



In the matter of an appeal under s. 76 of the *Credit Union Incorporation Act*,
R.S.B.C. 1996 c. 82 (as amended)

BETWEEN:

BRUCE BURROWS and JOHN MALTHOUSE

APPELLANTS

AND:

THE BOARD OF DIRECTORS OF COASTAL COMMUNITY CREDIT UNION

RESPONDENT

DECISION

Appearances:

Jeffrey Jones for the Appellants

Peter J. Brown and D. Rodney Urquhart for the Respondent

Introduction

1. This is an appeal under section 76(9) of the *Credit Union Incorporation Act*, R.S.B.C. 1996, Chapter 82 (the "Act")¹. The Appellants are appealing the decision of the Respondent's directors to refuse to call a requisitioned special general meeting after a group of members demanded that such a meeting be called. The group, represented by the Appellants, tried to undertake the process allowed under section 76(4) of the Act to requisition the directors to call the special general meeting to discuss certain credit union business.
2. This appeal is about the statutory interpretation of section 76(4) of the Act as it relates to the process for calling requisitioned special general meetings and to jurisdiction of the Financial Institutions Commission (the "Commission") to hear appeals under subsection (9).

Decision

3. For the reasons set out below, the Appellants' appeal is dismissed.

¹ The full text of section 76 of the Act is attached as an appendix to this decision.

Background

4. A group of members of the Coastal Community Credit Union (the "Credit Union") oppose the closure of the Alert Bay, Cortes and Sointula branches of the Credit Union (the "Branch Closures"). They wish to requisition, under section 76(4) of the Act, a special general meeting regarding the Branch Closures (the "Proposed Requisition"), and have collected a substantial number of signatures from Credit Union members which they say support the Proposed Requisition. The directors of the Credit Union decided not to call the special general meeting because the requisition documentation did not comply with section 76(4) of the Act. Dissatisfied with the directors' decision, the Appellants have appealed to the Commission under section 76(9) of the Act.
5. As a preliminary issue, the Respondent has asked that the appeal proceed by way of oral argument; however, the Appellants have objected, preferring that the appeal proceed by way of written submissions alone.

The issues

6. The issues before the Commission are as follows:
 1. Does the Commission have jurisdiction to hear this appeal?; and
 2. If the Commission does have jurisdiction to hear this appeal, then is the directors' refusal to call the meeting correct?

Facts

7. While a substantial number of Credit Union members signed a document in relation to the Proposed Requisition, none of these signatures were dated by the signing members.
8. The parties dispute whether the Proposed Requisition set out a proposal as required by the Act, whether it was properly executed in counterparts, and whether it was signed by the requisite number of members. However, they agree that the documentation was not dated by the signing members.
9. By letter of May 7, 2014 the directors of the Credit Union advised the Appellants that they would not be calling a special general meeting pursuant to the Proposed Requisition because it did not comply with section 76(4) of the Act.

Preliminary Matters

10. The Respondent has requested that this appeal proceed with oral argument, while the Appellants have submitted that this is more appropriately a matter for written submissions alone.
11. Having reviewed all of the submissions both on this preliminary issue and on the merits of the appeal, I have decided that oral argument or submissions are unnecessary in this case as the appeal does not involve very complex issues or facts which would be better resolved

with the assistance of oral submissions. Rather, the key question for the Commission in this appeal is one of statutory interpretation.

Discussion

The Nature of the Decision Under Appeal

12. This appeal is launched by the Appellants under section 76(9) of the Act which gives every member the right to appeal to the Commission "the directors' decision under subsection (5)(b) ...to refuse to call a requisitioned special general meeting." The "directors' decision" that is the subject matter of this appeal is therefore their decision to not call a special general meeting pursuant to the members' requisition.
13. Other decisions made by the Credit Union's directors or management that might have caused some members to demand a special general meeting are outside the purview of this section 76(9) appeal.

The Commission's Jurisdiction in this Appeal

14. For the Commission's jurisdiction under section 76(9) to be invoked, there must first be a decision taken by the Credit Union's directors to refuse to call the requisitioned special meeting on one or more of the three grounds stipulated under subsection (5)(b). Therefore, in determining whether the Commission has jurisdiction to hear this appeal, I must first answer the question of whether the directors decided to refuse to call a meeting under subsection (5)(b) of the Act.
15. In this case, the directors did not decide to refuse to call the meeting for any of the reasons under subsection (5)(b). The reason they refused to call the special general meeting is that they found the Proposed Requisition to be non-compliant with statutory requirements, specifically those stipulated by section 76(4) of the Act.
16. Under section 76(5) of the Act, a prerequisite for the directors to make the decision about whether to call or refuse to call the requisitioned special general meeting is that they receive a requisition that complies with subsection 76(4). Since they found the Proposed Requisition to be non-compliant with subsection 76(4), they could not proceed to make a decision under subsection 76(5).
17. The jurisdiction of the Commission under a section 76(9) appeal is over a directors' decision to refuse to call a meeting on the basis of one or more of the permissible grounds under subsection (5)(b). Since the directors' decision to not call the meeting was not based on any of the three reasons under subsection (5)(b), the Commission's jurisdiction under section 76(9) cannot be invoked, and it follows that this matter is not properly before the Commission.

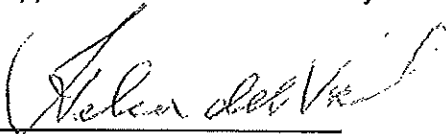
What if the Commission Does Have Jurisdiction?

18. Alternatively, if I am incorrect in determining that the Commission lacks jurisdiction to hear this appeal, I would nevertheless find that the appellants' appeal must be dismissed, as I find the directors' decision that the Proposed Requisition does not comply with the statutory requirements of section 76(4) was correct, for the following reasons.
19. Subsection (4) stipulates that a requisition "must be signed and dated by not less than 5% in number of the members or 300 members, whichever is the lesser." The parties do not dispute that the Proposed Requisition had not been dated by any of the members who signed it.
20. The word "must" denotes a mandatory statutory requirement that the directors have no power to overlook if not met. As the Proposed Requisition was not dated by the signing members, the directors have no option but to decline to call the meeting pursuant to the Proposed Requisition under subsection (4).

Conclusion

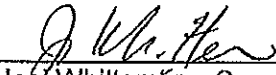
21. This appeal is dismissed because this matter is not properly before the Commission as the Commission has no jurisdiction under section 76(9) to hear an appeal of the directors' refusal to call a requisitioned special general meeting unless the refusal is on one or more of the grounds permissible under subsection (5)(b). In this case, the directors refused to call the meeting because the process prescribed by legislation under subsection (4) had not been complied with.
22. Alternatively, if the Commission does have jurisdiction, I find that the directors were correct in determining that the Proposed Requisition does not comply with the mandatory requirements of subsection (4). The requisition process as contemplated by subsection (4) was not complied with as the Proposed Requisition had not been dated by the signing members. Thus, the directors had no choice but to refuse to call the meeting as requisitioned pursuant to the Proposed Requisition under section 76(4).
23. I understand that the dismissal of this appeal will be a disappointment to those members who seek the opportunity and forum for an open discussion amongst members and directors about the closure of the branches that serve their communities. If they decide that the best way to achieve this is still through a special general meeting, it is open for them to renew their efforts to requisition a special general meeting, paying close attention to the statutory requirements that govern the process.

Appeal dismissed this 15th day of July, 2015:



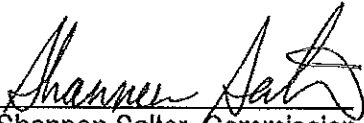
Helen R. del Val, Chair, Financial Institutions Commission

I agree:



Joel Whitemore, Commission Member

I agree:



Shannon Salter, Commission Member

Credit Union Incorporation Act

Special general meetings

- 76 (1) In this section, "**proposal**" means any matter proposed by members for consideration at a special general meeting and includes a proposed special resolution.
- (2) The directors of a credit union may call a special general meeting of the credit union.
- (3) By a requisition that may be signed in several counterparts, each bearing the signature of one or more members of the credit union, the members may requisition that the directors call a special general meeting for the purpose of considering a proposal.
- (4) A requisition under subsection (3) must
- (a) be signed and dated by not less than 5% in number of the members or 300 members, whichever is the lesser,
 - (b) state the proposal to be considered at the special general meeting,
 - (c) state the name and mailing address of one of the members as a representative of all the requisitioning members, and
 - (d) be deposited at the registered office of the credit union within 60 days of the first signing of the requisition by a requisitioning member.
- (5) If the directors receive a requisition that complies with subsection (4), then, within 21 days after the date the requisition is deposited at the registered office of the credit union, the directors must
- (a) call the requisitioned special general meeting to consider the proposal, or
 - (b) refuse to call the requisitioned special general meeting on one or more of the following grounds:
 - (i) the requisition was not deposited at the registered office of the credit union at least 90 days before the anniversary date of the last annual general meeting, or at least 90 days before the date on which it is proposed that the meeting be held;
 - (ii) it clearly appears that the proposal is submitted by the members for the purpose of enforcing a personal claim or redressing a personal grievance against the credit union or its directors or officers, or primarily for the purpose of promoting causes that are extraneous to the purposes of the credit union;
 - (iii) substantially the same proposal was considered and defeated by the membership within the 2 years

immediately before the date of deposit at the registered office of the credit union of the requisition containing the current proposal.

(6) The directors must give notice promptly to the representative of the requisitioning members of a decision under subsection (5) to call or to refuse to call the requisitioned special general meeting, and if the directors refuse to call the meeting, they must include in the notice their reasons for the refusal.

(7) If the directors call the requisitioned special general meeting under this section, then, at the request of the representative of the requisitioning members, the directors must attach to the proposal for circulation a statement, supplied by the requisitioning members, of not more than 400 words in support of the proposal, and the name and address of the representative of the requisitioning members.

(8) No credit union or person acting on its behalf incurs any liability only because of circulating a proposal or supporting statement in compliance with subsection (7).

(9) Within 14 days after the representative of the requisitioning members receives the notice referred to in subsection (6) of the directors' decision under subsection (5) (b), any member of the credit union may appeal to the commission the directors' decision to refuse to call a requisitioned special general meeting and, on receiving notice of the appeal, the commission may

- (a) make an order confirming the directors' decision to refuse to call the requisitioned special general meeting, or
- (b) order the directors to call the requisitioned special general meeting.

(10) Without limiting the powers given under subsection (9), the commission, in an order under that subsection, may

- (a) appoint a time and place for the requisitioned special general meeting ordered under subsection (9) (b),
- (b) require amendments the commission considers necessary or advisable to the proposal, supporting statement or notice of meeting, and
- (c) establish procedures for the conduct of the requisitioned special general meeting referred to in subsection (9) (b).

(11) On receiving notice of an order made by the commission under subsection (9) (b), the directors must call the requisitioned special general meeting in accordance with the order.