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Citation: *Nova Tech Ltd (Re)*, 2024 ONCMT 28
Date: 2024-12-03
File No. 2023-20

**IN THE MATTER OF
NOVA TECH LTD and CYNTHIA PETION**

REASONS AND DECISION

(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators: M. Cecilia Williams (chair of the panel)
Sandra Blake
Jane Waechter

Hearing: October 2, 2024

Appearances: Brian Weingarten For the Ontario Securities Commission

No one appearing for Nova Tech Ltd or Cynthia Petion

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REASONS AND DECISION

1. OVERVIEW

- [1] In a decision on the merits dated July 19, 2024 (the **Merits Decision**),¹ the Capital Markets Tribunal found that Nova Tech Ltd breached the *Securities Act* (the **Act**)² through unregistered trading, illegal distribution of securities, and breaching the Tribunal's temporary cease trade order. The Tribunal also found that Cynthia Petion violated Ontario securities law by authorizing Nova Tech's violations of the *Act*.
- [2] The Ontario Securities Commission asks the Tribunal to impose a broad range of sanctions against Nova Tech and Petion pursuant to s. 127(1) of the *Act*, and for an order requiring them to pay the Commission's costs of the investigation and this proceeding. The respondents did not respond or otherwise participate.
- [3] For the reasons set out below, we conclude that it is in the public interest to order that Nova Tech and Petion be subject to permanent bans from participating in Ontario's capital markets, pay an administrative penalty of \$2.5 million, disgorge \$31,000 and pay costs of \$193,333.52.

2. BACKGROUND

- [4] Nova Tech told investors that it would earn three percent per week returns for them by trading in foreign exchange and crypto assets using pooled investor funds.³ It promoted these returns over YouTube, its website, and a Telegram channel with 30,000 subscribers.⁴
- [5] Ultimately, Nova Tech stopped allowing investors to make withdrawals and later stopped communicating with investors. Investors lost the money they continued to hold in accounts with Nova Tech.⁵

¹ *Nova Tech Ltd (Re)*, 2024 ONCMT 18 (**Merits Decision**)

² RSO 1990, c S.5

³ Merits Decision at para 5

⁴ Merits Decision at para 9

⁵ Merits Decision at paras 57-60

- [6] In the Merits Decision, the Tribunal found that Nova Tech violated Ontario securities law because:
- a. it did not file a prospectus with the Commission pertaining to the securities it was offering to investors;
 - b. it did not register with the Commission; and
 - c. it continued to accept new investments despite a Tribunal cease trade order prohibiting Nova Tech from doing so.

[7] Petion is the founder, sole director, and CEO of Nova Tech. She oversaw its operations and promoted its investments.⁶ The Tribunal found that Petion authorized Nova Tech's breaches of Ontario securities law and, therefore, personally violated Ontario securities law.

3. ANALYSIS

3.1 Introduction

[8] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it is in the public interest to do so. The Tribunal's exercise of that jurisdiction must be consistent with the purposes of the *Act*, which include protecting investors from unfair, improper, and fraudulent practices, and fostering fair and efficient capital markets and confidence in the capital markets.

[9] Sanctions are protective and are intended to prevent future harm to investors and to the capital markets.⁷

[10] In this case, the Commission seeks the following sanctions and costs against Nova Tech and Petion:

- a. permanent prohibitions on their participation in Ontario's capital markets;
- b. an administrative penalty of \$2,500,000, on a joint and several basis;
- c. disgorgement of \$31,000, on a joint and several basis; and
- d. costs of \$193,333,52, on a joint and several basis.

⁶ Merits Decision at para 52

⁷ *Bradon Technologies Ltd (Re)*, 2016 ONSEC 19 at para 27 citing *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37

[11] We agree that the requested sanctions and costs are appropriate for the reasons below.

3.2 Sanctioning factors

[12] The Tribunal has identified various sanctioning factors that may be relevant when assessing breaches of Ontario securities law.⁸ We will focus on the seriousness of Nova Tech and Petion's misconduct and on specific and general deterrence.

[13] We find that the circumstances of this case weigh heavily in favour of significant sanctions. Furthermore, we find that there are no mitigating factors to consider for Nova Tech's and Petion's misconduct. Rather, we find that the broad-based solicitation of investors, the failure to provide required information to investors, and the blatant breach of the temporary cease trade order all served as aggravating factors in determining sanctions.

3.2.2 Seriousness of the misconduct

[14] The Commission submits that Nova Tech's and Petion's misconduct was egregious. We agree. It was far from the behaviour that Ontario investors have a right to expect when dealing with legitimate market participants. They:

- a. accessed the Ontario capital markets virtually through a broad-based solicitation of investors through Nova Tech's website, a YouTube channel, an active Telegram channel, and a web-based investment platform;
- b. promoted a security to investors without disclosure of the risks involved, securing at least 8,500 Ontario investors;
- c. gave financial incentives to investors to bring other investors to Nova Tech;
- d. stopped communicating with investors when faced with an influx of investor withdrawal requests; and
- e. did not return either invested funds or promised returns to investors.

⁸ *Norshield Asset Management (Canada) Ltd (Re)*, 2010 ONSEC 16 at para 73; *Mughal Asset Management Corporation (Re)*, 2024 ONCMT 14 (**Mughal**) at para 33

- [15] All these activities were done outside Ontario's cornerstone framework of regulatory licensing and prospectus disclosure. This denied Ontario investors access to a prospectus that they were entitled to receive under Ontario securities law. A prospectus could have provided sufficient information to help them realistically assess their investments.
- [16] Nova Tech's investors also did not receive the protections that are available to investors who use investment professionals authorized by the Commission to act on behalf of investors. Those protections include proficiency, integrity, and financial solvency requirements, all of which could have shielded investors from financial loss.
- [17] We find that, by denying investors these critical protections of Ontario securities law, Nova Tech and Petion engaged in serious misconduct deserving significant sanctions.
- [18] Additionally, we find that Nova Tech and Petion were flagrant in their disregard for the Tribunal's temporary cease trade order. The Tribunal found that Nova Tech made an illusory change to its website to remove Canada from a list of jurisdictions where eligible investors could reside. The change was illusory because:
- a. Nova Tech told investors in a YouTube video how to circumvent jurisdictional restrictions that applied to them by simply choosing another jurisdiction listed on Nova Tech's website;⁹
 - b. a Commission investigator demonstrated that following those instructions allowed him to invest from Ontario while the Tribunal's cease trade order was in effect;¹⁰ and
 - c. Investor C also testified about learning this evasive strategy from a Nova Tech YouTube video.¹¹
- [19] The Commission also urged us to consider as an aggravating factor the fact that Nova Tech solicited investors by promising astonishing returns or extraordinary

⁹ Merits Decision at para 44

¹⁰ Merits Decision at para 43

¹¹ Merits Decision at para 44

wealth. We have not taken these facts into account in determining sanctions, since the Commission did not allege in the Statement of Allegations any statutory breach or raise any other addressable concern related to the purported returns.

- [20] Nova Tech's and Petion's flagrant disregard for a Tribunal order warrants significant sanctions.

3.2.3 Specific and general deterrence

- [21] Sanctions play a key role in specific deterrence, which involves discouraging future misconduct by the respondents to an enforcement proceeding – in this case, Nova Tech and Petion. Sanctions are also designed for general deterrence, that is to dissuade other like-minded individuals or companies from carrying out similar activities. Both specific and general deterrence are designed to protect Ontario investors from future misconduct.

- [22] We find that, given their serious wrongdoing, Nova Tech and Petion should be subject to substantial sanctions to promote specific deterrence. Those sanctions should also speak to others who consider preying on Ontario investors and, as a result, promotes general deterrence as well.

3.3 Monetary Penalties

3.3.1 Disgorgement

- [23] The Commission requests that the respondents be ordered to disgorge \$31,000 on a joint and several basis. Such an order is authorized by paragraph 10 of s. 127(1) of the *Act*, which refers to disgorgement of "any amounts obtained" because of non-compliance with Ontario securities law. A disgorgement order also may be made joint and several between a corporation and the directing minds of that corporation when the corporation receives funds through a contravention of the *Act*.¹²

- [24] Although there was not an explicit finding in the Merits Decision that Petion was a directing mind of Nova Tech, that does not preclude such a finding now.¹³ The

¹² *Quadrex Hedge Capital Management Ltd (Re)*, 2018 ONSEC 3 at para 46

¹³ *MOAG Copper Gold Resources Inc (Re)*, 2020 ONSEC 29 (**MOAG**) at para 57

Merits Decision found that as the founder, sole director and CEO of Nova Tech, Petion was credited with “creating, planning, implementing and integrating the strategic direction” of Nova Tech and for overseeing the operations of the company.¹⁴ Therefore, we find that Petion was the directing mind of Nova Tech and should be joint and severally liable for the disgorgement order.

- [25] The Tribunal has developed a non-exhaustive list of factors to determine both whether disgorgement is appropriate and what amount should be disgorged:
- a. whether an amount was obtained by a respondent because of non-compliance with Ontario securities law;
 - b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to investors or otherwise;
 - c. whether the amount obtained because of the non-compliance is reasonably ascertainable;
 - d. whether those who suffered losses are likely to obtain redress; and
 - e. the deterrent effect of a disgorgement order on the respondents and other market participants.¹⁵
- [26] The Commission bears the onus of proving on a balance of probabilities the amounts obtained by a respondent because of their non-compliance with Ontario securities law. Once a disgorgement figure has been established, the onus shifts to the respondent to disprove the reasonableness of that number. Any risk of uncertainty in calculating disgorgement falls on the respondent whose breach of the *Act* is the basis of that uncertainty.¹⁶
- [27] The Commission was unable to present a comprehensive disgorgement amount pertaining to all Ontario Nova Tech investors. Nova Tech and Petion caused the Commission’s inability to demonstrate a comprehensive disgorgement amount by not participating in the investigation or proceeding.

¹⁴ Merits Decision at para 52

¹⁵ *First Globa Data Ltd (Re)*, 2023 ONCMT 25 at para 86, citing *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18 at para 56; *Limelight Entertainment Inc (Re)*, 2008 ONSEC 28 at para 52

¹⁶ *Polo Digital* at para 118

[28] The Commission's requested disgorgement order relates to the \$31,000 invested by the three Ontario residents who testified in this proceeding. Those proven investments were obtained by Nova Tech because of the respondents' non-compliance with Ontario securities law. During the sanctions hearing, we asked about the \$2,250 that Investor B was able to withdraw from their Nova Tech account after Nova Tech started restricting withdrawals. The Commission argued that we should apply the principle in *Mughal* where the Tribunal found that in the context of a Ponzi scheme, it may not be appropriate to reduce a disgorgement order by amounts returned to investors.¹⁷ The Tribunal's rationale in *Mughal* was that "[t]he payments to investors in a Ponzi scheme are not intended to make investors whole or to repair harm done by the fraud; rather, they are a necessary element of the Ponzi scheme to allow it to continue."¹⁸ While we agree with that approach for a proven Ponzi scheme, Nova Tech and Petion were not alleged to operate a Ponzi scheme. As such, the rationale that applied in *Mughal* does not apply to these facts.

[29] While it was not alleged that Nova Tech and Petion operated a Ponzi scheme, we read the *Act* broadly and purposively and find that \$31,000 represents amounts obtained by the respondents because of their non-compliance. Considering all the factors in making an order for disgorgement, and in particular the seriousness of the misconduct, the fact that one investor received a small return on investment does not weigh in favour of reducing the disgorgement order sought in these circumstances. We find that it is more likely than not that the respondents obtained significantly more than the requested disgorgement amount, given that there were at least 8,500 Nova Tech investors in Ontario and that Nova Tech was entitled to a \$25 monthly fee from each investor's account.

[30] For those reasons, we exercise our discretion to order \$31,000 in disgorgement against the respondents, jointly and severally. In doing so, we rely on our earlier conclusion about the seriousness of the respondents' misconduct, together with specific and general deterrence.

¹⁷ *Mughal* at para 91

¹⁸ *Mughal* at para 87

3.3.2 Administrative penalties

3.3.2.a Introduction

- [31] The Commission seeks an administrative penalty of \$2.5 million, to be paid jointly and severally by Nova Tech and Petion.
- [32] Paragraph 9 of s. 127(1) of the *Act* provides that if a person or company has not complied with Ontario securities law, the Tribunal may require the person or company to pay an administrative penalty of not more than \$1,000,000 for each failure to comply.
- [33] The requested administrative penalty is broken down by the Commission as follows:
- a. \$1,000,000 for the breach of s. 25(1);
 - b. \$1,000,000 for the breach of s. 53(1); and
 - c. \$500,000 for the breach of the cease trade order.

3.3.2.b Breach of ss. 25(1) and 53(1) of the Act

- [34] The Commission asks for a total administrative penalty of \$2 million for Nova Tech's breaches of s. 25(1) and s. 53(1), together with joint and several liability for Petion because she authorized Nova Tech's breaches. The Commission submits that this was not merely a technical breach of s. 25(1) and s. 53(1), but serious misconduct circumventing the gatekeeper provisions of the *Act*. We agree.
- [35] The Commission has drawn our attention to recent decisions involving unregistered trading and illegal distributions through online trading platforms. In *Mek Global Limited (Re)*,¹⁹ the respondents, like Nova Tech, engaged in unregistered trading and illegal distributions of securities through a crypto asset trading platform. The *Mek Global* respondents and Nova Tech both operated global platforms and their misconduct was recurring. The Tribunal imposed a \$2 million administrative penalty.

¹⁹ 2022 ONCMT 15 (*Mek Global*) at para 125

- [36] In *Mek Global*, the Tribunal held that when determining the appropriate administrative penalty, it was appropriate to consider the fact that disgorgement was not possible since the respondents did not cooperate with the Commission and because of their offshore character. This prevented the collection of information about the fees or other amounts received through the respondents' operations in Ontario.²⁰
- [37] *Polo Digital Assets, Ltd (Re)*²¹ involved unregistered trading and an illegal distribution of securities through the operation of an online crypto asset trading program.²² It had approximately 9,300 Ontario accounts,²³ which is similar in scope to Nova Tech's Ontario presence of approximately 8,500 accounts. The Tribunal imposed a \$1.5 million administrative penalty.
- [38] In *Polo Digital*, the Tribunal explained that "there is a need for regulatory sanctions to create economic incentives to foster compliance or alternatively, remove economic incentives for non-compliance."²⁴ In other words, sanctions were necessary to create an economic disincentive for future misconduct by Polo Digital. In *Polo Digital*, an ascertainable amount was proven in support of a disgorgement order for more than \$1.8 million.²⁵ Even with this sizeable disgorgement amount, the Tribunal ordered an administrative penalty of \$1.5 million.²⁶
- [39] Unlike this case, neither *Mek Global* nor *Polo Digital* involved a breach of a Tribunal temporary cease trade order.
- [40] The economic incentives seen in *Mek Global* and *Polo Digital* are equally applicable in this case. The Commission submits, and we agree, that because a comprehensive disgorgement order is unavailable, we should promote specific and general deterrence by ordering an administrative penalty against Nova Tech of \$1 million for unregistered trading plus \$1 million for illegal distribution of

²⁰ *Mek Global* at para 122

²¹ 2022 ONCMT 32 (***Polo Digital***) at para 134

²² *Polo Digital* at para 10

²³ *Polo Digital* at para 15

²⁴ *Polo Digital* at para 132

²⁵ *Polo Digital* at para 131

²⁶ *Polo Digital* at para 134

securities to Ontario investors. The same economic incentives apply to Petion, who we order is jointly and severally liable with Nova Tech to pay administrative penalties. This aspect of the sanctions will prevent the respondents from reaping a windfall from their illegal conduct in Ontario.

3.3.2.c Breach of the cease trade order

[41] The Commission is seeking a joint and several administrative penalty of \$500,000 for Nova Tech's breach of the cease trade order and Petion authorizing this breach.

[42] The Commission referred us to *MOAG Gold Resources Inc (Re)*, a case where the only allegation was that the respondents breached a cease trade order. In *Moag*, the individual respondents were ordered to pay administrative monetary penalties of \$200,000 and \$400,000 for misconduct involving trading in debentures while a Tribunal cease trade order was in effect. The Tribunal found that the conduct was serious and recurring and affected many investors.²⁷

[43] The Commission asks us to find that the misconduct in this case was more egregious than that in *MOAG* because of Nova Tech's illusory compliance efforts. As stated above, we find flagrant misconduct in Nova Tech's breach of the Tribunal's temporary cease trade order and Petion's authorization of that breach. Their efforts to circumvent the Tribunal's order should attract a substantial penalty, and we find that an administrative penalty of \$500,000, joint and several as against Nova Tech and Petion, is appropriate in the circumstances.

3.4 Market participation and director and officer prohibitions

3.4.1 Permanent market participation prohibition upon Nova Tech and Petion

[44] The Commission asks that we impose permanent restrictions on the respondents' participation in Ontario's capital markets. Specifically, the Commission asks for an order that:

- a. trading in any securities by the respondents cease permanently;
- b. the acquisition of any securities by the respondents cease permanently;

²⁷ *MOAG* at para 86

- c. any exemptions in Ontario securities laws do not apply to the respondents permanently; and
- d. the respondents be prohibited permanently from becoming or acting as a registrant or a promoter.

[45] The Commission submits, and we agree, that participation in the capital markets is a privilege and not a right.

[46] The Commission relies on *Mek Global* and *Polo Digital*, where the Tribunal imposed permanent market participation bans on the corporate respondents. In those cases, no individuals were named as respondents.

[47] We agree that the proposed permanent bans from participating in Ontario's capital markets are necessary. *Mek Global* and *Polo Digital* involved similar violations of registration and prospectus requirements. Permanent bans are needed to reflect the serious nature of the respondents' violations of cornerstone provisions of Ontario securities law and to guard against potential harm that the respondents may cause to Ontario investors in future.

[48] The respondents have misused Ontario's capital markets and should not be permitted to do so again. Anything less than a permanent ban would result in a loss of confidence in the integrity of Ontario's capital markets and expose investors to the elevated risks that Nova Tech, Petion, and like-minded persons pose.

3.4.2 Permanent director and officer prohibitions upon Petion

[49] With respect to Petion, the Commissions asks for an order that:

- a. Petion resigns any positions as a director and/or officer of any issuer or registrant; and
- b. Petion be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant.

[50] We agree that these sanctions are appropriate for Petion. She was the sole director, chief executive officer and public face of Nova Tech, was responsible for the serious and repeated breaches of the *Act*, and bears responsibility for the

illusory jurisdictional restrictions used in the face of the Tribunal's temporary cease trade order.

- [51] We find that Petion cannot be trusted to engage in corporate governance appropriately or lawfully. It is important that Ontario investors are permanently protected against any future venture involving Petion.

3.5 Costs

- [52] Section 127.1 of the *Act* authorizes the Tribunal to order a respondent to pay the costs of an investigation or a hearing if the Tribunal is satisfied that the person or company has not complied with Ontario securities law or has not acted in the public interest. Costs are not a sanction, but rather a tool for recovery of costs incurred in an investigation and enforcement proceeding.

- [53] The Commission seeks costs of \$193,333.52 against the respondents jointly and severally. This amount is comprised of \$189,647.50 for fees and \$3,686.02 for disbursements.

- [54] We have reviewed the Commission's bill of costs and have considered the reductions that the Commission has made to its bill of costs. The investigation involved multi-jurisdictional cooperation by regulators, and a significant volume of social media material and YouTube videos to review. The Commission received no cooperation from Nova Tech and Petion, who are not entitled to further reductions in the Commission's costs. We find that the costs requested were fairly and reasonably incurred to investigate Nova Tech and Petion, and to prove the Commission's allegations against them. We order that the respondents jointly and severally pay the Commission \$193,333.52 in costs.

4. CONCLUSION

- [55] For the above reasons, we order that:

- a. with respect to the respondents, Nova Tech and Petion:
 - i. pursuant to paragraph 2 of s. 127(1) of the *Act*, trading in any securities by the respondents shall cease permanently;
 - ii. pursuant to paragraph 2.1 of s. 127(1) of the *Act*, the acquisition of any securities by the respondents is prohibited permanently;

- iii. pursuant to paragraph 3 of s. 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply permanently to the respondents;
 - iv. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, the respondents are permanently prohibited from becoming or acting as a registrant or a promoter;
 - v. pursuant to paragraph 9 of s. 127(1) of the *Act*, the respondents shall jointly and severally pay to the Commission an administrative penalty of \$2,500,000;
 - vi. pursuant to paragraph 10 of s. 127(1) of the *Act*, the respondents shall jointly and severally disgorge to the Commission \$31,000; and
 - vii. pursuant to s. 127.1 of the *Act*, the respondents shall jointly and severally pay \$193,333.52 to the Commission for the costs of the investigation and hearing.
- b. with respect to Petion:
- i. pursuant paragraph 7 of s. 127(1) of the *Act*, Petion shall resign any position that she holds as a director or officer of any issuer;
 - ii. pursuant to paragraph 8 of s. 127(1) the *Act*, Petion is permanently prohibited from becoming or acting as a director or officer of any issuer;
 - iii. pursuant to paragraph 8.1 of s. 127(1) of the *Act*, Petion shall resign any position that she holds as a director or officer of any registrant; and
 - iv. pursuant to paragraph 8.2 of s. 127(1) of the *Act*, Petion shall be prohibited permanently from becoming or acting as a director or officer of any registrant.

Dated at Toronto this 3rd day of December, 2024

"M. Cecilia Williams"

M. Cecilia Williams

"Sandra Blake"

Sandra Blake

"Jane Waechter"

Jane Waechter