

**CITATION:** Apollo Technology Capital Corporation et al v. MediPharm Labs Corp. et al, 2025  
ONSC 3496

**COURT FILE NO.:** CV-25-00743454-00CL

**DATE:** 20250611

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

**RE:** Apollo Technology Capital Corporation and Nobul Technologies Inc., Applicants

**AND:**

MediPharm Labs Corp., Respondent

Application under Section 248 and 253 of the *Ontario Business Corporation Act*,  
RSO 1990, c B.16.

**BEFORE:** Justice J. Dietrich

**COUNSEL:** *Kevin Sherkin, Richard MacGregor, Al Wiens*, for the Applicants

*James Bunting, Michael O’Brien, Maria Naimark*, for the Respondent

**HEARD:** June 10, 2025

**REASONS FOR DECISION**

**Introduction**

- [1] The Applicants, Apollo Technology Capital Corporation (“**Apollo**”) and Nobul Technologies (“**Nobul**”) seek an order regarding the conduct of the upcoming annual general meeting (“**AGM**”) of MediPharm Labs Corp. (“**MediPharm**”), a publicly traded company listed on the Toronto Stock Exchange.
- [2] The AGM is scheduled for June 16, 2025. The Applicants have proposed their own slate of directors for appointment at the AGM.
- [3] Specifically, Apollo and Nobul seek an order:
- (a) appointing an independent chair to preside over the AGM, with authority to make objective determinations on the validity of proxies and voting materials;
  - (b) appointing TSX Trust as the scrutineer of the meeting, with a requirement that all communications between TSX Trust and the MediPharm board be shared with the Applicants; and

- (c) declaring that the Applicants' Dissident Circular is valid and compliant; or in the alternative, an order permitting the Applicants to cure any material deficiencies, with an adjournment of the AGM if necessary to do so (the ("Dissident Circular Relief").
- [4] The Applicants' notice of application issued on May 16, 2025, also contained a request that the Applicants' Advance Notice of Nominations for the Board of Directors of MediPharm dated May 1, 2025 (the "**Advance Notice**") was timely, in proper written form and otherwise valid. That request is now moot as MediPharm has confirmed that nominations provided for in the Advance Notice will stand for election.
- [5] With respect to the Dissident Circular Relief, this relief was not contained in the notice of application issued on May 16, 2025.
- [6] MediPharm served its responding material on May 27, 2025. MediPharm also delivered a separate notice of application (CV-25-0074426-00CL) which was issued on May 28, 2025 (the "**MediPharm Application**"). The MediPharm Application seeks, among other things, various disclosure, including voting support or similar agreements from Apollo, Nobul, Regan McGee, Patrick McCutcheon, Tim Hayden and Rebecca Levy. The MediPharm Application also seeks, depending upon the results of the disclosure, an order invalidating certain proxies or votes cast at the AGM and granting certain relief regarding the Dissident Circular.
- [7] On May 30, 2025, the Applicants served a 'Fresh as Amended Notice of Application' and additional affidavit evidence. The Applicants' proposed amendments to the Notice of Application included the addition of the Dissident Circular Relief. MediPharm took issue with the addition of the Dissident Circular Relief as it overlapped with the issues in the MediPharm Application, it took place after the MediPharm's evidence had been delivered, and no leave from the Court was sought or provided for such amendment. MediPharm's view is that the relief is not properly before the Court, nor is there a proper record before the Court to make such declarations.
- [8] The Applicants take the position, that the objections to the Dissident Circular relate to the same factual matrix at issue in the application – namely that the Applicants are acting with other undisclosed dissidents - and raise a concern about further delay if MediPharm does not accept the results of the vote at the AGM.
- [9] It is not disputed that the proposed amendments to the Applicants' Notice of Application were sought following the close of pleadings as MediPharm's responding affidavit had already been delivered see: *Angeloni v. Estate of Francesco Angeloni*, 2021 ONSC 3084 at para. 31. No leave was sought for such amendments.
- [10] Counsel to MediPharm has confirmed that, absent a Court order staying the voting results of the AGM, MediPharm will comply with the results of the vote. Further, MediPharm has advised that it will not seek to disqualify any proxies received at the AGM based on alleged

deficiencies in the Dissident Circular, but rather intends at the AGM to reserve its rights to proceed with the MediPharm Application following the AGM, if appropriate.

- [11] In the circumstances, the Dissident Circular Relief is not properly before me today and, if necessary, can be addressed following the AGM.

## **Background**

- [12] MediPharm is an Ontario corporation founded in 2015 specializing in purified, pharmaceutical-quality cannabis concentrates. It is a widely traded retail stock on the Toronto Stock Exchange, and trades under the ticker symbol 'LABS'.
- [13] David Pidduck is MediPharm's current CEO. Along with Mr. Pidduck, the current board of directors of MediPharm is comprised of Chris Taves (Chairperson), Michael Bumby, Chris Halyk, Keith Strachan, and Shelley Potts.
- [14] Apollo and Nobul are Ontario corporations. Nobul is a wholly-owned subsidiary of Apollo. Regan McGee is a resident of the Province of Ontario and the controlling mind of both Apollo and Nobul.
- [15] Mr. McGee has been raising concerns about MediPharm's governance and management with Mr. Pidduck starting in October 2024.
- [16] In early April of 2025, Mr. McGee made offers to purchase shares held by Mr. Pidduck and Mr. Strachan. Those offers were rejected.
- [17] On April 15, 2025, Apollo sent MediPharm a Term Sheet Proposal for a \$3.4 million cash injection in exchange for 40,000,000 treasury shares at market price, with no substantial conditions. The Board of MediPharm rejected that offer.
- [18] The Applicants take the position that the rejection occurred as the current Board wishes to entrench themselves and Mr. Pidduck was seeking a change of control payout. In any event, Board minutes show that the Board rejected Apollo's offer, proceeded with a letter of intent for an alternative transaction, and retained a proxy adviser, a PR firm, and a "special situations" litigator.
- [19] On April 19, 2025, litigation counsel to MediPharm, sent a letter to Applicants' counsel, raising concerns regarding breaches of securities laws, market manipulation, and improper proxy solicitation. It warned that proxies or voting agreements obtained in breach would be "tainted and could be invalidated by the company." At the time this letter was sent, the AGM had not been scheduled, nor had dissident materials been filed.
- [20] Around this time, Mr. McGee sought to exercise statutory rights under s. 145(1) of the OBCA to inspect corporate records. MediPharm refused the request, requested further information and technical compliance, and advised that there was no need to attend at the MediPharm offices as documents to which he was entitled would be provided

electronically. In this regard, MediPharm also cited concerns about threats made by Mr. McGee against Mr. Pidduck and his family. Mr. McGee attended at the MediPharm premises anyway.

- [21] On April 23, 2025, MediPharm announced its AGM for June 10, 2025. That date was later adjourned until June 16, 2025.
- [22] After the AGM was called, the Applicants launched a dissident shareholder process, submitting the Advance Notice on May 1, 2025.
- [23] On May 5, 2025, MediPharm's counsel Aird & Berlis LLP responded, raising concerns with the Advance Notice, primarily claiming that Tim Hayden and Pat McCutcheon should have been disclosed as "dissidents" based on alleged collaboration.
- [24] The Applicants' counsel requested proof of these allegations asking for details and reiterated that Apollo was the only dissident. MediPharm issued a press release on May 8, 2025, alleging the Advance Notice was deficient. On May 9, 2025, counsel to MediPharm again reiterated the concerns and requested documentation from the Applicants. On May 12, 2025, counsel for the Applicants replied, reiterating that MediPharm refused to provide documentation of any bona fide deficiency taking issue with excerpts from text messages which were alleged to show more potential dissidents.
- [25] Given MediPharm's position, on May 12, 2025, the Applicants commenced this application seeking an independent chair, scrutineers, and a declaration that the Advance Notice was valid.
- [26] While the dispute continued, the Applicants submitted their Dissident Circular on May 7, 2025.
- [27] As noted above, MediPharm no longer disputes the Advance Notice. MediPharm has confirmed that it does not intend to challenge the Dissident Circular, or any proxies held by the Applicants at the AGM but rather would reserve its rights with respect to the matters raised in the MediPharm Application.
- [28] MediPharm takes the position that Mr. McGee has been engaged in a series of intimidation tactics. The evidence shows that Mr. McGee has threatened to release a draft press release which, among other things, compared Mr. Pidduck to known serial killers. Press Releases have also been issued by Mr. McGee or the Applicants which accuse MediPharm and the Board of securities fraud, breach of fiduciary duty and running a corrupt election process to entrench themselves. Mr. McGee has threatened to sue the Board by way of a derivative action for breach of fiduciary duty and associated damages because of the rejection of the \$3.4 million offer and has commenced a lawsuit against MediPharm, two of its senior officers and directors, as well as the Company's external litigation firm (Tyr LLP) and counsel (James Bunting) which claimed \$50 million in damages. Mr. McGee, repeated the

allegations set out in the lawsuit in the Dissident Circular and then abandoned and withdrew the claim against Tyr LLP and Mr. Bunting, and agreed to terms of settlement that included a declaration by Mr. McGee that Tyr LLP and Mr. Bunting are not in a conflict of interest in acting for MediPharm, that they had not misused confidential information, that Mr. McGee would not disparage Mr. Bunting or Tyr LLP and provided a full release to Tyr LLP and Mr. Bunting.

## Issues

- [29] There are two issues to be decided at this time:
- (a) should this Court order the appointment of an independent chair of the AGM; and
  - (b) should this Court order that all communications leading up to the AGM between TSX Trust and MediPharm be equally shared with the Applicants and their agents?

## Analysis

### Independent Chair

- [30] The parties do not dispute that this Court has the jurisdiction to appoint an independent chair under ss. 106 and 107 of the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16 (the “OBCA”).
- [31] Section 106(1) of the OBCA provides that the Court has the authority upon application of a shareholder entitled to vote at a meeting to direct a meeting to “proceed in a manner and on such terms as the Court deems fit”. Section 107(1) of the OBCA allows a corporation, shareholder, or director to apply to the Court to “determine any controversy with respect to an election or appointment of a director or auditor of the corporation”.
- [32] In executing the authority under these sections, Courts have appointed independent chairs to preside over shareholder meetings where the Court has found the circumstances warrant such relief.
- [33] However, the starting point, is that the governance of meetings is essentially a private contractual matter, if the shareholders are concerned about the maintenance of *prima facie* impartiality, they can specify through the by-laws or otherwise that the corporate meetings are to be chaired by a neutral third party: see *Blair v. Consolidated Enfield Corp.* [1995] 4 SCR 5 [*Blair*] at para.50.
- [34] Accordingly, as summarized in *Maudore Minerals Ltd. v. The Harbour Foundation*, 2012 ONSC 4255 (CanLII) [*Maudore*] at para 108 “... in the absence of demonstrated impropriety, court ought not to interfere in advance with the operation of the exercise of the shareholders' right to design their own corporate constitution and electoral process. In *Blair v. Consolidated Enfield Corp.*, 1995 CanLII 76 (SCC), [1995] 4 S.C.R. 5, [1995] S.C.J. No. 29, at para. 50, the Supreme Court of Canada emphasized that “[t]he detailed

organization of a corporation is essentially a private contractual matter”. As noted by the British Columbia Supreme Court in the context of a proxy battle, “The court should not enter into the fray and take sides in such a battle in the absence of any evidence of impropriety”: *MTC Electronic Technologies Co. (Re)*, [1994] B.C.J. No. 3223, 57 A.C.W.S. (3d) 944 (S.C.), at para. 29.”

- [35] The MediPharm By-Laws provide: “The chair of the board, if such an officer has been elected or appointed and is present, otherwise another director of the Corporation who is a shareholder of the Corporation, shall be chair of any meeting of shareholders.” In the ordinary course, the Chair of the Board, Chris Taves, would serve as the Chair of the AGM. While Mr. Taves is the person who should chair the AGM, out of caution, in circumstances where Mr. Taves is being sued by Apollo, Nobul and Mr. McGee for \$50 million for alleged defamation, MediPharm has offered an alternative independent director chair the AGM, being Mr. Halyk.
- [36] MediPharm submits there is no demonstrated impropriety on the part of MediPharm or the proposed chair that warrants any deviation from the By-Laws. Mr. Halyk has not been sued by the Applicants and he testified that he does not know and has not met Mr. McGee. He is an experienced business executive who has testified that he will take advice from independent counsel appointed to assist him.
- [37] The Applicants object to Mr. Halyk as chair as they claim that MediPharm has a “design or plan to invalidate proxies”, or that there has been “tactical manoeuvring” which warrants appointment of an independent chair.
- [38] In response, MediPharm has confirmed that it will not seek to invalidate proxies held by the Applicants at the meeting and that it will allow the dissident slate to stand for election. Accordingly, MediPharm says, Mr. Halyk will not be asked to weigh in the dissident proxies. MediPharm takes the position that the question of whether proxies should be invalidated should be addressed, if it is necessary at all, through MediPharm’s Application after the meeting.
- [39] A chair of a shareholder’s meeting, particularly a publicly traded corporation, must be “capable of acting fairly and honestly”; the duty of a chairperson is “one of fairness and honesty to all individual interests” and is “directed generally toward the best interests of the company”: see *Blair* at para 48.
- [40] There is no evidence or indication that Mr. Halyk will act unfairly in the role of AGM chair. Mr. Halyk testified that he would not favour MediPharm over the Dissidents in his role and owes a fiduciary duty to all shareholders. Rather, the evidence from MediPharm is that MediPharm will not seek to disallow the Dissidents proxies at the AGM, such that the chair will not be asked to rule on that matter.
- [41] The Applicants rely on *In Concept Capital Management Ltd. v. Oremex Silver Inc.*, 2013 ONSC 7820. In that case, the Court appointed an independent chair, where the board

adjourned a requisitioned shareholders' meeting, rescheduled it with a later record date, and then implemented a dilution strategy by issuing a substantial number of shares. In that case, the Court found such timing and strategy to show a motivated plan to dilute shareholders, with the goal of setting the stage to make it easier for them to be re-elected and appointed an independent chair.

- [42] However, there is no evidence before me of similar behaviour. There have been no additional shares issued in an effort to dilute the vote. Nor is there a bonus plan in issue as there was in *Shoppex Corporation v. Brown*, 2010 ABQB 365. Nor has management previously brought unsuccessful legal proceedings seeking the disqualification of proxy votes as was the case in *Western Wind Energy Corporation v. Savitr Capital, LLC*, 2012 BCSC 1414.
- [43] The Applicants also take issue with the material distributed by MediPharm to shareholders, which includes a six page 'message from the chair' that the Applicants say is not permitted under securities law. The Applicants will have the opportunity to challenge MediPharm's materials at the AGM. Mr. Halyk has advised that he supported the Board in disseminating the material, however, he will take advice from independent counsel at the AGM if a challenge is raised.
- [44] Both the Applicants and MediPharm are advised by highly skilled litigation counsel and the correspondence from both sides can be seen as tactical. However, I am not persuaded that the conduct of MediPharm or of Mr. Halyk rises to the level of impropriety that would warrant interference with the process for selecting a chair of the AGM established by MediPharm's By-laws.
- [45] Similar to the finding by the Court in *Maudore* at para 110, referencing reasons from Justice Campbell in *Environmental Management Solutions Inc. v. D'Arrario* (unreported, April 28, 2005, Toronto O5-CL-5772), in this case, I can understand the concern and perhaps apprehension that the Applicants here may have for the fair resolution of proxy and other issues at the AGM, but on the material before me, I am not satisfied that Mr. Halyk will not act fairly and reasonably in his duties as chair. MediPharm and Mr. Halyk are on notice that their actions may well be criticized by this Court after the fact.
- [46] Like in *Maudore*, the appropriate course of action is for the Applicants or MediPharm to await the results of the AGM and if there is some impropriety or illegality, apply to the Court under the OBCA: see para 111 and see *Meson Capital Partners, LLC v. Aberdeen International Inc.*, 2015 ONSC 532 (CanLII) at para 14.
- [47] There is also no evidence before me that a proposed independent chair is prepared and ready to act in these circumstances.
- [48] Accordingly, I decline to appoint an independent chair for the AGM as requested by the Applicants.

### Conduct of the Scrutineer

- [49] The parties have agreed that TSX Trust will act as scrutineer of the votes at the meeting.
- [50] Although not contained in the Notice of Application, the Applicants now request an order that all communications from TSX Trust to MediPharm and its board regarding tabulating results—both before and during the election—also be copied to the Applicants. The Applicants say that the periodic voting results provided by TSX Trust to MediPharm give MediPharm an unfair advantage in the proxy contest between MediPharm and the dissidents.
- [51] No case law is provided by the Applicants to support the request.
- [52] The MediPharm by-laws provide that the process leading to the AGM is to be run by the current directors unless and until replaced. For the reasons set out above, I am not persuaded that the Court should interfere in that private contractual matter absent some evidence of impropriety. Accordingly, I dismiss the request by the Applicants for such communications.

### **Disposition**

- [53] The request by the Applicants for an order appointing an independent chair to preside over the AGM and for copies of all communications between TSX Trust and the MediPharm Board is dismissed.
- [54] If the parties are not able to resolve costs of this matter, MediPharm may email a costs submission of no more than three double-spaced pages to the Commercial List office within 15 days of the date of this endorsement. The Applicants may deliver responding submissions of no more than three double-spaced pages within 15 days following the delivery of MediPharm's submissions. No reply submissions are to be delivered without leave.

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The Honourable Justice J. Dietrich

**Date:** June 11, 2025