

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Salim Akbar Cricket Club v. West Coast Cricket Organization*,
2023 BCSC 2202

Date: 20231103
Docket: S237288
Registry: Vancouver

Between:

Salim Akbar Cricket Club

Petitioner

And

**West Coast Cricket Organization
and British Columbia Mainland Cricket Association**

Respondents

Before: The Honourable Madam Justice Murray

Oral Reasons for Judgment

Counsel for Salim Akbar Cricket Club:

A. Doolittle
N. Bertanjoli

Counsel for West Coast Cricket Organization
appearing by teleconference:

D. Gautam

Counsel for British Columbia Mainland Cricket
Association appearing by videoconference:

P. Joshi

Place and Date of Trial/Hearing:

Vancouver, B.C.
November 2, 2023

Place and Date of Judgment:

Vancouver, B.C.
November 3, 2023

[1] **THE COURT:** The parties are seeking an answer to a discrete question: who should the respondent societies permit to vote on behalf of the Salim Akbar Cricket Club (SACC) in the respondents' AGMs, which are taking place tomorrow and Tuesday, November 4 and 7, 2023. As there is urgency to this decision, these reasons for judgment will be brief. I reserve the right to edit them if they are ordered in writing. The results will not change.

[2] By way of brief background, the SACC is in a state of turmoil. There are two factions at war with each other, both claiming to be in control of the cricket club. One faction, which I will call "the registered directors," are registered in the society register for SACC as directors. The dissident group, who I will call "the purported directors," are not. I pause to note that there is no evidence before me to indicate how big the dissident group is.

[3] The conflict in the club has led to issues with the respondent organizations. On September 30, 2023, Cricket BC did not permit the person registered as director and president of SACC in the society register to vote on behalf of the club. Instead, Cricket BC allowed Mr. Nawaz Tonoli one of the purported directors to vote. The secretary of Cricket BC admitted after that he did not check SACC's society records to confirm that Mr. Tonoli was a registered director of SACC before he permitted him to vote.

[4] On October 13, 2023, the dissident group incorporated a new society, Salak Cricket Club ("Salak"), and purported to replace the SACC. On October 20, 2023, the president of Cricket BC sent a message to a director of Cricket BC stating that SACC was being terminated from Cricket BC and replaced by Salak.

[5] On or about October 22, 2023, a registered director of SACC discovered that SACC had been removed from BCMCA's online list of members in advance of the AGMs and was replaced by Salak. Neither of the respondent organizations contacted the registered directors of SACC before doing this, nor did they notify them of the termination of the club's membership with the organizations. Notably, SACC was never provided with a reason for the termination or provided with an

opportunity to be heard as is required under BCMCA's bylaws and *The Societies Act*.

[6] In the petition before me, SACC makes a claim for a declaration that the termination of their membership constitutes an irregularity in the conduct of the activities of the BCMCA that resulted in a contravention of *The Societies Act* and BCMCA's bylaws. SACC further seeks an order remedying the default by reinstating SACC as a member in good standing of the respondent associations. The respondents resolved those issues before court. I understand that SACC has now been reinstated as a member in good standing of both organizations.

[7] Regardless, I am still being asked by SACC to declare that the acts of the respondent associations threaten or constitute unfair prejudice to SACC and for an order compensating SACC for the legal fees it incurred to rectify the respondents' unfairly prejudicial conduct. I will return to these applications.

[8] Regarding the issue of voting in the upcoming AGMs, while the respondent organizations claim to be neutral, submissions made on behalf of both seem to favour either allowing a purported director to vote on behalf of SACC or disallowing SACC from voting altogether. I do not see the latter as an option. It is common ground that SACC is a member of both societies. As such, it is entitled to vote at both AGMs. To disallow the club to vote would be unfairly prejudicial to the members of the club. Additionally, there is nothing in the bylaws of the respondents which would allow them to bar SACC from voting.

[9] That leaves two possible answers to who should be permitted to vote: one of the registered directors as per the society register for SACC, or the unregistered purported director of the dissident group.

[10] In BC, cricket clubs must be a legal entity in order to play in the leagues governed by the respondent organizations. Typically this is done by registering a society under *The Societies Act*. It is the legal entity, that is, the society, which governs the cricket club. It is also the legal entity that is member of the respondent

associations and who participates in the associations by casting a single vote on behalf of the club. There is no provision in the bylaws of either of the respondent organizations granting them authority to pick and choose who should vote. They are bound by the society's register.

[11] I pause to address two arguments raised by the respondents. First, they argue that the process by which the registered directors became directors is illegal and therefore contrary to *The Societies Act*. Other than a paragraph in the response to the petition, there was very little in the way of submissions made regarding this. Most importantly, there is no basis in the materials filed to substantiate this claim. That may be an issue for another day. There is nothing before me on this application on which to question the validity of the society's register.

[12] The second argument is that Justice Gordon Weatherill has already decided the issue before me. The respondents refer to an October 1, 2021 application brought by previous counsel on behalf of SACC seeking three orders: first, cancelling the AGM of Salak scheduled for October 2nd, 2021 (the day after the application), two, affirming the address of the registered office of SACC, and three, affirming that the registered directors are the directors registered in the society registry.

[13] There are notes of the 19-minute chambers application before Justice Weatherill. It is clear from the notes that the Justice found that both the materials and the presentation were lacking and the time scheduled by counsel for the hearing deficient. Partway through the application, then counsel for SACC (not the same counsel as is before me) advised the Court that all he was asking for was to cancel the AGM scheduled for the next day. After further exchange the Justice remarked that he was utterly confused by counsel for SACC's presentation. The Justice then remarked that the application was far beyond a 30-minute application and that he was not satisfied or even close to being satisfied that there was merit to the application. He then dismissed the applications.

[14] I disagree with the respondents that this constitutes a decision on the issues before me for two reasons. First, the only issue before me is who can vote at the AGMs as the club currently stands. I am not being asked to ratify the directors of SACC. That is a much more involved issue. Second, on the information put before me on this application, I am not satisfied that Mr. Justice Weatherill reached a decision on the merits.

[15] Turning now to the remaining applications, I am satisfied that the following acts of the respondents have threatened or constitute unfair prejudice to the petitioner:

- a) BCMCA, in unilaterally and without giving SACC a chance to be heard, removing SACC from its membership in the BCMCA and removing SACC from list of members online and replacing it with Salak;
- b) Cricket BC, by advising its directors unilaterally and without giving SACC a chance to be heard, that SACC was being terminated by Cricket BC and replaced with Salak.

Accordingly, I issue a declaration to that effect.

[16] I am further satisfied that SACC is entitled to compensation from the respondents for the legal fees SACC incurred in rectifying the prejudicial conduct. It took bringing this petition to get the two respondent organizations to respond to SACC's concerns.

[17] In conclusion, I make the following orders: first, a declaration that the acts of the respondent West Coast Cricket Association, also known as Cricket BC, and the respondent British Columbia Mainland Cricket Association threaten or constitute unfair prejudice to the petitioner; and second, I order that the respondent societies allow the registered directors of the petitioner Salim Akbar Cricket Club to vote in their 2023 annual general meetings. Next, I order that the respondents compensate the petitioner for the legal fees it incurred in rectifying their unfair prejudicial conduct. And finally, I order that the petitioner is entitled to the costs of this application.

[18] There is one more order that I am going to make. As both counsels for the respondents foreshadowed issues that may arise at the upcoming AGMs, I am seizing myself of any issues arising from the AGMs being held on November 4 and 7, 2023.

“The Honourable Madam Justice Murray”