THE LAWYER'S DAILY

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Business

Courts reluctant to interfere in operations of not-for-profit corporations

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(November 24, 2022, 9:00 AM EST) -- A recent decision from the Superior Court of Ontario has demonstrated once again the reluctance of the court to intervene in the operations of not-for-profit voluntary associations, or even for-profit corporations, provided that the decisions being questioned were made in good faith.

The decision in *Jung v. Ye*, 2022 ONSC 6296 concerned the operations of the Chinese Freemasons of Toronto and the Dart Coon Club of Toronto (the clubs) both of which are not-for-profit voluntary associations established to promote Chinese culture in Toronto. They own and operate a social hub for the Chinese community in Toronto and sponsor various cultural and charitable activities.

Dissension in the clubs arose when a faction of the clubs questioned expenses that had been incurred to replace windows and doors in the premises owned by the clubs. On Nov. 17, 2021, a group arrived at the premises and demanded to see the financial records of the organizations. When the records were not immediately produced, the faction attempted to change the locks on the premises, supposedly to secure the building. Eventually the police had to be called to restore order.

Following this incident, the executive of the clubs met, and the membership rights of the dissenting members were suspended as a result of their actions.

Certain members of the dissident group brought an application before the court seeking to obtain legal redress for their complaints. The application sought broad relief against the clubs and its leadership including the production of all financial records, an injunction to prevent the present leadership from carrying on the business of the clubs and declarations that the notices issued announcing the expulsion of the dissident members were null and void. At the hearing, the applicants further sought to add relief related to elections to be held within the clubs.

The matter came on for a hearing before Justice William Black on Oct. 4, 2022. In a decision released this month, Justice Black described the litigation and a parallel defamation action as a "hydra-headed beast... with the potential to occupy the Court's time and draw on both sides financial resources on an ongoing basis."

In his decision, Justice Black emphasized the autonomy that private associations have to govern their own affairs and noted that "the Courts have repeatedly been warned against being too quick to intervene in the operations of not-for-profit organizations or even for-profit corporations."

Justice Black quoted from the Supreme Court of Canada decision in *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22 where it was held that courts could only interfere in the affairs of a voluntary association to vindicate legal rights such as a right in property or contract and that mere membership in a voluntary association did not necessarily grant such legal

rights as can be adjudicated by the court.

While the judge noted that both the *Corporations Act* R.S.O. 1990 c C38 and the *Not-for-Profit Corporations Act* 2010 S.O. 2010 c.15 do provide certain rights to complainants, there is an array of decisions suggesting that the court should not subject not-for-profit or even profit-making corporations to microscopic examination of their operations and that where relief was justified, "any surgery should be done with a scalpel and not a battle axe."

Justice Black quoted from the decision in *Lee v. Lee's Benevolent Association of Ontario*, 2004 O.J. No. 6232, which dealt with disputed elections as follows:

> Non-profit organizations such as the Association should not be required to adhere rigorously to all of the technical requirements of corporate procedure for their meetings as long as the basic process is fair. Nor should the court be too quick to grant relief in such circumstances that may only serve to encourage a disgruntled member of such an organization to seek such relief. Absent some demonstrated evidence that any irregularities went to the heart of the electoral process or lead to a result which does not reflect the wishes of the majority, the court should be loathe to interfere in the internal workings of such groups.

In the case that was before him, Justice Black found that there was no basis for the complaints made by the applicants, as the process used to replace the windows and doors had been reasonable. He went on to find that the relief sought was overly broad and was not supported by any evidence which was before the court. The application was dismissed.

In dismissing the application, Justice Black quoted from the respondents' Factum, where they said:

> The Applicants seek remedies to which they have no legal right. They claim to be oppressed, but then propose remedies that make them the oppressors. This Honourable Court's valuable time and scarce resources should not be used for this purpose.

The case is a reminder that not every grievance has a remedy, especially when it comes to the operations of not-for-profit voluntary associations, and that the courts will be reluctant to interfere in the affairs of private not-for-profit corporations provided that they are being run in good faith.

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