

ENDORSEMENT

Short Style Of Cause: TORONTO KALIBARI v.
GOSWAMI et. al

File No.: CV-21-00003556-0000

Date	Counsel	
October, 12, 2021	<p>App: BAXI, Pathik Email: pathik@sdsllawfirm.com</p> <p>Resp: GOSWAMI, Suvendu Email: goswami@golawto.com</p> <p>Resp: BANERJEE, Goutam Email: c/o goswami@golawto.com</p>	<p>[1] On consent, this motion is adjourned, to be heard with <i>Srivastava v Sarkar et. al.</i> Court File # CV-21-2789 on December 9, 2021.</p> <p>[2] Both this Application and <i>Srivastava v Sarkar et. al.</i> address the same subject matter: the governing of the Toronto Kalibari, a Hindu Temple located in the City of Mississauga, until an election for a new Board of Directors can be completed.</p> <p>[3] It is not contested that the terms of the former Board expired on September 14, 2019. Since then, there has been a struggle for control of the Board, the finances, and the physical premises of the Kalibari. Central to the struggle has been the actions of the former counsel for the Board, Mr. Suvendu Goswami who is a named respondent in this Application, Court File # CV-21-3556, with Mr. Banerjee, the former Secretary who was removed from office.</p> <p>[4] Mr. Paxi is counsel for the Applicants, the remaining Board members whose terms have expired. He argues that pursuant to the <i>Not-for-Profit Corporations Act</i>, 2010, S.O. 2010, C 15, those members continue to constitute the Board pending the election of new Officers and Directors.</p> <p>[5] Mr. Goswami, who initially sought to be legal counsel for his co-respondent Mr. Banerjee, argues that the prior Board failed to institute the Bylaws and Articles of Incorporation necessary for an election to be held. He believes that instead</p>

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		<p>of the members electing a new Board, the Court should appoint an interim Board.</p> <p>[6] I ask all parties to note that the <i>Act</i> has been recently amended and the new <i>Act</i> comes into force by proclamation on October 19, 2021. A careful reading of the <i>Act</i> may resolve much of the current confusion.</p> <p>[7] A corporation must have at least three directors which, pursuant to section 24 (1), are to be elected at the annual meeting by ordinary resolution. Section 25(5) provides that if directors are not elected at a meeting of the members, the incumbent directors continue in office until their successors are elected.</p> <p>[8] It is only if a corporation has neither directors nor members that the court may, on the application of an interested party, make an order appointing the required number or minimum number of directors provided for in the articles of incorporation, see section 28(3).</p> <p>[9] I suggested upon the first hearing of this matter that all parties step back from the palpable conflict and assess whether a transition agency or third-party institution/person could assist with the election of a new Board for the Toronto Kalibari. It is clear to me that the Kalibari has an active membership; so there should be no need for a Court to substitute its authority for that of the members. If there is a significant conflict</p>

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		<p>amongst the members, the solution is a carefully and fairly held election, not a court proceeding.</p> <p>[10] When the motion returned to me later in the day, there was no sign of a resolution and indeed, the conflict appeared to have deepened as individual members of the corporation sought to make statements to the Court outside the context of this short Motion.</p> <p>[11] The role of the Court is clearly set out in the <i>Act</i> and narrowly construed by statute. Orders sought must be on a firm footing and to this end, I make the following procedural Orders:</p> <ul style="list-style-type: none">a. The Applicants shall amend this Application by October 22, 2021 with special attention to the naming of the parties and the relief sought within the <i>Act</i>.b. The Applicants shall also update their Notice of Motion by October 22, 2021.c. The Respondents shall serve and file their Answers by November 1, 2021.d. The Respondents shall serve and file their responding materials to the Motion by November 12, 2021.e. Reply on the Motion is due by November 22, 2021.f. The motion shall be heard December 9, 2021 with the motion scheduled for the same date in CV-21-2789.

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		<p>g. Each party within the two motions to be heard that day shall file a single Factum with hyperlinked caselaw for the two motions.</p>
		<p>h. Each party shall serve and file a single draft Order for the two motions.</p> <p>i. Mr. Goswami shall not act as counsel for any person or corporation involved in the proceeding as he is a material witness to this dispute and a named respondent. He may represent himself in his personal capacity.</p> <p>j. Parties are encouraged to serve an Offer to Settle by December 3, 2021.</p>
		<p>k. In the interim, any person who prohibits a former Board officer or director who has not been removed from office, from exercising his or her lawful duties in accordance with the Act is hereby cautioned and directed to obtain independent legal advice.</p> <p>l. Costs of today's attendance are reserved.</p> <p style="text-align: right;"> _____ J. McGee</p>