

COURT OF APPEAL FOR ONTARIO

CITATION: Faas v. Centre for Addiction and Mental Health Foundation, 2019

ONCA 192

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Feldman, Roberts and Trotter JJ.A.

BETWEEN

Andrew Faas and The Faas Foundation

Applicants (Appellants)

and

Centre for Addiction and Mental Health Foundation and Centre for Addiction and
Mental Health

Respondents (Respondents)

Ronald Lachmarsingh and Tyler Murray, for the appellants

Rebecca Jones and Kelly Hayden, for the respondents

Heard: March 6, 2019

On appeal from the order of Justice Edward M. Morgan of the Superior Court of
Justice, dated June 6, 2018, with reasons reported at 2018 ONSC 3386.

REASONS FOR DECISION

[1] The appellants agreed to make a significant charitable donation of one million dollars to the respondents – a mental health hospital and its fundraising arm (collectively “CAMH”) – for the express purpose of creating Well@Work, a workplace mental health program. The donation and the project were to take place over a three-year period. The parties entered a written Donor Investment

Agreement, which set out the terms of the donation including provision for an annual status report to the donor.

[2] The appellant, Mr. Faas, was not satisfied with the progress of the program, the extent of reporting, or the expenditure of the first one-third of the donation during the first year. He requested changes to the content of what was being developed as well as an accounting of CAMH's expenditures. Eventually, the parties reached an impasse and the appellant brought an application under s. 6 of the *Charities Accounting Act*, R.S.O. 1990, c. C.10. Subsections 6(1), (3) and (5) of that Act provide:

(1) Any person may complain as to the manner in which a person or organization has solicited or procured funds by way of contribution or gift from the public for any purpose, or as to the manner in which any such funds have been dealt with or disposed of.

...

(3) Wherever the judge is of opinion that the public interest can be served by an investigation of the matter complained of, he or she may make an order directing the Public Guardian and Trustee to make such investigation as the Public Guardian and Trustee considers proper in the circumstances.

...

(5) The cost of any such investigation, when approved by the Attorney General, forms part of the expenses of the administration of justice in Ontario.

[3] The appellants' application was based on the submission that it was in the public interest for the Public Guardian and Trustee (the "PGT") to investigate whether CAMH used the appellants' donation for the designated purpose that was

agreed to in the Donor Investment Agreement. There was no suggestion that the respondent used the funds for purposes outside its own charitable objects.

[4] The motion judge found that there were no grounds to order an investigation by the PGT, and that making such an order would serve no identifiable public interest: para. 67. He made the following findings, at paras 62-64 of his reasons:

[62] As for Faas' desire for an accounting in order to ensure that the funds have been properly spent, the Application is based on conjecture. No actual mischief has been identified, and no misuse of funds is apparent from the record. According to all of the relevant CAMH reports, the preparatory work was accomplished during the first year of the Well@Work program; the major expenses involved in those preparations were the salaries of the CAMH staff dedicated to the program.

[63] Absent evidence of financial misdeeds, Faas has no particular right to a detailed accounting of CAMH's program and its use of funds. Counsel for Faas argues that he does not know if there was mismanagement as it is not apparent what CAMH did with the first instalment of funds. He contends that Faas needs to invoke the PGT's authority to investigate in order to get to the bottom of a question to which Faas is incapable of obtaining the answer.

[64] The problem, however, is that the first instalment was, and was always intended to be, dedicated to preparatory work. Since the preparatory work was done in the first year, but the funding was prematurely cancelled in the second year, the implementation that was to follow all of that preparatory work never took place. Only the invisible part of the program had the chance to be accomplished. It is the non-payment of the second and third instalments that prevented the fruits of CAMH's initial year's labour from being visible.

[5] We see no error in these findings. The appellants argue that they were not able to show that there was mismanagement because the respondents refused to provide various documents and salary records that were requested on cross-examination of CAMH's witnesses for the purpose of the motion. However, the motion judge was satisfied on the record, based on the evidence from the respondents, that no mismanagement had occurred and that the funds were properly spent on the designated program. He was entitled to accept that evidence.

[6] The appeal is therefore dismissed.

"K. Feldman J.A."

"L.B. Roberts J.A."

"G.T. Trotter J.A."