

Setting the Record Straight

Dear Members and Supporters of the Iranian Canadian Congress (ICC):

Some important information is contained in this letter which we encourage you to read in its entirety. **This letter has been approved by the board of directors¹ of the Iranian Canadian Congress (“ICC”)** who is comprised of Ms. Soudeh Ghasemi (“**Ghasemi**”), the President, Pouyan Tabasinejad (“**Tabasinejad**”), Vice President and Secretary, Babak Amin Tafreshi, Younes Zangiabadi, Saman Tabasinejad, Mohsen Khaniki, Sholeh Khalili and Hooman Shirazi² (**collectively “Board”**) and the four applicants Ms. Mehrdokth Hadi (“**Hadi**”), Ms. Kamnoosh Shahabi (“**Shahabi**”), Mr. Shayan Moin (“**Moin**”) and Mr. Babak Payami (“**Payami**”) (**collectively “Applicants”**).

The *Corporations Act*, R.S.O. 1990, c.C38 (“*Corporations Act*”) is the law that applies to all non-profit organizations including ICC. The *Corporations Act* **supersedes** the bylaws anytime there is a conflict between it and the bylaws.

- According to sections 299 and 304 of the *Corporations Act* as well as ICC’s by-laws, the board of directors **shall** maintain complete minutes of all official board meetings and they are to be made available for inspection.
- According to section 307 of the *Corporations Act*, ICC **shall** provide the complete Members’ Registry **within ten (10) days** to anyone who delivers an affidavit in accordance with this section.

In December 2018, the four Applicants sent a formal request to ICC asking for (1) the complete Minutes of Meetings of the Board of Directors and (2) the complete Members’ Registry. The requests were made based on the *Corporations Act*. The 10-day deadline for ICC to deliver the Members’ Registry based on the law was **December 19, 2018**.

ICC failed to deliver the Members’ Registry by December 19, 2018 and it also failed to provide the Minutes of Meetings of the Board of Directors.

On December 28, 2018, Ms. Ghasemi wrote the Applicants rejecting their request. Ms. Ghasemi claimed that the Personal Information Protection and Electronic Act (PIPEDA) prevented ICC from disclosing the requested information. To determine if *PIPEDA* applies to an organization that collects personal information, the test is to determine if it is “*in the course of commercial activities*.” ICC does not engage in “commercial

¹ Bijan Ahmadi submitted his resignation as board member to the ICC on August 15, 2019.

² Hooman Shirazi submitted his resignation as board member to the ICC on August 23, 2019.

activities”. Therefore, *PIPEDA* was not applicable. A qualified corporate/commercial lawyer would have advised ICC on this point right away. However, ICC did not consult with a qualified corporate/commercial lawyer.

On December 31, 2018, the Applicants wrote Ms. Ghasemi to advise that *PIPEDA* did not apply and that the applicable law was the *Corporations Act*. They repeated their request and suggested that ICC consult with qualified legal counsel. They reminded Ms. Ghasemi of the fiduciary obligations owed by the Board to ICC. They put ICC on notice that if it did not comply with the law, the Applicants would consider taking legal steps.

On January 15, 2019, the Board issued the first, in a series of emails that contained incomplete information relating to the Applicants’ request under s.307 of the *Corporations Act*. This official ICC communication was sent to an undisclosed mailing list. In it, the Board referred to *PIPEDA* as the governing law. This was incorrect. The applicable law is the *Corporations Act*. As well, on its own volition, the Board purported to introduce a new privacy policy for ICC whereby members could “opt-in” to have their information disclosed. This policy did not obviate ICC’s obligation to deliver the Members’ Registry to the Applicants as per s.307 of the *Corporations Act*.

On February 27, 2019, Ms. Atoosa Mahdavian (**“Mahdavian”**), the lawyer retained by the Applicants, wrote to Ms. Ghasemi and Mr. Tabasinejad at ICC. Ms. Mahdavian referred to the applicable law and placed ICC on notice that by failing/refusing to deliver the Members’ Registry, the Board was causing ICC to commit an offence under the *Corporations Act*. She also cautioned that their continued failure to provide the Members’ Registry and the Minutes of the Board Meetings would result in legal proceedings being initiated by her clients.

On February 28, 2019, Mr. Tabasinejad, writing on behalf of ICC, responded to Ms. Mahdavian. He refused to acknowledge the Applicants’ legal entitlement to the Members’ Registry. He again improperly referred to *PIPEDA* as the governing statute. ICC finally provided a link to some Minutes of Board Meetings. This was the first time in 10 months that the Board finally published some Minutes, however, they were incomplete. For example, the Board did not include any entries for meetings held December 2017 to and July 2018 or any meetings for February 2019.

On March 1, 2019, Ms. Mahdavian replied to Mr. Tabasinejad. As a final attempt to avoid litigation, Ms. Mahdavian invited ICC to have its legal counsel or insurer contact her to address ICC’s non-compliance. Ms. Mahdavian’s letter remained unanswered.

On March 19, 2019, the Applicants initiated legal proceedings in the Superior Court of Ontario by application bearing court file no. CV-19-00616512-00CL (“Court Case”).

The Applicants each delivered an affidavit in support of the relief they were seeking which included (1) an order compelling ICC to provide the complete members’ registry as at the 2018 AGM held April 29, 2018 or alternatively, as at December 2018 pursuant to section 307 of the *Corporations Act*, (2) a declaration that ICC and its directors have committed an offence under s.307(5) of the *Corporations Act* by failing to provide the members’ registry maintained by ICC and (3) an order that ICC provide access to all Minutes recorded by the Secretary of ICC since the 2018 AGM, authorizing all actions taken by the organization enumerating all powers delegated to officers and summarizing all discussions held.

On March 21, 2019, ICC was served with the Application Record in the Court Case.

On March 23, 2019, two days after being served with the court documents, ICC issued another official communication to an undisclosed list of recipients as an “Important Notice to ICC Members”. The email not only contained inaccurate information (by again referencing *PIPEDA*) but it also omitted to include the following relevant information: (1) nothing was said about ICC’s clear legal obligations under the *Corporations Act* to provide the Members Registry and (2) nothing was said about the affidavits the Applicants had provided in December 2018 where they declared, under oath, that the members’ list would only be used for the purposes connected with ICC.

On March 25, 2019, the night before the first court appearance, ICC hired Mr. Jonathan J. Nehmetallah (“**Nehmetallah**”) of Gardiner Roberts as its lawyer.

On March 25, 2019, Mr. Bijan Ahmadi (“Ahmadi”) emailed Ms. Ghasemi to inform her of 24 people who allegedly objected to their information being released. Included in that list was Mr. Ahmadi himself, Ms. Shohleh Khalili, another board member and relatives and friends of the Board.

On March 26, 2019, at the first court appearance, various members of the Board attended along with their lawyer. The Iranian Canadian Journal also attended. The Judge postponed the matter to April 10 to allow ICC’s new counsel to meet with his client and review the Court Case. The court directed that ICC would not call the Annual General Meeting (AGM) before the next court appearance.

On March 29, 2019, three (3) days after ICC had retained counsel, the Board issued another official communication to its members which contained inaccurate information. This time, (1) the ICC email stated that the membership information was “being made

public” which was contrary to the Applicants’ sworn affidavits in the Court Case and therefore, false (2) the ICC email referred to “many” members being displeased which was also inaccurate and (3) the ICC email suggested that ICC was “currently reviewing the application”. In fact, the relief the Applicants were seeking in the Court Case was exactly the same as what they first requested in December 2018 which request ICC refused to fulfil 3 months earlier.

On April 10, 2019, the Judge scheduled the hearing of the Court Case for July 15, 2019. Through its counsel, ICC claimed it needed two (2) months to deliver responding affidavits. The Judge scheduled May 22, 2019 as the deadline for ICC’s affidavit(s) and June 12 and 13, 2019 for all cross-examinations.

On April 26, 2019, Ms. Mahdavian wrote Mr. Nehmetallah requesting confirmation that ICC was preserving all records and the Members Registry as at the December 2018 date and she asked him to advise her on the number of members in December 2018.

On April 30, 2019, one (1) month after ICC had retained legal counsel, the Board issued another official statement to its members. This letter also contained errors and again omitted relevant information (1) ICC’s continued insistence that it would protect the privacy of members’ information was **contrary to the applicable law** (2) the Board’s continued failure to deliver the requested information caused ICC to be in violation of the law which was exposing ICC to an offence under s.307(5) of the *Corporations Act* and unnecessary legal costs for both the organization and the Applicants.

On May 7, 2019, based on information from his client, Mr. Nehmetallah wrote to say that as a volunteer organization, ICC did “not have the institutional capacity to build a list for hypothetical dates” and “to reproduce the record for another specific point in time (aside from the present) is extraordinarily time-consuming”. Not only did ICC fail to deliver the Members’ Registry as at December 2018, it also failed to disclose the number of members it had as at date.

On May 13, 2019, the Board issued another official communication to its members. In this email, for the first time, ICC referred to the regime under s.307 of the *Corporations Act* where the Members Registry can be requested by anyone who delivers an affidavit.

In doing so, the Board finally acknowledged that the *Corporations Act* was the governing law and not *PIPEDA* as it had been claiming for the last five (5) months. Although ICC committed to complying with the *Corporations Act* for any *future requests* for membership lists, it continued to refuse to provide the Applicants with the Members’ List which was past due on December 19, 2018.

In the May 13th email, ICC members were advised that the Board was disabling online membership such that members could only renew/join the organization by making an appointment with the Secretary and attending in person to pay the membership fee. It should be noted that shortly after the 2018 AGM, in late May 2018, ICC had disabled the reminder email that was routinely and automatically sent out to members to encourage them to join as members.

This message was repeated in a follow-up email sent on May 16, 2019 and in telephone calls made by Mr. Tabasinejad to various ICC members. The email again referred to ICC having heard from “many” members. In fact, based on Mr. Tabasinejad’s own affidavit sworn May 22, 2019, there appears to have been only **22 people** who sent an email to ICC to have their memberships withdrawn.

On May 19, 2019, Mr. Nehmetallah, counsel for ICC, sent Ms. Mahdavian the list of “current” ICC members (“May 2019 List”). There were **91 members** on the May 2019 List.

Based on Mr. Tabasinejad’s May 22, 2019 affidavit filed at court on behalf of ICC and his evidence at cross-examinations, the following facts were disclosed:

- **ICC had 957 eligible members at the 2018 AGM held on April 29, 2018;**
- **ICC had 737 active members in December 2018, when the Applicants submitted their s.307 request for the Members’ Registry;**
- **ICC had 91 current members when the May 19 List was delivered.**

On June 12, 2019, Ms. Ghasemi and Ms. Hadi were cross-examined. On June 13, 2019, Mr. Moin and Mr. Tabasinejad were cross-examined. ICC chose not to cross-examine Mr. Payami or Ms. Shahabi.

From June 14, 2019 to June 25, 2019, the parties, through counsel, entered into discussions to achieve a resolution that would be in the best interest of the organization.

On June 26, 2019, counsel attended at court as ICC was requesting directions for the timing of the AGM. The Honourable Madame Justice Conway did not agree to postpone the 15-month statutory deadline for the AGM. Her Honour, however, ordered that on consent ICC would deliver all minutes of board meetings and committee meetings to the Applicants by July 5, 2019.

On June 27, 2019, the parties reached an agreement in principle which included, among other things,

- a letter would be sent out to all ICC members setting the record straight and providing the complete and accurate information of all of the events that had taken place since the Applicants first requested the Members' Registry in December 2018 ("**Joint Letter**");
- An independent monitor would be retained to oversee and chair the 2019 AGM/elections and who would report to the Court;
- a committee called the **2019 AGM Committee** would be struck headed by the independent Monitor and two community members (one representative selected from each side);
- The 2019 AGM Committee would receive the December list (consisting of 737 members) and it would process the registration/renewal of memberships, the voters' list and run the AGM/elections;
- For transparency, the Board agreed that it would have no involvement at all in the 2019 AGM including the elections and the Monitor would chair the AGM with full and final authority; and
- At the conclusion of the AGM, the Monitor would report to the Court and if the Court was satisfied with the outcome of the elections/AGM, the Applicants would then withdraw their Court Case and the parties would exchange releases.

Currently the hearing of the Application is scheduled to be heard at the Superior Court, Commercial List, on September 9, 2019.

UPDATE

The settlement could not be finalized as the parties were unable to reach agreement on some points including 1) the wording of the Joint Letter 2) the Release to be exchanged and 3) the Monitor's retainer.

From July 2 to August 21, 2019, these issues were extensively negotiated by Ms. Mahdavian on behalf of the Applicants and Mr. Nehmetallah on behalf of ICC.

On July 31, 2019, counsel attended before the Honourable Madame Justice Conway to update the court. In light of the breakdown of the settlement discussions and ICC's plan

to call the AGM for September 15, 2019, the Judge moved the hearing of the Court Case from September 19 to September 9, 2019.

On August 1, 2019, ICC issued another communication to the members regarding the status of the Court Case and the delay in calling the 2019 AGM.

On August 7, 2019, the parties agreed to retain **Mr. Marvin Huberman (“Huberman”)**, litigation lawyer and commercial arbitrator to act as the court appointed Monitor and to chair the 2019AGM.

On August 15, 2019, Mr. Ahmadi submitted his resignation as board member to the ICC.

On August 15, 2019, the parties reached agreement on the Release to be exchanged at the end of the Court Case and on the wording of the Minutes of Settlement.

On August 16, 2019, the parties exchanged answers to all undertakings from the cross-examinations, however, the settlement discussions broke down again in respect of the wording of the Joint Letter.

On August 23, 2019, ICC finally agreed to the proposed draft Joint Letter prepared by Ms. Mahdavian. The parties also agreed that the Joint Letter shall be distributed to the December Members’ Registry, i.e. 737 member list and that it shall be posted by ICC on its website, along with a link to all the records filed at court and that ICC would also publish the letter on all of its social media platforms.

On September 9, 2019, pursuant to the order of the Honourable Mr. Justice Hainey of the Commercial List, Mr. Huberman became the court-appointed monitor with full and final authority to oversee the 2019 ICC election and chair the 2019 AGM.

The parties have confirmed that **Dorna Mojdami** selected by ICC and **Bahram Jalayer** selected by the Applicants would be the volunteer members of the 2019 AGM Committee to work with the Independent Monitor.

The parties have agreed that the 2019 AGM will be held on **Sunday November 3, 2019**. The Independent Monitor shall call the AGM by providing members with a minimum 30 days’ notice and he shall be responsible for all matters relating to membership registration, voters’ list and members’ motions for the 2019 AGM/election.