

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Athesivan v. Canada Shri Muththumaari Amman Temple, 2022 ONSC 6638

Ontario Superior Court of Justice, Agarwal J, 29 November 2022

An application to appoint a monitor over the affairs of a temple.

Key words: Nonprofit Corporation, Ontario, Canada, Temple, Breach of Trust, Monitor

1. Canada Shri Muththumaari Amman Temple (the Temple) is a non-share, not-for-profit Ontario corporation which is a sacred religious institution and a community centre for members of the Tamil community in the Greater Toronto Area.
2. Originally incorporated under the [Ontario Corporations Act, RSO 1990, c C.38](#), the Temple is currently governed by the [Not-for-Profit Corporations Act, 2010, SO 2010, c 15](#) (ONCA), and has a three-year transition to make any necessary changes to its incorporating and other documents to bring them into conformity with ONCA.
3. A group of members claiming to be directors (the applicants) brought an application to appoint a monitor over the affairs of the Temple, also joining the Temple and individuals who allegedly were former directors.
4. The [Charities Accounting Act, RSO 1990, c C.10](#) deems any corporation incorporated for a religious or charitable purpose to be a trustee, and any real or personal property is trust property, and its directors are impressed with fiduciary obligations to carry out the trust.
5. While under the Charities Accounting Act two or more persons alleging a breach of a trust created for charitable purposes may apply to the court for any “order as it considers just for the carrying out of the trust under the law”, in this matter the applicants relied only on the Court’s inherent or equitable jurisdiction.
6. The applicants argued that there had been alleged misappropriation of around \$400,000 from the Temple’s bank accounts, and there had been a failure to hold an annual meeting to elect directors and officers.
7. The former Treasurer, who was one of the applicants, was removed from his office on allegations of theft and fraud by him. The former Treasurer made allegations of theft by others, and that as he was elected by the members, only they could dismiss him.

8. The applicants also argued that the Temple had failed to hold an AGM or election since 2017.
9. There was confusion over the exact nature of the constitution and whether practice had departed from whatever the terms of the constitution were.
10. The applicants claimed to have held a meeting in January 2020 at an offsite location (because some of them were banned from the Temple), which they say was an annual meeting of the Temple. There were no directors present and it was not clear that those who attended were voting members.
11. The applicants who were elected at such a meeting then contacted the bank, which froze the Temple's accounts. The Temple's landlord refused to renew its lease and changed the governmental record of the Temple's directors.
12. Further elections were held in 2021 at which new directors were elected but not recognised by the applicants who were barred from standing for election.
13. The Court held that 2021 election irregularities might undermine the good governance of the Temple, but the improprieties did not rise to the level of a breach of trust nor a serious issue to be tried.
14. The Court found that the applicants had not shown there was a serious breach of trust and there was no basis for the imposition of a monitor over the Temple's affairs.
15. The Court gave this advice to the parties (at [57]-[58]):

That all said, the Temple's governance may need reform. The coming into force of ONCA and the election of a fresh board will help. In making this decision, I'm not blessing the Temple's failure to abide by appropriate corporate governance rules. Though a nonprofit run by volunteers should not be held to the standard of a public company with a professional board, the directors must not forget that our law makes them fiduciaries of the members' trust. A court should not interfere unduly in the activities of religious organizations—the right of a religious community to determine how it will be governed is an important one. That said, it is of fundamental importance that a temple should conduct itself in accordance with the requirements of law and that its directors be elected in a fair and transparent manner.

More so though, the Temple's leadership (which, in the broader sense, includes the disaffected members) need to recommit themselves to the Temple's purpose. Temples play an important role for the South Asian diaspora. They provide a sense of community to new immigrants. They are a source of culture and history for the children of those immigrants. They ensure a link between the diaspora and their communities of origin. And, of course, they are a place of worship, where community members can, together, celebrate their faith and festivals. In a complex, fast-changing, and sometimes scary world, the Temple is a home for religious placemaking and community building. The parties have risked dishonouring that sacred role.

IMPLICATIONS



The Court's observations about the importance of leadership of the Temple and its role in civil society are insightful and a timely reminder for all, not just the parties to this action.

For those in jurisdictions such as Australia where it is unclear how nonprofit corporations with charitable objects hold their property, the provisions of the Ontario legislation deeming any corporation incorporated for a religious or charitable purpose to be a trustee, and any real or personal property to be trust property, with its directors impressed with fiduciary obligations to carry out the trust is worthy of consideration. Refer [Grain Technology Australia Limited & Ors v Rosewood Research Pty Ltd & Ors](#) [2019] NSWSC 1111

VIEW THE CASE



This case may be viewed at <https://www.canlii.org/en/on/onsc/doc/2022/2022onsc6638/2022onsc6638.html>

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Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

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