



Capital
Markets
Tribunal

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financiers

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Citation: *Marks v CNSX Markets Inc*, 2026 ONCMT 28

Date: 2026-06-12

File No. 2025-11

BETWEEN:

JACK MARKS

(Applicant)

- and -

CNSX MARKETS INC. and ONTARIO SECURITIES COMMISSION

(Respondents)

REASONS FOR DECISION

(Rule 34 of the *Capital Markets Tribunal Rules of Procedure*)

Adjudicators: Andrea Burke (chair of the panel)
Jane Waechter
Dale Ponder

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

Appearances: Charlie Pettypiece For the Ontario Securities Commission
Andrew McCoomb For CNSX Markets Inc.
Sandy Lockhart
Aliyyah Jafri
Jack Marks For himself

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REASONS FOR DECISION

1. OVERVIEW

[1] Just over two weeks before a long-scheduled merits hearing, Jack Marks advised the Tribunal that he was no longer represented by legal counsel and he needed an adjournment to gather more evidence and prepare for the hearing.

[2] The parties agreed that Marks' adjournment motion should be dealt with as a written hearing. Despite CNSX Markets Inc. not opposing the request and the Ontario Securities Commission taking no position, we applied the test in subrule 34(1) of the Tribunal's *Rules of Procedure* (**Rules**) for adjournments. We made an order¹ on May 4, 2026, denying the adjournment on the basis that Marks failed to establish the requirement that there were exceptional circumstances justifying the adjournment. We also took into account rule 1 of the *Rules* which states that proceedings should be conducted in a just, expeditious and cost-effective manner and that it is in the public interest that the Tribunal hear proceedings as soon as possible.²

2. PROCEDURAL CHRONOLOGY

[3] This proceeding is an application brought by Marks pursuant to ss. 8 and 21.7 of the *Securities Act*³ for a hearing and review of a decision dated May 21, 2025, of a Panel of the Board of Directors of CNSX (**CNSX Panel**). The CNSX Panel found that Marks was unsuitable to be affiliated with an issuer listed on the Canadian Securities Exchange (**CSE**). Marks filed the hearing and review application on June 19, 2025.

[4] At the first case management hearing on August 28, 2025, the Tribunal scheduled November 12 and 14 for the merits hearing and any motions for permission to introduce new evidence (**new evidence motions**). The August 28

¹ *Marks v CNSX Markets Inc*, (2026) 49 OSCB 4251;
https://www.capitalmarketstribunal.ca/sites/default/files/2026-05/rad_20260504_marks.pdf

² *Hogg (Re)*, 2024 ONCMT 15 (**Hogg**) at para 35

³ RSO 1990, c S.5

case management order⁴ required the parties to serve and file motion materials by September 26. CNSX filed new evidence motion materials complying with the timetable established in that order. Marks did not.

[5] On October 23 Marks advised the registrar that the November 12 and 14 hearing dates must be rescheduled because Marks' counsel was no longer available. In response, the Tribunal made an order⁵ on November 17 varying the timetable. CNSX's new evidence motion and the merits of Marks' application were set for hearing on May 8 and 13, 2026.

3. MARKS' ADJOURNMENT MOTION

[6] On April 24, 2026, Marks provided notice as required by subrule 24(1)(b) of the *Rules* that he was no longer represented by counsel and would represent himself. At the same time, he requested an adjournment of the May 8 and 13 hearing dates and asked to reschedule them to dates between August 15 and August 30, 2026, or later.⁶

[7] We directed Marks to file a motion in support of his adjournment request,⁷ provided him with links to the Tribunal's recent adjournment decisions and directed him to provide details about his proposal to introduce new evidence that he raised as a ground for his adjournment request.⁸

[8] By May 1, Marks filed his materials in support of his adjournment motion.⁹ He advanced the following grounds for an adjournment:

- a. he was newly self-represented, which required him to independently review and analyze materials and make submissions;

⁴ *Marks v CNSX Markets Inc*, (2025) 48 OSCB 7497; https://www.capitalmarketstribunal.ca/sites/default/files/2025-08/rad_20250828_marks.pdf

⁵ *Marks v CNSX Markets Inc*, (2025) 48 OSCB 9556; https://www.capitalmarketstribunal.ca/sites/default/files/2025-11/rad_20251117_marks.pdf

⁶ Marks' email of April 24, 2026 (sent at 10:11 a.m. EDT) is marked as **Exhibit 1**.

⁷ Registrar's email of April 24, 2026 (sent at 2:08 p.m. EDT) is marked as **Exhibit 2**.

⁸ Registrar's email of April 29, 2026 (sent at 4:41 p.m. EDT) is marked as **Exhibit 3**.

⁹ Marks' email of May 1, 2026 (sent at 11:49 a.m. EDT) and attachments OSCJackMarksaffidavitApril28.pdf, Mark Faulkner – 04-21-2026.pdf, OSC notice of Motion CSE.pdf, OSC Motion Record.pdf and OSC CSE supplementary Motion Adjournment.pdf are marked as **Exhibit 4**.

- b. he was involved in responding to an injunction hearing in a proceeding brought against him by CNSX scheduled for May 4 and it was “practically impossible” for him to prepare for both hearings;
- c. CNSX had recently introduced new evidence and arguments that were not previously part of the record, materially altering the case;
- d. he wanted an opportunity to gather additional evidence as well as the opportunity to introduce new and compelling evidence for the merits hearing that could not have been provided earlier;
- e. if he were required to proceed with the hearing on May 8 and 13, he would be significantly prejudiced and he would be denied a meaningful opportunity to be heard; and
- f. the requested delay in the hearing dates was justified by the seriousness of the issues.

[9] Marks’ grounds for the adjournment also included a reiteration of his submissions on the merits of his application. We have treated that part of his motion materials as background information that is otherwise not directly relevant to his adjournment request.

4. ANALYSIS

[10] Subrule 34(1) of the Tribunal’s *Rules* provides that any party requesting an adjournment must satisfy the Tribunal “that there are exceptional circumstances requiring an adjournment.” This high standard supports the objective, set out in rule 1 of the *Rules*, that Tribunal proceedings be “conducted in a just, expeditious and cost-effective manner”.¹⁰

[11] Although CNSX and the Commission did not object to an adjournment, we must apply the Tribunal’s *Rules* to the circumstances before us. There is an underlying public interest in Tribunal proceedings being just, expeditious and cost-effective, even where the parties do not object to a request that might impact this interest.

¹⁰ Hogg at para 15

[12] For the reasons set out below, Marks did not meet the required exceptional circumstances standard.

4.1 New status as a self-represented party

[13] Marks submitted that we should grant the adjournment request to allow him additional time to prepare his case, since until recently he was represented by counsel.

[14] The Tribunal has previously found, and we reiterate, that withdrawal of counsel near the start of a hearing is not, in and of itself, an exceptional circumstance.¹¹ While self-representation may be challenging for an individual, the Tribunal has explained that litigants:

... in Tribunal proceedings often represent themselves. While a [litigant] may feel that they cannot participate as effectively as they could with counsel, there are many protections in place to ensure that they get a fair hearing. There is no absolute right to counsel.¹²

[15] The Tribunal has previously noted that parties are free to choose to be represented, and if so, by whom, and generally need not explain their choice. However, when a party seeks an adjournment based solely on that choice, the party bears the burden of demonstrating the exceptional circumstances related to representation that warrant an adjournment.¹³ Marks did not provide any explanation for his change in representation nor any details to explain why his change in representation was exceptional. Without an explanation from Marks, we do not have facts to support a conclusion that Marks' new status as a self-represented party met the exceptional circumstances burden.

4.2 Injunction hearing

[16] Marks also submitted that he needed an adjournment because he must also prepare for and attend an injunction hearing on May 4 in a court proceeding brought against him by CNSX, and the proximity of that hearing to the May 8

¹¹ *Hogg* at paras 20-24; *First Global Data Ltd (Re)*, 2022 ONCMT 23 (***First Global***) at paras 3 and 17; *Mughal Asset Management Corporation (Re)*, 2024 ONCMT 14 at paras 6-8 and 22-24

¹² *First Global* at para 13

¹³ *First Global* at paras 14 and 15

hearing in this proceeding significantly limits his ability to prepare for both matters. Marks' motion materials did not expressly identify the court proceeding, except to state that it involved issues that overlap with issues in this application before the Tribunal.

[17] While the existence of other proceedings may contribute to a party's workload, the Tribunal has previously found that, without more, this is not a sufficient reason to further delay a merits hearing.¹⁴

[18] Other than asserting that the proximity of the two hearings limited his ability to adequately prepare, Marks provided no evidence explaining why the scheduling amounted to exceptional circumstances. Without further evidence or explanation, we found that the closeness of the hearing dates did not meet Marks' burden to establish exceptional circumstances.

4.3 New CNSX evidence and arguments

[19] Marks also submitted that an adjournment was required because CNSX had introduced new evidence and arguments not previously part of the record, materially altering the case. It was not obvious to us whether Marks was taking issue with CNSX's new evidence motion or, alternatively, was referring to new evidence that he wants to be able to adduce and rely on at the merits hearing. As a result, we considered both.

[20] CNSX's new evidence motion, filed in compliance with timelines, asks for leave to adduce and rely upon a series of social media posts made by Marks after March 25, 2025. Those posts were not part of the record of the original proceeding before the CNSX Panel. Marks (while still represented by counsel) filed his written responding submissions to the CNSX new evidence motion in October 2025. CNSX also filed a supplemental motion record on April 23, 2026, asking to expand its new evidence motion to include more recent social media posts by Marks as well as documents related to its civil defamation injunction application against Marks.

[21] At the time of Marks' adjournment motion, CNSX's new evidence motion had not yet been heard or decided. However, Marks had notice for many months of the

¹⁴ *Ontario Securities Commission v Emerge Canada Inc*, 2026 ONCMT 11 at para 34

nature of CNSX's proposed new evidence, as well as CNSX's submissions relating to that new evidence. He was also a defendant in the injunction proceeding and, as such, would have received notice of the evidence and orders made in that proceeding.

[22] We rejected Marks' submission because CNSX's proposed new evidence and arguments based upon this proposed new evidence were not a surprise to Marks. They relate to social media posts that he made and a parallel court proceeding that he is involved in and of which he has knowledge. CNSX's proposed new evidence and related arguments were not an exceptional circumstance in this case that justify an adjournment request.

4.4 Gathering and submitting new evidence

[23] Marks submitted that he should be granted an adjournment because he would like to both gather and submit new evidence for the merits hearing.

[24] In a review proceeding, new evidence is not automatically admitted. A party must bring a motion for permission to introduce new evidence pursuant to subrule 17(5) of the *Rules*. Marks had the opportunity to file a new evidence motion by September 26, 2025. While represented by counsel, he let that deadline pass without filing a motion and he never sought to extend that deadline. As a result, when he made his adjournment request, Marks was no longer entitled to bring a new evidence motion without leave.

[25] Marks also requested an adjournment to seek disclosure of further evidence from CNSX. He described this new evidence as internal CNSX documents relating to its decision-making process as well as evidence from individuals at CNSX involved in the decision (which we inferred was testimonial evidence). Marks' adjournment materials did not specify precisely what he wants by way of disclosure. However, if Marks wants additional evidence, he must bring a motion (**discovery motion**) and, given the late stage of his request for relief, he will also require leave to bring that motion.

[26] Although the new evidence motion deadlines in the August 28 case management order had long passed, we allowed Marks to bring motions for leave to file a new evidence motion and to file a discovery motion to obtain the unspecified further evidence referred to in his adjournment motion. We ordered that these leave

motions be heard on May 8 and, to the extent that leave is granted, the underlying motions would also be heard on that date.

4.5 Prejudice

[27] Marks submitted that he would experience prejudice if an adjournment were not granted and that any delay was justified by the seriousness of the issues he has raised in his application. We disagree.

[28] When Marks notified the registrar that he was self-represented on April 24, 2026, his counsel had already filed written submissions for both the CNSX new evidence motion and the merits of the application. In addition, throughout the case management process, Marks was represented by counsel and had the benefit of legal advice for the scheduling decisions made along the way. These protections support our view that Marks has had a meaningful opportunity to make informed decisions about both the timing of the hearing and the arguments he will make on the merits and on the CNSX new evidence motion.

[29] Marks also submitted that CNSX would not experience any prejudice if an adjournment were granted. In our view, this factor is neither determinative nor persuasive. Although the prejudice or lack of prejudice to other parties is something that we may consider, there is no need to do so in these circumstances, since Marks has not demonstrated exceptional circumstances to support an adjournment.

5. CONCLUSION

[30] We considered all of Marks' submissions related to the adjournment request and we took note of the lengthy adjournment initially granted. We were not satisfied that the high threshold to establish exceptional circumstances was met, considering all of Marks' grounds for the adjournment, both separately and together. We therefore dismissed Marks' adjournment motion.

[31] We also set a timetable for the filing of materials for any leave motions by Marks relating to new evidence and discovery motions and for the new evidence and discovery motions themselves.

[32] We also ordered that the leave motions would be heard on May 8, 2026, and if the leave motions or any part of them were granted, then Marks' new evidence

motion and discovery motion would be heard on May 8, as applicable. We also ordered that the merits of the application be heard on May 13, 2026.

Dated at Toronto this 12th day of June, 2026

"Andrea Burke"

Andrea Burke

"Jane Waechter"

Jane Waechter

"Dale Ponder"

Dale Ponder