Citation: 2024 BCSECCOM 271

IN THE MATTER OF

THE BRITISH COLUMBIA SECURITIES COMMISSION

-AND-

BRANDON WADE BODDY

NOTICE OF APPLICATION - ADJOURNMENT

To: Hearing Office of the British Columbia Securities Commission
Attention: Adrianne Garrone, Hearing Officer and Executive Assistant

AND TO: The Executive Director
Attention: Beverly Ma, Litigation Counsel

TAKE NOTICE that an application will be made by the Respondent in the above-noted matter to the British Columbia Securities Commission (the "**Commission**") at 701 West Georgia, in the City of Vancouver, Province of British Columbia, in writing, for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The hearing of the above-noted matter, presently scheduled for five (5) days commencing on 25/NOV/2024 be adjourned generally and the file held in abeyance until the Respondent is [redacted] to prepare for and attend the hearing.

2. That the [redacted] evidence and information filed in support of this application be sealed away from the public, including being redacted in the public copy of this Notice of Application

3. Such further and other orders that the Commission may deem necessary in the circumstances

Part 2: FACTUAL BASIS

The Respondent's Current Condition

4. The Respondent is not able to attend the hearing dates starting 25/NOV/2024 as he is primarily [redacted]. His ability to meaningfully participate in this proceeding, including making informed decision as to what preliminary applications to bring, or how to defend this proceeding are [redacted]. An adjournment of this matter is necessary and in the interests of justice to enable a fair process to occur.

History of this Proceeding & Medical History

5. This is a first set of hearing dates. The Notice of Hearing in this matter set the first appearance to be 13/AUG/2024 meaning that this hearing was scheduled within four (4) months.

6. A five day hearing was reserved at the first appearance based on a conservative estimate for various possible applications that Mr. Boddy might bring. Among them was a prospective constitutional challenge to s. 57.5 of the *Securities Act* – a provision which has no reported decisions on yet. Other prospective applications included seeking to set aside Mr. Boddy's subpoena in Supreme Court (see for instance the decision of *British Columbia (Securities Commission) v. Imbeault*, 1998 CanLII 1716 – adopted with approval at paras 71-72 in *British Columbia (Securities Commission) v Brar*, 2023 BCSC 1122.

7. Hearing management meetings were conducted on 16/OCT/2024, 29/OCT/2024, and 12/NOV/2024. In those instances Mr. Boddy's [redacted] were noted, as well as the lack of the ability of his counsel to [redacted].

8. In advance of the first hearing management conference counsel for the Executive Director provided a reliance list of some 13 documents that would be relied upon for the case in chief. It was also confirmed that there would be a single witness case for the Executive Director – a single investigator from the Enforcement Division (without the need for an interpreter).

9. The Respondent has been under the care of [redacted]. Amongst other reports that have been shared with counsel for the Executive Director, [redacted] provided a letter dated 01/DEC/2023 which stated that he Mr. Boddy has been [redacted] and that [redacted], also recommended postponement until Mr. Boddy's [redacted]

10. [redacted] subsequently ceased working with [redacted] and [redacted] took over conduct of the Respondent's patient file. This has [redacted] given that he was being [redacted].

11. [redacted] provided a letter dated 06/NOV/2024 (n.b. the date is in the bottom left and is tricky to read due to its size) that describes Mr. Boddy's [redacted] as recently [redacted]. He opines that it [redacted] states from his assessment that he [redacted] also recommends a postponement of the securities commission matter until Mr. Boddy [redacted]. He relays that Mr. Boddy [redacted].

12. By an e-mail dated 12/NOV/2024 counsel for the Respondent advised counsel for the Executive Director of his present [redacted] and attached [redacted] communication, provided some chronology in respect of [redacted], as well as attaching various [redacted] for them as follows:

[redacted]

Part 3: LEGAL BASIS

13. The Respondent is, and will be [redacted] if the adjournment is not granted, thus compromising the Respondent's right to be heard and the fairness of these proceedings.

14. There is little prejudice if the adjournment is granted. The case for the Executive Director consists of one witness and several documents. Given that the evidence sought to be adduced is from an investigator of the Enforcement Division it is extremely unlikely that this evidence will be lost, destroyed, or otherwise unavailable if the matter is reset.

15. This is the first adjournment request.

16. Given the very short turnaround from the initial appearance to the hearing, and the [redacted], the interests of justice militate in favour of an adjournment.

17. Lastly, on the issue of sealing, the Respondent's [redacted] in nature and the type of documents that the Respondent has not just a reasonable, but a significant expectation of privacy in those materials. The materials are being advanced to adjourn the hearing by way of written submissions – they are not being introduced into the substantive hearing proper.

18. The Respondent acknowledges section 19 of the *Securities Regulation* and section 8.4(a) BC Policy 15-601 which both provide that the hearing is presumptively open to the public. However, this is application is being brought in writing and there is little public interest in an adjournment application – compared to the outcome of a substantive hearing.

19. The Respondent does not seek a significant form of exclusion of the public's ability to view the file. The reasoning in *Re Application 20230310* is of utility, but it should be noted that what is being sought here is significantly more narrow.

20. The [redacted] that Mr. Boddy has. It would be detrimental to Mr. Boddy's prospects to have his [redacted] available for the world at large to view. The [redacted] also cannot be ignored and the Commission can take judicial notice of same.

21. In *Sherman Estate v Donovan,* 2021 SCC 25 identified that a person's core biological private information [redacted] meets the threshold for being an important public interest that ought to be protected and that can justify an infringement on the open court principle. Specifically the Respondent notes paragraph 55 of that decision which is replicated below:

> [55] Indeed, the specific harms to privacy occasioned by open courts have not gone unnoticed nor been discounted as merely personal concerns. Courts have exercised their discretion to limit court openness in order to protect personal information from publicity, including to prevent the disclosure of sexual orientation (see, e.g., *Paterson*, at paras. 76, 78 and 87-88), HIV status (see, e.g., *A.B. v. Canada (Citizenship and Immigration*), 2017 FC 629, at para. 9 (CanLII)), and a history of substance abuse and criminality (see, e.g., *R. v. Pickton*, 2010 BCSC 1198, at paras. 11 and 20 (CanLII)). This need to reconcile the public interest in privacy with the open court principle has been highlighted by this Court (see, e.g., *Edmonton Journal*, at p. 1353, per Wilson J.). Writing extra-judicially, McLachlin C.J. explained that "[i]f we are serious about peoples' private lives, we must preserve a modicum of privacy. Equally, if we are serious about our justice system, we must have open courts. The question is how to reconcile these dual imperatives in a fair and principled way" ("Courts, Transparency and Public Confidence – To the Better Administration

of Justice" (2003), 8 Deakin L. Rev. 1, at p. 4). In seeking that reconciliation, the question becomes whether the relevant dimension of privacy amounts to an important public interest that, when seriously at risk, would justify rebutting the strong presumption favouring open courts.

Part 4: MATERIAL TO BE RELIED ON

22. The Notice of Hearing itself;
23. The transcript of the initial appearance;
24. The transcript and summary letters for each of the three hearing management meetings;
25. The first affidavit of Kristina Pokhilko made on 18/NOV/2024; and
26. And such further and other facts and materials as counsel may advise.

Dated: November 18, 2024

PP: Kristina Pokhilko for:
Mikhael Magaril
Counsel for the Applicant