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Citation: *Canada Cannabis Corporation (Re)*, 2022 ONCMT 34

Date: 2022-11-04

File No. 2019-34

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

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT**

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

**Adjudicators:** M. Cecilia Williams (chair of the Panel)  
Geoffrey D. Creighton  
Dale R. Ponder

**Hearing:** By videoconference, November 4, 2022

**Appearances:** Johanna Braden For Staff of the Ontario Securities  
Commission  
William Harvey Jones For Canada Cannabis Corporation and  
Canadian Cannabis Corporation  
Melissa MacKewn For Benjamin Ward  
Michael Byers

## ORAL REASONS FOR APPROVAL OF A SETTLEMENT

*The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.*

- [1] Staff of the Ontario Securities Commission allege that Canada Cannabis Corporation, Canadian Cannabis Corporation, Benjamin Ward, Silvio Serrano and Peter Strang contravened the *Securities Act*<sup>1</sup> (the **Act**). Staff and Canada Cannabis Corporation, Canadian Cannabis Corporation and Mr. Ward seek approval of this settlement agreement into which they have entered to resolve all the allegations against them. No settlement agreement has been entered by Mr. Serrano or Mr. Strang. For clarity, in these reasons we refer to Canada Cannabis Corporation, Canadian Cannabis Corporation and Mr. Ward as the Settling Respondents, and for brevity we refer to Canada Cannabis Corporation and Canadian Cannabis Corporation, collectively, as CCC.
- [2] The Statement of Allegations alleges that the respondents' actions were fraudulent and contravened s. 126(1)(b) of the *Act*. However, none of the Settling Respondents are admitting to this allegation. Instead, the settlement before us contains the following admissions:
- a. The corporations made statements in offering memoranda required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in light of the circumstances under which the statements were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to the prohibition contained in subsection 122(1)(b) of the *Act*, thereby resulting in a breach of Ontario securities law;
  - b. Mr. Ward acquiesced in the corporations' breach, and is liable under subsection 129.2 of the *Act*; and

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<sup>1</sup> RSO 1990, c S.5

- c. the conduct described above is contrary to the public interest.
- [3] We conclude that it would be in the public interest to approve the settlement agreement with the Settling Respondents, for the following reasons.
- [4] The factual background is set out in more detail in the settlement agreement, but we summarize the most important agreed facts here.
- [5] This proceeding involves misconduct in the burgeoning cannabis sector. In January 2014, the respondents formed a cannabis cultivation and distribution company, CCC. Mr. Ward was Chief Executive Officer and a director of CCC. Mr. Strang and Mr. Serrano were Vice Presidents and either directors or *de facto* directors of CCC.
- [6] CCC raised approximately \$3.2 million and USD 8.8 million from approximately 125 investors, approximately 60 of whom were located in Ontario, by selling shares and debentures of CCC in private placements. To raise funds, CCC provided prospective investors with an investor brief dated January 16, 2014, an offering memorandum dated May 16, 2014, and an investor slide deck dated January 2015. These documents constituted offering memoranda under Ontario securities law.
- [7] Between early February 2014 and March 28, 2014, approximately \$4 million of investor funds were transferred from CCC to a company called Growlite Canada, a corporation solely owned by Mr. Serrano. The transfers were pursuant to an oral agreement among the respondents, which was reduced to writing on March 31, 2014. The transfers were by way of a \$1 million investment to purchase a 45% interest in Growlite, and \$3 million to fund a loan to Growlite (the **Growlite Loan**). Between February 2014 and August 2016, funds were directed away from the business of Growlite Canada to the benefit of Mr. Serrano, Mr. Strang, their families or companies controlled by them.
- [8] Growlite Canada did not make any interest payments nor repay any principal and eventually CCC wrote off the Growlite Loan in its entirety, in April 2016.
- [9] Each of the offering memoranda contained misstatements or were misleading in various respects, full details of which are set out in the settlement agreement. By way of example, the investor brief stated that "CCC has purchased 45% of

Growlite”, when in fact no investment had yet been made and the investors’ funds were needed to make the investment. It gave a vastly overstated figure for sales in the first month of business for Growlite, and characterized Mr. Ward as a PhD, which was untrue.

- [10] By way of further example, the offering memorandum and investor slide deck were misleading in that they described the investments in Growlite but failed to state that CCC had not independently valued Growlite before agreeing on a price, that the Growlite Loan came with no express conditions on how it could be used, that CCC did not take reasonable steps to ensure it could oversee or monitor the Growlite Loan, and that the proceeds of the loan had been or would be spent on matters unrelated to Growlite’s business.
- [11] Based on the agreed facts in the settlement agreement, the Settling Respondents acknowledge and admit that CCC breached subsection 122(1)(b) of the *Act*, Mr. Ward acquiesced in CCC’s breach and is liable under subsection 129.2 of the *Act*, and that the conduct described is contrary to the public interest.
- [12] That brings us to the sanctions upon which Staff and the Settling Respondents have reached agreement.
- [13] Staff and the Settling Respondents have agreed that CCC shall be subject to permanent, broad market bans, prohibiting CCC from trading or acquiring securities, acting as a registrant or promoter, or benefiting from any exemptions under Ontario securities law. They have agreed that Mr. Ward will immediately resign from all positions as a director or officer of any issuer, registrant or investment fund manager and will be prohibited from acting in those capacities, or as a promoter, for six years. Staff and the Settling Respondents have also agreed that Mr. Ward will pay \$10,000 towards the costs incurred by the Commission, on an agreed schedule.
- [14] We have reviewed the settlement agreement in detail. In addition, we have had the benefit of a confidential settlement conference with counsel for Staff and the Settling Respondents. We asked questions of counsel and heard their submissions.

- [15] Our role at this settlement hearing is to consider the settlement agreement as a whole, to determine whether the negotiated result falls within the range of reasonable outcomes, and whether it would be in the public interest to approve the settlement agreement.
- [16] The settlement agreement is the result of what its signatories advise were protracted and careful negotiations. The Tribunal affords significant weight and deference to settlement agreements, as they reflect a balancing of factors and interests between adversarial parties. We recognize that a negotiated agreement will not generally yield the same sanctions that might follow a contested hearing.
- [17] Staff and the Settling Respondents have agreed to facts that both narrow and expand upon the facts pleaded in the Statement of Allegations. CCC has agreed to admit to a breach of the *Act* that was not expressly pleaded, but that admission covers CCC's role in the overall conduct relating to their offering memoranda. Mr. Ward has agreed to admit to acquiescing in CCC's breach and this reflects the role Mr. Ward played as CEO.
- [18] We must be satisfied that the sanctions serve to deter not only the Settling Respondents, but any like-minded people from engaging in similar misconduct. Misleading investors with untrue and inaccurate statements is serious. The amount of money lost by CCC to Growlite Canada was a significant portion of the total funds raised from investors. It impaired CCC's ability to succeed.
- [19] While we note that there is no agreement for payment of any administrative monetary penalty, Staff submits and we agree that taken as a whole, the significant non-monetary sanctions, in the context of the entire settlement agreement, place the agreement within the reasonable range.
- [20] Mr. Ward did not receive any of the funds directed from CCC to Growlite Canada, and we agree that a disgorgement order is not necessary in these circumstances.
- [21] Staff submitted that the agreement protects the public and deters others. We agree. Other, like-minded parties are on notice that a failure to accurately and truthfully disclose how investor funds will be used will not be tolerated as it harms investors and impairs the integrity of the capital markets.

- [22] By reaching a settlement, the Settling Respondents have recognized their wrongdoing and accepted accountability. Staff submits that, while the Commission intends to proceed against the remaining respondents, the settlement agreement with the Settling Respondents will significantly reduce the costs and time associated with this matter.
- [23] In our view, given all the circumstances, the terms of the settlement agreement fall within the range of reasonable outcomes, and it is in the public interest to approve the settlement agreement. We will therefore issue an Order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 4<sup>th</sup> day of November, 2022

*"M. Cecilia Williams"*

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M. Cecilia Williams

*"Geoffrey D. Creighton"*

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Geoffrey D. Creighton

*"Dale R. Ponder"*

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Dale R. Ponder