

Court File Number: CV-19-00616512

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

BABAK PAYANI et al
Plaintiff(s)

AND

IRANIAN CANADIAN CONGRESS
Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
☐ Adjourned to: _____
☐ Time Table approved (as follows): _____

① Ordered to go on the
Terms of the attached
Hameez J
September 14, 2020

Date

Judge's Signature

☐ Additional Pages _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

JUSTICE

HAINES

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MONDAY, THE 14th

DAY OF SEPTEMBER, 2020

B E T W E E N:

(Court Seal)

BABAK PAYAMI, KAMNOOSH SHAHABI, MEHRDOKHT HADI and
SHAYAN MOIN

Applicants

and

IRANIAN CANADIAN CONGRESS

Respondent

APPLICATION UNDER section 332 of the *Corporations Act*, R.S.O. 1990, c. C.38

ORDER

THIS MOTION FOR DIRECTIONS by the parties was heard by the court this day via Zoom videoconference;

ON HEARING the submissions of the lawyers for the parties as well as the submissions of the court-appointed monitor Marvin J. Huberman ("Monitor"),

ANNUAL GENERAL MEETING AND ELECTION

1. **THIS COURT ORDERS** that the 2019 Annual General Meeting ("**2019 AGM**") of the Iranian Canadian Congress ("**ICC**") shall be held virtually and the 2019 election of the board of directors of the ICC ("**2019 Election**") shall be held by on-line voting as a result of the health and safety restrictions in place due to the COVID-19 pandemic.

2. **THIS COURT ORDERS** that the date for the virtual 2019 AGM and 2019 Election is hereby set for Sunday, December 13, 2020.
3. **THIS COURT ORDERS** that the 2019 AGM and 2019 Election shall be held through the use of Zoom videoconferencing software for all communications during the 2019 AGM between the ICC membership, Monitor, and Technical Expert (defined below), with the use of ElectionBuddy voting software to facilitate all required voting at the 2019 Election.
4. **THIS COURT ORDERS** that Marcel Mongeon of Mongeon Consulting Inc., be and is hereby appointed by the court as a technical expert ("**Technical Expert**") to manage and host the 2019 AGM and the 2019 Election virtually via the Zoom and Election Buddy platforms under the authority and direction of the Monitor. The Technical Expert shall also oversee the process of verifying eligible voters for the 2019 Election.
5. **THIS COURT ORDERS** that the following events shall take place leading up to the 2019 AGM and 2019 Election. The dates set out below may be changed on agreement of the Monitor and counsel, or by further court order:
 - (a) On or before September 21, 2020, ICC shall deliver to the Monitor a letter from the accountant confirming that the accountant has been retained by ICC to prepare the audited financial statements for ICC for the period from January 1, 2018, to December 31, 2019 and any related auditor's report;
 - (b) On or before September 30, 2020, subject to the Monitor's discretion, a summary report from the AGM Committee with respect to the verification of the Member Registry as it existed as of December 9th, 2018, for the purpose of, *inter alia*, verifying the membership list for the upcoming 2019 election (the "Summary Report") shall be published by the Monitor on the ICC website in both English and Persian;
 - (c) On or before October 15, 2020, ICC shall deliver to the Monitor all outstanding information and records requested by the AGM Committee;

- (d) By no later than November 6, 2020, ICC shall deliver to the Monitor the audited financial statements for the period beginning January 1, 2018, until December 31, 2019, and any related auditor's report as well as the President's Report, the Treasurer's Report and any subcommittee reports necessary for the AGM (collectively "**AGM Reports**"), prepared in English and Persian. The Treasurer's Report shall contain a report on the funds raised by the ICC at the Information Session (defined below) and it shall address any and all donations made to the ICC including donations by the board of directors; and
- (e) By no later than November 23, 2020, the Monitor shall cause to be published the aforesaid audited financial statements, any related auditors report, and the AGM Reports on the ICC website together with the AGM Notice and Agenda.

MONITOR'S POWER

- 6. **THIS COURT ORDERS** that the Monitor shall be the full and final authority over the entire process and all matters relating to the 2019 AGM and 2019 Election including, but not limited to, membership registration, renewals, verification, members' motions, the creation of the eligible voting list and the election for the nine (9) vacant positions on the board so as to ensure it is carried out in compliance with the governing legislation and good corporate governance practices having regard to the by-laws of the ICC.
- 7. **THIS COURT ORDERS** that the Monitor shall be the full and final authority over the determination of the eligibility of any member with respect to voting in the 2019 ICC Election as well as the determination of the eligibility of any candidate who intends to run in the 2019 Election.
- 8. **THIS COURT ORDERS** that the Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:
 - (a) Communicate with the membership of the ICC, by either email or by posting information on the ICC website and the ICC social media outlets for any purpose related to the 2019 AGM and 2019 Election, including, but not limited to:

- (i) notifying members that the 2019 AGM and the 2019 Election shall take place on-line and further notifying members that he shall preside over the 2019 AGM as Chair, with full and final authority to address all matters relating to the 2019 AGM;
 - (ii) issuing the AGM notice and Agenda, in both English and in Persian, which shall be sent a minimum 30 days prior to the 2019 AGM date; and
 - (iii) notifying members what the procedure and regulations for members' motions for the 2019 AGM shall be as well as notifying members what the procedure for proxy voting, if any, shall be at the 2019 Election.
9. **THIS COURT ORDERS** that, subject to the terms of this Order, the 2019 AGM and the 2019 Election shall comply with the ICC by-laws as long as there is no conflict with the *Ontario Corporations Act*.
10. **THIS COURT ORDERS** that, subject to and in accordance with the Minutes of Settlement, the directors of ICC namely Soudeh Ghasemi, Pouyan Tabasinejad, Babak Amin Tafreshi, Younes Zangiabadi, Saman Tabasinejad, Mohsen Khaniki, Sholeh Khalili and Amir Moazzemi (hereinafter collectively referred to as the "**Directors**") shall not engage in any activity in relation to the 2019 AGM and the 2019 Election, subject to the delivery of the President's Report, the Treasurer's Report and any other subcommittee report deemed necessary for the 2019 AGM and/or if requested by the Monitor.
11. **THIS COURT ORDERS** that the Monitor shall prepare his final report to this Court, within fourteen (14) days of the 2019 AGM and the 2019 Election being held, wherein he shall provide a complete account on the 2019 AGM and 2019 Election. The Monitor may opine on whether the 2019 AGM and 2019 Election were held in conformity with the governing legislation having regard to the by-laws of the ICC and practices of good corporate governance (the "**Final Report**").
12. **THIS COURT ORDERS** that the appointment of the Monitor shall expire upon the delivery of the Final Report to the satisfaction of this Court.

ICC INFORMATION SESSION FOR FUNDRAISING

13. **THIS COURT ORDERS** that on or before October 31, 2020, the ICC shall call and hold an information session (the “Information Session”) for the ICC membership for the sole purposes of outlining the organization’s fiscal position and obligations and to request assistance with its fundraising objectives in respect of the retainer of the Monitor and the Technical Expert. The Information Session shall be organized and administered exclusively by the ICC’s board of directors who shall act in accordance with the Minutes of Settlement. At the Information Session, there shall be no discussion regarding the subject lawsuit that is before the court. It shall be held through the use of Zoom videoconferencing software and shall accommodate the participation of all the ICC members. The ICC Information Session shall be recorded and the recording of the ICC Information Session shall be published forthwith on the ICC website following the completion of the Information Session. Any and all information and documents to be presented at the Information Session shall be circulated by email to the membership and posted on the ICC website at least fourteen (14) days prior to the Information Session.

DIRECTOR CANDIDATE ELIGIBILITY

14. **THIS COURT ORDERS** that the nominees for election to the ICC board of directors at the 2019 Election shall meet the following eligibility criteria:
- (a) They must have been regular members in good standing of ICC for at least one (1) month immediately proceeding the election, namely, by no later than November 13, 2020, at 5:00 pm EST;
 - (b) They must be twenty-one (21) years of age or older;
 - (c) They must be Canadian citizens;
 - (d) They must have lived in Canada for at least five (5) years in aggregate;
 - (e) They must have not been convicted of a criminal offence; and
 - (f) They must not be an undischarged bankrupt.

PAYMENT OF FEES AND DISBURSEMENTS

15. **THIS COURT ORDERS** that on or before November 13, 2020, the ICC shall pay the Monitor a further retainer of \$5000 + HST and it shall pay the Technical Expert \$3,500 + HST (collectively "**Retainer**") which Retainer will be held in trust by the Monitor and disbursed out.

LIMITATION ON THE MONITOR'S LIABILITY

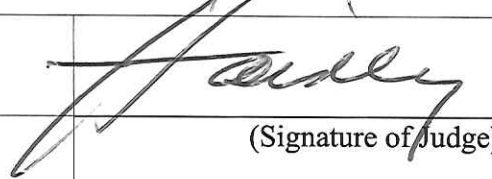
16. **THIS COURT ORDERS** that the Monitor and the Technical Expert shall incur no liability or obligation as a result of their appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on their part. Nothing in this Order shall derogate from the protections afforded to the Monitor and the Technical Expert by any applicable legislation.

FUTURE PROCEEDINGS

17. **THIS COURT ORDERS** that the appointment of the Monitor hereunder shall not in any manner hinder or prevent Mr. Huberman from acting in a future administrative capacity in respect of the ICC, including without limitation, as monitor.

GENERAL

18. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
19. **THIS COURT ORDERS** that the parties may, from time to time, apply to this Court for advice and directions in respect of carrying out the terms of this order or the Application more generally.

	
	(Signature of Judge)

BABAK PAYAMI et al.	-and-	IRANIAN CANADIAN CONGRESS
Applicants		Respondent
		Court File No. CV-19-00616512-00CL
		ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST PROCEEDING COMMENCED AT TORONTO
		ORDER
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RCP-E 4C (May 1, 2016)