

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
 Polish National Union of Canada) *Ronald S. Segal and Scott D. Chambers, for*
) *the Applicant*
 Applicant)
)
 – and –)
)
 Branch 1 the Polish National Union of) *James F. Diamond, for the Respondents*
 Canada, an unincorporated association, led)
 by the individual board members, Jozef)
 (Joseph) Aleksandrowicz, Henryk (Henry))
 Kacprzak, Anna Kacprzak, Bartłomiej)
 (Bart) Habrowski, and Antoni Kantor)
)
 Respondents)
)
) **HEARD: April 7, 8, 9 and 14, 2014**

PENNY J.

JUDGMENT

Overview

[1] There are two competing applications before the Court dealing with essentially two issues:

- (1) governance of the Polish National Union of Canada Inc. and its branches; and
- (2) ownership of property.

[2] The Union seeks declarations that:

- (a) the Union is the owner of all property purportedly held by or associated with Branch 1, and, specifically, of 71, 73 and 75 Judson St., Toronto; and
- (b) Branch 1 of the Polish National Union of Canada was dissolved and that Branch 26 is the lawful successor to Branch 1.

[3] Branch 1 seeks declarations that:

- (a) Branch 1 is the owner of all its property and, specifically, of 71, 73 and 75 Judson St., Toronto; and
- (b) Branch 1 has not been dissolved and its members have not been terminated.

[4] Both sides seek various additional orders for collateral relief relating to these two issues. These Reasons dispose of both the Union Application, CV-13-10225-00CL, and the Branch 1 Application, CV-14-10433-00CL.

Background

[5] The Union was incorporated under Part II of the *Canada Corporations Act* on April 24, 1973. Branch 1 is, (or was, depending on the parties' viewpoint) a long-standing branch of the Union. The predecessors to the Union were the Polish Veterans Mutual Benefit Society, established in 1930, and the Polish National Union of Canada Mutual Benefit Society, established in 1938.

[6] The Letters Patent set out the objects for the Union:

- (a) To develop the highest standards of citizenship in Canadians of Polish heritage by encouraging carrying on and participating in activities of the national patriotic, cultural, charitable or humanitarian in nature and in the furtherance of the best interests of Canada and those Canadians of Polish heritage;
- (b) To act in matters affecting the rights and welfare of Canadians of Polish origin and Polish immigrants to Canada;
- (c) To initiate, carry on and assist and partake in efforts for the general improvement of the social, economic and cultural conditions of Canadians of Polish origin and to cooperate with other agencies in rendering assistance and helping to rehabilitate Polish immigrants or refugees;
- (d) To promote the growth of a spirit of tolerance, understanding and goodwill between all ethno-cultural elements in Canada;
- (e) To cooperate in maintaining and defending freedom and democracy in Canada and to carry on and assist Canadians in efforts for upholding, strengthening and establishing democratic system of government everywhere in the world and particularly in Poland;
- (f) To cultivate amongst its members an appreciation of their mother tongue, their cultural heritage and historical traditions;
- (g) To study problems affecting the foregoing objects and to conduct research and encourage studies thereon and to publish periodicals, pamphlets and other

literature and information on the work of the Corporation in the furtherance of its objects;

- (h) To raise funds and to collect and receive monies and property, by contributions, subscription, gifts, legacies and grants, for the objects of the Corporation or for any special purpose it may determine or as may be directed by donors consistent with its aforesaid objects.

[7] The Letters Patent also provide that:

in the event of dissolution or winding-up of the Corporation all its remaining assets after payment of its liabilities shall be distributed to the Canadian Polish Congress, Head Executive Board or to one or more recognized Polish Canadian charitable organizations in Canada

[8] It is common ground that the parties are governed by the *Constitution of the Polish National Union of Canada Inc.* Under the Constitution, the supreme legislative authority is the National Convention of the Union, which is held every two years. Delegates to the National Convention must be members of the Union and are elected by the local branches from amongst their own members.

[9] The Head Executive Board of the Union is the highest authority of the Union when the National Convention is not in session. The HEB is elected by the members of the Union at the National Convention.

[10] Members of the Union are divided amongst the local branches of the Union. Each local branch of the Union is administered by its own board whose election, terms of office and powers are dictated by the Constitution. In order to become a branch of the Union, the prospective branch must possess at least 10 members and its creation must be approved by the HEB.

[11] The branches are not legal entities but internal divisions of the Union. The branches are not organized by separate written agreement among branch members and have no constituting documents, objects or bylaws of their own.

[12] The present disputes have their origins with the purchase, in 1997, of 71 Judson St.

[13] The acquisition of 71 Judson St. took place on April 14, 1997. The purchase was initiated by members of Branch 1. The respondent, Mr. Kacprzak, was a member of Branch 1 and a real estate agent with Sutton Realty. He acted as the agent for the purchaser. Kacprzak went on to become the president of Branch 1 and, later, the president of the HEB.

[14] The Agreement of Purchase and Sale, dated November 11, 1996, shows the "Polish National Union of Canada" as the purchaser. An amendment of November 25, 1996 describes the purchaser as the "Polish National Union of Canada Branch 1" but goes on to describe the purchaser as a "non-profit fraternal organization [which] intends to use the premise as a meeting place for its members."

[15] The purchaser's solicitor, Richard Rusek, did not testify in these proceedings but his file was produced. The notes in Rusek's file disclose that on April 14, 1997, the date of closing, Mr. Nowinowski, president of Branch 1, and Kacprzak attended at Rusek's office, where he was instructed to place title in the name of the Union "in trust 4 Branch 1."

[16] The title register for this property records the purchase of 71 Judson St. on April 14, 1997 by the "Polish National Union of Canada." The Transfer/Deed for the transaction however, executed on the same date, shows the name of the transferee, in one place, as "POLISH NATIONAL UNION OF CANADA" with the words "IN TRUST FOR BRANCH 1" in clearly different typeface. In another place on the Transfer/Deed, the name of the transferee is recorded as merely the "POLISH NATIONAL UNION OF CANADA." The then president of Branch 1, Nowinowski, signed the Deed. The solicitor who acted on the transaction was Rusek. It is accepted by both parties that the Transfer/Deed was prepared by the Vendor's solicitor and that it is likely that the words denoting a "trust" were added by Rusek.

[17] The land transfer tax affidavit also shows the purchaser as "POLISH NATIONAL UNION OF CANADA IN TRUST FOR BRANCH 1." It too was signed by Nowinowski and shows Rusek as the transferee's solicitor.

[18] It appears that on April 23, 1997, Rusek prepared a draft trust agreement. Each page of this three-page document bears a red rubber stamp reading "DRAFT For Discussion Purposes Only RICHARD E. RUSEK." Three representatives of Branch 1 and three representatives of the Union, including the president of each entity at the time, purportedly signed this agreement.

[19] The trust agreement defines the Union as the "Trustee" and Branch 1 as the "Owner." In the document, the Trustee acknowledges that it is a bare trustee, holding the property in trust for the members of Branch 1, which members are the owners of the property.

[20] The Owner is entitled to all income, however earned, from the real estate and is responsible for all payments for the property including, but not limited to, realty taxes, goods and services tax, business tax, public utility charges, insurance, maintenance, upkeep, etc. The Owner, however, acknowledges in the agreement that its ownership of the real estate is subject to the "rules" (that is, the Letters Patent and Constitution) of the Trustee.

[21] There is an evidentiary conflict around the validity of the trust agreement - who signed and under what circumstances. There is also a legal conflict around what status and meaning are to be attributed to this document, assuming it to be valid.

[22] Following the transaction, 71 Judson St. was used as a meeting place for Branch 1 members, a meeting place for the HEB of the Union and the place from which the Union's newspaper, Polish Voice, was operated.

[23] In 2012, the president of Branch 1, Alesandrowicz, raised ongoing concerns about the Polish Voice and told the HEB that Branch 1 wanted the Polish Voice to move out of the Judson St. premises. A dispute arose between Branch 1 and the HEB over Branch 1's request to move the Polish Voice out. Alesandrowicz filed a formal complaint with the HEB. The complaint was dismissed.

[24] The president of the HEB, Mr. Bukin, then called a special meeting of the HEB and branch presidents to take place on February 8, 2013 in Burlington. The stated purpose of the meeting was to “discuss some very important matters regarding the PNUC and the Polish Voice.” The meeting was postponed to February 15, 2013 due to bad weather. Alesandrowicz could not attend due to a prior commitment and advised Bukin of his unavailability by e-mail correspondence in advance of the meeting.

[25] The meeting proceeded in Alesandrowicz’s absence. At the meeting, Bukin proposed a motion to suspend Alesandrowicz’s Union membership and status as Branch 1 president. The motion was passed.

[26] On February 27 2013, Bukin wrote to the Branch 1 board of directors requiring the Branch to respect the decision of the HEB and saying that, if Branch 1 failed to comply, it could face dissolution.

[27] Branch 1 members voted not to accept the HEB’s decision. Alesandrowicz, on behalf of Branch 1, wrote to the Polish Voice indicating that 71 Judson St. belonged to Branch 1 and that the Polish Voice needed to vacate the premises within seven days.

[28] The HEB scheduled another special meeting. The only evidence of any notice to Branch 1 of what the meeting was about is an email from Bukin’s wife to a Branch 1 member. The email indicates that the special meeting would proceed “with or without” the presence of Branch 1 representatives and that “HEB decisions are indisputable.” At this meeting, on March 19, 2013, Bukin proposed a motion to dissolve Branch 1 which was passed. By virtue of Branch 1’s dissolution all Branch 1 members ceased to be members of the Union.

[29] In retaliation, on April 4, 2013 Branch 1 posted a lawyer’s letter on the window of 71 Judson stating that 71, 73 and 75 Judson St. belonged to Branch 1 and that any entry into the properties without express written consent of Branch 1 would be considered trespass. Branch 1 unilaterally changed the locks on the properties. Branch 1 also wrote directly to Bukin, accusing the HEB of having “illegally attempted to take possession” of 71 Judson St. and putting the HEB on notice that any attempted access by the HEB to the premises would be illegal and a trespass.

[30] These proceedings, and various interlocutory motions, followed, culminating in a hearing commencing April 7, 2014. Because of the conflicting evidence over the execution of the trust agreement, I directed a trial of the issue of who signed the trust agreement and under what circumstances. Several of the purported signatories of this agreement testified, most with the benefit of a Polish interpreter.

The Property Issue

[31] Three provisions of the Constitution are relevant to the issue of property ownership as between the Union and its branches. The Constitution contains a declaration that:

The XXI National Convention unanimously resolved that all the property in possession of the Polish National Union of Canada (Polish National Union of Canada – Mutual Benefit Society) become now the property of the Polish

National Union of Canada Inc. as a body incorporated under the regulations of the Canada Corporations Act.

Art. VI/para. 25

The Head Executive Board has supervision of all the property of the Society including the Polish Voice Ltd. The Board of the Branch must submit any documentation requested by the Head Executive Board which can be pertinent to the supervisory duties of the Head Executive Board.

and

Art. XXII/para. 98 Personal and Real Property:

i) The property of the Society consists of the following:

a) cash

b) personal and real property of the Branches and Departments, Social Clubs and other institutions of the Society.

c) "Polish Voice Publishing Company Limited".

ii) All purchase and sale transactions of real property must have approval of the Head Executive Board. In case of conflict between the Branch and the Head Executive Board concerning all purchase and sale transactions, an arbitration committee consisting of representatives of two third (2/3) of the Branches will be appointed by the Head Executive Board to settle the dispute.

iii) All houses and other real property must be registered in the name of the Society.

iv) Each Branch of the Polish National Union of Canada is entitled to administer all real and personal property of the Branch, according to the rules of the Constitution.

[32] Paragraph 98 of the Constitution came before this Court in March 1997. Pardu J. dealt with a dispute between the Union and Branch 1A involving ownership of properties at Palaise Royale in Toronto and in Tiny Township. Dissident members of Branch 1A sought to secede from the Union and formed a new organization which, they alleged, was a successor to Branch 1A and, therefore, entitled to Branch 1A's assets.

[33] The Union took the position that Branch 1A assets could not devolve to the dissidents' new organization because Branch 1A could not, under the Constitution, own any property; all property of the Branch was beneficially owned by the Union. Pardu J. found the language of the Constitution on this issue clear and unambiguous. She held that:

The P.N.U.C. is the beneficial owner and owner of legal title subject to the right of the Branch to administer the property. The fact that the title to the property has been registered to “Polish National Union of Canada Mutual Benefit Society – Branch 1A”, a potential minor breach of paragraph 98(iii), does not detract from this conclusion.

[34] I take a similar view of the meaning and effect of the Constitution. In my view, the language of the Constitution is clear and unambiguous. Branches cannot own property. The Union owns all real property, including property ostensibly of the branches. This makes sense because the branches are not distinct legal (or even social) entities from the Union. The branches are, however, entitled to administer real property under the supervision of the HEB. Through this means, they are able to raise funds for local activities at the branch level. That is, in fact, what happened in this case. The fact that the Transfer/Deed says the transferee is the “Polish National Union of Canada In Trust for Branch 1” is a minor breach of para. 98(i) and does not detract from this conclusion.

[35] I am supported in this view by the implications of Branch 1’s argument if it were right. Branch 1 is not a legal entity. For whom then is the Union holding 71 Judson St. in trust? It can only be the members of Branch 1. This is indeed the very wording of the trust agreement itself in paragraph 1:

The “Trustee” acknowledges that it is a bare trustee of the “real estate”, holding same in trust *for the members of* Branch 1, Polish National Union of Canada, which *members* are the owners of the “real estate”. [emphasis added]

[36] If the members of Branch 1 are the true owners of 71 Judson, then on a dissolution, Branch 1’s members would be the ultimate beneficial owners of the property. This directly contradicts the Letters Patent of the Union, which provides that in no circumstances do members of the Union become entitled to property on dissolution but, rather, any remaining assets are to be distributed to the Canadian Polish Congress, or one or more recognized Polish Canadian charitable organizations in Canada.

[37] Both sides put in a good deal of evidence, much of it anecdotal, about the history of property ownership within the Union and its branches. Each side found examples of transactions supporting their view or ways of counteracting the contrary examples of the other side.

[38] The history of property ownership is complicated by the historical transition from a mutual benefit society to the current nonprofit corporation.

[39] In general terms, the situation seems to be that practices varied from branch to branch and transaction to transaction. Whatever the rules may have been, they appear not to have been rigorously enforced. The 1997 transaction involving 71 Judson St., it seems, is not the only case involving documents which appear to show the Union holding property as trustee for a branch.

[40] There is evidence that in or about 2006, the Union made a concerted effort to regularize all real property holdings by ensuring that title to all real property in the land registry, whether administered by a branch or not, was in the name of the Union.

[41] The Judson St. properties were not affected by this initiative because registered title to 71, 73 and 75 Judson St. has always been in the name of the Union.

[42] From 1997 to 2013, no attention seems to have been paid at all to who owned 71 Judson St. Branch 1 administered the property, collected rents and paid carrying costs from the rental cash flow, all in accordance with, and as contemplated by, the Constitution.

[43] The original of the 1997 trust agreement purports to have been signed by Bodgan Adamczak, then president of the Union. Adamczak is adamant that he did not sign this document. However, Mr. Adamczak has a distinctive signature. The signature on the trust agreement looks very like his admitted signature on other documents, including another transaction in which the Union purports to hold property as trustee for a branch. Four other people testified that they attended a meeting in April 1997, signed the trust agreement themselves and saw Adamczak sign. Whatever the frailties of their evidence, in the circumstances, I find, on a balance of probabilities that Adamczak, along with the other five signatories, did sign the agreement in the latter part of April 1997. This finding, however, by no means imports legal validity to this document.

[44] I say this because:

- (1) the document is inconsistent with the Constitution;
- (2) the document is internally inconsistent;
- (3) the document is inconsistent with the conduct of the parties post-purchase;
- (4) the funds needed to acquire 71 Judson (as well as 73 and 75 Judson) came from the mortgage and sale of properties of which the Union was the undisputed owner; and
- (5) the evidence of the signatories reveals that most of them did not understand the nature and effect of what they were signing.

[45] The issue of inconsistency with the Constitution I have already dealt with in substance. Branches cannot own property; all property is the property of the Union. The trust agreement is subordinate to the Constitution. Any conflict between the provisions of the Constitution and the provisions of any agreement between the Union and a branch must be resolved in favour of the Constitution.

[46] Further, the trust agreement is internally inconsistent. While purporting to establish Branch 1 as the owner of the property, it also says that Branch 1's ownership is "subject to" the Constitution. Under the terms of para. 4, the "Owner" acknowledges that its ownership of the "real estate" is subject to the "rules" [defined to include the Constitution] of the "Trustee". The Constitution stipulates that all property of a branch is the property of the Union. Thus the trust agreement appears to give with one hand (para. 1) and take away with the other (para 4).

[47] The upper floor of 71 Judson St. was, and remains, leased to a third party. The lease dated July 2012, shows the Union as the Landlord. There is no mention of Branch 1.

[48] Further, I am satisfied on the evidence that the funds for the purchase of 71, 73 and 75 Judson St. all came from the mortgage and sale of property owned by the Union. 71 Judson St. was acquired on April 14, 1987 for \$610,000. On that day, a mortgage for \$700,000 was registered on property of the Union, 905 Queen St.

[49] In December 2000, the Union acquired two adjoining properties, 73 and 75 Judson St. The parcel registers show the Union as the owner of those properties.

[50] These purchases were not handled by Rusek but another firm that later acted for the Union in "cleaning up" the land registrations in 2006.

[51] The purchase price for 73 and 75 Judson St. was \$820,000. About two years earlier, 905 and 899 Queen (properties of the Union) were sold for \$1.25M with a vendor take back mortgage to the purchaser.

[52] Rusek acted on the 1998 sale of 905 and 899 Queen St. He arranged for the "charge" on the VTB to appear as PNUC In Trust for Branch 1. I find this document was not authorized by the Union or the HEB, was inconsistent with the fact that registered title to 905 and 899 Queen, prior to sale, was in the name of the Union and inconsistent with the Constitution.

[53] Accordingly, I find the beneficial chargee on the VTB mortgage was the Union and that the Union was the beneficial owner of the proceeds of the mortgage on discharge.

[54] The mortgage came due in December 2000. The proceeds were used to purchase 73 and 75 Judson. Title to these properties was taken in the name of the Union.

[55] Finally, I heard four of the signatories to the 1997 trust agreement testify. Most required the assistance of a Polish interpreter. It is clear that these people relied on Kacprzak (who was the realtor acting on these transactions and had a personal interest) and Rusek, who appears to have been retained by Kacprzak. I was left with no confidence that any of these people understood the nature and effect of what they were signing. There was no evidence that the document was formally translated into Polish for them or that anything more than a cursory or casual explanation was given. They appear to have done what they were asked to do as officers of the branch and the Union. There was certainly no evidence of any discussion of the relationship and possible conflict between Art. XXII/para.98 of the Constitution and the trust agreement.

[56] I find the trust agreement, although signed, is legally ineffective as being inconsistent with the Constitution. I find that 71, 73 and 75 Judson St. are beneficially and legally owned by the Union.

The Governance Issue

[57] Alesandrowicz and Branch 1 complain that their termination/dissolution was done in contravention of the Constitution and in breach of the rules of natural justice/procedural fairness.

[58] The relevant provisions of the Constitution are:

Art. VI/para. 26

Between the National Conventions the Head Executive Board can remove from the office or suspended for a certain period of time officers of the Branches for any breach of the Constitution and/or not obeying directives of the Head Executive Board. The officers of the Branch may appeal such a decision to the Committee for Resolution of Conflicts at the National Convention.

Art. XXI/para.96

Any member of the Society who acts to the detriment of the Society, or who legally takes benefits from the Society Funds, who supports Communist ideology inconsistent with the ideology of the Society or who was finally convicted by a criminal court for criminal offence shall be struck off from the list of membership by final decision of the Committee for Resolution of Conflicts.

Art . XXII/para. 99

A Branch may be dissolved for lack of members, or if the Branch does not observe the rules of the Constitution and Regulations of the Society.

[59] Branch 1 and its members seek to invoke the supervisory jurisdiction of the Court to invalidate the actions of the HEB in purporting to:

- (a) remove Alesandrowicz as a member and officer of Branch 1;
- (b) dissolve Branch 1 and, thereby, terminate membership in the Union of all Branch 1 members; and
- (c) establish Branch 26 as a “successor” to Branch 1.

[60] Branch 1 argues that there was a denial of natural justice. Neither Alesandrowicz nor Branch 1 was advised in advance of the purpose of the special meetings at which their rights were terminated. They neither knew the nature of the charges against them nor were they given an opportunity to respond.

[61] The Applicant argues that Alesandrowicz and Branch 1 ought to have known the jeopardy they faced. Their failure to attend and speak in their defence was a conscious decision on their part – they waived their right to be heard.

[62] Further, the Applicant argues that the Respondents had a right of appeal to the Committee for Resolution of Conflicts under the Constitution and that they failed to exercise that appeal. Having failed to exhaust their “domestic” remedies, they cannot seek relief from this Court.

[63] The general tenor of the law concerning court intervention in organizations of this nature is one of caution. Non-profit organizations such as the Union should not be required to adhere rigorously to all of the technical requirements of corporate procedure for their meetings as long as the basic process is fair.

[64] In one of the leading cases, *Lee v. Showmen's Guild of Great Britain*, [1952] 1 All E.R. 1175 (C.A.), Lord Denning addressed the question of the extent to which the court would examine the conduct of "domestic" tribunals. The courts, he said, have no wish to sit on appeal from the decisions of such groups any more than from the decisions of a family conference. However, he went on to say (at 1181):

On any expulsion they will see that there is fair play. They will see that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observe the procedure laid down by the rules, but will not otherwise interfere.

[65] In *Conacher v. Rosedale Golf Association*, 2000 CarswellOnt 527 (S.C.J.) Chapnik J. said (at para. 24):

Clearly, the court may intervene in a dispute where the member's property or civil rights are at issue and natural justice has not been followed. The rationale appears to be that a member joins an organization voluntarily and the relationship is contractual in nature... At the same time, as a matter of policy, the court refuses to recognize a duty of care regarding the social expectations of members or to interfere in purely voluntary social relationships.

[66] Natural justice requires notice, an opportunity to make representations and an unbiased tribunal/board. A member must be given full, adequate and timely notice of the cause for which he is to be expelled. This affords the member an opportunity to consider his position and either see the error of his ways and seek reconciliation or prepare to defend himself. The member who is to be expelled must also be given an opportunity to respond to the specific allegations made against him, *Lakeside Colony of Hutterian Bretheren v. Hofer*, [1992] 3 S.C.R. 165.

[67] The applicant argues that, as Branch 1 cannot own property, there can be no question of property or civil rights being engaged in this case. I am unable to accept this submission because, although I have found that Branch 1 cannot, under the Constitution, own property of its own, it is clear that the branches can administer property and derive monetary benefit from properties which they administer, including raising money through property rentals. Branch 1 did so in this case, prior to its purported dissolution. It is therefore clear that property and civil rights are engaged, such that the threshold articulated by Chapnik J. is met in this case.

[68] The applicant also argues that Art. XX/para. 93 provides for the resolution of all disputes by the Committee for Resolution of Conflicts. Because the respondents failed to pursue this domestic remedy, they should be foreclosed from coming to Court.

[69] There are at least two problems with this argument. First, the Applicant commenced these proceedings. It did not seek resolution from the CRC. Both parties have sought relief from the Courts. No one brought a motion for stay. It seems to me entirely disingenuous for either party to now say, at the hearing of this matter after over a year of litigation, that the other party ought to have sought its remedies from the CRC.

[70] Second, four of seven CRC members were members of Branch 1 and lost their membership status upon the dissolution of Branch 1. While the HEB claims that it appointed

new CRC members, and that the CRC was therefore still open for business, it is not clear that the HEB had the authority to do so. Art. XX\para. 94 provides that the CRC members are to be appointed at a National Convention, which is held every two years. Under the Constitution, the National Convention is the supreme legislative authority.

[71] In any event, given the approach taken by the HEB to its special meetings on the dissolution of Alesandrowicz's status and Branch 1, the Respondents could be forgiven for concluding that a CRC selected by the HEB would be unlikely to conduct a fair and unbiased "trial by arbitration." In the circumstances of this case, the Respondents were not constrained to bring their concerns only before the CRC.

[72] On the question of natural justice itself, I can come to no other conclusion than there was a complete lack of natural justice with respect to the two decisions in issue. There is no evidentiary foundation for the assertion that Alesandrowicz or Branch 1 knew or should have known that their status was in jeopardy at the special meetings called by the HEB. Further, there is absolutely no evidence that the specific complaints against them were articulated clearly and unambiguously or that they were given any meaningful opportunity to respond. Indeed, after four days of argument, it is still not clear to me the basis upon which the status of Alesandrowicz and Branch 1 were ultimately terminated.

[73] The overwhelming weight of the evidence drives me to the conclusion that the decisions of the HEB to strip Alesandrowicz of his membership and office and to dissolve Branch 1 were made in breach of the principles of natural justice and must be quashed. Accordingly, I find that Alesandrowicz was not removed from office or as a member of the Union. I also find that Branch 1 was not dissolved. It follows that the purported termination of membership of all Branch 1 members, and the purported replacement of Branch 1 with a successor, Branch 26, was also invalid.

Conclusion

[74] Both sides submitted the form of judgment they were seeking on these applications. Both forms of judgment raised collateral issues that were not addressed in argument. Unless the disposition of one of these collateral issues was specifically addressed or arises directly from the disposition of the main issues, I am reluctant to make orders on these issues.

[75] The matters resolved in these Reasons are:


1. the "property" of Branch 1, including 71, 73 and 75 Judson St., is owned beneficially by the Union;
2. the April 23, 1997 trust agreement is invalid as being inconsistent with the Constitution;
3. the act of dissolution of Branch 1, and the termination of Union membership of Branch 1 members, including Aleksandrowicz, are set aside;
4. the act of removing Aleksandrowicz as an officer of Branch 1 is set aside;

5. it logically follows that the establishment of Branch 26, in so far as it purports to be a "successor" to Branch 1, is also set aside;
6. it also follows that the appointments by the HEB to the CRC, purported in replacement for terminated members (who were from Branch 1), are set aside.

[76] The balance of the relief sought in the parties' draft judgments is dismissed.

Costs

[77] Any party seeking costs shall do by filing brief written submissions, not to exceed two typed double spaced pages, together with a bill of costs, within 10 days. Any party wishing to respond to a request for costs shall do so by filing a responding written submission, subject to the same page limit, within a further seven days.



Penny J.

Date: May 28, 2014

CITATION: Polish National Union v. Branch 1 of the Polish National Union et al., 2014 ONSC
3134

COURT FILE NO.: CV-13-10225-00CL

DATE: 20140528

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Polish National Union of Canada

Applicant

– and –

Branch 1 the Polish National Union of Canada, an unincorporated association, led by the individual board members, Jozef (Joseph) Aleksandrowicz, Henryk (Henry) Kacprzak, Anna Kacprzak, Bartłomiej (Bart) Habrowski, and Antoni Kantor

Respondents

JUDGMENT

Penny J.

Released: May 28, 2014