CITATION: Hellenic Congress of Quebec v. Canadian Hellenic Congress, 2020 ONSC 2224
COURT FILE NO.: CV-18-591763
DATE: 2020414

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Le Congrès Hellénique du Québec Applicant	John H. Reiterowski, for the Applicant
– and –	
Canadian Hellenic Congress Respondent	Nicholas Katsepontes, for the Respondent
	HEARD: October 9, 2019, with further written submissions on October 31, 2019

NISHIKAWA J.

Overview

[1] The Respondent, the Canadian Hellenic Congress (the "CHC"), is a national, not-for-profit corporation that promotes and connects Canadians of Hellenic descent on matters of cultural, economic and social importance to their community. The Applicant, le Congrès Hellénique du Québec (the "CHQ"), is a provincial organization that pursues similar objectives at the provincial level in Quebec. The CHQ is one of a number of provincial bodies that constitute the CHC, as further described below.

[2] In 2016, after obtaining a certificate of continuance under *Canada Not-For-Profit Corporations Act,* S.C. 2009, c. 23 (the "*NFP Act*"), the CHC passed a new constitution (the "2016 Constitution") that superseded its previous constitution (the "1999 Constitution").

[3] The CHQ alleges that the 2016 Constitution was not passed in accordance with the procedure for amending the constitution under the 1999 Constitution and is therefore void or of no force or effect. In this Application, the CHQ seeks a declaration that the 1999 Constitution remains in effect. The CHQ also seeks to nullify the election of members to the CHC's governing body in 2016 and an order that new elections be held. In addition, the CHQ seeks a declaration that the

CHC's formation of a "Quebec Regional Council" (the "QRC") to replace the CHQ was invalid as contrary to the 1999 Constitution.

[4] At the outset of the hearing, the CHQ sought to adjourn the hearing of the Application on the basis that the Application ought to be converted into an action. The CHQ argued that the Application raised issues of material fact and credibility, including whether certain documents had been "doctored." The CHC opposed an adjournment on the basis that the Application had originally been scheduled to be heard in May 2019 and was already delayed significantly. The May 2019 hearing was adjourned due to a defect in the CHC's materials and the parties were directed to attend at Civil Practice Court, where the parties agreed to a timetable for the Application. The CHC also objected to an adjournment because of the additional legal costs, which were already a significant burden for a not-for-profit, volunteer-run organization.

[5] At no point throughout the proceeding did the CHQ raise the issue of converting its Application into an action. Moreover, in the event that there were issues of material fact, the court could direct a trial of an issue, pursuant to r. 38.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Accordingly, and based on the history of this proceeding, I determined that rather than delay the matter further at additional cost and uncertainty to the parties, it would be appropriate and preferable to hear the Application.

Issues

[6] The issues raised by this Application are as follows:

(a) Does the CHQ's failure to pay membership fees to the CHC preclude it from bringing this Application?

(b) Is the Application statute-barred by the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B?

(c) Was the 2016 Constitution of the CHC validly passed?

(d) Was the creation of the QRC proper?

(e) Were the 2016 Elections valid?

(f) If necessary, what relief is appropriate in the circumstances?

Factual Background

The Structure and Organization of the CHC under the 1999 Constitution

[7] The CHC is a national umbrella organization comprised of provincial and local organizations, as well as individual members. The CHC was originally incorporated in 1982 under the *Canada Corporations Act*, R.S.C. 1970, c. C-32, Part II.

[8] The CHQ is one of the provincial organizations that comprise the CHC. The CHQ is a not-for-profit corporation incorporated under the laws of the province of Quebec and was founded on May 5, 1987. The current president is John Theodosopoulos, who was the CHQ's affiant in this Application.

[9] Before the adoption of a new constitution in 2016, the CHC was governed by "By-Law Number Two Constitution," which first came into effect in 1987 and was later amended to become the 1999 Constitution.[1]

[10] The 1999 Constitution contemplated a two-tier organization, with the CHC at the national level and provincial organizations at the provincial level.[2] Under section 6.1, at the national level, the functions of the CHC were to be carried on by the National Assembly, the National Council, the Executive Committee, and the Standing or Special Committees.

[11] The National Assembly is the "supreme governing body" of the CHC responsible for setting the policies of the CHC. Under the 1999 Constitution, the National Assembly was composed of 150 delegates, based on roughly proportionate representation from each of the provinces: 13 from British Columbia, 9 from Alberta, 6 from Saskatchewan, 7 from Manitoba, 61 from Ontario, 40 from Quebec, 4 from New Brunswick, 4 from Nova Scotia, 3 from Newfoundland and 3 from Prince Edward Island. The delegates were to be appointed by the provincial organizations, where one existed.

[12] The National Assembly approved the annual budget proposed by the National Council, as well as the financial statements. The National Assembly's responsibilities also included the "receipt, consideration and approval of amendments to the Charter, Constitution and by-laws of the Congress, in accordance with the provisions of the Constitution[.]"

[13] The CHC operated through a National Council, which consisted of representatives of the provincial and municipal organizations that make up the CHC. According to the 1999 Constitution, the National Council was the Board of Directors of the CHC. Members of the National Council were referred to as "councilors."

[14] The National Council consisted of: the President of each provincial organization, one person elected from each province in which there is no provincial organization, 33 persons elected by the National Assembly (proportionately by province), and one person appointed by each board

---

[1] The parties have attached different versions of the 1999 Constitution to their respective affidavits. It appears that certain amendments to the Constitution were made in 2002. The version attached to the affidavit of George Manios, sworn September 17, 2018 (the "Manios Affidavit") is the more up-to-date version and is the version that is referred to in these Reasons. For the purposes of this Application, the parties do not dispute that the provisions relevant to this Application are the same in both versions of the 1999 Constitution.

[2] The 1999 Constitution also contemplated a third tier at the local or municipal level, however, this level was removed in the 2016 Constitution.

of "the largest metropolitan community which is a member-organization of the provincial organization in each of the provinces of British Columbia, Ontario and Quebec[.]" In effect, this meant that three municipal organizations, the Hellenic Community of Greater Montreal (the "HCGM"), the Greek Community of Toronto (the "GCT"), and the Hellenic Community of Vancouver (the "HCV"), had representation on the National Council. The total number of individuals on the National Council would thus be approximately 45. Quorum for the National Council was 11 councilors.

[15] The National Council elected the officers who formed the Executive Committee of the CHC, which was composed of the President, Executive Vice-President, Regional Vice-Presidents, and other officers. The Executive Committee consisted of a total of 12 individuals. Quorum for the Executive Committee was the President or Executive Vice-President and four members of the Executive Committee. Between meetings of the National Council, the Executive Committee oversaw the activities and finances of the CHC.

The Provincial Organizations

[16] The 1999 Constitution defined "provincial organization" as a single, province-wide organization recognized by the CHC and composed of a minimum of two member organizations from such province.

[17] Like the national organization, at the provincial level, the functions of the CHC were to be carried on by the Provincial Assembly, the Provincial Council, the Executive Committee, and the Standing or Special Committees. In provinces where no provincial organization existed, the functions of the CHC were to be carried on by the members of those provinces. Also, in a province where no provincial organization existed, the National Council could establish a regional board to carry on the functions of the CHC in that province.

[18] The provincial organizations within the definition of the 1999 Constitution, other than the CHQ, were the Hellenic Canadian Congress of British Columbia (the "HCCBC"), the Hellenic Canadian Congress of Alberta (the "HCCA"), the Hellenic Canadian Congress of Manitoba (the "HCCM"), and the Hellenic Congress of Ontario (the "HCO").[3] The members of the provincial organizations were local or municipal organizations, as well as individuals.

Membership

[19] Section 7 of the 1999 Constitution set out who was eligible to be a member of the CHC. This included any non-profit body corporate "whose aims are Hellenic, and whose aims or

[3] The New Brunswick organization, the Greek Community of New Brunswick (the "GCNB"), was not considered a "provincial organization" within the meaning of the 1999 Constitution because it was not composed of two member organizations.

purposes bear directly or indirectly, on the aims and purposes of the Congress…[.]" Section 7.1 further stated that these bodies corporate could become members of the CHC "unless there is a provincial or regional organization, in which case it becomes a member through such organization." In other words, in a province where a provincial organization existed, an organization could only become a member of the CHC through the provincial organization.

[20] Section 7a specified the eligibility requirements for individual members. Pursuant to s. 7a.2, in a province where a provincial organization existed, an individual had to apply to the provincial organization for membership in accordance with its by-laws. In those provinces, the provincial organization was to establish a method of representation of individual members in its provincial assembly.

Conventions

[21] The 1999 Constitution required that an annual convention of delegates (a "Convention") be held no later than fifteen months after the last annual convention. Forty delegates representing at least three provinces were required for quorum for a Convention.

The Amendment of the 1999 Constitution

The 2012 Annual Convention

[22] In June 2012, the CHC appointed a Constitution Committee to begin drafting a new Constitution. The Constitution Committee was chaired by George Manios, the President of the CHC from 1991 to 1993 and 2013 to 2016 and its affiant in this Application. There were two other members of the Committee.

[23] In August 2012, the CHC gave notice of its annual convention to be held from September 28 to 30, 2012 (the "2012 Convention").

[24] At the 2012 Convention, the Constitution Committee presented a report on the *NFP Act* and the proposed changes to the 1999 Constitution of the CHC. At the time, the Constitution Committee explained its understanding that unless articles of continuance and an updated Constitution were filed, the CHC could be dissolved under the *NFP Act*.

[25] The report of the Constitution Committee, including its recommendations, was adopted by the delegates at the 2012 Convention. It was also agreed that the Constitution Committee's report would be circulated before the by-laws were finalized.

Articles of Continuance Are Filed

[26] In January 2015, the CHC received a notice of pending dissolution from Industry Canada. That same month, the CHC gave notice to the provincial organizations of a Convention to be held in November 2015, which stated that the proposed constitution would be voted on. The November

2015 convention did not proceed, however, because it became apparent that quorum would not be reached.

[27] In March 2015, the CHC filed Articles of Continuance with Industry Canada, and received a Certificate of Continuance effective February 26, 2015. The CHC advised the provincial organizations that amended by-laws, in other words, the proposed constitution, would have to be filed within one year of that date.

[28] In December 2015, the CHC circulated a draft proposed constitution to all members, including representatives of the CHQ. Shortly thereafter, on January 1, 2016, the CHC delivered notice of a meeting to be held on February 21, 2016, at which the proposed constitution would be voted on by the National Council. There would also be a meeting of the National Assembly after the National Council meeting for "confirmation" of the proposed constitution. The CHQ was advised that it would not be permitted to participate because it was in default of its fees.

[29] On February 21, 2016, meetings of the CHC's National Council and National Assembly were held by teleconference. The National Council approved the proposed constitution during the teleconference.

[30] In July 2016, the CHC sent a notice to the provincial organizations of an annual convention on November 27, 2016 (the "2016 Convention"). The agenda for the 2016 Convention included "Constitution Review Report and Confirmation of Changes." Later that month, the CHC circulated a "Comparison of the 2016 Constitution and the 1987 Constitution, as amended (1999 consolidated)" to the delegates.

[31] In September 2016, the CHC sent invitations to the 2016 Convention to the boards of the provincial organizations. The invitation sent in September 2016 gave notice, for the first time, of the establishment of the QRC.

The CHQ's Objections

[32] After it received the invitation to the 2016 Convention, in October 2016, the CHQ and several other provincial and local Hellenic organizations jointly wrote to the CHC objecting to certain matters as contrary to the 1999 Constitution, including the creation of the QRC and the holding of the 2016 Convention. The organizations stated that they would boycott the 2016 Convention unless it was held in accordance with the 1999 Constitution.

The 2016 Convention

[33] The CHC did not respond to the October 2016 letter and proceeded with the 2016 Convention. At the 2016 Convention, the National Assembly ratified the 2016 Constitution. In addition, an election for the National Council was held.

[34] On December 2, 2016, the CHQ and other provincial and local Hellenic organizations issued a press release regarding their objections to the 2016 Convention and the decisions made at the convention.

[35] On January 30, 2017, the CHQ and other Hellenic organizations wrote to the CHC regarding a proposal to address their objections. The CHC responded by requesting that the CHQ pay its fees to rejoin the organization.

[36] In January 2018, the CHQ retained counsel and sent a list of demands to the CHC. As no response was received, the CHQ commenced this Application in February 2018.

Analysis

Issue No. 1: Does the CHQ Lack Standing to Bring this Application?

[37] The CHC's position is that the CHQ lacks standing to bring this Application, or to challenge the adoption of the 2016 Constitution in any manner, because it has failed to pay membership fees since 2012 and is therefore no longer a member of the CHC. The CHC relies upon s. 157 of the *NFP Act*, which states that a person's rights cease to exist on the termination of membership, to argue that only a person whose membership has not been terminated may raise a challenge to the conduct of a voluntary association. The CHC calls this its "silver bullet" argument.

[38] Pursuant to section 17.1 of the 1999 Constitution, any member who failed to pay fees would lose all voting privileges until the fees were paid. If membership fees remained unpaid for more than six months, membership privileges for the particular member were suspended without notice until the fees were paid, unless the National Council determined otherwise. The 1999 Constitution did not prescribe to whom or which body members were to pay their fees.

[39] According to the Manios Affidavit, the CHQ was required to pay $5,000 per year in fees from 2010 to 2015. In 2016, the fees for all provincial organizations were reduced. The CHQ's annual fee was reduced to $350.

[40] The CHQ does not dispute that since 2012, it has failed to pay fees to the CHC and that it owes approximately $7,000 in fees. The CHQ argues that its failure is justified because the CHC failed to deliver annual financial statements as required under the 1999 Constitution and because the CHC has not required other provincial organizations, specifically the HCO, to pay membership fees. The CHQ further submits that in September 2012, the interim president of the CHC, Costas Pappas, waived the CHQ's fees for 2012 to 2013. In an e-mail message from Mr. Pappas to the CHQ President at the time, Peter Georgakakos, he stated that the CHQ would be granted a "credit" of $5,000 because "the CHC has not functioned according to the CHC bylaws and more particularly, has never created a budget that clearly indicated what the various membership fees were. As such, the presidents of the provincial congresses did not know what (membership fees)

to pay." The CHC now disputes that the President at the time, Mr. Pappas, had authority to do so under the terms of the 1999 Constitution.[4]

[41] Neither party's position takes into account the provisions of the 1999 Constitution and the organizational structure of the CHC.

[42] The CHC's argument is flawed because, according to the terms of the 1999 Constitution, the CHQ is not a member of the CHC, but a provincial organization as that term is defined in the 1999 Constitution. As a provincial organization, the CHQ has a place within the structure of the CHC that is specifically contemplated and distinct from membership. In addition, the 1999 Constitution contains no requirement that provincial organizations pay fees.

[43] As noted above, the definition of "members" in the 1999 Constitution does not refer to the provincial organizations but to the members of those organizations. The CHC's affiant, Mr. Manios, recognized that the provincial organizations are not members of the CHC but "an organ of the CHC; they carry out the CHC mandate and functions at a provincial level." He further stated that the provincial organizations are also "conduits for which member-organizations and individuals become members of the CHC."

[44] Since the CHQ is not a member of the CHC, its failure to pay fees could not result in a suspension or loss of membership privileges. Moreover, the criteria for membership in section 7.3, including the payment of fees, did not apply to the CHQ. This is supported by the language of section 7.3 of the 1999 Constitution, which stated that "[a]ny organization **defined in section 7.1 or 7.2** shall not be eligible for membership or continued membership in the Congress, unless" it meets the requirements, including the payment of membership fees (emphasis added). The organizations referred in sections 7.1 and 7.2 did not include provincial organizations.

[45] Similarly, section 7.4 of the 1999 Constitution stated:

> Notwithstanding section 7.1, 7.2 and subsections 7.3(a) and (b), members of the Congress and of provincial organizations on the date of approval of the Constitution, shall be deemed to be members, provided that member-organizations comply with the provisions of subsections 7.3(c) to (l) inclusive, and individual members comply with the provisions of subsections 7.3(g), (h) and (l).

[46] This section did not require that provincial organizations comply with the requirements of 7.3(c) to (l) but only that member organizations comply.

[47] It is evident from the provisions described above that the 1999 Constitution consistently treated the provincial organizations as distinct from members and member organizations. The

---

[4] While the CHC submitted an affidavit from Mr. Pappas to respond to the Application, this issue is not addressed in his affidavit. The CHQ did not cross-examine Mr. Pappas.

provincial organizations were the means through which the CHC interacted with its members in those provinces. The repeated references to the provincial organizations in the 1999 Constitution demonstrate that their continued existence was essential to the governance model established by the 1999 Constitution.

[48] Mr. Manios deposes that the provincial organizations were to collect fees from their members and use these to pay the prescribed fees to the CHC. The record on this Application contains no evidence of the fees paid by individual members to the CHQ. As a result, it is not clear whether $5,000 reflected the fees collected in Quebec or how the fee was determined. There is no resolution of the National Assembly or National Council authorizing the $5,000 fee. When the fees were reduced in 2015, this was at the request of the Alberta and Manitoba organizations. There is no resolution authorizing this change and the reduction does not appear to reflect actual fees collected from members in any particular province.

[49] If the CHQ did collect fees from members that were to be paid to the CHC in the manner described by Mr. Manios, the CHQ ought to have submitted those fees to the CHC. If the fees collected were for membership in the CHC through the CHQ, the CHQ had no right to keep those fees.[5] The individual and organizational members of the CHQ, who were members of the CHC by virtue of this membership, would lose their rights by virtue of the CHQ's failure to transfer their fees. While the CHQ's failure to transfer any member fees it collected would have been improper, under the 1999 Constitution, this did not result in a loss of rights or status as a provincial organization.

[50] Given the above analysis, I need not consider whether the CHC failed to provide annual financial statements and whether this justified the CHQ's refusal to pay fees. Nonetheless, it appears that the CHC was not meeting its financial reporting obligations under the 1999 Constitution.

[51] Under section 11.20 of the 1999 Constitution, the Vice-President, Finance and Treasurer, was required to deliver a financial report within three months of the end of each fiscal year to the Executive Committee, the National Council and the National Assembly. For 2013 and 2014, the CHC provided a brief "Revenues and Expenses Statement" that stated only the membership fees received and the expenses for rent and utilities. In 2013, the total revenue was comprised only of membership fees from the Alberta and Manitoba organizations, for a total of $450. The expenses for rent and utilities totaled $12,750. According to the notes on the statement, the Ontario chapter

[5] There is no evidence in the record as to whether the CHQ also collected a membership fee separate from the fee collected for the CHC.

paid $5,000 "directly" toward rent and utilities and then covered the shortfall of $7,300, resulting in a debt to the Ontario chapter for $7,300.[6]

[52] More recently, in July 2018, the CHC obtained unaudited financial statements for 2012 to 2016 prepared by a chartered accountant, likely to comply with the requirements of the *NFP Act*. These were provided to the CHQ in the context of this proceeding.

[53] The CHC's failure to meet its financial reporting obligations under the 1999 Constitution, did not, however, justify the CHQ's refusal to pay members' fees to the CHC. Similarly, another provincial organization's non-payment of fees to the CHC would not impact upon the CHQ's obligation to pay fees. These are matters that are to be addressed not by self-help but in accordance with the structure and processes in place. A voluntary, not-for-profit organization like the CHC cannot survive if its constituent groups act in their own self-interest. This would defeat the very *raison d'être* of the organization, which is to act collectively in their mutually shared interest.

[54] As will be seen further below, there is a significant disconnect between the CHC's onerous and cumbersome governance structure and requirements and the actual practices of the organization. A misunderstanding of the structure and requirements of the 1999 Constitution, as well as a lack of continuity in the leadership of the organization, appears to be at the heart of the problems that led to this Application. The CHC argues, and I recognize, that it is a voluntary, not-for-profit organization and cannot be held to a standard of perfection. However, the CHC cannot simply disregard all the requirements of its Constitution for the purposes of expediency. Moreover, for the CHC to excuse its own failure to fulfill even the most basic requirements of its governing documents while maintaining that the CHQ lost its status for failing to pay fees, when this was not required under the Constitution, is incongruous and lacks fairness.

[55] A further issue arises as to whether the 2016 Constitution, under which a provincial organization can lose status for non-payment of fees, would result in the CHQ lacking standing to challenge the 2016 Constitution. For the reasons detailed further below, I have determined that the 2016 Constitution was not approved in accordance with the requirements of the 1999 Constitution and that, as a result, the provisions affecting its status have no force or effect. The CHQ is thus not precluded from bringing an Application challenging the 2016 Constitution.

[56] In the event that my interpretation of the 1999 Constitution and the status of provincial organizations is incorrect, and the CHQ no longer has status, I would nonetheless find that the CHQ has standing to bring this Application. While the courts will not ordinarily interfere in the internal affairs of voluntary clubs and religious organizations, the court may intervene in the decisions of a voluntary organization where: (i) the respondent organization failed to comply with the rules of the corporation; (ii) the organization failed to comply with the rules of natural justice,

---

[6] Apparently, the CHC shared office space with the Ontario provincial organization in Toronto. This too was contrary to the 1999 Constitution, which required that the head office of the CHC be located in Ottawa.

or (iii) if the organization's actions were allegedly undertaken in bad faith: *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165, at paras. 8-10 (S.C.C.) [*Hofer*]. For the reasons detailed above, the CHC did not follow its rules or comply with the rules of natural justice when it revoked the CHQ's status. The CHC simply demanded that the CHQ pay the fees and then excluded the CHQ from participating in the organization when it failed to pay. As will be further described below, the CHC then created the QRC to take the CHQ's place without a valid by-law. This creates a basis for the court to intervene in this circumstance.

Issue No. 2: Is the Application Statute-Barred?

[57] The CHC submits that the Application is statute-barred under the *Limitations Act, 2002* because it was commenced more than two years after the CHQ lost its membership in the CHC. The Application was commenced on February 2018. The CHC does not specify the date on which the CHQ lost its membership, but only that it was more than two years before the commencement of the Application.

[58] Given that I have found that under the 1999 Constitution, the CHQ could not have "lost" its status as a member of the CHC, this cannot be the event from which the limitations period begins to run. If the CHC's position is that the CHQ lost status under the 2016 Constitution, the Application is not statute-barred because the Application was commenced within two years of February 21, 2016, the date on which the CHC states that the 2016 Constitution was passed.

[59] In any event, the act that is the basis for the relief sought by the CHQ is the passing of the 2016 Constitution. By the CHC's own account, the 2016 Constitution was passed on February 21, 2016. Since the Application was commenced on February 8, 2018, it is within the two-year limitations period and is not statute-barred.

[60] The CHC argues, in the alternative, that the CHQ knew of the proposed changes to the 1999 Constitution, and the process for amendment, in 2014. The CHC submits that the CHQ should have sought injunctive relief at that time. The CHC has not cited any authority to support this position, and I reject that the limitations period expired two years after the CHQ could have sought injunctive relief or that the CHQ somehow waived its rights by not bring a motion for injunctive relief. In any event, the CHQ did not suffer any injury until the 2016 Constitution was passed.

Issue No. 3: Was the 2016 Constitution Properly Adopted?

[61] The CHQ submits that the 2016 Constitution was not properly adopted because the CHC failed to follow the procedure for amending the constitution as set out in section 19 of the 1999 Constitution, which continued to govern.

[62] The CHC acknowledges that the requirements of section 19 of the 1999 Constitution were not strictly complied with but submits that any non-compliance does not invalidate the 2016 Constitution because:

(i) the CHC followed a procedure that was previously authorized and used to amend the Constitution;

(ii) the National Council was authorized to amend the Constitution at the 2012 Convention;

(iii) any non-compliance was minor and technical in nature; and/or

(iv) any procedural defects were addressed when the Constitution was "ratified" in November 2016.

[63] Section 19 of the 1999 Constitution contains the procedure for amending the CHC's Charter and Constitution and states as follows:

> 19.1. The Charter or Constitution of the Congress or any [part] thereof, may be amended, supplemented or repealed only by the National Assembly.
>
> 19.2. Amendment, supplement or repeal of the Charter, Constitution or any part thereof, may be introduced by means of a resolution of the National Council or by a petition of at least ten (10) members at an annual or special convention.
>
> 19.3. A notice containing the entire resolution or petition mentioned in section 19.2, shall be given, in writing, to the Vice-President, Administration and Secretary, at least sixty (60) days before the annual or special convention at which it is intended to be considered.
>
> 19.4. The Vice-President, Administration and Secretary, shall send a copy of the entire resolution or petition mentioned in section 19.2, along with the notice mentioned in section 19.3, to all members, at least thirty (30) days prior to the annual or special convention at which it is intended to be considered.
>
> 19.5. Any amendment, supplement or repeal of the Charter or Constitution duly introduced shall require the affirmative vote of at least two-thirds (2/3) of the delegates present at the annual or special convention in order to become effective, and shall not be enforced or acted upon until the approval of the Minister of Consumer and Corporate Affairs has been obtained.
>
> 19.6. Notwithstanding section 8.21, the requisite quorum for amendment, supplement or repeal of the Charter, Constitution or any part thereof, shall be seventy-five (75) delegates representing at least three (3) provinces.

[64] Subsection 17(2) of the *NFP Act* prohibits a corporation from carrying on any activities or exercising any power in a manner contrary to its articles. Subsection 17(3) provides, however, that no act of a corporation is invalid "by reason only that the act… is contrary to its articles or this Act."

[65] "[A]bsent some demonstrated evidence that any irregularities went to the heart of the electoral process or lead to a result which does not reflect the wishes of the majority, the court

should be loathe to interfere in the internal workings of" voluntary clubs and religious organizations: *Lee v. Lee's Benevolent Assn of Ontario*, [2004] O.J. No. 6232 (Ont. Sup. Ct.), aff'd [2005] O.J. No. 194 (Div. Ct.).

[66] As discussed above, the courts generally refrain from intervening in the affairs of a voluntary club or organization, except where: (i) the respondent organization failed to comply with the rules of the corporation; (ii) the organization failed to comply with the rules of natural justice, or (iii) if the organization's actions were allegedly undertaken in bad faith: *Hofer*, at paras. 8-10. Even then, a legal right of sufficient importance, such as a property or contractual right, must be at stake: *Pal v. Chatterjee*, 2013 ONSC 1329, 226 A.C.W.S. (3d) 603, at paras. 30-31. See also: *Ukrainian Greek Orthodox Church of Canada v. Trustees of the Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress*, [1940] S.C.R. 586 (S.C.C.).

[67] In *Aga v. Ethiopian Orthodox Tewahedo Church of Canada*, 2020 ONCA 10, 314 A.C.W.S. (3d) 11, at paras. 40-41, the Court of Appeal for Ontario, citing *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall,* 2018 SCC 26, [2018] 1 S.C.R. 750, at para. 26, stated that:

> Voluntary associations do not always have written constitutions and by-laws. But when they do exist, they constitute a contract setting out the rights and obligations of members and the organization. […] Once it is established that a contract exists, an expectation of procedural fairness may attach as a way of enforcing the terms of a contract.

Did the Rules of Procedure Alter the Process for Amending the Constitution?

[68] The CHC does not dispute that it did not strictly comply with the procedure specified in section 19 of the 1999 Constitution for amending the Constitution. Instead, the CHC takes the position that the 2016 Constitution was passed in accordance with the "Rules of Procedure for the Convention" passed by the CHC in 1993 (the "Rules of Procedure"), which provided an alternative mechanism for making changes to the Constitution.

[69] Mr. Manios deposes that the Rules of Procedure were adopted at a Convention held in Vancouver in 1993. The version of the Rules of Procedure attached to the Manios Affidavit is dated "May 28-30, 1999, Ottawa, Ontario." No minutes from the 1993 Convention were in evidence, nor did the CHC produce any document reflecting the adoption of the Rules of Procedure. According to the Manios Affidavit, the Rules of Procedure were adopted when other amendments to the Constitution were made, including, among other things, the formation of a women's commission and a youth commission. Mr. Manios further deposes that the Rules of Procedure were used to govern all subsequent Conventions.

[70] The CHC also relies on the affidavit of Iraklis Theodorakopoulos, a Quebec delegate at the 1993 Convention, stating that the Rules of Procedure were adopted at that convention and that there was quorum for the meeting.

[71] The Rules of Procedure state that they "shall be observed in all proceedings of the Convention and shall be the rules and regulations for the order and dispatch of business of the

convention…[.]" Section 5 of the Rules of Procedure allows for the consideration of "new Motions or Amendments submitted from the floor of the Convention regarding the Charter and the Constitution of the Congress… provided the Members present at the Convention by a two-thirds (2/3) majority vote consent to have such a Motion or Amendment discussed, otherwise new Motions and Amendments are to be received and presented for consideration at the next Annual Convention of the National Assembly." Pursuant to section 15 of the Rules of Procedure, a motion passes by a simple majority of the members present and voting.

[72] The Rules of Procedure thus purport to provide a means through which amendments to the Constitution could be proposed from the floor of a Convention and passed by a simple majority. This is contrary to the notice periods and two-thirds majority required under section 19 of the 1999 Constitution.[7]

[73] Since the procedure for amending the Constitution is specifically provided for in section 19 of the 1999 Constitution (and in section 19 of By-Law No. 2 before that), to be valid, the Rules of Procedure derogate from those terms and would have to have been passed in accordance with the requirements of section 19. While the CHC's evidence is that there was a quorum at the 1993 Convention, they do not specify whether the quorum requirement under section 19 was met, nor whether any of the other procedural requirements were met.

[74] Moreover, if it was intended that the Rules of Procedure supersede the requirements of section 19, one would expect them to have been incorporated into the 1999 Constitution. All of the other changes that were adopted at the 1993 Convention, such as the creation of a women's commission and a youth commission, and the provisions for regional councils and standing committees, were incorporated into the 1999 Constitution. However, the Rules of Procedure were not, supporting the view that they were not intended to be incorporated into the 1999 Constitution.

[75] Indeed, the Manios Affidavit states that "the consensus was to keep the existing mechanism for changing the Constitution and By-Laws, but at the same time, give the delegates the ability to [e]ffect changes through a complementary mechanism." This suggests that the procedure for amending the Constitution was not altered by the Rules of Procedure.

[76] The CHC's reliance on the affidavit of Costas Pappas, secretary of the Congress from 2001 to 2004, to argue that the CHC had previously made constitutional changes under the Rules of Procedure is of no avail. The fact that the Rules of Procedure were used does not mean that they were valid.[8]

---

[7] Section 19 of the 1999 Constitution is identical to section 19 of By-Law Number Two of the CHC ("By-Law No. 2"), dated March 6, 1987, that was in effect at the time of the 1993 Convention.

[8] As no previous changes made under the Rules of Procedure are challenged, I make no findings as to their validity.

[77] The adoption of the Rules of Procedure, without incorporating them into the 1999 Constitution, created an ambiguity as to the proper procedure for amending the Constitution. In the absence of further proof that the Rules of Procedure were intended to change the amending procedure in section 19 of the 1999 Constitution, and were adopted in accordance with section 19, I find that compliance with the Rules of Procedure is not sufficient. The Rules of Procedure did not alter the procedure required to amend the constitution. Any amendment to the 1999 Constitution must comply with the requirements of section 19.

Was the National Council Authorized to Amend the 1999 Constitution?

[78] In addition to the Rules of Procedure, the CHC appears to rely on a resolution made at a Convention held in September 2012 (the "2012 Convention") as authorizing the National Council to amend the Constitution.

[79] On June 2, 2012, in anticipation of the entry into force of the *NFP Act*, the National Council passed a resolution to constitute a Constitution Committee to review and propose changes to the 1999 Constitution. According to the Constitutional Committee's terms of reference, the committee was to conduct a formal review of the Constitution to ensure compliance with the *NFP Act*; draft amendments as it deemed necessary; invite comments from councilors, provincial councils and the membership; submit an interim report at the 2012 Convention, and submit a final report at the 2013 Convention. The Chair of the Constitution Committee was Mr. Manios.

[80] Notice of the 2012 Convention was given to the provincial organizations on August 21, 2012. The report of the Constitution Committee was on the agenda for the 2012 Convention.

[81] According to the minutes of the 2012 Convention, Mr. Manios outlined "what is required by the Act and changes recommended by the Committee to be adopted." Although the Constitution Committee's report was not in the record on this Application, the minutes of the 2012 Convention state that the following changes, among others, were proposed: reducing the number of directors from 33 to 26 plus the immediate past president; reducing the total number of delegates from 150 to 100; making changes to quorum requirements to reflect changes to the composition of the National Assembly; and eliminating ex-officio directors, which the CHC understood were not permitted by the *NFP Act*.

[82] Mr. Manios then recommended that the delegates take the report back to their members for further input, and that such input be submitted to the Constitution Committee in time to make necessary changes. Mr. Manios then put forward a motion as follows, which was passed unanimously:

- Authorizing the National Council to submit Articles of Continuance as required by the *NFP Act*;

- Adopting the Constitution Committee's report as the basis for the changes to be made in the new by-laws "[s]pecifically Option A, Option B, paragraph 1, the relevant provisions of the Model By-Law, as the National Council sees fit;"

- Requiring that the provincial organizations and members be consulted before the National Council creates and adopts the new by-laws and any changes submitted by them "as the National Council sees fit, necessary and appropriate;" and

- Authorizing and delegating to the National Council the power to create new by-laws "and in its sole discretion adopt and submit said by-laws to the Federal Government, despite section 19.1."

[83] The motion also authorized the National Council to conduct the affairs of the Congress, including meetings of the National Assembly, on the basis of the new by-laws, which had not yet been drafted.

[84] Also at the 2012 Convention, certain delegates moved a motion requiring that a consultation process be undertaken and that the delegates take the report to their respective constituencies and boards for input and "that a special National Assembly meeting may be held on this matter, as may be determined by the National Council." That motion was also passed unanimously. The minutes of the 2012 Convention state that there was a quorum.

[85] In effect, the resolution delegated authority to amend the Constitution from the National Assembly to the National Council. Like the Rules of Procedure, this too derogated from section 19.1 of the 1999 Constitution, which states that the it "may be amended, supplemented or repealed **only by the National Assembly.**" As such, it was a constitutional amendment that had to be passed in compliance with the requirements of section 19. It does not appear from the evidence that members were provided with a written copy of the resolution, as required by section 19, since the notice sent to the provincial organization did not include any attachments. In addition, while the minutes state that there was quorum for a Convention, they do not state whether there was a quorum of 75 delegates from three provinces, as required for a motion amending the Constitution. Unless the requirements of section 19 were met, the resolution could not supersede the requirements of section 19.

[86] In addition, the CHC relies on the resolution at the 2012 Convention to argue that the National Assembly approved the proposed changes to the 1999 Constitution at the 2012 Convention. The resolution was not and could not have been a prospective approval of changes to the 1999 Constitution. The proposed changes were discussed in general terms and no specific draft provisions were approved. The Constitution Committee report was not final, as is evident from the fact that it was subsequently revised. Moreover, the resolution adopted at the 2012 Convention was in respect of the process for amending the Constitution and not the substantive changes themselves. In any event, the process contemplated further consultation with the provincial organizations.

Was the Non-Compliance with Section 19 of the 1999 Constitution Merely Technical?

Steps Leading to the Approval of the 2016 Constitution

[87] There is little evidence of what took place after the 2012 Convention. The final report of the Constitution Committee was to be delivered at the 2013 Convention, however, no Convention was held that year. There is also no evidence of steps being taken to consult the provincial organizations or other members during 2013.

[88] The next communication pertaining to the proposed Constitution was an e-mail message sent by George Papadakis, Vice-President, Administration and Secretary, to provincial representatives on February 24, 2014. The e-mail states only: "here is the report that I forgot to send you before the last meeting" and attaches the Constitution Committee's Report, dated February 14, 2014 (the "Report"). It does not state that the Report was being sent for consultation, nor does it set out any timeline for responses. In a responding e-mail sent on the same day, Mr. Theodosopoulos, on behalf of the CHQ, stated that it was the first time that he had seen the Report. He suggested that it be put on the agenda of the next meeting of the National Council. There is no evidence that this was done.

[89] The Report outlines the proposed changes to the 1999 Constitution. No draft proposed constitution is provided. The Report notes that no comments were received since the first report of the committee was presented at the 2012 Convention. However, it does not specify any process for receiving feedback. The Report states that the Constitution Committee had identified several areas of the Constitution that would need to be modernized to comply with the *NFP Act*. The Report states that Constitution Committee would not draft amendments but, as directed by the National Council, would only make proposals, which would be accepted or rejected by the National Assembly. The approved proposed changes would then be drafted with the assistance of legal counsel and submitted to the 2014 Convention.

[90] The Report outlines the following proposed changes:

- Remove membership provisions that were not in use;
- Clarify that membership is through provincial organizations or regional boards;
- Reduce the number of delegates to the National Assembly from 150 to 100, while maintaining balanced and fair representation of all provinces;
- Keep the same quorum requirement for the National Assembly of 40 delegates representing three provinces;
- Reduce quorum for amendments to the Constitution from 75 to 60 delegates;
- Reduce the number of councilors on the National Council from 45 to 23, while maintaining proportionate representation by province;

- Provide an option for eight appointed councilors; and
- Streamline the Executive Committee, including eliminating provincial vice-presidents, which created confusion with provincial presidents.

[91] The Report does not mention the possibility that privileges would be revoked, not only for members but also for provincial organizations, who were not in "good standing" or who had not paid their fees.

[92] According to the Manios Affidavit, the HCCA, the HCCM, and the HCO made comments on the Report during telephone calls with Mr. Manios, which he summarized in a single document. Mr. Manios noted that they approved the proposed changes and made certain additions, including to "[s]pecify rights and privileges of members" and "revise and clarify the 1999 provision on matters relating to membership fees, delinquency and process of reinstatement." The Constitution Committee received no feedback from the CHQ.

[93] The CHQ submits that the 2016 Constitution was drafted based on the direction given at the 2012 Convention and the input received from the HCCA, the HCCM, and the HCO. There is no evidence that the other provincial organizations, namely, the HCCBC and the CHQ, were advised of the changes proposed by the other provincial organizations or that they were provided with an opportunity to comment on them. On cross-examination, Mr. Theodosopoulos stated that the CHQ did not receive the HCCA's or the HCO's comments.

[94] In January 2015, the CHC received a notice of pending dissolution from Industry Canada. Pursuant to the notice, the CHC had 120 days to transition to the *NFP Act*.

[95] On March 9, 2015, the CHC filed articles of continuance. On March 16, 2015, the CHC was issued a Certificate of Continuance by Industry Canada.

[96] In January 2015, the National Council had issued a notice of a conference and National Assembly meeting to be held in Toronto in November 2015. The draft agenda included "Approval of Constitution" as an agenda item. However, since none of the provincial organizations, except the HCO, committed to attending, the conference did not take place.[9]

[97] A "special meeting" of the National Assembly was then scheduled for November 30, 2015. According to Mr. Manios, this meeting was postponed to 2016 "due to lack of commitment from the Provincial Congresses[.]"

---

[9] No convention took place in 2014. The Manios Affidavit states that the CHQ had undertaken to organize the 2014 Convention and failed to do so. There is no documentary evidence regarding a 2014 Convention.

The February 21, 2016 Meeting

[98] By e-mail on February 1, 2016, the CHC gave notice of a "special meeting" of the National Council, followed by a meeting of the National Assembly to be held via teleconference on February 21, 2016. The draft agenda for the National Council meeting included the approval of the Constitution. The draft agenda for the meeting of the National Assembly included "Confirmation of Constitution" as an item, as opposed to approval of the Constitution.

[99] The e-mail message further stated: "By operation of law the BC and Quebec Congresses are [sic] no longer have any status in the CHC due to their financial delinquency. Hence their presidents are not entitled [to] attend the NC meeting or to have any representation to the National Assembly."

[100] The CHC submits that the 2016 Constitution was passed by the National Council at the meeting held on February 21, 2016 (the "February 2016 Meeting").

[101] However, the February 2016 Meeting does not meet the requirements of section 19 of the 1999 Constitution. As noted above, the authority to approve the 2016 Constitution could not be delegated to the National Council, when the 1999 Constitution stated that only the National Assembly could amend or repeal the Constitution. In addition, the process did not meet the requirements of section 19.2, which required that the amendment be introduced by resolution of the National Council or by a petition of at least ten members at an annual or special convention. The February 2016 Meeting was a "special meeting"[10] and not a Convention. There is no record of notice of the resolution having been provided to the Vice-President, Administration and Secretary, let alone on 60 days' notice as required by the 1999 Constitution. Similarly, there is no record demonstrating that the entire resolution was sent to all members 30 days in advance, as required by section 19.4.

[102] The minutes of the February 2016 Meeting state that "[q]uorum was present." On cross-examination, Mr. Manios confirmed that quorum was met under the requirements of the 2016 Constitution, that is, one-third of registered delegates. This does not comply with the quorum required under section 19.6 of the 1999 Constitution for a constitutional amendment, which required 75 delegates representing three provinces.

[103] At the meeting, Mr. Manios advised the participants that the Constitution had to be submitted to Industry Canada by the following week. The minutes state that the members agreed to go over the proposed constitution article by article and make changes and comments before final approval. However, the entire meeting, which included other agenda items, lasted for one hour and fifteen minutes.

---

[10] The 1999 Constitution contains no provision for a "special meeting" and it is unclear what was meant by this label.

[104] It is unclear whether a proposed draft Constitution was provided to the participants. The document attached to the minutes shows only the changes in representation on the National Assembly and National Council, the officer titles and positions, and the standing and special committees.

[105] On the provisions that subsequently became contentious, the minutes of the February 2016 Meeting state as follows:

- Regional boards are continued but renamed regional councils, with details left to the National Council;
- Article 9, regarding membership "the thrust of the existing provision remains the same;"
- Article 13, regarding membership fees "[r]evised to clarify matters. But the thrust of the old provisions, except for other assessments, are continued;"
- Article 19, regarding quorum "[c]ontinues the same provisions, except quorum of meetings is no longer a fix[ed] number, but rather a percentage of the registered delegates, namely 1/3."

[106] Not only is it clear that the process for amending the Constitution as stated in the 1999 Constitution was not followed, but the substantive changes proposed in the 2016 Constitution were either minimized or obscured. Based on the documentary evidence, at no time was it made clear to the members who participated in the February 2016 Meeting that the proposed changes to the Constitution were substantial and far-reaching. For example, despite the fact that the loss of privileges by a provincial organization that failed to pay fees was new, the provisions were described as substantially the same as they were previously.

[107] The change in quorum was accurately described. However, what was not reflected was that reducing quorum to one-third of registered delegates was a substantial change to the regional balance that existed under the 1999 Constitution. Previously, Ontario had 61 of 150 delegates to the National Assembly and Quebec had 40. Quorum for a Convention was 40 from three provinces. Under the 2016 Constitution, Ontario had 40 of 100 delegates and Quebec had 32. Changing quorum to one-third of all delegates, without any requirement that they come from three different provinces, meant Ontario delegates alone could constitute a quorum while Quebec delegates alone could not.

[108] In addition, the notice for the February 2016 Meeting incorrectly stated that the CHQ and the HCCBC had lost their status and had no right to participate in both the National Council and National Assembly. As determined above, there was no basis in the 1999 Constitution to revoke their status as provincial organizations. The inability of the CHQ and HCCBC to participate was a substantial defect in the process through which the 2016 Constitution was passed.

[109] The CHC relies on the fact that the resolution that was passed at the 2012 Convention authorized the National Council to operate in accordance with the new Constitution to argue that the CHQ had lost its status. The terms of the 2016 Constitution disentitling a provincial organization from participating for not being in good standing could not apply because they were not yet in force. The CHC cannot rely on the terms of a constitution that was not yet passed. Nor can it rely on a resolution prospectively authorizing the organization to act in accordance with a new Constitution that had not been drafted. Until a new constitution was validly approved in accordance with section 19 of the 1999 Constitution, the 1999 Constitution continued to apply.

[110] An additional issue arises as to whether the meeting was properly held by teleconference. At the 2012 Convention, a motion was moved from the floor to amend the by-laws to permit meetings of the National Assembly to take place by teleconference, since many delegates were unable to attend in-person meetings. The motion also proposed to reduce the quorum requirements for all regular, special or other meetings of the National Assembly to one-third of registered delegates.[11] The motion was passed unanimously. For the reasons given above, amendments to the 1999 Constitution, such as quorum requirements, had to comply with the procedure provided in section 19 and could not be made from the floor of a Convention. Nonetheless, the 1999 Constitution contained no requirements regarding the location of meetings.[12] As a result, the fact that the February 2016 meeting was held by teleconference does not in itself run afoul of the 1999 Constitution.

[111] The 2016 Constitution also confirms that it could not come into force before approval by the National Assembly. Article 36 of the 2016 Constitution states that it "shall be enacted by National Council and confirmed by the annual meeting of the National Assembly." Article 36 required a two-thirds majority vote by both the National Council and National Assembly for the Constitution to come into force and effect.

[112] In summary, the 2016 Constitution was approved by the National Council only, and not the National Assembly. Quorum requirements for a constitutional amendment were not met. Notice of the meeting was inadequate and CHQ and the HCCBC were incorrectly told they were not entitled to participate. The proposed changes to the Constitution were not made clear to the members who did participate. Accordingly, the 2016 Constitution was not properly approved at the February 2016 Meeting.

Was the 2016 Constitution Ratified at the 2016 Convention?

[113] The CHC submits that the 2016 Constitution, as approved by the National Council at the February 2016 Meeting, was ratified by the National Assembly at a Convention held in Toronto

---

[11] The motion was moved by a delegate from Ontario and seconded by the then-president of the CHQ.

[12] The only location requirement was that the biannual "General Assembly," at which elections for the National Council took place, was to alternate between Eastern and Western Canada.

in November 2016 (the "2016 Convention"). As previously detailed, as this was not the procedure required by the 1999 Constitution, the 2016 Constitution could not be approved in this manner. The requirements of section 19 had to be followed.

[114] The CHC appears to be relying on the provision of the 2016 Constitution that states that it comes into force with a two-thirds vote of the National Council and the National Assembly or, alternatively, in accordance with the amendment procedure under the 2016 Constitution. Again, the CHC cannot rely on a provision of a constitution that was not yet in effect.

[115] The procedure adopted at the 2016 Convention was also defective. At the Convention, a report of the Constitution Committee dated July 30, 2016 comparing the 1999 and 2016 Constitutions was provided to the delegates "for information." The comparison is substantially the same as the comments made at the February 2016 Meeting in respect of membership and membership fees, i.e. insufficient.

[116] According to the minutes of the 2016 Convention, the report was submitted and no further changes were put forward. The motion made was "to accept the Report as circulated" and was passed unanimously. As described, it is unclear that the delegates understood that they were approving the 2016 Constitution and not simply the Constitution Committee's report. Again, this is not the process under the 1999 Constitution. For the delegates of the National Assembly to approve the 2016 Constitution, it had to be made clear to them that that is what they were voting on.

[117] While the CHC relies on s. 152(1) of the *NFP Act*, which states that the directors may, by resolution make, amend or repeal any by-laws that regulate the affairs of the corporation, that provisions states "[u]nless the articles, the by-laws or a unanimous member agreement otherwise provides[.]" In this case, the 1999 Constitution had specific requirements. In addition, s. 152(2) requires that the directors submit the by-law, amendment or repeal to the members at the next meeting of members, where they may confirm, reject, or amend the by-law.

[118] Given the above analysis, I need not address the admissibility of photographs of the 2016 Convention obtained by the CHQ that it relies upon to argue that the requisite quorum of 75 delegates was not met. In any event, the photographs are not reliable evidence, as there is no affidavit from the individual who took the photographs as to what they depict and whether they depict all of the delegates in attendance. I would place no reliance on the photographs.

[119] Based on the foregoing, the CHC's arguments regarding the procedure under which the 2016 Constitution was adopted fail.

What is the Impact of the CHC's Failure to Follow the 1999 Constitution?

[120] The terms of the 1999 Constitution constitute contractual obligations between the corporation and its members, to which the CHC has failed to adhere: *Conacher v. Rosedale Golf Association Ltd.,* [2002] O.J. No. 575 (Ont. Sup. Ct.), at para. 21; *Senez v. Montreal Real Estate Board*, [1980] 2 S.C.R. 555 (S.C.C.), at pp. 566-67. The CHQ was not a member, but a provincial

organization with recognized status under the 1999 Constitution. Moreover, the rights in question, being participatory rights, are of sufficient importance to warrant the court's intervention: see *Bhadra v. Chatterjee,* 2016 ONSC 4845, 269 A.C.W.S. (3d) 680, at para. 106.

[121] As described in the preceding section, the procedural defects in the process through which the 2016 Constitution was passed were more than merely technical. The CHQ was effectively blocked from participating in the February 2016 Meeting, which was not properly constituted.

[122] The defective process impacted on the substantive rights of the CHQ in a significant and far-reaching manner. A substantial change to the 1999 Constitution, that is, a provision that deprived the CHQ of its status as a provincial organization, was approved. The loss of status previously granted to the largest municipal organizations under the 1999 Constitution also significantly impacted the regional balance that existed under the 1999 Constitution. Quorum requirements that previously ensured that delegates from a single province could not amend the Constitution were removed. The cumulative effect of all of the changes was to enable one provincial organization, the HCO, to have sufficient representation to control decisions of the CHC at the National Assembly. This could then impact on who was elected to the National Council.

[123] Since I have found that in passing the 2016 Constitution the CHC did not follow the rules of the organization, I need not consider whether there was a breach of natural justice or whether the CHC's actions were taken in bad faith. As such, it does not matter whether the CHC intended to "ram through" the 2016 Constitution without input from the CHQ. It appears that the CHC acted hastily to pass the Constitution because of a concern that it could be dissolved if it failed to file new by-laws within the time required under the *NFP Act*. However, this does not justify a process that departs significantly from the required procedure, excludes bodies that have a right to participate, and makes sweeping changes that were not properly highlighted to those who were voting on them. The alternative would have been to maintain the existing terms of the 1999 Constitution, amended as necessary to comply with the *NFP Act*, and to make more substantial changes to the Constitution at a later date.

[124] Accordingly, I find that the 2016 Constitution was not properly adopted. The Rules of Procedure did not alter the process for amending the Constitution; the National Council was not authorized to amend the 1999 Constitution; and the 2016 Constitution was not ratified at the 2016 Convention. Moreover, the CHC's non-compliance with section 19 of the 1999 Constitution was not merely technical in nature but, rather, resulted in sweeping changes to the architecture of the organization. Those changes had a significant and far-reaching impact on the participatory rights of the CHQ.

Issue No. 4: Was the Creation of the Quebec Regional Council Proper?

[125] The CHQ further submits that the creation of the QRC by the National Council of the CHC was improper. The CHC maintains that the creation of the QRC was in accordance with the 1999 Constitution.

[126] Section 6.3a.1 of the 1999 Constitution permits the National Council to create a "regional board" where no provincial organization exists and states:

> Notwithstanding section 6.3, in a province where no provincial organization exists the National Council may, by by-law, establish a regional board to carry on the functions of the Congress in that province. One regional board may be formed for two or more provinces in the same geographic region.

[127] Section 6.3a2 further states that the regional board "shall be an interim provincial organization and upon the establishment of a provincial organization, the regional board shall be dissolved…[.]" The National Council is also required to pass by-laws relating to the name, objects, structure, membership, powers, duties and functions of the regional board.

[128] The CHQ did not know about the creation of the QRC until September 28, 2016, when a letter of invitation to the 2016 Conference was sent to the CHQ. The letter was on the CHC's letterhead but stated that it was being sent "on behalf of the Quebec Regional Council." The letter further stated that the QRC was a "temporary measure put in place in order to allow the CHC to carry out its mandate and functions in the province of Quebec."

[129] Notably, the CHC adduced no evidence regarding the decision to create the QRC. The Manios Affidavit is silent on this issue. On cross-examination, Mr. Manios testified that the QRC was created in the summer of 2016. If there was a by-law creating the QRC, as required by section 6.3a.1 of the 1999 Constitution, the CHC would be expected to have produced it. There are also no by-laws for the QRC, as required by section 6.3a.3 of the 1999 Constitution. The CHC's factum states only that "[i]n the time after the Applicant ceased paying membership fees, the Respondent established the Quebec Regional Board, as an apparently temporary measure to replace the Applicant as a representative of Quebec within the Respondent."

[130] In addition, no regional board was created in B.C., even though it is undisputed that the HCCBC was also in default of fees. The explanation offered by Mr. Manios on cross-examination was that there was no one available in B.C. to organize a regional board.

[131] Even though the CHC disputed the CHQ's right to participate in the organization because of its non-payment of fees, the CHQ continued to exist as a provincial organization. The CHQ's status and privileges were not revoked as a result of its failure to pay fees. As there was a provincial organization in Quebec, the National Council did not have the authority to create a regional board. Moreover, the CHC failed to pass a by-law to establish the QRC, contrary to the requirements of section 6.3a. The creation of the QRC was improper and as a result, it cannot validly exist.

[132] The 2016 Constitution is consistent with the terms of the 1999 Constitution in that the National Council may only establish a regional council in a province "where no recognized provincial organization exists[.]" In addition, Article 7, section 6 of the 2016 Constitution specifically states that the CHQ is a "recognized provincial organization." Therefore, the QRC likewise could not have been established under the 2016 Constitution.

Issue No. 5: Were the 2016 Elections Properly Held?

[133] The CHQ also challenges the legitimacy of the results of the election held at the 2016 Convention (the "2016 Election") due to lack of proper notice, and its inability to participate. The CHC had not held elections since 2012.

[134] As noted above, the CHQ, along with the HCCBC, the GCNB, the GCT, the GCV, and the HCGM boycotted the 2016 Convention. Four member organizations from Quebec paid their fees directly to the CHC and were able to send delegates to the 2016 Convention.

[135] Section 9.5 of the 1999 Constitution states:

> Election and appointment of the National Council shall be held in accordance with the Constitution at the ratifying Convention, every two years and in every second year thereafter, during the weekend of September/October, subject to section 8.5.

[136] Section 8.5 states that the location of the biannual General Assembly for Election of the National Council will alternate between Eastern and Western Canada. Section 9.8 states that the National Council shall prescribe the manner of nominations and of holding elections, including the forms to be used, the method of voting and rules and procedures "so long as to ensure the fair and proper conduct of nominations and elections." A similar provision is found in the 2016 Constitution, Article 22, section 6.

[137] The CHQ asserts that only the first notice of the 2016 Convention, on July 13, 2016, stated that an election would take place. Subsequent notices did not state that an election would be held. In my view, the absence of a reference to the election in subsequent notice does not matter. The Notice of Annual Meeting given in the letter of July 13, 2016 was the official notice and stated clearly that elections would be held. In any event, the CHQ did not fail to participate because it was unaware that elections would be held. The CHQ refused to participate because it objected to the Convention being held.

[138] Also, the notice met the 90-day requirement for Conventions in the 1999 Constitution. Although section 9.5 states that Conventions were to be held in September or October, the fact that the 2016 Convention was held in November would not be sufficient to nullify the result.

[139] The CHQ also challenges the legitimacy of the 2016 Election because so many local and provincial organizations boycotted it. The three municipal organizations, the GCT, the HCGM, and the HCV, refused to attend. The CHQ alleges that those three organizations are the largest Hellenic-Canadian organizations in Canada, and sponsor or organize 90 percent of the community and charity events of the CHC. The other organizations that co-signed the press release objecting to the Convention were the HCCBC and the GCNB.

[140] Strictly speaking, under section 8.6 of the 1999 Constitution, each delegate to a Convention "shall be appointed by the provincial organization and shall be entitled to one (1) vote[.]" Any delegates to the 2016 Convention from Quebec were not appointed by the CHQ and therefore,

strictly speaking, were not entitled to vote. This casts a doubt on the legitimacy of the election results.

[141] Moreover, the structure of the 1999 Constitution envisages an organization that has proportionate provincial representation at all levels of decision-making, as seen in the required composition of the National Assembly and the National Council. For the CHC to conduct elections in the absence of a significant number of the local and provincial organizations, whose members would have been entitled to vote, also raises questions about the legitimacy of the results.

[142] The CHQ bears the onus of demonstrating with cogent evidence that the irregularity impacted on the election result: *Bhagria v. Sharma*, 2014 ONSC 5563, 245 A.C.W.S. (3d) 757, at para. 23. Even if errors in procedure are established, where the irregularity does not go to the heart of the process or lead to a result that does not reflect the wishes of the majority, the court has discretion not to interfere with the election results: *Lee v. Lee's Benevolent Assn. of Ontario*, [2005] O.J. No. 194 (Ont. Div. Ct.), at para. 2. In the normal course, recourse should not be to the courts, but rather the duly constituted membership of the organization should be left to call an annual general meeting in accordance with its by-laws: *Montreal & Canadian Diocese of the Russian Orthodox Church Outside of Russia Inc. v. Protection of the Holy Virgin Russian Orthodox Church Outside of Russia in Ottawa Inc.*, [2002] O.J. No. 4698 (Ont. C.A.), at para. 12.

[143] The CHQ has not made specific complaints about the election result. There is no suggestion, or evidence in the record, that the composition of the National Council did not fulfill the regional representation requirements of the 1999 Constitution. Since the elected councilors and their province of origin are not identified, I have no information in this regard. According to the 1999 Constitution, any delegate could stand for election to the National Council, subject to certain conditions.

[144] It appears that the CHQ objects to the members of the Executive Committee of the CHC but it does not make any specific complaints. In addition, the members of the Executive Committee are elected by the National Council and not the National Assembly.

[145] Subsection 169(1) of the *NFP Act* allows a corporation, member or director to apply to the court "to determine any controversy with respect to an election or appointment of a director… of the corporation." The court may make an order:

> (a) restraining a director or public accountant whose election or appointment is challenged from acting pending determination of the dispute;
>
> (b) declaring the result of the disputed election or appointment;
>
> (c) requiring a new election or appointment, and including in the order directions for the management of the activities and affairs of the corporation until a new election is held or appointment made;

(d) determining the voting rights of members and of persons claiming to hold memberships; and

(e) any other order that it thinks fit.

[146] In the absence of specific concerns or complaints about the composition of the National Council after the 2016 Election, I decline to declare the results of the 2016 Election null and void. In any event, the councilors' terms came to an end in 2018 (under the 1999 Constitution) and in 2019 under the 2016 Constitution. There was no evidence before me as to whether elections were held subsequently or what the outcome was. Moreover, the relief sought by the CHQ is impracticable. The CHQ seeks a declaration that the board, or National Council, should be as it was constituted in 2012, however, there is no indication as to whether those individuals are currently willing to serve as councilors.

[147] As a result, notwithstanding the irregularities of the 2016 Election and the relief ordered below in respect of certain articles of the 2016 Constitution, there is no basis for disturbing the composition of the National Council as elected in 2016.

Issue No. 6: What Relief is Appropriate in the Circumstances?

[148] In respect of the Constitution, the CHQ seeks a declaration that the 1999 Constitution is the Constitution of the CHC.

[149] Pursuant to s. 97 of the *CJA*, the court may "make binding declarations of right, whether or not any consequential relief is or could be claimed." The court may also make mandatory orders when it appears just or convenient to do so: *CJA*, s. 101.

[150] However, the 2016 Constitution has been drafted to comply with the requirements of the *NFP Act* and has been filed with Industry Canada as the by-laws of the CHC. As such, it would be problematic to declare that the 2016 Constitution is invalid. In addition, the CHQ has not raised concerns regarding the majority of the provisions of the 2016 Constitution.

[151] As a result, it is my view that the more appropriate remedy would be to declare that certain provisions of the 2016 Constitution that impacted upon the rights of the CHQ be suspended, or declared to have no force or effect until properly amended in accordance with the amendment procedure under section 19 of the 1999 Constitution. Those provisions are as follows:

- Article 7, section 6 – removing the recognition of the three largest municipal organizations;
- Article 13, section 3 – regarding the loss of status as a provincial organization due to non-payment of membership fees;
- Article 19, section 1 – reducing quorum to one-third of registered delegates to a Convention;

- Article 21, section 5 – altering the composition of the National Council;
- Article 22, sections 3 and 4 – extending the term of President and increasing the term limit to three consecutive three-year terms;
- Article 23, section 1 – eliminating the positions of regional Vice-Presidents as officers;
- Article 24, section 10 – reducing quorum of the National Council to one-third of all councilors; and
- Article 36, section 2 – changing the procedure for amending the Constitution.

[152] In the meantime, the provisions of the 1999 Constitution that correspond with the provisions listed above will apply.

[153] The Applicant seeks an order "dissolving" the QRC. I have not been provided with any authority for this relief and lack evidence as to how the QRC was constituted, for example, whether it is incorporated and if so, under what legislation. As a result, the relief will be limited to a declaration that the QRC was created improperly and without authority.

[154] The CHQ has undertaken to pay $7,000 in outstanding fees within 60 days of the making of this order. That undertaking ought to be honoured. In addition, at the hearing, the CHQ advised that it is no longer seeking a financial accounting.

[155] Once the 2016 Constitution is properly amended and passed, all future elections are to be conducted in accordance with the terms of the amended Constitution.

Conclusion

[156] It is clear from the evidentiary record that the CHC had for years acted in a manner inconsistent with its constituting documents. It had no financial statements and elections and annual conventions were not being held. As record-keeping was inconsistent, it is difficult to see how the organization was operating or who was making the decisions. It certainly was not operating according to the governance structure in the 1999 Constitution. Inevitably, there were differences of opinion among the constituent organizations that were exemplified by the dispute over fees and unequal treatment of the provincial organizations.

[157] For the foregoing reasons, I find that the CHC did not comply with the 1999 Constitution when it passed the 2016 Constitution and when it created the QRC. The 2016 Election was also irregular and was conducted in the absence of important constituencies of the organization. Although it was the CHQ who commenced this Application, significant objections were voiced by almost many other provincial organizations and the largest municipal organizations before and after the 2016 Convention. The CHC nonetheless proceeded with the Convention.

[158] Accordingly, the CHQ's Application is granted and the following relief is ordered:

(a) A declaration that the QRC was created improperly and without authority;

(b) A declaration that the following provisions of the 2016 Constitution are of no force or effect until properly amended in accordance with section 19 of the 1999 Constitution:

- Article 7, section 6;
- Article 13, section 3;
- Article 19, section 1;
- Article 21, section 5;
- Article 22, sections 3 and 4;
- Article 23, section 1;
- Article 24, section 10; and
- Article 36, section 2.

[159] Counsel requested an opportunity to make submissions on costs. Given the restrictions on the court's operations and the constraints on the court's resources during the current pandemic, the parties are encouraged to agree on costs. In the event that no agreement is reached, Applicant's counsel shall submit their costs outlines and costs submissions within 14 days of the release of these Reasons. The Respondent's costs submissions are due within 14 days of receiving the Applicant's cost submissions. No costs submissions are to exceed four double-spaced pages and may submitted by email to my judicial assistant, at Roxanne.johnson@ontario.ca. No reply submissions without leave. If no costs submissions are received within this time frame, the parties will be deemed to have resolved costs.

Nishikawa J.

Released: April 14, 2020

CITATION: Le Congrès Hellénique du Québec v. Canadian Hellenic Congress, 2020 ONSC 2224
COURT FILE NO.: CV-18-591763
DATE: 2020414

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Le Congrès Hellénique du Québec

- and -

Canadian Hellenic Congress

REASONS FOR JUDGMENT

Nishikawa J.

Released: April 14, 2020