

[7] He asserts that the Association should be providing direct financial support to the members and that it should also fund his efforts to enforce the judgment he received against the Islamic Republic of Iran.

[8] Mehrzad brings an Application for an oppression remedy pursuant to s. 253(3) of the *Canada Not-for-Profit Corporations Act*, S.C. 2009, c. 23 (“CNCA”). He seeks the following:

- Full financial disclosure, financial statements (audited or not) and all supporting documentation of the business, and affairs of the Association from its date of incorporation.
- Production of Minutes of all Directors’ and Members’ meetings.
- Provision of a list of all Members including contact information.
- Production of all written and other submissions made to the Canadian Director of Not-for-Profit Associations under s. 25(1) of the CNCA as well as an Order setting aside the Director’s decision made pursuant to this section.
- An Order Requiring the Association to forthwith call and hold a meeting of Members of the Association under Section 168 of the CNCA to consider whether the objects of the Association include financial support and support for execution efforts in the proceeding *Zarei v. Iran*.

[9] There is also certain relief claimed in the alternative including an Order for the passing of accounts, a representation Order under r. 10.01 so that Mehrzad can represent any person who is a member of the Association, an Order appointing a receiver and manager, an injunction freezing the Association’s expenditures, or the appointment of a public accountant.

[10] I note at the outset that the Association served a final Affidavit on November 20, 2024, in response to an affidavit from a former director, Javad Soleimani, dated October 25, 2024. Mehrzad took no issue that I should consider this Affidavit but wanted me to take into account an email written by Javad Soleimani in response. He says that he was not able to obtain sworn evidence from Mr. Soleimani because of the late service of the November 20, 2024 affidavit provided by the Association.

[11] Mehrzad said that if I would not consider the further email from Mr. Soleimani, then he wanted time to file a further affidavit. This would no doubt lead to a further response from the Association and further cross examinations.

[12] This matter has already used up a great deal of the parties’ resources. Given the materials before me, it would not be proportional to the issues to continually permit additional evidence. There has already been one adjournment for this purpose which led to the affidavit of Mr. Soleimani. I am not prepared to allow this. Mr. Soleimani’s email is short and it is unclear to me why it could not have been provided in a sworn affidavit in time for the November 27, 2024 hearing.

[13] To bring finality to this matter, I am prepared to accept the Association's further affidavit as agreed by Mehrzad and treat the email from Mr. Soleimani in response as if it had been sworn, because in the end, it changes nothing.

Decision

[14] For the reasons that follow, I am dismissing this Application.

[15] At its core, this dispute is about corporate governance.

[16] The decisions made by the Association's Board have not violated any reasonable expectation Mehrzad had. The Board is entitled to deference pursuant to the business judgment rule.

[17] Further, Mehrzad has failed to avail himself of any remedies and options that he has to pursue his goals under the CNCA using the Association's democratic processes.

Issues

- Issue 1: Has the Association been operated in a manner that is oppressive or unfairly prejudicial or which unfairly disregards Mehrzad's interest?
- Issue 2: Is there a basis for any of the alternative relief sought?

Analysis

The Law

[18] Section 253 (1) of the CNCA provides that on the application of a complainant, a court may make an order if it is satisfied that, in respect of a corporation or any of its affiliates, any of the following is oppressive or unfairly prejudicial to or unfairly disregards the interests of any member, or causes such a result:

- (a) any act or omission of the corporation or any of its affiliates.
- (b) the conduct of the activities or affairs of the corporation; or
- (c) the exercise of the powers of the directors or officers of the corporation.

[19] Section 253 (3) of the CNCA specifies that the court may make any interim or final order that it thinks fit.

[20] To succeed in an oppression claim under the CNCA, a complainant must satisfy a two-part test: (a) the complainant must prove that they had a reasonable expectation regarding a right in their favour that has been infringed; and (b) if (a) can be proven, they must demonstrate that their expectation was violated by conduct that demonstrates "oppression", "unfair prejudice" or "unfair

disregard" of a relevant interest: *Watto v. Immigration Consultants of Canada Regulatory Council*, 2019 ONSC 701.

[21] The Supreme Court has confirmed that two related inquiries must be conducted in a claim for oppression: (a) Does the evidence support the reasonable expectation asserted by the claimant; and (b) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest?: *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69 at para 68.

[22] Not every unmet expectation, even if reasonably held, constitutes oppression: *BCE* at para 67.

Mehrzaad's Grievances

[23] Here I evaluate Mehrzaad's complaints.

Financial Support

[24] Mehrzaad's main complaint is that the Association has refused to provide financial support for family members and to fund his civil litigation.

[25] To evaluate this claim, one must consider the Association's constating documents and its actual activities.

[26] The Association's purpose is set out in its Articles of Incorporation (the "Articles"), as follows (the "Purpose"):

- (a) Creating a community for collaboration and support of the families of victims of Flight PS752.
- (b) Seeking truth and justice for the victims.
- (c) Keeping the memories of the victims alive through memorials and related activities.

[27] These are broadly stated purposes open to interpretation.

[28] Mehrzaad interprets "creating a community for collaboration and support of the families of victims of Flight PS752" as requiring the Association to give family members financial support and also fund the litigation he brought. One former Board member who has resigned, Mr. Mahmoud Zibaie agreed that when the Association was formed, he participated in discussions where they discussed the possibility that providing support included financial support for members.

[29] However, the Board has interpreted this provision as meaning the community is established for collaboration and support, not that the Association was created to provide financial support. I note that the word "financial" does not appear in the Purposes.

[30] I also note that the majority of the members of the Association were not plaintiffs in Mehrzad's civil suit and will receive no financial benefit from that proceeding. The civil claim was not related to or affiliated with the Association in any way.

[31] As well, providing direct financial support to members could risk the Association's status as a tax-exempt Not-For-Profit corporation.

[32] The Supreme Court of Canada has acknowledged that the "business judgment rule" is a defence to an oppression remedy claim. The court looks to see that the directors have made a reasonable decision, not a perfect decision. Provided the decision taken is within a range of reasonableness, the court ought not to substitute its opinion for that of the board. As long as the directors have selected one of several reasonable alternatives, deference is accorded to the board's decision: *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 at paras 64-65.

[33] The business judgment rule protects boards and directors from those who might second-guess their decisions. This approach recognizes the autonomy and integrity of a corporation and the expertise of its directors. The court should not intervene in decisions that have been made honestly, prudently, in good faith and on reasonable grounds. In such cases, the board's decisions will not be subject to microscopic examination and the Court will be reluctant to interfere and usurp the boards' function in managing the corporation: *Hadjor v. Homes First Security*, 2010 ONSC 1589.

[34] The Court of Appeal has acknowledged that while the business judgment rule was developed in the context of for-profit businesses, it has been applied to not-for-profit corporations as well: *3716724 Canada Inc. v. Carleton Condominium Corporation No. 375* at para 50; *Hadjor* at paras 47-52.

[35] The Association has decided that it would fulfill the Purposes, not through the provision of financial support but through the following activities:

- a campaign to pressure the international community to bring those responsible to justice before the International Court of Justice, International Criminal Court, and International Civil Aviation Organization.
- annual memorial events to honour the memories of the victims and seek action from the government to continue to pursue the truth.
- holding rallies to demand action, which rallies have been attended by thousands of people.
- online campaigns and petitions, preparing reports, writing books, producing documentary films and assisting with legal submissions.
- collaborations with Human Rights Watch and the United Nations.
- the publication of a detailed fact-finding report about the tragedy.

- a successful campaign to have the Government of Canada formally declare the IRGC to be a terrorist entity.
- the preparation of a detailed website that includes a dedicated page for each and every victim, working closely with their family members to properly pay tribute to those lost in the tragedy.

[36] In my view the Board's decisions as to how the Association will achieve its Purposes, and its decision that it will not provide the kind of direct financial support that Mehrzad wants is a reasonable interpretation that falls within the business judgment rule and which is entitled to deference.

[37] This disagreement does not amount to oppressive conduct, or any disregard of Mehrzad's rights as a member of the Association.

[38] As well, the failure to consult broadly with the membership about this issue does not constitute oppression or unfair prejudice.

[39] In *Campaign for the Inclusion of People who are Deaf and Hard of Hearing v. Canadian Hearing Society*, 2018 ONSC 5445, Wilton-Siegel J. held that the board of a not-for-profit corporation has a responsibility to ensure that the membership does not impose its own priorities over the stated purposes of the corporation. He further confirmed that the members of a non-profit corporation do not have a formal consultative function or authority in relation to proposed policies of the corporation, and that any consultative role depends entirely on a discretionary decision of the board of directors to invite such consultation.

Alleged Partisan activities and disagreements among the Board members

[40] Although Mehrzad's materials baldly allege that the members of the Board have political ambitions "to seek favours from or a political nomination to the Liberal party in the next federal election," there is no evidence to back this up. There is also insufficient evidence to support the bald statement that the Association has been improperly supporting a particular party in Canada.

[41] With respect to alleged partisan activities related to the Iranian regime, there is also insufficient support. Mehrzad provides only two examples.

[42] He complains that the Association has been involved with "Global Network Rallies," which is a Global Network formed in the wake of the Woman-Life-Freedom movement in Iran that arose after Mahsa Amini's death after being beaten by the morality police. The goal of the Global Network group was to facilitate the organization of worldwide rallies to protest human rights violations in Iran.

[43] As a prominent and reputable non-profit organization within the Iranian diaspora, the Association undertook the formation and leadership of the Global Network group for two reasons. First its contribution was seen as a moral obligation given the Association's capabilities and structure. Second, there were obvious synergies between the core objectives of the Association for seeking truth and justice for the downing of Flight PS752 and the protests against human rights

violations by the same regime. While the Association supported the Global Network to hold numerous rallies in countless cities around the globe, the Global Network also supported the core goals of the Association on many occasions such as rallies for Flight PS752 on the anniversaries.

[44] Mehrzad also references a rally in Berlin organized to protest Mahsa Amini's death that one Association Director attended.

[45] It is alleged that the speakers at the rally were chosen from "certain political orientation," but no details are provided as to what that was. In any event, the rally was not organized by the Association.

[46] The Association's Purpose is arguably broad enough for the above activities. In my view, these were decisions within the realm of reasonableness entitled to deference.

Disclosure of Documents

[47] Mehrzad says that the Association has not provided him with production of all the books and records of the Association in accordance with ss. 22 and 23 of the CNCA. However, with the exception of the member's register, the Association has provided all documents that members of a not-for-profit corporation are entitled to see as set out in the CNCA. As a voting member, Mehrzad has received the Articles, By-Laws, Minutes of Member meetings and audited financial statements. The CNCA does not give him the entitlement to receive Minutes of Directors' meetings.

[48] The failure to provide documents that Mehrzad has no entitlement to cannot violate any reasonable expectation.

Disclosure of the Member's Register

[49] Section 25(1) of the CNCA provides that on application the Director may authorize the corporation to refuse access to corporate records if the Director believes that furnishing these records would be detrimental to any member.

[50] On or about February 13, 2023, the Association made an application to the Director under section 25(1) of the CNCA seeking an exemption to the requirement to provide its members with the register of members or the members' contact information (the "Exemption Application").

[51] Mehrzad's counsel wrote to the Director seeking permission to make submissions but he did not receive any response. Then, it appears Mehrzad's counsel made a submission to the Director opposing the exemption.

[52] The Director granted the exemption on March 16, 2023 (the "Exemption").

[53] Mehrzad suggests that the purpose of this application for an exemption was somehow nefarious.

[54] The Association provided evidence that the Iranian regime has been intimidating and harassing family members of those who died on Flight PS752. Many Iranians fear reprisals from the Iranian government. Accordingly, their anonymity in these circumstances is a reasonable concern for the Board to have. I note that some of the plaintiffs in the proceeding brought by Mehrzad were anonymous. Belobaba J. issued a sealing order in respect of that proceeding because of such concerns. He found that there were “genuine and credible fear[s] of reprisal” in Canada.

[55] Mehrzad also complains that the Association has not provided him with a copy of the Exemption Application but he points to no law that entitles him to this production. The Director did not order this.

[56] As the Exemption was obtained in accordance with the procedure set out in the CNCA and granted by the Director who is authorized to carry out the duties and exercise the powers granted under that legislation, this cannot constitute any violation of Mehrzad’s reasonable expectations. To suggest otherwise would mean that a not-for-profit corporation exercising its rights under the governing statute can be oppressive to an individual member.

[57] With respect to the argument that Mehrzad requires the register because there might be some members who are part of the Iranian regime, there is absolutely no admissible evidence to support this.

Non-Compliance with Exemption Order

[58] The exemption contains a term requiring an alternate method for members to communicate with each other. To comply, the Association created a private group on the instant messaging platform “Telegram” which functions as a resource to encourage and facilitate communications among members.

[59] Mehrzad has been an active participant in the Telegram Group and has full access to it. He has used it in the past to discuss some of the same issues raised by him in this application.

[60] Therefore, the Association’s actions in this regard, cannot have violated Mehrzad’s reasonable expectations.

Resignation of Board Members/Concerns of Other Members

[61] Mehrzad has provided evidence from two former Board members, Mahmoud Zibaie and Javed Soleimani. They both say that they resigned from the Board because of their disagreements with how the Board was operating.

Mr. Zibaie

[62] Mr. Zibaie’s main concern was that former Board President, Hamed Esmaelion, hijacked the Association to focus on his own partisan and political issues including regime change in Iran.

[63] Mr. Esmaelion resigned in March 2023, almost two years ago and as such, any concerns about him and the direction that he was taking the Association in are not particularly relevant to the way in which the Board is currently operating.

[64] Mr. Zibaie also takes issue with the Board's alleged failure to comply with its By-Laws by adding a clause that permitted it to accept anyone as a member.

[65] When Mr. Zibaie was cross examined, he acknowledged that the By-Law was approved by the Board and then brought to the members who also approved it. He may not have liked it, but it was established through a democratic vote.

[66] As well, Mr. Zibaie was only a Board member for a few months in 2020. He does not communicate with members on the social media site where they communicate and as such, it is unclear how he has any current knowledge on relevant issues. Therefore, I do not find his evidence persuasive.

Mr. Soleimani

[67] Mr. Soleimani also references an unhealthy atmosphere, as well as the need for greater circulation of members and participation of family members in Board decisions. However, he provides insufficient details as to what he means. He points to no provision of the CNCA that requires the kind of involvement of family members that he seeks.

[68] Mr. Soleimani also says that the Board has not dealt with Mehrzad's Application appropriately and that it has improperly incurred expenses as a result.

[69] The Association says that it did not want to be involved in litigation with a member but the Board determined that it had no choice to respond in large part due to its obligation to safeguard the information of its members and ensure their safety and well-being. This was a decision that it was entitled to make.

[70] He alleges that volunteers have resigned due to mismanagement, but again there is insufficient evidence and particulars to back this up.

[71] Finally, Mr. Solemani expresses concern about the lack of facility with the English language of certain Board members and the impact this has on decision making. Again, there are insufficient particulars.

Anonymous Letter

[72] There is also an anonymous letter from some members dated April 8, 2022, attached to Mr. Zibaie's affidavit where they assert that they want greater transparency on the Association's finances and where they refer to "questionable conduct".

[73] There are insufficient details. Furthermore, this evidence relates to a significantly contested matter and as such it is not admissible to prove the truth of its contents pursuant to r. 39.01(5). It is also stale dated as it predates this Application by 2 years.

[74] The totality of all of this evidence does not persuade me that the Board's disagreements are such that it is not operating effectively. The fact that people may disagree with how a Board is operating or the decisions it has made does not mean that it is operating in an oppressive manner.

[75] As explained by the Association's affiant, "as expected with a group the size of the Association, all of whom are grieving the senseless loss of a close relative, there can be disagreements and disputes about how best to achieve its Purposes."

Misuse of Funds/Transparency

[76] Mehrzad challenges the way in which the Association has spent some of the \$1,000,000 it has raised. He says that it has been spent on things that the Board personally want to do, and not in support of activities that would support the Association's objects.

[77] In support, Mehrzad references an \$83,000 consultation expense that he says is unexplained. He says that the Board should not be spending money on consultants.

[78] The Association explained that it hired a consultant to assist it with its lobbying of the Canadian government. It felt that it required assistance that went beyond what it could achieve with only volunteers which included the Board. With the consultant's assistance, it established deep connections with many relevant ministries and international bodies. It says that this consultant charged it only 50 % of the fee. Its achievements is a testament to the value of the consultant.

[79] Mr. Zibaie wrote to the Hon. Ralph Goodale, Special advisor to the Prime Minister who had prepared a comprehensive report on the Flight PS752 about this issue. Although Mr. Goodale said that consultants are not required, he also said that they can be of assistance.

[80] Mehrzad also raises concerns about expenses incurred on holding a ceremony in respect of the third anniversary of the downing of Flight PS752. While there is a suggestion that this ceremony served more as a political platform than a platform for seeking justice, there are no details to back this up. The Association indicated that it held this ceremony because it was the first opportunity for the families of victims to come together and see each other since COVID. The ceremony successfully brought together many of the country's most prominent leaders including the Prime Minister, federal cabinet ministers and members of Parliament and renewed attention on the scale of the tragedy of Flight PS752.

[81] Notably, while there is reference to "huge expenses" there is not a single reference to a particular expenditure that was inappropriate or excessive.

[82] Mehrzad also makes reference to the costs associated with a Director attending the Berlin rally but as I noted above, this was within the Board authority. Mehrzad has not demonstrated any concerns with any particular expenditures.

[83] He also raises concerns that the Association appears to have received some donations in the form of crypto currency upon which it appears to earn profits. Mehrzad did not provide any legal reason why accepting a crypto currency donation is problematic. Further, the Association

explained that the income statement was somewhat of a misnomer as it reflects the net balances of the Association's cash assets for the year after income and expenses. This is permissible at law, otherwise a non-profit corporation would be required to disgorge any assets in its possession at the end of every year to achieve a zero balance.

[84] Again, the Board is the one elected by the members with the authority to manage the Association and make decisions as to how best to achieve its objects. All of the above expenditures are decisions that the Board was entitled to make. Mehrzad has not shown how these expenditures constituted oppression of him.

[85] With respect to concerns about transparency, the Association provides annual reports related to its financial activities.

[86] There is simply insufficient evidence before me to show there is any real concern that the money raised by the Association has been used for improper purposes.

Mehrzad's Failure to Take Reasonable Steps to address his concerns.

[87] In determining whether an expectation is reasonable, the court may consider whether the claimant could have taken steps to protect themselves against the prejudice they claim they have suffered: *BCE* at para 72; *Carr* at para 52.

[88] The main relief that Mehrzad seeks in respect of his claim is an Order requiring the Association to call a special meeting to discuss providing financial support to family members and for Mehrzad's civil suit. However, he has failed to take steps that he could have taken democratically pursuant to the Articles and the CNCA to seek other members' support for his position and seek a democratic vote on them.

[89] The Association holds an annual general meeting of its members ("AGM"), as required by the CNCA. All members receive notice of the AGM and are invited to attend. Despite receiving notice, Mehrzad chose not to attend the Association's AGM in either 2023 or 2024.

[90] The CNCA also allows any member entitled to vote at an AGM to submit notice of any matter that the member wishes to raise at the AGM (known as a "Proposal"), and to discuss at the meeting any matter with respect to which the member would have been entitled to submit a Proposal. The Proposal is required to be included in the notice of the AGM sent to the members, along with any statement the member wishes to include in support of their Proposal. Mehrzad was free to submit his requests for the Association to consider his two issues at the AGMs for consideration by its membership. He was aware that he had this right. He chose not to do so.

[91] There are also monthly meetings with family members and Mehrzad does not attend.

[92] Mehrzad relies on the case *Saskatchewan WFT Taekwondo et al v. Taikwondo Canada*, 2015 ONSC 2937 where Dunphy J. ordered such meeting. However, this case is distinguishable.

[93] In *Saskatchewan Taekwondo*, the applicants had submitted a valid requisition to call a meeting of the members pursuant to s. 167(1) of the CNCA that permits members holding a

prescribed percentage of votes to requisition such meeting. The directors had no valid reason for rejecting the requisition but did.

[94] Mehrzad has not argued that he has the right to call a meeting pursuant to s. 167, much less that this has been obstructed by the Board after a valid requisition. He has access to Telegram where members can communicate. If he wishes, he can use this platform to discuss the issues about which he is concerned and seek broad based support after which he could exercise his rights under s. 167.

[95] He has failed to try this.

[96] He could also seek to become a Director which he has never attempted.

[97] In the end, the material before me does not establish that any reasonable expectation that Mehrzad had has been violated, much less that he has been oppressed in any way that satisfies the test. Not even the totality of all the issues raised together leads to this conclusion.

Issue 2: Is there a basis for any of the alternative relief sought?

[98] Mehrzad indicated at the hearing that he wished to only pursue the oppression remedy and then adjourn the other relief he requests. I am not prepared to do so. The parties have appeared multiple times in this matter and this is Mehrzad's own application. There has to be finality.

[99] Mehrzad has not provided evidence that would entitle him to any of the alternate relief sought nor were they even argued at the hearing. For the same reasons that he has not proven any entitlement to an oppression remedy, he has not established any valid basis for the other alternative relief he seeks.

[100] A representation order pursuant to r. 10 is appropriate when there are persons who have a present, future, contingent or unascertained interest in or may be affected by a proceeding and who cannot be readily ascertained, found, or served. There is no evidence adduced in respect of these issues.

[101] The test for the appointment of a receiver under s. 101 of the *Courts of Justice Act* is similar to the test for an interlocutory injunction. The moving party must establish: 1) a serious issue to be tried; 2) that they will suffer irreparable harm if the motion is refused; and 3) the balance of convenience favours the appointment. Where the order sought is for interim relief in an oppression action, the moving party must establish a strong prima facie case, which is a higher standard than "serious issue". The moving party must demonstrate the likelihood of ultimate success in the action: *Halsey v. Genoil*, 2017 ONSC 4817 at para 14.

[102] The appointment of a receiver-manager is extraordinary relief which may and often does give rise to significant cost consequences. As a result, it should only be granted cautiously and sparingly. *Halsey v. Genoil*, at para 12.

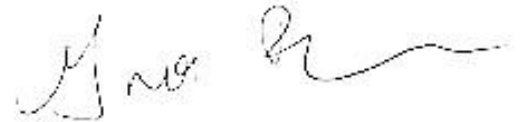
[103] Mehrzad has failed to satisfy this test. The evidence does not establish a serious issue to be tried. As I have outlined, the evidence establishes that the Board has been acting within the Purposes of the Association and does not support impropriety alleged. Further, he has failed to establish any irreparable harm because he can take steps pursuant to the CNCA to bring forward the concerns he has. I add that he did not provide any sworn evidence attesting to any irreparable harm either.

[104] For the same reason, Mehrzad has failed to establish the basis for an injunction or the appointment of a public accountant.

Conclusion

[105] Therefore, the Application is dismissed.

[106] The parties can make cost submissions as follows: the Association within 5 days, Mehrzad within 5 days thereafter. Submissions shall be no longer than 5 pages.



Papageorgiou J.

Released: December 3, 2024

CITATION: Zarei v. Association of Families of Flight PS752, 2024 ONSC 6740

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MEHRZAD ZAREI

Applicant

– and –

ASSOCIATION OF FAMILIES OF FLIGHT PS752
VICTIMS

Respondent

REASONS FOR JUDGMENT

Papageorgiou J.

Released: December 3, 2024