2024 is extended permanently.
  - ii. If the resolution referred to in para. (g)(i) is passed subject to an amendment that one or more resolutions of the *de facto* directors between September 6, 2022 and the date of the annual general meeting are not to be validated, then all other resolutions of the *de facto* directors from September 6, 2022 to June 24, 2024 are permanently validated, while the resolutions referred to in the amendment shall cease to be of any force or effect at the end of the annual general meeting, except to the extent that any third party has acquired rights for valuable consideration as a result of the invalidated resolutions.
  - iii. If the resolution referred to in para. (g)(i) is defeated, then all resolutions of the *de facto* directors from September 6, 2022 to June 24, 2024 shall cease to be of any force or effect at the end of the annual general meeting, except to the extent that any third party has acquired rights for valuable consideration as a result of the invalidated resolutions.

- i) An order that the Society can continue to do business under the name of “The Friends of Monterey Centre Society” until the conclusion of the next annual general meeting.
- j) An order that if the resolution referred to in para. (g)(ii) passes at the annual general meeting, that the change of name to “The Friends of Monterey Centre Society” is validated, that validation shall continue indefinitely, and the name of the Society shall be “The Friends of Monterey Centre Society”, unless and until altered by a special resolution of the Society.
- k) An order that if the resolution referred to in para. (g)(ii) is defeated, then the special resolution at the 2024 AGM changing the name of the Society shall be corrected and the name of the Society will be “Monterey Recreation Activity Association” thereafter, unless and until altered by a special resolution of the Society.
- l) An order that if the resolution referred to in para. (g)(ii) is defeated, records referring to “The Friends of Monterey Centre Society” may be corrected to refer to “Monterey Recreation Activity Association” without further court order.
- m) An order that if the resolution referred to in para. g(iii) is passed, the amendment to the constitution of the Society at the 2024 AGM is corrected to read as it did prior to that AGM and the bylaws of the Society in relation to the means of achieving the purpose are corrected to read as it did prior to the 2024 AGM.
- n) An order that if the resolution referred to in para. g(iii) is defeated, the amendments to the constitution and bylaws at the 2024 AGM are validated in their entirety.
- o) A declaration that the Society has no discretion not to accept the petitioner as a member if he signs a consent form.

- p) An order that each party shall bear its own costs of the petition.

“J. G. Morley, J.”  
The Honourable Justice Morley