KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 186**

Date: **2024 10 25**
File No.: KBG-SA-00417-2024
Judicial Centre: Saskatoon

BETWEEN:

SOHAIL GHANI and MUHAMMAD GHOUSUDDIN

APPLICANTS

- and -

ISLAMIC ASSOCIATION OF SASKATCHEWAN (SASKATOON) INC., MOHAMED HAJINOOR, ANJUM SAEED, ILEANA DAWOUD, ABUBAKER HASSAN, and AHMED SAID ABDEL-HAMEID SHOKER

RESPONDENTS

Counsel:

Adam R. Touet — for the applicants
Grant J. Scharfstein, K.C. — for the respondents

FIAT — GERECKE J.
October 25, 2024

A. OVERVIEW

[1] The respondent, Islamic Association of Saskatchewan [IAS], terminated the employment of its Imam, Ilyas Sidyot, in 2022 based on allegations of theft and misappropriation of property. The termination triggered disputes within IAS's membership concerning board governance that still exist today. The disputes have spawned multiple proceedings in this Court.

[2] This application is focused on a resolution that IAS's board of directors [Board] placed before the members on December 18, 2023 as part of the IAS's annual general meeting [AGM] held that day. That resolution [Resolution] asked members to choose between two alternatives, as follows:

> Ballot 3:
>
> > I, as a member in good standing of the Islamic Association of Saskatchewan (Saskatoon) Inc. (IAS), AGREE to <u>one</u> of the following:
> >
> > ☐ **Br. Ilyas'** employment has been terminated. Any future employment of **Br. Ilyas Sidyot** for the IAS and all financial proceedings related to the case involving **Br Ilyas** should be confined solely to the **legal system**.
> >
> > ☐ **Br Ilyas** should be reinstated with repayment of all his lost privileges and a formal apology.

[3] The Resolution was not the only question put to members at the AGM. Also at stake was the composition of the board of directors. On October 25, 2023, Bardai J. (as he then was), in *Hassan v Mastaan*, 2023 SKKB 223 [*Hassan*], directed the Board to convene the AGM to hold a confidence vote [Confidence Vote] to determine whether the existing Board should continue in office, or a new election be held. In the Confidence Vote, members supported retention of the Board by a margin of 502 to 345. Below I explain the background to the Confidence Vote.

[4] The applicants seek to have Mr. Sidyot restored as the Imam at their mosque. IAS is a non-profit corporation registered under *The Non-profit Corporations Act, 2022*, SS 2022, c 25 [*Act*]. It is governed by corporate law principles. Its stakeholders are hundreds of members of the non-profit. In contrast to most corporate disputes, religious and spiritual beliefs permeate the evidence here. As one example, one applicant avers that "the lack of Imam Ilyas' spiritual wisdom and uplifting presence at the Mosque has left a significant void in my day-to-day prayers, and has negatively affected my well-being as a Muslim person". That applicant, Muhammad

Ghousuddin, voted in favour of the Resolution to reinstate Mr. Sidyot.

[5] Mr. Ghousuddin was far from alone: 481 members voted for reinstatement, while 356 voted against. Thus, a 57 percent majority wanted Mr. Sidyot reinstated and given a formal apology. Mr. Ghousuddin believed the Board would take those steps after the vote. Though the Board entered negotiations with Mr. Sidyot about his potential return to work, no agreement was reached. He has not been reinstated.

[6] Mr. Ghousuddin avers he was encouraged by the Board to believe that if members voted to reinstate Mr. Sidyot, that would occur. He points to a communication to members shortly before the AGM, in which the Board stated: "The BoD expresses gratitude to everyone involved in the upcoming vote of confidence and commits to accepting the community's verdict with open hearts." Two days after the AGM, Mr. Ghousuddin wrote to a Board member to express his concern that Mr. Sidyot had not already been reinstated.

[7] Because the vote did not achieve their desired outcome, the applicants seek to achieve the reinstatement through two legal avenues. They seek an oppression remedy under the *Act*, contending that the Resolution was legally binding on the Board and the Board's failure to implement the Resolution on its terms is oppressive, unfairly prejudicial and unfairly disregards their interests as members. In the alternative, they say the Board acted unlawfully when it refused to implement the Resolution, which they argue the Board was required to do at law. Given the Board's failure to implement, the applicants seek a permanent mandatory injunction.

[8] I determine that this Court should not grant either remedy sought by the applicants. With respect to the oppression remedy, I find that the applicants have failed to establish a reasonable expectation to support their claim, because the Resolution related to matters within the Board's sole authority. That said, below I leave open the possibility that a differently framed expectation could be established as reasonable.

[9] Nor is this an appropriate case for an injunction. Only unlawful conduct can be enjoined. While the Board acted imprudently in inviting members to vote on the Resolution, for the same reasons that I discuss in the oppression context, the Resolution did not generate a legal obligation for the Board to reinstate Mr. Sidyot and it was not unlawful for the Board to decline to reinstate him.

[10] My detailed reasons follow.

B. FACTUAL BACKGROUND

[11] Much of the background was outlined by Bardai J. in *Hassan*. *Hassan* covers most of the period leading up to the AGM. I will provide only a brief summary of those events.

[12] The termination of Mr. Sidyot by the IAS board of directors (which was composed differently than the current Board) led to both a rift within IAS's congregation and a governance crisis. Mr. Sidyot's supporters called for a vote of no confidence and a petition was sent to the then board of directors.

[13] In spring 2023, a new Board was elected with Anzar Hassan as president, which continues to be the IAS's board of directors. It was a very close election, which resulted in claims of it having been rigged. In July 2023, a petition was submitted to the Board, challenging that Board's decision not to conduct an audit on the prior board. All of this stemmed from backlash to the firing of Mr. Sidyot.

[14] In August 2023, Mr. Sidyot's supporters attempted to organize a special general meeting to address concerns raised in the petition. The Board took steps to make it more difficult for Mr. Sidyot's supporters to organize, including by failing to call a meeting as required by IAS's bylaws, forcing a change of meeting venue a day before it was to happen, and refusing to provide a list of members entitled to vote. Mr. Sidyot's

supporters nevertheless succeeded in holding a meeting at which an entirely new board was elected.

[15] The new board [Mastaan group] claimed legitimacy as the properly elected board. They amended corporate registrations at ISC and attempted to take control of IAS. The existing Board refused to leave. Litigation ensued that sought the determination of what board properly governed IAS. That was *Hassan*. Bardai J. held in *Hassan* that many irregularities occurred at, and leading up to, the meeting at which the Mastaan group were purportedly elected, such that the vote was invalid. He declared that the Board was the properly elected board of directors.

[16] To pre-empt the Mastaan group simply trying again and to reflect that the Board had impeded the calling of a members' meeting, Bardai J. ordered a new annual general meeting at which the Confidence Vote was to be put to members. The applicants do not challenge the validity of the Confidence Vote.

[17] Mere days before the AGM, the Board sent out communications to members concerning the upcoming meeting. On December 17, 2023, the Board stated:

> Tomorrow, the broader population of Saskatoon will be watching as the IAS membership gathers for the 2022 AGM, addressing significant matters like a vote of confidence in the current Board of Directors (BoD) and motions brought forward by community members. ... Let's pledge to accept the majority decision and seek Allah's guidance through this challenge. ...

On December 18, 2023, the day of the AGM, the Board sent another communication to members:

> The Confidence and Three (3) Motions Vote is scheduled for TODAY …
>
> The Board of Directors (BoD) commits to accepting the community's verdict with open hearts and we hope the membership adopts a similar approach.

[18] As above, in the Confidence Vote, members voted 502 to 345 in favour

of keeping the Board in place. In the Resolution, they voted 481 to 356 to reinstate Mr. Sidyot.

[19] After the AGM, the Board expressed to members in several communications that they were working on the legal issues surrounding reinstatement of Mr. Sidyot. In one email to an applicant, a Board member stated that it would take time because of the wrongful dismissal lawsuit that Mr. Sidyot had commenced against IAS while providing the assurance that "The BoD is working to fulfill the majority decision".

[20] In June 2023, Mr. Sidyot commenced a wrongful dismissal action in this Court against IAS.

[21] Although it was not clear from the evidence, the parties agree that there is a new Imam in place at IAS, which could further complicate reinstatement of Mr. Sidyot.

C. ISSUES

[22] The issues raised by this application are as follows:

Issue #1: Is this application an abuse of process?

Issue #2: Have the applicants made out the requirements for an oppression remedy?

Issue #3: Have the applicants satisfied the test for granting an injunction?

D. ANALYSIS

Issue #1: Is this application an abuse of process?

[23] In their brief the respondents contend that this application is an abuse of

process, citing my decision in *Nodran Ltd. v Sundowner Farms Ltd.*, 2024 SKKB 54 [*Nodran*]. The respondents say that this application is substantially similar to Mr. Sidyot's wrongful dismissal action against IAS. I am unpersuaded of that.

[24] In *Nodran*, the applicant commenced a second oppression remedy application when a prior one involving substantially the same parties and issues and remedy claims had been ongoing since 2007 (though dormant for several years). IAS asserts that this matter may render Mr. Sidyot's action moot, and that the IAS's defences here raise some of the same issues as in Mr. Sidyot's claim.

[25] This stance was not pursued with any force in oral argument so I will dispense with it quickly. The issues seem the same to IAS largely because they believe that this application is fundamentally about whether Mr. Sidyot should be reinstated. Indeed, the applicants here may believe that as well. I conclude below that I should not order reinstatement. Instead, it appears to me that the pairing of the Confidence Vote with the Resolution at the same meeting may represent the real problem, even if that is not the subject of this application.

[26] In any event, the differences between this action and Mr. Sidyot's wrongful dismissal claim lead me to conclude that *Nodran* does not apply. There are material differences both in parties to the respective actions, and remedies sought. I will explain briefly.

[27] The respondents contend that this application cannot be decided in favour of the applicants without Mr. Sidyot being made a party. They characterize this application as an attempt to impose a contract (of employment) on IAS. That stance is filled with irony because this application springs from the Board's decision to put the Resolution to the members. They may have felt some pressure to do so, but it was not forced on them. It was a choice. They drafted the Resolution. They determined whether to include caveats in the Resolution's language that would assure them discretion in

how to implement it if passed. The language, the timing, whether to do it at all, was all in their control. They cannot now complain that this application represents an effort to "impose a contract" on them.

[28] That does not mean that no problems are created for the applicants by the fact that Mr. Sidyot is not a party here. For example, without Mr. Sidyot as a party, the Court cannot make orders that bind him, which leaves the Court unable to order discontinuance of the wrongful dismissal action if I were to conclude that the Resolution should be implemented. That said, workarounds could likely be developed that would address IAS's concern, and the challenges do not bring this case anywhere close to a *Nodran* situation.

[29] I conclude that IAS's complaint that this application represents an abuse of process is not well-founded.

Issue #2: Have the applicants made out the requirements for an oppression remedy?

1. Law on oppression remedy

[30] To obtain an oppression remedy, an applicant must qualify as a complainant under s. 18-1(a) of the *Act*. Both applicants are members of IAS and thus qualify as complainants.

[31] The complainant seeking an oppression remedy must show a failure to meet their reasonable expectations in the relevant context. The Court must address two questions. First, does the evidence support the reasonable expectation that the complainant asserts? Second, was the reasonable expectation violated by conduct in the nature of oppression, unfair prejudice, or unfair disregard of the complainant's interests? See: *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69, [2008] 3 SCR 560 [*BCE Inc.*]; generally, and *Gordon v White*, 2020 SKCA 129 at para 25.

[32] *BCE Inc.* explained "reasonable expectations" as follows:

> [64] Determining whether a particular expectation is reasonable is complicated by the fact that the interests and expectations of different stakeholders may conflict. The oppression remedy recognizes that a corporation is an entity that encompasses and affects various individuals and groups, some of whose interests may conflict with others. Directors or other corporate actors may make corporate decisions or seek to resolve conflicts in a way that abusively or unfairly maximizes a particular group's interest at the expense of other stakeholders. The corporation and shareholders are entitled to maximize profit and share value, to be sure, but not by treating individual stakeholders unfairly. Fair treatment -- the central theme running through the oppression jurisprudence -- is most fundamentally what stakeholders are entitled to "reasonably expect".
>
> [Emphasis added]

[33] *BCE Inc.* also instructs that directors do not owe duties to individual stakeholders that might be affected by a corporate decision. Directors' fiduciary obligations are owed only to the corporation itself. Most of the time, a stakeholder's reasonable expectations will coincide with the corporation's best interests. Oppression remedies are granted where those interests do not coincide. See: *BCE Inc.* at para 66.

[34] *BCE Inc.* expanded on the meaning of oppression, unfair prejudice and unfair disregard of interests at para. 67:

> [67] Having discussed the concept of reasonable expectations that underlies the oppression remedy, we arrive at the second prong of the s. 241 oppression remedy. Even if reasonable, not every unmet expectation gives rise to claim under s. 241. The section requires that the conduct complained of amount to "oppression", "unfair prejudice" or "unfair disregard" of relevant interests. "Oppression" carries the sense of conduct that is coercive and abusive, and suggests bad faith. "Unfair prejudice" may admit of a less culpable state of mind, that nevertheless has unfair consequences. Finally, "unfair disregard" of interests extends the remedy to ignoring an interest as being of no importance, contrary to the stakeholders' reasonable expectations: see *Koehnen* [*Oppression and Related Remedies*] at pp. 81-88. The phrases describe, in adjectival terms, ways in which corporate actors may fail to meet the reasonable expectations of stakeholders.

[35] Thus, oppression – conduct that is coercive and abusive and often is

associated with bad faith – is often viewed as the most serious of the three categories of conduct. Because remedies can also be granted for conduct that results in unfair prejudice or unfairly disregards interests, a complainant is not required to demonstrate bad faith to obtain a remedy.

2. The applicants' expectations

[36] The applicants say their reasonable expectations were simply that the Board would implement the Resolution. They mainly ground that expectation in three facts.

[37] First, from their point of view, this has happened before. After a prior board of directors terminated Mr. Sidyot, a special general meeting of IAS members was held in October 2022. At that meeting, the members passed a resolution [October 2022 Resolution] to immediately reinstate him as IAS's Imam. Within a week, the board of directors reinstated him.

[38] Mr. Sidyot continued in the role until May 2023, when the Board advised him that they had initiated a forensic audit, that he would no longer be considered an IAS employee until completion of the audit, and that he would be reinstated only if vindicated by the audit. *Hassan* described the surrounding circumstances at paras. 6 to 7. That second termination caused Mr. Sidyot to commence his wrongful dismissal proceeding on June 15, 2023.

[39] Second, they ground the expectation in the Board's communications in the days leading up to the AGM, which I discuss above.

[40] Third, they say that because the Resolution was passed at the same AGM as the Confidence Vote, the Board effectively "implemented" the Confidence Vote by continuing as IAS directors. That, they say, makes it reasonable for the applicants to expect that their votes on every issue at the AGM would count in similar fashion.

(a) Legal principles

[41] Several legal principles are relevant to determination of whether the applicants' expectations were reasonable. Some relate also to the injunctive relief that the applicants seek. I discuss those next.

i. Relevance of past practice

[42] Past practice can be an indication of reasonable expectations: *BCE Inc.* at para 76. The applicants point to Mr. Sidyot's reinstatement after the October 2022 Resolution (on the same terms and conditions as he previously held) as a past practice that informed their reasonable expectations on what would happen if the Resolution was passed.

ii. Directors are responsible for operation of corporations; members and shareholders have no such role

[43] The demarcation between roles of members and directors is a core feature of corporate law. Members conduct business at general meetings, which primarily entails electing directors, appointing auditors, receiving financial statements and other similar business. Absent a unanimous members agreement (or shareholder agreement, in the case of a for-profit corporation), members have no involvement in the corporation's day-to-day operations. They do not hire and fire management or other employees – that is the purview of directors (who, in their roles as directors, would usually only be involved in hiring and firing the top layer of management). Obviously those roles are blurred in very small, closely held for-profit corporations. Here, however, IAS has at least about 850 members.

[44] That understanding of the respective roles of shareholders/members and directors has been expressed numerous times in Canadian jurisprudence.

[45] *Teck Corporation Ltd. v Millar* (1972), 33 DLR (3d) 288 (QL) (BC SC), may represent the clearest articulation of the division of roles and has been cited widely

(though not always for the following passage). It involved a dispute between a corporation and its minority shareholder. It stated as follows:

> 83 The directors' power to manage the affairs of the company is complete. That is, a majority of shareholders, even if they pass a resolution at a general meeting, cannot dictate to the directors: *Automatic Self-Cleansing Filter Syndicate Company Limited v. Cunningham* (1906) 2 Ch. 34. The directors are not the agents of the shareholders. Once given the power to manage the company, they can exercise the power according to their best judgment, until removed from office: *The Gramophone and Typewriter, Limited v. Stanley*, (1908) 2 K.B. 89.
>
> 84 Teck had no right to insist the directors should not enter into an agreement with Canex, Cominco or anyone else. A majority of the shareholders do not by reason of the fact they have a majority, acquire thereby any legal right. Their rights, like those of any other shareholder, are derived from applicable companies' legislation, the company's Memorandum and Articles, and the case law as developed by the judges. A majority can pass shareholders' resolutions at meetings of the company, they can elect a new board of directors at a meeting of the company, but they do not, by virtue of their majority, enjoy any proprietary right.
>
> [Emphasis added]

Thus the separation of roles and powers, where directors have full and exclusive responsibility for managing a corporation, has existed for over 100 years and sources back to English law.

[46] The principles concerning the relative roles of directors and shareholders were echoed in *CIPC (Ocean View) Limited Partnership v Churchill International Property Corporation*, 2006 BCSC 1127, 20 BLR (4th) 19:

> [34] The basic rule that the powers of the company set out in the articles prevail unless they are properly altered has long been recognized. In *Automatic Self-Cleansing Filter Syndicate Company, Limited v. Cuninghame*, [1906] 2 Ch. D. 34 , the shareholders sought, through a resolution passed at a general meeting, to overrule a decision of the directors validly made within their authority under the articles. The Court held that the directors were not bound to accept the shareholders' resolution. The holding of Collins M.R. at 43 is apposite: "If the mandate of the directors is to be altered, it can only be under the machinery of the memorandum and articles themselves."
>
> [35] The English Court of Appeal reached a similar conclusion in

> *Shaw (John) & Sons (Salford) Ltd. v. Shaw*, [1935] 2 K.B. 113, [1935] All E.R. Rep. 456 (C.A.), In that case, the shareholders passed a resolution at a general meeting purporting to disapprove of the directors' decision to start an action on behalf of the company. In refusing to give effect to the resolution, Greer L.J. held as follows at 134:
>
> > A company is an entity distinct alike from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in a general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers. The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles in the directors is by altering their articles, or, if opportunity arises under the articles, by refusing to re-elect the directors of whose actions they disapprove. They cannot themselves usurp the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders.
>
> [Emphasis added]

Also see Dennis H. Peterson & Matthew J. Cumming, *Shareholder Remedies in Canada*, loose-leaf (2024-Rel 100) 2d ed (Toronto: LexisNexis Canada, 2009) at para 13.16. At para. 13.36, that text discusses advisory proposals. Advisory proposals cannot bind corporate directors; they merely permit members or shareholders to express their wishes in the hope of influencing directors.

[47] Here, IAS effectively contends that the Resolution was no more than an advisory proposal that cannot bind the Board. Certainly, that "feels" wrong in some fashion, as it was not represented to members as such by the Board. But the concept of reasonable expectations has a strong objective element. It involves many considerations beyond what the applicants believed would happen if they and a majority of members voted for the Resolution.

iii. An exception to that separation of roles exists in unanimous member agreements

[48] Had IAS's members intended to remove governance authority from the

organization's directors, the *Act* provides an avenue to do so. Section 11-15 provides that where members enter into a unanimous member agreement, each member who is a party to such agreement has all the rights, powers and duties, and incurs all the liabilities, of a director to the extent that the agreement restricts the directors' powers to manage the corporation's affairs. Directors are relieved of liability to the extent that their powers are transferred to shareholders.

[49] There is no unanimous member agreement concerning IAS. Members have not opted to remove any authority from directors through that avenue.

iv. Bylaws cannot vary the *Act*'s assignment of authority to manage

[50] IAS's constitution and bylaws [bylaws] were put into evidence. They contain several relevant provisions:

> **C. Board of Directors (BoD):**
> ...
> 5. The B0D shall be responsible for implementing the resolutions passed at any general meeting and shall manage the affairs of the Association between general meetings.
> ...
> 14. The BoD may establish and enforce policies and regulations for the proper management of the Association.
>
> 15. The BoD may hire/appoint full-time or part-time employees to help the BoD in running the affairs of the Association, provided that the General Body approves, in principle, the creation of the position. The BoD may terminate an employee's contract, in accordance with applicable legislative requirements.

[51] Pursuant to s. 9-1, a corporation may vary from the standard allocation of authority contained in that section, but only through the other provisions of the *Act*, the articles, or a unanimous member agreement. To illustrate this point, consider ss. 9-1 and 9-3(1) together:

> **Power to manage**
> **9-1** Subject to this Act, the articles and any unanimous member agreement, the directors shall manage or supervise the management of

> the activities and affairs of a corporation.
> …
> **Bylaws**
> **9-3(1)** Unless the articles, bylaws or a unanimous member agreement provide otherwise, the directors, by resolution, may make, amend or repeal any bylaws that regulate the activities and affairs of the corporation.
>
> [Emphasis added]

[52] Section 9-1 provides that its assignment of the power to manage is subject only to three possible documents: the *Act* itself, the corporation's articles, and a unanimous member agreement. Bylaws are conspicuously absent from that list.

[53] In contrast, the exception in s. 9-3(1) includes articles, bylaws and any unanimous member agreement. For other examples in similar exceptions, see s. 5-1(2) (issuance of securities), s. 5-3 (annual contributions or dues), s. 9-25(1) (remuneration of directors, officers and members), and s. 14-18(1) (borrowing powers).

[54] Thus, while other provisions place the bylaws in the same category as the articles and unanimous member agreements, s. 9-1 does not. That is fundamentally important here because s. 9.1 sets out the only list in the *Act* – which I interpret to be an exhaustive list – of exceptions to the allocation of management authority to directors. Absent inclusion of bylaws in that list, I conclude that the Legislature intended that a corporation cannot re-allocate authority via bylaw provisions.

[55] Importantly, para. IV.C.5, on which the applicants rely heavily, is a bylaw provision. I determine that the bylaws were incapable of re-allocating authority as the applicants suggest.

v. No concept exists of delegation of authority back to members outside of unanimous member agreements

[56] In a supplementary brief, the applicants argue that the Board delegated discretion to members by putting the Resolution to them. Further, absent an express

declaration to members that the Board would retain ability to make the final decision, they say that:

> ... the act of seeking member approval is an indication that the board recognizes the members' authority to make a final decision on the matter and will accept the outcome of the vote as binding. In essence, by initiating the voting process, the board is conveying to the members that it will respect and implement the members' decision, thus delegating its discretion to the collective judgment of the members.

They offer no authority.

[57] The Court was unable to locate jurisprudence to support that stance. For several reasons, I cannot agree with the applicants.

[58] First, in corporate law, responsibility is paired with liability. If the members had voted to terminate Mr. Sidyot, could members have been held liable in the manner of directors? I am aware of no authority to support such liability in the absence of a unanimous member agreement made pursuant to s. 11-15 of the *Act*, and conclude that the answer to this question must be no. Could directors shield themselves from liability by putting a question to members? Again, the answer must be no. Only a unanimous member agreement that removes authorities from directors would have that effect pursuant to s. 11-15(5).

[59] Second, the applicants' argument reverses how Canadian corporate legislation provides authority to directors. *Canadian Jorex Limited v 477749 Alberta Ltd.*, 1991 ABCA 330, 117 AR 222, offers some parallels. The issue there was whether directors of a federal corporation hold power to cancel a special meeting (of shareholders) called by them in advance of its scheduled date. The Court concluded that directors have that power. The shareholders urged the Court to adopt a restrictive approach to directors' powers, that directors enjoy no power to cancel meetings unless it is expressly granted. The Court disagreed, holding that residual power to manage a corporation's affairs rests with directors. That power is derived from statute. To hold otherwise would negate the legislative intent to vest in directors such residual powers.

[60] I offer one further observation about the *Act*'s provision for unanimous member agreements. To be effective, any such agreement would need to list the specific areas of director authority transferred to members. That specificity is crucial. It would determine not only the areas of member authority, but also the corresponding removal of directors' liabilities. Without that, considerable uncertainty could exist concerning both authority and risk.

[61] Other than through a unanimous member agreement or perhaps a sufficiently specific provision in a non-profit's articles, no delegation of directors' authority to members is possible.

vi. IAS's religious purpose does not differentiate this case from those involving non-religious organizations

[62] IAS's bylaws contain references to Islamic Law. Matters of faith and religion are touched on in the evidence filed by both parties. Indeed, an affidavit filed by an IAS director on behalf of IAS purports to speak to Islamic Law.

[63] Members likely view Islamic Law as relevant when the choice of Imam might ultimately be at stake. IAS's corporate bylaws set out numerous aims and objectives, most of which centre around Islam. I reproduce just the first: "To follow the path of Allah and the teachings of Prophet Muhammad (peace be upon him) according to the Quran and the Sunnah."

[64] The bylaws provide for numerous standing committees, including a Religious Affairs Committee. That committee's responsibilities include developing protocols for selection, hiring and annual evaluation of the Imam. The committee is appointed by the board of directors and is to include adequate representation of the membership's diversity. Its main work, however, is to develop procedures rather than to actively participate in selection, hiring or evaluation of the Imam.

[65] Although IAS was the party seeking to refer to Islamic Law, they concede

that the Court cannot give effect to references in the bylaws to Islamic Law or Allah in view of the Supreme Court of Canada's comments on justiciability of religious matters in *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26, [2018] 1 SCR 750.

[66] Accordingly, I will not analyze arguments or evidence from either party regarding religious tenets.

[67] I further observe that, irrespective of the fact that IAS exists to serve the religious and spiritual needs of its members, the same separation of authority exists between members and directors as for other corporate organizations. The corporate model embodied by the *Act* is what was expressly chosen by the IAS's organizers. If members wish to direct some or all of IAS's operations, including selection, evaluation and, if needed, termination of their Imam, they can enter into a unanimous member agreement. They have not done so. If they lose faith in their Board, they can elect a new one. That also has not validly occurred. (I return to the Board's status below.)

vii. In assessing what expectations are reasonable, the Court is concerned only with the applicants' interests as members and not their personal interests

[68] Jurisprudence establishes that shareholders and members can have reasonable expectations only that their interests as shareholders and members will be protected. The law does not protect their personal interests: *Hui v Hoa*, 2015 BCCA 128 at para 38, 40 BLR (5th) 1; *Naneff v Con-Crete Holdings Ltd.* (1995), 23 OR (3d) 481 (Ont CA); and *Vassilaki v Vassilakakis*, 2024 BCCA 15 at para 29. As I discuss below, that is particularly relevant to Mr. Ghousuddin's evidence as to how Mr. Sidyot's absence as Imam has affected him spiritually.

(b) Analysis concerning reasonable expectations

[69] With the above principles established, I now turn to analysis of whether

the expectations asserted by the applicants were reasonable. The applicants say they expected the board would implement the Resolution as required by para. IV.C.5 of the bylaws.

[70] I conclude that the applicants have failed to establish a reasonable expectation in that respect. My analysis below incorporates most of the factors set out in *BCE Inc.* at paras 72 to 87.

i. Interpretation of para. IV.C.5

[71] The applicants rely heavily on the language of para. IV.C.5 of the bylaws, but I conclude that they misinterpret that provision. I reproduce it here for convenience:

> C. Board of Directors (BoD):
> ...
> 5. The B0D shall be responsible for implementing the resolutions passed at any general meeting and shall manage the affairs of the Association between general meetings.

The applicants treat that bylaw as meaning that the board is required to implement all resolutions passed at general meetings, essentially without variation. They contend that failure to implement is a breach of that bylaw, contrary to s. 18-8 of the *Act*, which states:

> **Restraining or compliance order**
> **18-8** If a corporation or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a corporation does not comply with this Act, the regulations, articles, bylaws or a unanimous member agreement, a complainant may, in addition to any other right the complainant has, apply to the court for an order directing any of those persons to comply with, or restraining any of those persons from acting in breach of, any provisions of this Act, the regulations, articles, bylaws or a unanimous member agreement, and on that application, the court may so order and make any further order it considers appropriate.
>
> [Emphasis added]

The applicants focus on the highlighted portions. They make that argument in the context of their injunction application, but it is germane here as well. They contend that the Board breached para. IV.C.5 of the bylaws by failing to implement the Resolution.

[72] IAS says para. IV.C.5 merely assigns responsibility, as between directors and members, as to which body would implement resolutions that are passed by members.

[73] I agree with IAS. Paragraph IV.C.5 does little more than express a principle found in the governing *Act*. Corporate bylaws regularly duplicate requirements found in corporate legislation. The presence of such duplicating provisions does not imply some added "gloss", even if the drafting differs. The applicants effectively argue that because a resolution is passed by members, para. IV.C.5 mandates that it must be implemented without variation. I consider IAS's interpretation to be more consistent with both para. IV.C.5's drafting and its legislative and jurisprudential context. For para. IV.C.5 to be interpreted as the applicants suggest, it would need to be without ambiguity. Even if it were unambiguous, the *Act* does not contemplate removal of powers of directors by operation of bylaws.

[74] Paragraph IV.C.5 does not support the expectation advanced by the applicants.

ii. The *Act*'s allocation of management authority is inconsistent with the applicants having reasonable expectations

[75] Above I discuss corporate law jurisprudence and legislation relevant to allocation of management authority. Neither jurisprudence nor legislation supports an expectation that a member's vote on a matter falling within management authority of directors binds the directors.

[76] The importance of the foregoing is far from abstract. Although the evidence did not address the point in any detail, it seems highly unlikely that members at large possessed the same information about the reasons beyond Mr. Sidyot's termination as the directors possessed. The IAS's Imam would be the highest profile position in a mosque. Mr. Sidyot's termination has, as Bardai J. found, created a deep

rift, leading to threats of violence, bullying and other wrongful conduct. Members are invested in this dispute's outcome. Nonetheless, it would be surprising, and likely a breach of Mr. Sidyot's privacy rights, if the Board had revealed every relevant detail to members of IAS. This policy consideration logically underpins the division of responsibilities between directors and members.

iii. There are no "normal commercial practices" at play

[77] Whether the directors departed from normal business practices was discussed as a factor relevant to a party's reasonable expectations in *BCE Inc*. Little about the situation before the Court can be described as "normal". Accordingly, this factor does not assist here.

iv. The nature of the corporation and relationships among stakeholders

[78] *BCE Inc.* discussed the nature of the corporation question by reference to size, nature and structure, indicating that courts might reasonably accord more latitude to directors of small corporations to deviate from strict formalities than to those governing larger public companies.

[79] IAS is a non-profit member corporation with several hundred members. It is not terribly similar to either a small closely-held corporation or a larger public company. In any event, the issues at play here are determined largely with reference to the allocation of management authority, which does not favour the applicants.

[80] The religious purpose of IAS and relationships among stakeholders have contributed to this dispute. I am unconvinced, however, that this factor in the *BCE Inc.* analysis informs the outcome here, at least as to determination of what expectations would be reasonable.

[81] I arrive at that view because of how the applicants frame their reasonable expectations. Their framing is closely tethered to corporate law concepts, particularly

allocation of managerial authority, which I address above. Those concepts do not support that the expectations the applicants advance are reasonable.

[82] Below I discuss a potential alternate framing of reasonable expectations, in which these factors could take on heightened relevance.

v. Disenfranchisement and representations

[83] The applicants characterize the Board's actions as having disenfranchised members as voters in good standing. That, however, is predicated on the Resolution's implementation being mandatory at law. I find above that it cannot have been mandatory.

[84] Representations made by directors can impact on reasonable expectations. However, the examples provided in *BCE Inc.* related primarily to representations intended to induce persons to invest, i.e., through prospectuses and information circulars. No such considerations apply here.

vi. Personal interests do not ground reasonable expectations

[85] As I observe above, the evidence includes averments from Mr. Ghousuddin about how Mr. Sidyot's absence as Imam has affected him spiritually.

[86] Although I accept that Mr. Ghousuddin has been personally affected by Mr. Sidyot having been terminated and not reinstated, what he expresses is a personal interest, not one as a stakeholder in a corporation – even if the corporation exists in part to serve the spiritual needs of its congregation. Although the list of congregation members might be largely co-extensive with voting members of the corporation, that need not be so, and in any event congregation members are not entitled to corporate protection. Protection is available only to voting members, but only with respect to their interests as voting members. A member's personal desire to receive spiritual guidance from a particular Imam is not a protected interest.

[87] Accordingly, no reasonable expectation arises from Mr. Ghousuddin's evidence on that point.

vii. Past practice

[88] The applicants contend that the prior reinstatement of Mr. Sidyot established a past practice that informed their reasonable expectations. *BCE Inc.* observed that reasonable practices may reflect changing realities. Here, there existed a single prior precedent, though one that bore a strong parallel.

[89] This factor favours the applicants slightly, but not to the extent they suggest. At the least, Mr. Sidyot's commencement of the wrongful dismissal claim against IAS altered the landscape to at least some extent and complicated implementation of the Resolution without successful negotiations between him and the Board. As well, it is difficult to place much reliance on a single prior act (about which I have only minimal evidence) by a prior board of directors as establishing a "past practice" capable of generating reasonable expectations. To hold that a one-time event creates a past practice, the evidence concerning the surrounding circumstances and basis of the decision would need to be compelling and detailed. Here the evidence falls short of establishing a past practice.

viii. *Dauphinee v White Rock Harbour Board*

[90] The applicants rely on *Dauphinee v White Rock Harbour Board*, 2018 BCSC 1286 [*Dauphinee*]. *Dauphinee* was a dispute between a harbour board and one of its members concerning assignment of boat slips. The applicant relied on an existing (and validly adopted) rule that would have given him priority, while the harbour board refused to apply the rule. The court held that the board's refusal was oppressive. The applicants here contend that the IAS Board's refusal to implement the Resolution that it put to members is akin to the harbour board's refusal.

[91] I consider *Dauphinee* distinguishable. Refusal to enforce an existing and valid rule cannot be equated to the Board putting a question to members at a meeting and then going in a different direction. Members of an organization can have a reasonable expectation that directors will enforce established rules; such an expectation is not inconsistent with the allocation of authority to manage or other fundamentals of corporate law. *Dauphinee* does not assist the applicants.

ix. *Canadian Federation of Students v Mowat*

[92] The applicants also rely on *Canadian Federation of Students v Mowat*, 2007 SKCA 90, 304 Sask R 236 [*Mowat CA*], which dismissed an appeal from *Mowat v University of Saskatchewan Students' Union*, 2006 SKQB 462, 287 Sask R 166 [*Mowat QB*]. *Mowat CA* framed the issue as whether an otherwise valid exercise of corporate power amounts to oppression. The University of Saskatchewan Students Union [USSU] held a referendum of its members to vote on whether to join the student federation. A majority of members voted in favour of joining, but Mr. Mowat voted against. The USSU's elections policy gave final authority concerning referenda to its elections board. The elections board concluded that there were irregularities in the voting process and refused to ratify the referendum. It recommended that another referendum be held. The USSU's council overrode the election board's decision and ratified the referendum result.

[93] In its discussion, the Court of Appeal stated as follows:

> [36] In light of this history, I agree with Mr. Mowat that the Council's decision to reject the Election Board's decision entitled him to relief under the *Act*. Having expressly amended the Elections and Referenda Policy for the specific purpose of giving the Elections Board "final authority" with respect to the referendum, it was unfair for the Council to then reverse field for purposes of endorsing the referendum result. That decision involved unfair prejudice to Mr. Mowat, and students of like mind, within the meaning of s. 225(1)(a) of the *Act*. It can also be taken to have involved an unfair disregard for their interests within the meaning of s. 225(1)(b) of the *Act*.

> [37] On this point, the Students' Union contends that the Council had the power to disagree with the recommendations of one of its committees in the same way it is said that any corporate board can reject a committee recommendation. This line of argument, in my view, is not convincing. The issue in a case of this sort will rarely be whether the corporation had the power to act as it did. Rather, the question will be whether an otherwise valid exercise of corporate power amounts to oppression, unfair prejudice and so forth. That is the situation here. Mr. Mowat does not challenge the actions of the Students' Union on the basis that it lacked the root authority to do as it did. He argues that its use of power was inappropriate and gives rise to remedies under the *Act*. That issue, not the simple *vires* of the Council's decision, is the question before the Court.
>
> [Emphasis added]

[94] The highlighted portion in that passage represents the gist of the applicants' argument here. Similar to *Dauphinee*, however, I view that discussion as distinguishable and inapplicable here. There is a fundamental difference between a circumstance where a governing body such as the USSU validly enacts a rule – in this case, that the election board would have final authority on whether to ratify a particular referendum – and does not follow it, and where members of a non-profit take a vote on an issue that is within the sole purview of the organization's directors to manage. The USSU's members had a reasonable expectation that the USSU's council would follow the rule concerning ratification that it had established for that referendum (see paras. 10 to 12 of *Mowat QB*). The referendum was a vote that, if validly passed by the members, would bind the USSU.

[95] Logically, there must be a point beyond which *Mowat CA* does not extend. For example, if the members had voted to require the IAS to enter into an illegal transaction – even if the Board had put the vote on the agenda for members to vote on – that could not ground reasonable expectations, even if it seemed to members (or the Court) to be unfair that they be asked a question only for the Board to ignore the majority's wishes.

[96] Returning to the less extreme example of this particular case, i.e., the

question of whether the Resolution could create reasonable expectations, the context remains relevant even in the face of *Mowat CA*. What is reasonable is always contextual. In this context, the *Act*'s allocation of authority to manage to the sole purview of directors represents a highly meaningful distinction from what faced the Court of Appeal in *Mowat CA*.

[97] Accordingly, I conclude that *Mowat CA* does not assist the applicants.

x. Fair resolution of conflicting interests

[98] This was the final factor discussed in *BCE Inc.* As *BCE Inc.* stated at para. 81, once a conflict arises among stakeholders that involves the corporation's interests, it falls to the directors to resolve the various conflicting interests in accordance with their fiduciary duty to act in the best interests of the corporation, commensurate with the corporation's duties as a responsible corporate citizen.

[99] That can be a challenging role for directors. In cases such as this, they cannot possibly satisfy all stakeholders. Although the Resolution vote favoured reinstatement, it was not a landslide. Over 40 percent of members opposed reinstatement.

[100] Considerable evidence was filed concerning the Board's negotiations with Mr. Sidyot following the AGM. Those efforts by the Board represent its efforts to arrive at a fair resolution of the conflicting interests. Opposing groups want Mr. Sidyot reinstated and terminated (there may be sub-factions but that is not in evidence). There is a new Imam in place. The IAS has an interest in ensuring that its Imam is, and is viewed as, honest and trustworthy. Its Board has an interest in not being seen to condone potentially illegal conduct by its Imam. The organization needs peace and harmony. Instead, in *Hassan*, Bardai J. recounted allegations of "social bullying, physical altercations, disturbances in the prayer hall, physical interference with religious proceedings, shouting matches, allegations of misinformation campaigns, allegations

of lying and concerns for personal safety that have gotten so bad that police have had to become involved": para. 19. Whether the personal conflicts have abated is unclear, but this application establishes that the political conflict has not. The Board is left to grapple with all of that.

[101] The Board has made serious errors in judgment, but the Court is left with the impression that they are making an earnest effort.

xi. Conclusion on reasonable expectations

[102] Given the above analysis, the applicants have failed to establish the existence of a reasonable expectation that the Board would implement the Resolution. The expectations they express are unsupported by corporate law principles concerning allocation of roles between members and directors. Further, the personal impacts they express are not protected interests.

[103] The application for an oppression remedy is therefore dismissed.

xii. Potential reframing of reasonable expectations

[104] Although the applicants have failed to establish the reasonable expectations that they assert, I have also identified a potential expectation that the applicants did not advance. Because they did not seek a remedy for what I identify, I will not grant one, though I will not foreclose the applicants from pursuing it. I explain in the discussion below.

[105] I refer here to the fact that the Resolution was coupled with the Confidence Motion in the same AGM. My concern is that this coupling may have tainted the outcome of the Confidence Vote.

[106] The Court has little evidence on that question beyond the vote counts. There must have been members who voted "Yes" on the Confidence Vote and also

voted to reinstate Mr. Sidyot. The vote counts make that entirely clear. Would there have been a different result on the Confidence Vote if it had not been accompanied by the Resolution, or if members had understood that the Board would not necessarily implement the Resolution? The history of these proceedings and *Hassan* suggest that is entirely possible.

[107] That possibility, however, is unproven. Indeed, it can be no more than hypothetical at this point. Whether the Confidence Vote's outcome was affected by the pairing of the two resolutions is not a question the Court can determine on this evidentiary record.

[108] Consistent with what the Court of Appeal held in *Mowat CA*, an issue may exist about whether placement of the Resolution (in that particular form) to the members alongside the Confidence Vote in the AGM amounted to oppression, unfair prejudice or unfairly disregarded the interests of the applicants.

[109] The Board contends that it cannot have been expected to simply implement the Resolution because that would not have been in the best interests of IAS as a whole. They point to para. IV.C.5 of IAS's bylaws to say that they had responsibility to try to implement the Resolution, but only to the extent that doing so was in IAS's best interests.

[110] Above I explain that I agree with that stance as it pertains solely to implementation of the Resolution. Nonetheless, the applicants may have suffered a harm, for which there may be a remedy under the *Act*. What harm might they have suffered? Their belief that their votes on the Resolution mattered may have influenced whether they voted "Yes" or "No" on the Confidence Vote. Again, I have no evidence on that at this point.

[111] Resulting from that lack of evidence, I am unable to determine on this record whether the pairing of the Resolution with the Confidence Vote impacted the

latter's outcome. It is a potentially important question, as it goes to the heart of whether IAS complied appropriately with Bardai J.'s order in *Hassan*.

[112] If the applicants wish to pursue a remedy relating to this discussion, in the interests of judicial economy I am prepared to hear that application if it is served and filed within 30 days of the date of this fiat. It makes little sense for another judge to be required to grapple with the considerable material already filed in this matter. If that application is not served and filed within 30 days, I shall not be seized with any aspect of this matter.

xiii. Problems with the remedy sought

[113] No alternatives short of reinstatement were proposed by the parties. Even if I had found that the applicants had proven a reasonable expectation, I would have been unpersuaded that the remedy sought by them – that the Court mandate implementation of the Resolution – was one that I should order.

[114] If Mr. Sidyot actually committed the wrongful acts that are alleged, then a court order for reinstatement would prevent IAS's board of directors (the present Board and any future boards) from acting on that set of allegations, or from negotiating with him to achieve a satisfactory resolution. The Court would have effectively determined the dispute between Mr. Sidyot and IAS solely because a wrongheaded Board put the Resolution to the members.

[115] The oppression remedy is discretionary. Its objective is to right the wrong created by the oppressive or otherwise unfair conduct where the reasonable expectations of members are not met.

[116] There are cases where a remedy flows logically. *Mowat QB* and *Mowat CA* represent one such case. The remedy sought was nullification of the referendum. That would leave the USSU to determine whether to hold another vote.

That is a very different situation than ordering a board of directors to reinstate a key employee accused of theft and other conduct amounting to a breach of trust. *Dauphinee* represents an example of a court making a mandatory order (assignment of a slip to the applicant), but that remedy accorded entirely with the harbour board's existing rules that it had refused to follow.

[117] Thus, given the entire context of this case, I am not persuaded that reinstatement would be an appropriate remedy even if the applicants had proven the existence of reasonable expectations.

Issue #3: Have the applicants satisfied the test for granting an injunction?

[118] The applicants seek a permanent mandatory injunction to require the Board to implement the Resolution. The applicants argue that when the Board did not implement the Resolution, they breached para. IV.C.5 of the bylaws, and that s. 240 of the *Act* gives the Court jurisdiction to grant injunctive relief to ensure that the breach does not continue.

[119] For the following reasons, I conclude that the applicants have not met the test for injunctive relief.

[120] *Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc*, 2011 SKCA 120 at para 113, 377 Sask R 78 [*Mosaic*], set out the modern formulation of the injunction test. *Mosaic* did not alter the elements of the longstanding analytical framework relating to the seriousness of the issues raised by the applicant, whether irreparable harm has been suffered, and the balance of convenience. Instead, it articulated new approaches to the contents and interplay of those three elements of the test. *Mosaic* tells us that the Court must focus on the justice and equities of the situation.

[121] This application fails on the first leg of the test – seriousness of the issues

raised by the applicants. As *Mosaic* discussed, there have been various iterations of that part of the injunction test. I need not analyze which iteration would apply here for one simple reason – the evidence satisfies none of the iterations. I will explain.

[122] Under the most easily cleared threshold, an applicant must establish that there is a serious issue to be tried. The "serious issue to be tried" threshold equates to presenting a case that is not frivolous or vexatious: *Mosaic* at para 113.

[123] In *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (CA), the Court of Appeal explained when a claim will be frivolous. The question of frivolousness involves some consideration of the claim's merits. The test is whether it is obvious that the claim is devoid of all merit or cannot possibly succeed.

[124] The vexatious formulation is aimed at a plaintiff's motivations, i.e., whether the claim was commenced for an ulterior motive, out of malice, to force delay, or as a nuisance: *Paulsen v Saskatchewan (Ministry of Environment)*, 2013 SKQB 119 at para 46, 418 Sask R 96. There is no evidence of ulterior motives. The applicants are clear and transparent concerning their objectives. Accordingly, I will focus on whether the applicants' claims are frivolous.

[125] Although the "serious issue" threshold represents a low bar to be cleared, it must be met on substantially all the elements that would need to be proven to obtain relief at a trial: *Retail, Wholesale and Department Store Union Local 558 v Pepsi-Cola Canada Beverages (West) Ltd.* (1998), 167 DLR (4th) 220 (Sask CA) at 233. The onus throughout rests on the plaintiffs.

[126] Injunctions are granted to address legal wrongs. To succeed, the applicants must establish a serious issue to be tried in respect of a cause of action that is not frivolous. They characterize the Board's failure to implement the Resolution as a legal wrong because it falls afoul of para. IV.C.5 of the bylaws.

[127] IAS's primary response is that the Board did not act unlawfully in not implementing the Resolution. I agree. The applicants cannot establish even a serious issue to be tried. Paragraph IV.C.5 of the bylaws is incapable of supporting the claim asserted by the applicants for the same reason that no reasonable expectation arose that the Board would implement the Resolution: the matters addressed in the Resolution fall under the heading of management. As a matter of corporate law, members and shareholders cannot dictate to directors in respect of managing or supervising the management of the activities and affairs of a corporation. That is so even where the directors have placed a resolution before the members.

[128] Because of that corporate law principle, the Board was not legally required to implement the Resolution. It follows that the Board has not committed a legal wrong, and there is no basis to order an injunction against them.

[129] Accordingly, the injunction application does not clear the "serious issue to be tried" threshold and must be dismissed. Even if I were satisfied that the applicants had cleared that threshold, I would not exercise my discretion to grant an injunction for similar reasons to those expressed above in connection with my discussion of problems with the particular remedy sought under the oppression remedy application: the evidence does not support reinstatement as a remedy. Without far more evidence on whether the Imam's termination was appropriate, the Court is in no position to determine whether reinstatement is warranted on the merits and should not take that step simply because members voted for the Resolution.

E. CONCLUSION

[130] For the foregoing reasons, this application is dismissed.

[131] I have given the applicants leave to apply for relief based on the notion that the Confidence Vote may have been tainted by it being paired with the Resolution. Any such application would require the filing of new or further evidence but would

arise from the same set of circumstances. If the applicants bring that application and succeed, that could impact on my view of costs of this application. Accordingly, I will allow the 30 days to pass before ruling on costs. If the applicants bring that application in that time, I will address costs in conjunction with deciding that application.

J.
D.G. GERECKE