

**CITATION:** Islamic Society of Toronto v. Abowat, 2012 ONSC 1853  
**COURT FILE NO.:** CV-12-9645-00CL  
**DATE:** 20120320

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**COMMERCIAL LIST**

**RE:** Islamic Society of Toronto, Applicant

**AND:**

Ismail Aslam Abowat, Shamim Abowat, Bilal Diwan, Abdul Rahim Jogiat, Ilyas Mullabhai, and M. Wasim Vania, Respondents

**BEFORE:** D. M. Brown J.

**COUNSEL:** R. Treleaven, for the Applicants

D. Edmonds, for the Respondents

**HEARD:** March 16 and 20, 2012.

**REASONS FOR DECISION**

**I. The nature of this dispute amongst members of a non-share corporation**

[1] The Islamic Society of Toronto is a non-share corporation incorporated by letters patent under Part II of the *Canada Corporations Act*, R.S.O. 1970, c. C-32, as amended. The Society operates a mosque, community centre and educational facility at 4 Thorncliffe Park Drive, Toronto (the “Premises”).

[2] Last year a most unfortunate internal governance dispute erupted amongst the members of the Society, leading to a purported expulsion of the incumbent Executive Committee and the purported election of a new Executive Committee. Last October the incumbents initiated a civil action (Court File No. CV-11-437593) in this Court seeking, in effect, injunctive relief which would restore them to the management of the Society. On October 24, 2011, Low J. set April 19, 2012 as the date for a half-day hearing for the motion for an injunction. Low J. ordered: “There is agreement that there are to be signing authorities from both sides”.

[3] Last week the incumbents brought this application before me on the Commercial List seeking urgent relief, alleging that the Society had not yet issued 2011 charitable tax receipts to its members, problems had arisen with the joint signing of cheques, and that the “new” Executive Committee planned to hold a special members’ meeting on March 18, 2012 notwithstanding the pending hearing of the injunction motion.

## II. The March 16, 2012 hearing

[4] At the hearing on March 16, 2012, I made a number of points to those present in the courtroom:

- (i) It is always a most unfortunate turn of events when a non-share corporation such as the Society encounters internal governance problems which divert the organization from concentrating on the religious, educational and charitable objectives for which it was founded;
- (ii) Notwithstanding the level or intensity of the emotions which invariably surround these sorts of internal governance disputes, our Courts are required to consider and determine the dispute in a dispassionate manner, applying the principles of Canadian corporate law under which the Society has been incorporated;
- (iii) A Court will seek to ensure that the rights of members as set out in the organizing corporate documentation – in this case the Constitution of the Islamic Society of Toronto and its By-Laws – are observed by those who seek to manage the Society. A court will work to make sure that the affairs of a corporation, such as the Society, are managed in accordance with its Constitution and by-laws;
- (iv) Transparency, accountability and procedural fairness are some of the principles of the corporate law applicable to organizations such as the Society; and,
- (v) It would be appropriate to put in place a temporary supervisory mechanism to ensure that the financial affairs of the Society are properly managed until the hearing of the motion on April 19, 2012.

[5] I was pleased to see that after hearing those remarks, the lawyers and representatives of both sides in this dispute were able to work out an agreement in principle to appoint a monitor for a short period of time. As a result, on March 16 I made the following endorsement on the application record:

- (1) Civil matter CV-11-437593 transferred to Commercial List;
- (2) Motion(s) scheduled for Apr 19/12 on Civil List will now be heard before me on Com/List – 2 hours;
- (3) Between now and Apr 19/12 no meetings of members may be held;
- (4) Counsel to appear before me on Tuesday, Mar 20 @ 9:30 am to finalize language for appointment of limited purpose Monitor. Counsel can use my Nov 25/12 decision in [*Ontario Korean Businessmen's Association*, 2011 ONSC 6991 (CanLII)] as a guide;
- (5) On Mar 20 I will set a date for a 9:30 the w/o Mar 26 to do final scheduling for Apr 19 hearing.

### III. The March 20, 2012 hearing

[6] This morning counsel appeared before me at a 9:30 appointment. They, together with their clients, had worked hard to develop an agreed order for the appointment of a Monitor. A few points of difference remained. Specifically:

- (i) Whether the mandate of the Monitor to assess the state of accounts and on-going record-keeping practices of the Society should extend back only to October 14, 2011 (the date of the contested change of the Executive Committee) or further back to January 1, 2010. Given that the Monitor will have to review the Society's books and records for 2011 in order to ensure that accurate 2011 charitable tax receipts are issued, I concluded that for the purposes of injecting some stability into the Society's affairs between now and April 19, it was only necessary for the scope of work of the Monitor to extend back to January 1, 2011;
- (ii) Whether Mr. Wasim Vania should be the Contact Person for the Respondents. I indicated to counsel that it was up to each side to select its own Contact Person, and the Respondents have selected Wasim Vania. I will not interfere with that selection. However, I wish to emphasize to both Contact Persons – Ismail Bhayat and Wasim Vania – that they must conduct themselves with integrity and fairness, always keeping in mind that it is the rights of the members as a whole, not a specific faction, which are paramount;
- (iii) On the issue of who should hold keys to the premises, I indicated that I was not prepared to disturb the status quo at this time. On April 19 I will hear full argument on the governance dispute. Between now and then I simply want to put in place a temporary mechanism which will bring down the temperature in this most unfortunate dispute and ensure proper financial management of the Society. As a result, I accepted the suggestion that the financial records of the Society be kept in a separate, locked room – not the general Administrative Office – and that only the Monitor should have the keys to that room. In order for a person to access the room where the financial records are kept, the Monitor must be present at the time of access. The Monitor shall also be given the combination to the safe.

[7] Following this morning's attendance counsel submitted an electronic draft form of interim order.

### IV. Orders

[8] I have approved and signed an order in the form set out as Schedule "A" to these Reasons.

[9] Counsel shall appear before me at a 9:30 appointment on Thursday, March 29, 2012 in order to deal with any outstanding timetabling matters for the April 19 hearing. As I told counsel this morning, there will be no adjournment of the April 19 date. It is very important to the corporate health of the Society that a legal adjudication of the dispute take place in the very near future. I would encourage counsel to work together over the next week to agree on what preparation remains to be done for the April 19 hearing.

[10] In order that all members of the Society are aware of what is happening in this court case, I order all parties to arrange for the posting of these Reasons in their entirety on the Society's website, [www.islamicsofToronto.com](http://www.islamicsofToronto.com), as well as on the public posting board at the Society's Premises where public notices generally are posted. These Reasons must be posted in both places no later than 12 noon on this Thursday, March 22, 2012.

[11] Finally, I wish to emphasize to all members of the Society that by putting in place this temporary, interim order, I have made no decision about which faction in the underlying governance dispute is right and which faction is wrong. All parties must appreciate that one possible result of the April 19 hearing is that the Court does not validate the position of one faction over the other, but decides to order independently supervised elections under section 106 of the *Corporations Act*. Of course, the best solution to this dispute would be for all members of the Society to come together and resolve their internal governance differences before April 19, instead of requiring this Court to make a decision.

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(original signed by)

D. M. Brown J.

**Date:** March 20, 2012



3. THIS COURT FURTHER ORDERS that no meetings of the IST members may be held pending the determination of the April 19, 2012 Motion referred to above;

4. THIS COURT FURTHER ORDERS that on the consent of both parties, BDO Canada Limited, is hereby appointed pursuant to section 101 of the Courts of Justice Act as the Monitor, an officer of this Court, to monitor the business and financial affairs of the IST with the powers and obligations set forth herein. The IST and its members, officers, directors, and employees shall advise the Monitor of all material steps taken pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

5. THIS COURT FURTHER ORDERS that the Monitor is hereby directed and empowered to:

- (a) monitor any and all funds received or disbursed by the IST;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the property of the IST (the “**Property**”), its business, and such other matters as may be relevant to the proceedings herein;
- (c) have full and complete access to the Property, including the Premises at 4 Thorncliffe Park Drive, Toronto, books, records, data, and any financial documents of the IST, including receipts and bank statements, whether in paper or electronic form, to the extent that it is necessary to adequately assess the IST’s business and financial affairs or to perform its duties arising under this Order;
- (d) assess the state of accounts and on-going record-keeping practices of the IST during the period of January 1, 2011 until the termination of the Monitor’s appointment and to ensure that the accounts and financial records of the IST are being kept in accordance with its obligations as a charitable organization;

- (e) assist and oversee the issuance of all outstanding charitable tax receipts for the 2011 fiscal year to the IST's donors forthwith. In completing this obligation, the Monitor shall make best efforts to use the volunteer staff of the IST, including, but not limited to Mr. Ismail Bhayat and Mr. Abdul Khaliq Gosla, who have previous experience with the issuance of charitable tax receipts on behalf of the IST;
- (f) perform such other duties as are required by this Order or by this Court from time to time.

6. THIS COURT FURTHER ORDERS that to facilitate the Monitor's ability to carry out its obligations under this Order and in the aim of causing as little disruption to the IST community and its normal business operations as possible, that:

- (a) there shall be one contact person for the Applicant and the Respondents who shall be the primary point of contact for the Monitor in carrying out its duties under this Order (the "**Contact Person**"). For greater clarity:
  - (i) the Contact Person on behalf of the Applicant shall be Ismail Bhayat;
  - (ii) the Contact Person on behalf of the Respondents shall be Wasim Vania;  
and
  - (iii) any inquiry of the Monitor from the IST membership or employees shall be directed through a Contact Person.
- (b) All documentary and electronic financial records, hardware and related software belonging to the IST that are in the possession of any other members of the IST shall be delivered forthwith to the IST office and delivered to the Monitor;
- (c) all keys or combinations to the IST office, any storage space, filing cabinets, or vault within the IST Administrative Office shall be delivered to the Monitor forthwith. The Monitor shall ensure that one set of keys to the IST Administrative Office is provided to:

- (i) each of the three (3) Imams employed by the IST;
- (ii) the IST's evening school administrator, Umer Taliya; and
- (iii) The Contact Person for the Respondents.

7. THIS COURT FURTHER ORDERS that on or before 12 noon, Thursday, March 22, 2012, the Monitor shall ensure that all the books, records and other financial documents of the IST are placed in a separate, secure, locked room at the Premises to which only the Monitor shall have the keys. The Monitor shall provide access to the financial records of IST to those persons whom the Monitor considers necessary and appropriate for the proper maintenance of IST's financial books and records, but such persons may only access such financial records in the presence of the Monitor.

8. THIS COURT FURTHER ORDERS that the Monitor shall not take possession of any property of the IST and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of any property or other asset of IST. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in possession of any of the property within the meaning of any environmental legislation, unless it is actually in possession.

9. THIS COURT FURTHER ORDERS that, in addition to the rights and protections afforded the Monitor as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by any applicable legislation.

10. THIS COURT FURTHER ORDERS that the Monitor shall be paid their reasonable fees and disbursements at their standard rates and charges by the IST as part of the costs of these proceedings. The IST is hereby authorized and directed to pay the accounts of the Monitor on a bi-weekly basis from the IST bank account, and, in addition, the IST is hereby directed to pay to the Monitor a retainer in the amount of \$15,000, to be held by them as security for payments of their fees and disbursements outstanding from time to time.

11. THIS COURT FURTHER ORDERS that the Monitor shall pass its accounts from time to time, and for this purpose the accounts of the Monitor are hereby referred to the Honourable Mr. Justice Brown of the Commercial List of the Ontario Superior Court of Justice.

12. THIS COURT FURTHER ORDERS that the Monitor shall be entitled to the benefit of and is hereby granted a charge over the bank account of the IST and any future cash receipts payable to the IST (the “**Administrative Charge**”). For greater clarity, the Administrative Charge does not attach to the physical property of the IST, including the Mosque so as to be compliant with Article 9 of the IST Constitution. The Administrative Charge shall not exceed an aggregate amount of \$30,000, as security for the Monitor’s professional fees and disbursements incurred at the standard rates and charges of the Monitor.

13. THIS COURT FURTHER ORDERS THAT the Monitor’s appointment shall terminate upon the determination of the motion to be heard by the Honourable Mr. Justice Brown on April 19, 2012 or upon further order of this Court.

14. THIS COURT FRUTHER ORDERS that on or before 12 noon on Thursday, March 22, 2012, the parties must post the Reasons for Decision dated March 20, 2012 in their entirety on the IST website, [www.islamicsocietytoronto.com](http://www.islamicsocietytoronto.com), as well as on the public posting board at IST’s Premises where public notices are generally posted.

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D. M. Brown J.