BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Randy Bryan Hildebrandt, 2025 BCSECCOM 406 Date: 20250910

Randy Bryan Hildebrandt and Canadian Investment Regulatory Organization

Panel	James Kershaw	Commissioner
	Marion Shaw	Commissioner
	Noordin Nanji, KC	Commissioner
Hearing date	April 24, 2025	
Ruling date	May 16, 2025	
Date of Reasons	September 10, 2025	

Parties

Owais Ahmed Jessica Mank Michelle de Haas	For Randy Bryan Hildebrandt
Rob Del Frate Jagdeep Khun-Khun	For Canadian Investment Industry Organization
Setareh Khasha Paul Smith	For the Executive Director

Reasons for Ruling

I. Procedural and factual background

[1] On June 26, 2023, the Canadian Investment Regulatory Association (CIRO) enforcement staff issued a Notice of Hearing alleging that between July 2019 and March 2020, Randy Bryan Hildebrandt (Hildebrandt) failed to make sufficient and reasonable or diligent inquiries in relation to client trading activity, contrary to his gatekeeper obligations under Investment Dealer and Partially Consolidated (IDPC) Rule 1400.

[2] Hildebrandt denied the allegations set forth in the Notice of Hearing.

[3] The matter proceeded to an enforcement hearing before a CIRO panel (CIRO Hearing Panel).

[4] On January 23, 2025, in *Re Hildebrandt*, 2025 CIRO 05 (Liability Decision), the CIRO Hearing Panel issued its decision on the liability portion of the hearing, finding that Hildebrandt had breached his gatekeeper obligations.

[5] On February 21, 2025, pursuant to section 28 of the *Securities Act*, 1996, c. 418 (Act) and Part 7 of BC Policy 15-601 *Hearings*, Hildebrandt sought a hearing and review by the Commission of the Liability Decision. On March 19, 2025, Hildebrandt brought a notice of application to stay both the Liability Decision and any subsequent CIRO sanctions hearing (Sanctions Hearing), pending the outcome of the hearing and review (together, the Hildebrandt Applications).

[6] Also on March 19, 2025, CIRO applied for an order dismissing the Hildebrandt Applications on the basis that they were premature, and for an order directing the parties to complete the Sanctions Hearing before the CIRO Hearing Panel (together, the CIRO Applications).

[7] The parties agreed that the Hildebrandt Applications and the CIRO Applications should be heard before any hearing and review of the Liability Decision.

[8] On April 24, 2025, we heard the parties' preliminary applications and reserved our decision.

[9] On May 9, 2025, CIRO issued a notice scheduling the Sanctions Hearing for July 9, 2025.

[10] On May 16, 2025, after considering the written and oral submissions of Hildebrandt, CIRO and the executive director, we ordered that:

a) Hildebrandt's application for an order to stay the Liability Decision and any Sanctions Hearing pending the outcome of the hearing and review of the Liability Decision be dismissed;

b) CIRO's application for an order dismissing Hildebrandt's application for a hearing and review of the Liability Decision be dismissed; and

c) Hildebrandt's application for a hearing and review of the Liability Decision be adjourned generally until a date to be set on application made by Hildebrandt after the completion of the Sanctions Hearing.

[11] These are the reasons for our orders.

II. Applicable law – Right to apply for a hearing and review

[12] The Commission issued an order dated November 16, 2022, as varied on May 15, 2023 (2023 BCSECCOM 259), recognizing CIRO as a self-regulatory body (SRO) pursuant to section 24 of the Act, to act as a successor to the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada following their legal amalgamation.

[13] CIRO is also a "designated organization", which is defined in the Act as "an organization that is authorized under section 184(2)(e) to exercise a power or perform a duty of the executive director". Section 184(2)(e) of the Act permits a designated organization to exercise specific powers of the executive director. CIRO's predecessor IIROC was so authorized under BC Instrument 22-502.

[14] Section 1(1) of the Act defines a "decision", in relation to the Commission, the executive director or a designated organization, to mean a "direction, decision, order, ruling or requirement made under a power or right conferred by this Act or the Regulations".

[15] Section 26(1) of the Act provides, in relevant part:

> Subject to this Act, the regulations and any decision made by the commission, a self-regulatory body … must regulate the … standards of practice and business conduct of its members or participants … in accordance with its bylaws, rules or other regulatory instruments.

[16] Section 28(1) of the Act provides:

> **Review of action**
> **28** (1) The executive director or a person directly affected by a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository may apply by notice to the commission for a hearing and review of the matter under part 19, and section 165(3) to (9) applies.

[17] Section 165(3) to (9) of the Act provides:

> (3) Except if otherwise expressly provided, any person directly affected by a decision of the executive director may, by a notice in writing sent to the commission within 30 days after the date on which the executive director sent the notice of the decision to the person, request and be entitled to a hearing and review of the decision of the executive director.
>
> (4) On a hearing and review, the commission may confirm or vary the decision under review or make another decision it considers proper.
>
> (5) The commission may grant a stay of the decision under review until disposition of the hearing and review.
>
> (6) The executive director is a party to a hearing and review under this section of any decision.
>
> (7) A designated organization is a party to a hearing and review under this section of its decision.
>
> (8) A self-regulatory body, an exchange, a quotation and trade reporting system, trade repository or a clearing agency is a party to a hearing and review under this section of its decision.
>
> (9) On application or on its own motion, the commission may extend the period in subsection (2) or (3) to a date the commission considers appropriate.

III. Application for a Hearing and Review of the Liability Decision

A. Positions of the Parties

Hildebrandt

[18] Hildebrandt submits that the Liability Decision is a decision made by CIRO under IDPC Rule 8200, which empowers CIRO hearing panels to conduct enforcement proceedings and make decisions on the standards of practice and business conduct of its members. The CIRO Hearing Panel held that Hildebrandt breached his gatekeeper obligations as a registered representative, contrary to IDPC Rule 1400. Hildebrandt argues that the IDPC Rules that CIRO uses to govern its members are derived from section 26(1) of the Act and that, accordingly, the Liability Decision is a “decision” contemplated by section 28(1) of the Act. He asserts that, as a person directly affected by a decision made under a rule of a SRO, he falls squarely within the words of section 28(1), which gives him a statutory right to a hearing and review of the Liability Decision.

[19] Hildebrandt also argues that he has that right in respect of the Liability Decision now, without waiting for the conclusion of any Sanctions Hearing. He submits that liability and sanctions decisions are separate decisions made under IDPC Rule 8200. “Decision” is defined in IDPC Rule 8202, as “[a] determination made by a hearing panel under Rule 8200 and includes a sanction and other order or ruling”. Hildebrandt argues that the express “reference to a “sanction” order or ruling in CIRO’s definition of a decision is, on its face, an acknowledgement that liability decisions and sanction decisions are distinct.

[20] Moreover, Hildebrandt submits that, pursuant to IDPC Rule 8204(2), regardless of whether a penalty hearing will follow, a decision on liability is effective immediately:

> **8204. Application and effective date of decisions**
> (2) A *decision*, other than a ruling in the course of a *hearing,* is effective on the date the *decision* is dated by the *National Hearing Officer*, unless Rule 8200 or the *decision* provides otherwise, in which case the *decision* is effective on the date so provided. [emphasis in the original]

[21] He further submits that there is nothing under Rule 8200 or the Liability Decision to suggest that it becomes effective at some later date, and no basis in the Act or otherwise to suggest that a penalties or sanctions decision must be issued before he can seek a hearing and review of the Liability Decision.

[22] Hildebrandt made submissions referencing a number of decisions by courts in the context of bifurcated liability and damages decisions, including *Radke v. M.S. et al,* 2006 BCCA 12, *Habitat for Humanity v. Hearts and Hands for Homes Society,* 2015 BCCA 443, and *Facebook, Inc. v. Douez,* 2023 BCCA 40. He argued that in the circumstances of those cases, courts have held that liability decisions are final orders, giving rise to rights of appeal, and that appealing the liability issue before there has been any damages determination was an efficient use of court resources, promoted fairness, avoided prejudice and possibly avoided unnecessary expense incurred in connection with the damages portion of the process if the liability appeal succeeds.

[23] Hildebrandt also drew the panel’s attention to *Michaels v. British Columbia Securities Commission*, 2016 BCCA 144, where the British Columbia Court of Appeal considered the appropriateness of liability and sanctions portions of a hearing being heard before different panels. The court found that there were two distinct matters resulting in two distinct decisions.

[24] Hildebrandt acknowledges that in the judicial review context, courts typically exercise restraint in interfering with the affairs of an administrative tribunal until the affected parties have exhausted all available remedies and processes within that tribunal. He says that that general rule of judicial restraint in the absence of exceptional circumstances flows from the acknowledgment that an administrative tribunal is created to fulfill its statutory functions, and that such process should not be interfered with by the courts until a final decision is rendered, as too much court intervention could frustrate the mandate and legislative purpose of the tribunal.

[25] However, Hildebrandt argues that section 28 of the Act gives the Commission broad jurisdiction to intervene in the CIRO decision process, and that section 28 signals clear legislative intention that the principles of restraint exercised by the courts on judicial review are not applicable to the Commission's review of a CIRO decision.

[26] Hildebrandt also draws a distinction between appeals of interlocutory decisions and those that are considered final. He argues that where a decision is final, and not merely interlocutory, there is no cause for restraint. In this case, he says, the Liability Decision is final, since the record on liability is complete and his only recourse now is to the Commission. Hildebrandt distinguishes the Manitoba Securities Commission decision *Re Kazina*, Reasons for Decision of the Manitoba Securities Commission dated February 1, 2024, referenced below and relied on by CIRO, on the basis that it relied on appellate cases which involved appeals from interlocutory decisions, not final orders on liability.

[27] Moreover, he argues that even if the panel accepts CIRO's contention that exceptional circumstances are required before the Commission will interfere in the work of a SRO, that test is met here.

[28] In summary, Hildebrandt's position is that he has a statutory right to have the Commission conduct a hearing and review of the Liability Decision now, and that proceeding now promotes efficient use of Commission resources while avoiding unnecessary potential prejudice to him.

CIRO

[29] CIRO does not take issue with Hildebrandt's submission that, as a person directly affected by the Liability Decision, he has the right to apply pursuant to section 28(1) of the Act for a hearing and review.

[30] CIRO's position is that Hildebrandt's application for a hearing and review should be dismissed on the basis that it is premature, given that the CIRO enforcement proceedings are not yet complete. The focus, CIRO says, should be not on whether a hearing and review should take place, but when. CIRO argues that the proper course of action is for the Sanctions Hearing to take place and for the CIRO Hearing Panel to issue a decision on sanctions before Hildebrandt can apply for a hearing and review of the Liability Decision. Only at that point, it says, has the CIRO Hearing Panel fully completed its work.

[31] CIRO argues that allowing a hearing and review of any or all decisions that are made by a CIRO hearing panel during the course of CIRO proceedings is not in the public interest because it risks fragmenting the CIRO disciplinary proceedings, resulting in added costs, time delays and a waste of scarce regulatory resources. CIRO says that would potentially undermine its role in the securities regulatory system and create a precedent that would encourage future respondents to appeal prematurely in an attempt to circumvent CIRO's enforcement proceedings.

[32] CIRO submits that it has adopted a disciplinary hearing process followed by most, if not all, securities commissions across the country of bifurcating disciplinary proceedings into two stages – a liability or merits stage, followed by a sanctions stage. These, it says, are not two distinct hearings, but rather two stages of a single disciplinary proceeding.

[33] CIRO points to the bifurcated disciplinary proceeding model codified by the Commission in section 9.2 of BC Policy 15-601, which provides:

> In enforcement hearings, generally, the Commission issues its findings of fact and law before hearing submissions on sanctions. These findings, any rulings and the Commission's decision on sanctions, when issued, constitute the Commission's decision.

[34] CIRO emphasizes that the "decision" following a bifurcated proceeding is not reached until a decision on sanctions is issued. They argue that while section 28 of the Act is silent on when a hearing and review should take place, section 9.2 of Policy 15-601 offers guidance in that regard.

[35] CIRO submits that IDPC Rule 8217(1), titled "Review by a securities regulatory authority", defines "decision" in a similar way:

> A party to a proceeding under Rule 8200 may apply to the *securities regulatory authority* in the relevant *District* for review of a final *decision* in the proceeding. [emphasis in the original using the defined term "decision" from rule 8202, *supra*, which is a "decision… and includes a sanction and other order or ruling"]

[36] CIRO further submits that this Commission has previously considered whether an application for a hearing and review of a SRO's liability decision in a disciplinary hearing is premature if brought before the sanctions hearing portion of that hearing is complete. In *Re Hauchecorne*, COR#99/054, [1999] 14 BCSC Weekly Summary 5, 1999 LNBCSC 27*,* the applicant sought "an order staying Vancouver Stock Exchange [VSE] disciplinary proceedings against him or for an order directing the Exchange panel to take no further steps on the issue of sanction."

[37] CIRO asserts that the VSE was at that time a recognized SRO performing a number of the same functions CIRO currently performs.

[38] CIRO submits that in *Hauchecorne,* staff of the VSE opposed the application for a hearing and review on the grounds that it was premature. At paragraph 13, the Commission set out the question to be decided by it: *"*whether there is very good reason in this case to prevent the Exchange from concluding its hearing and reaching a final decision on sanction?" The Commission concluded that no such reason existed. The panel considered a number of factors including the stage the VSE process was at, noting, at paragraph 15, that "[the] only matter outstanding before the Exchange hearing process results in a final conclusion, is the determination of sanction." The Commission also stated at paragraph 16: "We also note there is no indication that Hauchecorne's status as a Registered Representative under strict supervision at Pacific International will change pending the conclusion of the sanction portion of the hearing".

[39] CIRO notes that, in dismissing the application, the Commission concluded, at paragraph 17:

> In all these circumstances and to avoid further delay, it is our view that the Exchange should be allowed to complete the hearing process and render its final decision on sanction. In that way, all of the issues arising out of the hearing, including any on sanction and those raised by Commission staff, can be dealt with at one time at the hearing and review. In addition, once the Exchange renders its decision on sanction, Hauchecorne has the option of coming back before the Commission on short notice to seek a stay.

[40] CIRO also directed us to a Manitoba Securities Commission decision, *Re Kazina supra*, where a panel (MSC Panel) dismissed an application for a hearing and review of a CIRO liability decision. The MSC Panel directed the parties "to fully complete the processes under the CIRO rules". The MSC Panel stated, at paragraph 30:

> The generally accepted rule is that an administrative tribunal should not intervene in the work of a first instance tribunal until that tribunal has completed its work. In this case, that

> work includes the CIRO Hearing Panel making its determination on the issue of sanctions and penalties.

[41] The MSC Panel, at paragraph 27, cited the Manitoba Court of Appeal in *Thielmann v Association of Professional Engineers and Geoscientists of the Province of Manitoba*, 2020 MBCA 8, which held:

> In the past decade, there has been a significant shift away from early judicial intervention in the work of a tribunal. The general rule with respect to prematurity is that "absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted" (*Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at para 31). Moreover, the exceptional circumstances exception is exceptionally narrow and the threshold for intervention is exceptionally high (ibid at para 33)." [emphasis added in *Kazina*]

[42] CIRO argues that the same general rule should apply to the Commission's review of SRO disciplinary decisions.

[43] CIRO notes that the MSC Panel concluded, at paragraph 34:

> We are of the opinion that our intervention at this time would unnecessarily fragment the work of the CIRO Hearing Panel and would be disruptive and wasteful of resources. There is an adequate statutory remedy available to the Appellant at the conclusion of the work of the CIRO Hearing Panel.

[44] CIRO also cited *Lamarche v. British Columbia (Securities Commission)*, 2024 BCSC 1137, in which the British Columbia Supreme Court reiterated the requirement for exceptional circumstances before it would intervene in an administrative proceeding before the Commission.

[45] Finally, CIRO cited a decision of the Ontario Securities Commission, *TSX Inc. (Re)*, 2007 LNONOSC 781, in which the panel said, at para 206, "...the Commission should not lightly interfere with or interject itself (or be interjected) into an SRO adjudicative matter. In particular, we are of the view that we should do so prior to the conclusion of an SRO adjudicative process, only in the rarest of occasions."

Executive Director

[46] The executive director made limited submissions on Hildebrandt's application for a hearing and review of the Liability Decision.

[47] The executive director submits that the Act provides Hildebrandt with a right to apply for a hearing and review of the Liability Decision but does not guarantee the hearing and review will be scheduled in a specified period of time.

IV. Application to Stay the Liability Decision and Sanctions Hearing

A. The test for a stay application

[48] Section 165(5) of the Act provides:

> **Review of decision of the Executive Director**
> **165 (5)** The commission may grant a stay of the decision under review until disposition of the hearing and review.

[49] Hildebrandt asserts that the Commission has the authority to stay the Liability Decision and any Sanctions Hearing and should do so now.

[50] Hildebrandt submits that the test to be applied when considering whether to grant a stay was articulated by the Supreme Court of Canada in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311. CIRO and the executive director concur that the *RJR-Macdonald* test is the correct test to apply in these circumstances.

[51] The principles espoused in *RJR-McDonald* have been adopted by the Commission in various decisions and are reflected in section 7.4 of BC Policy 15-601, as follows*:*

> **7.4 Stays** – The Commission may grant a stay of a decision under review. If the person requesting the review seeks a stay of the decision, the person should say so in the request for review and describe the grounds for the stay. Generally, the test for a stay includes:
>
> - Is there is a serious question to be tried?
> - Will irreparable harm be suffered if the stay is not granted? and
> - Assessing any harm in granting or rejecting the stay, weighing the balance of convenience, including the public interest.
>
> The Commission generally will attach conditions to a stay of a decision and require the review to be heard promptly.

[52] Hildebrandt bears the onus of proving that the three branches of the *RJR–Macdonald* test have been satisfied, such that the Commission should exercise its discretion to grant a stay.

B. Serious question to be tried

[53] Hildebrandt and CIRO agree that the preliminary requirement to establish that there is a serious question to be tried on a hearing and review by the Commission of the Liability Decision is a low threshold.

[54] Hildebrandt argues that there are serious questions to be tried, including the appropriate articulation of the gatekeeper standard, the scope of the CIRO Hearing Panel's jurisdiction and the burden of proof to establish contraventions of IDPC rules.

[55] Hildebrandt argues that the gatekeeper standard that emerges from the Liability Decision is vague, overly broad and represents a sea change from existing industry standards. Hildebrandt also alleges that the CIRO Hearing Panel departed from existing precedents, without justification, when framing the gatekeeper standard.

[56] Hildebrandt also argues that the CIRO Hearing Panel improperly considered submissions that were not made in CIRO's Statement of Allegations against him and therefore fell outside the CIRO Hearing Panel's jurisdiction.

[57] Hildebrandt also argues that CIRO bore the onus of proving, based on clear and cogent evidence, that Hildebrandt failed to make appropriate inquiries consistent with his gatekeeper obligation. Moreover, Hildebrandt submits that the CIRO Hearing Panel further erred by improperly placing the burden of proof on him to prove that he did ask questions.

[58] CIRO does not challenge the position put forward by Hildebrandt. Rather, CIRO argues that, even if a serious question is made out, this panel must consider whether the application itself is premature and therefore doomed to fail.

[59] The executive director made no submissions on whether the serious question to be tried branch of the test had been met.

C. Irreparable harm

[60] Hildebrandt argues "that for harm to be irreparable, it need not be significant. He relies on *RJR-MacDonald*, where the Supreme Court articulated the meaning of irreparable harm as follows, at page 341:

> "Irreparable" refers to the nature of the harm suffered, rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.

[61] Hildebrandt argues that if the Liability Decision is not stayed, he will suffer irreparable harm to his reputation, possibly leading to loss of current or prospective clients. He submits that he has already suffered substantial emotional distress as a result of the Liability Decision, including sleepless nights, loss of appetite and difficulty concentrating, which will worsen if the stay is not granted.

[62] Hildebrandt argues further that, if his hearing and review of the Liability Decision is successful, any sanctions decision that has been issued will be rendered moot and he will have no ability to recover legal defence costs incurred by him in relation to the Sanctions Hearing, which he asserts will not be insignificant.

[63] Hildebrandt draws our attention to the decision in *Gill v. Canadian Venture Exchange (CDNX)*, 2002 BCCA 439, where the British Columbia Court of Appeal stated, at paragraph 9:

> Mr. Gill submits that if the hearing proceeds and penalties or costs are imposed against him, he will suffer financially. The respondents say that he has not submitted evidence of his financial circumstances. In my view, that is not necessary in order to demonstrate that he will suffer some irreparable harm from the CDNX hearing proceeding if he's ultimately successful on his appeal to this court. While penalties may be reversed, the cost of preparing for and conducting the hearing will likely not likely be recoverable. I am satisfied that he will suffer irreparable harm if the stay is not granted.

[64] CIRO submits that Hildebrandt bears the burden of establishing a real risk of disastrous consequences if the stay is not granted and that such evidence must be "clear and not speculative" and show that Hildebrandt will suffer it. CIRO argues that Hildebrandt has not established that he will suffer any harm, let alone irreparable harm, if the stay is not granted.

[65] CIRO submits that the Ontario Superior Court of Justice in *Kitmitto et al v. Ontario Securities Commission*, 2023 ONSC 1739*,* stated, at paragraph 27, that emotional harm "is not a basis to find irreparable harm - something more must be required in cases involving professionals who have a psychological attachment to their business; otherwise, as the Court stated in *Sazant* [*Sazant v. College of Physicians & Surgeons (Ontario),* 2011 CarswellOnt 15914 (ONCA)], a stay would always be granted."

[66] CIRO also argues that any reputational harm can be remedied by a successful review or appeal and therefore does not constitute irreparable harm.

[67] In support of that proposition, CIRO cited the decision of the Ontario Superior Court in *Xanthoudakis et. al. v. Ontario Securities Commission*, 2009 CanLII 30146, at paragraph 26:

> While it is a reasonable inference that reputations could be affected by adverse findings on the merits given the nature of the allegations, the nature and extent of that harm is speculative: *Noble v. Noble,* [2002] O.J. No. 4997 at para 16 (S.C.J.). Such an argument - based solely on the nature of the allegations - would mean that any professional conduct or regulatory proceeding based upon integrity or wrongdoing would automatically qualify as irreparable harm. The impact upon reputation of any adverse findings, as well as the issue of bias, can be fully and appropriately dealt with in this court on appeal.

[68] CIRO further argues that Hildebrandt has provided no medical evidence that Hildebrandt's loss of appetite, difficulty concentrating, and difficulty sleeping are tied to the Liability Decision, or that these symptoms would be alleviated, in any way, by the granting of a stay.

[69] Moreover, CIRO argues that the Liability Decision has not resulted in any impact on Hildebrandt's livelihood, noting that he remains employed with the same employer and in the same registration capacity without any terms and conditions on his employment. CIRO asserts that Hildebrandt has provided no evidence of any loss of clients or income as a result of the Liability Decision and has provided no evidence of actual impact on his reputation.

[70] CIRO submits that there is nothing specific to Hildebrandt that does not exist in any other disciplinary proceeding.

[71] In response to Hildebrandt's statement that he will incur substantial legal costs to defend the Sanctions Hearing, CIRO argues that Hildebrandt has provided no estimate of those costs. Furthermore, CIRO submits, following *Canadian Imperial Bank of Commerce v. Kollar,* 2003 FC 985, "that the costs associated with the defence before an administrative tribunal, along with negative publicity and stigmatization are insufficient to constitute irreparable harm."

[72] Finally, CIRO submits that we should be guided by the decision in *Talarico v. Law Society of Upper Canada*, 2012 ONSC 2493*,* where the Ontario Superior Court of Justice stated:

> […] The fact that he will incur irrecoverable legal costs if the discipline proceedings begin is not a harm caused by not staying the disciplinary discipline hearings.
>
> Unfortunately, Mr. Talarico will inevitably incur irrecoverable legal costs and inevitably he will be taken away from practicing law and inevitably he will suffer stress and worry in defending the discipline proceedings. Put somewhat different, there may be irreparable harm, but it will not be caused by refusing a stay, nor will it be avoided by granting a stay.

[73] The executive director submits that the Liability Decision is already public. Moreover, any reputational harm that Hildebrandt suggests will result from not granting the stay has already happened and it is not clear how a stay would remedy that harm.

[74] The executive director submits that the *Gill* decision reflected in the submissions of Hildebrandt with respect to irreparable harm has not, to the knowledge of the executive director, been followed or applied as authority in any reported case.

D. Balance of convenience

[75] Hildebrandt asserts that the balance of convenience favours a stay. He argues that while he will suffer irreparable harm if a stay is denied, there will be no harm to the public interest if the Liability Decision and any Sanctions Hearing are stayed pending the Commission's hearing and review of the Liability Decision.

[76] In support of that position, Hildebrandt invites this panel to consider that he has no prior disciplinary history and has continued to work as a registered representative since the investigation began without any restrictions imposed by either CIRO or his employer.

[77] Hildebrandt argues that proceeding with the hearing and review prior to the Sanctions Hearing is more efficient than the alternative. He further argues that if he is forced to proceed to the Sanctions Hearing now, and his hearing and review is successful, the time and effort expended on the Sanctions Hearing will have been wasted. He adds that since over four years have passed since the investigation of this matter commenced, there is no urgency to complete the Sanctions Hearing.

[78] CIRO submits that the public interest is a special factor that must be given extra weight in cases that challenge the authority of a law enforcement agency compared to cases between private litigants. As support, CIRO quotes the court in *RJR-MacDonald*, at page 346:

> The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.

[79] CIRO notes that the Ontario Court of Appeal in *Sazant*, *supra*, stated:

> The public interest goes beyond that of public safety and also includes public confidence in the administration of justice, and in cases such as this, confidence in the disciplinary process of the College.

[80] CIRO argues that as a public interest regulator, it must adhere to its guiding principles, which include protecting investors from unfair, improper or fraudulent practices, fostering fair and efficient capital markets, fostering public confidence in capital markets and administering robust enforcement processes.

[81] CIRO references the decision in *Kitmitto*, *supra*, where the court noted that "the public must have confidence in the integrity of the capital markets, and confidence that the laws regulating the markets will be rigorously enforced."

[82] CIRO noted that the court in *Talarico*, *supra*, found that extraordinary circumstances were needed to favour "early intervention and fragmentation of the disciplinary process":

> In the absence of extraordinary circumstances, courts should not permit proceedings before tribunals to be fragmented. In the absence of extraordinary circumstances, courts ought not to entertain applications for judicial review in the absence of a final result in a full record from the tribunal. The inconvenience to Mr. Talarico is outweighed by the broad public interest in maintaining the integrity of the scheme for the regulation of the legal profession.

[83] The executive director agrees with CIRO's submission on public interest as a factor that must be considered in a case involving discipline of a registered individual.

[84] The executive director further argues, following the British Columbia Court of Appeal in *Ganapathi v. The Law Society of British Columbia*, 2020 BCCA 340, that public confidence in the context of a disciplinary matter is reinforced when sanctions are determined soon after a liability determination. The executive director submits that public confidence in CIRO's registrants is also critically important and having the Sanctions Hearing follow closely after the Liability Decision will instill confidence in the general public that registered individuals who breach CIRO's rules will be disciplined in a timely manner.

V. Analysis

A. Application for a hearing and review

[85] Section 28(1) of the Act sets out certain prerequisites before a party can apply for a hearing and review by the Commission of a decision. We conclude that those prerequisites are met here. CIRO is an SRO, as defined. Hildebrandt asserts, and CIRO and the executive director do not dispute, that the Liability Decision is a "decision" as defined and that Hildebrandt, being a registrant of CIRO and the subject of the CIRO enforcement proceedings, is a person directly affected by the Liability Decision. Hildebrandt has applied by notice in writing to the Commission for a hearing and review of the Liability Decision. He is a person to whom section 28(1) applies and he has followed the prescribed process to seek a hearing and review.

[86] Hildebrandt argues that he has a statutory right to have a hearing and review of the Liability Decision conducted by the Commission now. We disagree. We find that he has the right to apply for a hearing and review, but not the right to determine when or how that hearing and review is conducted, which are matters within the discretion of the Commission. The Commission is the master of its own procedures. BC Policy 15-601 provides in section 1.2:

> **General Principles**
> The Commission holds administrative hearings, which are far less formal than the courts. **The Commission's goal is to conduct its proceedings fairly, flexibly and efficiently**… [emphasis in the original]

[87] Section 2.1 Procedures of BC Policy 15-601 further states that:

> The Act and Regulation prescribe very few procedures the Commission must follow in hearings. Consequently, the Commission is the master of its own procedures, and can do what is required to ensure a proceeding is fair, flexible and efficient. In deciding procedural matters, the Commission considers the rules of natural justice set by the courts and the public interest in having matters heard fully and fairly and decided promptly.

[88] In keeping with BC Policy 15-601, the Commission is free to determine when and how a hearing and review in these circumstances is held, taking into account the rules of natural justice and the public interest. CIRO has asked us to dismiss Hildebrandt's request for a hearing and review of the Liability Decision on the grounds that it is premature. As master of our own procedures, this panel is free to assess whether that is the case.

[89] The generally accepted rule on prematurity is that articulated by the Federal Court of Appeal in *CB Powell Limited v. Canada (Border Services Agency) ,* 2010 FCA 61, at para 31: “absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.” In its decision in *Kazina*, a matter very similar to this one, the Manitoba Securities Commission extended that rule to state, at para 30, the “generally accepted rule” that “an administrative tribunal should not intervene in the work of a first instance tribunal until that tribunal has completed its work. In this case, that work includes the CIRO Hearing Panel making its determination on the issue of sanctions and penalties.”

[90] Hildebrandt argues that section 28 of the Act signals clear legislative intention that the principles of restraint exercised by the courts on judicial review are not applicable to the Commission's review of a CIRO decision. If that was indeed the Legislature’s intention, it is not clear to us. We have a regulatory framework in which each SRO, including CIRO, exists to fulfil the statutory duties assigned to it. Our practice has been to respect the process, allowing CIRO to perform its role without interference unless we find it warranted.

[91] As with Commission enforcement hearings, CIRO enforcement proceedings involve both a liability phase and a sanctions phase. Hildebrandt invites this panel to make a determination that the Liability Decision is a final decision of the CIRO Hearing Panel in the liability phase and he is, therefore, entitled to proceed to a hearing and review now. He argues that the principle of administrative deference to the completion of process at the tribunal of first instance is limited to appeals of interlocutory decisions rather than those of final decisions. However the Liability Decision is characterized, we do not accept that distinction.

[92] The CIRO enforcement proceeding is a bifurcated process that is conducted in a manner consistent with that employed by similar bodies across the Canadian securities regulatory landscape. A hearing was held on the merits, the Liability Decision was rendered and the CIRO Hearing Panel moved promptly to schedule a hearing with respect to sanctions. The Liability Decision was delivered on January 23, 2025. Following the Hildebrandt Applications and the hearing before this panel, the Sanctions Hearing date of July 9, 2025 was set on May 9, 2025. Upon issuing its findings on sanctions, following the Sanctions Hearing, the CIRO Hearing Panel will have completed its work.

[93] No exceptional circumstances have been brought to our attention that would warrant our intervention prior to the completion of CIRO’s enforcement process.

[94] We find that to conduct a hearing and review of the Liability Decision now would be premature. Accordingly, we dismissed CIRO’s application for an order dismissing Hildebrandt’s application for a hearing and review of the Liability Decision, and ordered that Hildebrandt’s application for a hearing and review be adjourned generally, for consideration at a later date on application by Hildebrandt following the resolution of the Sanctions Hearing.

[95] Our order is intended to promote a fair and efficient enforcement process by CIRO that is neither wasteful of resources nor results in unwarranted intervention by the Commission that risks unnecessarily fragmenting and disrupting the work of the CIRO Hearing Panel. Moreover, the approach chosen may allow the same CIRO Hearing Panel members that delivered the Liability Decision to sit on the Sanctions Hearing and, more importantly, it will also enable the decision on sanctions to be made as soon as possible following the Liability Decision.

B. Application to stay the Liability Decision and the Sanctions Hearing

[96] As was acknowledged by CIRO, the threshold test was easily met, in that Hildebrandt's application raised one or more serious questions to be tried.

[97] With respect to the issue of whether Hildebrandt will suffer irreparable harm absent a stay, we note that:

a) long after the commencement of the CIRO enforcement proceedings, Hildebrandt remains employed with the same employer, and his employment remains free of restrictions imposed by CIRO or his employer;

b) no evidence was adduced that would suggest that Hildebrandt has lost clients or assets under management, or been denied professional opportunities as a result of the Liability Decision;

c) the nature and scope of the CIRO enforcement proceedings, including the related Notice of Hearing and the Liability Decision, have been disclosed publicly and the liability hearing portion of the CIRO enforcement proceedings was open to the public, so if there was reputational harm associated with the Liability Decision, that harm has already arisen; and

d) it is reasonable to expect emotional and psychological distress to be associated with professional discipline proceedings. That is a risk attendant on participation in a regulated industry.

[98] Absent a stay, it is foreseeable that Hildebrandt will incur expenses in preparing for the Sanctions Hearing that ultimately will have been incurred unnecessarily if the Liability Decision is set aside by the Commission following its hearing and review. In that case, those additional costs will not be recoverable by Hildebrandt. We note that any such expense will likely constitute a relatively minor part of the overall expense associated with the enforcement proceedings against Hildebrandt. In any event, the prospect of such harm is speculative, not certain. We find that Hildebrandt’s claim of irreparable harm if the stay is not granted has not been made out.

[99] The final aspect of the decision whether to grant a stay requires us to assess any harm in granting or rejecting the stay, weighing the balance of convenience, including the public interest. Hildebrandt argues that while he will suffer irreparable harm if the stay is denied, there will be no harm to the public interest if the stay is granted. We disagree. As a public interest regulator, CIRO is charged with promoting public confidence in the integrity of our capital markets, which necessarily includes conducting robust enforcement processes. Prior decisions of courts and of this Commission have reinforced the importance of regulators both enforcing and being seen to enforce the strictures governing the operations of our capital markets. Applying the reasoning of the Supreme Court in *RJR-MacDonald*, we conclude that where a regulator, such as CIRO, is charged with promoting the public interest through effective regulation and the act sought to be enjoined, here the Sanctions Hearing, is carried out pursuant to that responsibility, the balance of convenience must favour the regulator. We find that the risks that Hildebrandt will suffer additional emotional distress and may incur additional unnecessary cost are outweighed by the broad public interest in maintaining the integrity of the regulatory scheme.

[100] For those reasons, we dismissed Hildebrandt's application for an order to stay the Liability Decision and any Sanctions Hearing pending the disposition of a hearing and review of the Liability Decision by the Commission.

September 10, 2025

For the Commission

James Kershaw
Commissioner

Marion Shaw
Commissioner

Noordin Nanji, KC
Commissioner