

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.



The Order of St. Basil the Great in Canada v. St. Mary's Ukrainian Senior Citizens Housing Society, 2023 BCSC 23

Supreme Court of British Columbia, Kirchner J, 6 January 2023

A claim of oppression of the members of a society initially formed by a church parish.

Key words: Incorporated Society, British Columbia, Canada, Church, Oppression, Standing, Limitation

1. St. Mary's Ukrainian Senior Citizens Housing Society (the Society) is a non-profit corporation providing low-cost homes for elderly citizens.
2. It was incorporated in 1973 by members of the Blessed Virgin Mary Ukrainian Catholic Parish (the Parish) under the Societies Act, R.S.B.C. 1960, c. 362 (now repealed).
3. The Parish is a parish of the Order of St Basil the Great in Canada, established pursuant to an agreement dated 6 March 1959 between the Ukrainian Catholic Eparchy of Edmonton (the Eparchy) and the Order.
4. The Order is a Catholic order incorporated in 1908 by a Special Act of Parliament: An Act to incorporate the Ruthenian Catholic Mission of the Order of Saint Basil the Great in Canada, S.C. 1908, c. 152.
5. By virtue of an agreement between the Order and the Eparchy dated 17 November 1964, the Order claimed it owed certain stewardship obligations to the Eparchy in respect of its church property.
6. Part of the church property land was transferred to the Society in 1974 as an unconditional and absolute transfer of title from the Order to the Society for valuable consideration.
7. The Society now owns and operates a 90-unit housing facility called St. Mary's Gardens on land (the Gardens Land) that was formerly owned by the Order.
8. Despite the unconditional land transfer and the consent order, the Parish and the Order claim the Order had ongoing stewardship obligations in respect of the Gardens Property, which amounted to managing and overseeing the property, and that the Society must be governed, and the Gardens Property managed, in a way that upheld these obligations.

9. The Society was governed and operated by a core group of Parish members who were volunteer directors, including the parish priest in a de facto ex officio capacity that was mentioned in the bylaws or constitution.
10. In 2010 there was a move to formalise the parish priest's ex officio position. A special meeting passed a resolution, but it was not filed with the Registrar of Companies and thus did not become effective under s. 23 of the Societies Act, R.S.B.C. 1996, c. 433 (now repealed).
11. There was no list of members of the Society, and the practice was that the volunteer directors were the members.
12. In 2017 the Society transitioned to the new [Societies Act 2015](#), but the constitution and the bylaws were largely unaffected.
13. At a meeting held on 13 June 2017, the Society passed a special resolution making changes to its governance structure and process, including setting the number of directors at nine. Board members were to serve two-year terms, with the election years staggered so that five members would be elected in one year and four members elected the following year.
14. A month later the Society held its annual general meeting at which the parish priest was removed as a director, and the resolution was signed by the parish priest, not knowing its import.
15. After the parish priest's removal was appreciated, concerns developed about the situation and the intent of the Society for the Gardens Property.
16. The Society's directors threatened to resign, and then reversed that position after public discussions with Parish members.
17. The Order and the Parish claimed the Society's conduct in removing the parish priest, eliminating the ex officio position on board, and the board members' proposed resignation and reversal of that proposal, constituted oppression or unfair prejudice pursuant to [s. 102\(1\)](#) of the Societies Act.
18. They further claimed that the Society had excluded the parish priest from the board to shut the Order out of exercising the alleged stewardship obligations in respect of the Garden Property.
19. The Society argued that there was nothing in the bylaws or the constitution giving the parish priest an ex officio position on the board, and the Order had no ongoing rights or interest in the Gardens Property, having transferred all of its interest to the Society absolutely.
20. Further, the Order and the Parish had no standing to bring an oppression claim under s. 102 of the Societies Act because they were not members of the Society. It was also argued that the claims were brought beyond the 2-year time limit set by the [Limitation Act, S.B.C. 2012, c. 13](#).

21. The Court found that the Order was not a member of the Society as:
 - There was no mention of the Order being a member in the bylaws or constitution;
 - The parish priest was a member until the 2017 resolution, but was not a party to the proceedings; and
 - The parish priest's de facto ex officio position on the board did not make the Order a member.
22. The Court was not satisfied that the Parish itself was either a legal entity capable of bringing the proceeding or a member of the Society.
23. The Society's by laws did confer membership on individual members of the Parish, but this required an opt-in to membership, and was also open to members of the public.
24. Although not required for the Court to make a decision in the matter it considered limitation timings.
25. Oppression claims are subject to two different timing requirements. One is that a claim must be brought in a "timely manner" and the other is the 2-year statutory limitation period under the Limitation Act, s. 6.
26. The Court found that the parish priest's removal from the board was barred by the Limitation Act.
27. Although not required for the Court to make a decision in the matter, it considered whether the Society's actions were oppressive or unfairly prejudicial.
28. The Court found that if it was not for the issues of standing and limitation, it would have found the manner in which the board ended the parish priest's position as director and eliminated the ex officio position was unfairly prejudicial to him as a member of the Society.
29. The Court found that the Order had transferred all its interest in the Gardens Property to the Society unconditionally and for valuable consideration, and there was no reservation of a beneficial interest or any agreement that the Order might retain any rights of stewardship over the property.
30. However, the Court noted that the Society was constrained by its own constitution and bylaws as well as the Societies Act in the disposal of the land, or its destination upon winding up.
31. The Court was not persuaded that the board members' reversal of their proposed resignation was oppressive or unfairly prejudicial.
32. The Court finally found that those bringing the proceedings did not have standing, and in any case, the Society had not otherwise acted in an oppressive or unfairly prejudicial manner against either party or against members of the Parish more broadly.

33. Further, it found that the Order had no ongoing rights in respect of the Gardens Property, having transferred its interest in the property absolutely to the Society in 1974 for valuable consideration. Nor does it have any rights to the governance of the Society.

COMMENT



The Court noted that ‘the elephant in the courtroom’ was that there was some significant tension between the board members and the Order, including potentially the parish priest. There was no evidence to explain why it was decided to end the parish priest’s role on the board and eliminate his ex officio position.

The Court was critical at the outset of legal structuring arrangements for faith-based subsidiaries, or spin offs. It noted that the legal relationship should be given careful consideration and then clearly articulated in the applicable legal arrangements. This is particularly so for Roman Catholic organisations that usually are subject to an extensive body of canon law.

The issue of standing to bring a legal proceeding also arises in this case. An unincorporated association in itself has no corporate persona that is recognised by the Courts, and must use other legal strategies to be represented, such as through representative individuals, a committee, a trust, or all the members of the association.

VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/bc/bcsc/doc/2023/2023bcsc23/2023bcsc23.html>

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