CITATION: The Polish Alliance of Canada v. Polish Association of Toronto Limited, 2014 ONSC 3216
COURT FILE NO.: CV-08-361644
DATE: 20140527

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
THE POLISH ALLIANCE OF CANADA Plaintiff	*Peter Waldmann*, for the Plaintiff
– and –	
POLISH ASSOCIATION OF TORONTO LIMITED, MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS aka JOHN ARGYRIS, WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN, HELENA JASLAN, EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ aka STAN ROGOZ, ALBERT JOSEPH FLIS and RICHARD RUSEK Defendants	*Bernie Romano*, for the Defendants, except for Richard Rusek *Valerie A. Edwards* for the Defendant Richard Rusek
– and –	
POLISH ASSOCIATION OF TORONTO LIMITED, MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS JOHN ARGYRIS aka JOHN ARGYRIS, WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN, HELENA JASLAN, EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ aka STAN ROGOZ, ALBERT JOSEPH FLIS and RICHARD RUSEK Plaintiffs by Counterclaim	
– and –	
THE POLISH ALLIANCE OF CANADA, ROBERT ZAWIERUCHA, TADEUSZ MAZIARZ, ELIZABETH BETOWSKI, DANUTA ZAWIERUCHA, TERESA SZRAMEK, ANDRZEJ SZUBA, ADAM SIKORA, ELZBIETA GAZDA, STANISLAW GIDZINSKI, STANISLAW IWANICKI and TADEUSZ SMIETANA Defendants by Counterclaim	
	HEARD: March 17-28 and April 16-17, 2014

F.L. MYERS J.

REASONS FOR DECISION

[1] These are my Reasons for Decision arising from the trial of the issues ordered by Mr. Justice Colin Campbell on February 21, 2012.

The Issue

[2] The essential question for resolution in this twelve day trial is: Who owns the land and premises municipally known as Nos. 2282, 2284, 2286, 2288 and 2290 Lakeshore Boulevard West, Nos. 9, 11, 13 and 17 Louisa Street, and No. 32 Twenty-Fourth Street, in Toronto? The properties on Lakeshore Boulevard and Louisa Street are contiguous and are the home of the clubhouse of Branch 1-7 of The Polish Alliance of Canada (the "Lakeshore Property"). The Lakeshore Property is on the waterfront and has been rezoned so that it is available for luxury condominium development. All parties agree that the Lakeshore Property has substantial value if redeveloped to its highest and best use - perhaps over $50 million.

The Parties

[3] The combatants are The Polish Alliance of Canada (the "PAC") represented by its Head Executive Board (board of directors), as plaintiff, and eight individuals (the named individual defendants other than Richard Rusek) purporting to represent Branch 1-7 of The Polish Alliance Canada ("Branch 1-7"). The corporate defendant Polish Association of Toronto Limited ("PATL") is the corporate land-holding vehicle for Branch 1-7. In August 2006, the eight defendants advised the PAC that Branch 1-7 was leaving the PAC. They say that the branch has validly seceded from the PAC and has taken the Lakeshore Property and 32 Twenty-Fourth Street with them for the benefit of the branch's members.

[4] The defendants paint the PAC as a failed dictatorial umbrella organization that has fallen into the grasp of a real estate developer, Elizabeth Betowski. They fear that Ms Betowski is trying to seize and sell their clubhouse that was bought, built and tended with the blood, sweat and tears of the branch members and their forefathers. The PAC, for its part, points to its constitution (corporate bylaw) to argue that the PAC is the one and only legal entity capable of owning property. The PAC claims that under its constitution it owns all property no matter how title is held. The PAC paints the eight defendants as disloyal, disgruntled members who are free to leave the PAC but not to take the PAC's property with them. They raise the fear that if the purported current branch or PATL were to dissolve or to distribute their assets, a very few people, consisting largely of the families of the eight defendants, would unjustly share in tens of millions of dollars.

[5] The arguments have a certain ring of a dispute started long ago and far away. As will become apparent throughout, the parties are locked into a dispute that precedes and transcends the narrow issues that are before me. Both claim to represent the best interests of the Polish community in Toronto. Both believe the other side to be motivated by personal greed and ill will. Some of the rhetoric during the trial sounded suspiciously like a dispute between a

totalitarian government fighting to put down a rebellious group asserting the peoples' right to the fruits of their labour. There is no room for compromise or any acknowledgement of there being an honest disagreement between these parties.

[6] As I indicated to the parties during the trial, it was not very difficult to see when a witness was giving heartfelt testimony concerning events in which he or she took part, as compared to efforts by numerous witnesses to mouth the party line. For example, Ms Betowski had a remarkable facility for a layperson to rhyme off from memory the five classes of documents among the PAC's 234 tabbed productions which she said were not created in the "usual and ordinary course of business". She was plainly marshaling the troops for the PAC side throughout the trial. She has been engaged in much litigation for the PAC and yet she had no compunction in testifying to her voluntary destruction of handwritten notes of meetings that she took after this litigation commenced.

[7] Mr. Marek Miasik, the leader of the defendants, for his part, had no concern signing letters to government officials and others deliberately seeking to impair the workings of the PAC or with filing with the government documents that were plainly incorrect and tactical. Much time was spent at trial by the defendants trying to show that the omission by Ms Betowski of a particular document from a set of minutes was deliberate. For its part, the PAC sought to show through several witnesses that Mr. Miasik is a populist demagogue who, at a general meeting, overturned a cart of documents for dramatic effect; whereas his witnesses say that a few documents in a stack fell off the cart. Not a thing turned on whether the omission from the minutes was deliberate or whether Mr. Miasik threw or merely dropped some documents. The point of this recitation is that, as I said during the trial, if the parties are unable to see beyond their historic anger, the person in the room with the least knowledge and experience of what is in the best interests of the Polish community in Toronto would be called upon to decide the outcome of their community centre and properties for them. If this is just a new battle in an ongoing war masquerading as a dispute about land ownership in Toronto, my decision will give no comfort to those who seek a symbolic victory.

The Legal Environment

[8] In order to understand the relevance of some of the factual story, it is useful to set out the basic legal principles applicable to the relationships among participants in a not-for-profit organization. The basic legal approach is not seriously in issue. In *Wawrzyniak v. Jagiellicz* (1988), 64 O.R. (2d) 81 (H.C.J.), A. Campbell J. decided a case that bears some similarity to this one. In that case, an unincorporated national association had a Toronto branch. The local members incorporated a company to own their clubhouse. In 1957, the members went to court for the first time and McRuer C.J.H.C. decided that the corporation held title to the clubhouse in trust for the members of the local branch. The decision was upheld by the Ontario Court of Appeal. In 1982, after problems developed between the local branch and the parent organization, a majority of the members present at a meeting of the branch voted to leave the organization and commenced operating as an independent club under a new constitution through the corporation that then owned the land. An identifiable minority of the members of the branch remained behind and clearly constituted the old local branch. The constitution of the parent

association provided that the assets of the branches are the collective property of the parent association. At pp. 88-89 of the decision, Campbell J. described the legal context as follows:

> Voluntary organizations have a life of their own determined by their charter and constitution and practice. If they acquire property it is theirs according to their own rules. If they give that property to a corporation without unanimity the corporation will ordinarily hold it in trust for the voluntary organization. The members of the association may come and go. Individuals may join and continue until death or they may resign or they may seek to form a new group. The departure of individual members, the formation of a new group, the creation of a new bond of association, have nothing to do with the legal integrity of the original voluntary association unless its constitutional instruments say so. The property of the voluntary association continues to be the property of the members from time to time of the association.
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> The majority although free to leave ordinarily cannot take with them the assets that belong to the membership at large unless the step is taken with unanimity of all the membership. Unless authorized by the constitution, a mere majority of members cannot cause property to be diverted to another association having different objects. When the majority of an association leave, they trigger the clubman's veto. The clubman's veto was discussed by Blair J.A. in [*Organization of Veterans of Polish Second Corps of Eighth Army v. Army, Navy & Air Force Veterans in Canada* (1978), 20 O.R. (2d) 321, at p. 339, by Wilson J.A., at p. 345, and by Dubin J.A., dissenting, at pp. 324-28 ("*Polish Veterans*")]. They agreed that the transfer of property, as opposed to the transfer of affiliation, could ordinarily be accomplished only by unanimous membership unless the constitution specified otherwise.

[9] The *Polish Veterans* case carves out a very narrow exception to that general rule where a branch was arbitrarily and unjustly dissolved by the parent association and the majority sought to preserve the property of the branch by transferring it to a corporation created for that purpose. On reading the concurring reasons of Wilson J.A. (as she then was) and the dissenting opinion of Dubin J.A. (as he then was), one is left to conclude that the majority result was driven as much by the inequitable facts as by any doctrine that can be readily generalized and applied again. However, in setting out the general approach to unincorporated associations, Blair J.A. wrote the following, at p. 339:

> Because of the peculiar nature of the interest of the members of an unincorporated association in the property of the association the Courts have been zealous to protect that interest where factions develop and the fellowship of the association is broken. They have been particularly concerned to do this where the fragmented association has split into a disloyal faction, which is gone its separate way and attempted to take the association's property with it, and an ongoing loyal group of adherents seeking to preserve the property and the fellowship of the original association. The tempestuous history of religious denominations, fraternal

> societies and trade unions affords many examples of local congregations or units seeking to break away for the parent body either to affiliate with another organization or achieve independence. It is been held many times that, unless authorized by the organization's constitution, a mere majority of members cannot cause property to be diverted to another association having different objects.

[10] The PAC says that, under Article 8 of its constitution, it owns all property, whether it is the equitable title to the Lakeshore Property and 32 Twenty-Fourth Street or title to the shares of PATL the corporate owner of the Lakeshore Property. It says that the defendants fit into Justice Blair's description of a disloyal faction. That means that they cannot take with them the property of the association absent a unanimous vote of all members.

[11] The defendants argue that they are not a disloyal faction at all. They were, are and always will be the Polish Alliance of Canada. They are the ones who built the clubhouse, who ran and run the events, who educated and educate the children, and who carry on the legacy of their forefathers. Their properties belong to their members and are not being diverted to a different group with different objects. The Head Executive Board, they say, is not a "loyal group of adherents seeking to preserve the property and the fellowship of the original association". Rather, it is a group under the influence of an aggressive real estate developer that is trying to take control of the branch clubhouse to obtain profit for themselves or for other branches in a manner that is inconsistent with the fundamental underpinnings of the PAC.

[12] Mr. Waldmann, for the PAC, relies upon a number of Australian cases where, on the facts, the branches had no independent identity from the parent association: *Bacon v. O'Dea* (1989), 88 A.L.R. 486 (F.C.A.); *Williams v. Hursey* (1959), 103 C.L.R. 30 (H.C.A.); *Hall v. Job* (1952), 86 C.L.R. 639 (H.C.A.). They all involve what is sometimes referred to as the "chapter model" of unincorporated associations. However, as noted by Donald J. Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 3rd ed. (Markham, Ont.: Butterworths 2002), at p. 187, at the opposite end of the factual spectrum is the "association model", which involves multiple entities that are members of an umbrella organization. An association model organization is analogous to a federation of partially self-governing states united under a federal government. For the reasons set out below, the PAC resembles an association model comprised of independent units far more than a chapter model organization. The Australian cases are therefore of little assistance in resolving the issues in this trial.

[13] As a final guidepost for the assessment of applicable law, I refer as well to the decision of Megarry V.-C. in *In re GKN Bolts & Nuts Ltd. (Automotive Division) Birmingham Works Sports and Social Club*, [1982] 1 W.L.R. 774, and the following words, at p. 776, that strike me as particularly apt to the circumstances before me:

> As is common in club cases, there are many obscurities and uncertainties, and some difficulty in the law. In such cases, the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not, of course, saying that these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general

> concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints.

The Polish Alliance of Canada

(i) The Polish Alliance Friendly Society of Canada

[14] In 1907, The Sons of Poland Friendly Society was incorporated under *The Ontario Insurance Act*, R.S.O. 1897, c. 203. In 1921, the name of the corporation was changed to Polish Alliance Friendly Society of Canada ("PAFS") to align its name with the nascent PAC with which it had become associated. As a friendly society, the objects of the PAFS were to provide insurance benefits to its members. Not all members of the PAC chose to buy insurance from PAFS and therefore not all members of the PAC were or are members of the PAFS. PAFS stopped issuing new insurance coverage decades ago. Today only a very small handful of members of the PAC remain entitled to a very modest death benefit of $300 through PAFS.

(ii) The Unincorporated Polish Alliance of Canada

[15] At or about the same time as the PAFS was incorporated, other organizations were formed to represent the interests of members of the Polish community. There is very little documentation concerning the early establishment of the PAC. There are pictures and a few sets of meeting minutes indicating that the PAC existed as an organization, or at least a name, from the early years of the 20th century. It appears that the PAC existed only in Toronto until the 1920s. In the late 1920s, a second branch of the PAC opened in Hamilton, Ontario. At that time, the Toronto branch became known as "Branch 1" and the Hamilton branch became "Branch 2".

[16] Excerpts from the PAC's *Golden Jubilee Brochure* were submitted into evidence by the defendants at trial. I ruled that the document was not hearsay because it was a statement made by the plaintiff or its privy in interest. The *Golden Jubilee Brochure* appears to have been written in or about 1957 to celebrate the 50th anniversary of the PAC. It was written at the instruction of the membership at a convention under the guidance of the Head Executive Board. The Author's Note provides:

> The purpose of this brochure is to give a reader essential information about the Polish Alliance of Canada, a Friendly Society. The Polish Alliance of Canada XVth General Meeting passed the resolution to write and publish a brochure presenting the organization in a concise and clear way. The Alliance's Head Executive Board assigned this task to me and I did fulfill it the best way I could. The brochure content is based on my knowledge gained during my seven year long Alliance membership. Moreover, I wish to extend my sincere

> acknowledgments to the Head Executive Board, Polish Alliance Press, Education Council and the Alliance Branches, as well as to all those who supplied me with source materials and statistical data from the previous years
>
> Józef Broda
> Secretary General
> Polish Alliance of Canada

[17] Under the heading "The Polish Alliance of Canada – organization", the *Golden Jubilee Brochure* states:

> Each Alliance Branch is a self-dependent administrative unit existing with a purpose to benefit its members as well as to fulfill needs of the whole Polish community, it is a fully autonomous formation and boasts a complete freedom in all its plans and activities, except for the insurance matters which are taken care of by the Head Executive Board. All assets of each Branch are the [sic] owned by the branch, and therefore owned by the members of the given branch. This should be emphasized in particular, since many existing Polish organizations withhold their plans to join the Polish Alliance of Canada due to apprehension of their property, especially the buildings being taken over by the Head Executive Board. This is a totally incorrect approach and inconsistent with the existing status quo.
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> Branch No. 1 in Toronto was officially named as such since 1927. As is well-known, Branch No. 1 was established upon merging of three Polish organizations: Sons of Poland Brotherly Aid Society, St. Stanislaus Kostka Society and National Polish Union. The Alliance members used to call Branch 1 a "mother" of the Polish Alliance of Canada.

[18] I attach little weight to this brochure. While it does not lie in the mouth of the PAC to complain about an inability to cross-examine itself, the brochure is not under oath and there is no indication of what the author knew about the legalities of ownership of property by an unincorporated association. The legal determinations as to who owns property will be made below based on appropriate legal principles. The brochure does however give some circumstantial support to the fundamental argument of the eight defendants that structurally the branches of the PAC were not understood to be simply pieces of the whole. Rather, the PAC was but a convenient administrative umbrella under which lay autonomous, independent branches, each with its own properties. It also shows the PAC understanding 60 years ago the sensitivity of the issue of ownership of branch property and actively trying to dispel concern that the PAC could make the very arguments that it is now making in this trial.

[19] As unincorporated associations, the branches were not legal entitles and could not purchase property in their own names. Properties were acquired and held by the branches (and by the PAC prior to its incorporation in 1973) in three ways. First, although technically only an insurer, PAFS had a corporate existence that was used to hold property acquired by local branches and the PAC. Second, some properties were held in trust by named individual trustees

on behalf of the members of a branch. That remains the case with respect to title to 32 Twenty-Fourth Street. Third, corporations were specifically incorporated to hold land purchased by branches. The Lakeshore Property is owned by one such corporation, the defendant PATL. The ownership of the shares of PATL is one of the issues for resolution in this trial.

Polish Association of Toronto Limited

(i) PATL's Structure

[20] PATL was incorporated in 1927 under *The Companies Act*, R.S.O. 1927, c. 218. At that time, there was no separate *Business Corporations Act* to distinguish not-for-profit corporations from "for-profit" corporations. The original objects of PATL included acquiring land to be used as a place of meeting for the Polish people of Ontario and to promote the general educational and social welfare of the Polish people of Ontario. Despite these not-for-profit objects, several aspects of the company's formation are typical of a "for-profit" corporation. For example, PATL's letters patent provide for authorized share capital of 4,000 shares with a par value of $10 each. This was subsequently increased to 10,000 shares with a par value of $10 each. The letters patent provide that the company may distribute its assets *in specie*. The initial bylaw of PATL authorized the board of directors of the company to declare dividends from time to time.

[21] The concern expressed by the PAC with respect to PATL is that its "for-profit" structure creates a risk that PATL could distribute its property to shareholders *in specie*, declare dividends, or dissolve. The PAC fears that shareholders could take the assets or a share of the value of the assets to the exclusion of the membership of the PAC. The defendants argue against the characterization of PATL as "for profit" because, they say, it has always been directed and managed in the interests of its members as if it were a not-for-profit corporation. They point to correspondence from the early 1970s between PATL's lawyers, Osler Hoskin & Harcourt, and provincial taxation authorities, in which PATL sought to be characterized as a not-for-profit entity for tax purposes. However, PATL has never formally changed its structure and continues to file income tax returns as a "for profit" company.

(ii) The Defendants' Recent Effort to restructure PATL

[22] To attempt to mitigate the risk identified by the PAC, the defendants purported to amend the bylaw of PATL in December 2013 to make it look more like a not-for-profit corporation. In December 2013, PATL purported to hold a shareholders' meeting at which the shareholders approved a new general bylaw for the corporation. Mr. Hartley Nathan, the corporate lawyer who guided the restructuring for PATL, frankly conceded that the effort was designed to be completed just prior to the pre-trial conference that was scheduled to be held in this trial of the issues. The purpose of the restructuring was, at least partially, to try to have PATL regarded in this trial as a not-for-profit corporation whose assets are protected from distribution to shareholders. Mr. Nathan explained that there is currently unproclaimed legislation that may assist PATL in converting to not-for-profit status if and when the legislation is proclaimed into force. Until then, in my view, any amendment to the corporation's bylaw is reversible by shareholders and does little to ameliorate the PAC's concerns. To answer these concerns, Mr.

Romano, for the defendants, invites me to add conditions to any declarations that I may make concerning PATL's ownership of the Lakeshore Property to prohibit it from distributing its assets to shareholders and to require it to elect into the new legislation once proclaimed.

[23] A significant amount of time at the trial was devoted to a review of the procedure adopted by PATL in its effort to restructure. The defendants appear to have improperly excluded Ms Betowski from the PATL shareholders' meeting despite her presentation of a valid proxy from the PAC entitling her to vote at least 51 shares. The PAC provided the original share certificates to PATL previously and they are now being held by Mr. Romano pending the outcome of these proceedings. The defendants also refused to let Ms Betowski attend to vote the one share of PATL that the defendants acknowledge is registered in the name of the PAC Head Executive Board in PATL's minute book and their own shareholders' list that is Exhibit 33.[1] In light of my holdings below and the reversibility of any bylaw in any event, I do not see any need to discuss further the details of the December 2013 events.

The Lakeshore Property

[24] It is clear from the evidence and the transcripts of the examinations for discovery that were read-in during the trial, that all of the money used for the purchase and upkeep of the Lakeshore Property came from property and funds held by Branch 1 and Branch 7 of the PAC for their respective members. The two branches merged to form Branch 1-7 in the early 1970s in order to purchase the various parcels that would ultimately comprise the Lakeshore Property.

[25] Both Branch 1 and Branch 7 sold properties to contribute proceeds to the purchase of the Lakeshore Property. In addition, Branch 1 had access to funding from the estate of Stefanie Bilski. Mrs. Bilski left a very significant bequest to "the Polish Alliance of Canada, Branch 1-7, 2282 Lakeshore Boulevard West, Etobicoke, Ontario, for its own use absolutely". The trustees of the estate have treated the funds as being held in trust for the members of the branch. Neither the Head Executive Board nor any other branch of the PAC has claimed entitlement to funds from the Bilski estate prior to this litigation. The Bilski estate bequest provided funds for the purchase of 17 Louisa Street, which forms part of the Lakeshore Property and is registered in the name of PATL.

[26] The Bilski estate owned 32 Twenty-Fourth Street. In 1997, title to that property was transferred by the estate trustees to the defendants Argyris, Flis, Miasik, Rusek and one other as trustees for the members of Branch 1-7 of the PAC.

[27] Absent evidence to the contrary, the presumption of resulting trust applies to the Lakeshore Property. Funds for that property were provided by the members of Branch 1-7 while title was taken in the name of PATL. Unless there is proof that the intention of the funders was that PATL was to hold the equity in the property for itself and its shareholders, the law presumes

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[1] See subsection 44(2) and section 301 of the *Corporations Act*.

that title is held in trust for the funders, i.e. the members of Branch 1-7 of the PAC from time-to-time. See the discussion of *Wawrzyniak* above.

(i) PATL has Shareholders

[28] Does the existence of shareholders who are not composed solely of members of Branch 1-7 mean that the members of Branch 1-7 who decided to buy the Lakeshore Property intended that PATL hold the land for itself and its shareholders and not as trustee for the members of Branch 1-7? Although its authorized capital is limited to 10,000 shares, it appears that there are a few hundred more than 10,000 shares issued and outstanding. More than 9,000 shares are held in the name of or controlled by Branch 1-7 on behalf of its members.[2] A further approximately 400 shares appear to be held by members of the public being principally, but not fully, members of Branch 1-7 or their heirs. A few shares are registered in the names of other branches of the PAC, for example.

[29] A finding that PATL is a trustee is consistent with the limited par value ascribed to its shares. There is correspondence in the record in which PATL at one time indicated a willingness to repurchase its shares at par value irrespective of the underlying value of the assets. Moreover, when considering seceding from the PAC in 2004, Branch 1-7 considered purchasing all of the available shares for $2 dollars a share. Members of the community were issued shares in PATL in return for donating a chair or participating in other fundraising activities for the branch. There was no evidence of any suggestion that shareholders were investing in PATL or that the shares were viewed as more than a symbolic certificate of appreciation. There is certainly no correspondence from shareholders over the past 85 years inquiring as to the performance of their investments. Neither is there any indication of any shareholder asserting that his, her or its shares have value commensurate to that of the Lakeshore Property.

[30] There is also no indication of the Lakeshore property or the PATL shares ever being reported as valuable assets by the shareholders. The shares are not recorded as assets in the financial statements of either the PAC or Branch 1-7. Similarly, neither the PAC nor Branch 1-7 records the value of the land on its financial statements. If the PAC thought that it owned the

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[2] Exhibit 33 is a shareholders' list drawn from the original minute book of PATL as supplemented by due diligence performed by the defendant Rusek, who was counsel at the time, and the defendant Flis. The minute book shows these shares being held either in the name of "Branch 1" or "Branch 1 – members". As noted above, Branch 1 and Branch 7 merged in the early 1970s. There was some argument made by the plaintiff that the formation of Branch 1-7 was never properly approved by the Head Executive Board so it is not the successor to Branch 1. The PAC has accepted dues from Branch 1-7, granted its delegates credentials for conventions, borrowed money from it, and treated it as the successor branch and the proper occupant of the Lakeshore Property for decades. Branch 1-7 is the successor to branches 1 and 7 and the PAC is estopped from asserting otherwise. (I pay no heed to the draft shareholders' list prepared for PATL in 2013 that was prepared by people who were not even provided with the corporate minute book.)

Lakeshore Property outright, the land ought to have been recorded as an asset on its balance sheet. Ms Betowski's evidence was that the financial statements of the PAC would not show the land because the financial statements were not prepared on a consolidated basis. Ms Betowski was not suggesting that Branch 1-7 should be viewed as a subsidiary with unconsolidated financial statements. If it is simply a division of the PAC, as the plaintiff asserts, then the assets of the branch ought to be shown on the PAC's financial statements. As PATL is a separate corporation, if its shares were owned by the PAC, there could be consolidated financial statements prepared for parent and subsidiary. However, this was never done or, apparently, contemplated. In the absence of consolidation, the PATL shares ought to be have been disclosed and reported as assets on the PAC's financial statements if the PAC believed that it owned the shares that are held in the name of Branch 1-7 and that the shares had value.[3]

[31] In all, I see no indication that PATL owns the Lakeshore Property on its own account and no basis to rebut the presumption of resulting trust. PATL's *raison d'être* was to hold land for the members of the unincorporated Branch 1 in 1927. If the historic oral understanding is insufficient to create an express trust for land, then the law of resulting trust fills the gap to properly allocate the value of the property in accordance with the purchasers' presumed intentions. I hold that PATL owns only legal title to the Lakeshore Property and that it holds the equitable title to the land in trust for the members of Branch 1-7 of the PAC from time-to-time.

The Implications of the Incorporation of the PAC

[32] In 1973, the PAC was incorporated as a not-for-profit corporation under letters patent issued under the *Corporations Act*. It has no shareholders. Section 130 of the *Corporations Act* provides that the bylaws of a not-for-profit corporation may divide the members into groups by territory. The bylaws can then allow each group to elect delegates to represent the group for the purpose of electing the directors of the corporation. The plaintiff says that after 1973, the branches were no more than territorial divisions and had no independent legal existence. Whether the branch was an unincorporated association or a territorial division of the PAC does not affect the fact that PATL continues to hold the Lakeshore Property in trust for the members of Branch 1-7 of the PAC from time to time. The objects of the trust remain identifiable with certainty and are the same group of people before and after incorporation. The legal characterization of the organization through which they are identified has no bearing on the members' equitable title. The question then is whether the constitution of the PAC changes that outcome.

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[3] I note that in conjunction with the PATL shareholders' meeting purportedly held in December 2013, the Head Executive Board asserted that the PAC owned just 52 shares of PATL and not the 9,000-plus shares registered in the name of Branch 1.

(i) The Constitution of the Polish Alliance of Canada

[33] I have set out the relevant provision of Articles 8, 9 and 59 of the PAC constitution from 1999 in the Schedule to these Reasons for Decision for ease of reference. Efforts to amend Article 8 in 2005 and 2007 are discussed below.

[34] Mr. Waldmann submits that upon the incorporation of the PAC, the members of the prior unincorporated PAC must be taken to have voluntarily joined the new corporate PAC. As such, the law provides that they are deemed to accept the articles and bylaws of the corporation as a contract that binds all of the members: *Senez v. Montreal Real Estate Board*, [1980] 2 S.C.R. 555, at pp. 566-71. Therefore, the plaintiff claims that all property that is held by or in trust for the branches or their members belongs solely to the PAC under Article 8.

[35] There was no evidence presented before me of any member of the PAC or any branch actually applying to join the corporate PAC in 1973. As far as I can tell, there was a seamless transition from unincorporated association to incorporated legal entity. There is no indication that any individual member ever applied to join the corporation or knew that a change in corporate structure had occurred. There was no transfer of title documented for any property at the time of the incorporation of the PAC. Notwithstanding the legal machinations, there is no evidence indicating that the members at large of the PAC knew that the PAC had formed a corporation, understood any implication from that legality, or agreed to donate their equitable title to the new corporation. There is no indication of unanimity or of any notice being provided to members that could form the basis of a finding that they knowingly and unanimously gave up their property interests or their clubman's veto. Mrs. Szramek, a former member of the Head Executive Board who was called as a witness for the PAC, testified that it would be most unfair if branches were deemed to be stripped of their properties upon the incorporation of the PAC.

(ii) The Transfer of the Lakeshore Property

[36] The purchase of the Lakeshore Property occurred shortly after the PAC was incorporated in 1973. Mr. Argyris testified to his involvement in negotiating the purchase on behalf of Branch 1-7. The branch used the legal services of Mr. Chester Smith, the lawyer for the PAC. Mr. Smith sought instructions as to title from the PAC President and registered the Lakeshore Property in the name of the PAC. When this became known to Branch 1-7, it demanded that title be rectified. Therefore, a correcting deed was prepared and filed in 1975 to transfer the Lakeshore Property to PATL. In the land transfer tax affidavit, the President of the PAC, Mr. Glista, swore the following:

> The lands and premises were purchased in trust by the Transferor for the benefit of the Transferee and is now being conveyed to the Transferee at the request of the Transferee.

[37] This transaction and affidavit, occurring just after the institution of the new PAC corporate constitution, is inconsistent with the interpretation sought by the PAC. The PAC admitted in 1975 that it took title to the Lakeshore Property solely as trustee for PATL. Ms

Betowski, who was not there at the time, claimed that the transfer did not matter to the PAC because it owned the shares of PATL in any event. This is not consistent with the financial statements of the PAC, the evidence of share ownership of PATL, nor the contemporaneous paper trail.

(iii) Branch 5 Dispute

[38] It is telling to note that another branch, Branch 5, had property that was sold with the approval of the Head Executive Board. Some of the proceeds of sale were directed away from the branch by the Head Executive Board. Ms Betowski's relatives were members of Branch 5. At the time she joined the PAC, there was already a dispute between Branch 5 and the Head Executive Board concerning these proceeds. The branch sued Mr. Rusek, the lawyer who was involved in this transaction, as well. Ms Betowski was clear in her evidence that the funds belonged to Branch 5 as the clubhouse that was sold had been funded solely by the members of that branch. Upon being impeached with the transcript of her examination for discovery, she admitted that she labeled the Head Executive Board's actions as a "misappropriation". She tried to distinguish that situation from the case at bar by explaining that before taking Branch 5's funds the Head Executive Board had failed to seek the direction of a general convention of members under Article 59 of the constitution. The statement reflects a misunderstanding of the meaning of Article 59 as explained below. In any event, I reject the notion that a misappropriation of Branch 5's money approved by the general convention would be any less a misappropriation in the eyes of the members of Branch 5 or Ms Betowski.

(iv) The Interpretation of Articles 8, 9 and 59

[39] If Article 8 were intended to be a forced seizure of the pre-existing equitable interests of members then it would have been invalid. It is inconsistent with the clubman's veto and the history and facts. Moreover, in my view, it would have been *ultra vires* the PAC for the reasons of Eberhard J. in *Berry* v. *Indian Park Assn.* (1997), 33 O.R. (3d) 522 (Gen. Div.), aff'd (1999), 44 O.R. (3d) 301 (C.A.).

[40] In my view, the constitution or bylaw of the PAC can be read in a manner consistent with the contemporaneous facts and documents. It is clear that there is a difference between the relationships among the branches and Head Executive Board, on the one hand, and relationships between the PAC and the external world on the other. Within the family, the branches are the dominant units. The branches held the cultural events that fulfilled the organization's objectives. The branches attracted members and, most significantly, funding. The PAC was a cash-starved umbrella organization. Nevertheless, the PAC made several forays into the market to try to be more than the sum of its parts. Unfortunately, each effort failed. But for a time, the PAC held properties and businesses for its own account. It held the crown jewel of the PAC – Place Polonaise in Grimsby – as well as land in Port Hope, a head office on Bloor Street West, Toronto, and shares of Polish Alliance Press and Polish Alliance Travel to name a few. At various times all of these investments had been reported on the financial statements of the PAC. None remains today. The head office, the printing business, the travel agency business, and all

others were lost. The crown jewel, Place Polonaise, was lost. There were many hints in the evidence of wrongdoing against Mr. Chrapka, Mr. Rusek and others associated with the defendants who were said to have then been managing those investments on behalf of the Head Executive Board at the relevant times. It is well beyond to scope of this trial of the issues to try to resolve responsibility for those historical failures. But they do demonstrate the difference in practice between property of the branches, on one hand, and property of the PAC as a whole on the other.

[41] Although the branches were not legal entities, they were recognized internally as separate entities by the PAC. The PAC borrowed money from the branches. The PAC signed formal promissory notes with Branch 1-7. Branch 1-7 sued the PAC on one such note. Internally, the organization recognized the primacy of the branches as independent and largely autonomous entities subject to general reporting and oversight. It was well understood that Branch 1-7 had a facility to raise money, had received the Bilski bequest, and it was willing to loan its members' money to the PAC. If the branch's property belonged to the PAC, the Head Executive Board would not have needed to enter into promissory notes to borrow from Branch 1-7. It would have held or just taken its money.

[42] In my view, to discern the intention of the bylaw, its terms are to be read as a whole and bearing in mind the history of the PAC as an association model consisting of independent parts rather than a chapter model consisting of a unitary whole. While, as noted above, the scope and application of Article 8 cannot have been imposed to confiscate members' equitable interests without their consent, neither can it ignore the internal relations among the parties. Internally the parties are free to organize themselves contractually as they wish. However, externally, lawyers dealing with the PAC and its branches saw a not-for-profit corporation incorporated under the *Corporations Act*. Assets were held in all different names and entities across the province. Branch 38 in Fort Frances held land in the name of Polish Alliance Friendly Society, Branch 38. Branch 7's land on 7th Street had at one time been held in the name of the PAFS itself.

[43] To convey assets to a third-party there has to be recognition of an owner with legal status to do so. There are examples in the record of branch sales of properties being approved by the Head Executive Board and conveyed by the PAC. Mr. Rusek wrote to Branch 38 to reassure it that despite this formality, proceeds would be held for and paid to the branch.

[44] Articles 8, 9 and 59 provide for the ownership and transmission of property internally and externally. Where property is held in an independent corporation, such as PATL, there is no need to involve the PAC in transfers of title or distribution of proceeds. By its terms, Article 8 applies only to property of "*the Alliance and its Branches as a whole*". It establishes only that the PAC can own property in its own right and that PAC property (such as Place Polonaise) belongs to the PAC without the branches, individually or collectively, being able to demand that a share be set over to them despite their primacy in the PAC firmament.

[45] Article 9 makes it clear that the Head Executive Board administers and manages PAC property. But the Head Executive Board has never sought under Article 9 to administer, exercise rights of ownership, manage, occupy or involve itself in the affairs of Branch 1-7's properties. Over the past 100 years, the PAC has not administered the properties held in trust for branch

members. The Head Executive Board members were welcomed guests to the Branch 1-7 clubhouse. They never asserted ownership or a right to administer it before Ms Betowski arrived on the scene.

[46] While Article 8 was the focus of the parties, it is Article 59 that is the most instructive. It deals with how the properties that are understood internally to be owned by the branches were to be dealt with in light of the lack of legal capacity of the branches to deal with the external world. Subparagraph 59(c) speaks of "*...proposed agreements regarding purchase and sale of real estate by the Branches...*" It requires that such agreements to be approved by the Head Executive Board. Subparagraph 59(e) speaks of "*Branches which have sold their property...*". That is, the constitution recognizes that the branches own their properties and may agree to sell their own properties. But Article 59 cannot operate in the external world where branches – whether territorial divisions or unincorporated associations – cannot own or convey property. Only the PAC can own or convey property said by the constitution to be owned internally by the branches. This is perfectly open to the parties to agree upon internally. Moreover, as these are major transactions for the organization and the PAC will be required to formally convey title, it is unsurprising that approval of the Head Executive Board was required.

[47] Subparagraph 59(e) prohibits a branch from using capital proceeds of sales for current expenses. That is, it requires the branches to use the capital proceeds derived from such sales for capital projects. It presupposes that the capital proceeds are available to be used by the relevant branch. This is consistent with the internal recognition of branch ownership. In legal terms, this means that the proceeds of sale, even if payable to the PAC as legal vendor, will be held in trust for members and paid over to the use of the relevant branch.

[48] Subparagraph 59(d) provides that the income – as distinct from the capital that is dealt with in subparagraph (e) – will be "*held by the Head Executive Board until such time as a new Branch may be formed in the area*". While not elegantly drafted, it appears that subparagraph 59(d) applies only where a branch is dissolved. Subparagraph 59(e) instructs branches that survive as to how to use their capital as I have said. However, where a branch dissolves, a trust for members of the branch would fail for want of certainty of objects. Where branch property is sold because a branch has dissolved, then to prevent a failure of the trust, Article 59 provides that the Head Executive Board is to use the proceeds for a new branch. Income accrued on the capital proceeds in the interim is not held for the new branch which does not yet exist, so the use of the income is subject to approval of a general convention.

[49] I was troubled during the trial when counsel and witnesses referred to subparagraph 59(d) as providing an entitlement for the Head Executive Board to re-direct capital proceeds of sale. Ms Betowski referred to subparagraph 59(d) in suggesting that the Head Executive Board might have been able to give away some of Branch 5's proceeds under that provision. While the PAC is composed of laypeople, the constitution was written by its corporate counsel. The use of the term "income" in subparagraph 59(d) as contrasted with "capital" in the very next subparagraph cannot have been an accident unless it is assumed that corporate counsel thought the two terms were synonymous. Proceeds of the sale of property are capital. Subparagraph 59(e) itself distinguishes "capital" from "current expenses" (i.e. income statement entries). It does not make sense that subparagraph 59(d) would use the term "income" to refer to the capital proceeds of

sale. Once one understands that Article 59 expressly speaks of branches owning property and then distinguishes the handling of income from capital, the scheme becomes clear.

[50] Where a branch internally owns property but lacks legal capacity *vis-à-vis* the external world, the PAC holds and conveys it for the branch. The PAC is subject to all existing trust obligations associated with such property however. Thus, while the PAC constitution does not reach PATL or its ownership of its properties (in trust for members), it does affect the shares of PATL that are purportedly registered in the name of "Branch 1" or the "Branch 1 –members". Whether an unincorporated association or a territorial division, Branch 1-7 has no capacity to exercise legal ownership of those shares. Effectively, Articles 8, 9 and 59 provide that legal title to branch property is in the PAC and equitable title is in the branch members. Internally, however, the shares are owned, held and administered by the branch. That is, the branch's property, while owned legally by the PAC, is held in trust for the members of the branch just as it would be if it could be owned by the branch itself. Moreover, for internal purposes, although owned by the PAC, the rights of ownership are delegated to and exercisable by the executive of the relevant branch.

[51] This interpretation is consistent with Article 9 and the association model of the PAC. It is consistent with the explanation in the *Golden Jubilee Brochure*. It is also consistent with Article 59 in that formal approval by the Head Executive Board and formal conveyance by the Head Executive Board is required to transfer property held by a non-legal-entity branch. But proceeds realized are to be paid to the Head Executive Board and go to the branch, subject to the restriction in subparagraph 59(e). If the branch no longer exists, the Head Executive Board is to use the funds for a new branch in the same geographic area and can apply income accrued on the proceeds until that happens with approval of a general convention. I read Article 59 as consistent with the recognition of the trust protecting the assets of the members of the branch. Mr. Waldmann made this very assertion to Mr. Rusek in cross-examination that was accepted by Mr. Rusek.

[52] This is not to say that the Head Executive Board has no role internally. Its role is defined by the constitution. In 1994, Branch 1-7 turned to the Head Executive Board to protect incumbent management against a group of newcomers who tried to stack a branch annual meeting to take control of the branch and the Lakeshore Property. That matter went to court and MacPherson J. (as he then was) held that the internal grievance mechanisms set out in the constitution applied. Mr. Miasik conceded that the Head Executive Board is to have internal oversight and supervision of the branches – if only honoured in the breach by Branch 1-7 historically.

(v) Amendment to Article 8 of the PAC Constitution

[53] Having found that the constitution of the PAC does have some impact on the legal ownership of the majority shares of PATL, I must consider the amendments to Article 8 in 2005 and 2007. It is clear that by 2005, the defendants were planning to take Branch 1-7 out of the PAC. Unbeknownst to the PAC, prior to 2005, Branch 1-7 had approved several resolutions authorizing the Executive of the branch to declare independence. What happened in 2005 and 2006 was the culmination of years of events.

(1) The Suspicion around Ms Betowski

[54] Ms Betowski is a relative newcomer to the PAC as compared to nearly all others involved in this trial. She first appeared in approximately 2000 while she worked for the City of Toronto. At that time she was not yet a member of the PAC but she had a chat with the former president of the PAC, Mr. Bycz, about the development potential of the Lakeshore Property. Around the same time, she had a similar chat with Mr. Miasik. Mr. Miasik was not interested in discussing a sale or redevelopment of the clubhouse with her. A couple of years passed and Ms Betowski re-appeared, became a member of Branch 5, and quickly became associated with Mr. Zawierucha and the Head Executive Board. She approached Mr. Miasik again to test his appetite for the redevelopment of the Lakeshore Property. Mr. Miasik again said he had no interest in discussing this with her.

[55] As noted above, in the early 2000s, the PAC was struggling financially. Mr. Zawierucha had become President of the PAC. However, he and Ms Betowski became allies and presented an autocratic front to the branches. The branches with properties came to believe that Ms Betowski and the Head Executive Board represented a threat to them. Article 8 was bandied about as a basis to suggest that the clubhouses of the branches belong to the PAC. (Note that when the Head Executive Board sought to dispel this very fear in the *Golden Jubilee Brochure*, the PAC was not yet incorporated and Article 8 of the constitution did not yet exist. This was a new ground for a very old fear).

[56] In the minutes of a 2004 Branch 1-7 meeting, Mr. Argyris is quoted as saying that the Head Executive Board is deluding itself if it believes that it can take the clubhouses from the branches. Mr. Miasik gave several other reasons for concern regarding alleged lack of communication, lack of fiscal accountability, lack of managerial prowess, and other generalized long standing complaints that he harboured against the Head Executive Board. Many of the complaints pre-dated Mr. Zawierucha's term and others were proven exaggerated in the documents presented in evidence. The issue at play seems to have been the fear of Ms Betowski and the autocratic style adopted by the Head Executive Board when she joined Mr. Zawierucha at the helm. The best support for this concern is that over the past decade, the PAC has done little else but litigate (Grimsby, Port Hope, Polish Alliance Press, W. Reymont Foundation, Branch 1-7, etc.). While the branches (including the current iteration of Branch 1-7) have continued to perform their cultural events and hold dances, pageants, dinners and the like, the PAC Head Executive Board seems to have become a professional litigant under the stewardship of the very organized and officious Ms Betowski. Although she is no longer a member of the Head Executive Board, Ms Betowski was the plaintiff's authorized witness for discovery, its lead witness at trial and, as noted above, was plainly the person in charge for the plaintiff throughout the trial.

(2) Suspicion Surrounding Mr. Chrapka

[57] The alternative theory, propounded by the plaintiff, is that Mr. Miasik was a leader, or at least a participant, in a move by Mr. Kazimierz Chrapka, the W. Reymont Foundation, and other land-owning branches of the PAC to destroy the PAC and take over its properties for personal gain. It was alleged in the documents that Mr. Chrapka had made personal gain in relation to the

PAC's loss of the Bloor Street property. I can make no findings regarding that issue. However the steps taken by Mr. Miasik to aid or in conjunction with Mr. Chrapka deserve some explanation.

(3) W. Reymont Foundation

[58] Mr. Chrapka is the President of the W. Reymont Foundation which was established in 1973 as the charitable arm of the PAC. In the PAC's constitution, the W. Reymont Foundation was to be the beneficiary of the assets of the PAC upon its dissolution. While the financial affairs of the PAC have languished over the past decades, the W. Reymont Foundation has flourished. Mr. Jesse Flis, a former long serving Member of the Parliament of Canada gave testimony at trial concerning the excellent works of the charity under Mr. Chrapka. Unfortunately no one is immune from the effects of the schism in the community perpetuated by this litigation. Mr. Flis gave testimony that he was deeply involved in the charitable works of the W. Reymont Foundation and was on its board of directors. Yet, at the same time, he claimed ignorance concerning the multiple lawsuits between Mr. Chrapka, on behalf of the W. Reymont Foundation, and the PAC. Additionally, he claimed that he had never had a conversation with his brother, the defendant Albert Flis, concerning the issues in this lawsuit. Yet he freely volunteered his view that branches own their own property – the mantra of the defendants. I accept the evidence of Mr. Flis and others that the W. Reymont Foundation does excellent work in the community. This does not diminish the seriousness of the issues surrounding Mr. Chrapka and his involvement with Mr. Miasik in this proceeding. Mr. Flis understandably wanted to stay above that fray.

[59] Until 2005, the bylaws of the W. Reymont Foundation provided that a majority of its directors would be appointed by the Head Executive Board of the PAC. Consistent with it being an arm of the PAC, the W. Reymont Foundation provided funding to the PAC to the tune of several hundred thousand dollars up to that time. The funding was secured by mortgage against Place Polonaise. Under the terms of the most recent lending, the W. Reymont Foundation actually controlled the cash flow of Place Polonaise. It received the rent, paid the expenses and remitted any small excess to the Head Executive Board of the PAC. There is no doubting the sincerity of the pride felt by all witnesses who spoke about Place Polonaise. They were particularly pleased that Prime Minister Trudeau had attended the official opening of their crown jewel. As the PAC's financial fortunes lagged, its ability to maintain Place Polonaise lagged. Rents barely covered expenses. There was not enough activity at Place Polonaise to generate excess revenue. The building was old and was falling apart. Environmental issues arose with respect to the maintenance of the lengthy shoreline that made the property unaffordable in view of the Head Executive Board. Previous general conventions had already approved the sale of Place Polonaise in the event that the Head Executive Board was not able to turn its fortunes around.

[60] Messrs. Miasik and Chrapka, among others, claim to have been distraught over the notion of the loss of the jewel of the PAC notwithstanding the approval of the sale by one or more general conventions of members. They viewed the Head Executive Board as incompetent and they sought to prevent the sale of Place Polonaise. But Mr. Chrapka had a funny way of showing support for maintaining the property in that when Mr. Zawierucha approached him to renew the

PAC's mortgage, the W. Reymont Foundation demanded a business plan showing how the Head Executive Board could carry the property. But Mr. Chrapka knew full well by that time that the Head Executive Board could not carry the property and was seeking to sell it. The plaintiff suggests, with much logic and force, that Mr. Chrapka and Mr. Miasik (wittingly or not) were actually engaged in an effort to destroy the PAC and take its properties. The steps taken by Mr. Chrapka and the W. Reymont Foundation, with the assistance of Mr. Miasik and Branch 1-7 are consistent with this argument. First, in early 2005, the W. Reymont Foundation amended its bylaws to remove the PAC's majority control over its board of directors. Shortly thereafter, both Mr. Chrapka and Mr. Miasik resigned from the Head Executive Board. In October, 2005, Mr. Miasik led a campaign for the successful amendment to Article 8 of the PAC constitution that is discussed below. At a meeting of branch presidents in early 2006, Mr. Chrapka offered to have the W. Reymont Foundation purchase Place Polonaise. He offered to pay $200,000 per year for an undisclosed period of time. This represented but a small fraction of the fair market value of Place Polonaise and engendered a very negative response at the meeting. Mr. Chrapka sued one participant in the meeting for defamation as a result. Other litigation ensued. In August 2006, Branch 1-7 purported to secede from the PAC as is also dealt with below.

[61] In early 2008, Mr. Chrapka, Mr. Miasik, and representatives of other branches with properties sent letters to the Ministry of Government Services purporting to be members in good standing of the PAC complaining about irregularities at the 2007 general convention of the PAC. By that time Mr. Miasik had resigned from the PAC and Mr. Chrapka had been suspended. Both Mr. Chrapka and Mr. Miasik acknowledged in their evidence that the letters were deliberately intended to interfere with the closing of a sale of Place Polonaise for approximately $11 million that had been negotiated by the Head Executive Board. The sale subsequently aborted. The property was ultimately sold in 2010 for about $8 million, which was about $3 million less than the aborted sale price. Among Mr. Miasik's complaints is that there has yet to be an accounting by the Head Executive Board for the proceeds of sale. Mr. Miasik has adopted a two-headed position in which he purports to remain deeply committed to and interested in the affairs of the PAC years after having tried to lead a mass exodus and himself resigning from the organization. However, that is not to say that there is no force to his concerns. In fact, the plaintiff admits that to the extent proceeds have been received to date from the sale of Place Polonaise, they have been fully expended by the Head Executive Board on operations, principally consisting of legal fees.

[62] In 2010, the PAC amended its constitution to remove the W. Reymont Foundation as the residuary beneficiary of its assets and replaced it with other charities committed to Polish culture. Mr. Chrapka admitted in cross-examination that once his organization was no longer the beneficiary of the PAC's properties, he lost interest in dealing with the PAC.

[63] It is clear that Mr. Chrapka and Mr. Miasik perceived the PAC as a weak target. Mr. Chrapka sought to deprive the PAC of mortgage funds – perhaps with good commercial cause – but he cannot have believed in good faith that PAC could keep Place Polonaise. His offer to take it off the PAC's hands for a pittance was telling. The group effort then to try to prevent the sale and invite the government to investigate the PAC similarly could not have been a good faith effort to save Place Polonaise for the PAC and is explicable only as an effort to obtain Place Polonaise for Mr. Chrapka and/or to injure the PAC to reduce its perceived threat to the

Lakeshore Property and the other properties of the other branches involved. Mr. Miasik seeks to excuse his deliberate interference in PAC's sale because of his love for the PAC. He said that "when one listens to his heart instead of his head, he often ends up with the short end of the stick". I cannot tell if his involvement was just a naive association with his enemy's enemy or if, as suggested by Mr. Waldmann, he wanted protect his hold on the Lakeshore Property. While Mr. Miasik's actions are consistent with an effort to wrest the Lakeshore Property from the PAC, there is no basis to say that Mr. Miasik was seeking to do so for personal gain as opposed to protecting the members of Branch 1-7 from losing the Lakeshore Property to the feared redevelopment by the Head Executive Board and Ms Betowski.

(4) The 2005 General Convention

[64] In October 2005, the PAC held its general convention in Brantford. In preparation for a convention, the constitution requires branches to give six months notice of any proposed amendments to the PAC's constitution. Upon receipt of notice from the branches, the Head Executive Board is required to circulate the proposals to all branches three months prior to the convention. The lengthy notice periods are required so that each branch can meet, appoint, and instruct delegates for the convention.

[65] It seems apparent that the defendants, in conjunction with other land-owning branches, determined to bring forward a constitutional amendment to alter article 8 to try to eliminate the argument propounded by the Head Executive Board then and at trial that the PAC owns the branches' properties. Mr. Miasik obtained legal advice about the proposed constitutional amendments days prior to the convention. Delegates who attended the convention volunteered to sit on various committees. Mr. Miasik, Mr. Chrapka and their supporters determined to stack the Constitution Committee.

[66] Several months prior to the convention, proposals to amend Article 8 were advanced by a number of branches. The Head Executive Board denies receiving any of the proposals. The defendants were not able to produce any transmittal sheets, or cover letters evidencing that the wording proposed by the branches was actually sent to and received by the Head Executive Board. Ms Szramek, who was then secretary to the Head Executive Board, testified that no proposals to amend the constitution were received by the Head Executive Board. In cross-examination she seemed to concede that a proposal was received from Branch 43. She reasserted her denial in reply. She also conceded in cross-examination that a proposal was received from Branch 5. However in reply she said that the proposal contained only one page of proposed amendments that did not include Branch 5's proposal concerning Article 8. The acknowledged receipt of Branch 5's proposal, such as it was, without a cover sheet or transmittal letter, takes some of the force from the plaintiff's argument that the absence of cover sheets or transmittal records compels the conclusion that the proposals were not received. Ms Szramek could not explain why, without receiving any proposals, the Head Executive Board discussed proposals to amend Article 8 in June 2005. Nor could she explain why she listed constitutional amendments on the agenda for the convention that she circulated to the branches. Ms Trytko claimed that prior to the convention, Branch 5 withdrew the proposal that it made. No other witness said this. Mr. Zawierucha said that the Branch 5 proposal was rejected as it was not received on a timely basis. That is, it was received (if only the one page).

[67] At the convention, when it came time for members to divide into their various committees, the defendants and representatives of the land owning branches attended the Constitution Committee for which they had signed up previously. Mr. Miasik was elected as Chair of the Committee. Mr. Zawierucha was also on the Committee. Mr. Sikora, the representative of the Head Executive Board for this committee, advised the Committee that the Head Executive Board had determined that no changes to the constitution were required. The Committee disagreed and determined to go through the constitution article by article. Mr. Sikora had with him a file folder containing various branch proposals to amend Article 8. The Committee required Mr. Sikora to distribute the proposals and then discussed them. The Committee started at Article 1 of the constitution and went through each article until it ran out of time after discussing Article 8.

[68] The result of the debate at the Constitution Committee was a consensus to take amendments to Article 8 to the floor of the convention that afternoon, one translation of which is:

Article 8

a) Funds, property and chattels of the Alliance Branches considered as an entity, are owned by the Polish Alliance of Canada particular Branch as well as corporations appointed by that Branch, regardless of the method of acquisition and legal title.

b) Each member and Director of Corporation duly registered by the Alliance Branches and other Organizational Groups will have to meet the requirements to be a full member of the Polish Alliance of Canada.

[69] Subparagraph (a) of the amendment was the upshot of the various proposals put forward by the branches. Subparagraph (b) was suggested by Mr. Zawierucha and was adopted by the Committee and the convention.

[70] Another issue arose at trial when Mr. Zawierucha denied that he signed the Constitution Committee report that appears to bear a copy of his signature as well as those of all of the members present. He was clear and resolute that he did not sign the document and that his signature must have been added to the copy presented at trial. When confronted with the original document that clearly bears his signature, he tried on a few different explanations before settling upon simply stating that he did not remember signing the document. In his zeal to depict the defendants as forgers, Mr. Zawierucha displayed his own one-sided bias that affected his memory at least if not his truthfulness.

[71] The plaintiff argues that the amendments were not validly made because notice was not provided six months in advance by the branches or three months in advance by the Head Executive Board. It seems to me that on a balance of probabilities the Head Executive Board was provided with timely notice of the proposed amendments. No mention of any concern about a lack of notice was recorded in the minutes of the convention. Nor did the Head Executive Board communicate the issue to the branches over the next two years. To the contrary, in March

2006, the Head Executive Board invited Mr. Miasik to re-constitute the Constitution Committee in order to continue the work from the 2005 convention. Mr. Zawierucha testified that he obtained legal advice before December 21, 2005 that the amendment was void due to lack of six months notice. Contrary to what Mr. Zawierucha said, Ms Betowski testified that a lawyer was not consulted for some time because the Head Executive Board had no money to do so. She said that she determined for herself that the amendment was void because she felt it would illegally allow the assets of a not-for-profit corporation to be distributed to members. Ms Betowski did not say where she obtained this legal knowledge. Her statement assumes that the assets are beneficially owned by the PAC. She assumes that the branches are free to transfer assets to their members or to shareholders despite members' beneficial title to the assets. There are far too many assumptions in that statement for it to be regarded as anything more than an *ex post facto* justification.

[72] I cannot accept the evidence of Mr. Zawierucha, Ms Szramek and Ms Trytko on this issue. Mr. Zawierucha was not a trustworthy witness. His testimony was impeached more than once, was inconsistent with that of Mrs. Betowski and Ms Trytko on details and he had a convenient memory. Ms Szramek and Ms Trytko were both argumentative and seemed to be zealously maintaining the party line that the constitution was not amended at the 2005 convention even when their evidence came into conflict with the contemporaneous documents of the PAC, i.e. the agenda and the minutes of the convention that the PAC Head Executive Board wrote and approved.

[73] The PAC cannot shelter under its own failure to circulate the proposed amendments to branches. The plaintiff's witnesses admit that they received some proposals from Branch 5. They knew enough to discuss proposals in advance and reject them; to put the constitution on the agenda; and for Mr. Sikora to have the branches' proposals with him at the Constitution Committee meeting.

[74] Mr. Waldmann also argued that because notice is required under the constitution, if I found that some proposals to amend Article 8 were received, there could be no amendments to those proposals as was done by the Constitution Committee and approved on the floor of the convention. He provided no law to support that argument and I do not believe it to be correct. Provided that there was due notice of the substance of the proposed amendments, as I find there was, it was open to the convention to consider, amend, and pass whatever final proposal the delegates deemed appropriate.

[75] The convention considered the constitutional amendments proposed by the Constitution Committee. One member suggested that since the Constitution Committee had only reached Article 8 in its deliberations, the approval should be deferred until the entire work of the Constitution Committee was done. Mr. Miasik spoke against that proposal and the convention proceeded to pass the amendments by the requisite 2/3 majority.

[76] I need also mention that prior to the 2005 convention, Branch 1-7 had not been granted any delegate credentials for the meeting. This is because the branch had more than one year previously determined that they would refuse to forward fees to the Head Executive Board to protest the alleged lack of response to their ongoing complaints. Under the constitution, a

member whose fees are in default for three months is suspended. Members whose fees are in arrears for one year are automatically expelled. Accordingly, the Head Executive Board took the position that there were no members of Branch 1-7 entitled to attend the 2005 general convention. However, the floor of the convention determined to allow Branch 1-7 two delegates provided that they paid all arrears that day and provided a list of members. Branch 1-7 immediately paid the portion of the members' fees that they had collected for the Head Executive Board. However they never provided a full list of members. It appears that they paid fees for approximately 80 members.

(vi) Branch 1-7 Purports to withdraw from the Polish Alliance of Canada

[77] After having obtained the amendment to article 8 of the PAC Constitution, Mr. Miasik determined that the time was right for the branch to withdraw. Branch 1-7 placed a notice in a Polish newspaper of a proposed extraordinary meeting of the branch to be held on May 28, 2006. The notice contained no detail about the substance of the business proposed for the meeting other than stating that it was important. The minutes of the meeting record the presence of 25 members. The following motion was approved:

> We hereby authorize the Branch 1-7 Board of the Alliance to fully separate the Branch from the Head Executive Board. Until the procedure is completed, we authorize the Branch 1-7 board to retain a counsel in order to legally execute the decision voted for by the Branch membership.

[78] In furtherance of the membership approval, such as it was, the branch executive obtained a legal opinion of Mr. Les Sosnowski dated July 6, 2006. In setting out the facts upon which his opinion was based, Mr. Sosnowski recites that the building used by Branch 1-7 is owned by PATL which is not a member of the PAC. He wrote, "The Branch has no significant assets whatsoever, especially it does not own any real estate." Mr. Sosnowski's ultimate opinion was that nothing in the statute or the constitution of the PAC prevents the members of the branch withdrawing and he opined that the resolution to affect the withdrawal of the branch "is a valid resolution". He qualified his opinion as follows:

> Because Branch 1-7 does not own any real estate nor does it have any other significant assets there is no need for me, at this time, to consider the implications of Art. 8 or the amendments made by the general meeting of the Alliance on October 8-9, 2005 to Art. 8 of the Constitution.

[79] By letter dated August 30, 2006, the eight individual defendants informed the Head Executive Board that "effective immediately, Branch 1-7 is hereby withdrawing from the Polish Alliance Canada".

[80] In my view, the effort to withdraw Branch 1-7 from the PAC was doomed from the outset and was invalid. While members may leave and may call themselves any name they choose in their new iteration, no matter what they may call themselves, upon resigning from the PAC they are manifestly no longer "members of Branch 1-7 of The Polish Alliance of Canada" in whom equitable title to the branch's property rests. Less than one-third of the members of the branch

were in attendance at the meeting. There was no unanimous consent provided by the near 80 branch members. The general rule is that a branch may not disaffiliate without the unanimous consent of its members, unless its rules provide otherwise: *John v. Rees*, [1970] 1 Ch. 345, at p. 391. The form of notice of the meeting did not give members any notice of the substance of the resolution to be put before the meeting. Therefore, I would not consider the possibility that the unanimous consent of the membership might be inferred from the unanimity of those present at the meeting as suggested by Wilson J.A. in *Polish Veterans*, *supra*, at pp. 345-46. Without unanimity of the branch, I do not need to consider if unanimous consent of the full membership of the PAC would have been required.

[81] Had I believed that every member of the Branch 1-7 knew and understood that he or she had not been a member of the PAC for the past eight years, my approach might have been different. However, as far as I can tell, no one has ever provided the members of Branch 1-7 of the PAC with notice of the steps purportedly taken on their behalf. Certainly there were some press reports in the community at the time. But the group that left continued to call itself Branch 1-7. They continued all trappings of being a PAC branch including using the same clubhouse, holding the same monthly meetings, and holding the same annual events. The members have continued to pay their dues after as before August 26, 2006. The PAC has not notified members that the people purporting to represent Branch 1-7 are not properly representatives of the PAC and have not been passing on the constitutionally-required portion of members' dues to the Head Executive Board. PAFS, an insurer, has not provided notice to the few remaining insured members that they have paid their premiums to pretenders who have not paid them to the insurer and unless paid within a specific time, their long-standing insurance coverage will lapse.

[82] In my view, the effort to withdraw Branch 1-7 from The Polish Alliance of Canada failed. It still exists and its members continue other than the eight defendants who resigned and any others who have knowingly done so. The automatic expulsion was not applied at the 2005 convention. Members of Branch 1-7 did not have to re-apply or re-join the PAC. The branch continued to exist and its delegates participated in the 2005 convention. In a similar vein, more than one year after the branch purported to secede, the Head Executive Board offered to discuss an issue concerning the ownership of a statue with Mr. Miasik provided that the branch paid its dues. Even at that late date, all that was sought was payment of arrears. Mr. Zawierucha even addressed his letter to "Branch 1-7 of the Polish Alliance Canada".

[83] During the trial, I pointed out to the parties the significance that I attach to the picture at page 116 of volume 2 of Exhibit 6. The picture is from the gala celebration of the 100th anniversary of The Polish Alliance of Canada Branch 1-7 in 2007. The picture shows a tuxedo-clad Mr. Zawierucha standing with Mr. Miasik in the Lakeshore Property under a banner displaying the logo of the Polish Alliance of Canada that says:

POLISH ALLIANCE OF CANADA BRANCH 1-7 WELCOMES YOU
100TH ANNIVERSARY

[84] More than one year after the defendants purported to withdraw Branch 1-7 from the PAC, the Head Executive Board continued to recognize the branch publicly. The Head Executive Board and the branch have continued operations in a seamless way to members and the public.

In my view, this represents the true state of affairs between these parties when viewed through Megarry V.-C.'s lens of reasonableness, fairness and common sense. Notwithstanding the machinations and legal structures that the parties have attempted to erect, there is an uneasy truce awaiting the outcome of these proceedings. The plaintiff knows that it cannot credibly assert that it is entitled to take the Lakeshore Property from the members of the branch. However, neither can eight disgruntled members withdraw the branch from the PAC while purporting to continue to be the same organization with the same property rights.

[85] In 2010, the defendants purported to re-brand themselves as Branch 1 of the PAFS. They did so to try to fit themselves within a letter written in 1965 in which Branch 1 of the PAFS asserted ownership of the majority shareholdings of PATL. Although the 1965 letter refers to the majority shares of PATL being held by "Branch 1 of the PAFS", the letter was signed under the seal of Branch 1 of the PAC. It is just another example of the interchangeability and confusion among the two different entities. There is no suggestion that Branch 1 of the PAC ever operated the PAFS insurance system. In fact, the defendants' reliance on the *Golden Jubilee Brochure* contradicts that. Moreover, the members of PAFS must hold insurance. All of the defendants' witnesses were clear in asserting that the Lakeshore Property is held for all of the members of Branch 1-7 and not just the very few remaining insured members. Since they have been calling themselves "Branch 1 of the PAFS", the defendants have never sought to obtain the PAFS's books, records or bank account from the PAC. They have purported to recognize and pay some $300 claims from the estates of deceased members but those payments are as easily characterized as compensation by the defendants to hide from the members the fact that they may have jeopardized the members' insurance benefits by purporting to leave the PAC and failing to pass on PAFS members' premiums.

[86] In order to facilitate their withdrawal, the defendants filed several documents with various government entities purporting to be PAFS, to appear to be directors and officers of PAFS, and to be entitled to a municipal business license to operate PAFS. These documents were not properly filed and do not reflect the true state of affairs. At no time have any of the defendants been authorized by PAFS or its members to represent, operate, bind, or to be officers or directors of PAFS. Even if they honestly believe themselves to be the successors of the "mother branch", they had no legal basis to usurp that corporation without obtaining proper authority of the corporation in accordance with its bylaw or constitution.

(vii) The 2007 General Convention of the PAC

[87] At the 2007 convention, after Mr. Zawierucha was re-elected as President, with no notice to branches whatsoever, he took the floor and moved to rescind the 2005 amendment to Article 8 because he said it was void for lack of notice. The proposal passed. If the 2005 amendment was indeed void, then there was no need to rescind it. The motion could only have vitality if the 2005 amendment was valid. If the 2005 amendment was valid, as I have found, then a proposal to amend it required notice just as the 2005 amendment did. The minutes record Mr. Zawierucha referring to the 2005 amendment as a "major change" with "significant implications" for the PAC. (So much for the evidence of the plaintiff's witnesses who echoed the party line that the 2005 amendment was not passed because it was simply a proposal for future consideration.) At trial, Mr. Zawierucha tried to deny saying that the 2005 amendment was a major change. He

claimed that he was referring to the proposed changes to the *Corporations Act*. Try as he might, the 2007 meeting minutes, as drafted for and circulated for approval by the Head Executive Board, cannot be bent to that shape. These are just more examples of witnesses' testimony straying from credibility when they try to mouth the party line instead of testifying to what they actually recall. As I have found the 2005 amendments valid, the 2007 amendments are invalid for the very want of notice that the plaintiff alleges against the defendants.

Summary

[88] In my view, as I said above, PATL and the trustees of 32 Twenty-Fourth Street hold title to their respective properties in trust for the members from time to time of Branch 1-7 of the Polish Alliance Canada. The branch continues to exist notwithstanding the actions of the defendants. It consists of those members of the PAC who have never communicated a knowing resignation to the PAC and who continued to pay dues to the branch in the hands of the defendants subsequent to August 26, 2006.

[89] I do not see the 1999 version of Article 8 affecting that outcome. Legal title of PATL to the Lakeshore Property, the legal title of the trustees of 32 Twenty-Fourth Street, and the equitable title to both properties in the members from time-to-time of Branch 1-7 are not assets of the PAC or its branches as a whole under Article 8. This is consistent with the application of Article 9 throughout and to date. But branches themselves cannot own property despite the internal organization of the PAC. Article 59 provides that property thought internally to be held by the branch for its members is in fact legally held by the PAC in trust for the members. Under Article 59, it is apparent that management of the legal title is delegated internally to the branch. The amendment to Article 8 cannot have constituted the branches as legal entitles capable of owning property at law. The members of the PAC do not have that authority. They can write their own internal law only. Perhaps the amendment can be viewed as a written confirmation of the intention of the internal law which I have referred to as delegation above. However, the amendment also sweeps into the purview of the PAC the management of the corporations holding properties for the branches. Mr. Zawierucha convinced Mr. Miasik and the Constitution Committee to add article 8(b) to the amendment and it was accepted by the convention. Although the PAC cannot force PATL to do anything, the members of the PAC can agree on how to deal with their shareholdings in corporations like PATL and they seem to have done so. Once the executive of Branch 1-7 is reconstituted, an early order of business for the executive will be to elect a proper board of directors for PATL in accordance with Article 8(b) of the constitution.

[90] Early in the trial, I advised counsel and the parties that I had the authority to add terms or conditions to any declaration that I might make and I invited counsel to consider terms that might be appropriate - especially any that might be helpful to protect the membership generally. I have the authority to add terms to my declaratory orders whether under the general law and rules applicable to declaratory orders (see *Jordan* v. *McKenzie* (1998), 3 C.P.C. (2d) 220 (O.H.C.J.)) or as an additional issue that I am authorized to raise under the Order to Campbell J. establishing this trial of the issues. That is, I raised an issue as to the remedial terms that should properly follow from the declarations being sought. Counsel both proposed terms and made argument on the terms proposed. In paragraph [22] above, I referred to terms suggested by Mr. Romano to

alleviate concerns raised by the PAC with respect to the corporate structure of PATL. In closing argument, Mr. Waldmann for the PAC fairly invited me to make the following directions as conditions in respect of the declarations that he sought:

(A) The PAC will recognize as continuing members of Branch 1-7 of The Polish Alliance of Canada all those who were members as at August 26, 2006 without any requirement to re-apply or to pay arrears from August 26, 2006 provided that the members did not know that their dues were not being paid to the PAC;

(B) The PAC will accept membership applications for Branch 1-7 of The Polish Alliance of Canada in the ordinary course from anyone who qualifies other than the defendants; and

(C) The shares of PATL shown in the name of Branch 1 and Branch 1 members in the minute book of PATL as amended by Exhibit 33 should be held by the PAC.

[91] I agree that these are appropriate terms to make with the following additions:

(D) The following is added to Condition (C) above: "pending reconstitution of the executive of Branch 1-7 who will then then hold and administer the shares on behalf of the PAC. In both cases the shares are held in trust for the members of Branch 1-7 of the PAC";

(E) The PAC will take steps to reconstitute the executive of Branch 1-7 of The Polish Alliance of Canada in accordance with the constitution of the PAC provided that a meeting of members of the branch for that purpose shall be held as soon as is practicable and need not wait for the next annual general meeting;

(F) The parties shall agree on a neutral third party who will take control of the assets and undertaking of Branch 1-7 of The Polish Alliance of Canada pending the election of a new executive. If the parties cannot agree either may apply for the appointment of an interim receiver and manager for that purpose. I will hear that motion if it is brought; and

(G) The defendants, PATL, and all those managing the Lakeshore Property and 32 Twenty-Fourth Street are enjoined and prohibited from making any payments out of the ordinary course of business and from transferring in any manner any of any assets of PATL, any shares of PATL, the assets of Branch 1-7 of The Polish Alliance of Canada and any and all assets held in trust by any of them for the members of Branch 1-7 of The Polish Alliance of Canada pending delivery of same to the reconstituted executive of the branch, an interim neutral third party, or an interim receiver and manager as the case may be.

[92] In answer to the questions posed in the order of Mr. Justice Campbell constituting this trial of issues, I make the following declarations on terms (A) through (G) set out above:

(a) Other than the shares referred to in the next sentence, the legal owners of the shares of the Polish Association of Toronto Limited are the people listed in the minute book of the corporation as updated in the shareholders' list that is Exhibit 33 subject to any amendments that any shareholder may prove by succession or proper transfer. Legal title to the shares shown in Exhibit 33 as being owned by PAC-Br 1-members and any other branch of the PAC is held by the PAC but that management of that title is delegated to the executive of the relevant branch. All of the shares of PATL are held in trust for the members from time to time of Branch 1-7 of the PAC as properly constituted under the constitution of the PAC and in accordance with these reasons.

(b)(i) to (v) The legal owners of the Lakeshore Property and 32 Twenty-Fourth Street are, respectively, PATL and the defendants Argyris, Flis, Miasik, Rusek and Mr. Stan Rogoz as trustees. The beneficial owners of all of these properties are the members from time to time of Branch 1-7 of the PAC as properly constituted under the constitution of the PAC and in accordance with these reasons.

(vi) PATL is the legal owner of all of its assets and holds them all in trust for the members from time to time of Branch 1-7 of the PAC as properly constituted under the constitution of the PAC and in accordance with these reasons.

(c) Branch 1-7 of the PAC is an independent organization within the constitutional structure of the PAC. While not a legal entity, as between the parties it is recognized as distinct, can lend and borrow, manage property interests delegated to it, and exercise the rights of a branch under the PAC constitution.

(d) None of the defendants, the group under their executive leadership, or Branch 1-7 of the PAC is the PAFS or the PAFS Branch 1.

(e) If they are not already in the possession of the Head Executive Board of the PAC, the assets, records, documents, reports, correspondence, corporate seal and other material of PAFS shall be returned to the Head Executive Board.

Costs

[93] I do not regard either side as having been successful in this proceeding. The plaintiff's success is that it holds paper title to a corporation that is itself a trustee. That has no practical value. The plaintiff did not win equitable title to the properties. Moreover, its claim to own the branches' properties was not reasonable in light of its history and its own witnesses' testimony. The defendants had good reason to suspect the plaintiff's *bona fides*. The defendants, by

contrast, failed in their efforts to secede from the PAC with the properties of Branch 1-7. They proved that the members of Branch 1-7 hold equitable title to their properties, but the defendants themselves are not among those members/owners. Their days in the PAC are over due to their own choices. Moreover their acts, however motivated, may have seriously jeopardized the interests of the PAC as a whole and their own members' status and insurance.

[94] This litigation has been typified by tactics and a lack of cooperation. The 2007 effort by the PAC to repeal the amendment to Article 8 of its constitution and the 2013 shareholders' meeting of PATL are both examples of legally-driven, transparent, and ultimately invalid tactics. Both sides played production of documents games procedurally. There was little or no cooperation among counsel in preparation for the trial. There were surprises during the trial. Instead of a joint book of documents and cooperation as ordered at the pre-trial conference, hundreds of documents were filed unnecessarily with no prior agreement on admissibility. The testimony of the lead witnesses on both sides was repeatedly and successfully impeached. In all, neither side behaved like transparent and accountable fiduciaries fulfilling their duties of care, honesty and good faith as the members of the PAC are entitled to expect. I order that there be no costs of this trial of the issues.

F.L. Myers J.

Released: May 27. 2014

SCHEDULE

The following articles of the 1999 version of the corporate bylaw or constitution of the PAC are relevant:

ARTICLE 8

The assets of the Alliance and its Branches as a whole, regardless of how they were acquired and their legal title, are the sole property of the Polish Alliance of Canada, A Non Profit Organization.

ARTICLE 9

The exercise of the powers of ownership and the administration of the assets of the Alliance is governed by the Head Executive Board according to the directions of the General Conventions of the Alliance.

ARTICLE 59

...

(c) All proposed agreements regarding purchase and sale of real estate by the Branches must be submitted in writing to the Head Executive Board for approval.

(d) In the case of a sale of property agreed to by the Head Executive, all income derived from such sale will be held by the Head Executive Board until such time as a new Branch may be formed in the area. The General Convention retains the final decision as to the use of these funds.

(e) Branches which have sold their property cannot use the capital so derived for current expenses of the Branch. [emphasis added]

CITATION: The Polish Alliance of Canada v. Polish Association of Toronto Limited, 2014 ONSC 3216
COURT FILE NO.: CV-08-361644
DATE: 201405-

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE POLISH ALLIANCE OF CANADA

Plaintiff

– and –

POLISH ASSOCIATION OF TORONTO LIMITED, MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS aka JOHN ARGYRIS, WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN, HELENA JASLAN, EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ aka STAN ROGOZ, ALBERT JOSEPH FLIS and RICHARD RUSEK

Defendants

– and –

POLISH ASSOCIATION OF TORONTO LIMITED, MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS JOHN ARGYRIS aka JOHN ARGYRIS, WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN, HELENA JASLAN, EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ aka STAN ROGOZ, ALBERT JOSEPH FLIS and RICHARD RUSEK

Plaintiffs by Counterclaim

– and –

THE POLISH ALLIANCE OF CANADA, ROBERT ZAWIERUCHA, TADEUSZ MAZIARZ, ELIZABETH BETOWSKI, DANUTA ZAWIERUCHA, TERESA SZRAMEK, ANDRZEJ SZUBA, ADAM SIKORA, ELZBIETA GAZDA, STANISLAW GIDZINSKI, STANISLAW IWANICKI and TADEUSZ SMIETANA

Defendants by Counterclaim

REASONS FOR DECISION

F.L. Myers J.

Released: May 27, 2014