

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HADASS (EMÉT) EVIATAR AND DAVID	)	<u>Murray N. Trachtenberg</u>
HOULT,	)	<u>Genevieve Y. Benoit</u>
	)	for the applicant
applicants,	)	
	)	
- and -	)	<u>Simon Q.K. Garfinkel</u>
	)	for the respondent
CONGREGATION ETZ CHAYIM,	)	
	)	
respondent.	)	<u>Judgment Delivered:</u>
	)	October 23, 2026

TOEWS J.

INTRODUCTION

[1] Dr. Hadass Eviatar and Dr. David Hoult (jointly referred to as the applicants or individually as Dr. Eviatar and Dr. Hoult) have brought an application pursuant to ***The Corporations Act***, C.C.S.M. c. C225 (***The Corporations Act***) for:

- a) A declaration that the purported termination by the corporate respondent, Congregation ETZ Chayim (the "CEC") of the applicants' membership in the CEC is null and void and invalid;

- b) An order that the CEC comply with its bylaws;
- c) An order that the CEC produce all of its documents related to the applicants' membership; and
- d) Costs on a solicitor and own client basis.

[2] The evidence relied on in this case is set out in affidavit form and in the transcripts of the cross-examinations of the affiants on their respective affidavits. There are notable differences in the factual matrix each party relies upon in advancing their respective legal positions. Additionally, there are substantive differences between the parties on the interpretation and the applicability of the statutory provisions and the legal authorities raised in their respective briefs.

[3] It is instructive to briefly review the facts advanced by each of the parties in their material. However, given my conclusions, it is not necessary to provide a detailed analysis of the facts advanced by the parties or even to make findings of credibility where the two factual versions set out in the submissions of the parties may differ materially. In my opinion, even if I accept the accuracy and relevance of the evidence advanced by the applicants, their application must fail on the basis of the interpretation of the relevant statutory provisions and the applicable legal principles and authorities.

POSITION OF THE APPLICANTS ON THE FACTS AND THE LAW

[4] The applicants state that the purported termination of their membership in the CEC was unlawful, unjust, and carried out without authority. They allege that the termination was orchestrated and carried out by a small group of individuals, consisting

of a former past president, the current president, and a number of employees of the CEC including the rabbi, the cantor and the chief operating officer.

[5] The applicants state that the bylaws of the CEC contain no provisions permitting the termination of the membership nor was the termination approved by the CEC board of directors. They state that an alleged threat by Dr. Hoult was a pretense for the termination. In particular, they argue that those responsible for the termination relied upon Dr. Hoult's differing views regarding security measures implemented by the CEC. They state the real reason for their termination was their disagreement with Israel's actions in the war in Gaza and their willingness to state their views notwithstanding that such views may not be popular among other members of the CEC or the Jewish community generally.

[6] The applicants have a history of active participation in a Winnipeg synagogue since 1994 and when an amalgamation of various synagogues took place in 2002, their membership and active participation continued in the CEC. They state that at all material times they were members in good standing of the CEC with a family membership.

[7] In the course of the invasion by terrorists from Gaza into Israel on October 7, 2023, more than 1200 Israeli citizens were murdered and some 241 hostages, both dead and alive, were abducted and taken to Gaza. During July 2024, Dr. Eviatar became the co-founder of Manitoba Friends Standing Together, a chapter of an international organization. The applicants state that the international organization, Standing Together, is a grassroots organization of Israelis and Palestinians opposed to the war in Gaza and Israeli military operations.

[8] Dr. Eviatar states that following her appearance on a local CBC Radio show together with the president of the Canadian Palestinian Association of Manitoba in October 2024, she received a call from the rabbi and the cantor of the CEC informing her that she would no longer be allowed to lead a particular service at the CEC, a position she held for over 20 years. She states that it was suggested to her by the rabbi in that conversation she consider finding another congregation. In a subsequent letter from the CEC approximately a month later she was accused of aligning herself with a movement which is mutually exclusive of and contrary to the interests of Jewish people and the state of Israel.

[9] Dr. Hoult states that at the general meeting of the CEC on May 5, 2025, he made it known that he was opposed to various measures implemented by the CEC, which were intended to improve the security of the synagogue. On May 23, 2025, Dr. Hoult sent a letter to the president of the CEC raising concerns about the changes at the synagogue. In it he advised that hysteria and paranoia had led to the board of the CEC giving Hamas a victory by caving to fear.

[10] Apparently, this letter led to a report being made to the Winnipeg Police Service alleging that Dr. Hoult had made a threat against the members of the CEC and that the CEC had been having issues with the applicants for the past two years. In turn, that led to police officers attending at the residence of the applicants on May 30, 2025. The police advised the applicants that at the request of representatives of the CEC they were not permitted to attend the synagogue. No reason was given by the police as to why they were not permitted to attend the CEC.

[11] Members of the congregation received an email and a letter from the CEC on the same day, advising them that a decision had been made to terminate the membership of the applicants and family members of their household immediately. The applicants and their family were no longer permitted on the premises of the CEC nor would they be allowed to participate in any of the synagogue's programs or activities.

[12] The applicants state that they were never provided with written reasons for the termination of their membership nor were they provided with an opportunity to respond to the purported termination before it was put into effect.

[13] The applicants take the position that there was no meeting held by the CEC board of directors to discuss or approve the May 30, 2025 letter nor was there an approval of the termination by the CEC board of directors.

[14] The applicants state that the central issue for the court is the interpretation of the CEC bylaw in place as of May 30, 2025 when their membership was terminated. They argue that King's Bench Rule 14.05 (2) (c) (iv) allows the applicants to proceed by notice of application where the relief claimed is for "the determination of rights which depend upon the interpretation of a ... by-law".

[15] The applicants note that s. 2(3) of ***The Congregation Etz Chayim Amalgamation Act***, S.M. 2002, c. 51 (the "***CEC Act***"), an act of the Manitoba Legislature which forms the statutory legal foundation of the CEC, provides that ***The Corporations Act*** applies to the CEC.

[16] The applicants state that s. 275 of ***The Corporations Act*** allows for the passing of by-laws by a corporation regulating a number of matters, including:

(d) the suspension and termination of membership by the corporation and by a member.

[17] The applicants argue that the CEC by-law in effect as of May 30, 2025 had no provision allowing the CEC to terminate the applicants' membership and as a result the termination cannot be valid or lawful. In addition, the applicants seek relief under the oppression remedy in ***The Corporations Act***. They argue that the discretion granted to the court in the case of oppression under s. 234 of ***The Corporations Act***, as stated in para. 35 of ***Pineau et al v. Capitano et al.***, 2020 MBQB 5 :

... must be exercised only as much as is necessary to rectify the oppression, not to punish the oppressor. ... The job for the court is to even up the balance, not tip it in favour of the hurt party.

[18] The applicants state that the court's inquiry in this case should be restricted to whether the CEC's decision to terminate the applicants' family membership was made lawfully pursuant to the by-law in effect as at May 30, 2025 and consistent with the rules of natural justice.

[19] The applicants also take the position that the oppression remedy provisions set out in ***The Corporations Act*** provide them with a remedy as they fall within the definition of complainant set out at s. 231 of ***The Corporations Act***. They ask that the court exercise its discretion to designate them as a "proper person" as noted in s. 231(d) which would then allow them to make an application under Part XIX of ***The Corporations Act*** and to have the court make an order "to rectify the matters complained of".

[20] The applicants also rely on s. 240 of ***The Corporations Act***, on the strength of which, they ask the court "... for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions thereof, and upon such application the court may so order and make any further order it thinks fit."

POSITION OF THE RESPONDENT ON THE FACTS AND THE LAW

[21] The respondent states the CEC is a non-share corporation and registered charity operating a synagogue in Winnipeg, Manitoba.

[22] The respondent notes that on October 7, 2023, Hamas and allied groups attacked Israel. In the aftermath, Jewish institutions across Canada faced heightened security threats. The CEC was no exception. Dr. Hoult acknowledged under cross-examination that he was aware of heightened security concerns for Jewish institutions, both globally and locally, in the period following October 7, 2023.

[23] The respondent submits that on or about March 2025, in response to heightened security risks and threats directed at the Jewish community, the CEC requested a site security assessment from the Winnipeg Police Service. Constable Justin Remillard attended the synagogue and provided guidance on improving security. Among other things, Constable Justin Remillard advised that:

- a) access to the synagogue should be controlled;
- b) that registration and entry lists should be used;
- c) that publicly available information could be used to screen individuals; and
- d) that the CEC, as a private institution, had the right to restrict access when safety concerns arise.

[24] The CEC states it implemented security measures including locked and monitored entrances, a pre-registration requirement for Saturday morning services, and the use of security personnel. It states that Dr. Hoult agreed in his affidavit that one of the CEC's responsibilities was to ensure the safety of its congregants.

[25] The CEC states that on May 5, 2025, Dr. Hoult attended the CEC's annual general meeting, and brought forward a motion to discontinue the locked door policy, pre-registration requirements, and screening procedures that the CEC had adopted on the advice of the Winnipeg Police Service. His motion did not attract a seconder, and therefore failed.

[26] The CEC notes that on May 21, 2025, a shooter killed two Embassy of Israel staff members who were leaving an event at the Capital Jewish Museum in Washington D.C. This was reported internationally and provoked a heightened concern for safety among the CEC's congregants.

[27] The CEC states that Dr. Hoult admitted under cross-examination that he probably became aware of the Washington attack on the evening of May 22, 2025, which was the same day he finalized and sent the letter central to this dispute to the CEC ("the Dr. Hoult Letter"). The Dr. Hoult Letter described CEC's security measures as "hysteria and paranoia" which were "psychologically stupid." Dr. Hoult confirmed this characterization under cross-examination.

[28] Under cross-examination, Dr. Hoult also confirmed:

- "The shul" in the Dr. Hoult Letter referred to the CEC.
- "Shabbat morning" meant specifically Saturday morning services.

- A “stolen motorbike” was a vehicle used in warfare and terrorism.
- A “Kalashnikov” referred colloquially to an AK-47 semi-automatic weapon.
- “Shattering the windows” meant shooting them with a gun.
- “Gun down the congregation” meant shooting the members of the CEC.

[29] When asked whether this referred to shooting members of the CEC, Dr. Hoult replied: “Absolutely correct.” He confirmed the congregation includes children, elderly individuals, and babies. Dr. Hoult acknowledged that this passage described a rudimentary sequence of events being arrival, weapon, method, victims, and escape. He admitted he had considered including more detail but selected these details as, they were “sufficient to get my point across fairly softly.”

[30] Dr. Hoult acknowledged that the “I” in the passage referred to him. He conceded it was “certainly fair to say” that readers would understand the first-person reference as denoting the author. When asked on cross-examination he whether apologized for any of the descriptions in his letter, Dr. Hoult confirmed that he did not apologize and he stated, “No. I stand by them completely”.

[31] Dr. Eviatar, the co-applicant, described its contents as “a very vivid description of a violent act against a synagogue”.

[32] Accordingly, it is the position of the CEC that the contents of the Dr. Hoult Letter constituted a threat that needed to be taken seriously, particularly as it came within weeks of Dr. Hoult’s frustrated attempt to have CEC’s security measures removed.

[33] The respondent argues even if the court accepts that the applicants' membership was terminated and that the CEC's actions engage the applicants' membership interests, the central issue remains whether this is a matter properly justiciable by the court. The CEC submits it is not.

[34] The respondents maintain that this dispute is, at its core, about the internal governance of a religious congregation. It concerns who may participate in communal worship, who may participate in communal religious life, and how a synagogue governs itself in response to legitimate security concerns. If it is accepted that the dispute was about ideological differences, as alleged by the applicants, then these are also fundamentally religious questions. The court, it states, has no jurisdiction to adjudicate such matters, and ought not to intervene.

[35] The respondent disagrees with the position that King's Bench Rule 14.05(2)(c)(iv) permits a party to seek a determination of rights under a private by-law. Canadian courts have exclusively applied this rule in the context of public by-laws and resolutions passed by municipal councils and the like. The rule includes "by-law" in the category of "statute, order-in-council, order, rule, regulation, by-law or resolution", all of which have the character of a statutory enactment or judicial pronouncement. This should not be extended to rules, protocols or documents serving private interests.

[36] It is the respondent's position that the courts do not have jurisdiction to intervene in matters involving a religious or voluntary association, including a corporation created by statute where membership is voluntary and of a religious nature, unless a civil or

property right is in dispute. The CEC submits that there is no justiciable issue before this court and therefore the application ought to be dismissed.

[37] The respondents argue that membership in a voluntary association, even if the voluntary association is in the form of a statutory corporation, is not automatically contractual. They state that even a written constitution does not suffice. Membership is contractual only where the conditions for contract formation are met, including an objective intention to create legal relations. Such an intention is more likely to exist where property or employment are at stake. It is less likely to exist in religious contexts, where individuals may intend for their mutual obligations to be spiritually but not legally binding.

[38] Furthermore, it is the position of the respondent that s. 274 ***The Corporations Act*** does not create the right the applicants claim. The CEC submits this is a misreading of the statute.

[39] It notes that s. 274(1) is located under the heading “Memberships not transferable.” Its primary purpose is to establish the default rule that membership interests in a non-share corporation are non-transferable. The clause describing when membership “lapses and ceases to exist” identifies the natural endpoints of a membership interest, being death, resignation, or cessation in accordance with the by-laws. It describes what happens when membership ends. It does not exhaustively codify the *only* ways membership can end.

[40] The respondents state that s. 275 reinforces this reading. It provides that directors “*may* pass by-laws” regulating, among other things, “the suspension and termination of

membership by the corporation and by a member.” The word “may” is permissive. The section enables directors to adopt termination procedures. It does not require them to do so, and it does not create a right to continued membership in the absence of such procedures.

[41] The respondent argues that Manitoba’s legislature does not impose mandatory obligations on non-share corporations to adopt termination procedures, and it did not create corresponding statutory rights for members. This choice must be given effect. If the legislature had intended ss. 274 and 275 to create an irrevocable right to continued membership absent specific bylaw provisions, it would have said so.

[42] It is further the position of the respondent that s. 234 of ***The Corporations Act***, which provides an oppression remedy, does not apply in these circumstances. They state that provision is only available to a “complainant” and that the applicants do not fall within the primary categories of complainants as they are not security holders, directors, or officers of the CEC. As a non-share capital corporation, the CEC has no shareholders or other security holders through whom the applicants could claim this status.

[43] The respondent states that s. 234 is directed at protecting legally recognizable interests, typically of a financial, proprietary, or economic nature, and at addressing conduct affecting stakeholders such as security holders, creditors, directors, or officers. The applicants do not assert any such interest.

[44] The respondent argues that ss. 274 and 275 leave matters of membership governance to be determined by each corporation in accordance with its own instruments

and, where those instruments are silent, by the common law principles governing voluntary associations.

[45] The respondent submits that the core dispute here is non-justiciable. They argue that the applicants' own pleadings and evidence demonstrate that their grievance is fundamentally with how the CEC has chosen to govern and protect its religious community since October 7, 2023. Dr. Hoult made this plain at the Annual General Meeting of May 5, 2025, where he opposed the locked door policy, pre-registration requirements, and screening procedures that CEC had adopted.

[46] The respondent maintains that decisions concerning how a synagogue safeguards its congregants falls squarely within the sphere of internal religious governance that the legal jurisprudence places beyond judicial review. Granting the relief sought would necessarily require the court to second-guess security measures adopted by a religious community on the advice of law enforcement and to assess who may pose a risk to the safety and functioning of that community. They state that this is precisely the kind of interference the case law prohibits.

[47] In response to the applicants' assertion that they were given no notice of the proposed termination, no opportunity to make any representations, and no reasons, the respondent states that their assertion ignores both the factual record and the legal principle that governs the content of natural justice in cases of this kind.

[48] The respondent states that the circumstances here are urgent and implicate safety concerns, and the requirements of procedural fairness should be correspondingly adjusted. Here, fairness did not require a pre-termination hearing on notice, it required

only that the applicants were aware of the concerns, had an opportunity to make their position known and that the decision was made in good faith and not arbitrarily.

DECISION

[49] At this point I wish to make it clear that on the review of the evidence I do not accept that the words of either applicant, and the Dr. Hoult Letter in particular, considered in their appropriate context, were willfully or otherwise intentionally used to communicate a threat. It is my opinion that, whether or not the Dr. Hoult letter was written with an appropriate degree of sensitivity given the local and world political climate following the October 7, 2023 massacre of innocent civilians by Hamas, the intention of Dr. Hoult was to set out why he thought the measures taken by the respondent were not appropriate. The example he used in his letter, focused as it is on the premises of the CEC, was intended, perhaps inadvisedly, to communicate his concerns about the security measures taken by the CEC, but not to threaten violence against members of the congregation.

[50] Even so, in my opinion, the circumstances and the law do not permit the intervention of the court in this dispute.

[51] In dealing with the applicability of ss. 274 and 275 of ***The Corporations Act***, I agree with the position of the respondent that the courts will not intervene in disputes over membership in a voluntary association where no civil or property rights are granted by that membership. In my opinion, the decision of the Manitoba Court of Appeal in ***Bell v. Civil Air Search and Rescue Association et al.***, 2018 MBCA 96 is dispositive of this issue, and also in my opinion, of the question of whether the principles of natural

justice govern the decision made to terminate the applicants' membership in the CEC. In

Bell the court held at paras. 11-13:

11 ... The Courts will not intervene in disputes over membership in a voluntary association where no civil or property right is granted by that membership, even if there is an alleged breach of natural justice.

12 Bell argues that, pursuant to the terms of the bylaws of CASARA Manitoba, a binding contract was created between Bell and CASARA Manitoba when he paid his membership fees. Bell submits that the respondents breached that contract when they suspended his membership without honouring the terms of the bylaw and their own membership dispute resolution policy. He maintains that, on this basis, we can uphold the result reached by the application judge.

13 We do not accept Bell's argument. He did not bring an action seeking to enforce a legal right that arose from his membership in CASARA Manitoba. He sought only judicial review of the decisions to suspend his membership. However, even if he had brought an action by way of a statement of claim, in our view, there is nothing in the record that indicates that Bell has a civil or property right that turns on his membership (see *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 (S.C.C.) at 173-74; and *Wall* at para 24).

[52] The case law is clear that religious groups are free to determine their own membership and rules and the courts will not intervene in such matters save where it is necessary to resolve an underlying legal dispute. There is no underlying legal dispute here of the nature that would justify the court's intervention pursuant to ss. 274 and 275 of ***The Corporations Act*** or, as my reasons also state, pursuant to any other provision of ***The Corporations Act***.

[53] While the CEC is a creation of statute, that statutory basis does not then afford the applicants with a legal basis to argue that the oppression remedy set out in the provisions of ***The Corporations Act*** provides them with a statutory remedy in these circumstances. The relevant provisions of ***The Corporations Act*** provide:

231 In this Part,

"complainant" means

- (a) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates, or
- (b) a director or an officer or a former director or officer of a corporation or of any of its affiliates, or
- (c) the Director, or
- (d) any other person who, in the discretion of a court, is a proper person to make an application under this Part.

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Application to court re oppression

234(1) A complainant may apply to a court for an order under this section.

Grounds

234(2) If, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates

- (a) any act or omission of the corporation or any of its affiliates effects a result; or
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner; or
- (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner;

that is oppressive or unfairly prejudicial or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

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Restraining or compliance order

240 If a corporation or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a corporation does not comply with this Act, the regulations, articles, by-laws, or a unanimous shareholder agreement, a complainant or a creditor of the corporation may, in addition to any other right he has, apply to a court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions thereof, and upon such application the court may so order and make any further order it thinks fit.

Summary application to court

241 Where this Act states that a person may apply to a court, the application may be made in a summary manner by notice of application or otherwise as the rules of the court provide, and subject to any order respecting notice to interested parties or costs, or any other order the court thinks fit.

[54] The applicants do not fall within the primary categories of complainants as they are not security holders, directors, or officers of the CEC. As a non-share capital corporation, the CEC has no shareholders or other security holders through whom the applicants could claim this status.

[55] The applicants must therefore rely on s. 231(d), which permits “any other person” to apply for relief from oppression only where the court exercises its discretion to recognize that person as a “proper person to make an application ...”.

[56] In my opinion, these provisions are directed at protecting legally recognizable interests, typically of a financial, proprietary, or economic nature, and at addressing conduct affecting stakeholders such as security holders, creditors, directors, or officers. The law is clear that the courts will not intervene in disputes over membership in a non-statutory voluntary association where no civil or property rights are granted by a membership in that voluntary association.

[57] Even though the CEC has a statutory legal status distinct from a non-statutory voluntary association, nothing in ss. 231 or 234 and the related oppression remedy sections in Part XIX of ***The Corporations Act*** provide the court with the discretion to fashion a remedy where no economic or property rights are granted by membership in the CEC. It is my reading of the relevant provisions that the type of complainant contemplated by ss. 231 and 234 of ***The Corporations Act*** is one who has a financial, proprietary, or economic nature, and is aimed at addressing conduct affecting stakeholders such as security holders, creditors, directors, or officers even if the “proper person” does not fall strictly within the definition of those categories. It may, by way of

example, include an executor advancing a claim on behalf of an estate where the testator held a security interest in the assets or property of a religious organization.

[58] Even if I had determined that there was a measure of discretion afforded to the court under the oppression remedy provisions to allow an applicant to be designated a complainant in the absence of a financial, proprietary, or economic underpinning to a dispute, I would not do so in a case like this where the dispute is fundamentally and substantively a religious dispute among members of the CEC. To repeat myself, the case law is clear that religious groups are free to determine their own membership and rules and the courts will not intervene in such matters save where it is necessary to resolve an underlying legal dispute.

[59] In any event, I find that the oppressive remedy sections of Part XIX of ***The Corporations Act*** do not provide a court with the discretion sought by the applicants to designate a person a complainant under s. 231(d) of ***The Corporations Act*** where, as is the case here, that person has no financial, proprietary or other economic interest that forms the basis of the dispute. Similarly, the restraining or compliance order contemplated by ss. 240 and 241 of ***The Corporations Act***, do not provide the court with the discretion to impose the remedy sought by the applicants.

[60] In the result, the application is dismissed. In the circumstances of this case, it is my order that each of the parties shall bear their own costs.

_____. J.