Court File No. CV-25-00753608-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF AN APPLICATION BY DYE & DURHAM LIMITED FOR AN EXEMPTION FROM THE REQUIREMENTS OF SECTION 154 OF THE BUSINESS CORPORATIONS ACT, R.S.O. 1990 C.B16, AS AMENDED

Applicant

FACTUM

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PART I - INTRODUCTION

1. Dye & Durham Limited ("**Dye & Durham**") brings this application for limited relief, to address an unavoidable compliance problem under Ontario's *Business Corporations Act* ("OBCA"). The problem arises out of the requirements to deliver audited financial statements at least 21 days in advance of the annual general meeting ("**AGM**") and to hold the AGM within 6 months of the end of the fiscal year ended June 30, 2025. Dye & Durham is not able to meet these requirements.

2. The AGM is scheduled for December 31, 2025. The record date for this meeting is November 7, 2025.

3. Although unaudited financial statements for the fiscal year ended June 30, 2025 were published via press release on November 12, 2025, the audited financial statements for 2025 ("**2025 Financial Statements**") are not completed. Dye & Durham's management and external auditor, Ernst & Young (the "**Auditor**"), are diligently working to attempt to complete the audited financial statements for the end of the week of December 15, 2025.

4. In the circumstances, Dye & Durham's Chief Financial Officer (**CFO**), Chief Executive Officer (**CEO**) and Board of Directors (the "**Board**") concluded it is in Dye & Durham's best interests to seek relief permitting the AGM to proceed as planned with the audited financial statements being delivered on a shortened timeline. The specific relief now being sought would allow for the audited financial statements to be delivered by December 23, 2025.

5. If the AGM must be postponed, Dye & Durham will also request limited relief from the record date and notice requirements in ss. 95(2) and 96(1) so that the existing record date and meeting materials already prepared and distributed remain and Dye & Durham press releases and files on SEDAR+ any changes and updates, avoiding the cost, delay, and potential prejudice associated with resetting the shareholder record and new printing and mailing.

6. The Court has jurisdiction – through its inherent jurisdiction to fill a functional gap in the OBCA – to grant the time-limited exemptions and directions sought where strict compliance is effectively impossible and where the relief protects shareholders and the integrity of the AGM process. The gap arises because the OBCA does not address how a corporation and its Board are to proceed in circumstances, such as the present, where three requirements cannot all be satisfied: (1) management and the Auditor must be satisfied that the financial statements are accurate; (2) the audited financial statements must be delivered to shareholders at least 21 days before the AGM; and (3) the AGM must be held within six months after the financial year end.

7. The relief sought is also consistent with the core statutory purpose of section 154: shareholders should receive audited financial disclosure and be able to meaningfully participate in the AGM. It is also consistent with the broad authority provided to the Court to deal with meeting process and scheduling on applications made by shareholders or a director under Section 106 or applications by complainants under section 253.

8. Proceeding with the AGM as planned but with the 2025 Financial Statements being delivered by December 23 will give shareholders sufficient notice to make informed decisions at the AGM. It recognises the importance of having the financial statements issued and approved by the directors, CFO and CEO, who will have overseen the preparation of the statements and will assume personal liability for them. It also recognises that the CEO and CFO will be certifying the internal controls and assuming personal liability for those controls.

9. The relief being sought balances the need to provide shareholders with audited financial statements before the AGM and the importance of maintaining the AGM as planned on December 31, 2025, and within six months of the 2025 fiscal year end.

10. The OBCA Director and the OSC were provided with notice of this application. There has been no response from the OBCA Director. The OSC has advised that, at this time, they do not take a position on the relief being sought in the draft order.

PART II - SUMMARY OF FACTS

11. The facts underlying this application are set out in the affidavit of Sandra Bell sworn December 11, 2025 ("**Bell Affidavit**"). The following is a summary of the key facts.

A. Corporate Background

12. Dye & Durham is a public company incorporated under the OBCA with its head and registered office in Toronto. It trades on the Toronto Stock Exchange under the symbol "DND" and is a reporting issuer in Ontario and all other Canadian provinces and territories other than Quebec. Dye & Durham's stock is liquid and trades regularly, and disclosed information is very quickly absorbed by shareholders and investors and incorporated into the stock price.[1]

13. Dye & Durham is a world leader in legal technology, enabling law firms to operate more efficiently and profitably and helping them achieve more growth with less effort. It provides users access to its platform, which acts as an all-in-one solution for the automation of the process of public records due diligence searches, document creation and electronic records filings. As of June 30, 2025, Dye & Durham had 1,114 employees and more than 36,000 customers around the world, with operations in Canada, the United Kingdom, Ireland, Australia, and South Africa.[2]

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[1] Bell Affidavit para 9 **[A72]**. With respect to the quick absorption of market information, see Bell Affidavit para 30-31 and 55(f) **[A77-A78 and A85]**.
[2] Bell Affidavit paras 3, 9-11 **[A70 and A72]**.

B. Reasons for Delay in Finalizing the 2025 Financial Statements

14. Dye and Durham's fiscal year-end is June 30. Its last audited annual financial statements were for the period ended June 30, 2024 ("**2024 Financial Statements**"), and the last annual general meeting took place on December 17, 2024 ("**2024 AGM**").[3]

15. Since the 2024 AGM, Dye & Durham has experienced significant events and challenges that have resulted in the 2025 Financial Statements not yet being available.

16. There was a full change in the Board at the 2024 AGM and significant subsequent management and board turnover in 2025.[4]

17. From July 30, 2025 until November 24, 2025, Dye & Durham dealt with an issue-oriented review letter and follow-ups from the Ontario Securities Commission ("**OSC**") related to the level at which Dye & Durham tests goodwill for impairment and to certain purchase accounting disclosures in the 2024 Financial Statements ("**OSC Process"**). Although Dye & Durham worked diligently to complete the OSC Process while working to complete the audit, Dye & Durham determined that it could not finalize the 2025 Financial Statements until the OSC Process was complete.[5]

18. As a result of missing the securities regulators' September 29, 2025 deadline for filing the 2025 Financial Statements and related annual filings, and in lieu of a full cease-trade order,

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[3] Bell Affidavit para 12 **[A73]**.
[4] Bell Affidavit paras 13-20 **[A73-A74]**
[5] Bell Affidavit paras 32-42 **[A32-42]**

Dye & Durham has been subject to a temporary management cease trade order (“**MCTO**”) which restricts trading by certain insiders but does not restrict trading by others. As of December 13, 2025, Dye & Durham may become subject to a full failure-to-file cease-trade order.[6]

19. On December 10, 2025, Dye & Durham announced that it had delivered to the Auditor substantially all items that were noted in the previous press release as being outstanding, and that the Company was addressing the remaining outstanding audit items and follow-up requests from the Auditor. Dye & Durham and the Auditor continue to work on the audit being complete towards the end of the week of December 15, 2025, which depends on the Company’s ability to quickly address the remaining outstanding audit items and any follow up requests. However, the CFO could not state with certainty when the 2025 Financial Statements will be finalized.[7]

C. Considerations Relevant to Keeping Currently Scheduled AGM or Postponing

20. There are a variety of factors and considerations that are specific to Dye & Durham’s situation and exemplify the management team’s and the Board’s commitment to advancing the best interests of the Company and its stakeholders in good faith.

21. The AGM is currently scheduled for December 31, 2025. Dye & Durham’s management team, Board and Auditor have worked diligently to finalize the 2025 Financial Statements

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[6] Bell Affidavit paras 34-36 and 40 **[A78-A80]**

[7] Bell Affidavit paras 41-43 and 50 **[A80-81 and A83]**

as quickly as possible. Despite their best efforts, they have not been able to deliver them to shareholders at least 21 days before the AGM. Dye & Durham's CFO believes, and the demonstrated quick absorption by the market of disclosed information confirms, that shareholders would be able to make informed decisions at the AGM if the 2025 Financial Statements are filed by December 22, 2025.[8]

22. Dye & Durham has released biweekly updates under the terms of the MCTO and has otherwise provided extensive disclosure of the status of its 2025 Financial Statements to the market by way of frequent press releases.[9]

23. On November 12, 2025, Dye & Durham released preliminary unaudited financial results for the fiscal year ended June 30, 2025 and the first quarter of fiscal 2026. The Company decided to release these preliminary unaudited results to give shareholders and the market as much information as reasonably possible while it continued to work to finalize the 2025 Financial Statements. The final audited 2025 Financial Statements are not expected to differ materially from the released results.[10]

24. Although not a cause of the delayed financial statements, Dye & Durham has been the subject of shareholder activism (including an outstanding action with the former CEO in this Court) and may be at further litigation risk if the AGM is postponed.[11]

[8] Bell Affidavit paras 30-31, 41-43, 49-51 and 55(a), (d) and (f) **[A77-A78 and A80-A85]**
[9] Bell Affidavit para 55(b) and Exhibits C-I and K **[A84, A100-A139 and A292-A293]**.
[10] Bell Affidavit paras 38 and 55(e) **[A79-A80 and A85]**
[11] Bell Affidavit paras 21-31 **[A75-A78]**

25. The officers and directors of Dye & Durham are concerned that they may potentially be liable for penalties despite the fact that they have been working as best they can and in good faith to meet all the required deadlines.[12] They are also concerned with their personal liability under securities laws for the financial statements.[13]

26. Shareholders and the market have been given notice of this application, and the hearing date, and have been provided with all materials for this application through posting on SEDAR+. Dye & Durham also provided notice of this application and the requested relief to the OSC and to the OBCA Director.[14]

27. The application is being brought in good faith and in furtherance of Dye & Durham's officers' and directors' fiduciary duties and duties of care. The Board believes this approach would minimize any risk of prejudice to Dye & Durham and its stakeholders. The Board considered all options and determined that the Company's best interests would be served if the 2025 Financial Statements were delivered to shareholders less than 21 days before the AGM and the AGM proceeded as scheduled on December 31. 2025.[15]

PART III - ISSUES

28. The issues on this application are:

[12] Bell Affidavit para 57 **[A86]**
[13] *Securities Act*, RSO 1990, c S.5, s.138.3.
[14] Bell Affidavit paras 63-64 **[A88-A89]**
[15] Bell Affidavit paras 67-68 **[A89]**

(a) Does the Court have jurisdiction to grant the exemptions requested from s. 154, and if necessary, ss. 95(2) and 96(1), of the OBCA?

(b) If so, should the Court exercise its discretion to allow the 2025 Financial Statements to be delivered on a shortened timeline and for the AGM to proceed as scheduled?

PART IV - LAW AND ARGUMENT

A. Statutory Framework and the Practical Impasse

29. Part XII of the OBCA imposes mandatory annual-meeting and financial disclosure obligations on offering corporations. In particular, an offering corporation must: (a) place its annual financial statements before shareholders at the AGM (b) ensure those statements are audited; and (c) deliver the audited statements and auditor's report to shareholders at least 21 days before the meeting. [16] These requirements are enforced by penal consequences: a director or officer who, "without reasonable cause", fails to comply with s. 154 commits an offence under s. 258(1).[17]

30. The purpose of this regime is to protect shareholders by ensuring that they receive timely, accurate financial disclosure of a corporation's financial position to be able to hold management to account at an AGM and form a reasoned vote. The annual financial statements serve as the "corporate report card" on the issuer's performance and condition.[18]

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[16] OBCA, ss. 154(1), 154(3).
[17] OBCA, s. 258(1).
[18] *Packall Packaging Inc. v. Ciszewski*, 2016 ONCA 6 at para. 28 [***Packall***], Book of Authorities of the Applicant dated December 12, 2025 ("**BOA**"), Tab A1, *IMAX Corp., Re*, 2007 CarswellOnt 8860 (S.C.J.) at para. 25 [***IMAX***], BOA, Tab A2.

Canadian courts have cautioned that a meeting held without current audited financial statements does not satisfy the statutory concept of an "annual meeting" and that courts cannot simply ignore imperative disclosure requirements.[19]

31. In Dye & Durham's specific circumstances, however, these provisions have created a functional impasse. Due to the challenges experienced and the ongoing audit work, Dye & Durham cannot (a) hold the AGM on the scheduled date with audited statements delivered 21 days in advance; or (b) postpone the meeting to await the audited statements while maintaining compliance with the six-month recency requirement and the record-date and notice provisions.

32. Absent judicial intervention, Dye & Durham is forced to choose between competing forms of non-compliance:

(a) proceeding with the AGM on the scheduled date without placing audited financials before shareholders and/or without delivering those audited financial statements at least 21 days in advance, contrary to s. 154(1) and (3);

(b) postponing the AGM to await completion of the audit, thereby pushing the meeting beyond the mandatory six-month recency requirement in s. 154(1)(b)(i); and

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[19] *Nalcap Holdings Inc. c. Kelvin Energy Ltd.,* [1988] R.J.Q. 2762 at paras. 25-26 [***Nalcap***], BOA, Tab A3.

(c) postponing the AGM in a manner that would require resetting the record date and notice periods, breaching or restarting the timelines in ss. 95(2) and 96(1) and necessitating significant, unnecessary expense.

33. Each option conflicts with mandatory requirements under the OBCA and exposes Dye & Durham and its directors and officers to potential statutory offence risk under s. 258 and related civil consequences. There is no express provision in the OBCA that allows Dye & Durham to apply for relief in respect of these requirements. Similarly, there is no express provision prohibiting Dye & Durham from seeking this relief.

34. This scenario represents a "functional gap" or vacuum in the legislation. As the authorities demonstrate, this Court may properly address such a gap through its inherent jurisdiction, provided the Court acts consistently with the statute's purposes.[20]

35. Dye & Durham therefore seeks narrowly tailored relief that allows it to comply with the substance of the OBCA's financial disclosure and AGM regime, while relieving it from timing mechanics that it is temporarily impossible to satisfy.

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[20] *Endean v. British Columbia,* 2016 SCC 42 at paras. 23-24 [***Endean***], BOA, Tab A4; *Portus Alternative Asset Management Inc*., Re, [2007] 88 OR (3d) 313 (ON SC) at paras. 22-24, 36-37, 39 [***Portus***], BOA, Tab A5; *CannTrust Holdings Inc. v. Merrill Lynch Canada Inc*., 2022 ONSC 6720 at paras. 61-63 [**CannTrust**], BOA, Tab A6; *CannTrust Holdings Inc. et al v. Merrill Lynch Canada Inc. et al* (Endorsement of Penny J., July 7, 2022), [***CannTrust* – Penny J. Endorsement**], BOA, Tab A7.

B. The Court Has Authority to Grant the Requested Relief

(i) The Statutory Scheme and the Functional Gap

36. The OBCA contains detailed rules specifying what must occur (audited financial statements must be placed before shareholders at an AGM within the prescribed time and recency limits, with set record-date and notice mechanics), but it is silent on how to resolve situations where, despite exercising diligence and best efforts, full compliance is rendered impracticable due to factors beyond the corporation's direct control.

37. By contrast, Parliament amended the *Canada Business Corporations Act* ("**CBCA**") in 2001 to add s. 133(3), which empowers a court to extend the time for calling an AGM where appropriate.[21] At the time of the amendment, Industry Canada explained that this amendment was intended to keep reporting "timely and regular" while "allow[ing] increased flexibility without creating any new risk for shareholders", and to provide a mechanism for corporations that cannot meet the timing rules for reasons beyond their direct control to obtain an extension.[22]

38. Section 133(3) was applied in *IMAX* when a corporation could not complete an accounting review and audit in time to meet the statutory deadline. The Court held that the provision requires a "legitimate and compelling reason" to depart from the timing rule, and that the Court must "consider the interests of the company balanced against any meaningful risk of

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[21] *Canada Business Corporations Act*, RSC 1985, c C-44, s. 133(3) [**CBCA**].
[22] *IMAX*, at para. 20, BOA, Tab A2.

harm to the shareholders" in deciding whether to grant an extension.[23] The Court granted an extension because: (a) audited statements were genuinely unavailable; (b) "without the financial statements, little purpose would be served by holding a meeting of shareholders"; and (c) shareholders would continue to receive robust interim disclosure in the meantime.[24]

39. In addition, s. 156 of the CBCA authorizes the Director, on application, to exempt a corporation from specified financial-statement requirements in s. 155 and ss. 157-160 – including the obligation to send audited financial statements to shareholders within the prescribed 21-day period – where the Director reasonably believes that the detriment to the corporation outweighs the benefit to shareholders or, for a distributing corporation, to the public.[25]

40. By contrast, there is no express OBCA power for a court or the Director to:

(a) extend the deadline for holding an AGM;

(b) abridge the 21-day delivery requirement in s. 154(3); or

(c) adjust the six-month recency requirement for financial statements in s. 155(1)(b)(i).

41. The OBCA, like the CBCA, "was designed to govern the affairs of practical men [sic] engaged in business".[26] The absence in the OBCA of a provision analogous to CBCA s.

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[23] *IMAX*, at para. 20, BOA, Tab A2.
[24] *IMAX* at para. 25, BOA, Tab A2.
[25] CBCA, s. 156.
[26] *Athabaska Holdings Ltd. v. ENA Datasystems Inc.*, 30 O.R. (2d) 527 at para. 18 [***Athabaska***], BOA, Tab A8.

133(3) is best understood, as in *CannTrust*, as a functional gap rather than a deliberate legislative decision that no flexibility should ever be available. Where the statutory scheme otherwise leaves the corporation without a workable, lawful path forward, the Court may fill that gap by exercising its inherent jurisdiction in a manner that vindicates, rather than frustrates, the statute's objectives.

42. That is how Justice Penny addressed the disparity between the OBCA and CBCA recently in *CannTrust*, in the context of a CCAA proceedings involving an OBCA corporation that could not complete its audited financial statements in time to call an AGM. He found that:

(a) the OBCA contains no express provision allowing a corporation to obtain an extension of the AGM deadline;

(b) the CBCA and several provincial statutes have closed this "perceived functional gap" by adding express extension powers; and

(c) Ontario courts have nonetheless exercised inherent jurisdiction to fill functional gaps in corporate legislation where it is "just and equitable" to do so.[27]

43. Relying on both the Court's inherent jurisdiction and the broad remedial authority under s. 11 of the CCAA, Penny J. adopted the CBCA-based balancing approach articulated in *IMAX* and granted an extension, noting that there was "no appropriate alternative," that

[27] *CannTrust* – Penny J. Endorsement at paras. 4-5, BOA, Tab A7; *CannTrust* at paras. 61-63, BOA, Tab A6.

CannTrust was "simply unable to hold an OBCA-compliant AGM" on the scheduled date, and that forcing a non-compliant meeting could have "potentially devastating effects".[28]

44. Dye & Durham is in the same position: it is governed by the OBCA, subject to mandatory AGM and disclosure obligations, and confronted with timing constraints the statute does not expressly address. The absence in the OBCA of a provision analogous to CBCA ss. 133(3) and 156 is best understood, as in *CannTrust*, as a functional gap rather than a deliberate legislative decision that no flexibility or relief should ever be available.

(ii) Inherent Jurisdiction as a Gap-Filling Tool

45. The inherent jurisdiction of a superior court has been described as "the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so".[29] Canadian courts have repeatedly endorsed this conception of inherent jurisdiction, while emphasizing that it cannot be used to negate the "unambiguous expression of the legislative will".[30]

46. The Supreme Court of Canada has adopted the analysis of Justice Jackson and Dr. Sarra on the "hierarchy of authority", under which courts should first interpret the statute; then,

[28] *CannTrust* – Penny J. Endorsement at para. 8, BOA, Tab A7.

[29] *Portus* at para. 25, BOA, Tab A5.

[30] Madam Justice Gerogina R. Jackon and Dr. Janis Sarra, "Selecting the Judicial Tool to get the Job Done" in Janis P. Sarra, ed., Annual Review of Insolvency Law 2007, at p. 31 [**Jackson and Sarra**], BOA, Tab B1, citing *Westar Mining Ltd., Re* (1992), [1992] B.C.J. No. 1360 (BC SC).

if the statutory interpretation reveals a gap, may resort to inherent jurisdiction to fill the gap and make the legislative scheme work.[31]

(iii) OBCA Provisions Demonstrate the Legislature Intended Flexibility

47. The Court exercises broad statutory discretion in corporate governance matters under the OBCA:

(a) First, s. 106(1) of the OBCA provides that, on the application of a director or shareholder, where it is "impracticable" to call or conduct a shareholders' meeting in the manner prescribed by the Act, the articles or the by laws, or "if for any other reason the court thinks fit," the Court may order that a meeting be called, held and conducted "in such manner as the court directs."[32]

(b) Second, s. 253 of the OBCA provides a compliance and restraining order mechanism. It permits a complainant or creditor to apply for an order directing a corporation, or its directors, officers or other specified actors, to comply with the Act, the regulations, the articles or by laws, or to restrain a breach, and authorizes the Court to "make any order it thinks fit."[33]

48. These provisions demonstrate that the OBCA contemplates active judicial oversight to ensure that corporate governance operates fairly in accordance with the statutory scheme

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[31] *Endean* at para. 24, BOA, Tab A4, citing Jackson and Sarra at p. 73, BOA, Tab B1.
[32] OBCA, s. 106(1).
[33] OBCA, s. 253(1).

while maintaining the necessary flexibility. They confirm that the Court's supervisory powers are intended to work with, rather than be ousted by, the OBCA's detailed meeting and disclosure regime.

49. Section 106 and similar provisions in other provinces give the Court a "wide scope".[34] The Ontario Court of Appeal described the predecessor provision as a discretionary power to remove practical obstacles to the conduct of a shareholders' meeting in accordance with the applicable requirements, while doing "as little violence as possible" to the articles and regulations and requiring conformity with them "as far as practicable."[35]

50. Courts have relied on equivalent provisions in other jurisdictions to adjust record date and notice mechanics where strict compliance was impracticable and no one was materially prejudiced.

(a) In *Nalcap*, the Quebec Superior Court relied on CBCA s. 138 (the federal analogue to OBCA s. 106) to set a date for the annual meeting beyond the statutory 15-month limit, so that fresh, current financial statements could be prepared and placed before shareholders, noting that the provision did not permit dispensation from the requirement to provide adequate, up-to-date financial disclosure, which the Court described as a fundamental shareholder right.[36]

[34] *Bull Run Capital Inc. v. GrowMax Resources Corp.,* 2019 ABQB 107 at paras. 108-110, citing Albera and Ontario authority, [***BullRun***] BOA, Tab A9.
[35] *Re Morris Funeral Service Ltd.*, [1957] 7 DLR (2d) (ONCA), p. 647, BOA, Tab A10.
[36] *Nalcap,* BOA, Tab A3 – the application was brought by a director.

(b) In *SXC Health Solutions Corp*, the Yukon Supreme Court granted relief under s. 145(1) of the *Business Corporations Act* (Yukon) – which closely parallels OBCA s. 106 – abridging the statutory notice period for a record date in connection with a special meeting. The Court accepted that strict compliance was impracticable due to timing and cost, and that "no one [was] essentially prejudiced" by the abridgement.[37]

(c) In *BullRun,* which involved a dispute over an advance notice by-law, the Alberta Court of Queen's Bench extended the deadline for the holding of the Annual General Meeting while preserving the original Record Date, given the significant additional costs that would be incurred if a new record date were set.[38]

51. While s. 106 provides for the application to be brought by a director or shareholder, courts appear to have interpreted the section broadly to include an application brought by the corporation.[39] Similarly, though there is no authority directly on point, a court could order compliance with the statutory provisions under s. 253 while at the same time issuing an order enabling the corporation to comply.

52. To the extent the statutory provisions leave a gap in the Court's ability to remedy issues raised by the requirements of s. 154 where audited financial statements cannot, despite

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[37] *SXC Health Solutions Corp., Re,* 2012 YKSC 49, BOA, Tab A11 – the application appears to have been brought by the corporation and a director.
[38] *BullRun* at paras. 112, 114, BOA, Tab A9 – the relief was sought by the corporate Respondent/Cross Applicant (see para. 3)
[39] *Athabasca,* BOA, Tab A8; *BullRun,* BOA, Tab A9.

reasonable efforts, be finalized in time, the Court can rely on its inherent jurisdiction to fill that gap. As the Ontario Court of Appeal has held:

> As a superior Court of general jurisdiction, the Supreme Court of Ontario has all of the powers that are necessary to do justice between the parties. Except where provided specifically to the contrary, the Court's jurisdiction is unlimited and unrestricted in substantive law in civil matters. In Re Mitchie Estate and City of Toronto et al., [citation omitted] Stark J., after considering the relevant provisions of the Judicature Act and the authorities, said:
>
> > It appears clear that the Supreme Court of Ontario has broad universal jurisdiction over all matters of substantive law unless the Legislature divests from its universal jurisdiction by legislation in unequivocal terms.[40]

53. Justice Jackson and Professor Sarra note, after setting out the above quote, that with increased codification in statutes, courts may have lost sight of the general jurisdiction they retain where there is a gap in the statutory language. But they point out that, while increased codification may have left less room for gap-filling, the court retains its "unlimited jurisdiction to decide what is necessary to do justice between the parties except where legislators have provided specifically to the contrary."[41] Courts have continued to exercise their inherent jurisdiction where it is just and equitable in circumstances that fall within a functional gap in legislation.[42]

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[40] *80 Wellesely St. East Ltd. v. Fundy Bay Builders Ltd,* [1972] 2 O.R. 280-284 (ONCA), BOA, Tab A12.
[41] Jackson and Sarra at p. 55, BOA, Tab B1.
[42] *Hagos, Re,* 2018 ONSC 372, BOA, Tab A13, exercising inherent jurisdiction to change birthdate of Canadian citizen born outside of Canada where Ontario *Vital Statistics Act* mechanism for amending birthdates explicitly did not cover persons born outside Ontario; *Montréal, Maine & Atlantique Canada Co., Re,* 2013 QCCS 4039, BOA, Tab A14, finding CCAA applied to a railway company despite the apparent exclusion of railway companies from its scope, because reform of railway legislation previously addressing railway insolvency had, in the absence of corresponding reform of the CCAA and BIA, left a statutory vacuum that was "grossly unfair to ordinary creditors" (it was also arguable that the debtor was not a "railway company" as contemplated by the CCAA, as the Superior

54. Filling the gap by granting the relief requested here is consistent with the fair and practical governance of corporate affairs contemplated by the statute.

C. A Practical Framework for the Court's Authority

55. By its nature, inherent jurisdiction will be invoked to address novel and practical issues in corporate proceedings. In such circumstances, the Court's inherent jurisdiction should be invoked in a manner consistent with the substantive objectives of the OBCA and in a manner attentive to practical considerations.

56. There is no direct authority under the OBCA for abridging the 21-day delivery requirement or the six-month recency requirement in s. 154. In these circumstances, Dye & Durham submits that it is appropriate for the Court to adopt the following principled framework for deciding whether to exercise its inherent jurisdiction to resolve a timing impasse:

Court later found in *Montreal, Maine & Atlantique Canada Cie. C. Richter Groupe Conseil inc.*, 2015 QCCS 3236 at paras. 93, 101-102, BOA, Tab A15.

(i) **Functional impasse and necessity:** Has the corporation shown that it cannot comply with all of the statutory timing requirements, so that some form of statutory non-compliance is otherwise unavoidable?

(ii) **Explanation for delay and reasonable diligence:** Has the corporation provided a clear and credible explanation for the delay and demonstrated that it has been working diligently to meet its obligations?

(iii) **Good faith / Business judgement:** Is there any evidence that the corporation or its officers or directors are acting for an improper purpose – such as avoiding scrutiny or entrenching control – or, conversely, does the record support the presumption that they are acting honestly and in good faith in the best interests of the corporation and its stakeholders?

(iv) **Narrow tailoring and minimal prejudice:** Is the relief strictly limited to what is necessary to resolve the impasse and designed to avoid material prejudice to shareholders?

57. The above framework acknowledges the statutory requirements but utilizes the court's residual authority to prevent the statute from defeating its own purpose. Under the *Bankruptcy and Insolvency Act* ("**BIA**"), the Courts avoid a "strictly legalistic" approach, in favour of a pragmatic and flexible approach.[43] A similar approach is appropriate under

[43] *Residential Warranty Co. of Canada Inc., Re,* 2006 ABQB 236 at para. 27 [***Residential Warranty* - ABQB**], aff'd 2006 ABCA 293 [***Residential Warranty* – ABCA**], BOA, Tabs A16, A17.

the OBCA, which, like the BIA, requires "consideration of the realities of commerce and business efficacy".[44]

58. Abridging the 21-day delivery period or permitting a short postponement of the AGM does not contradict the statute; it facilitates the statute's primary objective of ensuring Dye & Durham's shareholders receive accurate, audited information, rather than forcing a meeting based on incomplete data.

A. Application of the Framework to Dye & Durham

59. Having regard to the principles outlined above, and for the reasons set out below, it is just and appropriate, for this Court to approve the proposed Order.

(i) Functional Impasse and Necessity

60. Dye & Durham faces a genuine functional impasse. The 2025 Financial Statements cannot be audited and finalized in time to satisfy, together, the requirements to: (a) deliver audited financial statements to shareholders at least 21 days before the scheduled AGM (s. 154(3)); (b) ensure that those statements are not more than six months old as of the AGM date (s. 154(1)(b)(i)); and (c) comply with the existing record date and notice periods in ss. 95(2) and 96(1), without incurring further delay, expense and governance disruption.

[44] *Residential Warranty – ABQB* at para. 27, BOA, Tab A16.

61. Absent relief, Dye & Durham must either breach s. 154 or postpone the AGM in a way that triggers new statutory breaches and prejudice.

(ii) Explanation for Delay and Reasonable Diligence

62. Dye & Durham has been working continuously and in good faith with its advisors and the Auditor to complete the audit as quickly as possible.

63. Throughout, Dye & Durham and its management and Board have acted diligently and transparently:

(a) They cooperated fully with the OSC's review and have responded to all OSC inquiries in a conscientious, good-faith manner;

(b) They have worked diligently with the Auditor to complete the 2025 Financial Statements as quickly as practicable;

(c) Pending completion of the audit, they have provided shareholders with preliminary unaudited financial results which are not expected to differ materially from the final audited 2025 Financial Statements and have provided the market with frequent disclosure about the status of the delayed 2025 Financial Statements and other matters; and

(d) They have given clear notice of this application and the hearing date to the OSC, the OBCA Director, and the company's shareholders, and have posted the application materials on SEDAR+.

64. The delay reflects the time required to complete independent audit and regulatory processes, not any inactivity or lack of candour by Dye & Durham or its Board.

(iii) Good faith and Business judgement

65. Directors of an OBCA corporation have a statutory duty to "act honestly and in good faith with a view to the best interests of the corporation" and to exercise the "care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances".[45] Courts apply the business judgment rule and defer to board decisions made in good faith, on an informed basis, and within a range of reasonable options, particularly in complex corporate and securities contexts.[46]

66. The Board of Dye & Durham has determined, in good faith and on appropriate advice, that seeking an abridged timeline for delivery of the 2025 Financial Statements and keeping the currently scheduled AGM date is in the best interests of the corporation and its shareholders. It:

(a) ensures meaningful disclosure to shareholders;

(b) supports compliance with both corporate and securities law requirements; and

(c) avoids the cost and confusion of holding an AGM without audited financial statements and then having to reset record and meeting dates.

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[45] OBCA, s. 134(1)(a).
[46] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paras. 40, 99, BOA, Tab A18.

67. There is no evidence of any improper motive. The Board is not trying to avoid a meeting or suppress information. Its objective is to ensure that the AGM takes place on the basis of complete, audited financial information, so that it is meaningful. The decision has been Courts generally defer to such business judgments where they are made honestly, on an informed basis, and in response to complex timing and regulatory constraints.

(iv) Narrow Tailoring and Minimal Prejudice

68. The relief sought is narrow and temporary. Dye & Durham does not seek any permanent waiver of the audit requirement or of its financial reporting obligations, unlike the permanent relief rejected in *Packall*. Dye & Durham seeks only:

(a) an abridgement of the 21-day delivery period so the audited financial statements can be delivered immediately once finalized, with enough time for shareholders to review them before the AGM; or

(b) if necessary, a short extension of the AGM date beyond the usual six-month recency limit, measured from completion of the audit.

69. Shareholders will suffer no material prejudice from this relief:

(a) They already have detailed continuous disclosure and the unaudited financial results. Dye & Durham does not expect any material variance in the final audited financials. Dye & Durham's shares are liquid and the market has historically absorbed new information quickly.

(b) Their voting rights are preserved, not reduced. When the AGM is held, shareholders will be able to assess the company, after a year of significant change and issues, with the "report card" of current audited financial statements, rather than voting in a relative information vacuum.

(c) An abridged delivery period or brief extension of the AGM date does not take rights away; it simply shifts the timing so those rights can be exercised on a fully informed basis.

D. Conclusion on Authority

70. On the authorities and principles above, this Court plainly has jurisdiction to grant the narrow, time limited relief sought.

71. Dye & Durham has:

(a) demonstrated a genuine functional impasse and necessity;

(b) acted diligently and in good faith. Dye & Durham's Board, acting under its fiduciary duties and with the benefit of professional advice, has determined this course is in the best interests of the corporation;

(c) requested relief that is narrowly tailored, time limited and consistent with the OBCA's purpose and with the CBCA model; and

(d) shown that no one will suffer meaningful prejudice. Dye & Durham has ensured shareholders have had, and will continue to have, robust financial disclosure, including unaudited financial results since November 12 and ongoing updates.

72. As in *CannTrust*, “[t]here is no appropriate alternative here.”[47] Denying relief forces Dye & Durham into non-compliance, subjecting it and its officers and directors to potential penalties. Granting relief allows Dye & Durham to fulfill its substantive obligations to shareholders, albeit on a slightly adjusted timeline.

73. In these circumstances, it is just and equitable for the Court to exercise its authority and grant the requested Order.

II. ORDER REQUESTED

74. Dye & Durham respectfully requests that the Court grant the Order sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of December, 2025.

Goodmans LLP

Goodmans LLP

[47] *CannTrust* – Penny J. Endorsement at para. 7, BOA, Tab A7.

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LAWYERS FOR THE APPLICANT

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Packall Packaging Inc. v. Ciszewski*, 2016 ONCA 6

2. *IMAX Corp., Re*, 2007 CarswellOnt 8860 (S.C.J.)

3. Nalcap Holdings Inc. c. Kelvin Energy Ltd., [1988] R.J.Q. 2762

4. *Endean v. British Columbia,* 2016 SCC 42

5. *Portus Alternative Asset Management Inc*., Re, [2007] 88 OR (3d) 313 (ON SC)

6. *CannTrust Holdings Inc. v. Merrill Lynch Canada Inc*., 2022 ONSC 6720

7. *CannTrust Holdings Inc. et al v. Merrill Lynch Canada Inc. et al* (Endorsement of Penny J., July 7, 2022)

8. *Athabaska Holdings Ltd. v. ENA Datasystems Inc*., 30 O.R. (2d) 527

9. *Westar Mining Ltd., Re* (1992), [1992] B.C.J. No. 1360 (BC SC)

10. *Bull Run Capital Inc. v. GrowMax Resources Corp*., 2019 ABQB 107

11. *Re Morris Funeral Service Ltd.,* [1957] 7 DLR (2d) (ONCA)

12. *SXC Health Solutions Corp., Re,* 2012 YKSC 49

13. *80 Wellesely St. East Ltd. v. Fundy Bay Builders Ltd,* [1972] 2 O.R. 280-284

14. *Hagos, Re,* 2018 ONSC 372

15. *Montréal, Maine & Atlantique Canada Co., Re,* 2013 QCCS 4039

16. *Montreal, Maine & Atlantique Canada Cie. C. Richter Groupe Conseil inc.,* 2015 QCCS 3236

17. *Residential Warranty Co. of Canada Inc., Re,* 2006 ABQB 236

18. *Kingsway General Insurance Company v. Residential Warranty Company of Canada Inc. (Trustee of),* 2006 ABCA 293

19. *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date December 12, 2025 ______________________________

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Business Corporations Act*, RSO 1990, c B.16**

Requisition by court

106 (1) If for any reason it is impracticable to call a meeting of shareholders of a corporation in the manner in which meetings of those shareholders may be called or to conduct the meeting in the manner prescribed by the by-laws, the articles and this Act, or if for any other reason the court thinks fit, the court, upon the application of a director or a shareholder entitled to vote at the meeting, may order a meeting to be called, held and conducted in such manner as the court directs and upon such terms as to security for the costs of holding the meeting or otherwise as the court deems fit. R.S.O. 1990, c. B.16, s. 106 (1).

…

Standards of care, etc., of directors, etc.

134 (1) Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall,

(a) act honestly and in good faith with a view to the best interests of the corporation; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. R.S.O. 1990, c. B.16, s. 134 (1); 2006, c. 34, Sched. B, s. 24.

…

Information to be laid before annual meeting

154 (1) The directors shall place before each annual meeting of shareholders,

(a) in the case of a corporation that is not an offering corporation, financial statements for the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting;

(b) in the case of a corporation that is an offering corporation, the financial statements required to be filed under the *Securities Act* and the regulations thereunder relating separately to,

(i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and

(ii) the immediately preceding financial year, if any;

(c) the report of the auditor, if any, to the shareholders; and

(d) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement. R.S.O. 1990, c. B.16, s. 154 (1).

Auditor's report

(2) Except as provided in subsection 104 (1), the report of the auditor to the shareholders shall be open to inspection at the annual meeting by any shareholder. R.S.O. 1990, c. B.16, s. 154 (2).

Copy of documents to shareholders, offering corporations

(3) Not less than 21 days before each annual meeting of shareholders or before the signing of a resolution under clause 104 (1) (b) in lieu of the annual meeting, an offering corporation shall send a copy of the documents referred to in this section to all shareholders who have informed the corporation that they wish to receive a copy of those documents. 2006, c. 34, Sched. B, s. 30.

…

Orders for compliance

253 (1) Where a corporation or any shareholder, director, officer, employee, agent, auditor, trustee, receiver and manager, receiver, or liquidator of a corporation does not comply with this Act, the regulations, articles, by-laws, or a unanimous shareholder agreement, a complainant or a creditor of the corporation may, despite the imposition of any penalty in respect of such non-compliance and in addition to any other right the complainant or creditor has, apply to the court for an order directing the corporation or any person to comply with, or restraining the corporation or any person from acting in breach of, any provisions thereof, and upon such application the court may so order and make any further order it thinks fit. R.S.O. 1990, c. B.16, s. 253 (1).

…

258 (1) Every person who,

(a) fails without reasonable cause to comply with subsection 29 (5);

(b) without reasonable cause uses a list of holders of securities in contravention of subsection 52 (5) or subsection 146 (8);

(c) fails without reasonable cause to send a prescribed form of proxy to each shareholder of an offering corporation with notice of a meeting of shareholders in contravention of section 111;

(d) fails without reasonable cause to send an information circular in connection with a proxy solicitation in contravention of subsection 112 (1);

(e) being a proxyholder or alternate proxyholder, fails, without reasonable cause, to comply with the directions of the shareholder who appointed him or her in contravention of subsection 114 (1);

(f) without reasonable cause contravenes section 145;

(g) being a director of a corporation, fails, without reasonable cause, to appoint an auditor or auditors, as the case may be, under subsection 149 (1);

(h) being an auditor or former auditor of a corporation fails without reasonable cause to comply with subsection 151 (2);

(i) fails without reasonable cause to comply with subsection 154 (1); or

(j) otherwise without reasonable cause commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations,

is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both, or if such person is a body corporate, to a fine of not more than $25,000. R.S.O. 1990, c. B.16, s. 258 (1).

***Canada Business Corporations Act*, RSC 1985, c C-44**

Order to delay calling of annual meeting

(3) Despite subsection (1), the corporation may apply to the court for an order extending the time for calling an annual meeting.

…

Application for exemption

156 On the application of a corporation, the Director may exempt the corporation, on any terms that the Director thinks fit, from any requirement set out in section 155 or any of sections 157 to 160, if the Director reasonably believes that the detriment that may be caused to the corporation by the requirement outweighs its benefit to the shareholders or, in the case of a distributing corporation, to the public.

***Securities Act*, RSO 1990, c S.5**

Documents released by responsible issuer

138.3 (1) Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;

(b) each director of the responsible issuer at the time the document was released;

(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;

(d) each influential person, and each director and officer of an influential person, who knowingly influenced,

> (i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or
>
> (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and

(e) each expert where,

> (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
>
> (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
>
> (iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (1, 2).

IN THE MATTER OF AN APPLICATION BY DYE & DURHAM LIMITED FOR AN EXEMPTION FROM THE REQUIREMENTS OF SECTION 154 OF THE BUSINESS CORPORATIONS ACT, R.S.O. 1990 C.B16, AS AMENDED

Court File No: CV-25-00753608-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

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