

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

SASKATCHEWAN WTF TAE KWON DO ASSOCIATION INC.

Applicant

- and -



WTF TAE KWON DO ASSOCIATION OF CANADA

Respondent

APPLICATION made under section 106 of
the Canada Business Corporations Act, R.S.C. 1985, c. C-44
and Rule 14 of the Rules of Civil Procedure

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION made without notice will come on for a hearing on Thursday, the 10th day of March, 2011 at 10:00 a.m. at the Court House, 7755 Hurontario Street, Brampton, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application, you or an Ontario lawyer acting for you must prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION,

you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: February 8, 2011

Issued by: J. Pato
Registrar

Address of Court Office 7755 Hurontario Street
BRAMPTON, Ontario
L6V 2M7

TO: WTF TAE KWON DO ASSOCIATION OF CANADA
310 - 1376 Bank Street
Ottawa, Ontario
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APPLICATION

1. THE APPLICANT MAKES APPLICATION FOR:

(a) a declaration that the current board of directors (the "Directors") of the respondent, WTF Tae Kwon Do Association of Canada ("TKD Canada"), do not have the legal authority to act for TKD Canada;

(b) a declaration that the only valid directors of TKD Canada are those persons who were directors of TKD Canada on August 14, 2010 or in the alternative, that Sean FitzGerald ("FitzGerald"), Su Hwan Chung also known as Simon Chung ("Chung"), Jay Park ("Park"), and Oh Jang Yoon ("Yoon") are the only valid directors of TKD Canada;

(c) a declaration that the August 20, 2010 Executive Committee telephone conference call and the September 7, 2010 and September 23, 2010 directors' meetings were not validly called, held or conducted and an order setting aside all business transacted at those meetings;

(d) a declaration that there was no quorum of members at the September 23, 2010 annual members' meeting (the "AGM") and an order setting aside all business transacted at the AGM including the election of the Directors;

(e) a declaration that Manitoba Taekwondo Association Inc. (TKD Man.), Cristina Quon ("Quon"), Katy Pyke ("Pyke"), and Paula Henderson ("Henderson") did not have any voting rights at the AGM;

(f) an order setting aside all business transacted by the Directors since September 23, 2010;

(g) an order setting aside all business transacted by the members at the November 24, 2010 special members' meeting;

(h) an interim and permanent injunction restraining TKD Canada from holding any further directors' meetings, special members' meetings, or general members meetings until an annual members' meeting is held pursuant to an order of this court;

(i) an order directing TKD Canada to call, hold and conduct an annual members' meeting at Toronto, Ottawa or Montreal to elect directors and transact such other business as is typically transacted at an annual members' meeting;

(j) a declaration that the members entitled to vote at the court ordered meeting are: WTF Taekwondo Federation of British Columbia ("TKD BC"), Alberta Taekwondo Association ("TKD Alta."), Saskatchewan WTF Tae Kwon Do Association Inc. ("TKD Sask."), Ontario Tae Kwon Do Association ("TKD Ont."), Fédération Québécoise de Taekwondo ("TKD Que."), Taekwondo Association of New Brunswick ("TKD NB"), Nova Scotia Taekwondo Association ("TKD NS"), Tae Kwon Do Prince Edward Island ("TKD PEI"), Newfoundland & Labrador Tae Kwon Do Association ("TKD Nfld."), Tae Kwon Do Northwest Territories ("TKD NWT"), Canadian Forces Taekwondo ("TKD CF"), First Nations ("TKD FN"), Athlete Representative ("TKD AR") FitzGerald, Chung, Park, and Yoon;

(k) an order for the giving of such directions as are necessary to call, hold, and conduct the court ordered meeting;

(l) costs of the application on a substantial indemnity basis; and,

(m) such further and other relief as this Honourable Court may deem just.

2. THE GROUNDS FOR THE APPLICATION ARE:

(a) TKD Canada is a federal corporation incorporated by letters patent on April 21, 1981. It is a not for profit corporation and it therefore has members instead of shareholders. When it filed the

letters patent, TKD Canada filed a By-Law No. 1 (the "1981 By-Law") with Industry Canada.

(b) TKD Sask. is a member of TKD Canada

(c) Prior to August 14, 2010, TKD Canada had been operating under a 2004 By-Law (the "2004 By-Law"), which the directors had approved and the members had unanimously ratified and adopted at a special members' meeting held on May 15, 2004. The 2004 By-Law replaced the 1981 By-Law. However, by inadvertence, TKD Canada did not file the 2004 By-Law with Industry Canada.

(d) TKD Canada scheduled a directors' meeting on August 14, 2010 to approve a new by-law to replace the 2004 By-Law and it also scheduled a special members' meeting where it was anticipated that the members would adopt the new by-law approved by the directors.

(e) At the August 14, 2010 directors' meeting, FitzGerald, TKD Canada's president, advised the 17 directors that the 2004 By-Law was not a valid by-law because TKD Canada had not filed it with Industry Canada. FitzGerald further advised that the only valid by-law was the 1981 By-Law, which TKD Canada had filed with Industry Canada on April 21, 1981. FitzGerald supported his position with a legal opinion dated August 9, 2010 (the "Opinion") that he had obtained from Kent Ashby without the knowledge and consent of the other directors.

(f) The directors debated the Opinion, but they did not agree with or accept the Opinion. At the meeting, nobody took the position that 13 of the 17 directors were no longer directors because they had been appointed, not elected, as directors by the members. The directors were unable to agree on a new by-law to take to the members.

(g) FitzGerald concluded the directors' meeting and tried to convene the special members' meeting to get the members to approve the by-law

that he supported. However, the special members' meeting could not be held because there was no quorum of members.

(h) On August 17, 2010, on instructions from FitzGerald, TKD Canada sent out a notice of a telephone conference call for the Executive Committee on August 20, 2010 to FitzGerald, Chung, Park, and Yoon. Telephone conference calls are not authorized under the 1981 By-Law.

(i) The minutes of the August 20, 2010 Executive Committee telephone conference call indicate that the Executive Committee appointed Glen Berger as an interim director and it declared that pursuant to the 1981 By-Law, the only valid directors of TKD Canada were Chung, Park, Yoon, and himself. The minutes are not accurate as Park and Yoon did not vote for those matters.

(j) FitzGerald did not notify the 13 other persons who had up to that date been directors of TKD Canada that a meeting was being held to decide whether they were valid directors and he did not notify them that the Executive Committee had purportedly decided that they were no longer directors of TKD Canada.

(k) FitzGerald called and held a directors' meeting on September 7, 2010. TKD Canada only gave notice of this meeting to FitzGerald, Chung, Park, and Yoon.

(l) The minutes of the September 7, 2010 directors' meeting indicate that the directors called the AGM for Charlottetown, Prince Edward Island on September 23, 2010 and they confirmed that TKD Canada had 18 members (the "Declared Members"). The Declared Members were:, Dae Tack Lim - TKD BC, Chung - TKD Alta., Wayne Mitchell - TKD Sask., Joey Adamowski - TKD Man. (probationary for six months), Hwa Sun Myung - TKD Ont., Jean Faucher - TKD Que., Allie Vaughan - TKD NB, Phil Power - TKD NS, Mike Ives - TKD PEI, Tony Nippard ("Nippard") - TKD Nfld., Diane Thomas - First Nations ("TKD FN"), Mark Eldridge ("Eldridge") - Canadian Forces Taekwondo ("TKD CF"), Andy Ing, TKD Tae Kwon Do Northwest

Territories and Dasha Peregoudova - Athlete Representative ("TKD AR"), FitzGerald - President, Chung - Secretary General, Yoon - VP Sports, Park - VP Martial Arts.

(m) Park and Yoon voted to confirm the Declared Members on condition that TKD Man. not have any voting rights at the AGM because it was on probation for six months commencing September 7, 2010. FitzGerald and Chung agreed and accepted this condition.

(n) On September 9, 2010, TKD Canada sent out the notice for the AGM. The notice incorrectly stated that TKD Man. had voting privileges at the AGM. The notice also stated that the AGM would be governed by the 1981 By-Law.

(o) Sometime after September 9, 2010, TKD Canada purported to add additional members (the "Additional Members") to the voting list. The Additional Members included, Quon, Pyke, and Henderson. By coincidence, the Additional Members were at the AGM and TKD Canada allowed them to vote at the AGM.

(p) The election of the Directors at the AGM was a nullity because there was no quorum of members at the AGM.

(q) The 1981 By-Law allowed a member to vote by proxy, but under the 1981 By-Law a quorum was defined to be:

"Quorum - Ten (10) or more members personally present and entitled to vote shall be a quorum for the transaction of business at an Annual or Special General Meeting of members."

(r) The Additional Members should not be counted towards a quorum because they were not members when TKD Canada sent out the notice of the AGM and in any event, TKD Canada did not validly appoint the Additional Members.

(s) The quorum of members can only be formed from the Declared Members. However, when the election of the Directors took place, of the Declared Members, there were only 4 (FitzGerald, Chung, Nippard, and Eldridge) who were personally present at the AGM. These individuals had proxies from TKD BC, TKD Alta., TKD Man., TKD Ont., and TKD AR.

(t) if proxies do not count towards a quorum, then there were only 4 members personally present at the AGM. If proxies count towards a quorum and if the proxy from TKD Man. is valid, then there were only 9 members personally present at the AGM. In either scenario, there was no quorum of members.

(u) Since September 23, 2010, TKD Canada has added persons to the membership.

(v) On November 24, 2010, TKD Canada held a special members' meeting at which the members purported to adopt and ratify a new by-law, which TKD Canada has probably filed with Industry Canada.

(w) Prior to the November 24, 2010 special meeting, TKD Sask. through its lawyer, informed TKD Canada that it believed that the Directors did not have the legal authority to act for TKD Canada. TKD Sask. explained its position to TKD Canada, and it asked TKD Canada for information and documents so it could verify the events that had occurred. However, TKD Canada was not prepared to discuss the issues or try to resolve the dispute in an amicable manner.

(x) TKD Sask. relies on the provisions of the Canada Business Corporations Act, R.S.C. 1985, c. C-44 and Rule 14 of the Rules of Civil Procedure.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) affidavit of Wayne Mitchell;

- (b) affidavit of Jay Park;
- (c) affidavit of Allie Vaughan; and,
- (d) such further and other material as counsel may advise and this Honourable Court permit.

February 8, 2011
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