

## **DISPUTE RESOLUTION PANEL**

In the Matter of the General Dispute Resolution Process ("the GDRP")

And in the Matter of a Notice of Dispute dated April 6, 2022

BETWEEN:

Al Browne, Bill Moore, Clay Stump, Jack  
Redekop, Kevin Wilson, Nancy Holland, Patrick  
Malkin, Rob Smith, Samantha Steinke, &  
Wayne Moorehead ("Members Claimant")

- and -

The United Conservative Association and the United Conservative Party Executive  
("Party Executive Respondent")

- and -

Executive Director of the United Conservative  
Party ("Executive Director Respondent")

BEFORE:

Ryan B. Armstrong	Panel Chair
Richard Forbes	Panel Member
Mike McCrae	Panel Member

### **REASONS FOR DECISION**

(1) This matter first came before us on May 2, 2022 in a hearing conducted via Zoom video conferencing. Patrick Malkin, Samantha Steinke, and Kevin Wilson appeared for the Members Claimant. Steven Dollansky appeared for the Party Executive Respondent and Executive Director Respondent. The particulars of the meeting and the resulting Order of this Panel are outlined in a Memorandum dated May 9, 2022 ("Memorandum #1"). A second Memorandum was issued on May 11, 2022 ("Memorandum #2"). A third Memorandum was issued May 25, 2022 ("Memorandum #3").

(2) At the outset, we apologize for the delay in providing this decision and the reasons. The matter took us into the summer months and, while we all take the work of our committee seriously, we are also volunteers. We had panel members away and out-of-country, and the usual holidays and demands of regular employment created further delay. Notwithstanding, this decision was too long in being provided and for that we apologize to the parties.

(3) Memorandum #3 dealt with parties' requests for production of documents. We ordered the Respondents to produce the Deloitte Letter of Engagement by June 1, 2022, and for the Claimants to provide a rebuttal on or before June 8, 2022. We then provided for a further procedural meeting to be held to determine if the matter was ready to proceed to Hearing on June 24, 2022.

(4) The Respondents provided the Letter of Engagement and thereafter the Claimants provided their submissions. Thereafter, the Respondents expressed concerns about the issues at hand and the time it may take to hear the matter. The Respondents applied for summary determination and dismissal of several of the issues which they believed would not require oral evidence. The Respondents sought to narrow the issues and reduce the amount of time needed for a hearing.

(5) Specifically, the Respondents provided submissions by email on June 13, 2022 on what it believed were the 4 issues which could be resolved by summary determination. Those are outlined as follows:

1. "Conduct unbecoming at the Chestermere AGM"
2. "Membership Cut-Off for the Special General Meeting"
3. "Change of Special General Meeting Procedures"
4. "Change to the Membership Rules and Procedures"

(6) The position of the Respondents on these issues (the applicant in this interim application for summary determination), can be summarized as follows:

1. "Conduct unbecoming at the Chestermere AGM" – the Respondents claim that this matter is "res judicata", in the matter was previously adjudicated by the Arbitration Committee. The Claimants were not present at the AGM and there is no first-hand evidence to be presented on the issue.
2. "Membership Cut-Off for the Special General Meeting" – the Respondent relies on their written submissions dated May 13, 2022, at paragraphs 113-116. The Respondents note Article 4.7.3 of the Bylaw deals with voting at all levels, including at a Special General Meeting ("SGM"). The Respondents also suggest that the wording of Article 4.7.3 requires that section 22(4) of the *Interpretation Act* apply to count the number of days, and not section 22(3). Flowing from this, they suggest that the March 19, 2022 cut-off

complies within the minimum number of days' notice required for the April 9, 2022 SGM.

3. "Change of SGM Procedures" – the Respondent submits that there is nothing which prohibits the Party Board from changing the Rules and Procedures (specifically the voting process) of an AGM. They suggest that the party bylaws expressly permit the board to do so and rely on paragraphs 95-111 of their May 13, 2022 written submissions in asserting that the changes to voting were within the jurisdiction of the Party Board.
4. "Change to the Membership Rules and Procedures" – the Respondents state that any amendment to the Membership Rules and Procedures is within the jurisdiction of the Party Board.

(7) The Claimants (now responding to an interim application for summary determination) replied by way of email on June 14, 2022. The position of the Respondents is summarized as follows:

1. "Conduct unbecoming at the Chestermere AGM" – the Claimants state that they do not ask this Panel to re-adjudicate the matter. Instead, they take issue with the comments of the Executive Director about the investigation of the matter and the alleged code of conduct violations. They also believe that the discrepancies in membership lists from the date of notice of the AGM to the date of the AGM are serious contraventions of the by-laws. The Claimants complaint is with the Executive Director's investigation of the matter and alleged code of conduct violations, which they believe occurred during the normal course of the Executive Director's employment and are subject to the Code of Conduct.
2. "Membership Cut-Off for the SGM" – the Claimants' state that their dispute isn't with the date of the cut-off but rather with the fact that the process for voting was changed from an in-person SGM to a mail-in vote. In essence, they contend that by having a cost to attend the SGM, certain members may have decided not to pay the cost to attend and vote at the SGM. As such, they either did not renew their membership or obtain one in the first place. By changing the vote to a mail-in ballot and removing the cost of the SGM attendance after March 19, 2022, the individuals who didn't have a membership on that date were denied the ability to vote.
3. "Change of SGM Procedures" – the Claimants state that their concern isn't with the voting process, but rather the fact that the SGM was called for a "single purpose", and that the change to the voting rules changed the SGM into an AGM, in violation of the constitution and the bylaws.

4. "Change to the Membership Rules and Procedures" – the Claimants rely upon Section 15 of the *Societies Act* in asserting that the membership rules and procedures cannot be changed.

Generally, the Claimants are opposed to summary judgment because they contend that the Respondents have exhibited a "clear pattern of conduct violations"

(8) Our Panel convened a further interim hearing with the parties on June 15, 2022 to review and discuss the submissions. The issues were canvassed of the parties and the parties were each afforded the opportunity to make further submissions and rebuttal.

(9) Of note is that the Panel put to the parties what it has outlined as the issues to date. Those are the following:

- a. Conduct at the Chestermere AGM
- b. Membership cutoff date prior to the SGM
- c. Changes to procedure in the SGM
- d. Changes to membership policy
- e. Amount of Notice for the SGM
- f. Bulk buying of memberships
- g. Appointment of Rick Orman

(10) Items a. through d. are those which were addressed in this hearing and outlined as items 1. through 4. in the June 13, 2022 email of Mr. Dollansky, as replied to on June 14, 2022 by the Respondents. Items e. through g. were not otherwise addressed at this interim juncture.

(11) This Panel recognizes that the guiding principle set out in section 1.2 of the General Dispute Resolution Process ("GDRP") states that "the Process is a quasi-judicial process and as such the Process is subject to all the Rules of Natural Justice and must be fair, balanced, open and transparent".

(12) The Respondents seek clarification of the issues to be set for any hearing and are entitled to such in order to properly prepare for any hearing. The Claimants are entitled to a hearing of their grievances outlined in the Notice, as extrapolated upon. However, the principles of natural justice and if fairness and transparency necessitate that there needs to be a foundation upon which a claim is advanced. Any issues to be adjudicated (to which the Respondents are required to reply) should properly be identified prior to the commencement of any Hearing.

(13) The Claimants have advanced their notice of dispute (as amended and with additional/supplemental material). The Respondents have provided their Response, to which

the Claimants sought further disclosure prior to providing any rebuttal. The Respondents provided certain further disclosure, and the Claimants have since filed their rebuttal material. The Respondents now seek summary determination without further hearing of certain (but not all) of the issues, based on the material provided. The Claimants have replied in turn. In short, each party has been provided with fair and equal treatment to date.

(14) In matters of civil claims such as this one, it is the party who claims that must prove its claim – it bears the legal burden, or onus. In this instance, the Respondents are the party claiming relief in the form of summary determination (dismissal).

(15) The question for our panel in determining whether matters can be dealt with in a summary fashion is whether the facts are sufficient and largely uncontroverted to determine the issues at hand without a full hearing.

(16) We address the 4 issues as follows.

1. *“Conduct unbecoming at the Chestermere AGM”*

(17) The Claimants ask that the actions of the Executive Director be found to be in violation of the Code of Conduct. It is noted that none of the Claimants herein were parties to the Chestermere dispute. This Panel has no information about the Chestermere AGM from the parties present. However, the Panel issuing the March 28, 2022 Reasons for Decision indicated at paragraph 14 that:

“No aspersions need be cast in any direction. It is most probable that the Claimant Board did not read the CA Rules carefully and Mr. Braun was placed in a tight situation to perform just in advance of the Christmas holidays and office closure. It is completely understandable that Mr. Braun would not have been in a hurry to process the paper membership applications delivered to him in late November when an AGM had just been held a month before.”

(18) The Respondent seeks summary dismissal on this issue on the basis that this matter has previously been addressed by a panel of members of our Committee. The Executive Director, and the Respondents within the Chestermere Dispute, addressed these discrepancies before the Chestermere Panel, and replied to the claims therein. As the Respondents contend, this is “res judicata” or “a matter judged”. It is not fair or reasonable to return to a dispute which was previously dealt with by a panel from our Committee.

(19) We find that this issue can be dealt with summarily. This shall not be an issue for a hearing into the code of conduct of the Respondents.

## 2. "Membership Cut-Off for the SGM"

(20) The Claimants claim that the Respondents set the membership cut-off date erroneously. Article 4.7.3 of the Bylaws governs membership for the purposes of voting, and reads as follows

"4.7.3. For the purpose of voting at any level (e.g. AGM, Nomination, Leadership etc.) voters must be a member in good standing for a minimum of twenty-one (21) days prior to the vote."

(21) The Claimants believe that the March 19, 2022 membership cutoff deadline for the April . In support they rely upon the March 28, 2022 decision by the panel in the Chestermere Dispute.

(22) The Respondents contend that the Chestermere dispute dealt with section 6.2 of the CA Rules and the wording "such notice to be not less than twenty-one (21) days".

(23) The Respondents are correct that section 6.2 of the UCP Bylaws triggers Section 22(3) of the *Interpretation Act*, as was addressed in paragraphs 9 through 11 of the March 28, 2022 decision in the Chestermere Dispute. Section 22(3) of the *Interpretation Act* reads as follows:

"(3) If an enactment contains a reference to a number of days expressed to be clear days or to "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded."

(24) Conversely, Article 4.7.3 of the Bylaws reads "a minimum of twenty-one (21) days prior to the vote". As outlined in *Komant v. Enbridge Pipelines (Woodland) Inc.*, 2016 ABQB 631 at paragraph 20 "The wording of ss. 22(3) and 22(4) of the Interpretation Act is specific. If a phrase is not mentioned in ss. 22(3) then ss. 22(4) applies."

(25) On this basis, Article 4.7.3 does not trigger section 22(3) of the *Interpretation Act*, but rather section 22(4). Section 22(4) reads as follows:

"(4) If an enactment contains a reference to a number of days **not** expressed to be clear days or "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the day on which the first event happens shall be excluded and the day on which the 2<sup>nd</sup> event happens shall be included."

(26) The SGM was set for April 9, 2022. The membership cut-off date was March 19, 2022. Ignoring the March 19 date, there were 12 additional days in March. Including April 9, there was 9 days in April. The total number of days from the cut-off to the date of the SGM was 21 days. This meets the minimum number of days as required by Article 4.7.3.

(27) Accordingly, we find that this issue can be dealt with summarily as the facts and the law are not in dispute. This shall not be an issue for a hearing into the code of conduct of the Respondents.

3. *"Change of SGM Procedures"*

(28) The Claimants contend that changes to the SGM procedures were not within the purview of the Respondents in that they are in conflict with both the Bylaws and the Constitution, and thus in violation of the Code of Conduct. They also contend that the SGM was converted into an AGM and that the SGM was not conducted for a specified purpose.

(29) The Respondents assert that this matter can be dealt with summarily insofar as the Bylaws permit the Party Board to deference to control the process and procedure of the leadership review.

(30) Article 5 of the Party Bylaws governs Meetings. Article 5.1 specifies two types of general meetings: an AGM and a SGM. "An AGM may also be a SGM."

(31) The Respondents rely on Article 5.2, which states that:

"The date, time, location in Alberta, business to be conducted and rules and procedures for every general meeting will be determined by the Board or will be as otherwise stipulated in these Bylaws."

(32) The bylaws go on to specify that:

- a. 5.3: the quorum is the lesser of a majority of the Members or two hundred (200).
- b. 5.3: the Board may provide that Members not physically present at the place of the general meeting may vote on resolutions or special resolutions through the use of such technology as is deemed appropriate, and such Members will be deemed present and included in the quorum.
- c. 5.4: An AGM requires at least 90 days' notice. An SGM requires at least 60 days' notice. Notice may be by mail, email, and/or telephone.
- d. 5.5: An AGM will be held in each calendar year.
- e. 5.6: not relevant to SGMs.

(33) Article 5.7 reads:

"An SGM may be called by the Board for a specified purpose at any time and shall be called without delay upon the written request of one-quarter (1/4) of the Constituency Associations as evidenced by identical motions passed at meetings of the requisite number of Constituency Association boards."

(34) The Respondents also rely on Article 13.1 of the Bylaws, which reads:

“The Board may create or adopt rules of order for any meeting of the Association or the Board, including Committees created by the Board.”

(35) The Party Governance Manual outlines the “Leadership Review and Selection Rules”. Article 3.2 requires 6 criteria to be met, as follows:

“3.2 In the case of such a Leadership Review:

- 3.2.1 All Members eligible to vote on matters at a general meeting shall be eligible to vote in the Leadership Review.
- 3.2.2 Voting shall be by secret ballot.
- 3.2.3 The question shall be “Do you approve of the current Leader?”
- 3.2.4 The voting options shall be “Yes” or “No”.
- 3.2.5 The number of votes cast for and against the question, and the total valid votes cast, will be announced to the Members present at the general meeting prior to the end of the general meeting.
- 3.2.6 A “Yes” vote of less than fifty percent (50%) of the total valid votes cast, shall automatically trigger a Leadership Election, as per Article 4.1.1 in this document.”

(36) Applying Article 3.2 of the “Leadership Review and Selection Rules” in the context of Article 5 of the Bylaws, and particularly Articles 5.2 and 5.3, we find no suggestion that the Respondents acted contrary to any of the Bylaws or the Constitution. We note that:

- a. 3.2.1: The Leadership Review, as commenced as an SGM, determined voting eligibility pursuant to Article 4.7.3, which governs the eligibility of voting at a general meeting.
- b. 3.2.2: The Leadership Review was by sealed mail-in ballot.
- c. 3.2.3: The question on the Leadership ballot was not at issue, but was in accordance with the Rules.
- d. 3.2.4: The voting options on the Leadership ballot were not at issue, but were in accordance with the Rules.
- e. 3.2.5: The number of votes cast for and against the question, and the total votes cast, were announced at the conclusion of the general meeting prior to the end of the general meeting.



- f. 3.2.6: As the "Yes" vote was greater than 50.0%, no Leadership Election was automatically triggered.

(37) There is no violation of any of the required provisions. The fact that the meeting was shifted from one being held in person, to one by mail-in ballot, is within the purview of the Board pursuant to Article 5.2 and Article 13.1. The former expressly permitted the rules and procedures for any general meeting to be determined by the Board. The latter allowed the Board to create rules including those governing mail-in ballots in compliance with the Leadership Review Rules already in place.

(38) The change from an in-person vote at a weekend event, to a weeks-long mail-in voting period, did not change the nature of the SGM into that of an AGM. If anything, it narrowed the focus to the sole purpose of the leadership review, while simultaneously expanding the ability of members to vote. The eligibility to vote in the Leadership Review was not changed; however, the ability to vote expanded when the vote became a mail-in ballot as opposed to an in-person vote. The voting process at the SGM in-person was limited to those planning on being in attendance and paying the SGM fee; the voting process by mail-in ballot permitted all members eligible to vote on April 9, to subsequently vote by mail. We find no violation of the Constitution nor the Bylaws.

(39) We find that this issue can be dealt with summarily as the facts and the law are not in dispute. This shall not be an issue for a hearing into the code of conduct of the Respondents.

#### 4. "Change to the Membership Rules and Procedures"

(40) The Claimants also contend that subsequent changes to the "Membership Rules and Procedures", specifically those outlined on the Party website and updated on May 27, 2022, are not in compliance with the Party Bylaws and Constitution, and are not permitted under the *Societies Act*.

(41) The Respondents assert that the "Membership Rules and Procedures" do not conflict with the Bylaws and that they are neither an amendment nor variation of the bylaws. Instead, the Respondents suggest that the rules and procedures are created within the Board's authority under Section 13.1 of the Bylaws. In essence, these Rules and Procedures are supplemental to the Bylaws and Governance Manual, and not in substitution or variation.

(42) The Claimants rely on section 15 of the *Societies Act*. It reads:

"15(1) The bylaws of a society shall not be rescinded, altered or added to except by special resolution of the society.

(2) No rescission or alteration of or addition to a bylaw has effect until it has been registered by the Registrar.

(3) If the Registrar is of the opinion that a bylaw is not in accordance with the application for incorporation or that it contains anything contrary to law, the Registrar shall refuse to register it.”

(43) Article 4 of the Bylaws governs Membership. Article 4.5 reads:

“The Board will reserve the right to formulate policies and procedures regarding suspension and revocation of membership with a transparent process for member appeal.”

(44) The Party has given the Board the authority to formulate policies and procedures regarding suspension and revocation of membership, which is outlined in the Membership Rules and Procedures (paragraphs 7 through 10).

(45) The Board has provided clarification on the determination of a “member in good standing” at paragraphs 11 and 12 of the Membership Rules and Procedures. The issue was when does a member become a member – when they receive their membership card or when the party receives the application? The party has determined that the receipt of the application and issuance of the membership number, without the member having necessarily received the number, nevertheless makes the member a “member in good standing”. This clarifies Article 4.8 without rescinding, altering, or adding to it.

(46) At paragraph 13 of the Membership Rules and Procedures, the Board has outlined the Executive Director’s authority to process applications, membership cards and lists, and procedures for applications to the Board and verification of memberships in leadership or nomination contests. There is nothing to suggest that this rescinds, alters or adds to the Bylaws.

(47) Paragraph 14 of the Membership Rules and Procedures sets out the membership fees to be paid, including the restriction on cash payment and the requirement for credit card payments to be limited to the individual or that of their family. This is expressly contemplated in Article 4.5 of the Bylaws, which states that “The Board will determine the proscribed membership fee.”

(48) The Claimants have not outlined how the Membership Rules and Procedures alters, rescinds or adds to Article 4 of the Bylaws. It does not expand or contract the pool of potential Members by changing the age eligibility or the residency requirements.

(49) We find that this issue can be dealt with summarily as the facts and the law are not in dispute. This shall not be an issue for a hearing into the code of conduct of the Respondents

(50) Generally, while the Claimants have concerns over how they feel the inner workings of the party are handled, the allegations of violations of the Code of Conduct and the corresponding suggested consequences are serious. Any attempt to establish a “pattern” of

violations requires that each point in the pattern be examined. However, a hearing on each of the points is not necessary.

Closing

(51) We provide the following Order:

- 1) The issues for determination at any oral hearing shall not include the following:
  - a. Allegations of conduct unbecoming in relation to the Chestermere AGM;
  - b. Code of conduct allegations concerning the cut-off date for memberships for voting eligibility for the April 9, 2022 SGM;
  - c. Code of conduct allegations concerning the changing of the SGM Procedures;
  - d. Code of conduct allegations relating to changes to the membership rules and procedures.
- 2) Summary determination of the above-issues finds no violation of the Party Bylaws, governing documents, or Code of Conduct.
- 3) The parties will be reconvened to determine a hearing date.


DATED the 7<sup>th</sup> day of October, 2022.

**DISPUTE RESOLUTION PANEL**

Per:

  
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Ryan B. Armstrong – Panel Chair

Per:

  
\_\_\_\_\_  
Richard Forbes – Panel Member

Per:

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Mike McCrae – Panel Member