

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** BABAK PAYAMI, KAMNOOSH SHAHABI,  
MEHRDOKHT HADI, and SHAYAN MOIN, Applicants

**AND:**

IRANIAN CANADIAN CONGRESS, Respondent

**BEFORE:** Cavanagh J.

**COUNSEL:** Atoosa Mahdavian for the Applicants

Daniel Fridmar for the Respondent

Mitchell Wine and Yann Grand-Clement for non-parties Soudeh Ghasemi, Pouyan Tabasinejad, Babak Amin Tafreshi, Younes Zangiabadi, Saman Tabasinejad, Mohsen Khaniki, Sholeh Khalili and Amir Moazzami

**HEARD:** November 2, 2020

**ENDORSEMENT**

**Introduction**

[1] The Applicants are four members in good standing of the Iranian Canadian Congress (“ICC”). The ICC is a non-profit corporation established in 2008 under the *Corporations Act*, R.S.O. 1990 c. C.38. It was established with a view to representing the interests of Iranians in Canada and encouraging their participation in the larger Canadian society.

[2] There is a meeting of members of the ICC scheduled to be held on December 13, 2020 at which there will be an election of new directors. This meeting is being held in accordance with the terms of a consent order made on September 9, 2019 which provided for the appointment of Marvin Huberman as the Monitor of the ICC’s 2019 Annual General Meeting (“2019 AGM”) and the 2019 election of seats for the Board of Directors of the ICC. A further order was made on consent on September 14, 2020 dealing with the 2019 AGM and 2019 Election.

[3] The Applicants have brought this motion on an urgent basis seeking an order removing the directors of the ICC and appointing an interim board of directors until the December 13, 2020 meeting has been held, together with other relief. They assert that the eight directors of the ICC have caused the ICC to (i) breach its statutory obligations under the *Corporations Act*, (ii) act in

violation of the by-laws of the ICC, (iii) breach its obligations under Minutes of Settlement made in relation to the 2019 AGM and 2019 Election, (iv) incur unnecessary expenses, and (v) contravene a court order made on consent. The Applicants also seek relief against eight directors personally, and against legal counsel for the ICC for costs.

[4] For the following reasons, the Applicants' motion is dismissed.

### **Background**

[5] The Applicants commenced this application in March 2019 following a request made in December 2018 for the members' registry pursuant to s. 307 of the *Corporations Act*. The ICC did not provide the requested members' registry and the application was commenced as a result.

[6] Before the application was heard, a settlement was reached pursuant to Minutes of Settlement dated September 6, 2019. The Minutes of Settlement provide, among other things, for an order to be granted, on consent, dealing with the appointment of an independent monitor.

[7] An order was made by Hainey J. dated September 9, 2019, on consent, by which Marvin J. Huberman was appointed Monitor of the ICC's 2019 AGM and the 2019 Election of directors, with his appointment to expire upon delivery of a final report (defined in the order) to the satisfaction of the court.

[8] The Monitor initially called the 2019 AGM to be held on December 8, 2019. A dispute arose because the two-year terms of six of the directors did not expire until April 2020. To resolve this conflict, the Monitor scheduled the 2019 AGM to be held on May 3, 2020. Because of the circumstances presented by the COVID-19 public health crisis, the 2019 AGM did not take place on May 3, 2020 as scheduled. A number of meetings were held between the Monitor and counsel for the parties which resulted in an order for directions by Hainey J. dated September 14, 2020 which changed the 2019 AGM from an in-person meeting to a virtual meeting, fixed the date to December 13, 2020, and set out an agreed timetable.

[9] This order provided for certain events to take place leading up to the 2019 AGM and the 2019 election. One of these events was that on or before September 21, 2020, the ICC was required to deliver to the Monitor a letter from the accountant for ICC confirming that the accountant has been retained by ICC to prepare the audited financial statements for ICC for the period from January 1, 2018 to December 31, 2019 and any related auditor's report. This letter was not provided by the date specified. The reason given was that the ICC lacked sufficient funds to retain the auditor who had initially been told that audited statements for one year were required when, in fact, statements for both 2018 and 2019 were required.

[10] A case management conference was held on September 29, 2020 and Hainey J. scheduled this motion to be heard on November 2, 2020.

[11] On October 1, 2020, the Board called a Special General Meeting to be held on October 31, 2022 to "discuss the future of the organization". The evidence given on behalf of the ICC is that this meeting was scheduled to discuss the financial status of the ICC and the possibility of ICC filing an assignment into bankruptcy. The Applicants objected to this SGM and, before notice of

this meeting was sent out, counsel for the Applicants gave reasons why the SGM should not be called. The notice was sent, nevertheless.

[12] On October 9, 2020, the Applicants' motion materials were served on ICC and on eight directors of the ICC against whom relief is sought on this motion (the "Directors"). As I have noted, the relief sought includes, among other things, an order removing these directors and appointing an interim Board of Directors until the 2019 ICC AGM and election have been held.

[13] On October 18, 2020, the ICC hosted an Information Session during which the Board fundraised for the AGM.

[14] On October 21, 2020, number of members of the ICC requested a SGM. The By-laws of the ICC allow members to petition for a SGM to deal with issues of concern. This SGM was scheduled to be held on November 1, 2020.

[15] On October 27, 2020 counsel attended a case management conference before Hainey J. at the request of counsel for the ICC who was requesting an adjournment of this motion. The request for the adjournment was denied. Hainey J. ordered that the status quo be preserved until the hearing of this motion, and the SGM scheduled for October 31, 2020 and the members' SGM scheduled for November 2, 2020 were ordered not to proceed.

### Analysis

[16] The relief claimed in the Applicants' Amended Notice of Motion includes:

- a. An order pursuant to s. 332 of the *Corporations Act* removing the directors and appointing an interim Board of Directors until the 2019 ICC AGM and election have been held. The Applicants propose as interim directors two persons described as "ICC founders" who are not planning to run for a seat on the board and who have agreed to act as temporary custodian/interim caretakers until the 2019 AGM/election. At the hearing of this motion, counsel for the Applicants invited me to choose one or more other suitable interim directors, or not appoint anyone and simply allow Mr. Huberman to manage the process leading to the 2019 AGM, if I was not satisfied that the persons proposed should be appointed.
- b. An order that the Directors shall be personally responsible for the retainer of an auditor to prepare the audited financial statements of ICC for the period from January 1, 2018 to December 31, 2019 pursuant to the September 14, 2020 order.
- c. Relief in respect of the SGMs which were scheduled for October 31, 2020 and November 1, 2020.
- d. An order directing the Directors to be personally responsible to pay the outstanding debt of the ICC, in particular all the legal fees incurred since March 2019 including the outstanding accounts of Gardiner Roberts LLP who had been retained to represent the ICC in relation to the application under s. 308 of the *Corporations Act*.

- e. An order declaring that the Directors be personally liable for expenses incurred by the ICC that are not “legitimate reimbursable business expenses”.
- f. An order that counsel for the ICC shall personally bear some or all of the costs of this motion.

[17] In its responding material, the ICC provided evidence that (i) through the Information Session, the ICC was successful in raising over \$20,000 for the AGM, (ii) the indebtedness of the ICC have been lowered from \$65,838.02 to \$18,265.25, (iii) the ICC was able to retain an accountant on or about October 16, 2020, remedying its failure to comply with the September 14, 2020 order in this respect.

[18] The ICC and the Directors oppose the order sought by the Applicants and request that the 2019 AGM/Election proceed on December 13, 2020, as scheduled, with Mr. Huberman as Monitor with the powers set out in the September 9, 2019 and September 14, 2020 orders of Hailey J.

[19] In *Lee v. Lee's Benevolent Assn. of Ontario*, 2004 CarswellOnt 8790, Nordheimer J., as he then was, described the role of the courts with respect to matters involving non-profit organizations:

Non-profit organization 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 (sic) to interfere in the internal workings of such groups.

[20] In *Singh v. Sandhu*, 2013 ONSC 3230, Brown J., as he then was, in a case involving a non-profit organization, addressed the approach that should be taken by the courts with respect to corporations subject to the *Corporations Act*:

The fundamental policy underlying the Ontario *Corporations Act*, R.S.O. 1990, c. C.38, under which the Centre was incorporated on May 9, 2001, is that those who come together to form the corporation will be capable of self-governance. Although the *Corporations Act* enables resort to the courts to call meetings of members or to wind-up the corporation, judicial intervention in the affairs of a corporation without share capital should be rare. It is not the policy of the *Corporations Act* that courts should baby-sit the affairs of such corporation; self-governance by the members is the operating norm. If members, such as those of the Centre, are incapable of governing the corporation, they should take a hard look in their collective mirrors and do one of three things: (i) reform their ways, which the current members seem incapable of doing; (ii) step aside and let new members who are unencumbered with the baggage of past factionalism take over the running of the corporation; or,

(iii) wind-up the corporation, with the different factions parting company and setting up their own temples.

[21] In this case, the parties were able to agree, through the Minutes of Settlement, on terms for the 2018 AGM/Election to proceed, and the September 9, 2019 consent order sets out a process for this meeting to be held, including through the appointment of Mr. Huberman as Monitor. That meeting will be held on December 13, 2020, only six weeks hence. Although there have been difficulties during the process, including the failure of the ICC to comply with the September 14, 2020 order in a timely way by confirming the retainer of the accountant to prepare audited statements, I am not satisfied that the grounds advanced by the Applicants justify the relief sought of removing and replacing the Board until the 2019 AGM/Election has been held. I would regard such an order to be a last resort and the circumstances upon which the Applicants rely do not, in my view, warrant the extraordinary intervention of the court that is requested.

[22] I am also not prepared to grant the relief sought against the Directors personally. I am not satisfied that the evidentiary record before me justifies such relief, particularly at the instance of four members of the ICC. There will be an election of directors at the 2019 AGM at the meeting on December 13, 2020 and, after this meeting, the new board can decide whether any action should be taken in relation to the Directors.

[23] There is no basis for an order for costs against counsel for the ICC and this relief is denied.

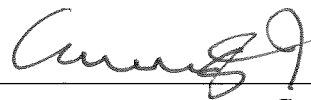
[24] The 2019 AGM/Election should proceed on December 13, 2020, as scheduled, in accordance with the terms set out in the September 9, 2019 Order and the September 14, 2020 Order, with Mr. Huberman as Monitor. The September 9, 2019 Order provides that Mr. Huberman shall be the full and final authority over the entire process and all matters relating to the 2019 AGM and 2019 Election.

[25] There should not be any special meetings called by ICC before December 13, 2020. On the hearing of this motion, counsel for the ICC gave an undertaking on behalf of his client that no special meeting would be called. I make no order that binds all members of the ICC who are not parties to this proceeding, but I see no reason for a special meeting to be called by any members.

### **Disposition**

[26] For these reasons, this motion is dismissed.

[27] If the parties cannot agree on costs, the ICC and the eight directors may make brief written submissions (no longer than 2 pages each, excluding Costs Outline) within 10 days. The Applicants may make written responding submissions (limited to 4 pages in total) within 10 days thereafter. The ICC and directors may make brief reply submissions (limited to one page for each) within 5 days thereafter.



\_\_\_\_\_  
Cavanagh J.

Date: November 3, 2020