



IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Can Duy Le, Harry Mai, Nguyen Thanh Nguyen, Phuong Thu Tran, Cuc Lam, Calvin Nhan, Thong Van Nguyen, Hien Thanh Huynh Ho, Haquyen Nguyen and The Vietnamese Canadian Community in Greater Vancouver Society

Petitioners

- and -

Kien Thuan Le, Ky Huu Nguyen, Minh Tri Truong, Nha Van Tran, Tran Tran, Tuan Kiet Dang Vu, Ngoc Hien Thi Tran, and Hai Ha Nguyen

Respondents

PETITION TO THE COURT

ON NOTICE TO:	Kien Thuan Le 105 – 211 Finch Ave West Toronto, ON, M3N 2Z9	Tuan Kiet Dang Vu 8920 Boul. Rivard, #103 Brossard, QC, J4X 1Y1
	Ky Huu Nguyen 61 Bluenose Cres. Scarborough, ON M1C 4S2	Ngoc Hien Thi Tran 4670 Hampton Way NW Calgary, AB T3A 6N6
	Minh Tri Truong 119 Margrave Ave. Ottawa, ON K1T 3X9	Hai Ha Nguyen 9 Staley Terrace Scarborough, ON M1W 2E6
	Nha Van Tran 1604 rue Simard Sherbrooke, QC J1J 4A5	Tran Tran 951 Summerside Link SW Edmonton, AB T6X 0C8

This proceeding is brought for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

- (b) serve on the Petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the Petitioners is:	c/o Todd Brayer Lundrie & Company 500 – 4211 Kingsway Burnaby, BC, V5H 1Z6
	Fax number address for service:	(604) 257-3511
	E-mail for service:	todd@lundrielaw.com

CLAIM OF THE PETITIONERS

Part 1: ORDER(S) SOUGHT

Respecting the Vietnamese Canadian Centre (the “VCC”)

1. Those of the Respondents who purport to be directors of the VCC shall take all required steps to and provide all required consents to permit the VCC to transition to the *Canada Not-for-profit Corporations Act* (the “**CNPA**”);
2. This Court declares that:

- a. The directors of the VCC are Can Duy Le, Nguyen Thanh Nguyen, Phuong Thu Tran, Cuc Lam, Kalvin Nhan, Thong Van Nguyen, Hien Thanh Huynh Ho, and Haquyen Nguyen (the “**VCC Directors**”);
- b. The members of the VCC are only those individuals who have been accepted as members of the VCC by the VCC Directors in accordance with the VCC’s by-laws;
- c. The governance dispute respecting the VCC is hereby resolved; and

3. Costs.

Respecting the Vietnamese Canadian Federation (the “**VCF**”)

4. There shall be an election for the governance of the VCF, to be conducted in accordance with the charter and rules of the VCF;
5. This Court declares that:
 - a. The VCF’s charter is the one approved on May 18, 1980 and amended on September 26 – 28, 1986 (the “**Charter**”); and
 - b. The VCF’s rules and regulations are those passed on September 4, 1988 (the “**Rules**”);
6. This Court further declares that:
 - a. All business conducted, resolutions made, elections conducted or any other matters of any kind that occurred at the following meetings are null and void:
 - i. Meeting held on February 7-9, 2014 in Toronto, Ontario;
 - ii. Meeting held on June 6-8, 2014 in Edmonton, Alberta; and
 - iii. Meeting held on September 10-11, 2016 in Montreal, Quebec.
 - b. All business conducted, resolutions made, elections conducted or any other matters of any kind that occurred at the following meetings are hereby validated:
 - i. Meeting held on August 22 – 24, 2014 in Toronto, Ontario; and
 - ii. Meeting held on December 27, 2014 in Ottawa, Ontario.
 - c. The governance dispute within the VCF is hereby resolved.

7. Costs.

Part 2: FACTUAL BASIS

The Parties

1. The Vietnamese Canadian Federation (the “**VCF**”) is a federal non-profit corporation governed by the *Canada Not-for-profit Corporations Act*, SC 2009 c 23 (the “**CNPA**”). It is an umbrella group for Vietnamese community associations across Canada. It has eleven members composed of Vietnamese cultural associations located across Canada. The VCF is governed by its Charter, approved on May 18, 1980 and amended on September 26 – 28, 1986 (the “**Charter**”); and its rules and regulations are those passed on September 4, 1988 (the “**Rules**”);
2. The Vietnamese Canadian Community in Greater Vancouver Society (the “**Vancouver Society**”) is a British Columbia society and member of the VCF.
3. Harry Mai is the president of the Vancouver Society. As president of the Vancouver Society, he is also a member of the Council of Presidents of the VCF (the “**Council**”). The Council functions as the board of directors of the VCF.
4. The Vietnamese Canadian Centre (the “**VCC**”) is a federal non-profit corporation and a registered charity formed under Part II of the *Canada Corporations Act*, RSC 1970, c C-32 (the “**CCA2**”). It is unable to transition to the *CNPA* as required due to the governance dispute that forms the subject of this petition. It is governed by its bylaws (the “**VCC Bylaws**”).
5. Can Duy Le is the president of the VCC.
6. Can Duy Le, Nguyen Thanh Nguyen, Phuong Thu Tran, Cuc Lam, Calvin Nhan, Thong Van Nguyen, Hien Thanh Huynh Ho, and Haquyen Nguyen are the VCC’s directors.
7. Tuan Kiet Dang Vu, Tran Tran, Ngoc Hien Thi Tran, Hai Ha Nguyen, Treasurer and Minh Tri Truong are individuals who purport to be the VCC’s directors.
8. Kien Thuan Le, Minh Tri Truong, Ky Huu Nguyen, Nha Van Tran, and Tran Tran are individuals who purport to be the members of the VCF’s executive committee. The executive committee traditionally registers themselves as directors of the VCF with Corporations Canada.

Relationship Between the VCC and VCF

9. The VCF and the VCC have worked closely together on an arm’s length relationship on various projects for the benefit of the Vietnamese-Canadian community. The VCC and the VCF have been involved in the Vietnamese Boat People Museum Project (the “**Museum Project**”), which was initiated and is headed by Can Duy Le. To partially fund the Museum Project, the VCC sold a

property it owned. At present, the Museum Project has not yet started construction.

10. According to the VCC Bylaws, its members are nominated, but not appointed, by the executive committee of the VCF. The VCC's directors may then confirm these nominees.

Ongoing Governance Dispute

11. In 2013 and 2014 a dissident group of members of the Vietnamese community began attempting to take control of the VCF, the VCC and the Museum Project (the "**Dissident Group**"). The Dissident Group is composed of the Respondents and others.
12. In February 2014, the Dissident Group purported to call a Special General Assembly of the VCF. Representatives of five of eleven members attended. Despite the lack of quorum, motions were made to the effect of requiring the VCC to transfer the Museum Project to the VCF (the "**Toronto Meeting**"). The VCC's directors refused to comply as the VCF had no such control over the VCC.
13. In June 2014, the Dissident Group purported to call a general assembly of the VCF (the "**Edmonton Meeting**"). Either three or four of eleven members attended. Despite the want of quorum, the attendees again proceeded anyway and the following purported resolutions were made:
 - a. Adoption of new bylaws (the "**Invalid 2014 Bylaws**"), purporting to replace either or both the Charter and the Rules;
 - b. Election of a new executive committee for the VCF;
 - c. Election of a new board of directors for the VCF;
 - d. Election of new representatives for the Council of Presidents; and
 - e. Appointment of Tuyet Lam as sole leader of the Museum Project.
14. In addition to the lack of quorum, the Invalid 2014 Bylaws were not adopted in accordance with the VCF's Charter or Rules.
15. Shortly thereafter the Dissident Group purported to appoint an unknown number of members to the VCC despite having no right to do so. These individuals were not accepted as members by the VCC's board of directors (the "**Invalid VCC Members**"), nor were the incumbent directors even made aware of who they were.
16. The other VCF member associations did not accept the outcome of the June 2014 Meeting. A majority of the members issued a joint declaration that the Edmonton meeting was invalid.

17. Through a series of special general assemblies in August 2014 in which six VCF members attended, resolutions were passed including that the Edmonton Meeting was declared invalid, interim officials were elected and Can Duy Le was asked to remain as leader of the Museum Project (the “**August 2014 Meeting**”).
18. Despite the August 2014 Meeting, the Invalid 2014 VCC Members purported to elect a new board of directors (the “**Invalid 2014 VCC Directors**”). In September 2014, the Invalid 2014 VCC Directors then sought to gain control of the VCC’s bank accounts. The bank froze the accounts as a result. The accounts remain frozen to this day, forcing the VCC to cover its operating expenses through fundraising and personal contributions by Can Duy Le.
19. In September 2014, both VCC’s directors and the Invalid 2014 VCC Directors attempted to file transition applications with Corporations Canada, required due to the passage of the *CNPA*. Due to the apparent governance dispute, Corporations Canada declined to process either transition application. This has put the VCC in danger of dissolution.
20. In December 2014, a special general assembly of the VCF was called (the “**December 2014 Meeting**”). It was attended by eight members. In this meeting, a new executive committee was elected (the “**Valid VCF Executive Committee**”). The three members who did not attend took the position that the 2014 Bylaws prevented the meeting from proceeding.
21. It is unknown what the 2014 Bylaws are.
22. The Valid VCF Executive Committee ran the business of the VCF until September 2016. They decided not to commence legal action to resolve the governance dispute due to the cost of court proceedings.
23. In July 2016, two member associations proposed a general meeting of the VCF in Montreal (the “**Montreal Meeting**”). This meeting was opposed by the Vancouver Society and other members of the VCF as it was not called in conformance with the Rules or the Charter for reasons that include:
 - a. It was not called by two thirds of the Valid VCF Executive Committee, per to Article 20 of the Rules and Article 9(a) of the Charter;
 - b. The agenda was not distributed per Article 10 of the Charter;
 - c. Voting rights were restricted despite Article 13 of the Charter; and
 - d. Announcements for the meeting did not recognize the fact that the Edmonton Meeting and all business conducted there they had been declared invalid; and
 - e. In general, the current Charter and Rules were not followed.

24. Despite the objections of several people involved in the VCF, the meeting proceeded anyway, resulting in election of the following alleged board of directors:

- a. Kien Thuan Le as President;
- b. Minh Tri Truong as Vice President of Internal Affairs;
- c. Ky Huu Nguyen as Vice President of External Affairs;
- d. Nha Van Tran as Secretary; and
- e. Tran Tran as Treasurer.

(the “**Invalid 2016 VCF Executive Committee**”)

25. Despite Article 16 of the Charter, Kien Thuan Le and Nha Van Tran are also both members of the Council of Presidents. In addition, the positions of president and vice-president are not positions on the Executive Committee.

26. The membership of the Vancouver, Nova Scotia and Manitoba members, who did not attend, was apparently revoked at this meeting as well.

27. The Invalid VCF Board then proceeded to purport to appoint 23 members of the VCC, despite having no such power. These purported members include members of the Invalid 2016 VCF Executive Committee, some members of the VCF Council of Presidents and other people purportedly elected to governance positions in the VCF at the Montreal Meeting (the “**Invalid 2016 Members**”), despite the arm’s-length relationship of the VCC and VCF.

28. The VCC’s current board was not informed of these nominations and did not accept the Invalid 2016 Members as members of the VCC. Despite this, the Invalid 2016 Members purported to appoint a new executive committee of the VCC, as follows:

- a. Tuan Kiet Dang Vu as President;
- b. Tran Tran as Vice-President;
- c. Ngoc Hien Thi Tran as Secretary;
- d. Hai Ha Nguyen as Treasurer; and
- e. Minh Tri Truong as Executive Director.

(the “**Invalid 2016 VCC Directors**”)

29. The Invalid 2016 VCC Directors are not involved in the governance of the VCC, do not take steps in furtherance of VCC business and do not take steps to ensure that the VCC’s creditors including the City of Ottawa are paid. However, their continued attempts to take control of the VCC has resulted in the VCC being unable to access its own bank accounts and has put the VCC in danger of dissolution by Corporations Canada.

30. The VCC is presently in danger of dissolution. Attempts to resolve the matter have been unsuccessful. The VCC's legal counsel has obtained extensions of time for the VCC to transition to the *CNPA*, however, it is unclear whether Corporations Canada will grant a further extension of time beyond July 31, 2017.

Part 3: Legal Basis

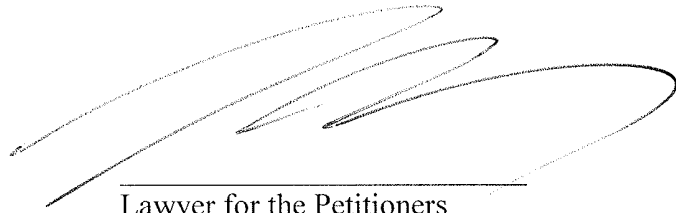
1. The Supreme Court of British Columbia is the proper forum for litigating disputes respecting governance in relation to federally-incorporated not-for-profit corporations under both the *CCA2* and the *CNPA*.
2. With the passage of the *CNPA*, all *CCA2* corporations are required to transition to the *CNPA*. Corporations Canada has given a final deadline of July 31, 2017 for the VCC to transition to the *CNPA*, after which the VCC will be dissolved. Resolution of the governance dispute or the consent of the Respondents appears to be required for Corporations Canada to accept the transition application.
3. The VCC's bylaws and VCF's Charter and Rules govern the VCC and the VCF. The Dissident Group did not follow these rules in seeking to gain control of the VCC, the VCF and the Museum Project.
4. The Court is empowered to interfere in a corporation's affairs when the processes of governance are not respected or there are irregularities which affect the rights and interests of members and the organization itself: *Street v BC School Sports*, 2005 BCSC 958 at 45.
5. It is not in the best interests for the Respondents, purportedly directors of the VCC, to allow the VCC to be dissolved: *BCE Inc v 1976 Debenture Holders*, 2008 SCC 69.
6. Section 168 of the *CNPA* permits the Court to order that a meeting of the VCF be called if the Court thinks that the meeting should be called, held or conducted in a manner that it directs. In this meeting, the Court can vary rules respecting quorum and such meeting is valid regardless of any other rules.
7. Section 169 of the *CNPA* permits the Court to determine any controversy with respect to an election. The Court is empowered to order a new election and make any orders that it sees fit.

Material to be Relied On

1. Affidavit of Harry Ma #1
2. Affidavit of Can Le #1

The petitioner(s) estimate(s) that the hearing of the petition will one day.

Date: July 27, 2017



Lawyer for the Petitioners
Todd Brayer

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

Date:[dd/mmm/yyyy].....

.....

Signature of Judge Master