

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.



Varjacic v. Radoja, 2024 ONCA 233

Court of Appeal for Ontario, Miller, Copeland and Gomery JJ.A, 4 April 2024

An appeal from orders to register members and hold an Annual General Meeting.

Key words: Unincorporated Association, Ontario, Canada, Annual General Meeting, Members

1. This is an appeal from [Varjacic et al v. Radoja et al](#), 2021 ONSC 5822 and various orders after that judgment.
2. The Hamilton branch of the Royal Yugoslav Army Combatants' Association in Canada-Draza Mihailovic (the RYACA) is an unincorporated association.
3. RYACA is a member of The Royal Yugoslav Army Combatants Association "Draza Mihailovic" (the Association). The Association is an international organisation founded after World War II by officers and soldiers of the Royal Yugoslav Army who fought against fascism and communism. General Draza Mihailovic was the Commander-in-Chief of the Royal Yugoslav Army at the war's end.
4. In 1968, a General Assembly was held in Chicago, Illinois, and a codified Statute for the Association (the Constitution) was adopted. The parties to these proceedings agreed that the Constitution governed the rights and obligations of RYACA members.
5. The RYACA owned a 16-acre property used by members that was locked in 2011 due to falling membership and lack of interest. A dispute arose among the remaining members regarding the right to decide about the property.
6. The Primary Court found that there were no valid members and no valid executive board.
7. The Primary Court made a series of orders for calling an AGM, enrolling members, and agreeing on a chair. The AGM's agenda included electing an executive board.
8. One faction held an AGM in November 2021 and another in December 2021. A further court proceeding followed, and the Court found that the December meeting was valid. The matter was appealed.
9. The Appeal Court reluctantly found that the Primary Court's decision was premised on a misapprehension of the evidence, and the order was set aside.
10. The Appeal Court further noted (at [13]):

As far as we can discern, it is not in anyone's interest that the current impasse be prolonged. It should be of considerable embarrassment to the community that it cannot achieve the degree of cooperation necessary to admit new members, hold an AGM, elect a board, and accept the election results. The sooner the association can restore its internal governance, the sooner it can return to fulfilling its historic role. This dispute has already consumed a vast amount of court time.

11. The Appeal Court annulled all memberships that had been granted. Any funds collected were to be credited towards fresh applications, and the AGM was to be held in accordance with the original order.

COMMENT



In many situations where there is a global or national association, there will be constitutional provisions that facilitate the superior body to step in to facilitate the orderly dissolution of a branch or chapter, or its restructure. There were no such provisions in this case.

Some of the parties in this hearing were self-represented, and this posed procedural issues for the court. Costs and delays might have been minimised if community legal assistance had been available or a receiver/manager had been appointed for the conduct of the member registration and AGM elections.

VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/on/onca/doc/2024/2024onca233/2024onca233.html>

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