BRITISH COLUMBIA SECURITIES COMMISSION
Section 161 of the *Securities Act*, RSBC 1996, c. 418

Citation: Re BridgeMark Financial, 2019 BCSECCOM 331 20190912

BridgeMark Financial Corp., Jackson & Company Professional Corp., Anthony Kevin Jackson, Lukor Capital Corp., Justin Edgar Liu, Rockshore Advisors Ltd. (formerly known as Cam Paddock Enterprises Inc.), Cameron Robert Paddock, Simran Singh Gill, JCN Capital Corp., John Rosarino Bevilacqua, Essos Corporate Services Inc., Sway Capital Corp., Von Rowell Torres, David Matthew Schmidt, Detona Capital Corp., Danilen Villanueva, Natasha Jon Emami, Altitude Marketing Corp., Ryan Peter Venier, Platinum Capital Corp., 658111 B.C. Ltd., Jason Christopher Shull, Tryton Financial Corp., Abeir Haddad, Tavistock Capital Corp., Robert John Lawrence, Jarman Capital Inc., Scott Jason Jarman, Northwest Marketing and Management Inc., Aly Babu Husein Mawji, Rufiza Babu Husein Mawji-Esmail, Denise Marie Trainor, Randy White, Escher Invest SA, Hunton Advisory Ltd., Kendl Capital Limited, 1153307 B.C. Ltd., Russell Grant Van Skiver, Bertho Holdings Ltd., Robert William Boswell, Haight-Ashbury Media Consultants Ltd., Ashkan Shahrokhi, Saiya Capital Corporation, Tara Kerry Haddad, Keir Paul MacPherson, Tollstam & Company Chartered Accountants, Albert Kenneth Tollstam, 727 Capital, David Raymond Duggan, Viral Stocks Inc., 10X Capital, Cryptobloc Technologies Corp., New Point Exploration Corp., Green 2 Blue Energy Corp., BLOK Technologies Inc., Kootenay Zinc Corp., Affinor Growers Inc., Liht Cannabis Corp. (formerly known as Marapharm Ventures Inc.), PreveCeutical Medical Inc., Speakeasy Cannabis Club Ltd., and Abattis Bioceuticals Corp.[1]

Panel	Nigel P. Cave	Vice Chair
	Judith Downes	Commissioner
	Audrey T. Ho	Commissioner
Decision date	September 12, 2019	

Reasons for Decision

[1] On July 16, 2019, a law firm, Camp Fiorante Matthews Mogerman, applied for access to certain affidavits which have been filed in this proceeding. The application made clear that the intended use of the affidavits related to civil proceedings that clients of the firm wished to pursue against one or more of the respondents.

[1] The original style of cause in this matter included Beleave Inc. On June 11, 2019, considering it would not be prejudicial to the public interest, the Executive Director discontinued the proceedings against Beleave, Inc. Therefore, the style of cause has been amended to refer only to the remaining respondents.

[2] The Commission Secretary sent the application to the parties to the proceeding, seeking their position.

[3] BridgeMark Financial Corp., Jackson & Company Professional Corp., Anthony Kevin Jackson, Kootenay Zinc Corp., Justin Liu, Lukor Capital, Affinor Growers Inc., Green 2 Blue Energy Corp., Simran Gill, David Raymond Duggan, Viral Stocks Inc., 727 Capital, 10X Capital, Altitude Marketing Ryan Peter Venier, Albert Kenneth Tollstam, Tollstam & Company Chartered Accountants, Tryton Financial Corp. Saiya Capital Corporation, Abeir Haddad, Tara Kerry Haddad, Cam Paddock, Rockshore Advisors Ltd., New Point Exploration Corp., Cryptobloc Technologies Corp., Tavistock Capital Corp., Robert Lawrence, Sway Capital Corp., David Schmidt, Jason Shull, Platinum Capital Corp., 658111 B.C. Ltd., Robert Boswell, Bertho Holdings Ltd., Abattis Bioceuticals Corp. Blok Technologies Corp., Essos Corporate Services Inc. and Von Rowell Torres (collectively, the Objecting Respondents) objected to the Commission releasing certain of the materials.

[4] The Executive Director did not object to the application but suggested that, if the application were granted, all parties be given the opportunity to propose redactions and to make any submissions on those redactions prior to release of the materials.

[5] On September 10, 2019, the panel decided that it would release all of the requested exhibits, redacted for sensitive financial and personal information. The panel advised that it would redact that information and would circulate the redacted versions to the parties for their comment before providing access. These are our reasons for that decision.

[6] The Objecting Respondents submitted that:

- the affidavits sought had been filed in connection with proceedings related to temporary orders and not in a hearing on the merits of the allegations in the notice of hearing;
- the affidavits contain sensitive information that the executive director compelled from the respondents and others in his investigation;
- the implied undertaking rule (which has been applied by the Commission in its proceedings), that prohibits the use of information obtained in the civil discovery process, is applicable to the Objecting Respondents and should also prevent the use of the affidavits by anyone for any purpose other than these proceedings;
- the implied undertaking is consistent with section 11 of the Act which requires every person acting under the authority of the Act to keep information confidential, subject to certain exceptions;
- the principle of open tribunal proceedings must be balanced against other public interest objectives and a consideration of the purpose to which the documents must be used – this balancing of interests is reflected in Section 19 of the *Securities Regulation* and section 41 of the *Administrative Tribunals Act*, SBC 2004, Chapter 45 (ATA);

- a balancing of the public interest in this case favours denying the application – the release of the documents will have the effect of using the Commission's broad investigative powers to aid in private litigation, particularly during the investigative stage of a proceeding;
- the decision of the Ontario Securities Commission in *X and A Co.*, 2007 ONSEC 1 is analogous and supports denying the application; and
- the applicants have other means to obtain the relevant evidence – the civil discovery process and its outcomes can and should be litigated through the courts.

[7] Section 19 of the *Securities Regulation* requires that hearings before the Commission be open to the public unless 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 from all or part of the hearing. This is reflected in section 7.5 of BC Policy 15-601 *Hearings*.

[8] In this same proceeding, we dealt with an application by a member of the media for the release of certain of the affidavits that are in question in this application (*Re BridgeMark Financial,* 2019 BCSECCOM 218). In that decision, we set out the following:

> [9] As also set out in section 7.5 of BCP 15-601, hearing materials, including transcripts of a hearing and exhibits, are not published on the Commission website, but are available on application to the Commission Secretary.
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> [10] While section 11 of the Securities Act requires every person acting under the authority of the Act to keep confidential all facts, information and records obtained or provided under the Act, there are exceptions to this requirement. One is that the person's public duty requires the person not to keep the information confidential. The Commission has a public duty to adhere to the requirement, set out in the *Securities Regulation* and consistent with principles of procedural fairness applicable to administrative tribunals, that hearings before it be public. This public duty extends to making evidence submitted in hearings and transcripts public, subject to other considerations in the public interest.
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> [11] In considering whether to grant access to hearing materials, the Commission balances the public interest in open hearings with the privacy and other interests of persons referred to in the materials.
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> [12] This is consistent with the practice followed by other securities commissions in Canada based on the fundamental principle of open and accessible court proceedings.
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> [13] The Supreme Court of Canada stated in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002], 2 SCR 522, at paragraph 52:
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> > The importance of public and media access to the courts cannot be understated, as this access is the method by which the judicial

> process is scrutinized and criticized. Because it is essential to the administration of justice that justice is done and *seen* to be done, such public scrutiny is fundamental. The open court principle has been described as "the very soul of justice", guaranteeing that justice is administered in a non-arbitrary manner: *Canadian Broadcasting Corp.* v. *New Brunswick (Attorney General),* [1996] 3 S.C.R.480 at para 22.

[14] That decision and reasoning has been applied in securities enforcement proceedings. In *Re Mega-C Power Corporation et al*., 2007 ONSEC 11 (at para 36), the Ontario Securities Commission stated:

> The [OSC] is a public body, exercising its statutory powers in the public interest. It is important, in our view, that it fulfil its mandate as transparently as practically possible. This means that matters coming before the [OSC], including the details about those matters, be made public, to the broadest extent possible, absent special circumstances that would warrant some degree of confidentiality. Where such circumstances exist, the [OSC] should exercise its discretion narrowly, so as to provide the public with as much information about the proceedings before the [OSC] as possible in the circumstances.

…

[16] The panel considered the public interest of conducting its proceedings in public to be paramount in the application at hand and that this outweighed any potential prejudice to the parties or the current proceedings. However, to protect the privacy and other interests of third parties, the Commission decided to redact the following types of information from the exhibits and transcripts before granting access to the applicant:

> a) personal information relating to the parties
> b) personal information relating to third parties
> c) sensitive financial information

[9] We continue to be of that view and consider that to be the starting point for considering this application.

[10] We note that none of the Objecting Respondents, in relation to the temporary order proceedings in which these affidavits were filed, applied for any form of confidentiality or *in camera* order.

[11] The decision in *X and A Co.* is not directly relevant to this application. That decision dealt with an application to relieve a party from an implied undertaking relating to documents that had yet to become exhibits in a public hearing. That is not the circumstance before us in this application.

[12] Section 41 of the ATA is also not applicable as that provision of the ATA is not applicable to the Commission.

[13] The submissions of the Objecting Respondents drawing upon the Commission's policies relating to the implied undertaking that attaches to records during the disclosure phase of our proceedings are also not directly relevant. The affidavits in question in this application have become exhibits in a public hearing.

[14] The records sought in this case are affidavits. Those affidavits have other records appended to them but they are still affidavits. Affidavits are akin to testimony. In this case, they are the material evidence which have been tendered in support of (and in opposing) the making of temporary orders. The narrow issue in this case is whether there is some public interest reason to deny public access to affidavits filed in a public hearing before the tribunal.

[15] The Objecting Respondents submit that the public interest harm in granting the application is a combination of the circumventing of civil procedure rules, the harm to the right against self-incrimination (as certain of the information may have been obtained by use of the Commission's powers of compulsion) and a possible chilling effect on future Commission investigations if those involved in those investigations fear public disclosure of information given to the Commission.

[16] We are mindful of all of the issues raised by the Objecting Respondents. However, those issues are present in all of our public proceedings and, if those were the guiding principles for public access to our hearings and affidavits filed therein, would lead to the exclusion of the public in all of our proceedings. We do not think that that outcome would be in the public interest.

[17] The potential circumvention of civil procedural rules is the natural consequence of activities which may involve civil litigation *and* a public hearing by a public regulatory body in a heavily regulated industry such as the capital markets.

[18] The Objecting Respondents suggested that it was an important distinction that the affidavits were filed in temporary order proceedings and not on a hearing on the merits of the allegations in the notice of hearing. We do not see a fundamental difference in temporary order proceedings. It is true that the purpose of a temporary order proceeding is not to determine the liability of a respondent. However, those proceedings are meant to ascertain whether the imposition of temporary orders, which are powerful regulatory tools in and of themselves, are warranted. It is equally important that these proceedings be open to the public and subject to public scrutiny.

[19] For all of the reasons set out above, we granted the application. However, like our previous order relating to the release of documents in this case, we view that redaction of certain information from the affidavits is appropriate. We determined that the

Commission would prepare a redacted version of the affidavits and provide the parties with an opportunity to comment before releasing the documents.

September 12, 2019

For the Commission

Nigel P. Cave
Vice Chair

Judith Downes
Commissioner

Audrey T. Ho
Commissioner