

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.



Vietnamese Association, Toronto v. Duong, 2023 ONSC 731

Ontario Superior Court of Justice, J. Steele J, 30 January 2023

An application for a declaration of the proper board after a disrupted Annual General Meeting.

Key words: Charity, Ontario, Canada, Internal Dispute, Letters Patent, Membership, Election

1. The Vietnamese Association, Toronto (VAT) provides settlement, adaption, and social services and programs to the Vietnamese community in the Greater Toronto Area.
2. VAT is a not-for-profit corporation, created by Letters Patent under [The Corporations Act](#), R.S.O. 1990, c. C.38. It is also a registered charitable organization governed under the [Not-for-Profit Corporations Act \(Ontario\)](#), 2010, S.O. 2010, c. 15 (the NFPC Act).
3. VAT is funded by the government, member dues, and rental income from a property. There is significant volunteer time provided to the organization.
4. VAT, under its by-laws, has annual elections for its board at its annual general meeting (AGM).
5. The 2022 AGM was disrupted by some members, so the board adjourned the meeting to a future date.
6. The Board had introduced new membership protocols which caused membership to fall from 200 to 50, and this caused unrest. Approximately 50 membership applications were awaiting board approval.
7. Some members purported to hold a vote for the board, electing themselves as an Interim Board.
8. The Interim Board then changed the locks, issued a press release about their election, changed the bank accounts, and filed notices with the authorities as to the change of directors and officers.
9. VAT obtained an interim injunction restraining the purported board, and to require the state of the parties to be returned to that prior to the adjourned AGM until a further hearing of the matter.
10. VAT applied to the Court for a declaration that the vote held to elect the Interim Board was invalid and a nullity, and that the prior board was authorised to manage VAT's affairs until such time as an AGM was held and a vote taken.

11. The Court was satisfied that the vote was held after the meeting had been adjourned and thus was invalid and a nullity.
12. In relation to membership issues, the Court found that any members as at the previous AGM, other than those who had voluntarily resigned their membership, died, or had been expelled in accordance with the by-laws and internal regulations, and in accordance with the NFPC Act, continued as members entitled to vote at the next AGM.
13. VAT argued for the Court to provide directions, as opposed to the appointment of a monitor, as it was unlikely that it would be able to fund the appointment of a monitor/supervisor over the long term due to the prohibitive cost involved.
14. The Court ordered that the AGM be held within 60 days. Candidates for the board of directors must have been a regular member at the prior AGM (and not have resigned or been expelled in accordance with applicable law) or have become a regular member for at least 20 days before the meeting.
15. Further, the Court ordered that VAT could hold the AGM in any manner it deemed fit, in its sole and unfettered discretion, so as to ensure the safety and security of its members, and could conduct the AGM in person, or remotely by video or another online platform. If any members disrupted the proceeding of the AGM, they could be removed from the AGM, in the sole discretion of the Board

COMMENT



The Court strongly stated that (at [4]):

I am very concerned that this charitable organization, which has done significant positive work in the GTA [Greater Toronto Area] for many years, may be in jeopardy if this in-fighting does not cease. This is a small organization, with an annual budget of approximately \$900,000, with a staff of 15. There are two other Court actions involving VAT, which have been commenced by some of the respondents, that are ongoing. This needs to stop.

VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/on/onsc/doc/2023/2023onsc731/2023onsc731.html>

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

Email: acpns@qut.edu.au

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