

**CITATION:** Dillon v. Carp Agricultural Society, 2024 ONSC 1858  
**COURT FILE NO.:** CV-22-89568, CV-23-91190  
**DATE:** 2024/03/28

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
LAURIE DILLON )  
 ) Charles R. Daoust, for the Applicant  
Applicant )  
 )  
– and – )  
 )  
CARP AGRICULTURAL SOCIETY ) Nigel McKechnie and A. Gabrielle Lemoine,  
 ) for the Respondent  
Respondent )  
 )  
 )  
 )  
 ) **HEARD: June 8, 2023 with further**  
 ) **submissions in writing on January 30,**  
 ) **2024**

2024 ONSC 1858 (CanLII)

**REASONS FOR JUDGMENT**

**LABROSSE J.**

**OVERVIEW**

[1] The Respondent, the Carp Agricultural Society (“CAS”), was a beneficiary under the Will of David Frederick Creighton. Following Mr. Creighton’s death in November 2020, his estate was liquidated, and members of Laurie Dillon’s family were involved in the sale of an estate asset. At the time, the Applicant, Laurie Dillon, was the co-president of the CAS Board of Directors.

[2] Given the implication of Ms. Dillon and her family’s involvement in the sale of estate property, allegations were made that Ms. Dillon was in a conflict of interest and that she had breached her fiduciary duties to the CAS. The CAS Board moved that Ms. Dillon recuse herself

from her roles and responsibilities and eventually, the CAS decided to revoke Ms. Dillon's membership. She appealed that decision to the CAS and her appeal was refused.

[3] The Applicant now brings this Application seeking the following relief:

- a. an Order that the decision of the Respondent dated April 8, 2022 to maintain the previous December 19, 2021 decision to revoke the Applicant's membership in the CAS is null and void;
- b. an Order directing the Respondent to reinstate the Applicant's membership in the CAS in compliance with s. 32 of the *Agricultural and Horticultural Organizations Act*,<sup>1</sup> and s. 49 of the *Not-for-Profit Corporations Act, 2010* ("NFPA");<sup>2</sup> and
- c. in the alternative to the Order requested immediately above, an Order directing that the matter be remitted for investigation anew by a differently constituted Executive Committee and for consideration afresh by the Board of Directors pursuant to the CAS's constitution, by-laws, and regulations and in accordance with this court's reasons.

[4] The CAS brings a Cross-Application seeking an Order declaring the Applicant to have breached (a) her fiduciary duty to the CAS; and (b) the CAS's constitution or its policies and procedures.

[5] For the reasons that follow, I conclude that the CAS Board breached the rules of natural justice in the manner that it investigated and decided the matters related to the Applicant's membership and as such the decision to revoke her membership is set aside and declared null and void. Furthermore, the CAS Board erred when it concluded that the Applicant was in a conflict of interest and that she breached her fiduciary duties to the Board. Accordingly, pursuant to s. 191 of

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<sup>1</sup> R.S.O. 1990, c. A.9.

<sup>2</sup> S.O. 2010, c. 15.

the *NFPA*, the Applicant's membership is reinstated and the Respondent's Cross-Application is dismissed.

## **FACTUAL BACKGROUND**

### *The Transactions*

[6] The CAS is a not-for-profit agricultural society incorporated under the *Agricultural and Horticultural Organizations Act*. It puts on the Carp Fair annually. The CAS is funded by the Minister of Agriculture, Food, and Rural Affairs, the City of Ottawa and third-party donors. The CAS claims that each of their donors has an interest in ensuring that CAS directors behave ethically and appropriately with respect to CAS funds. Mr. Brent Palsson is the CAS's representative in this proceeding in his capacity as past co-president of the CAS Board of Directors.

[7] The Applicant, Ms. Dillon, a real estate agent and mother of two, lives in the Village of Carp, a rural community west of Ottawa. She served on the CAS's Board of Directors for 12 years, in addition to three years as an associate director. In January 2021, she was serving as co-president of the Board. Ms. Dillon is married to Tim Dillon, also a real estate agent. She is also the daughter of Bruce Baird, a retired general contractor and former CAS Board president. Mr. Baird is married to Gail Baird, Ms. Dillon's stepmother.

[8] On November 9, 2020, David Creighton, a long-time Carp Fair volunteer, passed away. Mr. Creighton's Will specified that 75 percent of his estate, comprising mainly of his house, was to be left to the CAS. As early as November 20, 2020, but no later than December 16, 2020, Ms. Dillon learned that the CAS was a 75 percent beneficiary to the Creighton Estate.

[9] Prior to his death, Mr. Creighton promised his friend and neighbour, Taylor White, that he would have the right of first refusal to buy his home upon his passing. Mr. Creighton had a price point of \$300,000 in mind for the Creighton property.

[10] When Mr. Creighton died, his estate's Estate Trustee, Margaret "Peggy" Blair, contacted Mr. White to inquire if he was indeed interested in buying the property. Mr. White responded to

Ms. Blair that he had obtained advice from a realtor that a price of \$240,000 would be appropriate. In the realtor's opinion, a principal drawback to the property was that a road allowance to the rear of the property onto Salisbury Street was unable to be opened, which limited the future development potential of the property.

[11] In the weeks following Mr. Creighton's death, Ms. Blair sought the opinion of her friend and neighbour, Mr. Dillon, as to the market value of the property to ensure the \$300,000 price discussed between the late Mr. Creighton and Mr. White was reasonable. Mr. Dillon advised that \$310,000 was likely a fair and reasonable price, based on his assessment of comparable listings in the area. Mr. Dillon recommended to Ms. Blair that the property should go to market. He advised that the only way to access fair market value is to list the property and expose it for at least five days.

[12] When Ms. Blair advised Mr. Dillon of Mr. White's price of \$240,000, based on the limits of future development due to the inability to open the property onto Salisbury Street, Mr. Dillon sought advice from his father-in-law, Mr. Baird. Mr. Baird suggested that Mr. Dillon confirm this information with the City of Ottawa. Mr. Dillon was informed by email on December 28, 2020 that the road allowance could be opened and access to Salisbury Street would be granted. That information was shared with Ms. Blair.

[13] Ms. Blair returned to Mr. White with this new information, asking whether he might change his mind and purchase the property with the knowledge that the property could, in fact, be opened onto Salisbury Street and further developed. Mr. White declined to make a second offer. In the meantime, Mr. Baird indicated to Mr. Dillon that, should Mr. White decline to purchase the property, he would be interested in purchasing the property for the asking price of \$300,000 and develop it himself. Mr. Dillon relayed that information to Ms. Blair.

[14] Ms. Blair asked Mr. White at the beginning of January 2021 if he wished to purchase the property for \$300,000, knowing all the facts about development potential and that Mr. Baird was interested in purchasing and developing the property. He declined, telling Ms. Blair that he did not think it made financial sense for him to purchase the Creighton property, and that he had

purchased a lot in a neighbouring subdivision and was in the process of building a home with his fiancée.

[15] On January 4, 2021, Ms. Blair told Mr. Dillon via voicemail that she would accept the offer from Mr. Baird if it was still on the table. Mr. and Mrs. Baird agreed to purchase the property shortly thereafter for \$300,000 (the “first transaction”).

[16] On January 30, 2021, when Ms. Blair obtained a Certificate of Appointment of Estate Trustee With a Will, she entered into a formal Agreement of Purchase and Sale with Mr. and Mrs. Baird for the purchase and sale of the Creighton property, with a February 16, 2021 closing date. Mr. Dillon acted as the agent for Mr. and Mrs. Baird on this first transaction. Though Mr. Dillon did not intend to charge a commission given his close ties with Ms. Blair, she insisted that he do so. This is because, according to Ms. Blair, Mr. Creighton had always been paid by his friends and neighbours for the work he did for them; it was only fair that Mr. Dillon was paid for his work.

[17] Both Mr. and Mrs. Dillon are realtors with Greater Ottawa Realty Inc., a real estate brokerage owned by the Applicant’s mother. When either Mr. or Mrs. Dillon make a sale, that monetary benefit flows to the brokerage. Clearly, there is still a benefit to them upon a sale of a property.

[18] For about six weeks prior to the first transaction’s close, Mr. Baird was in contact with a City of Ottawa planner, as well engineers and an architect, land surveyor, planning consultant, landscaper, and construction contractor to organize for the property’s eventual development. As a result of development challenges, Mr. and Mrs. Baird decided to abandon the development project and to list the property for sale on February 19, 2021 for \$450,000. The next day, they received a \$500,000 offer for it, with no conditions and set to expire that day. They accepted the offer, and the sale closed on March 26, 2021 (the “second transaction”). The buyer was unknown to Mr. and Mrs. Baird and there is no evidence that the buyer had any links to any individual involved in this litigation.

[19] Neither Mr. or Mrs. Dillon nor Greater Ottawa Realty Inc. took a commission when they represented Mr. and Mrs. Baird in the second transaction, being their resale of the Creighton

property. Ms. Dillon acknowledges that they did not take a commission when representing her parents in the Creighton property's resale "because it's [her] dad" and she "like[s] [her] dad and [did not] want to charge him any money [she did not] have to".

*The Board's Response*

[20] In or about the end of February 2021, the Applicant was approached by Mr. Palsson to encourage her to address the issues surrounding the sale of the Creighton property with the CAS Board of Directors.

[21] At the March 4, 2021 meeting of the Board, there was no request by the Applicant to address this matter with the Board but she did discuss the matter with at least two other Board members prior to the meeting. However, the subject of Mr. and Mrs. Baird's sale of the property for profit was put up for discussion despite not been listed in the meeting's agenda.

[22] During this meeting, the minutes reflect that Board members raised issues of a potential conflict of interest and breach of fiduciary duties in respect of the Applicant. Members of the Board were concerned about the public perception of these transactions. A motion was passed that a third party look into the matter. The Executive Committee, minus Ms. Dillon and Mr. Neil Falls, was to be the point of contact. A further motion was made by Board member Michael Jensen to the effect that Ms. Dillon should recuse herself from her roles and responsibilities until the third party helped to figure out a solution. At some point, Ms. Dillon was invited to leave the Board meeting.

[23] On June 23, 2021, Ms. Dillon, alongside her family and legal counsel, attended a meeting at the CAS's office. She states that she came prepared with and offered all information, including real estate documents, legal correspondence, emails, and texts, supporting her claim that she had not been involved in any of the transactions regarding the Creighton Estate. At the end of the meeting, Mr. Falls indicated that he would return to the Board and solve the matter.

[24] In July 2021, Mr. Falls informed Ms. Dillon's legal counsel that the CAS was looking to hire a third party to look further into the matter. On August 26, 2021, Ms. Dillon was informed that a CAS Executive Committee had been formed to investigate the circumstances surrounding the sale, purchase, and resale of the Creighton property. A number of questions were put to her in writing.

[25] With the investigation now to be conducted by the Executive Committee, Ms. Dillon responded that she felt that she would not be subjected to a fair and unbiased process and refused to participate in the investigation at that time.

[26] The Executive Committee reached out to Ms. Blair, the Estate Trustee of the Creighton Estate, on multiple occasions to engage her in the investigation process. She declined to participate.

[27] On November 2, 2021, Ms. Dillon's new legal counsel advised that her position had changed and that she now intended to respond to the CAS letter of August 26, 2021.

[28] On November 12, 2021, counsel for CAS communicated that the Executive Committee had completed its investigation and reported back to the CAS Board. The lawyer's letter advises that the Board found the following:

- a. Ms. Dillon breached her fiduciary obligations to the CAS;
- b. she was in conflict of interest and in breach of the CAS's constitution, as well as the applicable policies and procedures; and
- c. discipline was warranted as a result of the engagement of her husband as real estate agent for the Creighton property through which he received a commission and her failure to disclose and address the conflict of interest created by that situation as well as the situation created when her father purchased the Creighton property and then sold the property for profit.

[29] Accordingly, the lawyer's letter purports to state that the CAS Board's findings are as follows:

- a. Mr. Dillon was engaged as real estate agent for the Creighton property through which he received a commission; and
- b. The Applicant failed to disclose the conflict of interest created by that situation as well as the situation when her father purchased the Creighton property and then sold the property for profit.

[30] The minutes of a CAS Board meeting dated November 9, 2021, when this decision is purported to have been made, make no mention of these findings or reasons. The minutes of that meeting only state that the Board requests Ms. Dillon's resignation, failing which her membership is to be revoked.

[31] Ms. Dillon declined to resign and requested that the investigation be reopened so that she may be afforded the opportunity to proffer evidence. The request was refused, and a second request to reconsider this decision was also refused such that Ms. Dillon's membership was revoked.

[32] On December 30, 2021, Ms. Dillon appealed the revocation decision and requested that she be given the opportunity to plead her case in person before the members of the Board. She submitted affidavits from Mr. Baird and Mr. Dillon, as well as from herself.

[33] On January 19, 2022, Ms. Dillon's appeal was allowed in part; the Society chose to reopen the investigation and directed a series of questions to her to be answered in writing. Further documentation was provided on March 21, 2022 in support of Ms. Dillon's appeal.

[34] On April 8, 2022, the Society maintained its original decision to revoke her membership through a letter from the CAS legal counsel. No reasons were given and no information about the findings that were relied upon was provided. The only information is that everything was considered and that the CAS Board maintains its original decision. While there are minutes of a meeting dated April 5, 2022, when the Board purportedly made its decision, the minutes contain no reasons or indication of what the Board considered in arriving at its decision.

*The CAS Constitution, Policies, and Procedures*

[35] The CAS has adopted the Carp Agricultural Society Constitution (the “Constitution”). As a director of the Board, Ms. Dillon was bound by the Constitution. Ms. Dillon, having been a director for some 12 years, was familiar with the CAS Constitution and had reviewed it in detail.

[36] Under the CAS Constitution, CAS directors must do the following:

- f. follow the organization’s bylaws, policies, and board resolutions
- g. disclose potential conflicts before meetings and actual conflicts during meetings
- [...]
- l. ensure strong fiduciary oversight and financial management
- [...]
- o. enhance the organization’s public image.

[37] Directors are also required to comply with the CAS Policies and Procedures Handbook (“Handbook”). Having been a CAS director for years, Ms. Dillon was familiar with the Handbook and was aware that Handbook policies and procedures applied to her. The Handbook frames directors’ fiduciary duties to the CAS and addresses issues relating to duty of care, conflicts of interest, duty of loyalty, setting aside personal self-interest, and performing their duties in a manner that promotes public confidence in the CAS. The Handbook also addresses how directors ought to deal with conflicts of interest, including requiring that they “openly disclose a potential, real or perceived conflict of interest as soon as the issue arises”.

[38] In cross-examination, Ms. Dillon confirmed that she is familiar with the concept of conflict of interest, both from practising as a real estate agent and from serving as a director of the Board. She understood, during her 12-year tenure as a CAS director, that she owed the CAS a fiduciary duty and that, as a fiduciary, she was required to put the CAS’s interests ahead of her own.

[39] Under the CAS Constitution, the Board may “revoke the membership of the member in the Society, a record of which will be documented and retained on file by the Society and will remain as a permanent record.” The Constitution requires that notification of revocation be in writing and given to the member.

[40] The process to be followed during the CAS disciplinary process is set out below and includes the following:

- a. A member may report any instance of an unacceptable act by a current member, director, or officer to the Executive Committee.
- b. The Executive Committee will then immediately and fully investigate the matter, objectively analyze the relevant information, identify facts, and afford the member under review adequate notice and an opportunity to be heard in his or her defence. The Executive Committee will then report the facts, its findings, and recommendations for the Board’s review and consideration.
- c. The Board will then deliberate, make any necessary findings of fact, and make a determination on the matter.

## ANALYSIS

[41] This application is governed by the broad authority given to the courts pursuant to s. 191 of the *NFPA*, which reads as follows:

### **Compliance or restraining order**

**191** On the application of a complainant or a creditor of a corporation, the court may make an order directing the corporation or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of the corporation to comply with this Act, the regulations or the articles or by-laws of the corporation or restraining any such person from acting in breach of them and may make any further order that it thinks fit. 2010, c. 15, s. 191.

[42] This section allows for a court to make any order that it thinks fit and, in these circumstances, would allow the court to determine if the Applicant has been aggrieved by the process that led to the revocation of her membership in the CAS as contemplated by s. 51 of the *NFPA*.

[43] In this Application, the court has essentially been requested to assess the following:

- a. the process the CAS Board followed to discipline the Applicant as a result of the matters which flowed from the death of Mr. Creighton and if there was a breach of natural justice;
- b. if the Applicant was in a conflict of interest pursuant to the applicable statute or the CAS's by-laws and procedures;
- c. if the Applicant breached her fiduciary duties to the corporation; and
- d. if the CAS's decision to terminate the Applicant's membership in the corporation was a reasonable one in all the circumstances.

### *Natural Justice*

[44] The CAS Constitution has a Disciplinary Policy that sets out the process to be followed:

1. In the event that the Board determines that there may be grounds for a member to be expelled or suspended from the Society, the Board shall conduct a review of the matter in accordance with this Disciplinary Policy as follows:
  1. Reporting Phase – Any instance of an unacceptable act as described above may be reported to the Executive Committee by a current member, director or officer of the Society.
  2. Investigation Phase – The Executive Committee will immediately fully investigate the matter, objectively analyze the relevant information, identify facts, and afford the member under review adequate notice and an opportunity to be heard in his or her defence. The Executive will then report to the Board the fact, its findings and recommendations for the Board's review and consideration. The Board may request additional information before making a determination and the Executive Committee will seek such information and report to the Board.

3. Decision Phase – The Board will deliberate, make any necessary findings of fact, and make a determination on the matter, which may include the following as the Board determines is warranted:

- a. Discipline/Reprimand – The Board may issue a written reprimand to the member, a record of which will be retained on file by the Society (and kept on file for 36 months), and a copy of which will be given to the member;
- b. Suspension of Membership – The Board may suspend the member, a record of which will be documented and retained on file by the Society and will remain as a permanent record. A written copy of the suspension will be given to the member; or
- c. Revocation of Membership – The Board may revoke the membership of the member in the Society, a record of which will be documented and retained on file by the Society and will remain as a permanent record. Notification of revocation shall be in writing and given to the member.

4. Appeal Process – Any member may appeal and request a reconsideration of a suspension or revocation and shall forward, in writing, his/her request for appeal and reconsideration to the Board within 10 (ten) days of the issue of the suspension or revocation. Any request for appeal will include the reasons, and/or rationale for reconsideration of the suspension, or dismissal. The Board will review the appeal request and a decision will be forwarded to the member within 20 days. The decision of the Board will be final and binding and there shall be no further right of appeal.

Depending on the severity of the offence, any of the stages may be combined at the discretion of the Board.

[45] From the first meeting when the issues surrounding the Creighton Estate came to the attention of the CAS Board, the Board improperly handled the process and this led to significant ill will between the parties and various poorly thought-out decisions and events.

[46] The question remains whether these circumstances, taken individually or cumulatively, or the process followed warrant the intervention of the court.

[47] Beginning with the first meeting of the CAS Board which dealt with these matters on March 4, 2021, the Board embarked on a process that was not contemplated by its own Constitution. The initial resolution of the Board undertook a process that called for a third party to look into claims of conflict of interest and breach of fiduciary duty. The Executive Committee was to remain the point of contact with the third party. This created a reasonable expectation by the Applicant that this matter would be reviewed by a third party. It was also reasonable for the

Applicant to believe that this would be an independent third party. It seems that all that the Board did was retain a lawyer to represent it.

[48] That resolution read as follows:

After a brief discussion with LD and the board it came to light that a potential conflict of interest and breach of fiduciary duties may have taken place. In the interest of all it was decided that Laurie recuse herself from the meeting, and any and all duties as a member of the executive and member of the board, while the matter was investigated more fully as supported by the motion.

Charles Caldwell makes the motion a third party looks into the matter and the executive minus Laurie Dillon and Neil Falls is the point of contact. Kathy McCord seconds.

21 in favour, 2 opposed, 0 abstained – Carried

[49] While the initial discussion surrounding the resolution proposed it as being a “neutral third party”, this is really of no moment. The CAS Board was proposing to have a third party look into the matter and there is no circumstance whereby a third party would not otherwise be expected to be neutral. Effectively, the CAS Board led the Applicant to believe that it was proposing to bring in a third party to investigate. The context did not suggest simply hiring a lawyer to advise the Board. This would have been done seemingly in the face of its own by-laws, which contemplate such an investigation was to be done by the Executive Committee as set out in the above Disciplinary Policy. Importantly, this investigation process is to be done immediately.

[50] As such, from the beginning, the CAS Board undertook a process that did not follow its own by-laws. However, given the realities of the CAS Board and the relationships between the Board members, this was possibly a conscious decision meant to provide some independence within the investigation process. This was the climate in which the Applicant’s expectations were created.

[51] It is also relevant that before any party commenced any investigation, a motion was passed requiring Ms. Dillon to recuse herself from any CAS activities and she was asked to leave the March 4, 2021 meeting. This effectively suspended her from all her activities on the Board. I was not directed to any provision that allows for her immediate suspension without an investigation.

[52] Moving forward, the obligation from the Constitution was to proceed “immediately” with the investigation. In fact, the process followed was anything but immediate. It took nearly five months (until July 21, 2021) for the CAS to simply advise that it was looking into hiring a third party to investigate. At best, that ended up being a lawyer to represent the Board.

[53] It ended up taking the CAS Board six months to finally announce, on August 26, 2021, that it would no longer hire a third party to investigate but that it would follow the Constitution and have the CAS Executive Committee conduct the investigation. This clearly created a climate of frustration and lack of trust for the Applicant, who was now going to be investigated by individuals who had already expressed significant concerns over her actions and those of her family members, and who had required that she recuse herself without an investigation. There was no longer an opportunity for the matter to be investigated by a third party, although the CAS Board had committed to doing so by formal resolution on March 4, 2021.

[54] The CAS Board’s decision to finally have the investigation done by the Executive Committee compounded the Applicant’s mistrust when it allowed members of the Board who were in dispute with the Applicant and Mr. Dillon to continue to be involved in the process. The decision to have members Mike Jensen and Scott Moore be part of the Board’s process when it was known that the Applicant had filed complaints against them to their real estate broker governing body raises many questions. The CAS Board representative clearly stated in his evidence that those complaints, which the CAS determined to be frivolous, form part of the reasons for which the CAS Board refused to reinstate her membership. However, there is no evidence that the Applicant was given notice that this was an issue the Board considered in this matter.

[55] Furthermore, the CAS tried to advance the position that neither Mr. Jensen nor Mr. Moore participated in the decision-making process because they recused themselves from the ultimate decision to revoke her membership. However, the minutes of a number of meetings show either Mr. Jensen or Mr. Moore being present at various meetings when this matter was discussed, without indication that they recused themselves. Regardless, even if they had recused themselves from the final vote, they would have had the opportunity to influence the vote throughout. This court makes no comment on the need for Mr. Jensen or Mr. Moore to recuse themselves. However,

the evidence of the CAS that they did recuse themselves is not supported by the evidence. Once again, the lack of transparency in the decision-making process leaves many unanswered questions.

[56] The absence of proper reasons setting out the facts upon which the CAS Board relied on to arrive at its decision raises more questions. Evidence was tendered that although Ms. Blair did not participate in the investigation, certain Board members heard second-hand information contradicting the Applicant's evidence. One Board member met with Ms. Blair but no information was given as to what facts that member obtained and how it played a part in the eventual decision. The Applicant was never given notice of this evidence or an opportunity to respond.

[57] The Board's failure to follow its Constitution, to undertake a third-party process, and then to reverse course and return to an investigation done by the Executive Committee clearly played a big part in the Applicant's mistrust.

[58] The Board's actions then led to the Applicant making the poor decision of not participating in the investigation until after her new counsel became involved in November 2021.

[59] As for the remainder of the CAS Board's decision-making process, it is difficult to understand what it was and how decisions were arrived at. At one point, the Applicant was told that she would have an oral hearing before the Executive Committee. That was changed to a hearing in writing.

[60] Turning to the recommendations of the Executive Committee and the decisions of the CAS Board, there are no meaningful reasons. The CAS Board has chosen to hide behind the letters of its lawyer and did not provide proper reasons setting out the factual findings made, as required by the Disciplinary Policy. While the relevant provisions of the *NFPA* do not require reasons for a termination of membership, the Disciplinary Policy suggests a need to explain what was relied upon and the factual determinations made. That is the process that the CAS decided to adopt when it included the obligation to deliberate, make necessary findings of fact, and make a determination on the matter as provided in the Decision Phase of its Disciplinary Policy.

[61] When considering the manner in which the CAS Board communicated its decisions – being through its lawyers – there is no way for the Applicant to understand if the Executive Committee

fully investigated the matter, objectively analyzed the relevant information, identified facts, and afforded the Applicant adequate notice and an opportunity to be heard on all issues the Board considered. To the contrary, there is suggestion that the Board considered factors that it did not identify as part of its analysis.

[62] The process the Executive Committee followed and the reasons provided do not allow for a meaningful analysis to determine if the CAS Constitution's Disciplinary Policy was followed either at the Investigative Phase or at the Decision Phase as no meaningful reasons were provided to demonstrate if the CAS Board made the necessary findings of fact required by the disciplinary process and if it relied on relevant facts in coming to its decision.

[63] The Divisional Court has weighed in on how the rules of natural justice apply to not-for-profit corporations, stating in *Chu v. Scarborough Hospital Corp.* that "the Court will not intervene with determinations made by a non-share capital corporation in accordance with its by-laws provided the corporation does not demonstrate bad faith or act contrary to the rules of natural justice."<sup>3</sup> The Divisional Court noted this with approval in *London Humane Society (Re)*, and quoted the following passage from the *Charities and Not-for-Profit Administration and Governance Handbook*:<sup>4</sup>

Natural justice is a common law development that is intended to protect the procedural rights of persons. Although it is more usually considered in the context of administrative law, the basic premises of natural justice have been applied by the courts to domestic forums and the relationship between members and organizations. Natural justice includes several elements. First, the person whose rights are to be affected should receive notice of the hearing, if any. Second, the notice should set out the grounds or reasons for the proposed change, termination or suspension. Third, the person whose rights are to be affected should have the opportunity to make submissions. Fourth, the decision-maker or tribunal should, if not unbiased, have an open mind.<sup>5</sup>

[64] Notably absent from that list is the duty to give reasons. This has been an ongoing debate, where some have argued that the duty to give reasons forms part of the principles of natural justice.

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<sup>3</sup> (2007), 35 B.L.R. (4th) 254 (Ont. Div. Ct.), at para. 22.

<sup>4</sup> Donald J. Bourgeois, *Charities and Not-for-Profit Administration and Governance Handbook*, 2nd ed. (Markham: LexisNexis, 2009).

<sup>5</sup> 2010 ONSC 5775, 77 B.L.R. (4th) 119, at para. 29.

There are many arguments that support such a contention but it would seem that the general consensus is that there “can” be an obligation to give reasons but that it does not necessarily form part of the rules of natural justice.<sup>6</sup>

[65] One of the most compelling arguments in support of the obligation to give reasons is that it facilitates the court’s exercise of its supervisory jurisdiction, which in this case has been made a challenge given the manner in which the CAS Board has communicated its decisions.

[66] In the context of the *NFPA*, s. 51 dictates that any disciplinary action or termination of membership must be done “in good faith and in a fair and reasonable manner”. Specifically, the *NFPA* requires that a member be “given at least 15 days notice of a disciplinary action or termination *with reasons*” (emphasis added).<sup>7</sup> When combined with the wording chosen by the CAS in its Disciplinary Policy, which sets out the need to make necessary findings of fact, I am of the view that the CAS Board was required to give some meaningful written reasons when arriving at its decision.

[67] This court certainly acknowledges that the boards of not-for-profit corporations, such as the CAS, are not held to a standard of perfection. The Ontario Court of Appeal instructs that decisions of boards, including those of not-for-profit corporations, should be granted deference, and it is recognized that the directors and officers are in a far better position to make decisions affecting their corporations than a court reviewing the matter after the fact.<sup>8</sup>

[68] The Ontario Superior Court has emphasized that the individuals making the decision to terminate a member are “in a better position to judge” than is the court and that, as a result, “the court should be reluctant to interfere”.<sup>9</sup> The Ontario Superior Court has also adopted an application of the business judgment rule when analyzing the decisions of not-for-profit corporations, namely that the “board’s decisions will not be subject to microscopic examination and the Court will

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<sup>6</sup> See e.g. Howard L. Kushner, “The Right to Reasons in Administrative Law” (1986) 24:2 *Alta L Rev* 305.

<sup>7</sup> *NFPA*, s. 15(3).

<sup>8</sup> *3716724 Canada Inc. v. Carleton Condominium Corporation No. 375*, 2016 ONCA 650, 61 BLR (5th) 173, at paras. 47-48, 50.

<sup>9</sup> *Dhaliwal v. Singh*, 2020 ONSC 6116, at para. 58.

be reluctant to interfere and to usurp the board of director's function in managing the corporation".<sup>10</sup> Accordingly, the Ontario Superior Court has upheld membership termination decisions where there is evidence on the record from which the individuals making the decision to terminate "could reach the conclusion they did", so long as the board acted within the scope of its authority to terminate.<sup>11</sup>

[69] I have no difficulty adopting the view that deference should be shown to the decisions of the CAS Board and that it cannot be put to a standard of perfection. However, there are limits as to how far the court can go in these circumstances. My conclusion is that when looking at the procedural process followed as a whole, in this case the CAS Board followed a process that was fundamentally flawed and did not follow its constitution. It cannot be upheld for the following reasons:

- a. It is apparent that the CAS Board was keenly aware that the Applicant's case was highly contentious and that from the start of the Board's implication on March 4, 2021, Board members were already developing their impressions prior to the investigation even starting to the extent that they proceeded to require recusal from Board activities pending the investigation. It is arguable that discipline was already being invoked.
- b. It is also apparent that the CAS Board was aware of the need to bring in a third party to conduct the investigation. The Board's minutes clearly reflect that a third party be engaged to look into the matter. The executive committee was only to be a point of contact. This may have been a result of the views already expressed at the first meeting by many Board members, including some of those who would participate in the investigation. It was apparent that there was a need for a third party to investigate. Notwithstanding the provisions of the Disciplinary Policy, this may have been an appropriate circumstance to pass a resolution as it did to involve a third-party investigator. This was done at the start, and for some reason, by August 2021, that

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<sup>10</sup> *Hadjor v. Homes First Society*, 2010 ONSC 1589, 70 B.L.R. (4th) 101, at para. 49, quoting *CW Shareholdings Inc. v. WIC Western International Communications Ltd.* (1998), 39 O.R. (3d) 755 (Gen. Div.), at p. 774.

<sup>11</sup> *Singh*, at paras. 52, 57.

decision was changed for some unexplained reason. In these circumstances, that decision to reverse course was prejudicial to the Applicant given what had already transpired.

c. The investigation mandated by the Constitution took far too long to complete. Although some of the delay lies at the feet of the Applicant, her actions were influenced by the deficient procedures the Board adopted and the significant mistrust created by removing the neutral third party from the process. It is the Board that has the obligation under the Constitution to conduct its investigation immediately and it clearly failed to do so notwithstanding certain delays attributable to the Applicant.

d. By January 11, 2022, the CAS Board passed a motion for the matter to proceed with an in-person meeting with the Applicant and the CAS Board. That motion was proposed, seconded, and carried. However, no such meeting took place. The Board representative's evidence was that the Board elected to proceed in writing, but no explanation was given as to why the Board did not follow its own resolution to have an in-person meeting.

e. The Constitution contemplates that the Decision Phase will include deliberation, the making of findings of fact, and the making of a determination of the matter. Such requirements require at least some reasons to avoid the situation that the Board considered important facts or issues for which the individual did not receive notice or did not have an opportunity to respond to. The Board failed to provide reasons that could explain the facts upon which it was relying to conclude that the Applicant's membership must be terminated. As became apparent during the legal process, the Board relied upon the complaints the Applicant filed against two of the Board members without notifying the Applicant that these were factors being taken into consideration to justify the termination of her membership. This, on its own, was a clear breach of the rules of natural justice.

f. The Board allowed for those two members to be involved in the process. Proper consideration should have been given to their participation. The two members'

participation was not transparent to ensure that they did not inappropriately influence the vote despite the fact that they may have recused themselves from the final vote (although this is not clear from the minutes of November 9, 2021 or April 5, 2022).

g. In these circumstances, there was clearly an obligation on the Board to provide reasons and, as required by the Constitution, to set out the facts upon which it was relying. The process was not transparent, and the letters provided by legal counsel for the Board and the Board's resolutions failed to provide a suitable level of written reasons to comply with the requirements of the Disciplinary Policy and allow the Applicant to understand the basis upon which the decision was being made.

[70] The Board failed to comply with the Constitution and failed to follow a fair and reasonable process as required by s. 51 of the *NFPA*. Accordingly, I conclude that the CAS Board failed to respect the principles of natural justice in the flawed disciplinary process it followed. Its decision is fundamentally flawed to the extent that it must be set aside and declared null and void.

#### *Conflict of Interest*

[71] Section 41 of the *NFPA* highlights that a conflict of interest arises when a director is a party to a material contract or transaction with the corporation – in this case the CAS. The conflict of interest may also arise wherever a board member is a director or officer or has a material interest in a person (including a corporation) that is a party to a material contract or transaction with the corporation. The purpose of this legislation is to ensure that a board member who has a material interest in a transaction does not seek to influence the vote either by voting on the transaction or attempting to influence the board in respect of that transaction.

[72] The Handbook details the principles for dealing with a conflict of interest among the Board of Directors. Policy 1.7 states that members of the Board are not to be in a position of personal gain. If a conflict arises, a director is to abstain from any vote involving the conflict.

[73] The principles for dealing with conflict of interest read as follows:

The Director must openly disclose a potential, real or perceived conflict of interest as soon as the issue arises and before the Board or its Committees deal with the matter at issue.

If the Director is not certain he/she is in a conflict of interest position, the matter may be brought before the President, Executive Committee or Board for advice and guidance.

If there is any question or doubt about the existence of a real or perceived conflict, the Board will determine by vote if a conflict exists. The person potentially in conflict shall be absent from the discussion and vote.

It is the responsibility of other Directors who are aware of a real, potential or perceived conflict of interest on the part of a fellow Director to raise the issue for clarification, first with the Board member and, if still unresolved, with the Board President.

The Director must abstain from participation in any discussion on the matter, shall not attempt to personally influence the outcome, shall refrain from voting on the matter and unless otherwise decided by the Board, must leave the meeting room for the duration of any such discussion or vote.

[74] The authorities presented to this court highlight that a conflict of interest arises generally in circumstances where a party has a financial interest in a matter that is before a board of directors, at which time a director must declare the conflict and refrain from influencing the vote either by voting on the matter or trying to influence how other directors will vote.

[75] At times, legislation will define specifically what a conflict of interest may be in the context of certain legislation. Here, s. 41 of the *NFPA* has described what constitutes a conflict of interest. Furthermore, the Handbook describes it as being in “a position of personal gain”.

[76] In certain circumstances, courts have deemed the interest of a close personal friend as being sufficient to warrant action by the director in question. In one case, negotiations involving a close personal friend of one of the directors made the transaction “suspect”.<sup>12</sup> It would not be difficult to extend that analysis to a family member.

[77] However, what is clear from the *NFPA* and Policy 1.7 is that a conflict of interest applies where a director is a party to a material contract or transaction that is before the board or is in a

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<sup>12</sup> *Exide Canada Inc. v. Hilts* (2005), 11 B.L.R. (4th) 311 (Ont. S.C.), at para. 11.

position of personal gain in respect of a matter that comes before the board. At that point, the member must take the positive steps set out in the statute and in Policy 1.7.

[78] In the present case, the notion of conflict of interest has clearly been misinterpreted by the CAS Board. There is no material contract or transaction before the Board upon which the Applicant could have a conflict of interest. In this vein, the CAS Board seems to have misunderstood that the CAS is simply a beneficiary under the Creighton Estate and they are only to receive whatever the CAS is entitled to receive under the last Will of Mr. Creighton. There was no transaction before the CAS Board that requires a vote of any kind. At some point, the CAS Board may be called upon to decide what it will do with the funds it receives from the Creighton Estate, but nothing of the sort was applicable in the present case. All of the transactions took place outside the realm of the CAS and its decision-making process.

[79] As there was no material contract or transaction before the CAS Board, the Applicant had no conflict of interest to declare. Even for a perceived conflict to exist, it must relate to the business of the CAS. I pause at this point to highlight that there were optics to the series of transactions in which the Dillon family was involved, and these are more relevant when considering the Applicant's fiduciary obligations to the Board, as addressed below. However, when it comes to a conflict of interest as set out in the *NFPA* or Policy 1.7, none existed.

[80] As stated, the CAS was simply the beneficiary of a substantial portion of the Creighton Estate. When considering the role of Mr. Dillon, the transaction that involved him took place between the Estate Trustee (Ms. Blair) and himself. Any commission paid to Mr. Dillon or the brokerage transpired separately from the CAS. The CAS did not have the right to weigh in on Mr. Dillon's right to charge a commission for the initial sale of the Creighton property or on the sale price or on the decision that the property not be put on the market. The CAS did not have the right to require that the Estate Trustee put the property on the open market. While the CAS may have rights as a beneficiary to complain about the liquidation of the Creighton Estate assets by the Estate Trustee, just like any other beneficiary, no such transaction was brought to the CAS Board for consideration.

[81] There is no evidence that the CAS Board made any complaints as a beneficiary to Ms. Blair that she failed to list the property for sale or that she should not have paid a commission to Mr. Dillon. Had the CAS Board made such a complaint, whereby the commission to be received by Mr. Dillon was in question, that could have been a legitimate conflict of interest. The CAS Board's vote to challenge the manner in which the Creighton property was sold could have given rise to a conflict for the Applicant. However, there was no such item before the Board that could have given rise to a conflict.

[82] The relevant transaction in this case was between Mr. Dillon or the brokerage for which he worked and the Creighton Estate. The Estate Trustee's insistence on paying a commission for Mr. Dillon's work may or may not have been warranted, but it was not a material contract or transaction involving the CAS. Furthermore, the evidence shows that it was as a result of Mr. Dillon's efforts that the parties found out that the road allowance could be opened and, effectively, he found Mr. Baird as the eventual purchaser. He was paid for his services just like any other real estate broker would have been paid.

[83] Accordingly, the Executive Committee's conclusion that the Applicant was in a conflict of interest is fundamentally flawed and cannot stand. It is wrong both in fact and in law and the Board's conclusion that the Applicant was in a conflict of interest is set aside and declared null and void.

#### *Fiduciary Duty*

[84] The Respondent argues that the Applicant breached her fiduciary duty to the CAS when she failed to disclose the Dillon family's personal interest and involvement in the sale and resale of the Creighton property. This allegation is possible as it does not rely on a conflict of interest.

[85] Canadian courts have provided the following direction on fiduciary duties:

- a. A fiduciary is “under a duty to act in a completely selfless manner for the sole benefit” of the beneficiary of the fiduciary.<sup>13</sup>
- b. The duties of trust and loyalty include an obligation to scrupulously avoid placing oneself in a possible or potential conflict of interest.<sup>14</sup>
- c. There should be careful avoidance of any personal pursuit inconsistent with the best interests of the beneficiary of the fiduciary duty.<sup>15</sup>
- d. A fiduciary must not put herself in a position where her interests and duty conflict, lest the person holding the fiduciary duty be swayed by her own interest rather than her duty.<sup>16</sup>

[86] It is not necessary for a director of a not-for-profit corporation to have acted in bad faith or for actual wrongdoing to be established in order to make out a breach of fiduciary duty. The Ontario Superior Court recently held that trustees of a not-for-profit board breached their fiduciary duties when they failed to disclose a conflict of interest in respect of a financial transaction involving the trustees, even though there was no malice or bad faith: “a fiduciary duty ‘might be departed from in many cases, without any breach of morality, without any wrong being inflicted, and without any consciousness of wrong-doing’”.<sup>17</sup>

[87] Most relevant to this case is “the fundamental rule of equity that a person in a fiduciary capacity must not make a profit out of his trust which is part of the wider rule that a trustee must not place himself in a position where his duty and his interest may conflict.”<sup>18</sup>

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<sup>13</sup> *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, at p. 461.

<sup>14</sup> *Fasken Campbell Godfrey v. Seven-Up Canada Inc.* (2000), 47 O.R. (3d) 15 (C.A.), at para. 48.

<sup>15</sup> *London Humane Society*, at para. 20.

<sup>16</sup> *Public Trustee v. Toronto Humane Society et al* (1987), 60 O.R. (2d) 236 (H.C.), at pp. 247-48, quoting *Bray v. Ford*, [1896] A.C. 44, at p. 51.

<sup>17</sup> *Cataraqui Cemetery Company v. Cyr*, 2017 ONSC 5819, at para. 184, quoting *Bray*, at p. 51.

<sup>18</sup> *Boardman v. Phipps*, [1967] 2 A.C. 46 (H.L.), at p. 123.

[88] The Handbook includes a number of sections that touch on the fiduciary duty of the directors, such as the sections on Duty of Care, Duty of Loyalty, and Other Responsibilities, and these are relevant to the fiduciary duties of the directors of the CAS.

[89] There is no dispute in this Application that directors of not-for-profit and charitable organizations are subject to fiduciary duties at common law.<sup>19</sup> Stated differently, directors of not-for-profit corporations have always been subject to the duties and obligations imposed by courts of equity upon fiduciaries.<sup>20</sup>

[90] As previously stated, even where the director does not have a direct financial interest in the party that is doing business with the corporation to which a fiduciary duty is owed, there may be a conflict where the negotiation involves a family member.

[91] As previously stated, this case involves the CAS as beneficiary to 75 percent of the Creighton Estate. The Estate Trustee chose to sell the property for the same amount that Mr. Creighton previously wanted for his home from his neighbour. It was sold for the same amount that was offered to his neighbour and this was done with the knowledge that the property had better redevelopment potential than was initially believed. The Estate Trustee chose not to list the property for sale. Mr. Dillon gave the proper advice that the only way to know the true value was to list the property for sale. The only evidence is that Estate Trustee insisted that Mr. Dillon receive a commission on the first transaction. It is safe to assume that any real estate agent acting on the first transaction from the Creighton Estate to Mr. and Mrs. Baird would have been entitled to and would have received a commission. Mr. and Ms. Dillon were free to represent Mr. Baird on the second transaction and not charge a commission. There is no breach of trust in those actions. Any dispute that the CAS Board may have with those transactions are those of a beneficiary and not as a party to a transaction involving the CAS. The Board's dispute lies with the Estate Trustee.

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<sup>19</sup> *London Humane Society*, at paras. 19-20.

<sup>20</sup> *Simms*, at p. 461.

[92] As previously stated, the Applicant was not directly a party to those transactions, and the transactions certainly did not involve the CAS, despite the fact that the corporation had a beneficial interest.

[93] What is most relevant is that the Applicant's position as a Board member of the CAS had nothing to do with her family's involvement in the sale and resale of the Creighton property. She did not become involved as a result of her role with the CAS, whereby she could put her own interests ahead of those of the CAS. Effectively, the CAS had no interest in either the first or second transaction – only the Estate Trustee did. The CAS's beneficial interest is too far removed.

[94] When dealing with fiduciary interests, the Respondent relies on authorities that involve transactions with a corporation to which a fiduciary obligation is owed:

- a. In *Cataraqui Cemetery Company*, the trustees obtained personal benefits from the corporation in the form of grave plots and future discounts on the maintenance of grave plots.
- b. In *Simms*, the respondent was acting for the developers of an investment and failed to disclose that relationship to his client.
- c. In *Exide Canada*, directors of the corporation caused the corporation to enter into a material contract with a third party without disclosing their close relationship with that third party.

[95] While Ms. Dillon stands in a fiduciary relationship with the CAS, none of the transactions raised by the Respondent involved the CAS. No vote was taken by the CAS Board to authorize any transaction. The CAS was simply a recipient of the liquidated estate assets.

[96] Accordingly, Ms. Dillon did not make profit out of her trust. She did not place herself in a position where her duty and her interest could conflict. The Creighton property had to be sold. Mr. Dillon provided valuable services to the Creighton Estate in determining a fair price with the caveat that it would only be upon listing the property for sale that the true value could be determined. I accept that he could have chosen not to take a commission in these circumstances.

Arguably, it was thanks to Mr. Dillon's efforts that the property was not sold to Mr. White for \$240,000. But for Mr. Dillon's role and efforts, the CAS may have ended up with a smaller beneficial interest.

[97] Effectively, the CAS seeks to blame the Applicant and Mr. Dillon for Ms. Blair's refusal to list the property and seek out the maximum value. The fault for this does not lie with the Applicant.

[98] I am of the view that the CAS Board erred when it concluded that the Applicant breached her fiduciary duty by allowing Mr. Dillon to provide realtor services to the Creighton Estate and by allowing her father to purchase the Creighton property for the price that Ms. Blair wanted to sell the property for. These are the fundamental complaints, and they do not place the Applicant in conflict with her fiduciary duty as Co-President of the CAS Board. The interest of the Board was to receive its beneficial share and the Creighton property needed to be sold. I am of the view that Ms. Dillon, through Mr. Dillon, did exactly what she was supposed to do when Mr. Dillon advised Ms. Blair as to how she could determine the true market value of the property. Ms. Blair chose not to follow that advice.

[99] After that, Mr. Dillon received a commission, just as any other agent would have, by providing valuable advice to Ms. Blair and by finding a purchaser to buy the property for the amount she was seeking. How can the Applicant or Mr. Dillon be found to have benefited from Ms. Dillon's trust relationship with the CAS? Assuming that Ms. Dillon can be found to have benefitted from Mr. Dillon's commission, he was simply paid fair value for the services he rendered. Those benefits did not result from Ms. Dillon's fiduciary obligations to the CAS.

[100] Turning to the second transaction, the profit made by Mr. and Mrs. Baird is at the heart of the CAS Board's complaints. The complaint is that Mr. Baird received the higher price that should have been paid to the Creighton Estate. However, the Estate Trustee did not see fit to engage in the process that she was told would yield the true value for the Creighton property. There is no fault attributed to any party for this decision as there is no known complaint by any party.

[101] The court appreciates that there is proximity to all parties involved in a series of transactions that take place in a closely knit community. However, a breach of fiduciary duty involves profiting from a trust and putting one's interests ahead of the beneficiary of the trust obligations. In the present case, the CAS was not prejudiced by the fact that Mr. Dillon provided services to the Creighton Estate in the form of valuable information and found a buyer for the Creighton property at the price that the Estate Trustee was seeking. In addition, the Applicant did not profit from the trust. The fact that a commission was paid to the brokerage is a normal transaction for services rendered and the CAS was not prejudiced by it. While the brokerage may have chosen to forego a commission, it was not required to do so and there is no evidence that another agent would have done so in similar circumstances. The payment of the commission does not flow from the trust obligations of the Applicant.

[102] Accordingly, there is no basis in law for a finding that Ms. Dillon breached her fiduciary duties to the CAS and the CAS's finding in this regard is set aside and declared null and void.

## **CONCLUSION**

[103] For the reasons set out herein, the court concludes that the CAS Board breached the rules of natural justice in the disciplinary process involving the Applicant and in the manner in which its decision was rendered. The Applicant was not in a conflict of interest pursuant to the applicable legislation nor the Constitution of the CAS. Furthermore, there was no breach of fiduciary duty. The cross-application is dismissed.

[104] Accordingly, the CAS Board's decision to revoke the Applicant's membership is set aside and her membership shall be reinstated. The court makes no comment on the Applicant's status as a director or officer of the CAS.

## **COSTS**

[105] The parties are encouraged to resolve the issue of costs. If they are unable to do so, they may make written costs submissions no longer than five pages excluding all attachments. The

Applicant will provide her costs submissions within 30 days from the date of these Reasons for Judgment and the Respondent will have a right to respond within 30 days thereafter. The Applicant will then have the right of reply ten days thereafter and must not exceed three pages plus attachments.

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**Justice Marc R. Labrosse**

**Released:** March 28, 2024

**CITATION:** Dillon v. Carp Agricultural Society, 2024 ONSC 1858  
**COURT FILE NO.:** CV-22-89568, CV-23-91190  
**DATE:** 2024/03/28

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

LAURIE DILLON

Applicant

– and –

CARP AGRICULTURAL SOCIETY

Respondent

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**REASONS FOR JUDGMENT**

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Labrosse J.

**Released:** March 28, 2024