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

Citation: Re Ismail, 2025 BCSECCOM 429 Date: 20250924

Aly Ismail, NH Transcendental Business Solutions Inc.,
Green Stream Botanicals Corp.,
(together, the Ismail Group)

Panel	James Kershaw	Commissioner
	Marion Shaw	Commissioner
	Karen Keilty	Commissioner
Submissions completed	September 3, 2025	
Ruling date	September 24, 2025	

Parties

Mila Pivnenko	For the Executive Director
Aly Ismail	For himself
Thuy Hanh Nguyen	For NH Transcendental Business Solutions Inc. and Green Stream Botanicals Corp.

Ruling

I. Background

[1] On October 24, 2023, the executive director issued a notice of hearing (2023 BCSECCOM 494) alleging that the Ismail Group and another group of respondents, the Mohamed Group, had engaged in unregistered trading of two issuers' securities without any applicable exemptions.

[2] Thuy Hanh Nguyen (Nguyen) was not named in the notice of hearing but is the sole director of the corporate respondents in the Ismail Group.

[3] On April 5, 2024, Aly Ismail (Ismail) and Nguyen each applied to the Commission to have the Ismail Group severed from the Mohamed Group for the purposes of the hearing and to be afforded unspecified medical accommodations.

[4] On August 26, 2024, in *Re Mohamed*, 2024 BCSECCOM 369, this panel denied the applications for severance because Ismail and Nguyen failed to establish that manifest prejudice would result if such order was not granted. The panel also denied the applications for unspecified medical accommodations because the respondents failed to provide credible documentary evidence from qualified medical practitioners sufficient to support those applications. We noted in that ruling that we had by then advised the respondents "on six occasions about the necessity for proper documentary evidence".

[5] On October 25, 2024, on application by the respondents, this panel adjourned generally the hearing, with reasons to follow.

[6] On October 28, 2024, the executive director filed a Notice of Discontinuance, 2024 BCSECCOM 466, which stated that the Mohamed Group had entered into a settlement agreement and that the proceedings were discontinued against them.

[7] On October 30, 2024, we issued a Ruling and Temporary Order, *Re Mohamed,* 2024 BCSECCOM 467, setting out the reasons we granted the adjournment application and making temporary orders prohibiting members of the Ismail Group from various activities in the securities markets until November 14, 2024.

[8] On November 13, 2024, we issued a Ruling, *Re Ismail*, 2024 BCSECCOM 476, extending the temporary orders until a hearing is held and a decision is rendered, with reasons to follow.

[9] On March 18, 2025, in *Re Ismail*, 2025 BCSECCOM 116, we issued our reasons for the extension of the temporary orders. Those reasons contain an extensive review of the procedural history of this matter. They document that:

a) On December 6, 2024, the executive director proposed that the hearing of this matter be conducted in writing with evidence by affidavits and proposed a timetable;

b) On December 6, 2024, former counsel for the Ismail Group advised that they were unable to obtain instructions from their client. On December 20, 2024, that counsel withdrew as counsel for the Ismail Group;

c) On January 9, 2025, the panel chair advised the respondents that they had until January 17, 2025 to respond to the executive director's December 6 proposal;

d) On January 16, 2025, Nguyen advised that she was unable to engage in the hearing process and provided a document to support her position;

e) On January 23, 2025, the panel chair directed that:

i. The matter will proceed in writing;

ii. The written submissions and evidence in affidavit form of the executive director will be due by the end of the day on Friday, May 30, 2025;

iii. The respondents may bring an application to cross-examine the executive director's witnesses on their affidavits by the end of the day on July 25, 2025;

iv. The written response and evidence in affidavit form (if there is any) from the respondents will be due by the end of the day on Friday, August 29, 2025;

v. The executive director may bring an application to cross-examine the respondents' witnesses, if any, on their affidavits by the end of the day on Friday, September 12, 2025; and

vi. Any written reply submissions from the executive director will be due by the end of the day on Friday, September 12, 2025, if there is no application for cross-examination, or by the end of the day on Friday, October 3, 2025, if there will be cross-examination of the respondents' witnesses.

[10] The January 23, 2025, email from the panel chair also advised that if "any of the parties want to proceed with an oral liability hearing instead of having the matter determined in writing, they should bring a written application to have the matter heard orally".

[11] On May 30, 2025, in accordance with the schedule set by the panel chair, the executive director provided his submissions and supporting affidavit evidence.

[12] On July 25, 2025, the Ismail Group submitted three applications: a "confidential accommodations application", a "renewed adjournment application", and an application to seal (the Applications). They provided some unsworn documents, including a doctor's note relating to Nguyen, to support the Applications.

[13] On August 1, 2025, the executive director responded to the Applications.

[14] On August 5, 2025, the Ismail Group replied to the executive director's response.

[15] On August 20, 2025, the Hearing Office sent an email to the parties from the panel advising that the parties were not required to meet the August 29, September 12, and October 3, 2025, deadlines set out above and that counsel for the executive director had until August 29, 2025 to provide evidence in response to Nguyen's doctor's note. The date for counsel for the executive director to provide that evidence was subsequently extended to September 12, 2025.

[16] On August 25, 2025, Nguyen and Ismail sent a letter to the hearing office that:

a) requested clarification on the July 25, 2025 deadline for cross-examination of the executive director's witnesses;

b) advised that they may not be able to reply by October 3, 2025;

c) advised that they were available for a hearing management meeting on October 24, 2025 and requested an agenda for that meeting; and

d) requested clarification on how the Commission would accommodate the respondents.

[17] On August 29, 2025, the Hearing Office sent an email to the parties from the panel responding to Nguyen and Ismail's August 25, 2025 letter.

[18] On September 3, 2025, counsel for the executive director sent an email to the Hearing Office advising that the executive director was relying on his August 1, 2025 written submissions and "will **not** be filing additional evidence or submissions in response to" the doctor's letter [emphasis in original].

II. The parties' positions

[19] In their Applications, the Ismail Group sought:

a) accommodations when communicating with the respondents;

b) procedural accommodations including extended deadlines;

c) sealing of the documents used to support the Applications; and

d) adjournment of the written hearing ”to a date no later than” March 31, 2026 on the basis of Nguyen’s continued medical incapacity and Ismail’s ongoing disability and inability to secure legal counsel.

[20] In support of the Applications, the respondents submitted two items of new evidence: what purports to be an extract from a 2023 vocational assessment for Ismail, and a letter dated June 24, 2025 from Nguyen’s family physician.

[21] The executive director opposed the application for an adjournment, noting that it was the third adjournment application made by the respondents. The executive director argued that:

a) The current structure of the hearing in writing includes extended deadlines and accommodates the respondents’ medical issues. It fully satisfies the principle of fairness to the respondents while allowing the hearing process to move forward;

b) The adjournment the respondents are seeking is lengthy, with no certainty that they will be in a position to engage in any form of hearing in this matter after March 2026 or ever;

c) The existence of medical conditions does not mean that the respondents are unable to participate in the hearing in writing, with appropriate accommodations. The current process is the best vehicle to ensure that the allegations are considered in a manner that accommodates the respondents’ health;

d) An adjournment will not ensure that the respondents can retain counsel; and

e) The evidence filed does not add anything of substance to the evidence the panel considered before ordering that the hearing proceed in writing and is insufficient to ground an adjournment.

[22] The Ismail Group’s August 5, 2025 reply to the executive director’s response was a three-page document entitled “Request for Time to Reply”. In it, they noted that:

a) The executive director’s submissions were formatted as a complex legal brief requiring detailed response;

b) The executive director had previously acknowledged that medical evidence could support extensions of timelines, and to argue otherwise now was inconsistent; and

c) The executive director’s responding submissions did not accommodate the respondents because it included legal language without accessibility adaptations and was formal and adversarial in tone.

[23] The Ismail Group requested new timelines:

a) a reply deadline not earlier than October 4, 2025, being 60 days after August 5;

b) in the alternative, 45 days for legal reply, with 14 additional days for supporting exhibits, submitted in two phases; or

c) 30 days for the initial reply on certain conditions.

[24] The Ismail Group's August 5, 2025 submission concluded by stating that:

> The Respondents intend to file one complete and final reply, including legal arguments and supporting exhibits, once an appropriate timeline is confirmed. **Subject to any direction from the Commission, that reply will close the Respondents' record in respect of the Executive Director's August 1, 2025 submission.** [emphasis in the original]

III. Applicable law

Adjournments and accommodations

[25] BC Policy 15-601 *Hearings* (Hearings Policy), in section 1.2, sets out the general principles of hearings at the Commission:

> The Commission holds administrative hearings, which are less formal than the courts. **The Commission's goal is to conduct its proceedings fairly, flexibly and efficiently.** The procedures set out in this Policy are in furtherance of this goal and the provisions of this policy are to be interpreted in light of this goal. **Where the circumstances require a variation of the procedures set out in this policy in order to achieve this goal, the Commission may do so.** [emphasis in the original]

[26] Section 2.1 of the Hearings Policy states that "the Commission is the master of its own procedure, and can do what is required to ensure a proceeding is fair, flexible and efficient".

[27] In *Re Poonian*, 2013 BCSECCOM 448, the panel quoted *Bennett (Re)*, 1992 LNBCSC 64, citing the Supreme Court of Canada in *Prassad v. Canada (Minister of Employment & Immigration)*, (1989), 57 D.L.R. (4th) 663:

> As a general rule, these (administrative) tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice. Adjournment of their proceedings is very much in their discretion.

[28] The panel in *Poonian* went on to quote the panel in *Bennett*:

> As a general rule, it is in the public interest to proceed with hearings expeditiously. One of the reasons legislatures pass legislation creating administrative tribunals is because there is an expectation those tribunals will be able to make decisions more expeditiously than the courts and therefore with respect to securities regulation as an example, the public interest will be better served. In our view, failure to hold hearings expeditiously can be prejudicial to the public interest, notwithstanding that there are temporary orders.

[29] Section 3.4(c) of the Hearings Policy describes the procedures to follow for adjournment applications:

> The Commission expects parties to meet scheduled hearing dates. If a party applies for an adjournment, the Commission considers the circumstances, the timing of the application in relation to any hearing date, the fairness to all parties and the public

> interest in having matters heard and decided efficiently and promptly. The Commission will generally only grant adjournments if a panel is satisfied based on the evidence filed by the applicant that there are compelling circumstances. Where an adjournment application is based on a party's health, the Commission usually requires sufficient evidence from a medical professional.
>
> Where the Commission has previously set dates for a hearing, and a party retains new counsel, the Commission expects the new counsel to be available for those dates.

[30] The panel in *Re Nickford,* 2016 BCSECCOM 282, addressed the need to balance hearing fairness with the public interest in the timely resolution of a matter. In that case, the panel denied an application to adjourn after taking "into account the insufficiency of the evidence provided and the balancing of interests". The panel stated: " While there is evidence that she has medical issues and is receiving treatment, we are unable to conclude from that evidence that the respondent is unable to participate in the hearing, particularly in view of the existing and possible further accommodations".

[31] The respondents cited *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817, for the principle that "decision-makers must ensure fairness is tailored to the context of the individual". The Court in *Baker* was careful to note that the duty of fairness owed to parties in administrative matters is "flexible and variable, and depends on an appreciation of the context of the particular statute and rights affected". The Court noted several factors to consider when determining whether a process is fair:

a) the nature of the decision being made;

b) the nature of the statutory scheme and whether it includes provisions for appeals;

c) the importance of the decision to the individuals affected by it;

d) the legitimate expectations of the parties; and

e) the choice of procedure made by the decision-maker.

[32] The panel in *Re Zhang*, 2023 BCSECCOM 192, addressed the need to balance the public interest factors against the interests of an applicant's request for an adjournment:

> There are other public interests factors as well, including the need for any administrative body, including this one, to operate efficiently. It is not efficient for us as a tribunal to repeatedly set aside time and resources only to adjourn. Also, the resource cost to the enforcement division is even larger because that group invests significant resources into preparation as each hearing date approaches. Even more importantly, there are a number of witnesses who have repeatedly set aside time in their schedules to attend hearings which did not proceed and permitting another adjournment will repeat that cost on individuals who have suffered their own level of stress and given up time in relation to this proceeding. We consider all of those interests to be important.

[33] The panel in *Re Zhang* quoted *Party A v. British Columbia (Securities Commission)*, 2021 BCCA 358, noting that the applicant is also a member of the public and that "their interests need to be considered so as to retain public confidence in the system".

[34] In *Re BridgeMark*, 2023 BCSECCOM 553, the panel considered adjournment applications where the applicants were seeking new counsel to represent them. The panel noted that, while all respondents are entitled to a fair hearing, their "right to retain legal counsel is not absolute" when balanced against the "public interest to hold and complete hearings promptly".

Sealing orders

[35] The Securities Regulation, BC Reg 196/97, section 19 states:

> (1) Subject to subsection (2), every hearing is open to the public.
> (2) If the person presiding considers that a public hearing would be unduly prejudicial to a party or a witness and that to do so would not be prejudicial to the public interest, the person presiding may order that the public be excluded for all or part of the hearing.

[36] Section 8.4(a) of the Hearings Policy states:

> **(a) Hearings are public** – A hearing must be open to the public, unless the Commission considers that:
> - a public hearing would be unduly prejudicial to a party or a witness and
> - it would not be prejudicial to the public interest to order that the public be excluded for all or part of the hearing

[37] The Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25, noted that "proceedings are presumptively open to the public" and provided a "test for discretionary limits on presumptive court openness". That test, at paragraph 38, is:

> In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:
> (1) court openness poses a serious risk to an important public interest;
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
> (3) as a matter of proportionality, the benefits of the order outweigh the negative effects.

IV. Analysis

[38] We have considered the submissions from the parties, the timing of the Applications, and the need to have this matter heard and decided efficiently and promptly, balanced against any potential unfairness to the respondents.

Adjournment

[39] The Applications were submitted on July 25, 2025, the day that the respondents were required to file any application to cross-examine the executive director's witnesses. That deadline was set on January 23, 2025. The Applications are the first communication from the respondents since around that time.

[40] When the panel chair set the dates for a hearing in writing, it was noted that:

> The procedures listed will allow this matter to be "heard fully and fairly, and decided promptly" as stated in BC Policy 15-601, section 2.1, while accommodating the medical concerns of the respondents.

[41] Procedural fairness requires that the respondents know the allegations to be met by them and that they be provided with an opportunity to put forward their views and evidence fully and have them considered by the panel. The schedule that was established for a hearing in writing was intended to allow the respondents to do just that, by eliminating the stress of an in-person hearing and providing significantly lengthened timelines for the due consideration of each procedural step, including the review, by the respondents, of the executive director's evidence, and their determination as to whether, and to what extent, to proceed with cross-examination of that evidence, as well as the production of documents by the respondents.

Adjournment to allow Ismail to retain counsel

[42] We deal first with Ismail's request for an adjournment to allow him to retain counsel which, he says, he has been unable to do because of his limited income and ongoing medical needs. He has provided no documentary evidence to support his assertions regarding his financial situation and no explanation why an adjournment will help him retain counsel in the future. There is no absolute right to counsel. The executive director, relying on *Bridgemark*, at paragraph 31, asserts that the basic question is whether an adjournment is required in order to ensure that the individual concerned has a reasonable opportunity in all the circumstances to present proofs and argument to the decision-maker, and to answer the opposing case. The executive director argues that Ismail has had notice of the case he has to meet for over 21 months and has had ample opportunity to prepare himself. Moreover, he says, the allegations are not complex, and the salient facts are within the knowledge of the respondents.

[43] We agree with the submissions of the executive director in this regard. We find that it is not in the public interest to adjourn this matter to afford Ismail more time to retain counsel, especially when there is no evidence that an adjournment would achieve that result.

Adjournment based on medical grounds

[44] We turn next to the application for an adjournment based on medical grounds.

[45] The executive director argues that the documents submitted along with the Applications are not sufficiently compelling to support an adjournment application because they do not reflect any understanding by the medical practitioners about accommodations already made to assist the respondents.

[46] The document submitted in relation to Ismail, which contains excerpts of what he asserts are the statements of medical practitioners, is not original, not sworn and not recent. It does not demonstrate that Ismail's conditions have worsened since our ruling ordering that the hearing proceed in writing. We attribute no weight to that document.

[47] The doctor's letter dated June 24, 2025 submitted in relation to Nguyen is more compelling. It states that she has limitations that "may persist for at least nine months, potentially longer" and that she "is unable to meaningfully participate in any written hearing process at this time and will remain unavailable for such activities until at least early 2026". That nine-month timeline takes us to late March of 2026.

[48] The executive director argues that this document "is not sufficient for the panel to find that Ms. Nguyen is unable to participate in the current hearing in writing process". He states that it is unclear what materials were relied on as a basis for the document and that there is no evidence that the document's writer "understands the functional requirements of a hearing in writing". We note that the author of the document stated that, if clarification was required, the author was

available to talk. The executive director in his September 3, 2025 email advised that he would not be filing additional evidence or submissions in response to that letter.

[49] On the subject of medical evidence, the panel in *Re Zhang,* at para 36, said this:

> It is understandable for the executive director to take a skeptical approach to medical evidence tendered by a respondent seeking an adjournment. As we noted in our ruling on the adjournment of the September, 2021 hearing dates, "it is not often in proceedings before us that a respondent to a notice of hearing is anxious to have a liability hearing". As a result, it is appropriate to examine medical evidence in a nuanced manner and consider such factors as whether the opinion is current and whether the opinion is based on the full context.

[50] That said, we disagree with the executive director that Nguyen's doctor's letter is not adequate to support a general adjournment of the hearing in writing. The question before us is whether we have proper evidence regarding how Nguyen's condition is affecting her ability to participate meaningfully in the hearing process. The letter, which dates from June 2025, was explicit that Nguyen could not participate in the hearing in writing process for nine months. We agree with the executive director that the letter raises questions as to what the doctor understands about the hearing in writing process or what materials were relied on by him to form his opinion. However, the executive director did not follow up with the doctor to clarify those points. We are left with an uncontroverted letter from Nguyen's personal physician that, for medical reasons, she is "unable to meaningfully participate in a written hearing process at this time".

[51] We conclude that not granting an adjournment in these circumstances would be unfair. Any continuing risk to members of the public that may be posed by the respondents has been mitigated by the temporary orders. We acknowledge that, as was stated in *Bennett* and reiterated in *Poonian,* the failure to hold hearings expeditiously can be detrimental to the public interest notwithstanding the presence of temporary restraining orders. That said, there is an appropriate balance to be struck in each case. In this case, that balance favours an adjournment. Therefore, we order that the hearing in writing be generally adjourned. New dates for submissions will be canvassed at the upcoming hearing management meeting.

Accommodations

[52] Ismail argues that the respondents' medical conditions require accommodations and requests:

a) written communication;

b) plain English communication;

c) documents being provided in advance;

d) extended deadlines for filing; and

e) consolidation of procedural steps.

[53] Ismail also requested a number of other accommodations that were clearly more pertinent to an oral hearing. We will not consider those accommodations here.

[54] The executive director's position on the accommodations application is that this is not an oral hearing, and that all of the accommodations sought by the respondents have already been built

into the current process for a hearing in writing. He states that the timelines currently in place provide the appropriate flexibility to allow the respondents to respond.

[55] We agree that the hearing in writing already addresses most of Ismail's concerns as it allows the respondents extended timelines and flexibility to consider the executive director's submissions and supporting affidavit evidence and to present their case. The notice of hearing setting out the allegations against the respondents was issued nearly two years ago. All the submissions and supporting affidavit evidence of the executive director were provided to the respondents on May 30, 2025. The general adjournment of this hearing in writing is in effect only until new dates and timelines for the remaining stages of the hearing are established at the upcoming hearing management meeting. Given that the executive director's submissions and evidence have been tendered, this panel expects the respondents to act both reasonably and diligently and to take advantage of the extension of deadlines resulting from the adjournment, and, as their respective capacity and capability allows, to consider those submissions and the supporting evidence for the purpose of informing their response by the deadlines that will be established.

[56] With respect to the request that the hearing in writing be executed in plain English, it is apparent from the evidence and submissions presented by and on behalf of the respondents to date that they are sophisticated communicators. In addition, we are satisfied that the process and timelines set out for this hearing allow the respondents sufficient time and opportunity to seek and obtain clarification on submissions made by the executive director where they reasonably consider such clarification to be necessary.

[57] We have accommodated the respondents in this matter to date. We communicate with the respondents in writing. We have provided generous timelines and will now adjourn this matter to dates to be set at the next hearing management meeting. We find that the accommodations requested by the respondents have already been provided.

Sealing order

[58] The presumption in section 19 of the *Securities Regulation* is that hearings and the evidence submitted in those hearings are open to the public. However, the Commission has discretion to deny the public access to all or parts of a hearing if access would be "unduly prejudicial" to the applicants and if exclusion of those records "would not be prejudicial to the public interest".

[59] The executive director did not respond to this aspect of the Applications.

[60] The documents submitted by the respondents in their Applications contain highly personal information that the respondents stated was "provided to the Commission strictly on a confidential basis". The Court in *Sherman Estate* identified sensitive personal information, including medical conditions, as an identifiable interest that could limit disclosure.

[61] We find that public access to the documents submitted by the respondents in support of the Applications would be unduly prejudicial to the respondents and that it is not prejudicial to the public interest to exclude public access to those documents.

V. Ruling

[62] After considering the written submissions of the respondents and the executive director, we:

a) grant the respondents' application for the hearing in writing to be generally adjourned; and

b) grant the respondents' application for the medical records filed by the respondents as part of these applications to be sealed.

September 24, 2025

For the Commission

James Kershaw
Commissioner

Marion Shaw
Commissioner

Karen Keilty
Commissioner