

**CITATION:** Noori v. Abdin Mosque, 2011 ONSC 5452  
**COURT FILE NO.:** CV-10-417094  
**DATE:** 20110916

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** **ABU TAHER NOORI, MOHAMMAD H. KABIR, KHALED A. MAMUN, SYED A. RAHMAN, ZAHIRUDDIN AKM, AKM JOINAL ABEDIN (BAHAR), MD. ZAHIDUR RAHIM (BOBY), MD. SHAHJAHAN UDDIN, AKIL AHMED**

**v.**

**JOINAL ABDIN**

**BEFORE:** **Michael G. Quigley J.**

**COUNSEL:** **Jason Squire, for the Applicants**  
**Hugh Pattison, for the Respondent**

**HEARD:** **September 12, 2011**

**ENDORSEMENT**

[1] In this case, the court is confronted by a governance dispute amongst the Founder Members of the Danforth Community Center. The DCC was established in 2008 as a Muslim community center in order to establish a mosque for worship by some of the members of the Bengali speaking Sunni Islamic community of Toronto. It is a registered charity that has been accepted as such by the Canada Revenue Agency and as a charitable corporation it must adhere to the high standards that apply to the administration of registered charities.

[2] Although it is not of long standing, there is a significant history of unrest and disagreement between the two groups that are parties to this litigation. That history is reviewed at length in both the Applicants' and the Respondents' Motion Records and *Facta*. There is no need to review it here. One of those discordant groups consists of the

current President and original board of incorporators established under the 2008 Constitution, who are not elected and the unelected members of that board who have been appointed in response to resignations over the past year or more of discord. The other is a group of Founder Members who seek to have the original and existing board respect an election of directors that purportedly took place a year ago and that resulted in other new members being elected to the board, but whose validity is disputed by the original board and the officers.

[3] There were many issues of dispute between these two groups, but both groups appear to now be resolved to go forward to hold new directors elections. This will be the first election of a board of directors by the full membership of the Danforth Community Center. Both parties now appear resolved to settle the affairs of the Danforth Community Center on this basis to permit it to move forward and start to function again.

[4] However, one fundamental issue remains for this court to determine – that is, who will be eligible to vote in that upcoming election of directors, and what rules will govern that election?

[5] There are 54 so-called "Founder Members" of the mosque. That group consists of the seven original incorporators of the Danforth Community Center and a further 47 members who have joined since the DCC was incorporated. "Founder Members" are those members who have been members of the mosque for at least one year, who have "paid" \$10,000 towards membership, and whose memberships are not under suspension. Mr. Noori and the other applicants believe that all 54 Founder Members should vote. The existing President, Mr. Abdin, and the other cross-applicants maintain that only those members qualified to vote under Clause 4, and in particular 4.4, of the 2008 Constitution of the DCC as originally worded, *i.e.*, members in good standing for one year (and not under suspension) who have paid \$10,000 in cash only towards membership.

[6] Let me first say, as both counsel have emphasized, that the court does have the power under sections 297, 309 and 332 of the *Corporations Act* to provide direction in governance cases such as this by exercising its remedial power to make such orders as are just. Thus, the court can give direction on the interpretation of the Danforth Community Center Constitution, on the proper composition of the voters list, on interpretive questions that may be in dispute, and on the manner in which the election will be held and the governance of the Danforth Community Center regularized. The court is empowered to provide such direction as part of its broad remedial discretionary powers as a superior court of record under section 96 of the *Constitution Act, 1982* as amended, and under the

*Courts of Justice Act* of this province. The court can exercise those powers for the protection of the membership of the DCC as a whole and to permit the DCC and its community of worshipers to move forward from the impasse they have faced for a year: see *Rexdale Singh Sabha Religious Centre v. Chattha*;<sup>1</sup> *Chu v. Scarborough Hospital Corp.*<sup>2</sup>

[7] Turning to the question of membership, it is agreed by all parties that the passage of time has ensured that all 54 of the Founder Members would be considered to have been members for one year at this point in time, and thus that all 54 meet at least that 2008 DCC constitutional requirement. Thus, there are two issues that remain:

- (i) Can Founder Members who paid for their membership in part by rendering services to the DCC and the mosque vote in the upcoming election as fully paid members?
- (ii) Can members whose membership has been suspended by the existing board vote in the upcoming election?

[8] On the first question, I find that Founder Members are entitled to vote, without regard to whether their membership was paid in cash or in kind or in a mixture of part cash and in part by the rendering of services. The by-laws have somewhat ambiguous wording to my eye, but at least initially it is clear that the board believed that it had the power to grant memberships for credit, just as a corporation is permitted under the *Business Corporations Act* to issue shares for money or for equivalent money's worth. That power was squarely within the board's jurisdiction and powers. The persons who received their memberships as a result of payments made partly in cash and partly by rendering valuable services would be severely disadvantaged in their efforts to be fully participating members of the mosque's religious community of worship to now be prohibited from voting when I find the board had the power under the law to do what it did.

[9] I accept that the language of the constitutional documentation might be read strictly as preventing the board from granting financial credit for services rendered, and certainly the granting of memberships in part supported by credit for the rendering of services dilutes the recognized economic value of the fully paid memberships. That is so just as shares of a business corporation issued for services or other in-kind consideration

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<sup>1</sup> [2006] O.J. No. 328 (S.C.J.) at para. 20 and cases cited there.

<sup>2</sup> [2006] O.J. No. 5417 (S.C.J.).

will dilute the stated capital of the class of shares. The only way to avoid that problem is for one class to be issued for cash and one to be issued for credit, but with the two classes otherwise enjoying identical rights. But the fact is this action was within the legal power of this board and ought to be recognized and accepted for what it was – a proper exercise of board power even if carrying unintended results.

[10] Nevertheless, I also accept that this issue has been a source of division between members. It is a situation that needs to be remedied. It is not surprising that there may be internal discord between some of the members who paid the full cash price of membership in the mosque and some of those who paid much less in cash, but who were given cash equivalent credit by the board for services whose value may be subject to question, even if the board determined that the credit given was a fair market value cash equivalent.

[11] Accordingly, as soon as possible after the election of the new board the question shall be put to the members. They shall either approve a constitutional amendment permitting the board to adopt and accept "in-kind" payments from prospective members in such value as the board shall determine, or the acceptance of such "in kind" consideration towards the cost of membership shall be specifically prohibited and payment for memberships permitted to be made only in cash.

[12] Should the latter position prevail, then the Danforth Community Center board shall promptly take steps to regularize the existing situation. It shall do so in the following way:

- (i) Every Founder Member who received credit towards his membership cost by rendering service shall render an invoice for such services to the DCC, dated as of the time that the service was rendered;
- (ii) The DCC shall the pay the amount of such invoices, in cash or by cheque, to the members who received memberships in part for the rendering of services. The payment shall equal the value of those services that were rendered, as established by the board at the time the transaction was completed and the services provided;
- (iii) The DCC shall then permit the member to contribute such monies back to the mosque in full satisfaction of the remaining cash purchase price of

membership, such transaction to take effect as if it had originally been completed on that basis.

- (iv) All appropriate accounting for these transactions, including reversals of earlier transactions and the re-booking of such transactions currently, shall be done in accordance with *Canadian Generally Accepted Accounting Principles* and recorded in the books and records of the Danforth Community Center and be made available for public inspection by any concerned public or charitable regulator or administrator.

[13] The second question of the voting rights of suspended Founder Members is much more troubling. It is evident to me that there are drafting deficiencies in the constitutional language of the Danforth Community Center relative to suspension of membership. Given the erosion of personal rights of a member that can result from a suspension, I would have thought that a decision by the board to suspend a member for conduct considered to be contrary to the objects and goals of the Danforth Community Center ought to be subject to ratification or approval by the membership at large, either at an Annual General Meeting, or at an Extraordinary General Meeting of all members called for that purpose, or in some other way.

[14] At present, however, the Constitution of the DCC is deficient in that regard. The proposed amendments to the Constitution advocated by the applicants would put in place such a safeguard.

[15] There is little evidence before me on this application of the manner in which all of the 10 member suspensions have been dealt with, but what I have seen, as for example in the Zahiruddin Affidavit and attachment letter of August 7, 2011 purporting to suspend Mr. Zahiruddin's membership for violating rules and regulations of the Danforth Community Center or for having acted against its aims and objectives, satisfies me that at least *on the face of the record*, the member was investigated, that accusations were made, including, surprisingly, that Mr. Zahiruddin had obtained his membership without payment,<sup>3</sup> and that he was given a hearing and an opportunity to respond. As a result, at least *on the face of the record*, there is no evident breach of rules of natural justice, nor on

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<sup>3</sup> I would note that it is difficult to reconcile this explanation of the board and the Arbitration Committee for removing and suspending Mr. Zahiruddin's membership in the mosque when it is obvious that the same board must have previously made a determination that Mr. Zahiruddin *had supplied services in lieu of cash*, or else the board had no legal authority to approve of his membership in the first place. However, those matters and the validity of the existing suspensions will be determined by the new board once elected so require no further comment from me.

its face was he denied the opportunity as a suspended member to refute the accusations made by his accusers.

[16] It is clear to me from my observations of the processes that are in place, such as they are, that there may well be deficiencies “in behind” the member suspension process, but with respect, the court is not in the position today to make such determinations *on this record* as much as it might wish to do so. The record before the courts is simply inadequate for the purpose.

[17] I accept and agree with the consent proposal going forward that those 10 suspensions of those 10 suspended members’ membership rights in the mosque should be ratified by a new board, and indeed I would hope that they would be put to the membership at large, but I am also persuaded by the respondent that there is no present evidentiary basis to call those suspensions into question today in the course of this proceeding. Just as the board allegedly acted within its authority to grant credit to certain members for part of their membership costs based on services provided to the Danforth Community Center, so too it seems to me the board was within its constitutional powers to suspend the 10 members whose memberships have been suspended. This is not to say those decisions were correct or incorrect. It simply recognizes that the board had that power.

[18] Had those members chosen to do so, however, as the respondent argues, they could have challenged those board decisions through other legal avenues and if they were improperly suspended, or if it were shown in such circumstances that the board acted capriciously or unreasonably or outside of the rule of law that binds it just as it binds all of us, then there may and could well have been remedies, but those remedies cannot be forthcoming on this application from this court. However, it seems clear to me as well that there is an entirely understandable explanation for the conduct of the suspended members, or perhaps stated more accurately, for their failure to pursue such other avenues of redress in the face of the board’s actions in suspending them. That explanation is obvious in the circumstances of this particular case. It is this.

[19] In the fall of 2010, a schism arose in the governance of the Danforth Community Center. It arose between these two groups. That division has continued for a full year. Several of the suspended members were original founders and incorporators of the DCC and the mosque. Several of the suspended members are persons who were purportedly elected as new and first time board members at the contested election of November 2010. This event resulted in an alleged new board demanding that the running of the Danforth

Community Center be turned over to it by the old board, but instead the result has not been accepted and it has resulted in the unelected old board continuing to run the Danforth Community Center with new directors called to duty to replace directors who resigned, but who are not elected by the membership.

[20] The Applicants in action 417094 initially applied to this court to *throw out* that old board and to *require* that the old board respect the result of the claimed November 2010 election of a new board. They have obviously not challenged the disciplinary suspensions imposed on them by the old unelected board because they have been pursuing a bigger and more meaningful result that, arguably, might also simultaneously solve those suspension issues and whether the suspensions were well-founded: that is to put in place new governance for the DCC and the mosque that is representative of the wishes of the members at large. Clearly, the suspended Founder Members neither accept the authority of the old board nor its suspension decisions relative to their memberships because they do not accept that it has continuing governing legitimacy.

[21] Now, however, those applicants have taken the high road. They have recognized this could be a long, painful, expensive and unproductive battle. They have agreed to cut to the chase and abandon the full-blown litigation they have been engaged in to date. All agree – both the old unelected board and the putative new board who claim to be a properly elected – to proceed to new elections. But the price to be exacted from the old board against these Founder Members who claim to be a properly elected would be that these 10 Founder Members would be unable to vote, because the old unelected board insists that they have been properly suspended by it – the very board with who they are in disagreement. For taking a conciliatory approach in trying to bring the parties together to move forward by holding new elections for members of a new board, in the interests of all members of the DCC, they would be “rewarded” for their now conciliatory position by being denied the right to vote in the very election that precipitated this litigation.

[22] I agree with Mr. Pattison that in the ordinary course, the suspension decision of the old board should be respected and would normally be respected pending ratification and verification by the membership at large, In this case, that would mean denying voting rights to the 10 suspended Founder Members, but in my judgment that would *not* be exercising my remedial powers to make an order that is just in this case because it would *not* protect the members at large, and especially those 10 suspended members, and provide all of them with the opportunity to all speak and exercise their franchise as one voice on the future direction of their mosque about which they all care deeply.

[23] To my mind that is the greater good – the better remedy in these circumstances. It is the only way I can see that there is a prospect of moving forward from the divisions that this religious community has experienced over the past year and to permit it to get back on the road to consensus and community.

[24] For the foregoing reasons, all 54 of the Founder Members shall be entitled to vote in the upcoming election of a new board to run the affairs of the Danforth Community Center.

[25] As I indicated to counsel, I shall remain seized of this matter until the upcoming election of a new board has been carried out. While my instinct, given the charitable nature of this undertaking, is to aggregate the costs of this application and order that each of the parties to this litigation pay one such equal share, given that I am satisfied that all were acting in what they believed to be in the best interests of the mosque, I will agree to keep open the question of costs to be argued on a future day if an appropriate consensual approach to costs cannot be achieved.

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Michael G. Quigley J.

**Released:** September 16, 2011