

Court of Queen's Bench of Alberta

Citation: Blood Tribe v Bearspaw Nation, 2022 ABQB 590

Date: 20220830
Docket: 2101 06054
Registry: Calgary

Between:

Blood Tribe, Piikani Nation and Siksika Nation

Applicants

- and -

**Bearspaw Nation, Chiniki Nation, Wesley Nation, Tsuut'ina Nation
and Treaty 7 Nations Chiefs Association**

Respondents

**Memorandum of Decision
of the
Honourable Justice K.D. Nixon**

I. Introduction

[1] The Treaty 7 First Nations Chiefs' Association ("the Association") is a society incorporated on May 3, 2005, pursuant to the *Societies Act*, RSA 2000, S-14. Its primary purpose is to advocate political positions of common interests to the First Nations in Treaty 7 territory. It is comprised of seven First Nations: the Blood Tribe, the Piikani Nation and the Siksika Nation (the "Blackfoot Nations"), who are the Applicants, and the Bearspaw Nation, the Chiniki Nation, the Wesley Nation (the "Stoney Nakoda First Nations") and the Tsuut'ina Nation, who are the Respondents, collectively the Treaty 7 First Nations.

[2] The Applicants submit that the relationship between them and the Respondents has deteriorated in recent years resulting in deadlock in the Association's decision-making process and interfering with the fulfillment of its core objects including and especially pursuing common political goals of the member Nations. In their view, a once collaborative and coordinated relationship in support of common objectives based on trust and partnership has become a relationship rife with disagreements and impasses. The Applicants note that attempts to voluntarily dissolve the Association have failed. They ask the court to dissolve the Association.

[3] The Respondents disagree and oppose dissolution. While they acknowledge that the work of the Association has slowed in recent years, in their view the differences between them and the Applicants do not relate to the core purpose of the Association and have not paralyzed the Association. They see the Association as continuing to have value in advocating for the Treaty 7 First Nations.

II. Background

[4] The Blackfoot Nations are members of the Blackfoot Confederacy, a Nation-to-Nation alliance that handles administrative and business affairs of the Blackfoot Nations. Similarly, the Stoney Nakoda First Nations and the Tsuut'ina Nation are members of the Stoney Nakoda-Tsuut'ina Tribal Council Ltd., a Nation-to-Nation alliance known as the "G-4 Nations".

[5] The elected Chiefs of the Treaty 7 First Nations ("the Chiefs") are the representatives of their respective First Nations. They act as Directors of the Association. The Association's bylaws appoint the Chief Executive Officer of the Treaty 7 Management Corporation ("the T7MC"), a non-profit company incorporated pursuant to the *Companies Act*, RSA 2000 c C-21 but since struck from the Corporate Registry, as the Association's eighth Director and its Chairman of the Board. The Treaty 7 First Nations were the shareholders of the T7MC.

[6] The Association does not typically deliver services to member Nations. The primary purpose of the Association is to advocate political positions of common interest with the federal government, provincial government, and other indigenous governments and bodies. The funding that is received is mostly used for general operations and to project a political voice.

III. Legal Framework

[7] The court may dissolve a corporation or a society where certain grounds exist, including where it is just and equitable to do so: s 215(1)(b)(ii) of the *Alberta Business Corporations Act*, RSA 2000, c B-9 and s 35 of the *Societies Act*. Dissolution is a discretionary remedy. It is not granted lightly or where equity can be achieved through other means: *Keho Holdings Ltd v Noble*, 1987 ABCA 84 at para 51.

[8] The court in *Keho* identified four grounds where it is just and equitable to dissolve a corporation:

1. deadlock in management;
2. fundamental breakdown in a trust relationship;
3. loss of substratum; and
4. loss of confidence in management.

[9] Only one of the four grounds need be established. Here, the Applicants rely on all four.

IV. Analysis

1. History of Disputes Between the Parties

[10] The Applicants cite six developments that underscore and exacerbate the decline in the relationship and in support of their position that the grounds to dissolve the Association have been met:

- a. A legal action commenced by the Stoney Nakoda claiming Aboriginal Title and rights to portions of land that overlap Blackfoot Territory (“the Stoney Action”);
- b. disagreements about the consensus decision-making model adopted by the Association in 2017;
- c. a lack of consensus on the use of the Association’s funds;
- d. a lack of consensus on funding applications;
- e. unauthorized disbursements by the Association; and
- f. dissolution of the T7MC.

[11] For the reasons discussed below, the evidence does not support the assertions of the Applicants that these matters, individually or collectively, have created a deadlock in management, resulted in a fundamental breakdown in a trust relationship, led to the loss of substratum or a loss of confidence in management.

a. The Stoney Action

[12] In 1999, the Treaty 7 First Nations commenced an action in the Federal Court against the Governments of Canada and Alberta in which they jointly advanced Aboriginal Title and rights in Treaty 7 Territory. This action was struck for lack of jurisdiction in 2001 on the application of the Government of Alberta.

[13] In 2003, the Stoney Nakoda commenced a new action against the Governments of Canada and Alberta in the Court of Queen’s Bench of Alberta seeking declarations of Aboriginal Title and rights in Treaty 7 Territory, including to portions of land the Blackfoot Nations also claim as their territory (the “2003 Action”). The declarations are sought without prejudice to any subsisting Aboriginal Title and treaty rights of other First Nations, including those of the Blackfoot Nations.

[14] The Blackfoot Nations were invited to participate in the 2003 Action but chose not to until 2017 when the Piikani and Siksika Nations applied to be added as defendants seeking to defend their claim to rights claimed by the Stoney Nakoda. Their application was dismissed in December 2019. The court concluded that intervenor status was a more appropriate process for the Piikani and Siksika Nations to defend their interests.

[15] Each of the Blackfoot Nations has expressed an interest in participating in the 2003 Action as an intervenor or has formally applied for such status. The stage of this litigation and any applications to become intervenors is not known to this court.

[16] The Applicants have provided no evidence that the existence of the Stoney Action has adversely affected the operating of the Association. Chief Grier, the current Chief of the Piikani Nation, and representative of the Applicants, made a vague and general assertion that the existence of the Stoney Action had resulted in “issues” in the Nation-to-Nation relationship between the Stoney Nakoda and the Blackfoot Nations. He did not articulate what those specific issues were or how they impacted the Association.

[17] Chief Young, the current Chief of the Chiniki Nation, and representative of the Respondents, acknowledged that the Blackfoot Nations are upset about the existence of the Stoney Action. The Respondents, however, submit that the historical disputes between the Blackfoot Nations and the G-4 Nations and the Stoney Action are not the cause of fundamental disagreements in the Association. Had they been, the Association would not have been formed in the first place or operated for years without issue.

[18] The evidence does not disclose how the existence of the Stoney Action has adversely affected the Association.

b. Consensus Model

[19] Underlying the Applicants' request for dissolution is their assertion that the Association adopted a "consensus model" in March 2017 that requires agreement of all Chiefs on Association matters. In their view, the two groups are at such odds with one another, particularly with respect to funding matters, that consensus is not achievable rendering the Association inoperable.

[20] At their March 14, 2017 Board meeting, the Chiefs unanimously passed a resolution to "continue with [the Association] without a voting system" and to "agree by consensus on issues". The requirement for "consensus" was again referred to in the Minutes of the September 14, 2017, as an agreement "to operate on a consensus basis" and to "continue through consensus and decisions be made by way of consensus." In further support for their contention that a consensus model was agreed upon, the Applicants note that the Chiefs approval for the Association's annual "organizational capacity funding" (hereafter referred to as its "basic operational funding") for the 2019-2020 year was documented as their agreement "by consensus [to] move forward collectively."

[21] Following adoption of the March 14, 2017 resolution, the Association's Chief Operating Officer, Ms. Many Heads drafted new bylaws. Although the March 14, 2017 resolution refers to continuing "without a voting system", the new draft bylaws provide for a unanimous vote by members voting on both ordinary and special resolutions. Despite Ms. Many Heads' repeated efforts to have the Chiefs consider the new draft bylaws, which were on the agenda at meetings between 2017 and September 2020, the Chiefs have neither considered them in any detail nor approved them.

[22] While the parties agree that political positions advanced by the Association require the approval of all the Chiefs, as has been the case historically, there is no agreement as to what was contemplated by "consensus" or to what decisions it applied. What was meant by "without a voting system" is not clear and the Chiefs have not proceeded on the basis that all decisions required unanimity.

[23] Chief Grier, on behalf of the Applicants, provided different meanings of "consensus" depending upon the nature of the issue. He explained that "consensus" meant that each Chief has a veto but, in some instances, it meant agreement of all the Chiefs present at the meeting. However, appointment of the Association's auditor did not require agreement of all Chiefs present because this is a "standard procedure" and what "normally" happens. In his view, therefore, a September 15, 2021 motion to approve the auditor was properly considered to be "carried", despite lack of unanimity among the Chiefs voting.

[24] Chief Young, on behalf of the Respondents, understood that "consensus voting" meant the member Nations needed to be respectful of each Nation and its leadership with respect to political aims and goals of individual Chiefs and Nations. While he agreed that "consensus" is required for significant decisions, and that funding issues are significant, the Respondents submit that the agreement of all Chiefs is not required for the Association's annual application for basic operational funding because that is a standard procedure.

[25] There is insufficient evidence about what was contemplated by the March 14, 2017 resolution on “consensus” to resolve the conflict in the evidence and make a finding of fact as to what was agreed upon.

c. Lack of Consensus on Use of the Association’s Funds

[26] The Association receives its funding through agreements with the Federal and Provincial Governments. Each year, the Association applies for basic operational funding. This funding is used for the operation of the Association to facilitate meetings, cover the expenses of the Chiefs, fund efforts to integrate service providers, cover costs of advocating political positions, pursue objectives of the Association and host indigenous groups.

[27] The Applicants cite disagreement between them and the Respondents regarding use of the Association’s funds as a particular strain on their relationship. They submit that the Respondents use their 57% of the vote at meetings to demand an equal distribution of funding despite representing only 25% of the collective members of the Treaty 7 First Nations. As they represent 75% of the collective members of the Treaty 7 First Nations, the Applicants are of the view that it is inequitable that they receive only 50% of funding.

[28] Four specific disputes regarding funding are cited by Chief Grier:

- (i) Covid 19 pandemic relief support;
- (ii) post -secondary funding;
- (iii) Child and Family Services support; and
- (iv) housing and infrastructure funding.

The first three of these relate to distribution of funding. The fourth relates to an application for funding that was not pursued because the G-4 Nations voted against the application.

[29] The disagreements with respect to funding are central to the Applicants’ position that dissolution is warranted. They submit that the parties are at fundamental odds with one another about how funds should be distributed with no hope of consensus being reached.

[30] The Applicants have not demonstrated that disagreements with respect to funding have adversely affected the functioning of the Association or the ability of the Chiefs to come to a consensus about core issues. The disputes cited by the Applicants do not justify dissolution of the Association.

[31] While the Association does apply from time to time for funding not otherwise available to individual member Nations, which it distributes for programs and services, funding for programs and services is not the core purpose of the Association. Very little funding flows through the Association to its members. Each Nation makes its own arrangements with Governments and agencies for most of its funding for programs and services. Any funding received through the Association represents a very small percentage of the overall funding received by the member Nations.

[32] The Applicants’ complaint about \$41,500 of Covid-19 pandemic relief funds received by the Association did not relate to any fundamental disagreement about how they were used, but rather the failure to obtain their approval before hand. These funds were used to expand a G-4 Nation’s “Urban Feed the Homeless” event so that all members of the Treaty 7 First Nations, including the Blackfoot Nations, could participate.

[33] The distribution of post-secondary funding and Child and Family Services funding did not involve decisions by the Association. The Applicants applied to the Federal Government for post-secondary funding but before the Association could discuss the matter at a Board meeting, Indigenous Affairs directed the funds to be divided equally between the Blackfoot Nations and the G-4 Nations. Likewise, the Association did not direct the distribution of Child and Family Services funds that had been received from the Federal and Provincial Governments.

[34] No details were provided with respect to the funding application not pursued for housing and infrastructure other than Chief Grier's statement that these funds were not applied for because the G-4 Chiefs, who initially supported the motion to apply, changed their minds without providing a reason.

d. Lack of Consensus on Funding Applications

[35] This relates to the application for the Association's 2021-2022 basic operational funding. The Applicants assert that the Respondents violated the "consensus model" when, in the absence of the Blackfoot Chiefs, they voted to apply for this funding and recorded the motion in the Minutes as "agreed by consensus".

[36] The Respondents submit that there is no evidence that it was intended by the March 2017 resolution on "consensus" that any Chief could hold the Association "hostage" and force its windup. They submit that the absence from the vote of the Blackfoot Chiefs, who had already given notice of their intention to seek dissolution of the Association, was not coincidental and was an indirect attempt by the Applicants to achieve dissolution by starving the Association of operating fundings and rendering it inoperable. I agree with the Respondents.

[37] The evidence does not establish that the Chiefs agreed in March 2017 that all decisions must be unanimous. In particular, it does not establish that the Chiefs contemplated that the agreement of all Chiefs was required to apply for the Association's annual basic operational funding, thereby giving any one Chief a veto over the continued existence of the Association.

e. Unauthorized Disbursements

[38] This relates to the use of Association's funds for the Urban Feed the Homeless event, previously discussed in these Reasons.

f. Dissolution of the T7MC

[39] The Chiefs unanimously agreed in 2017 to dissolve the T7MC after the G-4 Chiefs proposed an investigation into its administrative structure to determine if it was benefitting all Treaty 7 First Nations. Little information has been provided about the T7MC, the reasons for the decision to dissolve the corporation, or why no formal steps were taken to do so before it was struck from the Corporate Registry by the Registrar on September 2, 2021.

[40] At the September 14, 2017 Meeting, Ms. Many Heads, Chief Executive Officer of the T7MC, directed a working group to amend the bylaws to reflect the impending dissolution of the T7MC and removal of the CEO and to locate an office and develop job positions. This working group was never formed. Ms. Many Heads was appointed as interim Executive Director of the Association by a motion carried by the Chiefs at the Board's meeting on November 6, 2017.

[41] The Applicants submit that the dissolution of the T7MC renders the Association inoperable because the corporation is contemplated in the bylaws, which provide that the Chief Executive Officer of the T7MC is the Association's eighth director and Chairman of the Board.

Without the T7MC the Association is unable to have a properly constituted Board of Directors or even a Chairman of the Board of Directors in accordance with the bylaws.

[42] Although the Applicants submit that the dissolution of the T7MC renders the Association inoperable, the proposed new bylaws do not make any changes to sections referring to corporation, its CEO or the Chairman of the Board of the Association. The Association has continued to operate with Ms. Many Heads fulfilling the duties of Chairman of the Board outlined in the 2005 bylaws despite the company being struck.

[43] With this background, I turn to the analysis of the grounds for dissolution.

2. Grounds to Dissolve

a. Is There Deadlock in Management?

[44] Managerial deadlock is a just and equitable ground for dissolution. The classic case of deadlock involves two equal shareholders at odds, as was the case in *Osman v Elsiddeig*, 2019 ABQB 324, *Scozzafava v Prosperi*, 2003 ABQB 248 and *1170987 Alberta Ltd v. 1544361 Alberta Ltd.*, 2015 ABCA 351.

[45] In *Osman*, the underlying dispute and animosity between the owners of a medical clinic was such that there was no hope for reconciliation. In *Scozzafava*, two equal factions were so entrenched against each other they were unable to convene a meeting. There were no means to solve the deadlock such as a casting vote at a shareholders' or directors' meeting or a buyout or shotgun clause in a unanimous shareholders' agreement.

[46] In *1170987 Alberta Ltd.*, the parties were unable to agree on a basic business strategy and their different views on the continued tenancy of a third party were found to be a recipe for deadlock.

[47] Even where a casting vote can eliminate corporate paralysis, a court may still dissolve a corporation where consensus cannot be achieved: *Keho*, at para 41.

[48] The Applicant submits that the parties are so entrenched in their views that they have effectively vitiated the Association's ability to make decisions to propel itself forward and to attain its objects. They submit that, as consensus cannot be achieved, continuation of the Association would result in meeting for the purposes of disagreeing.

[49] The Applicants further submit that, quite apart from the requirement for consensus, the operation of the Association is moribund. They describe the Blackfoot Chiefs and the G-4 Chiefs as at "loggerheads" and distrustful of each other. In their view, it is a practical impossibility to pass a Special Resolution with the result that decisions such as rescission, alteration or amendment to the bylaws are out of reach. In other words, the parties have no way of resolving issues.

[50] The Applicants cite four circumstances as evidence of deadlock in management:

- a. failure to adopt new bylaws;
- b. failure to agree on a Strategic Plan;
- c. dissolution of T7MC; and
- d. disagreements with respect to funding

[51] The Respondents agree that the bylaws need to be amended and the Strategic Plan completed. They contend that the failure to do so is not the result of disagreement among them but, rather, inaction by all of the Chiefs. Simply put, the Respondents submit that all of the Chiefs have failed to give these matters priority. Further, they note that despite the dissolution of the T7MC, the Association has continued to operate and the Board continued to meet and pass resolutions. Lastly, as the Association delivers few programs and services to its member Nations, the Respondents submit that disagreements with respect to funding do not go to the core purpose of the Association and do not justify its dissolution.

b. Failure to Adopt New Bylaws

[52] The evidence does not establish that the failure to adopt new bylaws is a result of the parties being at “loggerheads”. There is no evidence that the parties have been unable to agree on new bylaws. As stated earlier in these Reasons, despite attempts by Ms. Many Heads to have the Chiefs address the draft new bylaws, they have yet to discuss them.

i. Failure to Agree on a Strategic Plan

[53] The Applicants submit that the Members cannot reach agreement with respect to a core Strategic Plan to define goals and facilitate the Association’s ability to move forward. They submit that this is a “recipe for deadlock” justifying dissolution: *1170987 Alberta*, at para 9.

[54] Unlike the new draft bylaws, the Chiefs have had meetings to discuss the Strategic Plan. A planning session was held in January 2018, but not all Chiefs were in attendance. Ms. Many Heads followed up with the Chiefs on September 27, 2018 to remind them that input was still required from the two Chiefs who were not in attendance at the planning session. A further planning session took place on April 24, 2019. Again, some Chiefs were absent. The matter was next on the agenda at the October 24, 2019, meeting. Yet again, some Chiefs were absent and no discussion took place. Although all Chiefs were present on November 17, 2019, the Strategic Plan was not discussed. Two Chiefs were absent at the last scheduled Strategic Plan session on September 24-25, 2020.

[55] While the Strategic Plan discussions appear to have stalled, primarily because the Chiefs have not yet held discussions when all of them were present, there is no evidence that the parties are at fundamental odds about the Strategic Plan or that their failure to finalize one arises because they are at loggerheads. As with the bylaws, the Chiefs have not given the Strategic Plan priority.

ii. Dissolution of the T7MC

[56] The Applicants submit that, with the dissolution of the T7MC, the existing bylaws are unworkable, and the Association can no longer function. As the Association’s 2005 bylaws appoint the CEO of the T7MC as the eighth Director and Chairman of the Board, they submit it is incapable of having a properly constituted Board of Directors or Chairman.

[57] As with the draft bylaws and the Strategic Plan, there is no evidence that the Chiefs’ failure to address the dissolution of the T7MC is a result of deadlock. While the Association has some corporate governance matters to address, including the implications of the dissolution of the T7MC, the Chiefs have continued to hold Board meetings and the Association continues to function.

iii. Funding Disagreements

[58] The specifics of the funding disagreements are addressed earlier in these Reasons. Disagreements about use of the Association's funds do not represent a fundamental disagreement about use of the Association's funds as very little of the Association's funding filters through to the individual Nations for programs and services and this is not the Association's core purpose. The dispute about the application for the Association's 2021-2022 basic operational funding is not about management of the Association but rather the continued existence of the Association, the issue before the Court.

[59] In conclusion, I find that the Applicants have not established deadlock in management. Despite areas of disagreement between the parties, the evidence does not establish that they are at loggerheads and unable to agree on matters fundamental to the Association or that they will be unable to do so in the future. The Association has continued to operate despite dissolution of the T7MC and the disagreement about distribution of funds is not a dispute about core Association matters. While there is inertia in addressing the bylaws and Strategic Plan, there is no evidence of an actual disagreement about amendments to the bylaws or about the content of the Strategic Plan.

c. Is There a Fundamental Breakdown in a Trust Relationship?

[60] The court may dissolve a corporation that is akin to a partnership where there is a fundamental and persistent disagreement that makes it impossible for the parties to get together again and work in harmony and cooperation: *Osman*, at para 21.

[61] A corporation is akin to a partnership where it was formed or continued based on a personal relationship, involving mutual confidence: *Scozzafava*, at para 53. There must be "something more" than a purely commercial relationship: *Keho*, at para 40.

[62] The Respondents agree that the Association is a business akin to a partnership. However, they disagree with the Applicants that there is a "fundamental and persistent disagreement" and "deep divide" between the Blackfoot Nations and the G-4 Nations that has resulted in their inability to work together in harmony and cooperation to achieve the Association's objectives.

[63] The evidence falls short of establishing a fundamental and persistent disagreement that makes it impossible for the parties to agree upon a strategic direction for the Association and to work together to advocate for political objectives common to Treaty 7 First Nations.

[64] The Applicants have not demonstrated how the historical dispute between the Blackfoot Nations and the G-4 Nations regarding Aboriginal Title and rights in Treaty 7 territory or the 2003 Action have adversely affected the functioning of the Association.

[65] The primary disagreement between the parties relates to what constitutes an equitable distribution of Association funds for programs and services as between the Blackfoot Nations and the G-4 Nations. As stated earlier in these Reasons, the distribution of funds to member Nations is not the Association's core purpose and represents a small fraction of the funding received by member Nations for programs and services.

d. Is There a Loss of Substratum?

[66] Where the main object of a corporation has failed, the court may treat the substratum of the company as gone and regard it as impossible for the company to carry on the real business

for which it was formed and make a winding-up order: *Keho*, at para 47 citing *Re Dominion Steel*, [1927] 4 DLR 337 at 349.

[67] The objects of the Association, in summary, are to:

- a. protect its member First Nations rights in accordance with the spirit and intent of Treaty 7;
- b. provide coordinated efforts and political advocacy for rights, interests and welfare of Treaty 7 First Nations;
- c. enhance Treaty 7 First Nation initiatives;
- d. actively and collectively pursue common political goals; and
- e. doing all things necessary for the betterment and welfare of Treaty 7 First Nations.

[68] The Applicants submit that with the deterioration in the relationship between them and the Respondents they are no longer engaged in active and coordinated efforts to enhance and protect all Treaty 7 First Nations. They submit that the member Chiefs cannot come to an agreement on common goals and the Association's paramount goals because of the divergence of opinions between them and the G-4 Nations about how the Association should work and how its funds should be allocated. As a result, the substratum has been effectively eroded. They assert that without a Strategic Plan and revised bylaws, the Association has no means to move forward.

[69] Chief Young on behalf of the Respondents acknowledged that the Association has not recently put forward a public political decision. It is not known to this court when that last occurred. The Respondents submit, however, that the substratum is not lost, but dormant. They oppose dissolution on the basis of a snapshot in time based on a divergence in views among the current Chiefs.

[70] While the Association has not, of late, focused on common political issues, the evidence does not establish that this is a result of fundamental disagreements among them or that they cannot come to an agreement on common goals. Rather, all the Chiefs have failed to give priority to completion of their discussions about the strategic direction of the Association, leaving the development of the Strategic plan and amendment of the bylaws to languish.

[71] Sustained failure of a society to pursue its core purposes could give rise to the loss of substratum. In my view, however, it is premature to conclude that the Blackfoot Nations and G-4 Nations will not be able to come to a common vision for the Association and will not return to the pursuit of common political goals. The failure to move forward in a coordinated effort is more a result of the Chiefs' collective failure to give priority to the Association's strategic direction than it is a fundamental disagreement or lack of trust between the Blackfoot and G-4 Nations.

e. Is There a Loss of Confidence in Management?

[72] Where there is a justifiable lack of confidence in the conduct and management of the company's affairs grounded in the conduct of the directors in regard to the company's business, the court may dissolve the corporation: *Keho*, at para 44 citing *Loch v John Blackwood Ltd*, [1924] AC 783 at 788 (PC), 1924 CanLii 529 (UK JCPC).

[73] In support of their contention that there is a loss of confidence in management, the Applicants cite the inequitable distribution of funds as well as an administrative and operational

deficiency arising from: the failure to agree on the Strategic Plan and to amend the bylaws; the dissolution of the T7MC; and, lastly, the failure to hold Annual General Meetings for several years to approve the financial statements as required by s 25 of the *Societies Act*. In particular, the Applicants cite a loss of confidence with the G-4 Chiefs as directors and Ms. Many Heads as CEO arising from the application for the Association's 2021-2022 basic operational funding and the use of pandemic relief funds to expand the Urban Feed the Homeless event without their prior approval.

[74] The evidence does not establish a justifiable loss in confidence in management. As noted earlier in these Reasons, disagreements about the distribution of funding do not relate to the core purpose of the Association and the Applicants' complaint that the Association applied for its basic operational funding for 2021-2022 without their approval is not a dispute about the management of the Association but about whether it should continue to exist.

[75] Failure to complete the Strategic Plan, amend the bylaws, address the dissolution of the T7MC, and to hold formal annual general meetings, is a collective failure shared by all the Chiefs. The Blackfoot Chiefs cannot rely on their own inactions in this regard to find a loss of confidence in management. Further, despite dissolution of the T7MC, the Association has continued as it has in the past with Ms. Many Heads fulfilling the role of Chairman of the Board. Despite the failure to hold annual general meetings for several years, this requirement has been functionally met as the Chiefs have met to approve the financial statements as required by s 25 of the *Societies Act*.

[76] Further, prior to this application, no Chief voiced any concerns about the job performance of Ms. Many Heads or any other employee, asked for a formal performance review or sought a change of staff managing the Association.

[77] Although citing a lack of transparency by Ms. Many Heads, the only issue raised in this regard is her failure to involve the Applicants in approval of the Association's pandemic relief funds to expand the Urban Feed the Homeless event to all Treaty 7 First Nations. The evidence does not disclose why the Blackfoot Chiefs were not consulted. There is no evidence that the expenditure was improper or that the event was inappropriate. To the contrary, the Applicants do not suggest that the event was inappropriate or the use of the funds to expand the event to include all Treaty 7 First Nations, including members of the Blackfoot Nations, was itself improper. On the evidence before the court, I cannot conclude that the failure to obtain the Blackfoot Chiefs prior approval justifies a loss of confidence in management. Further, this matter cannot have led to loss of confidence in management as the Applicants did not learn of this until after they filed their application to dissolve the Association.

[78] Lastly, as outlined by the Respondents, there are remedies short of dissolution, including bringing a motion to search for a new executive director or to dismiss employees; a resolution or other action to advance amendment of the bylaws and the development of the Strategic Plan; engaging the Chiefs in discussion about voting rights and differences in political priorities; and, mediation. The Applicants' contention that any motion to address their management concerns would be blocked by the Respondents is speculation for which there is little foundation in the evidence.

V. Conclusion

[79] In conclusion, while there are clearly some tensions between the Blackfoot Chiefs and the G-4 Chiefs, primarily with respect to distribution of funding, the evidence falls short of establishing that it is just and equitable that the Association be dissolved. As noted earlier in these Reasons, dissolution is a discretionary remedy not to be granted lightly. On the evidence before the court, the Applicants have not met their onus to establish a ground to dissolve the Association. In the result, the application is dismissed.

[80] Costs may be spoken to.

Heard on the 18th day of February, 2022.

Dated at the City of Calgary, Alberta this 30th day of August, 2022.

K.D. Nixon
J.C.Q.B.A.

Appearances:

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