

CITATION: Hemming v. JAZZ.FM 91 Inc., 2018 ONSC 7781
COURT FILE NO.: CV-18606192-00CL
DATE: 20181214

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: BRIAN HEMMING, Applicant

AND:

JAZZ.FM 91 INC., Respondent

BEFORE: S.F. Dunphy J.

COUNSEL: *Shane C. D'Souza, Ryan MacIsaac and Meghan Bridges*, for the Applicant

Natalie Leon, for the Respondent

HEARD at Toronto: December 14, 2018

Typewritten Transcription of Handwritten Endorsement dated December 14, 2018

[1] This has degenerated into an acrimonious fight between a not-for-profit corporation and some of its dissident members. It needn't be so adversarial.

[2] The corporation has over 2,000 members and customarily contacts them and sends meeting notices via email. This is the primary means of notice used to contact the overwhelming number of members. Only about 100 - 200 are not contacted in this fashion.

[3] Among the purposes advanced by allowing members/shareholders to access the list of members is to allow shareholders/members the means to requisition a shareholder meeting. The Respondent has decided to withhold electronic address information. That narrow view of its obligations to provide addresses was clearly adopted to frustrate the applicants and not – as suggested – out of concern to maintain privacy. The corporation is directed to provide such postal and electronic addresses (email) as it possesses when responding to the applicant or any other member's request.

[4] There is no interest served in making the requested declarations regarding past conduct. The corporation acknowledges that it has been late in calling meetings in the past relative to year end. My directions today will deal with the shortcomings complained of regarding the shareholder list.

[5] I expect that an honest and open response to a dissident campaign that does not needlessly waste the time and resources of dissident and corporation alike will follow this.

The membership will have the last word and this will not be solicited in a manner that places needless/pointless obstacles in favour of communication.

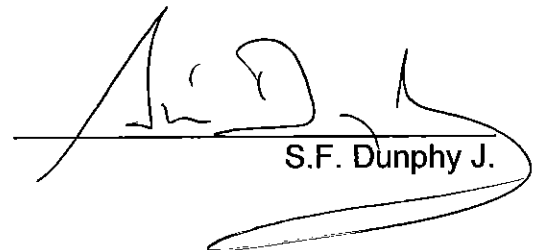
[6] In providing a requested membership list, I expect that the corporation will deliver an electronic list if requested particularly since this is the format in which the records are kept. Given that the request has been outstanding since September 7, I am directing that the electronic list be delivered by December 20, 2018. If there is a bona fide hardship this imposes – and I have no reason to believe there will be – I expect the applicant will consider that and grant a reasonable indulgence without the need for court intervention.

Costs

[7] I delivered oral reasons regarding costs which are fixed at \$20,000 all-inclusive payable by the corporation to the applicant.

Oral Reasons On Costs Delivered in court on the 14th day of December, 2018

[8] I'll tell you...I'm not inclined to have the parties bear their own costs on this one. I do think it is important that not-for-profit corporations among other things should be very cheap with their members' money and I don't think this kind of fight was worth the candle and I do think that a not-for-profit corporation who is run by and for its members ultimately, and this is a community-based organization and always has been, that if there's a dissident group, the best way to deal with that is at a meeting where they get to either stand or fall, but tossing roadblocks in the way of democracy, not a very helpful use of the corporation's money in my view. So I think it would be sending the wrong message to say that nothing happens, which I will not do, everyone bears their own side. Full three lawyers on a side, I recognize the seniority issues and so on, but nonetheless it's a lot to bear for a little non-profit as well. So I kind of look at it both ways and I'm looking at the costs incurred by one side and responding on a partial indemnity basis. I think that is a sure indication of the reasonable expectations of the losing side here, which I think is worth some recognition as well as the nature of this organization. So I am going to order 20 all in, okay?



S.F. Dunphy J.

Date of Handwritten endorsement: December 14, 2018

Date of typewritten transcription: January 14, 2019