

Court of Queen's Bench of Alberta

Citation: Hon v Liao, 2022 ABQB 43

Date: 20220113
Docket: 2103 02814
Registry: Edmonton

Between:

Tham Fatt Hon and Hung Phuc Ly

Applicants

- and -

**Demei Liao and Hakka Tsung Tsin
Association of Edmonton**

Respondents

**Memorandum of Decision
of the
Honourable Madam Justice S. Leonard**

I. Introduction

[1] In March of 2020, an election was held to select the new executive members of the Hakka Tsung Tsin Association of Edmonton (the Election). The Applicants allege that the Election was not carried out in accordance with the Association's bylaws, and that the conduct of then-president Demei Liao amounted to oppression of the Association's members.

II. Issues

[2] There are three main issues to be determined:

1. Does Mr. Ly have standing to bring this application?
2. Does this Court have jurisdiction to adjudicate this matter, either under the common law or the *Business Corporations Act*, RSA 2000, c B-9?
3. Was the Election conducted in accordance with the Association's bylaws?

III. Position of the parties

Mr. Hon and Mr. Ly

[3] Tham Fatt Hon and Hung Phuc Ly are the Applicants in this matter. Mr. Hon has been an honorary president of the Association since the early 1990s. Mr. Ly is a former member of the Association. He served as chairman of the Supervisory Board for 12 years leading up to these events.

[4] The Applicants argue that Mr. Ly has standing to bring this Application as he was a member in good standing of the Association at the time of the Election.

[5] They state that this Court has jurisdiction to adjudicate the matter because the Association and its members had an objective intention to form legal relations. The Association's bylaws constitute a contract between the Association and its members. As such, the Applicants have a justiciable civil right to have the bylaws enforced by this Court. In the alternative, they argue that the Court can grant an oppression remedy pursuant to the relevant provisions of the *Business Corporations Act (BCA)*.

[6] The Applicants assert that the Election was not held in accordance with the Association's bylaws because 1) voting was not done by secret ballot; 2) instead of electing the members of the Executive and Supervisory Boards, the president was directly elected; and 3) Ms. Liao personally appointed all members of the Executive and Supervisory Board — they were not elected by the members.

[7] The Applicants ask this Court for a variety of relief, including:

- A declaration that the election was invalid;
- An injunction enjoining Ms. Liao from holding herself out as the duly elected president of the Association;
- an order that an Association election be held in accordance with the Bylaws, with Mr. Ly organizing and overseeing the election, as soon as is reasonably and safely possible;
- an order that Ms. Liao indemnify the Association for their costs in this action; and
- an order that the Association indemnify the Applicants for their costs in this action, and that Ms. Liao indemnify the Association for those amounts.

Ms. Liao and the Association

[8] The Respondents' position is that Mr. Ly does not have standing to bring this application because his membership in the Association lapsed in June of 2020. Furthermore, they say this Court does not have jurisdiction to intervene in the internal affairs of the Association. They argue

that there is no justiciable right to be vindicated by the Association's members, either contractual or proprietary. They further argue that the oppression remedy is not available to the Association in this case. They argue that the oppression remedy is only available in the context of an application for liquidation and dissolution, neither of which has been brought by the Applicants in this proceeding.

[9] If jurisdiction is established, the Respondents argue that the Election was held in accordance with the bylaws and applicable democratic principles.

IV. Background

[10] There were numerous allegations and concerns about election irregularities raised by the Applicants in their materials. I have reproduced only those that are supported by evidence and relevant to my decision.

The Association

[11] The Hakka Tsung Tsin Association of Edmonton is a voluntary association registered pursuant to the *Societies Act*, RSA 2000, c S-14. The Association is subject to a set of bylaws that contain requirements for membership, governance, and elections. The bylaws articulate the purpose of the Association as follows:

The Association is a non-profit organization to promote friendship, unity and welfare of members. The organization upholds the values of peace and democracy and to [sic] promote Chinese culture.

[12] The Association's leadership is comprised of two boards: the Executive Board of Directors and the Supervisory Board of Directors (collectively, the Boards). The Executive Board consists of the positions of president (who also serves as chairman), vice president, secretary, treasurer, and various other positions responsible for organizing the Association's activities. Other than the president, each position is filled by at least two people. The Supervisory Board is responsible for monitoring the Executive Board of Directors and consists of a chairman, vice-chairman and auditing supervisor.

[13] There are three different categories of membership outlined in the bylaws: basic, associate, and honorary. All prospective members must apply and be approved by the Executive Board to become a member.

[14] The Association requires members to pay dues as determined by the Boards.

[15] In addition to membership dues, the Association funds its operation through participation in the Alberta Gaming, Liquor & Cannabis charitable gaming program (the AGLC Program). The basic eligibility standards required for groups to participate in the AGLC Program require the group to have 75% or more of its executive democratically chosen from its volunteer base. Up to 25% of its executive can be appointed by an external entity.

[16] According to the Applicants, as of March 2020, the Association had approximately \$100,000 of savings in its multiple bank accounts.

[17] Members are able to participate in programming run by the Association, as well as vote in elections and be elected to the Boards. Membership in the Association is contingent upon upholding the bylaws:

(11) A member who violates any of the bylaws of the Association and damages its reputation, may have his membership revoked in an Executive Board meeting by majority vote.

The Election

[18] The Association's 16th term expired in March 2020. On March 5th, two advertisements were placed in The Chinese Journal newspaper, in both English and Chinese (the Election Ad).¹ The English version read:

2020 Election Board of Directors

Registration: March 5, 2020 to March 22, 2020

Election date: March 29, 2020 10am to 4pm

Place: Hakka Tsung Tsin Association of Edmonton

We welcome all members manage to elected the new directors; Members who have joined our board for two years will qualify to be the candidates for the new board of director's election.

[19] A translation of the Chinese version read:

The 16th Executive and Supervisory Boards of Directors of the Association from 2018 to 2020 has expired. According to the by-laws, a new term of Directors should be elected to take over in order to promote the business of the Association. An Election Committee Group has been formed to handle election matters.

...we eagerly anticipate that competent members who are willing to serve the community, keenly come to the Association in person to submit their names for the two Boards of Directors' election between March 5 to March 22...

According to the recommendation during the meeting between the Executive and Supervisory Boards of Directors, we specially and sincerely recruit the followings to be the members of the Election Supervisory Committee.

DeMei Liao, Hung Phuc Ly, Cheuk Sin Ma, De Cheung Lu, Man Onn Chan, Fion Pon, William Chung.

Sincerely,

Election Organizing Committee of Hakka Tsung Tsin Association of Edmonton

[20] Mr. Ly deposed that in his 12 years of serving as chairman of the Supervisory Board, he was always involved with election planning to ensure that it was run ethically and in accordance with the bylaws. Although his name was listed in the advertisement, he had no knowledge of the Election Ad before viewing it in The Chinese Journal, and he was not aware of any meeting having been held to form an Election Supervisory Committee.

[21] The Government of Alberta began implementing public health orders to combat the COVID-19 pandemic in mid-March. On March 17, the Chief Medical Officer of Health issued an order prohibiting gatherings of more than 50 people, including at places of worship.

¹ Both parties referred to the advertisements as being in Chinese. They did not specify a particular dialect.

[22] Mr. Ly expressed concern to Ms. Liao and other members of the Boards about proceeding with the Election since many of their members are elderly and vulnerable to infection. In response, Ms. Liao informed Mr. Ly and the Association leadership in their text message group that voting would begin the next morning, March 22, to reduce the number of people attending the Association building at the same time. She also stated that the voting time on March 29 would end at 1pm rather than the advertised 4pm. There was no public announcement made regarding either of these changes. However, Ms. Liao personally invited at least some members of the Association to vote on the 22nd, including Mr. Song and Mr. Banh.

[23] Mr. Ly did not participate in the Election due to concerns about contracting COVID-19. He contacted Ms. Liao on March 22 and asked her to remove his name from the list of nominees. Only 70 members out of approximately 300-400 voted in the Election. Mr. Ly estimates that in prior elections, an average of 100-150 members voted.

[24] Mr. Song, Mr. Bahn, and Mr. Hon voted in the Election. When they arrived to vote, they were handed a ballot with their membership number printed on the bottom. The translated text of the ballot read:

**The 17th Executive and Supervisory Boards of Directors of
Hakka Tsung Tsin Association of Edmonton
Election Ballot**

Election rules:

1. At the time of the election, each household or individual has only one ballot, one candidate shall be elected from the ballot. If more than one candidate is checked off, this ballot becomes invalid. The candidate with the most votes becomes the 17th President.
2. Please put a check mark “✓” beside the name of the candidate you wish to vote for.
3. The ballot must have the seal of the Association and the signatures of the President and Vice President of the Election Organizing Committee to be considered valid.

[25] The Ballot listed 17 candidates, including Ms. Liao, Mr. Ly, and Mr. Chung.

[26] Mr. Song, Mr. Bahn, and Mr. Hon deposed that in past elections, they voted to elect members of the Executive and Supervisory Boards. The process for the Election in March 2020 differed in that they were being asked to vote directly for the president. They understood this to be contrary to the bylaws.

[27] These members were also troubled by the fact that their membership numbers were written on the bottom of the ballots, making them identifiable. The Respondents admit that this procedure was followed in the Election to ensure that members did not cast multiple votes.

[28] On March 29, 2020, Ms. Liao posted a tally of the Election results to the text group. The tally was a reproduction of the ballot with the number of votes each candidate received beside their name. It was titled “List of 17 of the 17th New Executive and Supervisory Boards of Directors (The 17th Presidential Election)”. Ms. Liao received 60 votes, Mr. Ly received 9, and Mr. Chung received 1.

[29] On June 25, 2020, the following announcement appeared in The Chinese Journal:

The 17th Hakka Tsing Tsun Association of Edmonton presidential election was successfully completed. The new term of board director committee is formed. According to the covid-19 pandemic, the swearing in ceremony of directors of the new 17th committee will be after the pandemic. [emphasis added]

[30] The announcement listed the names and positions of the Boards. Five individuals who were not included on the ballot were listed as having a position on one of the Boards. Six of the members whose names appeared on the ballot (including Mr. Ly's) did not receive a position on either of the Boards.

V. Law and Analysis

Issue 1: Does Mr. Ly have standing to bring this application?

[31] There is no dispute that Mr. Hon has standing to bring this application. Mr. Ly was a member at the time of the Election, but his membership has since lapsed.

[32] If Mr. Ly had never been a member of the Association, he would not be able to assert contractual rights as between him and the Association. However, since he was a member at the time of the alleged breach of the bylaws, he is able to claim a contractual or proprietary interest in the Association: *Sandhu v Siri Guru Nanak Sikh Gurdwara of Alberta*, 2015 ABCA 101 at para 71 [*Sandhu*]; *Chinese Benevolent Association of Edmonton v Chinatown Multilevel Care Foundation*, 2019 ABCA 339 at para 10, citing *Slovenian Canadian Association of Edmonton v Koncar*, 2014 ABQB 151.

[33] I find that Mr. Ly has standing to bring this application.

Issue 2: Does this Court have jurisdiction to adjudicate this matter, either under the common law or the *Business Corporations Act*?

a) Common law jurisdiction

[34] Courts do not have jurisdiction in all cases to adjudicate the disputes of voluntary associations. Members of voluntary associations seeking to have a Court review the decisions made by the voluntary association must show that there is an underlying legal right at stake, such as a contractual right: *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at paras 24 and 28.

[35] In *Ethiopian Orthodox Tewahedo Church of Canada St Mary Cathedral v Aga*, 2021 SCC 22 [*Aga*], the Court considered whether the bylaws of a Church constituted a contract between the church and its members. In that case, the Archbishop expelled five members from the congregation. The expelled members alleged that their expulsion violated the principles of natural justice, and that the Church leadership failed to follow the Church's bylaws and constitution in expelling them.

[36] The Supreme Court emphasized that courts cannot rely on the existence of bylaws or a constitution alone to find that membership in an association is contractual. Such a determination must be made using general contract principles (offer, acceptance, consideration), and objective intention to enter into legal relations. The Court stated at para 49:

Membership in a voluntary association is not automatically contractual. Even a written constitution does not suffice. Membership is contractual only where the conditions for contract formation are met, including an objective intention to create legal relations. Such an intention is more likely to exist where property or employment are at stake. It is less likely to exist in religious contexts, where individuals may intend for their mutual obligations to be spiritually but not legally binding. A voluntary association will be constituted by a web of contracts among the members only where the conditions for contract formation are met.

[37] The Court found that there was no evidence of an objective intention to enter into legal relations. The members were not aware of the bylaws when they joined the organization: *Aga* at para 8. Although the five respondents served on an *ad hoc* committee guided by the Church's rules and regulations and paid money to the Church, the Supreme Court considered those facts irrelevant. There was "nothing that [could] be characterized as an objective intention to make an offer on the part of any of the appellants, and nothing that [could] be characterized as an objective intention to accept on the part of any of the respondents, or vice versa:" *Aga* at para 52.

[38] Here, the Applicants cite pre-*Aga* cases in their brief as Alberta authority that courts have the power to ensure that associations are operating in accordance with their bylaws. However, they are of limited application to this case as, as 1) the existence of bylaws no longer automatically gives rise to a justiciable right (as per *Aga*); and 2) some of the cases concern statutory requirements under the *Religious Societies' Land Act*, RSA 2000, c R-15 (*The Canadian Islamic Trust Foundation v The Muslim Community of Edmonton Mosque and Muslim House*, 2019 ABQB 872; *Sandhu*) which are not present in this case.

[39] *Aga* has been applied by this Court in the context of a minor hockey dispute: *Chinook Park-Kelvin Grove-Eagle Ridge Community Association v Minor Hockey Association of Calgary*, 2021 ABQB 532 [*Chinook Park*]. A community association representing families living in three southwest Calgary neighbourhoods challenged a decision by Hockey Calgary (incorporated under the *Societies Act*) to redraw the boundaries of its hockey associations. The decision meant that some players had to change which minor hockey association they played with. The Applicants sought a declaration that the decision was made in breach of the bylaws and rules of Hockey Calgary; the decision breached Hockey Calgary's contractual relationship with its members; and that the decision was invalid. In the alternative, they argued that the oppression remedy should be used to set aside the redrawn boundaries: *Chinook Park* at para 1.

[40] The Applicants argued that they had an underlying legal right to ground their claim for relief as contemplated in *Aga* because they had entered into contractual relations with Hockey Calgary. The elements of a contract were defined by the Applicants as such: the "offer" was the public advertisement on Hockey Calgary's website for players, the "acceptance" was the player signing up to play with their community hockey association, and the "consideration" was the registration fees paid to the association, which were then passed on to Hockey Calgary. They argued that the existence of Hockey Calgary's bylaws and regulations confirmed that parents and players had rights with respect to decisions made by Hockey Calgary.

[41] The Court rejected these arguments and dismissed the application. While players under the umbrella of Hockey Calgary agreed to be bound by a "common set of rules," this was not evidence of an underlying objective intention to enter into legal relations. The Court also found that any potential contract would have only been formed between the players and their

community hockey associations—not the players and Hockey Calgary. The Court stated at para 60:

What this traditional contract analysis reveals [sic] is that all of the dealings and interactions are between the players, their families, and the community hockey association, not between players and Hockey Calgary. Even assuming that any objective intention to create legal relations exists in this scenario, I am of the view that the parties to such a contract would be the individual player and his or her community hockey association. In this instance only Hockey Calgary is named as a Respondent in this proceeding. As such, it is not necessary for me to decide whether a legally enforceable contract exists as between a hockey player and his or her community hockey association. However, based on *Aga*, I am inclined to the view that no such intention to create legal relations can be found in these circumstances involving children and young adults playing recreational hockey.

[42] The decision of *Varjadic et al v Radoja et al*, 2021 ONSC 5822 [*Varjadic*] also involved an application of *Aga*. It arose from a dispute between members of a branch of the Royal Yugoslav Army Combatants' Association in Canada-Draza Mihailovic (the RYACA). The RYACA's main asset was a 16-acre parcel of land (the Property) where the RYACA conducted meetings and events for their members.

[43] As membership in the RYACA decreased over time, disputes arose between the members as to the future of the organization, and ultimately, what to do with the Property. Some members thought the Property should be sold, while some thought the Property should remain with the RYACA.

[44] The plaintiffs argued that the RYACA Board did not act in accordance with the RYACA's governing rules in terminating memberships and in making decisions about the use and sale of the Property. They asked the Court to grant an order allowing for an AGM to be called where a new executive board could be elected to vote on the future of the RYACA and the Property.

[45] The Court found that unlike in *Aga*, the members of the RYACA had established underlying legal rights (with both proprietary and contractual aspects) which had been interfered with by the actions of the Board:

170 On the facts as I have found them, I conclude that that the actions of the 2010 Board on and after April 9, 2011 operated to deprive the members whose memberships were treated as "terminated". I also find that the actions taken by the 2010 Board, effectively interfered with the legal and contractual right of affected members ... to enjoy the use of the Property and to share in decision-making concerning its future use.

171 In my view, the actions of the 2010 Board (or some of them) to transfer the Property and to take steps to sell the Property, and, thereby, to liquidate the RYACA's only significant asset, affected the proprietary and contractual rights of all of its members. As such, the relief sought by the plaintiffs for themselves and the affected third parties, is a vindication of their legal rights, as members of the RYACA: see *Ethiopian v. Aga*, at paras. 29, 31, 40, 42 and 49.

172 Based on the principles set out in *Ethiopian v. Aga*, I conclude that this court has authority to intervene in the affairs of the RYACA.

[46] The *Aga* analysis is fact-driven, and there are multiple factors that distinguish the present case from *Aga* and *Chinook Park*. Firstly, the Association is not a church or religious organization. As stated in *Aga* at para 34, it can be more difficult to show an objective intent to enter legal relations in the case of religious organizations. While there may be an aspect of religious practice embedded in the Hakka Chinese culture, the Association exists for a largely secular purpose: to promote friendship, Chinese culture, and the unity and welfare of members while upholding the values of peace and democracy. This suggests that the members were not participating in the organization out of religious obligation alone.

[47] Further, unlike in *Aga*, it is clear that the Applicants in this case were well aware of the Association's bylaws at the time of the Election. Mr. Hon stated in his affidavit: "Voting directly for the president is inconsistent with the bylaws of the Association, which bylaws I am familiar with." Mr. Ly, in his reply affidavit, stated, "I never asked Ms. Liao to include me as a candidate in the Election, and even if I had, at that time I believed that the Election would be conducted in accordance with the Bylaws and past Association practice." Additionally, as chairman of the 16th Supervisory Board, Mr. Ly stated that had the responsibility to ensure that elections were conducted in accordance with the Association's bylaws. I accept that he would have been familiar with the bylaws in order to fulfill his duties.

[48] There is also some evidence that a portion of the membership at large was aware of the bylaws at the time they became members. The bylaws stipulate that associate-level membership can be attained by individuals who are not of Hakka descent but who are "willing to abide by the bylaws of the Association." This suggests that knowledge of and a promise to adhere to the bylaws was a condition of membership for at least some of the members of the Association. Present and former members of the Boards would also be aware of the bylaws.

[49] It is also clear from the structure of the Association that the mandatory membership fees are not paid for a solely charitable or religious purpose. The bylaws are explicit that membership fees are revenue for the operation of the Association, alongside grants and AGLC Program revenue. In return, the members receive rights to elect leadership and run for leadership in the Association, and receive specialized activities, education, programming, and assistance during "major life events."

[50] The basic elements of a contract are present in this case. The offer is the nomination or application by prospective members, made to the Executive Board, to become members of the Association, along with the consideration of a membership fee. The acceptance is the membership approval by the Executive Board. The value that flows to the members include rights and benefits of the organization. The bylaws set out the rights, obligations, and conditions of the relationship.

[51] There is evidence of objective intention to enter into legal relations on behalf of the members and Association. Associate members must agree to be bound by the bylaws before their offer is accepted by the Executive, and memberships may be terminated for failure to follow them. I find that the Applicants have established that at the time of the Election, there was a contractual relationship between themselves and the Association.

[52] This dispute contains an important proprietary aspect as well. The Association raises funds for its activities via membership fees, grants, and participation in the AGLC Program. Through the fundraising efforts of the members and their fees, the Association holds approximately \$100,000 in the bank. As Mr. Ly stated, those funds represent years of Association members' contribution of time and money to the Association.

[53] At the heart of this dispute is whether the Association has effectively been taken over by one individual in defiance of the bylaws. Similar to *Varjadic*, that individual holds control over the assets of the Association—assets which have been raised by the members and which they retain an interest in.

[54] The Applicants have thus established an underlying contractual and proprietary right that can be adjudicated by this Court. An invalid election of the governing Boards and president infringes both their contractual rights to elect their leadership as well as a loss in control as to how Association funds are used. I find that the Court has jurisdiction to adjudicate the matter.

b) Business Corporations Act

[55] Given that I have found this Court has jurisdiction under the common law to adjudicate the matter, I do not have to determine whether the Applicants also have access to the *BCA*'s oppression remedy as incorporated by s 35 of the *Societies Act*. However, I am inclined to agree with the Court's conclusion in *Chinook Park* that there is no stand-alone right for an "interested party" to seek an oppression remedy in relation to an organization under the *Societies Act* outside a liquidation or dissolution proceeding commenced under s 215: *Chinook Park* at para 180.

[56] There is no winding up application in respect of the Association in this case. Therefore, this Court does not have jurisdiction to adjudicate this matter by virtue of the *BCA*.

Issue 3: Was the Election conducted in accordance with the Association's bylaws?

[57] I find that the Election was not conducted in accordance with the bylaws for the following reasons:

The Election was improperly conducted to select a president, rather than an Executive Board of Directors

[58] The Applicants argue that the bylaws require an election of Executive and Supervisory Board members. The candidate with the most votes becomes the coordinator of the Executive Board. The coordinator then calls a meeting where the newly elected members of the Boards are appointed to their various responsibilities as officers (including the office of the president). I agree that this is how the Election should have been run, as described in Chapter 4 of the bylaws:

Chapter 4 - Election

- (1) The Term of the Executive Board of Director is two years, and it is formed by voting through secret ballots.
- (2) When the two-year term expires, a Director may self-nominate or be nominated to participate in the election.
- (3) The candidate\ [sic] receiving the highest votes shall be the coordinator of the current Executive Board and shall call an Executive Board Meeting in fifteen days to hold a meeting to select officers.

[59] The Respondents' position is that the Election was conducted properly. They explained that, by convention, the newly elected directors elected the president from the candidates nominated by the voters. The president then appointed the members of the Boards. They submit nothing in the bylaws disallows the president from appointing the Boards. It was Mr. Chung's evidence that the existing directors were all reappointed because no one else had come forward as a candidate.

[60] The Respondents acknowledge that the published election results referred to "The 17th Hakka Tsing Tsun Association of Edmonton *presidential election*," [emphasis added] however, they deny that there was a direct election of the president. They liken the process to presidential elections in the United States where voters cast ballots for members of the Electoral College who in turn elect the president.

[61] The Respondents are correct that nothing in the bylaws disallows the person who holds the position of president from appointing the newly elected Board members to their various responsibilities. In order to be president, a candidate puts his or her name forward for election to the Executive Board. If that candidate garners the most votes from the general membership then they would, pursuant to the bylaws, become the coordinator. There is nothing in the bylaws stating that the coordinator could not also be appointed to position of President—in fact, the bylaws are silent as to how appointments are made and whose job it is to do the appointing.

[62] However, where the Respondent's argument fails is that in order for the president to have been "elected" by the newly elected Executive Board, there has to have been an election of the Executive Board carried out in the first place. By their own admission, there was no such election in March of 2020.

[63] Mr. Chung explained that since no new candidates for the Boards had come forward, the members of the Boards were all reappointed. The general membership voted for their preferred presidential candidate in order to assist the Executive Board in selecting a president.

[64] Despite Mr. Chung's assertion, the evidence shows that the members of the Board were not all reappointed. There were outgoing Directors listed as candidates on the ballot who did not receive a position on the Executive Board. Further, five individuals received a position even though they were not on the ballot and did not previously hold a position on the Board. These individuals were appointed without having been voted for by the membership.

[65] I find that the Respondent's assertion that this was not a direct election of the president is not supported on the facts. The language of the ballot and the results announcement, combined with Ms. Liao's evidence that she "was elected by a decisive majority of the voting members (60 out of 70)" supports the finding that the Election was conducted for the purpose of directly electing the Association's president.

[66] I find that the electoral method used in March 2020 violated the Association's bylaws. Further, this process breached the proprietary rights of the Association's members by removing their ability to select who manages the assets of the Association. It also jeopardized the Association's eligibility to participate in the AGLC Program, which requires that 75% of the Association's executive be democratically chosen from its volunteer base.

The Election was not conducted by secret ballot

[67] The Respondents admit that each voter's ballot was marked with their membership number. They argue that the Election was nevertheless held by secret ballot because 1)

membership numbers are not easily identifiable, and 2) there is no evidence that they were used to identify who the members voted for.

[68] I reject the Respondent's assertion that the ballots were secret. The ballots contained information that made it possible to identify each voter. This is contrary to the requirements of the Association's bylaws. It does not matter whether the numbers were actually used to identify who members voted for. The mere possibility of identifying voters means that the ballots were not secret. I find that the Election was not conducted by secret ballot.

VI. Conclusions

[69] I find that the Election was not carried out in accordance with the Association's bylaws and as such breached the rights of the Applicants. The Election is declared invalid and another one shall be conducted in accordance with the bylaws.

[70] In order to balance the interests of all involved, and keeping in mind that the next election was originally scheduled to occur in March of 2022, I order as follows:

- The 17th Election of the Association is declared invalid;
- Ms. Liao is prohibited from holding herself out as president of the Association. Ms. Liao has now served as president of the Association for four years.
- The 16th Supervisory Board is immediately reinstated for the purpose of conducting an Association election in accordance with the Association's bylaws;
- Mr. Ly is permitted to immediately reinstate his membership in the Association provided that he pays the required membership dues. Once reinstated, he will resume his position as the chairman of the 16th Supervisory Board for the purpose of conducting an Association election in accordance with the Association's bylaws;
- An election of the 17/18th Executive and Supervisory Boards shall be conducted no later than **February 18, 2022**. Those elected will serve for a term of up to two years and two months. There will be no further election in March 2022. The Association's regular election schedule will re-commence in March 2024; and
- The Applicants are entitled to their costs. If the parties are not able to agree on the quantum of costs, they are to contact my assistant within thirty days to arrange a time and manner in which that issue may be addressed.

Heard on the 21st day of October, 2021.

Dated at the City of Edmonton, Alberta this 13th day of January, 2022.

S. Leonard
J.C.Q.B.A.

Appearances:

Daniel England, Mosaico Law
for the Applicants

Scott Horne, Queck & Associates
for the Respondents