

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.



Superior Court, 2023 QCCS 3380

Superior Court of Quebec, Geeta Narang JSC, 31 August 2023

Directors of a nonprofit foundation sought orders for meeting resolutions to be declared void, and for damages.

Key words: Nonprofit Foundation, Quebec, Canada, Internal Dispute, Jurisdiction, Code of Civil Procedure, Legal Person, Damages

1. The IQRA Foundation was founded by Kazi Shamsud Doha, Perviz Akther and Fazle Elahi Ashek Ahmad some twenty years ago, who formed the shura (an Arabic word for council) of the organization.
2. About a decade later, Bilal Abdul Kader joined the shura, which acted as the IQRA Foundation's board of directors.
3. The Foundation was conceived of as a "non-political, non-profitable, religious and socio-culture organization committed to the cause and services of the Muslims living in Canada."
4. The IQRA Foundation adopted bylaws in 2005, which all parties agreed applied, but did not follow set rules to determine membership, to hold meetings, or to elect the shura.
5. Three of the directors disputed the validity of resolutions made at meetings in 2017, claimed \$30,000 in damages, and sought the assistance of the Court against a number of other members.
6. The Court first discussed the reasons for rejecting an exhibit served just five days before the trial was to begin. The exhibit appeared to be membership lists and individuals' applications for membership between 2002 and 2005. The exhibit was not admitted as it was filed too late and no valid explanation was given for the lateness. Admitting the exhibit into the record would violate foundational principles of the legal system: fair play, avoiding trial by ambush, rendering justice in a timely fashion, and the principle of proportionality.
7. The Court found that there were two meetings in 2017 where some directors were not notified of the meeting. In 2018 the former President realised that he had been replaced on the government register and sought rectification. There were further disputes which led to court proceedings and injunctions being sought.
8. The Court ruled that the Superior Court of Quebec had a general power of judicial review over legal persons, such as non-profit organizations. Principles affirmed by the Supreme Court of Canada in decisions about the limited powers of courts to review decisions made by non-profit organizations did not apply in Quebec because of provisions in the Quebec Code of Civil Procedure.

9. The Court found that the meetings that were held in the summer of 2017 were not held in accordance with the IQRA Foundation's bylaws, in that notice was not given and this was unfair.
10. However, it was inappropriate for the Court to exercise its power of judicial review. Granting the orders sought would not be useful or helpful. An election was needed to determine how the IQRA Foundation was to be governed.
11. The Court also found that there was insufficient basis for an award of damages.
12. The Court dismissed the action with no costs award being made.

COMMENT



The Court decided that it had jurisdiction over this case because Article 34 of the [Québec Code of Civil Procedure](#) provides that the Court has “a general power of judicial review (...) over public bodies, over legal persons established in the public interest or for a private interest, and over partnerships and associations and other groups not endowed with juridical personality.

The Court held that the IQRA Foundation was a legal person established in the public interest (at [78]). It was not an association (at [83]).

The defendants argued that the Canadian Supreme Court's decision in [Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga](#) [2021] SCC 22 applied. In that case, the Supreme Court found that jurisdiction to intervene in the affairs of a voluntary association depends on the existence of a legal right which the court is asked to vindicate. The Supreme Court stated at [3] that the violation of a person's right to procedural fairness cannot, in and of itself, form the basis of a legal claim that may be adjudicated by a court of law. Accordingly, the Supreme Court found that it did not have the jurisdiction to decide whether the decision of a church to expel five members from the congregation was valid.

In this case, the plaintiffs did not argue a legal right, but rather procedural fairness concerning the right to be notified of meetings. Thus, the case seemed to align with the finding in *Ethiopian Orthodox*.

However, the Supreme Court of Canada's decision on jurisdiction in *Ethiopian Orthodox*, and other like cases, was held not to apply in Quebec given the explicit grant of the power of judicial control in the Code of Civil Procedure over various bodies, legal persons, associations, and other groups.

VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/qc/qccs/doc/2023/2023qccs3380/2023qccs3380.html>

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