

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

Citation: Re Zhang, 2023 BCSECCOM 192

Date: 20230425

Meiyun Zhang

Panel	Gordon Johnson	Vice Chair
	Audrey T. Ho	Commissioner
	James Kershaw	Commissioner

Submissions completed April 13, 2023

Ruling date April 25, 2023

Counsel
Veda Kenda For the Executive Director

For Meiyun Zhang

Ruling and Temporary Order

I. Introduction

- [1] This ruling addresses two applications. The first is an application brought by the respondent Meiyun Zhang (Zhang) to adjourn the hearing currently set to commence on April 28, 2023. The second is an application made on a conditional basis by the executive director to impose a temporary order against Zhang under Section 161(2). The executive director's application requires our decision only in the event that the adjournment is granted.
- [2] For reasons which we provide below, we are granting this adjournment and therefore we are explaining why we are also granting a temporary order.

II. Nature of the Proceeding

- [3] This proceeding was commenced by a notice of hearing, 2020 BCSECCOM 407, issued October 14, 2020. The allegations in the notice of hearing are that:
- (a) Between June 23, 2014 and December 31, 2016, Zhang raised \$3,152,110 from three Vancouver and Richmond investors (the Investors) through a fraudulent scheme. She told investors their money would go towards various investments that would generate 6-10% monthly returns without risk;
 - (b) In fact, Zhang did not spend the Investors' money as promised, and 6-10% monthly returns are not possible without risk;
 - (c) Zhang used at least the Investors' money to, among other things:

- (i) pay returns to investors in Canada and China;
- (ii) repay a personal loan to a Calgary realtor;
- (iii) make retail purchases;
- (iv) pay utility bills;
- (v) pay an immigration lawyer to dispute her removal order by Canada Immigration;
- (vi) make cash withdrawals;
- (vii) spend and gamble at casinos; and

(d) By engaging in the conduct as set out in this notice of hearing, Zhang contravened section 57(b) of the Act.

III. Privacy Issue

- [4] We have already made decisions about a number of adjournment applications during the course of this proceeding. When we made those earlier decisions, we conveyed our reasons by letter to the parties. We took that approach because Zhang's medical condition has been and remains a core element in our analysis and we have found it impossible to explain our reasoning properly without discussing the medical information which we have been sent. At the same time, we have been motivated to minimize public disclosure of details of the medical information we have received about Zhang. We balanced the competing needs to discuss medical issues and to protect Zhang's privacy by limiting circulation of our decisions to the parties.
- [5] In the context of the current applications, we consider that the public interest requires a different approach. There are considerations related to our discretion to order adjournments which are important but do not seem clear to the parties, so we consider it important to be more detailed and clear at this point. In addition, our decision to grant a temporary order, and the relationship that the potential for temporary orders has to the discretion to order adjournments, is a matter of importance to the public. It is in the public interest that we provide our reasoning regarding that relationship in a published decision. We continue our efforts to protect Zhang's privacy by redacting much of the medical information about her health and summarizing that evidence more than usual.

IV. Procedural History

- [6] At a set date hearing conducted on December 16, 2020, the liability hearing was set to commence on September 7, 2021.
- [7] A hearing management meeting was held on June 25, 2021. During that meeting then counsel for Zhang, Mr. Wong, advised that his client had a health issue, which he did not identify, and that his client might obtain a medical report and apply for an adjournment. Mr. Wong was advised by the panel chair that when deciding whether to adjourn the hearing the panel would take into account a number of factors, including the medical opinion. This advice was confirmed in a letter to all counsel summarizing the discussion at the hearing management meeting.
- [8] On August 5, 2021, Mr. Wong delivered an application to adjourn the hearing. The application was not supported by any evidence. A number of reasons were listed in support of the application, including the following:

- 1) The declining health both mental and physical of Ms Zhang. [REDACTED]

[REDACTED]
[REDACTED] She only recently met with counsel and provided authorization regarding obtaining her medical records from Richmond Hospital.

- 2) Due to the impending hearing date, Ms Zhang is submitting this adjournment request while awaiting receipt of her medical records. Ms Zhang has also requested a doctor's report and that report is to come from her doctor in [REDACTED].

- 3) [REDACTED]

[9] The application to adjourn was opposed by the executive director and was quickly dismissed by the panel, which referred Mr. Wong to the earlier letter referencing the importance of medical evidence in the consideration of any adjournment on medical grounds.

[10] Mr. Wong delivered a further application to adjourn in his letter of September 1, 2021. There followed a series of communications which resulted in the hearing being adjourned generally over the objections of the executive director. The reasons for the adjournment were recorded in a letter to the parties dated September 15, 2021. Due to the manner in which events have unfolded since then, it is useful to reproduce that letter in considerable detail:

The hearing was originally scheduled to commence on September 7, 2021. As that date became imminent, the Respondent brought a series of adjournment applications, each in turn supported by evidence and submissions about the Respondent's condition. While the evidence submitted was progressively more detailed, in the panel's view, it did not meet the threshold required to adjourn the hearing, except to merit a very brief adjournment of the commencement of the hearing from September 7 to September 13, 2021.

A further hearing management meeting was held the morning of September 9, 2021.

Immediately before the commencement of the September 9 hearing management meeting, the most material facts known about the Respondent's ability to properly participate in the hearing were the following:

1. she has been medically diagnosed as having [REDACTED] and has been prescribed treatment by drugs, facts which had been corroborated in writing by her doctor;
2. her prescription had not been refilled, a fact which the Respondent's doctor suggested is an indication the Respondent has not been taking her medication;
3. her counsel was representing to the panel that the Respondent was:
 - a. difficult to communicate with, although the details and scope of that representation were vague; and
 - b. claiming to be unwell and was intending to check herself into a hospital.

At the September 9 hearing management meeting, counsel for the Respondent reported that the Respondent had reported to the emergency room of a hospital the night before and was still awaiting assessment and possible admission to [REDACTED]. Counsel for the Respondent reported an intention to visit the Respondent at the hospital and to report further on the Respondent's status.

Counsel for the Executive Director made submissions at the hearing management meeting that the current evidence was insufficient to support an adjournment and whatever additional evidence was developed regarding the condition of the Respondent should be written and sourced from medical professionals. Counsel for the Respondent expressed an intention to fully document each statement about the Respondent's condition, but noted that there might be difficulties both obtaining documents on short notice given the priority of medical professionals on making rounds between all patients, and connecting with a doctor by telephone or in person during Covid. The panel chair noted that if counsel reported facts based upon his own observations about the location of the Respondent and what was said to him by medical professionals the panel would not be dismissive of representations made by Respondent's counsel. Respondent's counsel expressed appreciation of the statement and noted that all his representations would be sincere and in his capacity as an officer of the court.

Later on Thursday, September 9, 2021, counsel for the Respondent submitted evidence as follows:

1. An email sent at 2:51 PM which reported that Respondent's counsel had seen the Respondent at the hospital. At that time Respondent had not been admitted. However, since then a named doctor decided to admit the Respondent [REDACTED]. The email included the phone number for the [REDACTED] and in invitation that recipients of the email could confirm the Respondent's stay there. Respondent's counsel expressed an intention to try to speak to the doctor who had ordered the admission and to report further.
2. An email sent at 3:33 PM attaching a standard form which might be used by a doctor to explain why a patient should be excused from work or school due to illness or injury. The note was dated by hand "September 8, 2021" and signed with an illegible signature. However, the note also had a label affixed dated September 9, 2021 showing the printed name of a medical doctor and the note has a fax delivery script at the top indicating the note had been faxed from the [REDACTED] emergency department of the hospital previously disclosed as where the Respondent had been admitted. The note includes the comment above the doctor's signature "she is in hospital".
3. An email sent at 3:54 PM which includes representations by Respondent's counsel that "the hospital nurse called me and advised (the Respondent's)

[REDACTED]

Late on Thursday September 9, 2021, the panel chair requested through the hearing office that Respondent's counsel provide such further update as is available the next day and counsel for the Executive Director was asked to treat the developments as a new adjournment application and to provide their position.

The Executive Director objected to the new adjournment application:

- stating "some of counsel's evidence and assertions purport to show that (the Respondent) is not available next week, and some goes to (Respondent's counsel's) ability to participate in her defense"
- identifying that the doctors note does not address either the Respondent's status or to her ability to instruct counsel
- cautioning against relying on Respondent's counsel's insights to draw conclusions about [REDACTED]
- warning that some of the evidence provided is third hand and vague.

Counsel for the Respondent emailed again the morning of Friday, September 10, 2021 with some information he said he received from the hospital about the time required to independently document his previous assertions. In summary, even on an expedited basis documentation from the hospital cannot be expected until well after the hearing was scheduled to start. Respondent's counsel also informed the hearing office that he and counsel for the Executive Director discussed options for jointly calling [REDACTED] the hospital to confirm the Respondent's status but arrangements to do so cooperatively broke down over who should be involved in the call (counsel or an investigator) and whether counsel's participation would turn counsel into a witness. No new evidence was provided regarding the status of the Respondent.

Analysis

Given the manner in which the adjournment applications unfolded, the nature of the evidence and the submissions of the parties, this particular adjournment application merits more fulsome reasons than what is the usual practice at the Commission.

The panel agrees, as the Executive Director asserts, that there is a public interest in hearings such as this one proceeding and not being unduly delayed. The Executive Director points out that the allegations date back to 2015, that the hearing date was set with the cooperation of the Respondent and with significant advance notice and that the witnesses who are prepared to testify include the alleged victims of the Respondent's conduct.

The Executive Director's arguments are well founded, but they must also be balanced against the right of a respondent to be given an opportunity to fairly respond to the case against him or her. The conduct alleged in this case is significant and it is reasonable to presume that if the allegations are proven the sanctions sought will also be significant.

[REDACTED] It is possible that within days of the granting of this adjournment the Respondent will be released from the hospital. However, we find

[REDACTED] sufficient medical evidence to corroborate and legitimize the concerns expressed by Respondent's counsel that he has had and continues to have significant difficulties in communicating with the Respondent in a manner which enables him to present a proper defense.

It is not often in proceedings before us that a respondent to a Notice of Hearing is eager to have a liability hearing. Allegations of illness and vague submissions about difficulties in properly preparing for a hearing are sometimes advanced as reasons to delay a hearing. The normal expectation of panels that delays sought for medical reasons be supported by direct, independent medical evidence is an expectation which has developed for good reason. However, where the medical evidence is present, it can be in the public interest to adjourn a hearing to a later date. That is the case here.

We recognize that in this case much of the evidence we are relying upon was late in coming, and indirect. However, it was persuasive. Furthermore, some of the evidence is now corroborated by independent evidence and Respondent's counsel has offered to cooperate in further corroboration. In addition, Respondent's counsel has offered explanations for why further independent evidence has not become available in a timely way. We see no reason to do other than to accept the word of Respondent's counsel.

Ruling on the Adjournment Application

Having considered all the evidence and the public interest, it was the decision of the panel to allow the application.

The hearing was adjourned generally.

- [11] According to medical literature, the medical diagnosis referred to in the above letter of September 15, 2021 is a long term condition that can be very serious and debilitating but can be episodic in its intensity and may be controlled to some extent through medication.
- [12] After the adjournment, a further hearing management meeting was held on September 23, 2021. At that time there was discussion regarding whether it was better to reset the hearing for the earliest available date or to set a date further out in order to decrease the risk that Zhang would still be ill at the next hearing date. At the request of the executive director, the hearing was reset to commence on February 4, 2022. During that same hearing management meeting, a protocol was created for Mr. Wong to provide periodic updates on the health of Zhang in order to try to reduce the potential of a further, late in the day adjournment as the new hearing date approached.
- [13] Some medical information was delivered in the weeks that followed, including hospital records [REDACTED]
[REDACTED] We will not describe the details of the medical information provided, except to note that there was evidence that Zhang was [REDACTED] ill.
- [14] After many weeks passed, Zhang stopped delivering regular medical updates through Mr. Wong. Counsel for the executive director expressed concern that there would be a further adjournment application at the last minute, after the lives of witnesses had been disrupted by the hearing schedule and the need to prepare for the hearing. A further hearing management meeting was held on January 13, 2022.

- [15] At the hearing management meeting, Mr. Wong advised that Ms. Zhang had been discharged from hospital, but was referred by her doctor for medical care and was pursuing further care [REDACTED]. Further, Mr. Wong advised that he had not received clear instructions from his client and that he may have to withdraw as counsel, and would leave it to Zhang's future counsel to apply for any adjournment. Counsel for the executive director stated that, given the requirement to prepare witnesses for a hearing, it would be preferable if Mr. Wong brought any adjournment application prior to, rather than wait until the first day of, the scheduled hearing.
- [16] We encouraged Mr. Wong to proceed as expeditiously as possible with any potential adjournment application.
- [17] On January 24, 2022, Mr. Wong wrote to the hearing office passing along Zhang's request to adjourn the February 4 hearing and Mr. Wong's intention to withdraw. The executive director did not oppose the adjournment and it was granted.
- [18] At a subsequent hearing management meeting held on February 4, 2022, the hearing date was reset for July 5, 2022. The discussion at that hearing management meeting also addressed Mr. Wong's status. Mr. Wong had given notice that he had withdrawn, but he continued to act for Zhang on specific issues. Mr. Wong was informed, then and several times since, that under the rules of the Commission (BC Policy 15-601), counsel who had gone on the record for a respondent could not withdraw from being the formal contact for that respondent without first providing a proper address for delivery for their client.
- [19] On May 19, 2022, Mr. Wong delivered a new medical report related to Zhang's condition. The report contained some reasonable level of detail and referenced a formal, in person assessment by a specialist. The report indicated that, once again, Zhang was not at that time "able to undergo a court proceeding". The report was not accompanied by a specific request for an adjournment. The hearing office followed up with an inquiry seeking confirmation that an adjournment was being requested. It was eventually confirmed that Zhang was seeking an adjournment. The executive director consented to the adjournment request. The panel adjourned the hearing and set new hearing dates commencing in April of 2023 (later adjusted to shorten the hearing and set the first day of hearing for April 28, 2023). The panel also clarified, again, that under the rules of the Commission Mr. Wong's address would remain the address for delivery of communications and documents to Zhang until a proper new address is provided.
- [20] Mr. Wong, referencing instructions from Zhang, has refused to provide Zhang's address. He has provided a phone number which Mr. Wong indicates belongs to a relative of Zhang. The hearing office reports that there was no answer at the number provided when they called and no ability to leave a message. Zhang, through Mr. Wong, has been advised that the contact address she has provided is inadequate.

V. Current Adjournment Application

- [21] Mr. Wong sent a letter dated March 27, 2023 to the hearing office. The substantive portion of the letter is as follows:

I enclose a recent medical report from Ms Zhang's doctor. [REDACTED]
[REDACTED]. Ms Zhang has been unable to find a lawyer willing to take on her case, although she has tried to retain a few. [REDACTED]
[REDACTED]

- [22] The letter was accompanied by a letter from a doctor [REDACTED]. The substantive portion of that letter is as follows:

She is suffering from [REDACTED]
[REDACTED] She was assessed by [REDACTED] and he had a similar impression; [REDACTED] he did not believe she would be able to undergo a court proceeding. This assessment was dated Apr 4 2022 and was previously sent to your law office.

As per the [REDACTED] recommendation, I have started Meiyun on [REDACTED] medications. Although they had some modest effects on the patient's ability to [REDACTED] and some mild improvements to [REDACTED], she has not experience any meaning [sic] change [REDACTED]
[REDACTED]

[REDACTED] It is my professional opinion that she would not be able to under go the rigors of a court proceeding.

- [23] Counsel for the executive director responded to the materials from Mr. Wong by requesting a further hearing management meeting.
- [24] The hearing office sent an email to the parties on March 31, 2023 suggesting dates for a hearing management meeting. The email included the following requests:

At the HMM, the panel chair would like to receive input from the parties on whether:

1. It is open to the executive director to apply for temporary orders after a notice of hearing has been issued but before a hearing on the merits has been heard, and
2. Given the circumstances of this matter, if another adjournment is granted, would it be in the public interest for the panel to grant contemporaneous orders under sections 161(2) and (3).

- [25] A hearing management meeting proceeded on April 13, 2023. Counsel for the executive director appeared. No one appeared on behalf of Zhang. During the hearing management meeting, counsel for the executive director agreed that the latest correspondence delivered on behalf of Zhang should be treated as a request for an adjournment. Counsel for the executive director expressed an intention to provide written submissions later that day.

VI. Position of the Executive Director

- [26] The executive director's submissions opposing the adjournment application and seeking interim orders in the event of an adjournment were received on April 13, 2023.
- [27] In summary, the executive director submits that fairness to Zhang needs to be balanced with the public interest in having the matter proceed. Given that there has already been three adjournments over the course of two and a half years, the balancing of those interests has now "tipped in favour" of having the matter proceed – even if Zhang cannot attend in person or does not have counsel.
- [28] The executive director submits that there is support for this conclusion given the lateness of the adjournment application and the lack of more fulsome evidence in support of it. In particular, the executive director points out that the March 27, 2023 letter does not identify the doctor's qualifications to give an opinion, is vague, refers to a dated specialist report without new evidence, does not explain why Zhang's current medical condition prevents her from participating in the hearing, and does not address how Zhang could be accommodated at a hearing.
- [29] The executive director submits that while Zhang is owed a fair hearing, she is not owed a perfect hearing. In the executive director's opinion, accommodations such as shortened hearing days, breaks throughout the day, remote attendance and submitting evidence by way of affidavit could assist Zhang in proceeding with this matter.
- [30] Finally, the executive director emphasizes the amount of time that has passed, which must be considered when balancing interests. In particular, the misconduct dates back to 2014, considerable resources have been expended by the executive director to date, and repeated delays make it difficult to prepare witnesses. Investor confidence in both the integrity of the capital markets and the Commission's ability to protect the public diminishes as time continues to pass, the executive director argues.
- [31] Zhang has not responded to the submissions of the executive director. However, on April 17, 2023, Mr. Wong sent an email on behalf of Zhang indicating that Zhang has obtained new legal representation. Mr. Wong requested that the Commission delay further steps for "a couple of days".
- [32] On the afternoon of April 18, 2023 the hearing office received a letter from a lawyer located in the province where Zhang currently resides. The letter does not commit the lawyer to act as counsel for Zhang, but it indicates that Zhang was "taking steps to retain" him. The letter included a further application for an adjournment because the lawyer was not available on the hearing dates and could not be prepared in time even if he was available.
- [33] On April 20, 2023, the hearing office received an email from that lawyer confirming that he has been retained as counsel for Zhang.

VII. Analysis and Conclusions

[34] We agree with the positions advanced by the executive director in many key respects. Specifically:

- (a) we agree that the allegations contained in the notice of hearing are very serious;
- (b) we agree that there is a significant public interest in having proceedings heard and resolved promptly;
- (c) we agree that it is appropriate to reference the warning in *Re Nickford*, 2016 BCSECCOM 282 at paragraph 16 in support of the proposition that investor confidence in the integrity of the capital markets and the Commission's ability to protect the public diminishes as serious allegations continue to be unheard; and
- (d) we agree that in any application for an adjournment based on medical considerations, it is appropriate to consider options to allow the hearing to proceed by accommodating the medical concerns through modifications to the hearing process, for example by limiting hearing hours, allowing participation by video link or in writing, or other practical arrangements. A fair hearing can result, even if the hearing is not perfect.

[35] At the same time, we disagree with some of the positions taken by the executive director. We explain our conclusions about those positions under the subheadings which follow.

A. Adequacy of Medical Evidence

- [36] 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 eager 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.
- [37] At the same time, the required review should not be confined to a search for flaws in whatever evidence has been delivered. It is also essential to take a nuanced view of the larger context in order to consider whether potential flaws also have logical explanations. For example, in the course of the application to adjourn the September, 2021 hearing dates, the key evidence tendered in support of the adjournment application was a written representation from Mr. Wong that he had visited Zhang in the hospital. Mr. Wong represented that he was unable at that moment to obtain written hospital records, but he had learned that Zhang had been [REDACTED] to the hospital and could not attend the hearing. The executive director argued that evidence in the form of a representation from Mr. Wong was inadequate because it was not in writing from a doctor. We accepted Mr. Wong's evidence in part because Mr. Wong is an officer of the court but also because it was reasonable to expect that the hospital would not hand over its records to Mr. Wong on the spot, accepting Mr. Wong's statement that he had sought written evidence from the hospital but hospital records would not be available until later. We received that evidence subsequently. We note that if we had been strict in requiring a written letter from Zhang's doctor,

we would have proceeded with the hearing while Zhang was unable to participate because she was then confined in a hospital.

- [38] The medical evidence before us indicates that Zhang has suffered from a serious [REDACTED] illness for some time. The specialist who examined Zhang in April 2022 did not believe Zhang could participate in court proceedings at that time. The current adjournment application is supported by a medical report from Zhang's doctor who stated that her situation has not improved significantly with medication and it is his professional opinion that she would not be able to undergo the rigors of a court proceeding at this time.
- [39] We also have previously received medical evidence that Zhang has a [REDACTED] that, according to medical literature, is a long term condition that can be very serious and debilitating but which can be episodic in its intensity and may be controlled to some extent through medication.
- [40] Given the nature of Zhang's medical condition as described in all the medical reports, it is not obvious what measures would be appropriate to accommodate her condition and enable her to participate in the hearing.
- [41] We note that although the executive director has quite accurately pointed out that mitigating measures such as remote attendance and providing evidence by affidavit are available in this proceeding, the executive director has not suggested which of those measures should be followed here nor how those measures would accommodate Zhang's condition.
- [42] We would not expect Zhang to renew all of the evidence she has previously provided. What we expect from Zhang is evidence regarding whether her present condition is relatively acute so we can assess whether she can meaningfully participate in the presently scheduled hearing.
- [43] The executive director expressed concerns about the completeness of the letter from Zhang's doctor. The executive director submits that the letter does not indicate whether the doctor was reviewing Zhang's condition monthly and the executive director suggests that the doctor is relying on a "stale" specialist assessment from about 11 months earlier. Although there is truth to the proposition that the doctor's letter could have been much more specific, the wording of the letter strongly suggests that the doctor has had recent contact with Zhang. The letter speaks about the effect of treatment and it notes how [REDACTED]
- [REDACTED]
- [REDACTED] All of his comments speak in the present tense and appear to intentionally suggest the comments are based on current observations. The letter follows those comments about Zhang's condition with the words "It is my professional opinion that she would not be able to under go the rigors of a court proceeding". The letter is focused on Zhang's health rather than the question about Zhang's capacity. Again, taking a nuanced approach to both the shortcomings of the letter as evidence for the adjournment application and the circumstances around the delivery of this letter from Zhang's doctor, we do not find the doctor's focus to represent a fatal flaw.

- [44] We disagree with any suggestion that the letter might not be based on a current review of Zhang, or that there is no indication that the doctor is familiar with Zhang's condition. Further, based on the totality of the information provided, we conclude there was a specialist's assessment completed about one year ago and since then Zhang's doctor has been treating her and assessing her by reference to the specialist's assessment. In our view, a new specialist assessment is not critical to the application. As we have indicated, the issue is not with the general diagnosis, which is well established. The issue we must address is whether there currently is proper evidence about how Zhang's condition is currently impacting her ability to meaningfully participate in a hearing.
- [45] In the current context, a specialist report on Zhang's current condition would be more helpful, but the letter from Zhang's doctor is an acceptable indicator of Zhang's current condition. According to Zhang's doctor, she is not able to participate in the currently scheduled hearing.

B. Balancing of Public Interest Factors

- [46] As we have noted, we agree with the Executive Director that there are very significant public interest factors which support proceeding with the hearing as currently scheduled. We have spoken about the general importance of holding prompt hearings, as that principle is reflected s. 1.2 General Principles of the Commission's Hearing Policy 15-601 which states in part:

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.

- [47] 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. In all these respects, we expect that the views of the executive director correspond to our views.
- [48] Where we disagree with the submissions of the executive director regarding the public interest is in what we perceive to be the executive director's argument that there is a public interest on the one hand balanced against Zhang's right to a fair hearing on the other hand. We do not accept that way of analyzing the public interest. Zhang is part of the public. There is a public interest in ensuring that Zhang receives a fair hearing. This view is consistent with what the British Columbia Court of Appeal expressed in *Party A v. British Columbia (Securities Commission)*, 2021 BCCA 358 at para. 186:

[186] There is more than one aspect of the public interest that may be relevant to the question of whether to issue or maintain asset freeze orders. Certainly, the Commission's primary concern will be the protection of those members of the investing public who might be harmed by wrongful conduct. But the persons affected by the Commission's orders, whether market participants or not, are part of the "public" as well, and their

interests need to be considered so as to retain public confidence in the system—one of the three goals of securities legislation.

- [49] We have carefully considered the precedents referenced by the executive director, and particularly the various adjournment decisions in *Re Nickford*. We agree with the executive director's characterization that in *Re Nickford* the respondent was granted numerous adjournments until, eventually, the hearing proceeded. However, we do not agree with the characterization that the hearing proceeded even though the hearing panel concluded that Nickford's condition prevented her from receiving a fair hearing. The panel repeatedly noted in *Re Nickford* that the medical evidence provided was not adequate to support a conclusion that Nickford could not participate in the hearing, particularly if reasonable measures were adopted to mitigate the effects of Nickford's medical condition.

C. Temporary Orders and the Public Interest

- [50] The submissions of the executive director focus on the options of proceeding with the current hearing date, or adjourning yet again with its inherent costs to the public interest. We had attempted to draw out submissions from the executive director in relation to how temporary orders might be made and might impact a public interest analysis. Unfortunately, we received only one brief paragraph in response. That paragraph consisted of a bare application for a temporary order, should the adjournment be granted. We did not receive any other guidance or submission.
- [51] Our own view is that temporary orders are available and can make a significant contribution to the ability of this panel to advance the public interest in the event that an adjournment is granted.
- [52] Sections 161(2) and 161(3) of the Act read as follows:
- (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.
- [53] There are many circumstances which would justify the issuance of a temporary order before or at the time a notice of hearing is issued. In this case, no temporary order was sought at the time of the notice of hearing. That was a reasonable decision given that at the time there was a reasonable expectation that the proceeding would, from that point, proceed to a hearing and decision within a year.
- [54] At this stage the circumstances have changed dramatically. Almost 30 months have passed and at this point it is not clear that the hearing will proceed any time soon. In addition, we have found that Zhang has become uncooperative in our processes, declining to provide the regular updates

on her health as she was required to do and refusing to provide a proper address where communications and documents can be delivered to her. The entirety of her participation in this proceeding appears to be dedicated to producing whatever materials she needs to obtain an adjournment whenever a hearing date approaches.

- [55] Another public interest factor is that the allegations in the notice of hearing include significant fraudulent conduct. The nature of the allegations creates a perception of risk to the public. In normal circumstances, the Commission might be reluctant to initially impose temporary orders for an extended period of time in the absence of evidence such as an affidavit of an investigator setting out the evidence that is likely to be presented at an eventual hearing. However, in this instance, we conclude that the public interest supports the imposition of an order under Section 161(2). We do so because the allegations suggest that Zhang poses a risk to the public market and because it is uncertain when we can conduct a fair hearing.
- [56] Because this other option is open to us to protect the public interest without holding a hearing in a manner which is likely to be unfair at this time, we also conclude that an adjournment is appropriate. We have reached that conclusion without providing any material weight on the request by Zhang's new lawyer for an adjournment.

D. Conclusions

- [57] We conclude that the adjournment should be granted and that the temporary order set out below should be granted.

VIII. Order

- [58] The hearing set to commence on April 28, 2023 is adjourned.
- [59] Considering the length of time to hold a hearing in this matter under section 161(1) of the Act is prejudicial to the public interest, under 161(2) we order (the Temporary Order):
- (a) Under section 161(1)(b)(ii), Zhang is prohibited from trading in or purchasing securities or derivatives, except that she may purchase securities in her own account through a registrant;
 - (b) Under section 161(1)(c), all of the exemptions set out in the Act, regulations or any decision as defined in the Act do not apply to Zhang;
 - (c) under section 161(1)(d)(i), Zhang resign any position she holds as a director or officer of any issuer other than an issuer all the securities of which are owned beneficially by her or members of her immediate family;
 - (d) under section 161(1)(d)(ii), Zhang is prohibited from becoming or acting as a director or officer of any issuer other than an issuer all the securities of which are owned beneficially by her or members of her immediate family;

- (e) under section 161(1)(d)(iii), Zhang is prohibited from becoming or acting as a registrant or promoter;
- (f) under section 161(1)(d)(iv), Zhang is prohibited from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities markets;
- (g) under section 161(1)(d)(v), Zhang is prohibited from engaging in promotional activities by or on behalf of an issuer, security holder or another person that is reasonably expected to benefit from the promotional activity; and
- (h) under section 161(1)(d)(vi), Zhang is prohibited from engaging in promotional activities on her own behalf in respect of circumstances that would reasonably be expected to benefit her;

until May 10, 2023.

April 25, 2023

For the Commission

Gordon Johnson
Vice Chair

Audrey T. Ho
Commissioner

James Kershaw
Commissioner