

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

Citation: Re Boddy, 2025 BCSECCOM 520

Date: 20251201

Brandon Wade Boddy

Panel	Deborah Armour, KC Gordon Johnson Karen Keilty	Commissioner Vice Chair Commissioner
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Submissions completed August 6, 2025

Ruling date August 8, 2025

Counsel	
Mikhael Magaril	For Brandon Wade Boddy
Beverly Ma Mila Pivnenko	For the Executive Director

Reasons for Ruling

I. Introduction

- [1] On August 8, 2025, the panel issued *Re Boddy*, 2025 BCSECCOM 366 (Ruling), granting the July 25, 2025 application made by Brandon Wade Boddy (Boddy) to adjourn the liability hearing in this matter, with reasons to follow. These are our reasons.

II. Background

- [2] On June 26, 2024, the executive director issued a Notice of Hearing, 2024 BCSECCOM 271, alleging that Boddy refused to give evidence on oath and to produce records required for an investigation contrary to section 57.5 of the Act. The executive director also alleged that Boddy is liable under sections 161(6.1) and 162(3) of the Act.
- [3] On August 13, 2024, the Commission set the hearing for November 25 – 29, 2024.
- [4] On November 18, 2024, Boddy applied to adjourn the hearing.
- [5] On November 22, 2024, the Commission adjourned the hearing (2024 BCSECCOM 481). Considering that the length of time to hold a hearing was prejudicial to the public interest, the Commission also issued an order prohibiting Boddy from various activities in the capital markets until a hearing is held and a decision rendered (Temporary Order).
- [6] On November 28, 2024, the Commission reset the hearing for August 11, 12, 13, 15 and 18, 2025 (2024 BCSECCOM 497).
- [7] On July 25, 2025, Boddy again applied to adjourn the hearing (2nd Adjournment Application). He provided evidence and written submissions. He also applied to have the medical evidence and information submitted in support of the 2nd Adjournment Application sealed.

- [8] On August 1, 2025, the executive director provided evidence and written submissions in response to the 2nd Adjournment Application. The executive director consented to an adjournment if the adjournment order was made concurrently with an order that the hearing proceed in writing. The executive director consented to the hearing proceeding in writing. The executive director opposed an adjournment if the hearing did not proceed in writing. The executive director did not oppose Boddy's application for a sealing order.
- [9] In the Ruling, we:
- a) granted the application for the medical records filed by the respondent as part of this application to be sealed; and
 - b) granted the 2nd Adjournment Application and ordered that the hearing proceed in writing on the following terms:
 - i. The executive director will submit his submissions on liability in writing, along with all evidence relied upon, in affidavit form, by the end of the business day on October 30, 2025;
 - ii. If Boddy wants to cross examine the executive director's affiant(s), then that cross examination will occur by December 12, 2025. The terms of that cross examination are:
 - 1. Boddy must assert that he will be cross examining the executive director's affiant(s) and must provide to the Hearing Office and to the executive director copies of all documents which might be relied upon at such cross examination at least 10 days before the cross examination commences;
 - 2. Boddy and the executive director must coordinate with the Hearing Office to arrange a date for that cross examination that is prior to or on December 11, 2025;
 - iii. Boddy's responding submissions on liability will be provided in writing along with all evidence relied upon, in affidavit form, by the end of the business day on February 5, 2026;
 - iv. If the executive director wants to cross examine Boddy's affiant(s), then that cross examination will occur by March 26, 2026. The terms of that cross examination are:
 - 1. The executive director must assert that he will be cross examining Boddy's affiant(s) and must provide to the Hearing Office and to the executive director copies of all documents which might be relied upon at such cross examination at least 10 days before the cross examination commences;
 - 2. The executive director and Boddy must coordinate with the Hearing Office to arrange a date for that cross examination that is prior to or on March 26, 2026;

- v. If the executive director does not cross examine Boddy's affiant, then his reply will be provided by the end of the business day on March 5, 2026; and
- vi. If the executive director elects to cross examine Boddy's affiant, then his reply will be provided by the end of the business day on April 16, 2026.

III. Parties' positions

Boddy's position

- [10] With regard to the application for a sealing order, Boddy submitted he was not seeking a significant form of exclusion of the public's ability to view the file. He noted that the application for which he was seeking the sealing order was a prehearing application that proceeded in writing and was thus distinguishable from the outcome of a substantive hearing.
- [11] The evidence submitted by Boddy in support of his adjournment application included medical reports dated July 9 and July 21, 2025 from his treating physician. Those reports said that while Boddy had made some improvement, he continued to experience health issues. Those issues prevented him from participating meaningfully in a hearing of any duration for the foreseeable future even with various accommodations made to Boddy such as limiting the length of the hearing days and allowing him breaks whenever he requested them.
- [12] Further evidence was sought from Boddy's physician on whether Boddy was able to give his counsel instructions and whether he would be able to participate in a written hearing. That evidence was not forthcoming.
- [13] Boddy submitted that he was unable to physically attend a hearing, thus compromising his right to be heard and the fairness of the process. Boddy also submitted that he was unable to participate in a written hearing, even though there was no evidence to that effect.
- [14] Boddy submitted that there would be little prejudice if an adjournment were granted. As the executive director's case consisted only of the evidence of the investigator, there was little risk of that evidence disappearing. Given the Temporary Order, an adjournment would pose little risk to the public.
- [15] Given the short time lapse since the initial appearance, Boddy submitted that the interests of justice militated in favour of an adjournment.

Executive director's position

- [16] The executive director submitted that an adjournment was not in the public interest because:
 - a) This was the second adjournment sought by Boddy;
 - b) Boddy was represented by experienced counsel;
 - c) This is not a complex case and there are few documents;
 - d) There was no reasonable prospect that Boddy would be able to attend a hearing in the near future or at any point;

- e) The executive director was ready to proceed on the scheduled dates; and
- f) The medical evidence was not sufficiently compelling to support an adjournment.

[17] The executive director pointed out that there was added urgency in proceeding as the alleged misconduct was Boddy's failure to comply with demands to appear to give evidence and to provide documents as part of an ongoing investigation. Two years had passed since Boddy was served with the demand and summons. An adjournment would delay the investigation. The executive director cited *Brar v. British Columbia (Securities Commission)*, 2023 BCCA 432 at paragraph 49, citing *British Columbia Securities Commission v. Branch* [1995] 2 SCR 3 at paragraph 82:

Justice L'Heureux-Dubé [...] stressed the public importance of a well-regulated securities industry and the necessity for the ability to compel the attendance of witnesses "given the profound asymmetry of information facing securities regulators, the close relationship between such investigatory powers and the obligations voluntarily undertaken by those participating in this regulated activity, and the lack of a less intrusive alternative means to investigate and deter market irregularities and improper conduct by market players."

[18] The executive director submitted that the medical evidence of Boddy's physician was inadequate to support an adjournment because:

- a) There was no description of tests or assessments completed;
- b) Nothing demonstrated that the physician understood what was required to participate in a hearing;
- c) The physician had not been able to provide an accurate recovery timeline; and
- d) There was no evidence about how Boddy functioned in other aspects of his life. BC Company searches indicated that Boddy was actively engaged in activities as a director in 2024.

[19] The executive director questioned whether Boddy's physician understood how limited his role would be in the conduct of the hearing. He also questioned whether Boddy's experienced counsel would require extensive instructions in the course of the hearing. The executive director pointed out that Boddy's counsel was able to obtain instructions to bring two adjournment applications and to attend multiple hearing management meetings.

[20] Citing *Re Nickford*, 2016 BCSECCOM 282 at paragraph 16, the executive director submitted that there was significant public interest in having proceedings heard and concluded promptly. "Investor confidence in the integrity of the capital markets and the Commission's ability to protect the public diminishes as the allegations continue to be unheard".

IV. Applicable law

Sealing order

[21] Section 19 of the Securities Regulation, BC Reg 196/97, states that hearings are presumptively open to the public:

- (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.

[22] Section 8.4 of BC Policy 15-601, *Hearings*, 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.

[23] The leading case on sealing orders is the Supreme Court of Canada decision, *Sherman Estate v. Donovan*, 2021 SCC 25, which was recently applied by the British Columbia Court of Appeal in *College of Physicians and Surgeons of British Columbia v. Madryga*, 2025 BCCA 250.

[24] The Court in *Sherman Estate* stated that “proceedings are presumptively open to the public” but provided a “test for discretionary limits on presumptive court openness”. The Court identified three prerequisites that must be established by an applicant when requesting the trier of fact to limit court openness:

- (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 its negative effects.

Adjournment application

[25] BC Policy 15-601, *Hearings*, section 2.1, outlines the importance of having matters heard fairly and efficiently and decided promptly:

2.1 Procedures

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.** (emphasis added)

[26] Subsection 3.4(c) of 15-601 is relevant to the 2nd Adjournment Application:

3.4 Preliminary Applications

(c) 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.

- [27] The Commission in *Re Poonian*, 2013 BCSECCOM 448 at paragraph 19, quoted *Re Bennett*, 1992 LNBCSC 64 at page 11, emphasizing the importance of timely prosecution of securities cases:

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.

- [28] As stated in *Re Bridgemark*, 2023 BCSECCOM 553 at paragraph 36, our task “rests in weighing and balancing all the relevant and sometimes competing factors in the circumstances before us to determine whether or not it is in the public interest to grant the adjournment and if so, on what terms and conditions.”

Written hearing

- [29] BC Policy 15-601, *Hearings*, section 1.2 provides:

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)

- [30] The respondent in *Re Zhang*, 2023 BCSECCOM 315, was granted a number of adjournments due to evidence establishing a serious medical condition. The panel at paragraph 5 noted that the normal process in a liability hearing before the Commission looks much like court proceedings. The parties call witnesses and enter evidence and are entitled to cross-examine the witnesses and object to the evidence of the other party.

- [31] Given the condition of the respondent, the panel determined a more flexible approach was appropriate. Noting the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the panel stated:

...the duty of procedural fairness is flexible and variable, and that the participatory rights of an individual must both be appropriate in the context of the decision being made while at the same time ensuring that the person affected has the opportunity to put forward their evidence and argument fully so they can be considered by the decision maker.

- [32] Ultimately, the panel in *Zhang* ordered that the matter proceed by way of written hearing. It noted that it was not bound to strictly follow the normal hearing procedure given the principle of flexibility afforded to it in BC Policy 15-601, *Hearings*, section 1.2 and emphasized in *Baker*.

V. Analysis and Ruling

Sealing order

- [33] The information over which Boddy sought a sealing order is highly personal medical information. As the court in *Sherman Estate* noted, disclosure of such information poses a serious risk to an

important public interest, namely Boddy's privacy. The order sought was necessary to prevent that risk. As a matter of proportionality, we find that the benefits of this order outweigh the small compromise to the open court principle that it poses. Public access to the medical information would be unduly prejudicial to Boddy and it is not prejudicial to the public interest to exclude public access to that information.

Adjournment application

[34] The relevant factors in considering whether to grant an adjournment in this case are:

- a) One adjournment has already been granted;
- b) The Temporary Order is in place to protect the public until the hearing is held and a decision rendered;
- c) Boddy's evidence might prove or disprove that violations of the Act have occurred. Either way, his evidence is needed for the ongoing investigation and thus there is a public interest in proceeding with the liability hearing as soon as possible;
- d) Regardless of what Boddy's evidence reveals, the Notice of Hearing alleges breaches of the Act which, in the public interest, should be addressed within a reasonable timeframe;
- e) There is compelling medical evidence establishing that Boddy would not have been able to meaningfully participate in a hearing commencing in August of this year;
- f) The executive director consented to an adjournment as long as there was a concurrent order for a hearing in writing; and
- g) The panel determined that we could put a process in place that would allow the hearing to proceed in writing.

We comment further on a few of those factors below.

[35] While we agree with Boddy that the risk to the public is minimized through the Temporary Order, this ignores the fact that his evidence is needed for the purposes of the ongoing investigation.

[36] We disagree with the executive director that the medical evidence was not sufficiently compelling to support an adjournment of the in-person hearing. The executive director points to a lack of description of tests or assessments completed. In fact, Boddy's treating physician reported that he assessed him during the two office visits where he had the opportunity to speak with and observe Boddy. In terms of the physician's possible lack of understanding of the nature of a hearing, we can assume that Boddy's treating physician would think it was in the nature of a Court proceeding, which it would have been. We also do not consider it problematic that the physician was not able to provide any accuracy around a recovery timeline. The nature of Boddy's medical condition is such that it would be very difficult to provide such accuracy.

[37] The medical evidence established that Boddy was not able to participate meaningfully in an in-person hearing even with accommodations being granted. It also established that participating in such an in-person hearing would cause a worsening of Boddy's medical condition. Fairness clearly militated in favour of adjourning the in-person hearing.

Written hearing

- [38] We agree with the executive director that Boddy has been able to give instructions to his counsel to date to bring two separate applications to adjourn and for multiple hearing management meetings. Thus, it would appear that he is able to give instructions in the course of a written hearing where there will be much flexibility afforded to counsel and client for the timing of the giving of those instructions.
- [39] We also agree with the executive director that there is some urgency in proceeding with a hearing in some manner because of the role Boddy's evidence is likely to play in the ongoing investigation. As of the date of our ruling on August 8, 2025, it had been more than two years since the Summons to Attend was issued to Boddy. Considerable time has already passed in the course of the investigation.
- [40] Ordering a written hearing allowed the panel to structure it in such a way as to maximize fairness to Boddy while recognizing the important public interest in investigations and hearings proceeding expeditiously. A written hearing is likely to be much less stressful to Boddy than an in-person hearing. Further, ordering a written hearing allowed us to build in lengthy timelines, thus providing ample opportunity for consultation between Boddy and his counsel at times that are most conducive to Boddy's health.
- [41] The first deadline we ordered for Boddy is December 12, 2025, by which time he will need to have cross examined the executive director's affiant, if in fact he wishes to exercise his right of cross examination. That date is fully four months from the date the in-person hearing was to have commenced thus affording significantly more time for Boddy's condition to improve. Not only have we built in long timelines within which Boddy needs to participate, we have also ensured that his participation starts far later than it would have but for the adjournment and order for a written hearing.
- [42] We find that ordering that the hearing proceed in writing, meets all three goals found in BC Policy 15-601, *Hearings*, section 1.2, to conduct proceedings fairly, flexibly and efficiently.

December 1, 2025

For the Commission

Deborah Armour, KC
Commissioner

Gordon Johnson
Vice Chair

Karen Keilty
Commissioner