Ontario

Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Ontario Securities Commission v Carnie*, 2026 ONCMT 6
Date: 2026-02-02
File No. 2025-23

**BETWEEN:**

**ONTARIO SECURITIES COMMISSION**

**(Applicant)**

**- and -**

**MITCHELL CARNIE**

**(Respondent)**

# REASONS AND DECISION

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

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| **Adjudicator**: | Timothy Moseley | |
| **Hearing**: | In Writing | |
| **Appearances**: | Susan Kimani<br>Matthew McMurray | For the Ontario Securities Commission |
| | No submissions were made on behalf of Mitchell Carnie | |

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## REASONS AND DECISION

### 1. OVERVIEW

[1] In May 2020, in an earlier proceeding (*First Class Crypto Inc. (Re)*),[1] the Capital Markets Tribunal ordered[2] that, with a limited exception described in paragraph [8] below, Mitchell Carnie resign any positions he held as a director or officer of any issuer, and that he be prohibited from being a director or officer for at least seven years (possibly longer, if he failed to pay the financial sanctions and costs as required).

[2] In this proceeding, the Ontario Securities Commission seeks sanctions and costs against Carnie, alleging that he failed to resign as required, that he remained a director and officer of four issuers for more than five years, and that he thereby failed to comply with the 2020 order.

[3] At a case management hearing on October 27, 2025, I ordered that:

a. this proceeding be conducted in writing; and

b. the written hearing address the merits of the Commission's allegations and, if applicable, appropriate sanctions and costs.[3]

[4] Even though Carnie was properly served, he has not participated in this proceeding at any stage.

[5] As I explain below, Carnie breached the 2020 order by failing to resign as required and by continuing as director and officer of four companies. He therefore contravened Ontario securities law. I will order that:

a. Carnie pay an administrative penalty of $37,500;

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[1] 2020 ONSEC 14

[2] (2020), 43 OSCB 4704; https://www.capitalmarketstribunal.ca/sites/default/files/2020-12/rad_20200528_first-class-crypto.pdf

[3] (2025), 48 OSCB 8947; https://www.capitalmarketstribunal.ca/sites/default/files/2025-10/rad_20251027_carnie.pdf

b. on or before March 6, 2026, Carnie resign any positions he holds as director or officer of any issuer, subject to a continuation of the exception in paragraph [8] below;

c. until November 28, 2033, Carnie be prohibited from being a director or officer of any issuer, subject to a continuation of the same exception; and

d. Carnie pay to the Commission costs of $10,683.75.

## 2. BACKGROUND

[6] The factual findings in these reasons are based on the uncontradicted evidence contained in affidavits, filed by the Commission, from Paul Baik, Investigator,[4] and Julia Ho, Law Clerk.[5]

[7] Carnie, an Ontario resident, was a respondent in *First Class Crypto*. He settled that proceeding with the Commission. That resulted in the 2020 order, which required Carnie 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 until the later of:

a. seven years from the date of the order; and

b. Carnie's payment in full of the agreed-upon financial sanctions and costs.

[8] The order included an exception that allowed Carnie to be a director or officer of a company of which he was the sole shareholder, provided that:

a. the company's business was strictly limited to providing services related to construction, including landscaping; and

b. the company did not raise capital by issuing securities to the public.

[9] The Commission's allegations in this proceeding relate to four Ontario corporations. The Commission's affidavits, including reports issued by the Ontario government, and correspondence with Carnie, confirm the following:

a. First Class Crypto Inc. (the corporate respondent in the earlier proceeding): Carnie became a director and officer on December 8, 2017,

[4] Exhibit 1, Affidavit of Paul Baik, sworn December 1, 2025

[5] Exhibit 2, Affidavit of Julia Ho, sworn December 1, 2025

and resigned from those positions effective September 9, 2025, more than five years after the 2020 order required him to resign;

b. 2634676 Ontario Ltd. and 2634685 Ontario Ltd.: Carnie became a director and officer of both on May 9, 2018, and has not resigned from either; and

c. 2714649 Ontario Inc.: Carnie became a director and officer on September 4, 2019, and has not resigned.

[10] On December 20, 2024, the Commission asked Carnie for evidence of his compliance with the 2020 order. Carnie replied that he intended to have his "name removed from … incorporation documents" for the four corporations.

[11] On August 12, 2025, the Commission wrote to Carnie, noting that he remained listed as a director and officer of the four corporations. The Commission said that it was considering commencing a proceeding against Carnie as a result.

[12] On September 11, 2025, Carnie replied by email, attaching documents showing that he had, through a service provider, submitted a request that he cease to be shown as a director and officer of First Class Crypto Inc., effective September 9, 2025.

[13] There is no evidence that Carnie ever resigned as a director or officer of the other three companies. The Commission filed corporate reports, showing that as of November 27, 2025, Carnie remained a director and officer of all three.

## 3. ANALYSIS

### 3.1 Proceeding in Carnie's absence

[14] Carnie did not appear at the case management hearing on October 27, 2025. I found that the Commission had given him proper notice of the hearing when it sent the Notice of Hearing and the Application for Enforcement Proceeding to him at the email address from which he sent his September 11 reply to the Commission's letter.

[15] The order I issued following that case management hearing contemplated that the Commission would file written submissions and that Carnie could do the same in response. The Tribunal published that order by news release and on its website, and sent it to Carnie at his email address.

[16] The Commission filed its submissions. Carnie filed none. I may proceed in his absence.[6] I turn to consider the merits of the Commission's allegations.

### 3.2 Breach of the director and officer ban in the 2020 order

[17] The *Securities Act*[7] (the ***Act***) defines "Ontario securities law" to include a decision of the Commission or Tribunal to which a person is subject. The 2020 order is part of Ontario securities law as applied to Carnie.

[18] The uncontradicted evidence cited above establishes that:

a. Carnie was a director and officer of the four companies at the time of the 2020 order;

b. he failed to resign as required;

c. he continued to be a director and officer of First Class Crypto Inc. at least until September 9, 2025; and

d. he continued to be a director and officer of the other three companies at least until November 27, 2025.

[19] By continuing in these roles, Carnie breached the 2020 order and thereby contravened Ontario securities law.

[20] The Commission asked not only that I find Carnie to have contravened Ontario securities law, but also that I find Carnie to have breached s. 122(1)(c) of the *Act*. I decline to do so. While nothing turns on my decision not to make that finding, I should explain.

[21] That provision states that a "person or company that […] contravenes Ontario securities law, is guilty of an offence […] ". In a Tribunal proceeding, once there is a finding that a respondent has contravened Ontario securities law (as I have found here), referring to s. 122(1)(c) adds nothing.

[22] In making this observation, I am aware of the decision of the Court of Appeal for Ontario in *Wilder v Ontario Securities Commission*,[8] in which the Court focused

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[6] *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(2); *Capital Markets Tribunal Rules of Procedure*, subrule 24(3)

[7] RSO 1990, c S.5, s 1(1), "Ontario securities law"

[8] 2001 CanLII 24072 (ON CA)

on s. 122(1)(a) but made comments about s. 122 generally. That decision does not detract from my conclusion that s. 122(1)(c) adds nothing in a case such as this. In a Tribunal proceeding, it is no more necessary to refer to s. 122(1)(c) when alleging a breach of an order that is part of Ontario securities law than it is when alleging a breach of a statute or regulation that is part of Ontario securities law. I distinguish s. 122(1)(c) from s. 122(1)(a) and s. 122(1)(b), which proscribe specific conduct (*e.g.*, misleading statements to the Commission) in terms that do not appear elsewhere in the *Act*.

## 3.3 Sanctions

### 3.3.1 Introduction

[23] Having found that Carnie contravened Ontario securities law, I will now address the appropriate sanctions against him. I may impose sanctions under s. 127(1) of the *Act* if I find that it is in the public interest to do so. I must exercise that jurisdiction in a manner consistent with the *Act*'s purposes*,* which include protecting investors from unfair, improper or fraudulent practices, and fostering fair and efficient capital markets and confidence in them.[9] Sanctions are preventive and prospective, in that they are intended to prevent future harm to investors and to the capital markets.[10]

[24] I agree with the Commission's submission that the following sanctions against Carnie would be in the public interest:

a. director and officer bans for a period of six years and six months beyond the expiry of the original ban; and

b. an administrative penalty in the amount of $37,500.

[9] *Securities Act*, s. 1.1; *Money Gate Mortgage Investment Corporation (Re),* 2021 ONSEC 10 at para 7
[10] *Cartaway Resources Corp (Re),* 2004 SCC 26 at paras 58-62

### 3.3.2 Analysis

#### 3.3.2.a Sanctioning factors

[25] I may consider a variety of factors when imposing sanctions.[11] In this case, the most relevant factors are the seriousness of the misconduct, the fact that Carnie's misconduct was not an isolated instance, the specific and general deterrence achieved by any sanctions, and the absence of any mitigating factors.

*(i) Seriousness*

[26] Carnie's misconduct is serious. While breaching any Tribunal order is inherently serious, it is not generally among the most serious breaches that come before the Tribunal. For example, I might have had some sympathy if Carnie had established that his failure to resign as director and officer of a company was inadvertent, inconsequential and understandable. Here, however, not only has Carnie not adduced any evidence to support such a conclusion, the evidence in the record points in the other direction, for two reasons.

[27] First, Carnie remained in his roles at First Class Crypto Inc., the very company that was a respondent in the earlier proceeding. That fact prevents any inference that Carnie failed to think about that company.

[28] Second, the Commission's letter to Carnie in August 2025 mentioned all four companies. The letter clearly came to Carnie's attention, because he replied to it a month later and included information about his resignation from First Class Crypto Inc., without mentioning the other three companies. Again, there is no basis to give Carnie the benefit of the doubt about inadvertence.

[29] It is more likely than not that Carnie was cavalier about complying with a requirement that he himself had agreed to when he settled the earlier proceeding. That increases the seriousness of his misconduct, because it jeopardizes public confidence in the settlement process, the enforcement of Ontario securities law, and the capital markets generally.[12]

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[11] *Belteco Holdings Inc (Re),* (1998) 21 OSCB 7743 at 7746; *Erikson v Ontario (Securities Commission),* 2003 CanLII 2451 (ON SC) at para 58; *MCJC Holdings Inc (Re)* (2002), 25 OSCB 1133 at 1135

[12] *Re Cadman,* 2015 ABASC 836 at para 26

*(ii) Not an isolated occurrence*

[30] Carnie's misconduct was not an isolated occurrence. He failed to resign from any of the four companies. He continued to be a director and officer for years. Even after the Commission confronted him with these facts in 2025, he continued to occupy most of those roles. These aggravating facts justify greater sanctions.

*(iii) Specific deterrence*

[31] The need for specific deterrence in this case is acute. Carnie has, without explanation, already breached a previous order. In keeping with the need for sanctions to be preventive, I must impose sanctions that send a clear message to Carnie that he must comply with the Tribunal's order, and that similar misconduct in the future may call for an even more significant response.

*(iv) General deterrence*

[32] The sanctions I impose should send a message to like-minded individuals who might be tempted to ignore Tribunal orders. In general, that kind of conduct will be met with escalating sanctions.

*(v) Mitigating factors*

[33] Because Carnie did not participate in this proceeding, there is no evidence of any mitigating factors.

[34] I do note that these were private companies. In addition, there is no evidence that, during the material time, any of the four companies was operating, or that Carnie in fact acted as director or officer (as opposed to just holding the titles), or that Carnie's failure to comply with the order directly affected any member of the public. I do not fault the Commission for not introducing any such evidence, and I do not consider these to be mitigating factors. I make the observation merely to record that I am mindful that there are no such facts in this case. Had there been, they would likely have been aggravating factors.

### 3.3.2.b Director and officer ban

[35] The Commission proposes a director and officer ban of six years and six months, beginning on May 28, 2027, the expiry of the original ban. The Commission bases this submission on the length of time Carnie was in breach (approximately

five years), plus an additional 18 months. I accept this submission as a principled way to "recapture" time during which Carnie ignored the earlier order, and to add a reasonable amount of time to help achieve the objectives of sanctions, and especially of specific deterrence. It is in the public interest to order the ban the Commission requests.

[36] The original ban was subject to the exception described in paragraph [8] above. I agree with the Commission that the exception should continue.

[37] The Commission asks that I order Carnie to resign any positions as director or officer of an issuer, within 30 days of the order. I will do so.

### 3.3.2.c Administrative penalty

[38] Determining the appropriate amount of an administrative penalty is not a science.[13] As with all sanctions, the Tribunal must determine administrative penalties after considering the specific factual context and the sanctioning factors set out above.[14]

[39] Here, the Commission seeks an administrative penalty in the amount of $37,500. It calculates this amount based on:

a. $2,000 for each of the five years of breach for the three companies where Carnie remains a director and officer (*i.e.*, $2,000 x 5 x 3 = $30,000); plus

b. $1,500 for each of the five years of breach for First Class Crypto Inc. until his resignation (*i.e.*, $1,500 x 5 = $7,500).

[40] The Commission cites a number of authorities to support its calculation method and amounts, although the Commission fairly concedes the limited value of the amounts in these precedents, given important distinctions.

[41] In *Valentine (Re)*,[15] this Tribunal imposed an administrative penalty of $500,000 for the respondent's breach of a director and officer ban in respect of 38 private companies for approximately 19 years. That penalty amounts to approximately

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[13] *Quadrexx Hedge Capital Management Ltd (Re),* 2018 ONSEC 3 at para 59

[14] *Miner Edge Inc (Re),* 2021 ONSEC 31 at para 89

[15] 2024 ONCMT 21

$693 per company per year, which is lower than the amounts the Commission proposes here. However, in *Valentine* the Tribunal imposed other significant sanctions, including a disgorgement order totalling more than C$15 million, and the Tribunal noted that it was taking a global view of all the sanctions it imposed.

[42] The other cases the Commission cited[16] involving similar misconduct were from other Canadian jurisdictions and featured administrative penalties ranging from $2,750 to $15,000 per company per year of breach. As the Commission acknowledged, there were aggravating factors in those cases that were not present here (*e.g.*, attempts to conceal the non-compliance, or active involvement in capital raising).

[43] For the reasons the Commission mentioned, in arriving at an appropriate administrative penalty I give the cases cited little weight, other than as suggesting a broad range. I do accept the Commission's proposed $2,000 per year per corporation as an appropriate basis for calculation in this case.

[44] The Commission suggests that the amount be $1,500 per year (instead of $2,000) for First Class Crypto Inc., because Carnie resigned from that company but not from the others, after the Commission contacted him. I do not accept that the applicable amount during the breach should be reduced. Instead, the relevant time period is shorter for First Class Crypto Inc. than it is for the other three companies. I use the actual period of time related to each company. Accordingly, my calculation would be:

a. $2,000 per year, for 5.75 years (May 2020 to February 2026), for three corporations ($2,000 x 5.75 x 3 = $34,500); plus

b. $2,000 per year, for 5.25 years (May 2020 to September 2025), for First Class Crypto Inc. ($2,000 x 5.25 = $10,500).

[45] Using that approach, I would order an administrative penalty of $45,000. While that amount is not significantly different from the Commission's requested $37,500, it would be unfair to Carnie for me to exceed the Commission's

[16] *Dunn (Re),* 2023 BCSECCOM 251; *Re Malone,* 2016 BCSECCOM 334; *Re Jardine,* 2016 BCSECCOM 82; *Alexander (Re),* 2007 BCSECCOM 773; *Re Cadman,* 2015 ABASC 836

request. I will therefore order an administrative penalty of $37,500, which I consider to be in the public interest.

### 3.4 Costs

[46] Section 127.1 of the *Act* allows the Tribunal to order that a respondent who has contravened Ontario securities law pay the Commission's costs of the investigation and the proceeding. Costs are not a sanction; they are a means of securing partial recovery from the wrongdoer, so that the entire financial burden is not borne by other capital markets participants.

[47] The Commission seeks total costs of $12,312.36, comprising:

a. $10,683.75 in fees, reflecting work on this file by two litigation counsel, an investigator, and a law clerk, at rates previously approved in Tribunal decisions; and

b. $1,628.61, being one ninth of the total $14,657.50 in fees attributable to a group of nine cases, including this one, that make similar allegations against different respondents.

[48] I am satisfied that it is appropriate to make an order for costs for the first of those two portions. I exclude the second portion, though, because there is insufficient evidence for me to conclude that it would be appropriate to divide equally the $14,657.50. In fact, the evidence suggests otherwise, including because it refers to an "interview", and incorporates a meaningful amount of time spent on "settlement & mediation". I infer from the record in this case, including Carnie's relative silence, that there was no interview, no settlement discussions, and no mediation. Those charges appear to me to be attributable to other specific cases rather than an entire group of nine.

[49] Accordingly, I will order that Carnie pay to the Commission costs of $10,683.75.

## 4. CONCLUSION

[50] For the above reasons, it is in the public interest to order, and I will order, that:

a. pursuant to paragraph 7 of s. 127(1) of the *Act*, Carnie resign, on or before March 6, 2026, any positions he holds as director or officer of any issuer, except that he need not resign as director or officer of a company of which he is the sole shareholder, provided that:

   i. the company's business is strictly limited to providing services related to construction, including landscaping; and

   ii. the company does not raise capital by issuing securities to the public;

b. pursuant to paragraph 8 of s. 127(1) of the *Act*, Carnie is prohibited from becoming or acting as a director or officer of any issuer until November 28, 2033, except that he is permitted to be a director or officer of a company of which he is the sole shareholder, provided that:

   i. the company's business is strictly limited to providing services related to construction, including landscaping; and

   ii. the company does not raise capital by issuing securities to the public;

c. pursuant to paragraph 9 of s. 127(1) of the *Act*, Carnie shall pay an administrative penalty of $37,500; and

d. pursuant to s. 127.1 of the *Act*, Carnie shall pay costs of the investigation and hearing in the amount of $10,683.75.

Dated at Toronto this 2nd day of February, 2026

*"Timothy Moseley"*

Timothy Moseley