

# KEEPING CURRENT

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## Court declines to intervene in dispute over governance of not-for-profit clubs

By James R.G. Cook

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Members of not-for-profit organizations should generally try to resolve their differences pursuant to their rules and by-laws before seeking the assistance of the courts. While the enforcement of legal rights such as contracts or property ownership may require legal proceedings, the governance of not-for-profit organizations is a matter that courts will generally leave to the membership and the procedures set out in the constating documents.

***Jung v. Ye, 2022 ONSC 6296*** [not on CanLII], concerned a dispute involving two not-for-profit corporations organized to promote and support Chinese cultural and charitable events and activities: the Chinese Freemasons of Toronto ("CFT"), with about 100 members, and the Dart Coon Club of Toronto ("DCT") with about 30 members

The CFT was governed by an executive committee of 11 members, elected for three-year terms for a maximum of two terms. The DCT had its own executive committee whose members are not subject to term limits.

The two clubs occupied premises on Dundas Street West, Toronto. A "Property Management Committee" consisting of five members from both the CFT and DCT executive committees was responsible for management and maintenance of the clubs' premises.

During the pandemic, the activities of the clubs were reduced and the executive committees decided to undertake repairs to the clubs' premises. In particular, the doors and windows needed to be replaced. In April 2021, expense proposals for the replacement of windows and doors were submitted and approved by the Property Management Committee. A company was selected to do the work for a total price of \$24,295.00.

Some members of the CFT took issue with the approval of the renovations and attempted a coup of the club's leadership. A four-hour standoff occurred in the premises after the group arrived after business hours and demanded to see all records held by the clubs. The group announced that it was on

the scene to conduct a full investigation into allegations of corruption.

When the demand for records was not immediately met, the group's leader announced that the Chairman and two other members of the executives committees were immediately suspended and that the group was to take over the clubs and control the keys to the premises. When this demand was not immediately met, the group changed the locks.

The Toronto police then attended at the premises and eventually directed the coup members to leave.

The executive committees of CFT and DFT subsequently conducted a formal review of the events and revoked the memberships of the individuals who participated in the group and the after-hours coup. No issues were found with corruption or the decisions regarding the renovations.

Litigation ensued as some members of the disgruntled group brought a court application for production of financial and administrative records and seeking the court's intervention by way of declaratory and/or injunctive relief over the management of the clubs. The application judge noted, however, that the evidentiary and/or statutory or other legal basis for various of these items sought by the applications was far from clear.

The court focused on the allegation of misuse of funds and corruption relative to the replacement of the premises' doors and windows. In the application judge's view, the evidence showed a reasonable approach on the part of the respondents, including obtaining quotes for the work, putting the recommended vendor's quote before the Property Management Committee, obtaining that committee's decision, and then arranging for the work to proceed.

What was left after that issue was considered

was an array of allegations and relief sought concerning the management of the clubs and improper diversion of club funds.

In general, courts are reluctant to intervene in the operations of not-for-profit voluntary associations, or even for-profit corporations, as management issues ought to be resolved by the members pursuant to the constating by-laws and rules of the organization. Courts can only intervene in the affairs of a voluntary association to vindicate a legal right, such as a right in property or contract: *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, [2021 SCC 22 \(CanLII\)](#), at para. 49.

Courts respect the "business judgment rule". This means that business decisions made honestly, prudently, in good faith and on reasonable grounds should not be subject to microscopic scrutiny in a way that would usurp a corporation's duly elected management. A court should not be too quick to grant relief in circumstances that may only serve to encourage a disgruntled member of a not-for-profit organization to seek court intervention. As stated by the court in *Lee v. Lee's Benevolent Assn. of Ontario*, 2004 CarswellOnt 8790 (S.C.), at para. 12:

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 at hand, the court agreed with the respondent clubs that the application was based on suspicion, speculation and abusive conduct of the coup members, who were seeking remedies to which they had no legal right. They

claimed to be oppressed but were proposing remedies that made them the oppressors. The application was accordingly dismissed.

The application judge was critical of the applicants' attempt to use the court's time and resources to resolve internal governance matters rather than raising the issues of concern at a properly convened meeting at which issues, even difficult issues raising alleged concerns about proper management and deployment of club funds, could have been aired, discussed, and voted upon. The application judge noted that it was remarkable the extent to which grown adults were prepared to engage in unrestrained and unseemly behaviour with a view to securing power and control of the clubs.

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If you have a litigation matter and are in need of legal advice, please do not hesitate to contact James Cook, at 416.865.6628 or [jcook@grllp.com](mailto:jcook@grllp.com).

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