

[Transcription from handwritten original]

**FILE/DIRECTION/ORDER**

**BEFORE JUDGE MYERS**

**ACTION #: CV-18-606192**

**HEMMING**

Plaintiff(s)

-v-

**JAZZFM91 INC.**

Defendant(s)

CASE MANAGEMENT: YES [ ] NO [ ]

SHARDA PRASHAD, Vice-President Finance & Operations

SUZANNE BELANGER, Asst. Direction of Finance & Operations

[ ] ORDER [ ] DIRECTION FOR REGISTRAR

[ ] REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT \_\_\_\_\_

[ ] NO ONE APPEARED ADJOURNED TO BE SPOKEN TO COURT \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
(SIGNED)  
Judge's Signature

Two Officers of JazzFM91 attended today without notice to seek a stay of the Order of Dunphy J. dated Dec. 19/18. Justice Dunphy required the not-for-profit corporate Respondent to provide email addresses for members to the Applicant dissident member. The Board communicates with members by email. Dunphy J. interpreted the statutory obligation of the incumbents to provide a members' list with

names and addressed to include email addresses. Dunphy J. adopted a liberal interpretation to ensure a level playing field. He urged the parties to decrease antagonism and let the members resolve the issues democratically.

Justice Dunphy gave the Respondent a week before his Order went into effect. Apparently the Board of Directors met last night and decided to appeal. They wrongly believed a stay was in place.

There is no application for leave to appeal filed yet. So this motion is properly made to a Superior Court Judge and not the Div. Ct. R. 63.02(1)(a). Moreover, the proposed Appellant is a corporation. It therefore requires a lawyer or leave to represent itself. See Rule 15.01(2).

Leaving all of that aside, there is no material before me. There is no sworn evidence. I required the Officers present to give notice to counsel for the Applicant by telephone. Counsel has sent an email objecting to this hearing in their absence.

The JazzFM91 Officers say that a stay is urgent because the Corp is in breach of Justice Dunphy's Order and it is all over social media. In my view, the question of breach is of the Corporation's own making. It could and should have acted before the nighttime on the day after Judge Dunphy's Order compelled action. As to social media, if there is prejudice to public knowledge, the answer in a democracy is more and better information. The Corp is well able to tell its side of the story, it is the Respondent that is making efforts to "frustrate" the Applicant's ability to communicate effectively according to Justice Dunphy.

I see no risk of serious harm that would have befallen JazzFM91 had they notified counsel for the Applicant about this matter last night or even before Court today. Any risk now is of their own making. In any event, I see no basis for an interim stay under the 3 part RJR test. There is no serious issue for appeal. What the Officers say is an "unprecedented" decision on the breadth of the obligation to give member addresses as an obvious interpretation under the Supreme Court of Canada's modern, purposive approach.

Nor is there irreparable harm in a risk to member privacy. Members of a not-for-profit corp allow the corp and dissidents to contact them as an incident of membership. The Corp already uses email to do so. Levelling the playing field for dissidents enhances member democracy. It is not harm.

Finally, Dunphy J specifically advised the parties that they could reduce acrimony and let democracy play out so that members can fairly decide the issues. The Corp. plainly ignored this admonition by moving regressively and improperly without notice today.

I would not grant any relief today. If JazzFM91 wants to bring a proper motion on notice it should retain counsel or speak to Pro Bono Law Ontario, 393 University Ave, Main Floor, to find out how to do it themselves.

In the meantime Justice Dunphy's Order should have been complied with "by Dec. 20". That is by 11:59 pm on Dec 19, 2018. Non-compliance with a Court Order can be a serious matter. JazzFM91 proceeds without complying at its own risk.