

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

Citation: Re Boddy, 2025 BCSECCOM 2

Date: 20250103

Brandon Wade Boddy

Panel	Deborah Armour, KC Gordon Johnson Karen Keilty	Commissioner Vice Chair Commissioner
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Submissions completed November 21, 2024

Ruling date January 3, 2025

Counsel
Beverly Ma For the Executive Director

Mikhael Magaril For Brandon Wade Boddy

Reasons for Ruling

I. Introduction

- [1] On November 22, 2024, the panel issued *Re Boddy*, 2024 BCSECCOM 481 (Ruling), granting the November 18, 2024 application made by Brandon Wade Boddy (Boddy) to adjourn generally the liability hearing in this matter, and ordering temporary orders against Boddy, 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) against Boddy.
- [3] The executive director alleged that Boddy did not provide requested records or attend for an interview and therefore failed to comply with a demand and a summons issued under section 144 of the *Securities Act*, RSBC 1996, c. 418 (the Act). The executive director alleged that, as a result of this failure to comply, Boddy contravened section 57.5 of the Act and was liable under sections 161(6.1) and 162(3) of the Act.
- [4] On November 18, 2024, Boddy made an application to adjourn the hearing that was scheduled to commence on November 25, 2024, based on a diagnosis of medical conditions. The application included evidence of Boddy's medical conditions and medications. Boddy also applied to have the evidence submitted in support of the adjournment application sealed and the public copy of the Notice of Application redacted of personal information. The hearing had not previously been adjourned.
- [5] On November 20, 2024, counsel for the executive director submitted written submissions opposing the adjournment application. The executive director argued that:

- (a) The matter was not complex and had very few documents;

- (b) The issues the panel would consider for the adjournment application overlap with issues that may be part of the liability hearing;
- (c) Boddy's evidence did not provide a clear enough basis to warrant the indefinite postponement of the hearing;
- (d) Accommodations could be made to the hearing process to allow Boddy to participate;
- (e) If in person accommodations were not sufficient, the hearing could be conducted in writing instead to further accommodate Boddy; and
- (f) If an adjournment was granted, it would be in the public interest to make temporary orders against Boddy until a hearing has been held and a decision rendered. The proposed temporary orders would generally prohibit Boddy from accessing the capital markets.

[6] The executive director did not oppose Boddy's evidence being sealed or having Boddy's personal information redacted.

[7] On November 21, 2024, Boddy provided supplementary evidence and submissions in support of his adjournment application. These submissions included new medical evidence from Boddy's doctor that indicated that a hearing on the days scheduled would deteriorate his condition and that no accommodation during the hearing could be made to alleviate Boddy's condition.

III. Analysis and Ruling

Adjournment application

[8] BC Policy 15-601 *Hearings* addresses both the objective of hearing of matters before it promptly, as well as requests for adjournments, as follows:

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.

[...]

3.4(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.

[9] In considering the adjournment application, we balanced the public interest in having matters heard and decided efficiently and promptly against any unfairness that would result in not granting the adjournment.

- [10] We agree with the executive director's submissions that "the panel requires credible documentary evidence from a qualified medical professional sufficient to allow the panel to determine the extent or reasonableness of any medical accommodations requested or required in the circumstances".
- [11] We disagree with the executive director's submissions that the medical evidence was not sufficiently convincing to warrant an adjournment. In particular, after delivery of Mr. Boddy's supplementary evidence we had before us evidence from his current treating medical professional which was compelling and persuasive. That supplementary evidence showed that Boddy was unable to participate in a meaningful way in a hearing at this time. That medical evidence also showed that having a five day hearing would further deteriorate Boddy's condition.
- [12] We concluded that not granting the adjournment would result in a fundamental unfairness to Boddy. We also concluded that any risk to the public resulting from an adjournment could be addressed through appropriate temporary orders. Accordingly, we adjourned the hearing generally and directed the parties to attend a hearing management meeting on November 26, 2024. At that hearing management meeting, the hearing was rescheduled for August 11, 12, 13, 15, and 18, 2025 (2024 BCSECCOM 497).
- [13] Given the nature of the evidence relied on by Boddy for the adjournment application, and noting that the executive director does not oppose a sealing order regarding that evidence, we order under section 19(2) of the *Securities Regulation*, BC Reg 196/97, that Boddy's affidavits and exhibits for this adjournment application be sealed from the public and all reference to that evidence be redacted from the public version of the application materials.

Temporary Orders

- [14] Section 161(2) and (3) of the Act addresses the law regarding temporary orders. It states:
- (2) If the commission or the executive director considers that the length of time required to hold a hearing under subsection (1), other than under subsection (1) (e) (ii) or (iii), could be prejudicial to the public interest, the commission or the executive director may make a temporary order, without providing an opportunity to be heard, to have effect for not longer than 15 days after the date the temporary order is made.
- (3) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may, without providing an opportunity to be heard, make an order extending a temporary order until a hearing is held and a decision is rendered.
- [15] The panel in *Re Zhang*, 2023 BCSECCOM 304, noted at paragraph 7, following *Fairtide Capital Corp.* (Fairtide), 2002 BCSECCOM 993, that "the regulatory context is important when considering temporary orders". The panel continued:
- [8] The Act is a regulatory statute with a public interest mandate, and its overarching purpose is to ensure investor protection, capital market efficiency and public confidence in the system. The public interest purpose in imposing regulatory enforcement orders is neither remedial nor punitive, but protective and prospective in nature. These powers are intended to prevent likely future harm to the integrity of our capital markets.

- [16] The standard of proof for temporary orders was articulated in *Zhang* at paragraph 10 as requiring “the executive director to produce *prima facie* evidence of the misconduct alleged and to show that” the order is necessary and in the public interest.
- [17] The executive director provided affidavit evidence that gave *prima facie* evidence that Boddy did not provide requested records or attend for an interview and therefore failed to comply with a demand and a summons issued under section 144 of the Act, including:
- (a) The underlying investigation order and memorandum in support;
 - (b) The demand for production to produce records in support of the investigation order;
 - (c) The summons to attend before an investigator;
 - (d) Affidavits of service on Boddy for the demand and the summons; and
 - (e) Correspondence between counsel for Boddy and the investigator attempting to arrange for the delivery of records and a date for an interview.
- [18] Boddy did not provide any documentation that rebutted the executive director’s evidence.
- [19] The summary of the evidence produced by the executive director establishes a *prima facie* case that supports the allegations in the notice of hearing.
- [20] This *prima facie* evidence supports an inference that there is a continuing risk to the public. The evidence indicates that Boddy’s past conduct indicates some risk future breaches will occur. Moreover, as stated in *Zhang*, at paragraph 20:

The inability to hold a hearing on the merits promptly is a significant factor in our analysis of the public interest under section 161(3) of the Act. In support of that, we note that section 161(2) of the Act, which authorized the granting of the Temporary Order in the first place, explicitly connects our discretion to issue a temporary order to the length of time that will be required to hold a hearing. It logically follows that the length of time required to hold a hearing must also be a factor in any application to extend such an order. The underlying reasons for the delay in these proceedings initially called for patience and forbearance in the interests of preserving and promoting the public interest in ensuring that the hearing in this matter be conducted fairly.

[21] We agree with this reasoning and conclude that it is in the public interest that the temporary order remain in place until a hearing is held and a decision is rendered.

January 3, 2025

For the Commission

Deborah Armour, KC
Commissioner

Gordon Johnson
Vice Chair

Karen Keilty
Commissioner