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Appearances:	Matthew McMurray Benjamin Ward	For the Ontario Securities Commission On his own behalf
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REASONS AND DECISION

1. OVERVIEW

- [1] In this proceeding, the Ontario Securities Commission alleges that Benjamin Ward has breached an order against him, arising from a settlement of an earlier proceeding. That order required, among other things, that Ward resign all positions as a director or officer of any issuer, and that Ward be prohibited from taking on any such role for six years.
- [2] Ward brings this motion, asking that this entire proceeding (including all hearings and adjudicative records) be confidential and not accessible by the public. Alternatively, if a confidentiality order is not granted, Ward seeks a permanent stay of this proceeding. The Ontario Securities Commission opposes the motion.
- [3] These are our reasons for dismissing Ward's motion. He has not met the requirements for the broad confidentiality order he seeks. We dismiss the motion without prejudice to Ward's ability to bring a further, more targeted, confidentiality motion in future, should he choose to do so.
- [4] However, we are ordering that certain portions of the adjudicative record on this motion be redacted and made confidential. Those portions do not factor into our decision, and they appear either to reference materials covered by a previous confidentiality order or to contain sensitive information that Ward may have included in his motion materials only because he anticipated that those materials would be made confidential.

2. BACKGROUND

- [5] Ward filed no sworn evidence in support of his motion. The Commission filed the affidavit of its investigator, Paul Baik.¹
- [6] Ward was a respondent in the enforcement proceeding, *Canada Cannabis Corporation (Re)*.² On February 21, 2020, following a confidential motion, the

¹ Exhibit 1, Affidavit of Paul Baik, sworn on December 11, 2025

² 2022 ONCMT 34

Ontario Securities Commission (in its adjudicative capacity, now the Capital Markets Tribunal) issued a confidentiality order (**2020 Confidentiality Order**). That order, and the reasons for it, provided that all materials filed with the Commission in connection with the order, as well as specific portions of Ward's compelled interview transcripts, be kept confidential. The Tribunal later ordered that a redacted version of the 2020 Confidentiality Order and accompanying reasons be delivered to the other *Canada Cannabis* respondents and published on the Tribunal website.

- [7] On October 28, 2022, Ward entered into a settlement agreement with the Commission in the *Canada Cannabis* proceeding. The Tribunal issued an order on November 4, 2022, approving the settlement (**Settlement Order**).³ The Settlement Order and settlement agreement are publicly available on the Tribunal's website.
- [8] The Settlement Order required Ward to resign any positions he held as a director or officer of any issuer and prohibited him from becoming or acting as a director or officer of any issuer for six years. The Commission alleges that Ward breached the director and officer ban by remaining a director and officer of two issuers.

3. ANALYSIS

3.1 Confidentiality order

3.1.1 Ward has not met the test for a blanket confidentiality order

- [9] Under subrules 8(2) and (4) of the *Capital Markets Tribunal Rules of Procedure* and subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019*,⁴ a panel may order that all or part of a hearing be confidential and held in the absence of the public, and all or part of an adjudicative record be confidential and not available to the public, if it determines that intimate financial or personal matters or other matters are of such nature that the public interest or the interests of a person served by avoiding disclosure of such matters outweighs the desirability of adhering to the principle that hearings should be open to the public and the adjudicative record should be available to the public.

³ (2022), 45 OSCB 9468

⁴ SO 2019, c 7, Sch 60

- [10] The Supreme Court has repeatedly affirmed that the open court principle is a pillar of our free and democratic society.⁵ There is a strong presumption in favour of open courts, and accordingly, confidentiality orders should be made only in rare circumstances.⁶
- [11] A person seeking a confidentiality order must show that openness presents a serious risk to a competing interest of public importance, that a confidentiality order is necessary to prevent the risk, and that the benefits of an order restricting openness outweigh its negative effects.⁷
- [12] Ward submits that a blanket confidentiality order over this proceeding is required to give him a fair and full hearing. Ward says he intends to rely on materials and evidence made confidential under the 2020 Confidentiality Order. However, he neither identifies the specific materials and evidence he needs to rely on, nor explains how they are relevant or admissible. Further, he does not provide evidence of any specific risks, nor does he even identify any specific risks, that would arise if a blanket confidentiality order were not granted. He simply asserts that the materials are required to make full answer and defence. He says that these materials and evidence should be made confidential due to issue estoppel, detrimental reliance and promissory estoppel arising from the 2020 Confidentiality Order and his 2022 settlement with the Commission.
- [13] The Commission submits that Ward's request for a blanket confidentiality order falls far below the threshold required. Ward also fails to address why narrow redactions based on a specific subset of materials and evidence (as opposed to a blanket confidentiality order) would not be a reasonable alternative measure.
- [14] The Commission further submits that its Application for Enforcement Proceeding does not rely on any prior confidential information, and that any such confidential information is not relevant to this proceeding. Ward submits that the Commission does not know what information is covered by the Confidential Order and cannot judge whether any of it would be relevant to Ward and his

⁵ *Canada Broadcasting Corp v Named Person*, 2024 SCC 21 (**Canada Broadcasting**) at paras 1 and 27; *Sherman Estate v Donovan*, 2021 SCC 25 (**Sherman Estate**) at para 1

⁶ *Canada Broadcasting* at para 32; *Sherman Estate* at paras 2-3, 30

⁷ *Sherman Estate* at para 3; *Sierra Club of Canada v Canada (Minister of Finance)*, 2022 SCC 41 at para 53

defence in this proceeding. Because Ward has not identified the nature of the specific information he proposes to rely upon, we cannot determine whether any prior confidential information is or is not relevant to this proceeding and Ward's defence.

[15] We find that Ward bore the onus to identify the specific information he proposes to rely on in this proceeding, to explain why he believes it is relevant, and to explain why the information would present a serious risk to him or others without a confidentiality order. Ward cast his confidentiality request too broadly. For example, his broad request would include making confidential the entire Application for Enforcement Proceeding and all the evidence and materials that the Commission filed on this motion setting out the evidentiary basis for this proceeding, including multiple publicly available corporate records. Ward failed to meet the high standard for a confidentiality order.

[16] In addition, we are concerned that Ward may want to adduce in this proceeding materials and evidence that are covered by the 2020 Confidentiality Order. Ward may need to obtain a variation of that order before he does so.

3.1.2 Section 11(d) of the Canadian Charter of Rights and Freedoms

[17] In his motion, Ward claimed that s. 11(d) of the *Canadian Charter of Rights and Freedoms*⁸ protects his right to use any information in his defence that he wishes. We did not consider this claim, because s. 11(d) applies to individuals charged with an offence and not to proceedings before administrative tribunals.

3.2 Stay of proceeding

[18] Ward requests that if a blanket confidentiality order is not granted, the panel should permanently stay this enforcement proceeding against him.

[19] A stay of a proceeding is a drastic remedy. To obtain a stay, a party must show that:

⁸ *Canadian Charter of Rights and Freedoms*, s.2(b), Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, c 11

- a. there is prejudice to the party's right to a fair hearing or the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the proceeding, or by its outcome;
- b. there is no alternative remedy capable of redressing the prejudice; and
- c. where there is still uncertainty over whether a stay is warranted, the interests in favour of granting a stay must outweigh the interest that society has in having a final decision on the merits.⁹

[20] Ward submits that to make full answer and defence in this proceeding he must rely on testimony and evidence which is subject to the 2020 Confidentiality Order, and permitting a public hearing would undermine the integrity of the Tribunal's administration of justice.

[21] We dismiss Ward's request for a stay. He has not established prejudice to his right to a fair hearing or the integrity of the justice system, nor has he established there are no alternative remedies to address his concerns, such as proposed narrow and justified redactions of specific items he wants to adduce as evidence in these proceedings. We also reiterate our concerns about whether Ward can introduce materials and evidence subject to the 2020 Confidentiality Order, without first obtaining a variation of that order.

3.3 Without prejudice to any further motion

[22] Nothing in our order or these reasons precludes Ward from bringing a further motion seeking confidentiality over any part of any further hearings and any specific relevant portions of the adjudicative record going forward. However, prior to Ward filing any motion materials seeking a confidentiality order, there shall be a case management hearing to address the panel's procedural requirements for such a motion. The case management hearing will be held by videoconference, at a date and time to be fixed by the Registrar on receipt of submissions from the parties suggesting possible hearing dates.

[23] We recognize that Ward will not be able to seek a targeted confidentiality order over the Commission's written submissions or affidavit evidence in the merits,

⁹ *R v Babos*, 2014 SCC 16 at para 32

sanctions and costs hearing (**Commission's materials**) until he reviews them. The Commission is due to deliver those materials on or about the date of issuance of this decision and these reasons.

- [24] As a result, the Commission's materials will be kept confidential for a brief period of time to give Ward the opportunity to review them and determine whether he has concerns with any portions being available to the public. Ward should have a reasonable opportunity to seek, promptly, a permanent confidentiality order over portions of such materials. The Commission's materials will remain confidential from the time of their filing, as set out in paragraph 26 below.

4. ADJUDICATIVE RECORD ON THE MOTION

- [25] We have considered the adjudicative record on this motion and have, on our own initiative, decided that certain portions of the record should be redacted. We did not take those portions into account in making our decision, and they:
- a. may disclose information made confidential by the 2020 Confidentiality Order; and/or
 - b. may disclose information that Ward included because he expected that the motion materials would be made confidential.

5. CONCLUSION

- [26] For the above reasons, we order that:
- a. the Confidentiality Motion is dismissed without prejudice to Ward bringing a new confidentiality motion specific to particularized evidence after the conclusion of a case management hearing arranged to address the procedural and scheduling issues for the motion;
 - b. pursuant to subrule 8(4) of the *Rules of Procedure* and ss. 2(2) of the *Tribunal Adjudicative Records Act, 2019*, the portions of the adjudicative record on the Confidentiality Motion set out in Appendix A to our order are confidential and shall not be disclosed to the public; and
 - c. pursuant to subrule 8(4) of the *Rules of Procedure*, the Commission's submissions on the merits, sanctions and costs, and its affidavit evidence

for the merits, sanctions and costs hearing (**Commission's materials**), will remain confidential from the date they are filed, as set out below:

- i. if Ward informs the Registrar by email, within seven days of the date of filing of the Commission's materials, that he has concerns with any portion of the Commission's materials being available to the public, and a case management hearing is scheduled to take place within seven days of the date of his email, then the Commission's materials will remain confidential until the end of the case management hearing; or
- ii. if Ward informs the Registrar by email, within seven days of the date of filing of the Commission's materials, that he has concerns with any portion of the Commission's materials being available to the public, and a case management hearing is not scheduled to take place within seven days of the date of his email, then the Commission's materials will become public immediately at the end of the seven days from the date of Ward's email to the Registrar, unless Ward obtains a further order extending the period they will be kept confidential; or
- iii. if Ward does not inform the Registrar within seven days from the date of the filing of the Commission's materials that he has concerns with the materials being available to the public, then the materials will become public immediately at the end of the seven days.

Dated at Toronto this 16th day of January, 2026

"Cathy Singer"

Cathy Singer

"Timothy Moseley"

Timothy Moseley

"Andrea Burke"

Andrea Burke