

COURT OF APPEAL FOR ONTARIO

CITATION: Islamic Food and Nutrition Council of Canada v. Islamic Food and Nutrition Council of America, 2025 ONCA 425

DATE: 20250611

DOCKET: COA-25-CV-0047 & COA-25-CV-0048

Simmons, Wilson and Madsen JJ.A.

DOCKET: COA-25-CV-0047

BETWEEN

Islamic Food and Nutrition Council of Canada

Applicant
(Appellant)

and

Islamic Food and Nutrition Council of America

Respondent
(Respondent)

APPLICATION UNDER Sections 255 of the *Canada Not-for-Profit Corporations Act*, S.C. 2009, C. 23, and Rule 14.05(3)(h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194

DOCKET: COA-25-CV-0048

AND BETWEEN

Islamic Food and Nutrition Council of America

Applicant
(Respondent/Appellant by way of cross-appeal)

and

Islamic Food and Nutrition Council of Canada

Respondent
(Appellant/Respondent by way of cross-appeal)

APPLICATION UNDER Sections 255 and 289 of the *Canada Not-for-Profit Corporations Act*, S.C. 2009, C. 23, and Rule 14.05(3)(h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194

John Picone, Stephanie Voudouris and Laura Cloutier, for the appellant (COA-25-CV-0047) and the appellant/respondent by way of cross-appeal (COA-25-CV-0048)

Danny Urquhart and Sahil Kesar, for the respondent (COA-25-CV-0047) and the respondent/appellant by way of cross-appeal (COA-25-CV-0048)

Heard: March 25, 2025

On appeal from the judgments of Justice R. Lee Akazaki of the Superior Court of Justice, dated January 16, 2025.

REASONS FOR DECISION

[1] The issues on appeal arise out of competing applications for declaratory relief brought by two not-for-profit corporations, the Islamic Food and Nutrition Council of Canada (the “Canadian corporation”) and the Islamic Food and Nutrition Council of America (the “U.S. corporation”), concerning membership and voting rights in the Canadian corporation. Both corporations provide Halal certification services.

[2] The Canadian corporation sought a declaration that, in accordance with its original 2007 Letters Patent under an Ontario statute and subsequent 2021 Articles of Continuance under a federal statute, it has one class of members, each member has the right to vote, and the current members are Muhammad Ali, Muzaffar Ahmad and the U.S. corporation. It also requested an order rectifying its members’ register to list those persons as its members.

[3] The U.S. corporation sought a declaration that a 2015 bylaw of the Canadian corporation continues in force and that, under the terms of that bylaw, the Canadian corporation has two classes of members being “Director Members” and “Corporate Members”, that only Corporate Members have the right to vote at a members’ meeting, and that the U.S. corporation is the sole Corporate Member.

[4] The U.S. corporation also asked that the Canadian corporation’s 2021 Articles of Continuance and member’s register be amended in accordance with its request for declaratory relief (the “ancillary relief”).

[5] The applications were heard together. Following the hearing, the application judge dismissed the Canadian corporation's application but granted the U.S. corporation's application in part. He granted the declaratory orders requested by the U.S. corporation but not the requested ancillary relief.

[6] The Canadian corporation appeals from the application judge's decision and asserts that the application judge erred in failing to find that the Canadian corporation has one class of members, and that each member has the right to vote. The U.S. corporation cross-appeals and asserts that the application judge erred in failing to grant the ancillary relief it requested.

[7] For the reasons that follow, we dismiss the appeal and cross-appeal.

Background

[8] The U.S. corporation has been certifying Halal products since the 1980s. Muhammad Chaudry is its founder and has served as its president since 1986. The U.S. corporation registered in Ontario as an extra-provincial non-share corporation in November 1999.

[9] The Canadian corporation was incorporated in 2007 by Letters Patent (the "2007 Letters Patent") filed under Part III of the *Corporations Act*, R.S.O. 1990, c. C.38 (the "*Corporations Act*"). The applicants for incorporation were Mr. Ali, Mr. Ahmad and Sajjad Hanif. By operation of s. 121 of the *Corporations Act*, the

three applicants became the original members of the Canadian corporation.¹ As explained by the application judge, “members are to non-profits what shareholders are to business corporations with share capital. They do not manage the company but elect the board and control the fundamental constitution of the company.”

[10] The 2007 Letters Patent did not create any classes of membership. Accordingly, under s. 125 of the *Corporations Act*, each member of the corporation had the right to vote.² The Letters Patent did specify that the three applicants for incorporation were also to be the first directors.

[11] In 2008, Mr. Hanif was replaced by Hadir Khattak.

[12] It is undisputed that Mr. Ali and Mr. Khattak worked for the U.S. corporation as independent contractors for many years, well after the incorporation of the Canadian corporation. Mr. Khattak also worked for the U.S. corporation for some period.

[13] In 2015, Mr. Chaudry invited the Canadian corporation to have its annual general meeting in Chicago, where the U.S. corporation was headquartered. At that meeting, the U.S. corporation sought membership in the Canadian corporation and put forward Bylaw 2015-1 (the “2015 Bylaw”) to accomplish that. The 2015

¹ Section 121 of the *Corporations Act* states: Upon incorporation of a corporation, each applicant becomes a member thereof.

² Section 125 of the *Corporations Act* states: Each member of each class of members of a corporation has one vote, unless the letters patent, supplementary letters patent or by-laws of the corporation provide that each such member has more than one vote or has no vote.

Bylaw created two classes of members, Corporate Members and Director Members. Under the terms of the 2015 Bylaw, only a Corporate Member had voting rights, but Director Members could also attend member meetings. The effect was that the personal members of the Canadian corporation no longer had voting rights, while the corporate member, the U.S. corporation, did.

[14] In 2019, Mr. Chaudry replaced Mr. Khattak as a director of the Canadian corporation.

[15] In September 2020, the Canadian corporation's Board of Directors passed a resolution that it be "registered federally in Canada in addition to Ontario registration". After obtaining the requisite provincial approval, on May 18, 2021, Mr. Ahmad filed Articles of Continuance with Corporations Canada under the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23 (the "federal Act"). The Articles of Continuance specified that the Canadian corporation was authorized to establish one class of members and that "[e]ach member shall be entitled to receive notice of, attend and vote at all meetings of the members of the corporation." There is no evidence that Mr. Chaudry saw, or received notice of, the Articles of Continuance. An effect of the change would be to restore voting rights to personal members of the Canadian corporation, removed by the 2015 Bylaw.

[16] Minutes exist for only three meetings of the Canadian corporation or its Board of Directors. Those meetings were held on January 15, 2022, March 21, 2023, and May 26, 2023.

[17] A dispute developed concerning membership and voting rights prior to following the March 21, 2023 meeting. The applications were eventually filed as a result of that dispute.

[18] The application judge rejected the Canadian corporation's assertion that any of the signatories of the 2015 Bylaw were duped. At para. 5 of his reasons, he stated:

Given their obligations to review the documents before signing them, I found this submission objectively unfounded. The creation of two classes of members, one voting and one non-voting, was clear and not buried.

[19] Further, the application judge found the meeting minutes ambiguous as to whether the U.S. corporation, which participated through Mr. Chaudry, did so as a single-tier member or as the sole voting member of a two-tier structure. He therefore concluded that the issues on the applications boiled down to the legality of the 2021 change in federal registration.

[20] The application judge concluded that the purported change under the 2021 Articles of Continuance from a two-tier membership class to a one-tier membership class, with all members of the single class having voting rights, did not conform with the federal Act. He observed that s. 211(2) of the federal Act states that a

corporation continued under it can amend its articles without so stating in the articles of continuation, if such amendments are permitted for a company originally incorporated under the federal Act. For certain amendments, s. 197(1) of the federal Act requires a special resolution of members. The application judge concluded, that in this case, s. 197(1)(f) of the federal Act applied to require a special resolution of members where the rights of a class were elevated from non-voting to voting, and a single voting member had been demoted to a minority member.

[21] Here, there had been no such special resolution. Accordingly, the application judge determined that, to the extent the Articles of Continuation included a change to the membership classes without a special resolution of the sole voting member at the time, “the amendment was *ultra vires*, *i.e.*, beyond the authority of the company or of any director.” Since the amendment to the classes of membership was invalid, he concluded that a declaration should issue confirming there were currently two classes of membership, and that the U.S. corporation was the sole voting member.

Discussion

(1) The appeal

[22] The Canadian corporation advanced multiple arguments on appeal challenging the adequacy of the application judge’s reasons, his findings that the

2015 Bylaw was valid and that the meeting minutes were ambiguous, and his interpretation of the federal Act. The Canadian corporation also argued that the application judge ignored bedrock corporate law principles.

[23] We do not accept these submissions.

[24] Based on our review of the record, while succinct, the motion judge's reasons are sufficient to permit meaningful appellate review: *Farej v. Fellows*, 2022 ONCA 254, at para. 42.

[25] The motion judge's findings that the 2015 Bylaw was valid and that the meeting minutes are ambiguous are findings of fact or mixed fact and law. As such, absent palpable and overriding error or an error in principle, they are entitled to deference on appeal. We see no such error.

[26] In particular, we see no basis in the record for interfering with the application judge's finding that the 2015 Bylaw was valid. The members, directors and officers of the Canadian corporation at the time were Messrs. Ali, Ahmad and Khattak. All flew to Chicago and signed the 2015 Bylaw and related documents at the meeting that was held.

[27] Mr. Khattak apparently arranged for the preparation of the 2015 Bylaw by a Toronto law firm, albeit he apparently retained the law firm on behalf of the U.S. corporation. The proposed Bylaw was circulated by e-mail to Messrs. Ali and Ahmad for their review in advance of the meeting. Mr. Ali's claim that he did not

receive the e-mail, which was sent to an e-mail address he acknowledged was his, lacks credulity. Mr. Ahmad did not provide evidence on the application.

[28] In any event, we agree with the application judge's conclusion that the changes in membership and voting rights made by the 2015 Bylaw were there to be seen and not buried. As officers and directors of the Canadian corporation, Messrs. Ali and Ahmad were obliged to read the documents before signing them. We see no error in the application judge's findings that their long after-the-fact claim that they were duped is objectively unfounded and that the 2015 Bylaw was properly passed and valid.³

³ During oral argument, the panel raised an issue concerning whether the term "persons" as it appears in s. 129(1) of the *Corporations Act* includes a corporation. Neither party raised this issue in the court below or on appeal. However, as the issue could have affected the validity of the 2015 Bylaw, the panel requested that the parties file written submissions to address it.

After reviewing the parties' written submissions, we are satisfied that "person(s)" as it appears in ss. 124(1) and 129(1) of the *Corporations Act* includes a corporation: ss. 46, 47 and 87 of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F.

In its written submissions, the Canadian corporation argued that a contrary legislative intention is clear from a review of the *Corporations Act* as a whole. We do not accept this submission.

Our review of the *Corporations Act* reveals that the meaning of the term "person(s)" can vary in accordance with the context of the section in which it is used. Unlike the sections on which the Canadian corporation relies, ss. 124(1) and 129(1) lack a clear internal contextual indicator of meaning. Thus, no contrary intention to s. 87 of the *Legislation Act's* statement that "person" includes a corporation appears. Nor does the application of s. 87 give the term "person" a meaning that is inconsistent with the context of ss. 124(1) and 129(1) of the *Corporations Act*.

Sections 84 and 133 of the *Corporations Act* support our conclusion. Section 84 provides for proxy voting. Section 84 appears in Part II of the *Corporations Act* but applies to Part III corporations, with necessary modifications, by virtue of s. 133. When applied to Part III corporations, s. 84 provides,

"Every member, including a member that is a corporation...."

We are also fortified in our conclusion by the fact that no principled reason for excluding corporations from membership in Part III corporations has been advanced. Nor is there any indication in the legislative history that exclusion was intended. That there is no principled reason for excluding corporations as members from not-for-profit corporations is illustrated by the fact that in s. 1(1) of the *Not-for-Profit*

[29] Given this conclusion, the Canadian corporation's submission on appeal that the application judge's use of the terminology "parent" and "subsidiary" in his reasons is somehow in error is unfounded. The 2015 Bylaw reflected that relationship.

[30] Concerning the application judge's finding that the meeting minutes were ambiguous as to whether Mr. Choudry participated, post Articles of Continuance, as the representative of a single-tier member or of the sole voting member in a two-tier structure, we observe that it is a finding of fact subject to the palpable and overriding error standard of review. Bearing in mind that the 2015 Bylaw permitted Director Members to attend meetings, that the minutes were prepared by Mr. Ahmad who was apparently not physically present at the meetings, and that it is not apparent that any of the meeting minutes were formally approved, we see no basis to interfere with the application judge's conclusion that they were ambiguous. We are satisfied it was for that reason that he did not formally address the Canadian corporation's argument about estoppel by convention.

[31] Concerning the application judge's interpretation of the federal Act, the relevant portions of s. 211 on which he relied read as follows:

211(1) A body corporate incorporated or continued otherwise than by or under an Act of Parliament may apply to the Director for a certificate of continuance if so authorized by the laws of its jurisdiction....

Corporations Act, 2010, S.O. 2010, c. 15, "person" is defined as including both a "body corporate" and "a natural person".

(2) A body corporate that applies for a certificate under subsection (1) may, without so stating in its articles of continuance, effect by those articles any amendment to its ... letters patent ... that a corporation incorporated under this Act may make to its articles.

[32] The application judge also relied on s. 197 of the federal Act:

197(1) A special resolution of the members ... is required to make any amendment to the articles or the bylaws of a corporation to:

...

(f) change the designation of any class or group of members or add, change or remove any rights and conditions of any such class or group;...

[33] The Canadian corporation has not demonstrated any error in the application judge's interpretation of these provisions. However, it submitted that the application judge's conclusion that the 2015 Bylaw remained effective despite the Articles of Continuation violated a bedrock principle of corporate law, namely, that a corporation's articles take precedence over its bylaws.

[34] We do not accept this submission. The application judge found the amendments effected to the 2007 Letters Patent of the Canadian corporation by the Articles of Continuance *ultra vires* the corporation, because they were made in contravention of the 2015 Bylaw the requirements of the federal Act. The amendments were therefore not effective. We see no error in this conclusion.

[35] The Canadian corporation did not pursue in oral argument the claim advanced in its factum that the application judge erred by failing to consider its submission that the U.S. corporation's application was barred under the *Limitations*

Act, 2002, S.O. 2002, C. 24, Sched. B, ss. 4, 5, 12(2)-(3). In the absence of further submissions on this point, we accept the U.S. corporation's written submission that no limitation period applied to its claim for the relief that was granted as that relief was limited to declaratory relief: *Limitations Act*, s. 16(1)(a);⁴ *Kyle v. Atwill*, 2020 ONCA 476, 152 O.R. (3d) 59, at paras. 50 and 52-53.

[36] Based on the foregoing reasons, the appeal is dismissed.

(2) The cross-appeal

[37] By way of cross-appeal, the U.S. corporation submits that the application judge erred in failing to grant the ancillary relief it requested.

[38] We do not accept this submission. The sections of the federal Act under which the U.S. corporation sought ancillary relief are discretionary. The U.S. corporation acknowledged in oral argument that it could likely obtain the relief it seeks on its own based on the declaration that was granted. In the circumstances, we see no basis on which to interfere with the application judge's discretionary decision.

[39] The cross-appeal is therefore dismissed.

⁴ Section 16(1) of the *Limitations Act*, 2001, states:

There is no limitation period in respect of, (a) a proceeding for declaratory relief if no consequential relief is sought;....

Disposition

[40] Based on the foregoing reasons, the appeal and cross-appeal are dismissed. Although the parties agreed on costs, in our view, the agreed upon amount is excessive. Costs are to the U.S. corporation on a partial indemnity scale fixed in the amount of \$25,000 all inclusive.

“Janet Simmons J.A.”

“D.A. Wilson J.A.”

“L. Madsen J.A.”