

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

File Nos. 2019-34

MOTION
OF SILVIO SERRANO

Under Rules 1, 15, 17, 27, 28, and 34 of the Capital Markets Tribunal *Rules of Procedure and Forms*, and 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 Capital Markets Tribunal make the following orders:

1. An Order compelling Staff to disclose to the Respondents the Transcripts and the Redacted Material (as defined below), in their entirety and without redactions;
2. An Order revoking, varying, or otherwise setting aside the Order of Vice-Chair Vingoe dated February 21, 2020, to the extent that it is necessary to accomplish the above;
3. In the alternative, an Order staying this Proceeding as against Mr. Serrano;
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 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 (together “**CCC**”), Benjamin Ward, Peter Strang, and Silvio Serrano (together with CCC, 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 and a director of CCC for much of the time at issue in the Statement of Allegations, while Mr. Serrano and Mr. Strang are alleged to have been directors at various points in time.

Staff’s Disclosure

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

5. After reviewing the material disclosed by 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.

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

7. 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, and received, an adjournment.

The Transcripts

8. Staff disclosed a version of the Transcripts to the Respondents on April 7, 2020 (the “**Redacted Transcripts**”). Several significant sections of the Redacted Transcripts contained significant redactions (the “**Transcript Redactions**”).

9. The Transcript Redactions are labelled “By Confidential Order of the Commission” – referring to an *ex parte* order made in this proceeding, about which the Respondents were otherwise 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**”).

10. Based on the context surrounding the Transcript Redactions, they appear to relate to Mr. Serrano and the allegations against Mr. Serrano in the Proceeding.

The First Disclosure Motion

11. On April 29, 2020, Mr. Serrano brought a companion motion/application seeking a variety of relief relating to the Secret Order and process (the “**First Disclosure Motion**”). The First Disclosure Motion sought, *inter alia*:

- a. a copy of the Secret Order;

- b. any written decision or reasons in support of the Secret Order;
- c. materials filed by Staff or any other parties on any motion or application to redact the Transcripts;
- d. the statutory basis authorizing Staff and/or the Commission to redact portions of the Transcripts;
- e. the statutory basis on which the Secret Order was sought and made; and
- f. all information contained in or related to the Secret Order that is not directly proscribed by its terms.

12. The First Disclosure Motion continued for nearly two years. It proceeded through a lengthy “Confidential Phase”, where the Respondents were excluded but represented by *amicus* counsel.

13. On May 4, 2021, the Respondents were advised by the Registrar that Commissioner Kindiak’s term had concluded, and a new Panel had been assigned to the First Disclosure Motion (the “**New Panel**”).

The First Disclosure Motion Decision

14. The New Panel released its decision on the First Disclosure Motion on April 28, 2022 (the “**April 2022 Decision**”). The New Panel granted the First Disclosure Motion, in part, ordering that the respondents be provided with a significantly redacted version of the Secret Order and Secret Reasons, as well as certain information sought about the nature of the Secret Order and Secret Reasons.

The Secret Order and Secret Reasons

15. The New Panel's April 2022 Order appended the Secret Order and the Secret Reasons. Both the Secret Order and Secret Reasons contained sections that were heavily redacted (the "**Redacted Material**").

16. In the sections made available to the Respondents, the Secret Order provides that before disclosing the Ward Transcripts, Staff "shall" make nine discrete redactions.

17. The Secret Reasons expressly contemplate that the Respondents may initiate a motion to access the material underlying the Transcript Redactions or otherwise take issue with the Transcript Redactions. The New Panel similarly adverted to the availability of such a motion in the April 2022 Decision.

The Respondents are Entitled to the Unredacted Ward Transcripts

18. The *Rules of Procedure and Forms* and the principles of natural justice compel the disclosure of the unredacted Transcripts to all of the Respondents.

19. The redactions to the Transcripts were not made on the basis of privilege or relevance. They were made *ex parte*, without the benefit of submissions from the Respondents. They appear to have no basis in law. The Respondents are entitled to complete versions of the Transcripts, without redactions, immediately.

The Respondents are Entitled to the Redacted Material

20. The Secret Order and Secret Reasons affect the Respondents' substantive legal rights and their ability to make full answer and defence in this Proceeding.

21. Together with the unredacted Transcripts – and for substantially the same reasons – the Respondents are entitled to unredacted versions of the Secret Order and the Secret Reasons.

Without Full Disclosure, the Proceeding must be Stayed

22. Staff is subject to stringent disclosure obligations in a proceeding under s. 127 of the Act. It must disclose all relevant information in its possession, whether inculpatory or exculpatory.

23. The Transcript Redactions appear to relate to critical aspects of Mr. Serrano's defence. The redacted content of the Transcripts accordingly appears to be highly relevant to the allegations against Mr. Serrano in the Proceeding, and his ability to make full answer and defence.

24. Without disclosure of unredacted versions of the Transcripts, the Secret Order and the Secret Reasons:

- (a) Staff cannot comply with their *Stinchcombe* disclosure obligations;
- (b) Mr. Serrano cannot make full answer and defence in the hearing on the merits;
- (c) The proceeding against Mr. Serrano is fundamentally unfair, oppressive and/or vexatious, and contrary to the interest of justice.

25. Continuing the Proceeding without full disclosure would undermine the community's sense of decency and fair play and be detrimental to the public interest.

26. In the circumstances, the Proceeding must be stayed as an abuse of process. No other remedy is reasonably capable of remediating the considerable and ongoing prejudice to the Respondents.

27. Such further and other grounds as counsel may advise.

C. EVIDENCE

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

1. The Affidavit of Erin Tucker dated September 23, 2022, and the exhibits thereto; and
2. Such further and other evidence as the lawyers may advise and the Commission may permit.

DATED this 23rd day of September, 2022

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