COURT FILE NO.: 07-CV-328478PD2
DATE: 2007-03-02

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: DAVID WANG, RON MacVICAR, DAVID CHAO, ANNE CHAO and PAT AUCLAIR v. STEPHEN PRITCHARD, JONATHAN P'ING and THE CHURCH OF TORONTONIANS

BEFORE: HIMEL J.

COUNSEL: DUNCAN C. BOSWELL and NATALIE MULLINS for the Applicants
MARK R. FREDERICK for the Respondents

ENDORSEMENT

[1] The applicants bring this motion on short notice for an interim and interlocutory injunction to prohibit the respondents from holding a meeting on Sunday, March 4, 2007. The meeting had been scheduled for the purpose of holding a vote to accept new voting members of the Church and consider new proposed By-laws. The respondents oppose the motion for injunctive relief and ask that the court not intervene in internal Church matters.

FACTUAL BACKGROUND:

[2] The Church of Torontonians is a secular component of a Christian church established in 1967. The Church does not have a minister or pastor and is non-hierarchical. The Church of Torontonians was incorporated on December 10, 1974 as a Part III non-share capital corporation under the *Corporations Act* of Ontario. The By-laws set out the powers and duties of the directors and the membership admission criteria. Where a person meets those criteria in the opinion of the Board, they may be admitted as a voting member by resolution of the Board but the resolution is not effective unless it has been confirmed by a majority of voting members in a business meeting: see Article IV of the Bylaws. A Membership Admissions Committee was also created to control the admission of new members and provide a check and balance for reviewing and approving new voting members to the Church. However, since 2002, the

Board of Directors has taken on the role of reviewing all applicants and the Membership Affairs Committee has not played a role.

[3] Recently, the Board reviewed applications of over 190 people for membership and approved 106 as qualifying. Only three people sought to appeal the refusal under an appeal process. Ultimately, it is the majority of existing voting members who must vote on the admission of new applicants.

[4] On February 18, 2007, the Board of Directors proposed a new set of Bylaws and gave notice of an early annual meeting of the voting members for March 4, 2007 to vote upon it. Typically, the Annual General Meeting has been held in June of each year. Furthermore, David Wang, who has served as President for fourteen years was removed from office. It is submitted to me that the underlying issues relate to the alleged takeover of the local Church by a contingent based in Anaheim, California. It is also argued that the controlling directors have attempted to stack the vote for the meeting on Sunday by admitting and proposing for confirmation at the Annual General Meeting the 106 new members.

[5] The applicants take the position that the proposed Bylaw changes about membership criteria would significantly change the admission criteria. Furthermore, by admitting 106 new members, the Directors did not follow the process for admitting members through a vetting by the Membership Admissions Committee. They argue that there is no urgency in passing these new By-laws or holding the Annual General Meeting on March 4, 2007. There is a serious issue to be tried namely, the proper interpretation of the By-laws, irreparable harm will be caused by allowing the meeting to proceed and the balance of convenience favours granting the injunction to stop the meeting and the vote from proceeding.

[6] The respondents argue that there is no serious issue to be tried, that irreparable harm cannot be shown by the applicants and that the balance of convenience favours the respondents such that the meeting should be allowed to proceed.

ANALYSIS AND THE LAW:

[7] The authority to grant an interlocutory injunction is found in section 101 of the *Courts of Justice Act*, R.S.O. 1990, Chap. C.43 as amended and Rule 40 of the *Rules of Civil Procedure.* In *RJR-Macdonald Inc. v. Canada (Attorney-General)*, [1994] 1 S.C.R. 311, the Supreme Court of Canada adopted a three-part test to be applied in deciding whether injunctive relief should be granted:

(1) Is there a serious issue to be tried?

(2) Will the applicant suffer irreparable harm if the injunction is not granted?

(3) Which party will suffer the greatest harm from granting or refusing the injunction, that is, where does the balance of convenience lie?

[8] In answering the first branch of the test, the court has said that the standard is whether there is a serious issue to be tried rather than the higher standard of the "strong *prima facie* case". The court must make a preliminary assessment of the merits of the case but is not to embark upon a prolonged examination of the merits. So long as the court is satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third branches of the test. The second part of the test, irreparable harm, refers to the nature of the harm suffered and that it is harm which either cannot be quantified in monetary terms or which cannot be cured. In considering whether damages would be adequate compensation for the harm suffered, the court may also consider the defendant's ability to compensate the plaintiff in damages for any loss suffered until the time of trial: see *Rogers Cable TV Ltd. v. 373041 Ontario Ltd.*, [1994] O.J. No. 844 (Gen. Div.). The final factor requires the court to determine which of the parties will suffer the greater harm from the granting or refusal of the injunction. Lord Diplock in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.) suggested that two general principles govern the "balance of convenience" analysis. First, where all else is equal, "it is a counsel of prudence to ...preserve the status quo." Secondly, he observed that the assessment of where the balance of

convenience lies is significantly affected by the "extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial."

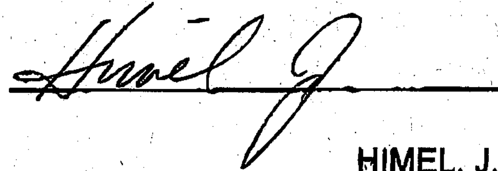
[9] Applying the test adopted by the Supreme Court of Canada, I find that the applicants have failed on the first branch to show that there is a serious issue to be tried. The threshold for this question is a low one and I need only make a preliminary assessment of the merits of the case. This is quite apart from the question of whether the plaintiffs are likely to succeed at trial. In my view, from the affidavit material filed, I cannot be satisfied that there is a serious issue to be tried. Courts should be reluctant to become involved and exercise jurisdiction over the question of membership in a voluntary organization, especially a religious one unless some property or civil right is affected: see *Lakeside Colony of Hutterian Brethren v. Hofer* [1992] 3 S.C.R. 165 at para. 6. The matters raised by the applicants concern membership issues that are clearly within the jurisdiction of the Board and the members to decide under the By-laws. The applicants concede that the meeting has been called with sufficient notice under the By-laws albeit shorter notice and at a different time than has been the case in the past. There is nothing untoward about that and it is within the Board of Director's exercise of discretion to convene a meeting on March 4, 2007. I find that the dispute alleged by the applicants does not mandate the intervention of the court as the matters raised do not concern property or civil rights issues.

[10] Furthermore, evidence of irreparable harm must be clear and not speculative: *Syntex Inc. v. Novopharm Ltd.* (1991) 36 C.P.R. (3d) 129 (Fed.C.A.). I find that there is no evidence that the applicants may suffer irreparable harm if the meeting proceeds and members of the Church are allowed to conduct a vote on the proposed By-laws.

[11] Finally, applying the balance of convenience test, I am satisfied that the balance of convenience favours the respondents given the ramifications if the meeting was not allowed to proceed.

RESULT ON INJUNCTIVE RELIEF:

[12] For the reasons outlined above, I am of the view that the applicants have not satisfied the test established by the Supreme Court of Canada in *RJR-Macdonald v. Canada (Attorney General), supra.* The motion for an interim and interlocutory injunction prohibiting the meeting from taking place and the vote from being held on March 4, 2007 is refused. As agreed by the parties, costs are fixed at $3,500 payable by the applicants to the respondents, if demanded.



HIMEL, J.

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SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID WANG, RON MacVICAR, DAVID CHAO, ANNE CHAO and PAT AUCLAIR

- and –

STEPHEN PRITCHARD, JONATHAN P'ING and THE CHURCH OF TORONTONIANS

ENDORSEMENT

HIMEL J

Released: March 2, 2007