

**IN THE MATTER OF CORMARK SECURITIES INC., WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER AND SALINE INVESTMENTS LTD.**

File No. 2022-24

MOTION OF CORMARK SECURITIES INC. and WILLIAM JEFFREY KENNEDY

For Disclosure of Additional Documents by Canopy Growth Corporation

Under Rule 28 of the Capital Markets Tribunal *Rules of Procedure and Forms*, made under the
Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, s. 25.1

**NOTICE OF CROSS-MOTION OF CANOPY GROWTH CORPORATION
AND JORDAN SINCLAIR**

(Motion for Intervenor Participation under Rule 21(4))

A. ORDER SOUGHT

Canopy Growth Corporation (“Canopy”) and Jordan Sinclair (“Sinclair”) request, with notice, that the Panel make an order:

1. Granting Canopy and Sinclair *Torstar* standing under Rule 21(4) to deliver written and oral submissions for the hearing of Cormark Securities Inc. (“Cormark”) and William Jeffrey Kennedy’s motion for the disclosure of documents by Canopy, returnable on June 28, 2023; and
2. For such further and other relief as the Panel may deem just.

B. GROUNDS

Background on Cormark and Kennedy's Motion

1. This is a motion to allow Canopy and Sinclair to intervene in a hearing that directly implicates their interests.

2. Cormark and Kennedy have delivered a motion in this proceeding seeking, among other things, orders that would require Canopy and Sinclair to produce documents and deliver written submissions on the law of privilege. For example, in their Amended Notice of Motion, Cormark and Kennedy seek:

1. An Order that Staff of the Ontario Securities Commission ("**Staff**") require that Canopy Growth Corporation ("**Canopy**") (i) produce all ~~relevant~~ documents in its possession, power or control that are relevant to any matters in issue in this proceeding, and (ii) ~~to~~ produce to the Panel all documents that Canopy identified as responsive to, but withheld production of on the basis of privilege, the summonses dated April 22, 2021, June 24, 2021 and November 1, 2021 (the "**Canopy Summonses**") for adjudication by the Panel of whether the documents, or any parts thereof, are privileged on the basis of submissions by the parties and, to the extent the Panel determines them not to be privileged, to be produced to the parties;

[...]

4. In addition or in the alternative to (1), an Order issuing a Summons to Canopy to produce, in advance of the hearing of this matter on a schedule to be determined by the Panel on submissions of Canopy and the parties, (i) all non-privileged documents in its possession, power or control that are relevant to any matters in issue in this proceeding, and (ii) all documents and communications in Canopy's possession, power or control over which Canopy has claimed or could claim privilege in any way connected to the issues in this matter to the Panel for the Panel to determine, considering the submissions of Canopy and the parties, whether such documents or any portions thereof are privileged and, to the extent the Panel determines them not to be privileged, to be produced to the parties;

[...]

9. An Order issuing a Summons to Jordan Sinclair (“Sinclair”), to produce, in advance of the hearing of this matter on a schedule to be determined by the Panel on submissions of ~~Burns~~ Sinclair and the parties, all documents and communications in ~~Burns~~ Sinclair’s possession, power or control that are relevant to any matters in issue in this proceeding;

[Underlining and strikethroughs in original].

3. Despite being a non-party to the proceeding at large, Canopy and Sinclair have a direct interest in the outcome of Cormark and Kennedy’s motion. Canopy and Sinclair therefore seek to ensure their interests are adequately represented.

Canopy and Sinclair Request Standing on the Motion

4. Under Rule 21(4) of the Capital Markets Tribunal *Rules of Procedure and Forms*, this Panel may grant a non-party standing to participate in all or part of a proceeding on terms the Panel considers appropriate.
5. In these circumstances, where relief is sought directly against Canopy and Sinclair, they have been brought into the proceeding for the limited purposes of Cormark and Kennedy’s motion and should have *prima facie* standing to making submissions on that motion.
6. In any event, Canopy and Sinclair meet the threshold for full intervenor standing (and *Torstar* standing) to intervene on Cormark and Kennedy’s motion.
7. This Panel has confirmed that the following factors are relevant to whether a party should be granted status as an intervenor:
 - a) the nature of the proceeding;
 - b) whether the proposed intervenor will make a useful contribution to the proceeding;
 - c) whether the proposed intervention would unfairly prejudice the interests of the

existing parties; and

- d) whether the proposed intervention would unfairly prejudice the interests of the existing parties.
8. All of these factors support Canopy and Sinclair's intervention in this motion.
- a) The motion seeks relief as against Canopy and Sinclair directly, by seeking to direct a Staff investigation for the production of documents by Canopy and Sinclair, and specifically directing the disclosure of documents over which Canopy and Sinclair have asserted privilege;
 - b) Canopy and Sinclair will make a useful contribution to the motion by providing a panel with the perspective of the parties actually affected by Cormark and Kennedy's motion. That perspective is not adequately represented by any of the existing parties.
 - c) There is no unfair prejudice to the existing parties.
 - d) If Cormark and Kennedy succeed on their motion, it will have a direct effect on Canopy and Sinclair's economic interests. Canopy and Sinclair would be forced to undertake an expensive and duplicative production effort and privilege review, and forced to incur further legal costs. Indeed, Cormark and Kennedy contemplate this Panel receiving Canopy's and Sinclair's submissions on the law of privilege should they succeed on the motion.

9. Canopy and Sinclair request that the hearing of their cross-motion be heard at the same time as the hearing of Cormark and Kennedy's motion, returnable on June 28, 2023.

10. Canopy and Sinclair plead and rely on:

a) Rules 21(4) and 28 of the *Capital Markets Tribunal Rules of Procedure and Forms*.

b) Such further and other grounds as counsel may advise and the Panel may permit.

C. THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the cross-motion:

1. The Motion Record of Cormark and Kennedy dated February 24, 2023.

2. The Supplementary Motion Record of Cormark and Kennedy dated April 21, 2023

3. Such further and other evidence as the Panel may permit.

June 9, 2023

BENNETT JONES LLP

3400 One First Canadian Place

P.O. Box 130

Toronto, ON M5X 1A4

Alan P. Gardner (LSO #41479N)

Email: gardnera@bennettjones.com

Telephone: 416.777.6231

Shaan P. Tolani (LSO #80323C)

Email: tolanis@bennettjones.com

Telephone: 416.777.7916

Lawyers for Canopy Growth Corporation
and Sinclair

TO: BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto, Ontario M5H 4E3

David Di Paolo (LSO #40817G)
Email: ddipaolo@blg.com
Telephone: 416.367.6108

Graham Splawski (LSO #68589T)
Email: gsplawski@blg.com
Telephone: 416.367.6206

Brianne Taylor (LSO #82028L)
Email: btaylor@blg.com
Telephone: 416.367.6292

Lawyers for the Moving Party
Cormark Securities Inc.

AND TO: CRAWLEY MACKEWN BRUSH LLP
179 John Street, Suite 800
Toronto, ON M5T 1X4

Melissa MacKewn (LSO #39166E)
Email: mmackewn@cmblaw.ca
Telephone: 416.217.0840

Dana Carson (LSO #65439D)
Email: dcarson@cmblaw.ca
Telephone: 416.217.0855

Lawyers for the Moving Party
William Jeffrey Kennedy

AND TO: ONTARIO SECURITIES COMMISSION
Enforcement Branch
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Nicole Fung (LSO #85061C)
Email: nfung@osc.gov.on.ca

Anna Huculak (LSO #51952K)
Email: ahuculak@osc.gov.on.ca

Telephone: 416.593.8291

Lawyers for Staff of the Enforcement Branch

AND TO: GROIA & COMPANY PROFESSIONAL CORPORATION
365 Bay Street, Suite 1100
Toronto, ON M5H 2V1

Kevin Richard (LSO #43160P)
Email: krichard@groiaco.com
Telephone: 416.203.4485

Joe Groia (LSO #20612J)
Email: jgroia@groiaco.com
Telephone: 416.203.4472

Lawyers for Marc Bistricher

AND TO: DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Derek Ricci (LSO #52366N)
Email: dricci@dwpv.com
Telephone: 416.367.7471

Chantelle Cseh (LSO #60620Q)
Email: ccseh@dwpv.com
Telephone: 416.367.7552

Galen Lambert (LSO #83589B)
Email: glambert@dwpv.com
Telephone: 416.367.7606

Lawyers for Saline Investments Ltd.

AND TO: MCCARTHY TETRAULT LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto, ON M5K 1E6

Wendy Berman (LSO#32748J)
Email: wberman@mccarthy.ca
Telephone: 416.601.8266

Christine Windsor (LSO#820771)
Email: cawindsor@mccarthy.ca
Telephone: 416.601.7732

Lawyers for Mark Zekulin

AND TO: SINGLETON URQUHART REYNOLDS VOGEL LLP
150 King St W Suite 2512
Toronto, ON M5H 1J9

Evan Rankin (LSO#73016G)
Email: erankin@singleton.com
Telephone: 416.585.8615

Peter Wardle (LSO#26412D)
Email: pwardle@singleton.com
Telephone: 416.585.8604

Meghan McCallen
(Evan Rankin's assistant)
Email: mmccallen@singleton.com

Lawyers for Debbie Weinstein

AND TO: CASSELS BROCK & BLACKWELL LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

John Picone (LSO#58406N)
Email: jpicone@cassels.com
Telephone: 416.640.6041

Lawyers for Bruce Linton

AND TO: CASSELS BROCK & BLACKWELL LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Lara Jackson (LSO#41858M)
Email: ljackson@cassels.com
Telephone: 416.860.2907

Lawyers for Timothy Saunders

AND TO: DMG Advocates LLP
155 University Avenue, Suite 1230
Toronto, ON M5H 3B7

Corey Groper
Email: CGroper@dmgadvocates.com
Telephone: 416.238.1530

Ryder Gilliland
Email: rgilliland@dmgadvocates.com
Telephone: 416.238.7537

Lawyers for Tayyaba Khan

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BENNETT JONES LLP

3400 One First Canadian Place

P.O. Box 130

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Alan P. Gardner (LSO #41479N)

Email: gardnera@bennettjones.com

Telephone: 416.777.6231

Shaan P. Tolani (LSO #80323C)

Email: tolanis@bennettjones.com

Telephone: 416.777.7916

Fax: 416.863.1716

Lawyers for Canopy Growth Corporation and Jordan Sinclair