

**IN THE MATTER OF**  
**CANADA CANNABIS CORPORATION, CANADIAN CANNABIS CORPORATION,**  
**BENJAMIN WARD, SILVIO SERRANO, and PETER STRANG**

File No. 2019-34

**MOTION**  
**OF SILVIO SERRANO**

(For disclosure of a Confidential Order of the Commission and related information)

Under Rules 15, 17, 27, 28, and 34 of the *Rules of Procedure and Forms*, (2019) 42 OSCB 9714,  
and s. 144 of the *Securities Act*, R.S.O. 1990, c. S. 5

**A. ORDER SOUGHT**

The Moving Party, Mr. Silvio Serrano, requests with notice that the Ontario Securities Commission make the following orders:

1. An order requiring the Office of the Secretary to provide the Respondents with the Order of the Commission (the “**Confidential Order**”) redacting the transcripts of the compelled interview of Benjamin Ward (the “**Transcripts**”), as well as any written decision or reasons of the Commission in support of the Confidential Order;
2. In the alternative to 1., an order requiring Staff to provide the Respondents with the Confidential Order and any written decision or reasons of the Commission in support of the Confidential Order;
3. An order requiring Staff to disclose to the Respondents any materials filed by Staff or any other parties on any motion or application to redact the Transcripts;
4. An order requiring Staff to disclose to the Respondents the date the Confidential Order was made;
5. An order requiring Staff to disclose to the Respondents the legal bases authorizing Staff and/or the Commission to redact portions of the Transcripts;
6. An order requiring Staff to disclose to the Respondents the statutory basis on which Staff sought the Confidential Order without notice to the Respondents;
7. An order requiring Staff to disclose to the Respondents the statutory bases on which the Confidential Order was made;
8. An order requiring Staff to disclose to the Respondents all information contained in or related to the Confidential Order that is not directly proscribed by its terms;

9. To the extent that the relief sought at 1-7 above is precluded by the terms of the Confidential Order, an order under s. 144 of the *Securities Act* revoking or varying the Confidential Order to allow for that relief; and
10. Such further and other orders as counsel may advise and the Commission deems just.

## **B. GROUNDS**

The grounds for the motion are:

### **Background – The Statement of Allegations**

1. On September 13, 2019, Staff of the Ontario Securities Commission (“**Staff**”) filed a Statement of Allegations under s. 127 and s. 127.1 of the *Securities Act* (the “**Statement of Allegations**”) naming as respondents Canada Cannabis Corporation, Canadian Cannabis Corporation, Benjamin Ward, Peter Strang and Silvio Serrano (together, the “**Respondents**”).
2. In the Statement of Allegations, Staff seeks a finding that the Respondents have, *inter alia*, engaged in conduct that they knew or reasonably ought to have known perpetrated a fraud on persons or companies (the “**Proceeding**”).
3. Staff alleges that Mr. Serrano, Mr. Strang and Mr. Ward acted improperly in their capacities as directors or *de facto* directors of the Respondent companies. Mr. Ward was the Chief Executive Officer of Canadian Cannabis Corporation for most of the period of time at issue in the Statement of Allegations.

### **Staff’s Disclosure**

4. Staff is subject to stringent disclosure obligations in a proceeding under s. 127 of the Act. These disclosure requirements are the function of Rule 27 of the Commission’s *Rules of*

*Procedure and Forms*, (2019) 42 OSCB 9714 (the “**Rules**”), the common law, and the principles of procedural fairness and natural justice.

5. Staff made its first tranche of disclosure of materials to the Respondents on October 18, 2019. This included disclosure of the interviews conducted by Staff of Mr. Serrano, Mr. Strang, and other parties related to the allegations at issue. However, the Respondents were not provided with the transcript of Staff’s interview of Mr. Ward (the “**Transcripts**”).

6. After reviewing the material disclosed from Staff, on November 9, 2019 counsel for Mr. Serrano requested that Staff provide the Transcripts or the reason for Staff’s failure to disclose the Transcripts. Staff failed to provide either.

7. Counsel for Mr. Serrano requested the Transcripts from Staff on several further occasions. Staff refused, and refused to articulate a basis for failing to comply with their disclosure obligations.

8. At the Second Attendance before the Commission on March 6, 2020, counsel for Mr. Serrano and counsel for Mr. Strang requested that Staff immediately disclose the Transcripts to the Respondents. Staff refused, and again refused to articulate a reason for their refusal. Staff instead sought an adjournment, without disclosing the existence of Confidential Order or the fact that Staff intended to seek the Confidential Order.

9. Staff failed to deal fairly with counsel for the Respondents, or the Commission, in seeking this adjournment without disclosing that the reason for the adjournment, presumably, was to delay while they obtained the Confidential Order.

10. The Commission granted the adjournment, unaware that its true purpose was to allow Staff time to seek and obtain the Confidential Order.

### **The Transcripts**

11. The Transcripts were disclosed to the Respondents on April 7, 2020. They detail the compelled interview of Mr. Ward, conducted by Staff over the course of three days.

12. However, in the version of the Transcripts disclosed by Staff (the “**Redacted Transcripts**”), several significant sections were redacted (the “**Redactions**”).

13. The Redactions were labelled “By Confidential Order of the Commission” (the “**Confidential Order**”). No further information was provided to the Respondents relating to the Redactions or the Confidential Order.

14. Based on the context surrounding the Redactions in the Transcripts, the Redactions appear to relate, at least in part, to Mr. Serrano and the allegations against Mr. Serrano in the Proceeding.

15. The Respondents have received no notice of any hearing or motion in the Proceeding. They have not been provided with the Confidential Order, written reasons related to the Confidential Order, or any materials filed on any motion or application for the Redactions. The only information that the Respondents have been provided is the labelling of the Redactions.

16. Staff have refused to articulate any basis for withholding disclosure of the unredacted Transcripts. They have not provided that it is irrelevant, or asserted any privilege.

17. Any information contained in the Transcripts that relates to Mr. Serrano, or to Mr. Ward's credibility, is likely highly relevant to Mr. Serrano's ability to make full answer and defence.

### **Staff Have Refused to Answer any Further Questions**

18. After receiving the Redacted Transcripts counsel for Mr. Serrano immediately requested that Staff provide the Respondents with a copy of the Confidential Order and the legal basis on which the Redactions were made.

19. Staff refused to do so. They have refused to provide the Respondents with *any* information about the Confidential Order, and have specifically refused to provide: (i) the date of the Confidential Order; (ii) the Commissioner who made the Confidential Order; (iii) whether the Confidential Order was granted on a motion or application; (iv) the proceeding in which any motion or application was brought (whether it was in the Proceeding or in a separate application); (v) the specific rule or statutory power under which Staff's motion/application was brought; or (vi) the specific rule or statutory power authorizing Staff to proceed with the motion/application *ex parte*.

20. Instead, Staff have insisted that they cannot provide *any* information about the Confidential Order or the Redactions "absent a further order of the Commission". The Respondents have been left to guess whether this is because of the terms of the Confidential Order, an internal decision from Staff, or some other legal obligation.

### **The Respondents are *prima facie* entitled to disclosure**

21. Pursuant to disclosure obligations set out in the *Rules* and the jurisprudence, Staff must disclose all relevant information in their possession, except where that information is privileged.

22. Where Staff refuses to disclose all or part of any relevant document, the principles of natural justice require that Staff identify to the Respondents the legal basis on which they have refused to make disclosure. This is done, *inter alia*, so that this exercise of Staff's discretion can be subject to review and challenge.

23. The Respondents are entitled to know the legal basis for the Redactions.

### **The Respondents Are Entitled to the Order and any Reasons**

24. The Confidential Order affects the Respondents' substantive legal rights and their ability to make full answer and defence in a proceeding before the Commission. It was, presumably, made in the Proceeding. In the process of issuing the Confidential Order, the Respondents were denied notice of the hearing, and any right to participate in the hearing.

25. The Respondents are now effectively prevented from exercising any right to review or challenge the Confidential Order. Such a review or challenge is impossible without more information, and without any reasons of the Commission. This fundamentally undermines their ability to make full answer and defence, and does not accord with the high standard of procedural fairness owed to parties before the Commission.

26. Parties to a proceeding at the Commission are entitled to review any orders, written reasons or written decisions of the Commission under Rule 34 of the *Rules*. This is also a basic requirement of procedural fairness and natural justice.

27. Parties to a proceeding at the Commission are also entitled to notice of any hearing. With a few exceptions, parties to a proceeding at the Commission are also entitled to notice of any motion brought by any party to the proceeding.

28. To the extent that the disclosure of the Confidential Order and any related written reasons and materials filed by Staff is not expressly forbidden, this information must be immediately provided to the Respondents. This may involve disclosure of the Confidential Order, written reasons and Staff materials in redacted form.

#### **The Commission's Jurisdiction to Make the Confidential Order Must be Made Clear**

29. There does not appear to be provision in the *Rules* for an order of the Commission to be kept secret from a party to a proceeding before the Commission. Staff also *appear* to have failed to comply with the notice, motion procedure, and disclosure requirements prescribed by the *Rules* and the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22 ("*SPPA*").

30. Likewise, it is unclear that there exists a jurisdictional basis on which Staff proceeded *ex parte* in these circumstances, or for the Commission to make a permanent order at an *ex parte* hearing. It may be that Staff proceeded *ex parte* inappropriately, or that the Commission did not have the power to make such an order – the Respondents cannot currently evaluate or challenge those points.

31. In order to adequately participate in this proceeding, the Respondents must be provided with the statutory jurisdiction identified by Staff and accepted by the Commission to ground the Confidential Order. Without providing the Respondents with this information, the Order is effectively insulated from *any* further jurisdictional or judicial scrutiny.

32. The *Rules* inform the parties' legitimate expectations. The principles of natural justice and procedural fairness require that the Commission provide *some* form of reasons for any decision departing from the Rules – especially where that departure abrogates the Respondents' rights to make full answer and defence.

### **The Commission Should Craft an Appropriate Remedy**

33. The Respondents, as parties whose interests are directly affected, are entitled to participate in the Proceeding and on any motion to redact disclosure materials to the greatest extent possible, in such a way so as to not compromise any privilege that is being asserted by Staff.

34. The Commission should exercise its broad jurisdiction to control its process and craft an Order that appropriately balances the Respondents' rights to make full answer and defence with Staff's (as yet unarticulated) interest.

### **Remedy under s. 144 of the Act**

35. To the extent that its terms prevent any information sought on this motion from being disclosed to the Respondents, the Confidential Order should be varied or revoked.

36. In those circumstances, the Confidential Order should be varied or revoked to better accord with the principles of natural justice and procedural fairness, the *Rules*, and Staff's disclosure obligations. It is overbroad.

37. Any privilege or interest protected by the Confidential Order should be protected in as minimally intrusive a fashion as possible. The Confidential Order should be varied so that the Respondents are provided with all information that does not absolutely compromise the privilege or other interest asserted by Staff (and presumably accepted by the Commission) to ground the Confidential Order.

### **Application and Motion to be Heard Together**

38. If the Commission determines that it is necessary for relief under s. 144 of the Act to be sought on a separate application, Mr. Serrano requests that this Motion be heard together on June 10, 2020 along with Mr. Serrano's related application filed on April 29, 2020 together with this Motion. This is necessary in the interests of ensuring a just, expeditious and cost-effective proceeding, in accordance with Rule 1 of the *Rules*.

39. Mr. Serrano relies on sections 6 and 25 of the *SPPA*, and Rules 1, 3, 15, 17, 22, 28 and 34 of the *Rules*.

### **C. EVIDENCE**

The Moving Party intends to rely on the following evidence for the motion:

1. The Affidavit of Erin Tucker, sworn April 29, 2020, and the exhibits thereto; and
2. Such further and other evidence as the lawyers may advise and the Commission may permit.

DATED this 29<sup>th</sup> day of April, 2020.

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