

CITATION: College of Family Physicians of Canada v. Resident Doctors of Canada, 2025
ONSC 1445

COURT FILE NO.: CV-24-96601

DATE: 2025/03/05

SUPERIOR COURT OF JUSTICE – ONTARIO

IN THE MATTER OF AN APPLICATION UNDER Rule 14.05(3)(h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and Section 288(4) of the *Canada Not-for-Profit Corporations Act*, S.C. 2009, c. 23

RE: The College of Family Physicians of Canada, Applicant

- and -

Resident Doctors of Canada, Respondent

BEFORE: The Honourable Justice Charles T. Hackland

COUNSEL: D. Lynne Watt and Nathan Lean, Counsel for the Applicant

Colleen Bauman, Counsel for the Respondent, Resident Doctors of Canada

HEARD: November 28, 2024 (Ottawa)

REASONS FOR DECISION

HACKLAND J.

Overview

[1] The applicant, The College of Family Physicians of Canada (the “CFPC”) is a not-for-profit professional organization governed by the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23 (the “CNCA”) which represents more than 43,000 members and performs a variety of important functions for the practice of family medicine in Canada.

[2] For a period of over ten years, the CFPC made amendments to its corporate by-laws and articles which, unknowingly and as a result of erroneous advice from its former corporate counsel, were not made in compliance with the CNCA. This has led to a crisis in the governance of the CFPC. In this application the CFPC seeks an order validating its current by-laws and articles [the “Constituting Documents”] adopted at the CFPC’s 2022 Annual Meeting of Members as well as the

Articles of Continuance and associated by-laws adopted in 2013. This relief is sought pursuant to section 288(4) of the *CNCA* or in the alternative, pursuant to the court's inherent jurisdiction.

[3] This application is opposed in part by the respondent Resident Doctors of Canada who, while generally supporting the relief sought by the CFPC, seek to vary that relief by requiring that a separate membership class be created for Residents restoring their voting rights. The Resident Doctors of Canada will be added as a respondent to this application and the title of proceedings amended accordingly.

Facts

[4] The *CNCA* received royal assent on June 23, 2009, and came into force on October 17, 2011. Before then, federal not-for-profit corporations were governed by Part II of the *Canada Corporations Act*. The *CNCA* required all not-for-profit corporations that were governed by Part II of the *Canada Corporations Act* (including the CFPC) to continue under the *CNCA* within a three year compliance period (ending October 17, 2014) or they would be dissolved.

[5] To continue under the *CNCA*, the memberships of federal not-for-profit corporations were required to approve (1) articles of continuance and amendments to their by-laws to align them with the *CNCA*, and (2) continuance itself.

[6] In particular, the articles of continuance and the by-law amendments were required to comply with the requirements of section 199 of the *CNCA*. Regrettably, this transition was not, on the part of the CFPC, carried out in compliance with section 199. The CFPC's factum explains the requirements of Section 199 and the problems which arose, as follows:

- Section 199 of the *CNCA*... requires that any proposal to make an amendment that, *inter alia*, changes voting rights of a membership class or grants one membership class superior rights to another, must be voted on by the impacted membership class(es) separately.
- This means that votes on amendments which may affect a membership class can only be passed if a two-thirds majority of the membership class (i.e. a special resolution) vote in favour of the change. In effect, an impacted membership class has the power to "veto"

a proposed change to the membership class, even if other membership classes vote in favour of the change.

- Moreover, section 199(2) of the *CNCA* provides non-voting members with the right to vote where the provisions of section 199 are triggered.
- Section 199(3) of the *CNCA* provides that proposed amendments under section 199(1) are only adopted when each impacted class votes separately to approve the amendment by special resolution.
- In Part II of the *Canada Corporations Act*, the former legislation governing the CFPC, there were no class votes and non-voting members did not have voting rights.
- Due to the “veto” powers conferred by section 199, the prevailing legal advice among practitioners at the time the *CNCA* was coming into force and during the three-year window described above, was that not-for-profit corporations should either move to one membership class (and thereby avoid section 199) or structure their membership classes or draft their articles in ways to mitigate the potential impacts of section 199.

[7] Immediately prior to the continuance of CFPC under the *CNCA*, the CFPC had 10 membership classes (called categories), 7 of which were voting categories. In May of 2013 the CFPC provided their former corporate counsel with proposed articles of continuance and by-laws for review and legal advice. These draft articles proposed two membership classes (each of which would have multiple “subclasses” or categories). Inadvertently, the proposed articles of continuance and by-laws did not refer to the “Life Members” membership class that was added to the CFPC’s membership structure in 2012.

[8] In addition, the by-law amendment provisions in CFPC’s proposed by-laws did not identify or account for the possibility that separate class votes of the members may be required under section 199 of the *CNCA*. The former corporate counsel made no recommendations to their client, the CFPC, concerning the application of section 199 of the *CNCA* and in particular did not address the requirements for voting by individual classes.

[9] To the contrary, former corporate counsel recommended that the CFPC continue with 10 different membership classes instead of two membership classes with multiple subcategories, thereby exacerbating the impact of section 199 of the *CNCA* by significantly increasing the instances of class votes that would be required.

[10] Former corporate counsel also failed to advise the CFPC of the implications of subsection 212(4) of the *CNCA* on the continuance process. This section provides that if a non-*CNCA* corporation (for instance, a corporation governed by Part II of the *Canada Corporations Act*) wishes to amend its corporate charter as part of the *CNCA* continuance process, and those amendments are in the nature described in section 199 of the *CNCA*, then separate class votes under section 199 are required to approve the amendments.

[11] In 2013 and again in 2014 and finally in 2022, the CFPC, at its annual meetings, sought and received members approval for a series of corporate changes that effected the rights of certain of its classes of membership without voting by individual classes of members, in contravention of section 199 of the *CNCA*.

[12] At the 2013 annual meeting the voting members in attendance adopted a proposal to remove the voting rights of members of the existing Student Member class and also approved the creation of a new Public Member class, without voting rights. Furthermore, voting members, voting collectively, approved the articles of continuance and by-laws. All of this contravened section 199 of the *CNCA*, which required each membership class to vote separately in the circumstances.

[13] Notwithstanding these contraventions Corporations Canada issued a certificate of continuance. As explained in the applicant's factum:

Therefore, unbeknownst to the CFPC, the articles of continuance and by-laws approved by the members at the 2013 annual meeting, and submitted to Corporations Canada, as part of the continuance process under the *CNCA* were not approved in conformity with the *CNCA*. Corporations Canada subsequently issued a certificate of continuance, which evidenced the continuance of the CFPC under the *CNCA* and enclosed the articles of continuance, on June 1, 2014.

[14] In 2022 in the context of administrative changes being undertaken, the CFPC decided to change its membership structure by replacing the ten membership classes in the CFPC's articles of continuance and the Life Membership Class (as reinstated in 2014) with four membership classes: Practising, Non-Practising, Learner, and Associate. Only the Practising Class were voting members. The former Life Members Class was divided into two categories: those who were no longer practising who would be exempt from paying fees and those actively practicing who would be required to pay fees.

[15] Section 199 applied to these changes because existing members were being re-classified and certain membership classes were being eliminated with the result separate class votes were required. Once again CFPC's former corporate counsel neglected to identify and advise on this requirement, leaving CFPC to believe only a special resolution of voting members was required. These amendments were approved at the annual meeting in November 2022.

[16] The articles and by-laws were filed with Corporations Canada, and Corporations Canada issued a certificate of amendment enclosing the articles dated January 1, 2023. The CFPC, believing these changes had been validly enacted, embarked on the contemplated administrative changes. In turn, CFPC's ten separately incorporated provincial chapters made corresponding changes to their constating documents to enact parallel membership classes.

[17] Finally, in early 2024, a family physician queried how he had lost his Life Member entitlements, leading the CFPC to review the relevant by-law amendments with the assistance of new counsel, resulting in an identification of the fact that class votes in accordance with section 199 of the *CNCA* should have been conducted at the 2022 annual general meeting to validly enact the proposed by-law and article amendments.

[18] On the record before this court, I find that the CFPC never held separate class votes when it was obliged to do so under section 199 of the *CNCA*, including the approval of membership class changes at the time of CFPC's continuance under the *CNCA* in 2013. The result is that the CFPC's Constatng Documents, even though approved each time by a majority of the voting members at the annual meetings, were not properly approved as required under the *CNCA*.

[19] I will note that the CFPC issued its Notice of Application herein on July 15, 2024 and subsequently, pursuant to directions provided in an order of Corthorn J. of this court, the applicant's over 43,000 members were provided with electronic notice of this application and an e-link to the applicant's materials. Only the Resident Doctors of Canada have sought to appear in response to this application.

The Issues

[20] The applicant seeks: (a) an Order validating the CFPC's articles of continuance filed pursuant to the *CNCA* and (b) an Order validating the corporate by-laws and articles approved at the CFPC's 2022 Annual Meeting of Members. Accordingly, the first issue is the court's jurisdiction to make such an order. The second issue is whether such an order is appropriate in the circumstances. The third issue is whether the particular changes to such an order, concerning family practice residents, sought by the Respondent Resident Doctors of Canada are appropriate.

Analysis

[21] The *CNCA* does not have any provision that expressly allows a corporation to bring an application to validate corporate documents that were irregularly enacted. Part 16 of the *CNCA* (sections 250 to 263) is entitled 'Remedies, Offences and Punishment' and sets out the procedural statutory measures available to a 'complainant' and specified stakeholders to, *inter alia*, enforce a corporation's compliance with the Act.

[22] The three main categories of statutory remedy under Part 16 of the *CNCA* are:

- a) Section 251 – derivative action;
- b) Section 253 – oppression remedy; and
- c) Section 259 – compliance or restraining order.

[23] The CFPC's position is that, none of these procedures are appropriate for the relief the CFPC is seeking. Crafting a remedy for the CFPC using any of the procedures in Part 16, in the submission of the CFPC "would require the Court to exceed the reasonable limits of statutory interpretation". I respectfully agree with that submission. The Part 16 remedies are clearly not

available to the corporation itself to correct errors of the nature before the court in the present matter.

[24] The CFPC submits that the Court's jurisdiction to grant the relief sought on this application can be found under section 288 of the *CNCA* and, in particular, subsection 288(4) which reads as follows:

Application to court

(4) On the application of the Director, the corporation or any other interested person, a court may

(a) order the correction of any of the documents referred to in subsection (1),

(b) determine the rights of members or creditors of the corporation;
and

(c) make any other order that the court thinks fit.

Subsection 288(4) refers to the correction of documents referred to in subsection (1) which applies to "an error in the articles, a certificate or other document".

[25] The CFPC submits that what it refers to as "its inadvertent non-compliance with sections 199 and 212 of the *CNCA*", resulting in Constatting Documents which were not adopted in strict compliance with the *CNCA* and were subsequently filed with Corporations Canada, constitutes an error for the purposes of section 288. The CFPC further submits that subsection 288(4)(c) grants the Court the power to rectify the CFPC's error by validating its Constatting Documents.

[26] Section 288 has not been judicially considered. Nor has a similar provision found at section 265 of the *CBCA*. Faced with a similar situation with regard to section 1031 of the Insurance Companies Act, the Ontario Court of Appeal in *Jeffery v. London Life Insurance Company*, 2011 ONCA 683 began its exercise of interpreting section 1031 by considering the rule of statutory interpretation set out in *Rizzo & Rizzo Shoes Ltd.* [1998] 1 S.C.R. 27 at para. 21:

Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[27] As a general principle, courts should strive to give harmonious and practical effect to legislation whenever and wherever possible. This principle is informed by section 12 of the (Canada) *Interpretation Act*, RSC 1985 c I-21 which reads as follows:

Enactments deemed remedial

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[28] Where a word in an act is not defined and has not received judicial interpretation, it is useful to resort first to dictionaries to ascertain its meaning.

The *Dictionary of Canadian Law*, 5th Ed., defines “error” as:

1. A mistake; something known or discovered to be incorrect or wrong;
- and
2. Incorrect information, and includes omission of information

[29] I agree with the CFPC’s submission that as the *CNCA* is remedial legislation warranting a liberal construction and interpretation as best ensures the attainment of its objects and in the absence of limiting or restrictive terms such as “mere technical or clerical errors”, the Act should be read broadly. This conclusion is reinforced by considering the broad powers specifically provided in subsection 288(4) allowing the court to (c) “make any other order that the court thinks fit”, in addition to allowing the court to (a) order the correction of any of the documents and (b) determine the rights of members or creditors of the corporation.

[30] CFPC submits on a plain reading of section 288, in this context, it is intended to allow for the ‘correction’ of an ‘error’ in a corporation’s constating documents. I respectfully accept this argument. In the court’s opinion the relief available in this section is sufficiently broad to allow a

court to exercise a discretion to validate corporate documents not properly enacted as a result of procedural error. In view of this conclusion the court does not need to consider the applicant's alternative argument that the court has a free standing inherent jurisdiction to grant such a relief, an approach only potentially available when no avenue for relief is provided by the Act (the *CNCA*).

[31] In reaching this conclusion, the court is mindful that the applicant is acting in good faith to correct errors made as a result of deficient advice by its former corporate counsel. Annually, the CFPC provided proper notice of its general and annual meetings to its membership of over 40,000 including memoranda which set out the proposed amendments to its by-laws and Articles. At the relevant annual meetings in 2013, 2014 and 2022, the CFPC's members voted in favour of the CFPC's proposed amendments to its by-laws and the by-laws were directed to changes in governance and administration believed to be in the interests of the membership.

[32] Further, the court is satisfied that the applicant's proposed relief, being an order validating the applicants Constatting Documents, with retroactive effect, is a fair, proportional, efficient and practical approach to remedy the situation and is preferable to embarking on a process of validating by-laws retroactively on an annual basis or returning wholesale to the 2012 status for the CFPC.

Position of the Resident Doctors of Canada

[33] The Resident Doctors of Canada (who are representing the interests of Family Medicine Resident Doctors) do not oppose the CFPC's application to validate its Constatting Documents but they seek to vary the relief sought to provide that Resident Members should constitute a separate class of members with voting rights.

[34] The Resident Doctors of Canada represent 14,000 resident doctors across Canada who are in various disciplines of medicine. Only 2800 of this group are residents in Family medicine. The CFPC plays a significant role in setting the requirements for family medicine residency training in Canada and in that respect their decisions have a direct impact on family medicine resident doctors. This includes determining the length of family medicine residency training as well as setting examination fees and other issues.

[35] Prior to the 2022 annual general meeting, family resident members of the CFPC were a separate class with voting rights. However, at this general meeting a new membership structure was approved by the membership eliminating the Resident Class of members with voting rights and creating a new “Learner Class” of members, composed of students, resident doctors, and international medical graduates. This new Learner Class of members did not have voting rights and were not required to pay CFPC fees. Previously, Resident Class members of the CFPC were entitled to vote and were required to pay fees.

[36] This special resolution was passed at the 2022 annual general meeting by a vote of 67.7% in favour and 32.3% opposed. As a result of this change, Resident Class members (ie., family medicine residents) as noted, lost their voting rights at the CFPC. As acknowledged by the CFPC this change was made in violation of the *CNCA*, since no separate class vote of Resident Class members was held to confirm this change.

[37] The resident doctors have presented to the court in this application a well articulated argument as to why and how the interests of resident doctors in family medicine differ from those of medical students and as to how their interests require the exercise of voting rights as a separate class. The respondent explains: “the loss of their vote at the CFPC has left Family Medicine Resident Doctors feeling like they have been disempowered and lack representation as they no longer have a direct voice when decisions are made affecting their interests at the CFPC”. The respondent advises the court family medicine residents do not oppose paying membership fees should their voting rights be restored.

[38] CFPC initially opposed the creation of a new membership class of voting residents and took the position the court lacked clear jurisdiction to make such an order and that doing so may be unfair to other CFPC members. It was concerned an order which restores residents’ voting rights would require the CFPC to redraft its bylaws and articles to effectively split the existing “Learner” class into two new classes with new rules governing fees and voting. The concern was such a change could have significant financial and administrative implications for CFPC and for its 10 provincial chapters.

[39] However, prior to the release of these reasons the parties advised the court they had been able to reach an agreement they felt reasonably addressed the family medicine resident's wishes to be restored as voting members. The proposal is they would be removed from the Learner membership class (who are non-voting) and reclassified as members of the "Practicing" membership class and as such would be entitled to vote and would pay membership dues.

[40] The parties agree this suggested reclassification would not change the CFPC's current membership structure. Moreover, there would be no apparent prejudice to other CFPC membership classes and only family medicine residents have taken any position on this application.

[41] The court is satisfied that section 288(4) of the *CNCA* is sufficiently broad to allow the court the discretion to approve a reclassification of a membership group from one membership class to another. This subsection permits an "interested person" to apply to the court for the correction of a corporate document (such as a by-law) and to "determine the rights of members" and "make any other order that the court thinks fit". In the present case family medicine residents were moved from a voting class to a nonvoting class pursuant to a by-law passed at the 2022 Annual Meeting of members. This by-law was invalidly enacted because no separate vote was held of the former Residents Class as required by section 199 of the *CNCA*. The remedy sought by the family medicine residents, as described above, is reasonable, minimally disruptive to the CFPC's corporate structure and closely and logically tied to the relief being granted herein to the CFPC arising from the same statutory non-compliance.

Disposition

[42] The CFPC's application herein is granted. An order will issue validating the CFPC's articles of continuance filed pursuant to the *CNCA* and validating the corporate by-laws and articles approved at the CFPC's 2022 Annual Meeting of members. These By-laws and Articles are validated nunc pro tunc from their respective effective dates to the date of this order. The court also orders that family medicine residents who are presently members of CFPC's "Learner" membership class be reclassified as members of the "Practicing" membership class, effective the date of this order.

[43] There will be no order as to costs.

Charles Hackland Jr.
Justice Charles T. Hackland

Date: March 5, 2025

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Released: March 5, 2025