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Citation: *Ontario Securities Commission v Alli*, 2026 ONCMT 21

Date: 2026-05-20

File No. 2025-26

BETWEEN:

ONTARIO SECURITIES COMMISSION

(Applicant)

- and -

NAYEEM ALLI

(Respondent)

REASONS FOR DECISION

Adjudicator: M. Cecilia Williams

Hearing: In writing; final written submissions received May 1, 2026

Appearances: Susan Kimani For the Ontario Securities Commission
Matthew McMurray

Nayeem Alli On his own behalf

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REASONS FOR DECISION

1. OVERVIEW

- [1] The Ontario Securities Commission brought a motion to strike from the record certain portions of the material filed by Nayeem Alli in connection with the merits and sanctions and costs hearing in this matter, and written submissions filed in connection with the motion. The basis of the motion was that both sets of materials contained references to communications protected by settlement privilege.
- [2] Alli objected to the motion, arguing that the Commission's request was overly broad and exceeds the scope of settlement privilege as defined by the Supreme Court of Canada.
- [3] This motion was heard in writing. On May 8, 2026, I issued an order,¹ with reasons to follow, granting the Commission's motion in part. Many of the references identified by the Commission disclosed the content of settlement discussions and should therefore be struck from the record. However, references that only identified the existence of settlement discussions or offers, but provided no further details of their substance, do not need to be struck. These are my reasons for the decision.

2. BACKGROUND

- [4] On October 17, 2025, the Commission filed an application for enforcement proceeding alleging that Alli contravened Ontario securities law by failing to comply with a director and officer ban imposed in a Tribunal order dated June 22, 2023. By order of the Tribunal, the merits and sanctions and costs hearing against Alli are being combined and heard in writing.²

¹ (2025), 49 OSCB 4404; https://www.capitalmarketstribunal.ca/sites/default/files/2026-05/rad_20260508_alli.pdf

² (2025), 48 OSCB 9957; https://www.capitalmarketstribunal.ca/sites/default/files/2025-11/rad_20251126_alli.pdf

- [5] Between November 4, 2025, and December 5, 2025, the parties engaged in settlement discussions, though no settlement was ever reached.³
- [6] On February 26, 2026, Alli filed written submissions in connection with the merits and sanctions and costs hearing.
- [7] On March 13, 2026, the Commission filed its motion to strike certain portions of the written submissions on the merits and sanctions and costs as they refer to, or otherwise describe, without prejudice settlement communications between the parties.
- [8] On May 1, 2026, in its reply submissions on the motion, the Commission stated that, in addition to the written submissions on the merits and sanctions and costs, it was also necessary to strike certain portions of Alli's written submissions on the motion (together, the portions of Alli's submissions on the merits and sanctions and costs and of his submissions on the motion are the **Contested References**).
- [9] The issue I must decide on this motion is whether the Contested References in Alli's materials are subject to settlement privilege and therefore constitute inadmissible factual assertions or submissions.

3. ANALYSIS

3.1 Law on settlement privilege

- [10] Settlement privilege is a class privilege based on longstanding common law principles that communications made during settlement negotiations by any party are inadmissible, regardless of whether a settlement was reached.⁴
- [11] Settlement privilege is based on the understanding that parties will be more likely to settle if they have confidence from the outset that their negotiations will not be disclosed.⁵

³ Exhibit 1, Affidavit of Julia Ho sworn March 31, 2026, at paras 3-4

⁴ *Sable Offshore Energy Inc v Ameron International Corp*, 2013 SCC 37 (**Sable**) at paras 12 and 15-17

⁵ *Sable* at para 13; *Union Carbide Canada Inc v Bombardier Inc*, 2014 SCC 35 (**Union Carbide**) at para 31

- [12] The Ontario Divisional Court has stated that there are three conditions to recognizing settlement privilege:
- a. a litigious dispute must be in existence or within contemplation;
 - b. the communication must be made with the express or implied intention that it would not be disclosed to the court in the event negotiations failed; and
 - c. the purpose of the communication must be to attempt to effect a settlement.⁶
- [13] Settlement privilege extends beyond documents and communications expressly designated to be “without prejudice”. Those precise words are not required to invoke the privilege. Any negotiation with the purpose of reaching a settlement is inadmissible.⁷
- [14] Settlement privilege belongs to all parties to the settlement negotiation, and no single party can unilaterally waive the privilege.⁸
- [15] There are exceptions to settlement privilege. A party seeking to establish an exception must show that, on balance, a “competing public interest outweighs the public interest in encouraging settlements”.⁹ Exceptions to settlement privilege are to be construed narrowly and may only be given effect where another policy objective can be shown to outweigh any impact on the policy objective of promoting settlement.¹⁰

3.2 Alli’s submissions on the law of settlement privilege

- [16] The Commission submits that Alli’s submissions on the law of settlement privilege are rife with inaccuracies and are consequently misleading. The Commission submits that I should reject his unsupported statements about the law.

⁶ *Inter-Leasing, Inc v Ontario (Finance)*, 2009 CanLII 63595 (Div Ct) (***Inter-Leasing***) at para 10

⁷ *Sable* at para 14

⁸ *Canadian Flight Academy Ltd v The Corporation of the City of Oshawa*, 2024 ONSC 2756 at para 11; *Phemex Limited (Re)*, 2025 ONCMT 6 (***Phemex***) at para 10

⁹ *Sable* at para 19

¹⁰ *Phemex* at para 11; *Singh v Progressive Conservative Party of Ontario*, 2018 ONSC 203 (Div Ct) at para 57; *Phoa v Ley*, 2020 ABCA 195 at para 24

- [17] In particular, the Commission submits that Alli's submissions repeatedly reference case law which either (i) does not stand for the proposition he asserts or (ii) does not appear to exist. For example, Alli submits that the Supreme Court of Canada has affirmed that "settlement privilege protects the content of settlement negotiations, not the mere procedural fact that settlement discussions occurred" and that it has "repeatedly held that settlement privilege is subject to exceptions where disclosure is necessary to prevent unfairness or where the disclosure is minimal and does not undermine the purpose of the privilege". The cases he cites (*Sable* and *Union Carbide*) do not explicitly affirm these sentiments. Other case citations provided by Alli also contain misstatements, and in at least one instance, a case cited could not be located at all.
- [18] I agree with the Commission that Alli's submissions on the law of settlement privilege are inaccurate, and I do not give any weight in my analysis to those submissions.

3.3 Application of the law of settlement privilege to this case

- [19] The Commission submits that the Contested References are subject to settlement privilege because they refer to:
- a. settlement discussions or otherwise describe communications made to resolve the litigation in the present proceeding;
 - b. offers made in the course of negotiations; and
 - c. content of negotiations.
- [20] The Commission has not waived its settlement privilege over the Contested References. Therefore, the Commission submits it was not open to Alli to unilaterally introduce or refer to them in his materials in this proceeding. As a result, the Commission submits the Contested References are presumptively inadmissible.
- [21] Alli submits that the Commission's request that all references to the fact that a settlement offer was made is overly broad, because his submissions do not disclose terms, admissions, "without prejudice" communications or negotiation strategy. Alli submits that he limited his references to the statement that "OSC Staff made a settlement offer, without describing its substance". The fact that

the Commission made a settlement offer is a procedural fact, Alli submits, disclosure of which is permissible, minimally intrusive, and necessary for fairness.

- [22] The Commission submits, and I agree, that the established exceptions to settlement privilege do not include minimal intrusion or fairness.
- [23] Alli also submits that the Tribunal is not bound by the strict rules of evidence and that fairness to a self-represented respondent would permit the Contested References for a complete procedural history. The Commission submits that while the Tribunal has broad evidentiary discretion, the *Statutory Powers Procedure Act*¹¹ explicitly preserves the various privileges recognized under the law of evidence.¹² I agree with the Commission. In the absence of a recognized exception to settlement privilege, protected communications are not admissible.
- [24] Alli also conceded that if he had inadvertently referred to the content of settlement discussions he would agree to those references being redacted from his submissions.
- [25] The Tribunal encourages settlement discussions between the Commission and respondents and recognizes the essential role that settlement privilege plays in the effectiveness of those discussions. Parties to a settlement discussion will be more likely to engage in frank and broad conversations about the issues if they are confident those discussions will not be disclosed without the agreement of all involved parties.
- [26] The scope of settlement privilege is broad and includes:
- a. the content of negotiations, reflecting admissions, offers and compromises made in the course of negotiations;¹³
 - b. summaries of settlement offers;¹⁴ and
 - c. materials that refer to settlement discussions.¹⁵

¹¹ RSO 1990, c. S22 (**SPPA**)

¹² *SPPA*, s 15(2)

¹³ *Sable* at para 18

¹⁴ *Inter-Leasing* at para 16

¹⁵ *Inter-Leasing* at para 17

[27] The Supreme Court of Canada in *Sable* stated:

The purpose of settlement privilege is to promote settlement. The privilege wraps a protective veil around the efforts parties make to settle their disputes by ensuring that communications made in the course of these negotiations are inadmissible.¹⁶

[28] While the case law does not expressly draw a distinction between the existence of settlement discussions and the content of those discussions, it is clear from the description of the scope of settlement privilege that it applies to the substance of those communications and anything derived from them. Namely, the details of the negotiations, including any admissions and the substance of any offers. The privilege also extends to any materials that would similarly provide any of those details.

[29] The Commission submits that in any event, all the Contested References disclose more than the mere fact that settlement discussions occurred, and they include repeated references to the content of those discussions.

[30] I agree that several of the Contested References clearly contain details of conversations/statements made during settlement discussions. These references are squarely within the protection of settlement privilege, and I ordered they be removed from Alli's submissions.

[31] However, I do not agree that every instance identified by the Commission in the Contested References discloses the content of settlement discussions. I am not persuaded that stating that settlement discussions occurred or that a settlement offer was made by one or the other party is protected by settlement privilege as such statements do not disclose any of the substance of the settlement communications. The order I issued denied the Commission's request to strike all such references from the Contested References.

[32] I am satisfied that settlement privilege does attach to references that allude to or give insight into the settlement discussions, the positions of the parties in those negotiations and/or the strategy of parties. Such references would include, for example:

¹⁶ *Sable* at para 2

- a. statements about a settlement discussion and/or an offer that state or suggest the attitude or approach of a party, for example that imply that a party was reasonable or unreasonable requiring the other party to have to consider waiving privilege to respond to the statement;
- b. statements that, in their context, would disclose a party's position or strategy on a particular aspect of the issues at stake in the settlement discussions, for example a statement that a party's submissions on a sanction sought does not make sense given the offer made during settlement discussions; and
- c. statements that express what a party may or may not have been prepared to consider as part of settlement negotiations.

Accordingly, the order I issued granted the Commission's request to strike all such references.

4. CONCLUSION

- [33] I concluded that all portions of the material that disclosed settlement discussions were inadmissible and must be struck. Alli did not establish that there was an applicable exception to settlement privilege available in this case.
- [34] The Commission did not persuade me that references to the existence of settlement discussions or to the fact that either party made offers to settle offended settlement privilege. I refused to strike those statements.
- [35] I ordered that redacted versions of Alli's written merits and sanctions and costs submissions and written motion submissions be served and filed in accordance with my decision by May 15, 2026. Only the redacted versions will be publicly available.

Dated at Toronto this 20th day of May, 2026

"M. Cecilia Williams"

M. Cecilia Williams