

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

File Nos. 2019-34/2020-13

MOTION
OF SILVIO SERRANO

Rules 1-3, 28 of the *Rules of Procedure and Forms* (2019), 42 OSCB 9714 and ss. 4.3, 25.0.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

A. ORDER SOUGHT

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

1. an Order declaring that Commissioner Kindiak’s term of office is extended until a decision is rendered on the Motion/Application (as defined below) by application of s. 4.3 of the *Statutory Powers Procedure Act* (“*SPPA*”).
2. an Order that Commissioner Kindiak remains the Panel for the determination of the remainder of the Motion/Application;
3. an Order declaring that the New Panel is without jurisdiction to hear the Motion/Application or that it is otherwise inappropriate for the New Panel to hear the Motion/Application unless the matter is reheard *de novo*; and
4. Such further and other orders as counsel may advise and the Commission deems just.

B. GROUNDS

The grounds for the motion are:

The Proceeding

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 (the “**Proceeding**”).

2. In its disclosure materials, Staff failed to disclose the transcripts of Staff’s interview of Mr. Ward (the “**Transcripts**”).

3. The Transcripts were eventually disclosed to the Respondents, in redacted form, on April 7, 2020 (the “**Redacted Transcripts**”). The Redactions are labelled “By Confidential Order of the Commission” – an apparent reference to an *ex parte* order made in this proceeding, about which the Respondents were kept unaware (the “**Secret Order**”). No further information was provided to the Respondents relating to the Redactions or the Secret Order, including the process that Staff undertook to obtain the Secret Order (the “**Secret Process**”).

4. On April 29, 2020, Mr. Serrano brought a motion and application concerning the Transcripts (the “**Motion/Application**”). The Motion/Application seeks, *inter alia*, orders requiring Staff and the Office of the Secretary to provide the Respondents with comprehensive information relating to both the Secret Order and the Secret Process.

5. The matter was set down for hearing on April 22, 2020. On May 5, 2020, the parties were advised that the same Panel would hear both the Motion and the Application.

6. On June 10, July 24 and August 26, 2020, the parties appeared before Commissioner Kindiak to begin the hearing of the Motion/Application (the “**Hearing**”). The parties made submissions on the procedure and substance of the Motion/Application.

7. Commissioner Kindiak released an Order on August 5, 2020, (the “**August 5 Order**”).

Inter alia, the August 5 Order ordered:

2. The hearing of the Motion and the Application will consist of four phases: (i) First Non-Confidential Phase; (ii) Appointment of the Amicus Curiae (the **Amicus**); (iii) Confidential Phase; and (iv) Second Non-Confidential Phase;

8. The August 5 Order excluded all of the Respondents from the Confidential Phase.
9. On August 28, 2020, Commissioner Kindiak ordered that the Hearing would proceed into the Confidential Phase. The Respondents have since been excluded from the hearing and have received no substantive updates on the motion.

The Change to the Panel

10. On May 4, 2021, the Respondents received their first consequential update on the Confidential Phase in nine months. They were advised by the Registrar that Commissioner Kindiak's term had concluded, and a new Panel had been assigned (the "**New Panel**").
11. On May 18, 2021, the Respondents received reasons for the August 5 Order (the "**August 5 Reasons**").
12. The change in the composition of the Panel in the middle of the Motion/Application is inappropriate. The new Panel is without jurisdiction to continue to hear the Motion/Application, and Commissioner Kindiak must continue to hear the Motion/Application.

Commissioner Kindiak's Term is Automatically Extended by the *SPPA*

13. The *SPPA* governs proceedings before the Commission. It prescribes a process for the continuation of a hearing after the expiry of the term of a Commissioner.
14. Section 4.3 of the *SPPA* provides:
 - 4.3 If the term of office of a member of a tribunal who has participated in a hearing expires before a decision is given, the term shall be deemed to continue, but only for the purpose of participating in the decision and for no other purpose.

15. Commissioner Kindiak has “participated” in the Motion/Application, which is part of a single “hearing” within the meaning of the *SPPA*. Accordingly, his term of office is automatically extended until the Motion/Application has concluded.

Procedural Fairness Requires that Commissioner Kindiak Hear the Motion/Application

16. Together with s. 4.3 of the *SPPA*, the principles of procedural fairness require that Commissioner Kindiak remain seized to hear the remainder of the Motion/Application, or that the Motion/Application be reheard *de novo*.

17. The parties have made extensive submissions before Commissioner Kindiak on the process and the merits of the Motion/Application. He has heard and reviewed the documentary evidence, and asked questions of the parties, where he deemed necessary.

18. In these circumstances, the replacement of Commissioner Kindiak with the New Panel represents a breach of the *audi alteram partem* principle. The New Panel is accordingly without jurisdiction to hear the Motion/Application.

19. Rules 1-3, 15, 17, 28 and 34 of the Rules and sections 4.3, 25.0.1 of the *SPPA*.

C. EVIDENCE

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

1. The Affidavit of Khalisa McCooty dated June 7, 2021, and the exhibits thereto; and
2. Such further and other evidence as the lawyers may advise and the Commission may permit.

DATED this 7th day of June, 2021.

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