

IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c.S.5, as amended

JACK MARKS

- and -

CNSX MARKETS INC. and ONTARIO SECURITIES COMMISSION

SECTION: Sections 8 and 21.7

PUBLIC

PURPOSE: Motion/Merits Hearing
VOLUME: 1
HELD ON: Friday, May 8, 2026
HELD AT: Capital Markets Tribunal
20 Queen Street West
17th Floor
Toronto, Ontario

HELD BEFORE: Adjudicator Andrea Burke - Chair
of the Panel
Adjudicator Jane Waechter
Adjudicator Dale Ponder

APPEARANCES:

Charlie Pettypiece For the Commission

Jack Marks On his own behalf
(Via Videoconference)

Andrew McCoomb For CNSX Markets Inc.
Sandy Lockhart

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1 --- Upon Commencing at 11:00 a.m.

2 HEARING COMMENCES:

3 CHAIR: Okay. We can get started. Good morning,
4 everyone. We're here in the matter of Jack Marks and CNSX
5 Markets Inc. and the Ontario Securities Commission.

6 I'll start first with introductions. I am Adjudicator
7 Burke. I am the Chair of this Panel today. To my left is
8 Adjudicator Ponder and to my right is Adjudicator Waechter.

9 And then what I will do is I'd like to do
10 introductions of the parties. So, I see, Mr. Marks, you're
11 joining us by videoconference this morning. Good morning.

12 MR. MARKS: Good morning, panelists.

13 CHAIR: And you're self-represented?

14 MR. MARKS: Correct.

15 CHAIR: Welcome. And then just looking in the room,
16 Mr. McCoomb and Mr. Lockhart, you're here for CNSX?

17 MR. MCCOOMB: Yeah, good morning.

18 MR. LOCKHART: Good morning.

19 CHAIR: And just for clarity on the record, I think
20 the parties have been using "CNSX" and "CSE" interchangeably so
21 that may happen today. I just want to make clear that that's
22 fine from your perspective.

23 MR. MCCOOMB: It is.

24 CHAIR: Okay. And then Mr. Pettypiece.

25 MR. PETTYPIECE: Good morning.

26 CHAIR: Good morning. You're here for the Ontario
27 Securities Commission?

28 MR. PETTYPIECE: That's correct.

1 CHAIR: So, just one housekeeping matter before we
2 begin. So, we'll be using the Zoom platform today to record
3 this hearing. It's for the Tribunal's own internal testing
4 purposes. And as you heard at the very outset, the Registrar
5 did start recording this hearing.

6 We do have a court reporter present in the room and
7 the court reporter will be preparing the official transcript of
8 this proceeding that will be made available to the parties.

9 Any questions, Mr. Marks? Is that clear?

10 MR. MARKS: Yeah, it's clear. Just if you can give me
11 how -- what is the process? What would you like me to start
12 with or what is the process?

13 CHAIR: I'll be getting to that for sure.

14 MR. MARKS: Okay.

15 CHAIR: So, just to be clear for the record, we
16 originally had started -- scheduled today's hearing as the start
17 of the merits hearing in this application brought by Mr. Marks.
18 It was originally to deal with a New Evidence Motion brought by
19 CNSX, as well as the merits of the application itself. But
20 because of recent developments, today has now been set aside for
21 purposes of dealing with a number of motions brought by Mr.
22 Marks, just in the past few days, as well as CNSX's motion to
23 introduce new evidence. And our second day scheduled for this
24 matter, which is May 13, will be the start of submissions on the
25 merits.

26 So, the purpose today as well, in addition to hearing
27 the motions that I've referred to, there are a few things that
28 we need to deal with in terms of preliminary matters, including

1 clarifying what the record of the original proceeding is about
2 which there has been some communication via the Registrar with
3 the parties over the past week.

4 And I also want to address the question of whether
5 there's a need to schedule additional hearing time for the
6 merits because we had originally set aside approximately a
7 day-and-a-half, and because today will be used for these
8 motions, I'm concerned that we won't have enough time with the
9 time we have set aside on May 13th.

10 Before we get started, Mr. Marks, over the past few
11 days there have been some communications with you via the
12 Registrar regarding an objection that you have about the mode of
13 this hearing being in person with the option available to the
14 parties to participate by videoconference, and I note that the
15 Panel had indicated, via the Registrar, in an e-mail
16 communication to you, as well as to the other parties, that we
17 would be proceeding today as ordered in person but it was
18 available to you to attend by videoconference, which you have
19 done.

20 We also indicated that we would entertain brief, oral
21 submissions from you on the record at the outset of this hearing
22 and give you the opportunity to mark communications on the point
23 as exhibits so that it's on the record because you had expressed
24 a concern about your objections being made clear on the record.

25 So, with that, this is your opportunity, Mr. Marks, if
26 you want to make some brief submissions about your objections
27 and also if you want -- if you want to have the e-mail
28 communications marked as exhibits, we can do that. I've got the

1 relevant references so I can help you with that.

2 MR. MARKS: Yes. I don't actually -- I'm not going to
3 bring up the e-mails right now. Essentially, I could -- I
4 already have some notes if you want me just to introduce the
5 motion of leave, I can start with that. I have my notes in here
6 about some of my objections to the adjournment request being
7 denied so I could address that. Would you like me to begin?

8 CHAIR: So, your adjournment request was denied with
9 reasons to follow. That is part of the record, Mr. Marks.
10 We're not going to revisit the issue of your adjournment request
11 today, but I do note that you are -- I'm giving you the
12 opportunity, because I know that you had some objections about
13 the hearing today proceeding in person with you participating --

14 MR. MARKS: Yes.

15 CHAIR: -- by videoconference. If you want to say
16 anything about that, you can do that now.

17 MR. MARKS: Yes. Okay.

18 CHAIR: I think your objections are also clear in the
19 various e-mail communications. So, if you'd like to just make
20 sure that they're part of the record, we can just mark those as
21 exhibits.

22 MR. MARKS: Sure. Yeah. I did object to the format
23 of today's hearing, in that, I'm at a disadvantage, in that, I'm
24 self-represented. I'm coming in remotely whereas the CSE and
25 the OSC are in the room with the Panel which is, you know, which
26 creates a -- in a sense of optics, a, you know, a very strong
27 advantage for the CSE and a disadvantage for me. I did request
28 that, you know, both parties should be coming in via Zoom

1 because that would put us both on a level playing field for the
2 purposes of procedural fairness which has really been at the
3 heart of the issue that we're going to be discussing today, it's
4 going to be procedural fairness.

5 In terms of e-mails, you know, I did request --
6 everything has been done after my adjournment request was
7 denied. Everything was in a very compressed time frame. I was
8 dealing with another legal matter brought by our learned friends
9 at the CSE which has left me literally just a few days to
10 prepare hundreds of pages here which are on my desk in front of
11 me, motions, all sorts of material and, you know, I did request
12 a number of -- a number of time extensions but every time I, you
13 know, I actually -- nobody got back to me and I had to rush the
14 materials in.

15 And once my materials were actually delivered, after
16 that, I received a reply that, okay, you can have an extension,
17 which I appreciate, but the fact is between everything that is
18 going on, it has -- it has also put me at a disadvantage. With
19 that said, I'm prepared to continue.

20 CHAIR: Okay. So, Mr. Marks, would it help you -- do
21 you want the various e-mails around the mode of hearing, do you
22 want -- that went back and forth earlier this week on I think on
23 the 4th through the 6th of May, do you want those marked as
24 exhibits because they set out --

25 MR. MARKS: Yes.

26 CHAIR: -- your objections in writing and then the
27 responses received?

28 MR. MARKS: Yes. I would like all -- I would like all

1 the e-mails -- all e-mail communications marked as exhibits.

2 CHAIR: Okay. So, I've got a list of those. The
3 first e-mail is an e-mail from you, Mr. Marks, on May 4, 2026,
4 at 8:40 p.m., and just for the record all of the times are
5 Eastern Time. I know that you're in a different time zone.
6 8:40 p.m., an e-mail from you to the Registrar asking permission
7 to attend this hearing by videoconference. We'll mark that as
8 Exhibit 1 to today's hearing.

9 EXHIBIT NO. 1: May 4, 2026, 8:40 p.m. e-mail from Mr.
10 Marks to the Registrar.

11 CHAIR: Then there's a May 5, 2026, 11:25 a.m. e-mail
12 from you to the Registrar objecting to the hearing proceeding as
13 a hybrid form, and down below in that chain there's a May 5,
14 2026, 9:56 a.m. e-mail from the Registrar confirming that you
15 may attend by videoconference. We'll make that chain Exhibit 2.

16 EXHIBIT NO. 2: May 5, 2026, 11:25 a.m. e-mail from
17 Mr. Marks to the Registrar, including a May 5, 2026, 9:56 a.m.
18 e-mail from the Registrar.

19 CHAIR: There's a third e-mail, an e-mail on May 5,
20 2026, at 3:24 p.m. from the Registrar to the parties attaching
21 the transcript of the attendance on August 28, 2025. We will
22 mark that as Exhibit 3.

23 EXHIBIT NO. 3: May 5, 2026, 3:24 p.m. e-mail from the
24 Registrar attaching an August 28, 2025, attendance transcript.

25 CHAIR: There is a May 5, 2025 [sic], 5:00 p.m. e-mail
26 from you to the Registrar, Mr. Marks, and the other parties
27 reiterating your objection. We will mark that as Exhibit 4.

28 EXHIBIT NO. 4: May 5, 2026, 5:00 p.m. e-mail from Mr.

1 Marks to the Registrar and other parties.

2 CHAIR: And finally, there is a May 6, 2026, e-mail
3 from the Registrar at 12:02 p.m. to the parties addressing your
4 e-mail of May 5 at 5:00 p.m. We will mark that as Exhibit 5.
5 Okay. I think we've covered off all of the e-mails.

6 EXHIBIT NO. 5: May 6, 2026, 12:02 p.m. e-mail from
7 the Registrar to the parties.

8 MR. MARKS: Yes.

9 CHAIR: And, Mr. Marks, this is not...not with the
10 intention of arguing with you at all, but just to inform you
11 that when you -- when you send e-mails to the -- that you want
12 the Panel to see, and you send them via the Registrar, if you're
13 sending them in the evening, the Panel doesn't get them until
14 the next day. So, there is necessarily a time delay when you're
15 sending communications. They're not instantaneously received
16 and they're not necessarily -- there's not necessarily the
17 ability to respond to them immediately. So, last-minute
18 requests for extensions, we deal with them as we can, but
19 they're not instantaneous and that's just the nature of the
20 beast. We do not have -- we do have people monitoring e-mails
21 that come in after 4:30 p.m. which is the closing time for
22 filing things.

23 MR. MARKS: Right. No, I understand. It's just that
24 a lot of these deadlines there was, again, without arguing
25 specifics, there was about six, seven hours of time from the
26 morning, from 9:00 a.m. until whenever I had to deliver
27 materials and, again, I'm at a slight disadvantage because I'm
28 three hours behind. So, when you ask for things delivered at 12

1 noon, that means I have to -- I have to have it for you by 9:00
2 a.m. my time.

3 CHAIR: Yes.

4 MR. MARKS: Even though I get up 5:00 a.m., I have,
5 you know, other obligations.

6 CHAIR: Yes. I recognize that and I recognize
7 timelines were tight this week. I think it was largely a
8 function of things being brought at the very last minute prior
9 to a merits hearing that has been scheduled now for months. And
10 part of it is is that this Panel has an obligation to
11 accommodate all parties and also have enough time to actually
12 review materials before the actual hearing.

13 So, the Panel is doing its best to try to accommodate
14 your request to bring last-minute motions, and also to be fair
15 to the other parties in terms of having appropriate time to file
16 responding materials.

17 MR. MARKS: I appreciate that.

18 CHAIR: Okay. Thank you. So, Mr. Marks, just so you
19 know, you're on camera. We can all see you in the hearing room.
20 All of the Adjudicators have you up on the screen in front of
21 us, the screen I'm looking at, and then there's also a large
22 screen in the room. And it may look like I'm not really looking
23 at you but I'm actually looking directly at your face when
24 you're on the screen and you're talking.

25 What you should know is that just for -- so we don't
26 have noise and people talking over each other, when you're not
27 making submissions, you should put yourself on mute. I will be
28 looking though if you need to raise your hand or you need to

1 interject for some reason, but it will have to be an appropriate
2 reason when somebody else is making submissions. You wouldn't
3 normally do that during submissions. I will be monitoring to
4 make sure that I see you when you want to speak. And for sure
5 if I don't -- if for some reason my head is turned away, and I
6 don't notice you putting your hand up because you want to speak,
7 you can turn on your sound and just draw my attention, but other
8 people will help me as well. So, we can all clearly see you and
9 even though probably on the screen you're looking at me turning
10 my head right now, I'm turning my head to you on the screen,
11 okay, so I can see your face and it's a very large screen.

12 MR. MARKS: And I'm even...[inaudible]...in person I
13 should add.

14 COURT REPORTER: (Appeals).

15 CHAIR: Sorry, Mr. Marks?

16 MR. MARKS: It was a joke.

17 CHAIR: Oh, I didn't hear it. I'm sorry.

18 MR. MARKS: I said I'm even better looking in person.

19 CHAIR: Got it. Thank you. Okay. So, the next thing
20 I want to deal with is the timetable for today. Ordinarily --
21 well, we got the time set aside today from 11:00 until 4:30 p.m.
22 We ordinarily take a 15-minute break approximately
23 every hour-and-a-half, and that's primarily to give our court
24 reporter a break. It can be exhausting to keep going for much
25 longer than that but we're flexible about taking these breaks.
26 So, if someone is in mid-flight of an argument, I'm happy to be,
27 you know, flexible about that, an extra five minutes here or
28 stopping five minutes earlier. It's just we'll try to make it

1 work so that people are not being cut off mid-argument or it's
2 an appropriate break point in the argument, so just to be aware.

3 And what I will do is I will set out a proposed
4 timetable for the whole day that everybody could maybe jot down
5 just to have a sense of what the plan is for today. We would
6 ordinarily also take a one or one-and-a-quarter hour lunch break
7 around 1:00 p.m., but because we're starting late today, I'm
8 going to maybe propose that we shorten that.

9 But I first want to hear submissions from the parties
10 about...about how we're best going to deal with the time today
11 because my intention is that we need to deal with some
12 preliminary matters first, those being the question of the
13 original record of the proceeding below. I want to talk about
14 available additional hearing time for the merits of the hearing,
15 and then we will move to hear submissions of all parties on the
16 CNSX New Evidence Motion, and then we will hear submissions of
17 all parties on Mr. Marks's motions. And we need to complete all
18 of this today by 4:30, which means that I'm going to keep the
19 parties tied to a fairly tight time clock which we can discuss
20 shortly.

21 So, first of all, have the parties consulted or
22 discussed with each other how much time they're going to need
23 for their submissions on these motions?

24 MR. MCCOOMB: No.

25 CHAIR: No. Okay. So, we will canvass that. I do
26 have a suggestion but I will look for the parties' submissions
27 on that. So, first, I want to make clear that the Panel has
28 read all of the materials on these motions, and the Panel has

1 also read all of the materials on the application merits, okay.
2 So, it's a voluminous record but we are quite familiar with the
3 materials which means that it's probably not necessary to walk
4 us through every page of the submissions and every page of the
5 documentary record. You can assume that we are quite familiar
6 with the parties' positions and materials. We will have
7 questions for the parties but please focus your submissions on
8 what is most important, okay.

9 Mr. Marks, so that you understand the process today,
10 when we do get to the motions, and we will start with the CNSX
11 motion first, the process will be to hear from CNSX first. CNSX
12 can make its submissions. I am proposing that we then hear from
13 the Ontario Securities Commission given that they have similar
14 positions on the evidence, the CNSX Evidence Motion. Then we
15 would hear responding submissions from you. And then there
16 would be an opportunity for reply, both potentially from CNSX
17 and the Ontario Securities Commission. And any reply
18 submissions have to be restricted to new things that have been
19 raised in your responding submissions. So, it's not an
20 opportunity for those parties to now raise new arguments that
21 you haven't heard and haven't had an opportunity to respond to.
22 It's really their opportunity to respond to new things that
23 you've raised, do you understand that?

24 MR. MARKS: I have a question. So, do I introduce my
25 notice of the leave -- notice of Leave Motion or no?

26 CHAIR: So, that will be -- that will be -- we will
27 deal with that. We will deal with your motions after we have
28 heard all of the submissions from everybody on the CNSX New

1 Evidence Motion, okay.

2 MR. MARKS: Okay. So, to be clear, they're going to
3 introduce I guess their motion and also I will have -- I will
4 have an opportunity to respond to that after.

5 CHAIR: Yes.

6 MR. MARKS: Immediately after.

7 CHAIR: Yes. And then they will have an opportunity
8 to reply if they want to reply to your submissions on that.
9 Once that has been done, we will have heard all of the
10 submissions on the CNSX motion, and we will move to your motions
11 with a similar process but this time we will hear from you first
12 on your motions. We will then hear from CNSX and the Ontario
13 Securities Commission, and you will have an opportunity to reply
14 to anything new that they raise, is that clear?

15 MR. MARKS: Yes.

16 CHAIR: Okay. And so what I am proposing in terms of
17 a timetable for today, and I would like -- a timetable for how
18 we are going to hear these motions and allocate time is as
19 follows: So, talking first about the CNSX motion, and I want to
20 be fair because I look at, although the Ontario Securities
21 Commission and the CNSX are separate parties, and they have
22 different views, they are similarly aligned about the
23 admissibility of the proposed new evidence so I am going to
24 suggest that CNSX and the Ontario Securities Commission have 50
25 minutes total for submissions on the CNSX motion to be split
26 between them as they agree, and it will also encompass any reply
27 time.

28 And then I am proposing that Mr. Marks will have 50

1 minutes total to respond to the CNSX motion so that essentially
2 the two -- the two positions, one being the material should go
3 in as new evidence, and your position, Mr. Marks, the materials
4 should not go in as new evidence will have the same amount of
5 air time today.

6 MR. MARKS: I have a question.

7 CHAIR: Yes.

8 MR. MARKS: I will have 15 or 50, five oh or one five
9 minutes?

10 CHAIR: Five zero. Five zero.

11 MR. MARKS: Five zero, okay.

12 CHAIR: Okay. So, it would be five zero minutes for
13 the Ontario Securities Commission and CNSX collectively,
14 including any reply, and five zero, 50 minutes, for you, Mr.
15 Marks.

16 Similarly, for your motions, Mr. Marks, and this
17 includes your Leave Motion, your motion to introduce new
18 evidence, and your motion we'll call it a Discovery Motion where
19 you're asking for documents to be produced and the opportunity
20 to cross-examine various individuals, we'll hear submissions on
21 all of those motions together. You will have 50 minutes total
22 to address those and you can reserve some time for reply out of
23 that 50 minutes. So, if you want to make submissions for 40
24 minutes and save 10 minutes to reply to anything that your
25 friends raise in response, you can do that. You can save as
26 much time as you want or save no time, okay. Yes.

27 MR. MARKS: I have a question here. So, my -- I think
28 my objection -- whatever, my response -- my response to the

1 CSE's motion will not take that long. Can I shift some of that
2 because I have three motions and they might -- you know, I have
3 three motions. They might take substantially more than 50
4 minutes. I mean, the CSE has only one motion really and they're
5 taking 50 minutes. I have three motions and I only have 50
6 minutes.

7 CHAIR: I understand the point and I'm certainly -- as
8 long as we can get the day done in a way that is fair, I'm fine
9 with shifting time over. This is just a proposal. So, hear my
10 proposal out and then I'll hear from the parties on it, okay.

11 So, 50 minutes for your motions, for you; 50 minutes
12 for CNSX and the OSC to respond to your motions. And if you
13 have reply, you take your reply out of your remaining -- your
14 remaining time that you've been allocated, okay. That will get
15 us to roughly, as I calculate it, it will get us to roughly
16 three-and-a-half hours of submissions, and I'm trying to do that
17 because I'm factoring in the other issues including what we're
18 doing as a run-up to these submissions is taking about 45
19 minutes this morning. So, I think that gets us to the end of
20 the day like almost on the nose.

21 So, Mr. Marks, your submission, you want to be able to
22 move some of your time over if you don't use it on the CNSX
23 motion into your motions?

24 MR. MARKS: Yes. Yes. And also I'd like to say again
25 is I think there's a procedural fairness issue. If I have three
26 motions, and I'm only allocated 50 minutes, they have really one
27 motion and they have the same time frame, I think there's a bit
28 of an imbalance there.

1 CHAIR: Well, okay, I think that there's a lot of
2 overlap between your motions, Mr. Marks. There is overlap. The
3 Panel has read all of the materials. And in addition, the law
4 around the introduction of new evidence will have already been
5 canvassed in submissions on the CNSX motion. So, you don't have
6 to discuss the law or the test or anything, right, again.

7 MR. MARKS: No, that's not my point.

8 CHAIR: It will all be considered, yeah.

9 MR. MARKS: Right.

10 CHAIR: Do you have anything else you want to say
11 about that proposal?

12 MR. MARKS: No. Again, my, you know, my motions might
13 take long because I have three, and I'm not bringing up any
14 laws. It might -- it might take longer. I'm new to the
15 process, so, and I'm going to have a limited time to respond.
16 So, I think there's -- you know, I just want to put that on the
17 record and it's up -- it's really up to you to decide. This is,
18 you know, it's not --

19 CHAIR: How much time do you think you need for your
20 motions, Mr. Marks?

21 MR. MARKS: I think I might need -- I hope I can get
22 it done within...within an hour but it might take me, if I'm not
23 -- if I'm not interrupted, maybe an hour-and-a-half.

24 CHAIR: Okay. Well, we're working with the time that
25 we have today and we have to get these done today so we're just
26 going to have to streamline our submissions. If you think you
27 can do it in an hour, I'm going to suggest you take 10 minutes
28 out of the time for the first motion. So, you make your

1 submissions for the CNSX motion in 40 minutes, and then you'll
2 have an hour for your submissions on your motion -- motions.

3 Again, we have read everything. We have read
4 everything that you have written and submitted this week and
5 that the other parties have submitted on these motions,
6 including the transcript, including the Faulkner affidavit. We
7 have read all of it, okay.

8 Can I hear from you, Mr. McCoomb?

9 MR. MCCOOMB: Yes. Thank you. It will be Mr.
10 Lockhart making submissions on the CNSX motion. We're fine with
11 all the timing proposal. We're also fine with -- as you framed
12 it, Adjudicator Burke, and we're fine with Mr. Marks splitting
13 time as between his two elements of the argument. It may make
14 sense to see how much time is remaining on his clock when we
15 wrap the first motion. If we want to reallocate it then, again,
16 I'm fine with that. We just want to make sure that we can move
17 forward.

18 CHAIR: Okay. And equally, I mean, what works for Mr.
19 Marks, if you haven't used all of your time on the CNSX motion,
20 it can also be shifted. We're fine with that.

21 MR. MCCOOMB: We are. I doubt we'll need it. We'll
22 be safely inside your estimate.

23 CHAIR: Okay. Mr. Pettypiece.

24 MR. PETTYPIECE: Yeah. We're fine with, excuse me,
25 proceeding in the way that the Panel has outlined. I don't
26 think I'll have more than 15 minutes of submissions to say
27 today, maybe in total so I think, you know, a comfortable amount
28 of time to deal with this, okay.

1 On the question about breaks, we're fine to, you know,
2 limit the length of breaks to accommodate getting through
3 everything today.

4 CHAIR: Okay. Great. So, what I would say then is,
5 Mr. Marks, keeping in mind that we have to get done by today,
6 if...if we have extra time because it is not all used on the
7 CNSX motion, we may be able to give you more time when we get to
8 your motions. We'll just reassess at that point.

9 Just as a matter of efficiency and process, we have to
10 get these motions done today. And so my proposal was to start
11 with fair time on both sides but, to the extent it's not used,
12 certainly it will be available, okay.

13 MR. MARKS: Very good. Thank you.

14 CHAIR: Have you had a chance to discuss amongst
15 yourselves, I'm speaking Ontario Securities Commission and CNSX,
16 as to how those times will be split between you or do we not --
17 or it's just going to work?

18 MR. MCCOOMB: It's just going to work. We'll be
19 safely within those estimates without any concern.

20 CHAIR: Okay. And is there any concern, Mr.
21 Pettypiece, about the order of operations from the Ontario
22 Securities Commission's perspective given that typically the
23 Commission wants to go third?

24 MR. PETTYPIECE: Yes. Typically that is the case but
25 I think, given the positions we've already taken, which have
26 been communicated through written materials, it makes sense to
27 proceed in the way you've outlined.

28 CHAIR: Okay.

1 MR. PETTYPIECE: Thank you.

2 CHAIR: Great. Thank you. Okay. So, given that, I'm
3 going to give everybody an alert as to our start and stop times
4 today just so you have it, if you want to jot it down.

5 We started today at 11 o'clock. We will go until
6 12:30 which is an hour-and-a-half. We will take a 15-minute
7 break from 12:30 to 12:45 or thereabouts. We will come back at
8 12:45 until 1:45. We will then break for a shortened lunch from
9 1:45 to 2:30. We will come back, resume the hearing from 2:30
10 to 3:45. We will then take another 15-minute break at 3:45
11 until 4 o'clock. And then we will come back at 4 o'clock until
12 4:30, so for another half an hour of hearing time. Any
13 questions about that?

14 MR. MCCOOMB: None.

15 CHAIR: Any concerns? I see nobody indicating any
16 concerns. Okay. So, the next thing that I want to address
17 before we get to the motions is the question of the record of
18 original proceeding.

19 So, earlier this week the Panel, via an e-mail from
20 the Registrar, had raised a question about the record of
21 original proceeding that was filed last fall by CNSX, and the
22 issue was raised in an e-mail from the Registrar to the parties
23 on May 4. The issue was raised because the Panel had seen a
24 reference to a January 8, 2025, letter from CNSX or CSE to
25 counsel, to Mr. Marks, with various enclosures, and we didn't
26 see that reflected in the record of original proceeding.

27 So, the Panel has seen various communications from the
28 parties about that and we have what CNSX has provided as I guess

1 you called it a document called "January 8, 2025 Disclosure
2 Record" with a copy of the January 8 letter, as well as the
3 enclosures to that letter. And I understand that CNSX has taken
4 the position that the materials attached to that letter are
5 already in the record of the original proceeding.

6 I understand Mr. Marks has said that this January 8,
7 2025, Disclosure Record should be included in the record before
8 us, and that the Ontario Securities Commission has taken no
9 position.

10 So, I'd just like to hear from the parties as to what
11 exactly we should be doing with this, if anything, with this
12 additional document or documents, whether it should be
13 considered part of the original record of proceeding, whether it
14 should be considered an exhibit for purposes of this
15 application, how it should be treated, and if there is any
16 disagreement. So, I don't know whether is it you, Mr. Lockhart
17 who --

18 MR. LOCKHART: Yes.

19 CHAIR: Okay. So, I'll hear from you and then I'll
20 hear from you, Mr. Marks, and also from Mr. Pettypiece, if he
21 wants to say anything, although it sounds like he doesn't have a
22 position. I see him shaking his head, okay.

23 MR. LOCKHART: I think our position on this is quite
24 simple that it is already part of it, the substance of it, which
25 is contained in a letter. It's a series of links. There are a
26 series of attached screenshots. Those are already included in
27 the record of the original proceeding and so this would be
28 duplicative, but our instructions are just, if Mr. Marks would

1 like it in, we will consent to it being part of the original
2 record.

3 CHAIR: Okay. May I ask, because I have looked at it,
4 the series of links, they're not live links, are they, in the
5 document that you filed?

6 MR. LOCKHART: You mean are they still accessible
7 today? No.

8 CHAIR: No.

9 MR. LOCKHART: I don't believe all of them are.

10 CHAIR: And the materials that were -- that would have
11 been connected to those links when they were still live, are
12 they printed in the record or is it just the link itself?

13 MR. LOCKHART: It's just the link itself. So, I can
14 take you to that portion in our record that's duplicated in the
15 record of the original proceeding. It is the last -- one of the
16 last pages is -- I don't -- one second. Apologies.

17 CHAIR: The record of original proceeding that was
18 filed last fall --

19 MR. LOCKHART: Yes.

20 CHAIR: -- by your firm?

21 MR. LOCKHART: And it's very far at the end. There is
22 a Tab B. On page 379 is that same links duplicated there from
23 the letter but they are also not live there as well.

24 CHAIR: Okay. So, that's page 379 of the marked pages
25 in the original -- the record of original proceeding, not the
26 PDF page number.

27 MR. LOCKHART: PDF page 384.

28 CHAIR: Okay. Okay. Mr. Marks.

1 MR. MARKS: I just want to make sure we're talking
2 about the same thing. Are we talking about the January 8th
3 decision memo --

4 CHAIR: No.

5 MR. MARKS: -- being part of the record?

6 CHAIR: No. We're talking about it's the
7 communications that have gone back and forth this week over the
8 past couple of days about something filed by Mr. Lockhart. It's
9 a January 8 -- the document is titled "January 8, 2025
10 Disclosure Record," and it contains a copy of the January 8,
11 2025, letter from CSE to your former lawyer, Mr. Narwal --

12 MR. MARKS: Okay.

13 CHAIR: -- containing a list of links and documents.

14 MR. MARKS: Okay. I just want to clarify because, you
15 know, there's been a lot of links. Is this -- is this -- so,
16 this January letter, is this -- is this a decision memo or is
17 this a letter from --

18 CHAIR: No. You're getting confused because the
19 decision memo is January 8, 2024. We're talking about a letter
20 of January 8, 2025.

21 MR. MARKS: And that came from -- who's the author of
22 that letter? I just want to -- I just want to refresh my
23 memory.

24 CHAIR: It's the letterhead is "CSE." I'm not sure
25 the author. I'd have to check that.

26 MR. LOCKHART: It's Faulkner.

27 CHAIR: Mr. Lockhart said it's Mr. Faulkner. It's Mr.
28 Faulkner.

1 MR. MARKS: Okay. Okay. And the -- and the -- and
2 the links, was that the links about allegedly overpromotional
3 activity evidence or is that something else?

4 CHAIR: I'm not going to give -- I don't know. I have
5 the letter. I have the cover letter describing the contents.
6 This was shared by you, Mr. Marks, and you wrote an e-mail to
7 the Registrar saying you wanted these materials in the record.

8 MR. MARKS: It's voluminous. You know, honestly
9 there's been so many e-mails, it's over my head. Okay, whatever
10 I said.

11 CHAIR: It's voluminous. It's voluminous. It's
12 voluminous, we agree. So, with that then, I think what I'm
13 proposing is that this is just considered part of the record of
14 original proceeding. It's not an exhibit but it's part of the
15 record and everybody can refer to it as appropriate.

16 MR. LOCKHART: That makes sense.

17 CHAIR: That makes sense, okay. You're okay with
18 that, Mr. Marks?

19 MR. MARKS: Yes.

20 CHAIR: It's available to you to refer to and it's
21 available to the Panel to consider as part of the application on
22 the merits.

23 MR. MARKS: Okay.

24 CHAIR: Okay. So, we've got -- I think we're pretty
25 much on schedule, hopefully. But the last thing that I have
26 before we actually get into submissions on the motions is to
27 discuss the merits hearing.

28 So, we originally had about one-and-a-half hearing

1 days scheduled over May 8 and May 13 for the CNSX New Evidence
2 Motion, as well as the merits of the application. We will now
3 only have the current time scheduled, which is 11:00 to 2:30
4 p.m. on May 13, for hearing all submissions on the merits of the
5 application, and the Panel has concerns that this will not be
6 sufficient time given how voluminous the record is and how
7 extensive the written submissions are.

8 So, I'd like to hear from you, Mr. McCoomb, and then
9 Mr. Marks, Mr. Pettypiece, as to whether you think we need to
10 find some more time.

11 MR. MCCOOMB: And adding in the fact that the original
12 timetable was set on the basis that Mr. Marks had counsel and
13 now he's self-representing and we've got a snapshot of what he
14 intends to work through in his materials. We're fine adding a
15 day and then using next week, the 13th, as Mr. Marks's
16 submissions in the main day and coming back on a subsequent day
17 for the CSE's response on the merits, the OSC's response on the
18 merits, and any reply from Mr. Marks. If we follow a similar
19 timing road map to what you've laid out for us this morning, my
20 submission would be that would give us the time that we need to
21 get this finished. We'd obviously love to have it wrapped next
22 week but times have changed, things have changed, here we are.
23 So, that's my submission.

24 CHAIR: Mr. Marks, do you agree with Mr. McCoomb that
25 we should set aside more time?

26 MR. MARKS: Yeah. I would like more time. I think
27 we'll definitely need more time but I think we should have it
28 all done on the same day, if possible, so that everybody has the

1 same amount of time but it's all wrapped up on one day. So, if
2 we start at 11:00, we can end at 4:30. If we need to change the
3 day, I'm fine with that, but I think -- I think just it should
4 be done in one day.

5 CHAIR: So, I'm just going to make a comment before I
6 ask Mr. Pettypiece for his submissions on this or position. We
7 will do what we can, Mr. Marks, to try to keep whatever hearing
8 days we can get as close together as possible because, for
9 efficiency sake, it's better for everybody to kind of deal with
10 this all at the same time or as close together in time as
11 possible so people don't forget what has been said, and the
12 Panel is following along and doesn't forget. We will do our
13 best but recognizing that it's often difficult to get people's
14 schedules to marry up on such a short time frame and also
15 recognizing I think, Mr. Marks, that you're in a different time
16 zone so you may not want to start as early in the day and we're
17 certainly able to be flexible about that.

18 So, that's just a comment but why don't we see what
19 the OSC has to say about additional time and then I'm going to
20 propose that we canvass some times quickly now and see whether
21 we can figure it out.

22 MR. PETTYPIECE: Thanks, Adjudicator Burke. I think
23 on the merits itself, our submissions would be fairly limited in
24 time, maybe 20 minutes, half an hour, subject to maybe further
25 submissions on the issue of remedy that's been raised recently
26 in correspondence. So, if the other parties require more time,
27 then certainly we wouldn't object to scheduling another day,
28 half-day, or whatever is necessary to accommodate that.

1 CHAIR: Okay. Thank you. I think that generally this
2 accords with the Panel's view that I think, just looking at it,
3 it doesn't look like there's enough time, and certainly there's
4 no harm done if we set aside time and then we don't have to use
5 it. I think the harm is that if we have to then suddenly at the
6 end of the day next Wednesday start looking for more time.

7 MR. MCCOOMB: And then we will be ready to deal with
8 whatever next Wednesday presents if that means arguing our side
9 of the merits.

10 CHAIR: Sure. So, we, just as a preliminary matter,
11 tried to figure out some additional time that we can offer up to
12 the parties. If we can't resolve it with this time, we're going
13 to have to do this in writing and get people to canvass their
14 calendars because I don't want to -- I don't want to burn up the
15 rest of the day having people looking at their calendars.

16 So, what we can do is we can do May 13. We can start
17 as early as 10:00 a.m. and we can go until 5:30. May 19, we can
18 start at 12:30 and go to 4:30. May 20 we can start at 1:00 and
19 go until 4:30. May 27 we can start at 1:00 and go until 4:30.
20 And May 29 we can start at 10:00 and go until 2 o'clock. I
21 think you're two hours behind, Mr. Marks.

22 MR. MARKS: Three hours.

23 CHAIR: Three hours?

24 MR. MARKS: Yeah.

25 CHAIR: So, is this something that people can look at,
26 figure out quickly, or do you want to do that on a break maybe?

27 MR. MCCOOMB: Maybe just starting for our part, I'll
28 make one observation. So, unfortunately, the 13th for me is a

1 hard stop at the 4:30 time.

2 CHAIR: Could you start at 10:00 a.m. though?

3 MR. MCCOOMB: 10:00 a.m. is fine but the 4:30 at the
4 end of the day is a family obligation for me --

5 CHAIR: Okay.

6 MR. MCCOOMB: -- so that would have to be it. The
7 19th and 20th dates work well for the CSE and keep us close to
8 -- as close to the starting date if that works for others.

9 CHAIR: And what about the 27th and the 29th?

10 MR. MCCOOMB: They do not work for me.

11 CHAIR: Okay.

12 MR. MCCOOMB: I have an arbitration that week.

13 CHAIR: Mr. Marks.

14 MR. MARKS: Okay. So, May 13th you're saying that we
15 would start at 10 o'clock you were saying, 10 o'clock?

16 CHAIR: We could start at 10 o'clock, yeah.

17 MR. MARKS: And end -- and end at 5:30?

18 CHAIR: 4:30.

19 MR. MARKS: But -- 4:30.

20 CHAIR: 4:30 because Mr. McCoomb can't go to 5:30.

21 MR. MARKS: Okay. Right. Okay. So, it's going to
22 be, you know, it's -- ideally, I'd like to start at 11:00 a.m.
23 That's...that's, you know, that's the ideal situation.

24 CHAIR: Okay. And we had previously --

25 MR. MARKS: I think -- I think we could probably
26 finish it up if we have -- you know, if we start at 11:00 and we
27 can end by 4:30, you know, I don't think there's a need for a
28 long lunch. I mean, it's -- I don't know if there's a big need

1 for that. Maybe we could just, you know, make the lunch 30
2 minutes and we can be done by 4:30.

3 CHAIR: Yeah. I mean, we wouldn't normally -- we
4 would not normally expect people not to take a break during a
5 hearing day because it can be exhausting and long for everybody,
6 people making submissions, people hearing submissions, and court
7 reporter, Registrar. So, let's just see where we get to
8 because, at least if we do 11:00 until 4:30, we've gained two
9 hours next week. What about the 19th, Mr. Marks, 12:30 to 4:30?

10 MR. MARKS: I'm not available.

11 CHAIR: Okay. What about the 20th, 1:00 to 4:30?

12 MR. MARKS: Yeah. I'm not available both days. I
13 think -- I think the 13th is probably the best so let's -- yeah,
14 let's just stick with that.

15 CHAIR: You think that's going to give you enough time
16 to make your submissions, Mr. Marks?

17 MR. MARKS: I think it's going to give me -- you know,
18 I think it's going to be as good as we can get. So, you know,
19 we start -- yeah, I think it's going to be as good as we can get
20 basically. And I would like to -- this has been a long process.
21 I did ask, again, I don't want to bring up the adjournment
22 thing, but I would have preferred if we could have had this
23 wrapped up a year ago. You know, my counsel was busy with other
24 cases. There was multiple adjournments that came up, nothing to
25 do with me. So, again, I would -- my preference is to do this
26 at a different -- this is a very tight month for me, but if May
27 -- it seems like May 13th is the only date available, then I'll
28 take it.

1 CHAIR: Well, we're going to definitely proceed on May
2 13. The question is whether we need more time. I confess, as
3 the Panel, I think we may need more time. The Panel will have
4 questions. So, I would like to find some other time that we can
5 have because I am thinking that going from 11:00 until 4:30 on
6 this motion, based on this record and these submissions, we are
7 going to need more time. Mr. McCoomb --

8 MR. MARKS: So, are you saying two days? So, you want
9 is it two days that would make sense then?

10 CHAIR: Well, 11:00 to 4:30 is not even a full day and
11 we originally had a day-and-a-half reserved.

12 MR. MARKS: Okay. So, can we do the 14th also?

13 CHAIR: I've given you what the Panel is available.
14 And what I've heard is Mr. McCoomb is available on the 19th and
15 the 20th. Is there anything that you can shift around, Mr.
16 Marks, or is that not possible?

17 MR. MARKS: I'm not available the 19th and 20th. I
18 can do again this week, 13th, 14th. I could do -- you know, I
19 could do --

20 CHAIR: We've given you the Panel's availability out
21 to the 29th. So, I think then we're going to have to look at
22 dates beyond the 29th for at least a half day, if we can find
23 it. And what I'll do is I'll ask maybe the parties to try to
24 communicate to see what their availability is trying to keep it
25 as close as possible.

26 MR. MCCOOMB: Are you able, Adjudicator Burke, to give
27 us one of those long lists of dates? Do you have more dates
28 than the ones that you've offered today?

1 CHAIR: We can do that on a break. We can give some
2 further dates, okay?

3 MR. MCCOOMB: Okay.

4 CHAIR: Okay.

5 ADJUDICATOR PONDER: So, just to repeat what you said,
6 there's no flexibility, Mr. Marks, on the 19th or the 20th?

7 MR. MARKS: No.

8 CHAIR: Okay. And, Mr. Pettypiece, I didn't ask you
9 whether you were available the extended hours on the 13th. I
10 apologize.

11 MR. PETTYPIECE: Yeah. I'm available on all the dates
12 and times mentioned earlier by the Panel, including the 13th
13 starting at 10:00 and going to 5:30, but I understand others
14 have more restrictions.

15 CHAIR: Look, Mr. McCoomb, if you think that 11:00 to
16 4:30 is sufficient but, again, we're going to be dividing time,
17 right.

18 MR. MCCOOMB: Well, that's it. If we're dividing time
19 on the 13th and Mr. Marks, in the face of, you know, being given
20 the option to look for alternate dates, wants to get this done
21 on the 13th, it's his application, and so, yes, I think more
22 time would be prudent, he's heard that, it's in the record and
23 he's heard that guidance. If we want to split the time --

24 MR. MARKS: I'm sorry.

25 MR. MCCOOMB: -- on that date --

26 MR. MARKS: I'm sorry.

27 CHAIR: Can you not hear?

28 MR. MARKS: I looked at my calendar. I'm sorry, I

1 just looked at -- are you saying -- are you saying you could do
2 the 19th and 20th, your available those two dates consecutively
3 -- consecutive dates?

4 CHAIR: We have the 19th from 12:30 to 4:30.

5 MR. MARKS: Okay.

6 CHAIR: And the 20th from 1:00 to 4:30. I'm thinking
7 we would look at a few more hours, a half day.

8 MR. MCCOOMB: And to be clear, Mr. Marks, that's in
9 addition to May 13th on which you're already booked to be here
10 for the full day from 11:00 to 4:30.

11 MR. MARKS: Oh, I see. Okay.

12 MR. MCCOOMB: We already have that date.

13 CHAIR: Can you put your mic on?

14 MR. MCCOOMB: Oh, I'm sorry.

15 MR. MARKS: Okay. So, just to --

16 MR. MCCOOMB: You understand, Mr. Marks, that you're
17 booked to be here for May 13th from 11:00 a.m. to 4:30 p.m. for
18 the -- what was supposed to be the beginning of the merits
19 hearing on this?

20 MR. MARKS: Okay. So, that's part one, okay. And
21 then part two is going to be the 19th and 20th you were saying.

22 MR. MCCOOMB: One of them.

23 CHAIR: We're looking for some additional time. What
24 does work for everybody right now, except -- and we're seeing
25 whether it works for you or could work for you, 12:30 to 4:30 on
26 the 19th; 1:00 to 4:30 on the 20th.

27 MR. MARKS: I think the 19th, and just to be clear --

28 CHAIR: Not both days. We're looking for one or the

1 other probably.

2 MR. MARKS: I think -- I think the 19th is good. And
3 just to be clear, my...my presentation, for lack of a better
4 word, is going to be on the 13th or the 19th? When do I -- when
5 is that? On the 13th.

6 CHAIR: You'll be -- you will be the first up, Mr.
7 Marks, because it's your application.

8 MR. MARKS: Okay. Great. Okay. Yeah. I'm fine with
9 the 19th.

10 CHAIR: Okay. That's great. So, we've got our times
11 then. So, May 13th we will start at 11:00 and continue to 4:30
12 as needed, and resume at 12:30 and continue to 4:30 as needed,
13 sorry, on the 19th.

14 MR. MARKS: Okay. And I will get an e-mail about this
15 confirmation, right? That will come from the Registrar?

16 CHAIR: We will issue an order that reflects the
17 additional hearing date and time, and that hearing will be in
18 person with the option of attending by videoconference.

19 MR. MARKS: I will be on videoconference both days.

20 CHAIR: Okay. Thank you, Mr. Marks. Okay. So, I'm
21 five minutes behind where I thought we would be but we're doing
22 pretty well so, with that, we will move on to the CNSX motion
23 regarding the admission of new evidence to be heard on the
24 application on its merits, and I see Mr. Lockhart is standing
25 up. So, it's over to you, Mr. Lockhart.

26 SUBMISSIONS BY MR. LOCKHART RE CNSX NEW EVIDENCE
27 MOTION:

28 MR. LOCKHART: Thank you, Ms. Burke. I'm mindful that

1 the Panel has read everything and is attuned to it so I'm
2 optimistic I can be even shorter.

3 The need for new evidence really just begins while Mr.
4 Marks was appealing to the CSE the Listing Committee's decision
5 that he was unsuitable, and while that proceeding was pending,
6 he began his campaign of defamation and harassment. That has
7 extended beyond just the CSE but also to CSE personnel and then
8 onto their families. It's continued even after the Ontario
9 Superior Court has ordered it to stop.

10 MR. MARKS: Can I raise an objection? Can I raise an
11 objection?

12 CHAIR: It's very unusual, Mr. Marks, to raise an
13 objection during someone's submissions. So, if you disagree,
14 take notes because you will have the opportunity to respond.
15 There is nothing that Mr. Lockhart has said at this point that
16 is inappropriate. It's part of the record and part of their
17 submissions.

18 MR. MARKS: Okay.

19 MR. LOCKHART: Thank you. It's been mostly online but
20 it's extended to phone calls and voicemails. And, in our
21 submission, it clearly speaks to Mr. Marks's suitability. The
22 evidence is, therefore, new and compelling.

23 My submissions are going to be fairly simple. I want
24 to spend a few minutes on the test, just on the nuance of this
25 case, and then use any evidence, the second part of my
26 submissions, I'll take you through that with a view to
27 understanding the two areas where Mr. Marks and the CSE disagree
28 as to its application. As part of doing that, I'll address Mr.

1 Marks's response.

2 Really briefly, I want to just correct in our factum
3 paragraph 19, there's a table. One of those boxes is for
4 post-hearing defamatory comments, and that should read "Exhibits
5 RR to FFF."

6 CHAIR: So, sorry, I've got paragraph 19 up in front
7 of me, Mr. Lockhart. Is it the first entry "Defamatory Posts"?

8 MR. LOCKHART: It's the table that's there. It's
9 "Defamatory Post-Hearing."

10 CHAIR: Post-hearing. So, it should be instead of
11 "Exhibits RR to FF, EEE and FFF," it should be?

12 MR. LOCKHART: "RR to FFF."

13 CHAIR: Okay. Thank you.

14 MR. LOCKHART: So, first, the test for new and
15 compelling evidence, this is, as we understand it, the first
16 case where the CMT is going to consider, the Tribunal will
17 consider rule 17(5) that requires this motion to be brought.
18 And there is not yet a substantive reported decision on that but
19 the parties are generally agreed that the Tribunal will take a
20 restrained approach admitting evidence only where it's new and
21 compelling or where there other exceptional circumstances.

22 And the parties disagree on the application of that
23 test in essentially two ways. The first is whether evidence
24 that predates the hearing that's under review can be admitted as
25 new. And the second is whether a respondent can ever show that
26 new evidence is compelling. I propose to address those with
27 reference to the evidence looking first at the pre-hearing
28 evidence.

1 With respect to the newness of the evidence, the only
2 issue is this March 25th window to the date of the hearing and
3 that's Exhibits A to QQ in the affidavit of Naomi Carrera-McKail
4 in the Motion Record for new evidence.

5 As the moving party CSE can show, the evidence is new
6 in one of two ways. It can either be that it wasn't known or
7 ought to have been known before the hearing or there can be
8 compelling explanatory evidence that the proposed evidence is
9 still new, and it's that second branch that CSE is relying on.

10 The compelling explanation is Mr. Marks' continued
11 behaviour and the practical reality of what that poses for the
12 CSE. At some point it became unreasonable for the CSE to
13 continue to adduce new evidence.

14 Mr. Marks is dismissive of this in his written
15 submissions. He claims that the CSE had ample time prior to the
16 hearing to identify and adduce the posts in question, and a
17 brief timeline shows that that's wrong.

18 The final round of disclosure was delivered March
19 25th, 2025, and at 11:40 p.m., that night, there is the first
20 post on X that is in our new evidence record. That's Exhibit A.

21 By May 8th, the written submissions are filed. On May
22 8th, Mr. Marks again tweets twice, once at 1:23 p.m., that's
23 Exhibit MM, and once at the 5:49 p.m., that's Exhibit NN.

24 On May 13th, the day of the hearing, at 12:04 p.m.,
25 Mr. Marks sends a tweet calling Mr. Caldwell worse than Bernie
26 Madoff and repeating the claim that it is a Canada Scam
27 Exchange. That's Exhibit QQ. The hearing started at 1:30.

28 It's just over 40 tweets in the period of time from

1 March 25th to the hearing, and it includes four tweets written
2 after -- posted after the written submissions.

3 In our submission, it would be absurd to hold the CSE,
4 as Mr. Marks urges you to do, that any evidence that he creates
5 in the lead-up to the hearing must be adduced as new or that we
6 are precluded from relying on it at this hearing.

7 A line has to be drawn somewhere, particularly in this
8 case because of all of these adjournments, to finally get the
9 hearing on and to get the hearing on with a record that we can
10 rely on.

11 The second question that I wanted to address where
12 there's disagreement between the parties was whether a
13 respondent can ever adduce new evidence, whether the winner
14 below could ever show that the evidence was compelling.

15 And the standard that this Tribunal has articulated on
16 numerous occasions is that evidence is compelling where it would
17 have changed the underlying decision, and that creates, in our
18 respectful submission, this logical impossibility that the
19 respondent will never be able to adduce anything because the
20 CSE's decision was that Mr. Marks was unsuitable.

21 Because of that impossibility, you have our written
22 submissions on seeking a sufficiently probative standard to
23 adduce this evidence and mirroring the purposive approach that
24 the Supreme Court has articulated for evidence -- fresh evidence
25 on appeals. That's paragraphs 22 to 27 of our new evidence
26 factum.

27 And I think fairly quickly I can say the evidence that
28 the CSE seeks to adduce easily meets that standard. It's

1 directly tied to an issue that the Panel will have to consider
2 if it decides to go that route under Canada Malting.

3 If it proceeds on a de novo basis, it's going to be
4 evaluating whether Mr. Marks is suitable under policy 2.18. And
5 that policy I'm going to just put on the screen because I'm
6 going to talk about it for just a little bit is about protecting
7 investors, the Exchange itself, and the public.

8 The CSE is an entrepreneurial exchange and the
9 reputation of its market is essential to its success. That
10 reputation is driven in part by the participants, including the
11 related persons. The CSE can't deliver on its mandate if its
12 own participants intend to tarnish its reputation.

13 Beyond protecting those, it also has a broad power.
14 The Exchange can deem any person to be unacceptable to be
15 associated in any manner with a listed issuer. That's to say it
16 can exclude someone from any role from all issuers. It gives
17 the CSE a discretion to manage its own affairs and to do so in
18 the public interest.

19 In short, that means that anything that speaks about
20 suitability, about reputation, all can be seen through the lens
21 of 2.18 and is probative of the question that this Panel must
22 consider.

23 And looking quickly at some evidence, I'm going to
24 pull up some examples. It does not take much to see why this
25 evidence is compelling and highly probative as to whether Mr.
26 Marks's association would bring the CSE into disrepute and
27 whether there's harm to the public interest.

28 You're familiar with the record so I'm not going to do

1 it -- I'm not going to spend any time on the evidence that is in
2 the original Motion Record. I'm going to give you instead some
3 footnotes where we've done that work.

4 Footnote 131 addresses all of the times where Mr.
5 Marks has referred to my client as the "Canada Scam Exchange."

6 Footnote 132 is all of the references to the CSE's
7 personnel as "pedophiles."

8 Footnote 133 is all the references to "crooked."

9 Footnote 134 is all of the references to "corruption."

10 And 135 is all of the references to "fraud."

11 Throughout there's also reference to some violence.
12 In one, at Footnote 136, he countenances violence with the
13 phrase "throwing green dildos" at employees, and I think that
14 summary renders it a little clinical.

15 And so I just want to very quickly go through roughly
16 ten examples from the record, turning first to Exhibit L in the
17 Motion Record. And this is one of the first ones early on in
18 the exhibit and it's part of Mr. Marks -- Mr. Marks calls --
19 writes that there's a clear pattern of defrauding companies and
20 investors, directly about the CSE's Senior Vice-President of
21 Listings.

22 Exhibit P is the first in this record of many
23 instances where Mr. Marks has taken a photo of Mr. Faulkner and
24 appended a moustache that just looks like Hitler's.

25 Exhibit U, Mr. Marks writes, "What do you expect
26 form," I think that should say "from your shithole country with
27 corrupt pigfuckers like Mark Faulkner?"

28 Exhibit CC, a tweet from April 25th, 2025, is a

1 picture in which the caption reads "CSE Rapes Investors."
2 Describes Mr. Faulkner, colon, "Corruption & Incompetence". And
3 again, we see the Hitler moustache on both Mr. Faulkner and Mr.
4 Carleton.

5 Exhibit FF, another tweet from April 25, the same day,
6 "CSE Rapes and Robs Investors Crack, Corruption," I'm going to
7 scroll down, apologies, "Crack, Corruption & Crony Kleptocrats"
8 with the caption "Guess which CSE executive is Rob Ford 2.0
9 (hookers & drinking minus crack smoking)."

10 Exhibit WW, Mr. Marks asks, "If Iran collapses, regime
11 will flee to [Canada emoji] & get jobs at corrupt anti-Semite
12 CSE Canada Scam Exchange with fellow pedophiles." And I think I
13 can note some of these user names at the bottom are, in fact,
14 the CSE staff members' handles.

15 Exhibit AAA, this one stands out because of a
16 one-liner at the bottom, "Justice is Coming. Get a rope. It's
17 the easier way out." And at the end of the sentence "Get a
18 Rope" there is Mr. Faulkner's handle on X. That is clearly a
19 reference to suicide.

20 Turning to the supplemental record, I have three more
21 of these that I'm going to do. This is from December 5th, 2025.
22 It's Exhibit E. This is where Mr. Marks brings in Mr.
23 Faulkner's son writing "Corrupt Canada Scam Exchange CSE
24 Fraudster Mark Faulkner [pig emoji], [Mr. Faulkner's handle],
25 must be very proud of his son."

26 The tweet quotes another tweet from an account,
27 "Defiant L's," which is a satirical post of a purported queer
28 intern.

1 Exhibit 0 in the supplemental record, I just want to
2 pause on this one because it's an attack on the entire Exchange.
3 Mr. Marks writes "Remember: Any stock from [Canada flag emoji]
4 Canada Scam Exchange CSE," apologies, my window is covering it,
5 "means there's a 90% probability it's a pump and dump."

6 It's not in the interests of the public and it's
7 extremely damaging to the CSE to have someone that participates
8 in its market suggesting that 90 percent of the stocks are
9 frauds.

10 I'm then going to take you one from March 27th, which
11 is Exhibit CCC, in which Mr. Marks writes, "The real Epstein:
12 Rapist Peter Nygard & CSE [pig emoji] CEO Richard Carleton."
13 The video thumbnail itself is -- mirrors that.

14 The only other thing I want to address quickly is how
15 Mr. Marks has shown himself unable to comply with court orders
16 and that comes out also in our supplemental record.

17 It goes without saying, having someone associated with
18 a CSE-listed issuer, who refuses to comply with Superior Court
19 orders, will bring the CSE into disrepute and it's contrary to
20 the public interest.

21 The timeline on this matter is fairly quickly. I'm
22 just going to go through it. Exhibit MMMM, on page 511 of that
23 record, contains the terms of the order that Justice Merritt
24 granted restricting Mr. Marks from making defamatory comments on
25 a social media post. That was April 7th.

26 But on April 10th, he publishes a YouTube video in
27 which he again discusses the Canada Scam Exchange. A screenshot
28 from that video is attached as Exhibit QQQQ. I'm going to have

1 to zoom out to get all of this onto the screen. I'm just going
2 to go through what's on it. It says "Rapist and pedophile and
3 Dicky Carleton," a reference to Mr. Carleton. "Canada Scam
4 Exchange: What are they hiding?"

5 And I want to take you very briefly to the YouTube's
6 own transcript from that video just because I know it's long and
7 I'm going to take you to page 528 of our supplemental record.
8 The transcript itself is Exhibit RRRR.

9 CHAIR: Page 531?

10 MR. LOCKHART: 531.

11 CHAIR: 531.

12 MR. LOCKHART: "So, Peter Nygard would take these uh
13 sex crime vict -- these victims, right? These sexual abuse
14 victims that he was raping and pedophiling and he would traffic
15 them, pass them along to his pals, right, so [sic] possibly
16 Richard Carleton. I'm not saying it. I've never said we have
17 no proof -- no proof of any wrongdoing by Richard Carl. I will
18 just be very clear. As far as I know, this guy could be a boy
19 scout, uh, you know, choir boy. We have no idea."

20 But I'm going to turn the page to page 532, and while
21 Mr. Marks was under this order not to defame the CSE or its
22 employees, he writes, "Richard Carleton is a sleazy fat pig who
23 thinks he's above the law."

24 The probative value of this evidence in assessing Mr.
25 Marks's suitability is clear, plain and obvious. It should be
26 admitted for the Panel's consideration on the merits hearing.
27 Subject to any question, those are my submissions.

28 CHAIR: Is CNSX relying at all on the extraordinary

1 category?

2 MR. LOCKHART: I think the OSC has ably made those
3 submissions and it would make sense that this is an
4 extraordinary case. The volume is there. You know, from our
5 perspective, what matters is that the Tribunal is able to render
6 the proper decision. So, the route to getting the evidence
7 before you is less...less important to us, and I see the
8 extraordinary nature of this.

9 CHAIR: Going on recollection right now, I don't have
10 the verbatim submission from the Ontario Securities Commission,
11 again, I will ask that as well when Mr. Pettypiece stands up,
12 but maybe from you, Mr. Lockhart, when the Commission makes the
13 submission that all of this new evidence should be considered
14 and we should make a decision from scratch basically based on
15 this new decision because, otherwise, it will have to go back to
16 the CSE, can you just fill us in on whether that is actually the
17 CSE's position and what the facts around that are?

18 MR. LOCKHART: Yeah. That is certainly our position.
19 It was originally adduced with a view to trying to short-circuit
20 this loop back to the CSE, and I believe we make that submission
21 in our merits factum towards the end. It's one of our grounds
22 of relief that, if you were to conduct a hearing de novo, it
23 would result in essentially the same finding based off all of
24 this evidence without, of course, prejudging it, but the
25 evidence is what it is. I'm happy to get that paragraph for you
26 because I believe we've made that submission.

27 CHAIR: I think that's okay from my perspective. And
28 I guess I just have a third question, but others can jump in as

1 well, my understanding is that there are some materials that
2 were in the record before the panel decision in May that were of
3 this similar nature and, given that, how does more of it become
4 compelling?

5 MR. LOCKHART: I think that -- I mean, I put to you
6 first the tone has changed. It's become more extreme. And this
7 is, of course, the problem we face with a logical impossibility
8 is how can we compel you more to make the same decision, but in
9 our submission, this pattern -- this pattern has become more and
10 more extreme. He has -- there are real changes in how it's --
11 how it's conducted. The voicemails that happened in March, the
12 YouTube posts, the connections to the alleged made-up
13 connections to Mr. Nygard, all of that is different and would
14 make the decision easier for a panel considering a question like
15 suitability and governability.

16 ADJUDICATOR WAECHTER: I just have a question. I
17 notice in the case, yeah, I don't know how to say it, Eley, Eley
18 case -- in the Eley case, E-L-E-Y, there is a comment by the
19 panel that says that there is some interest in ensuring that a
20 review process doesn't provide a party the opportunity to
21 relitigate the original proceedings on an augmented, evidentiary
22 record, and this really follows from the question that you just
23 answered, but I just wanted you to tell us how you think that
24 principle applies in this, in these circumstances.

25 MR. LOCKHART: I mean, I think my answer to you is
26 that that would feel like we were -- the CSE was relitigating it
27 if it had, in fact, lost and had sat on the sidelines with this
28 evidence. This evidence is -- either couldn't be adduced in

1 time because it was still being generated as part of this course
2 of conduct or it, in fact, couldn't be considered at all. And I
3 think I'm left with the point only that this can't be
4 relitigation because we were successful in excluding Mr. Marks
5 and it is in furtherance of that. And the totality of the
6 weight should be considered by this Tribunal, the totality of
7 this voluminous record to ensure that there is, in fact,
8 finality.

9 There is this other point that I believe the
10 Commission makes quite eloquently in its factum that finality is
11 served in this case by admitting it, considering it, and
12 deciding it here rather than remitting it to the CSE.

13 ADJUDICATOR WAECHTER: Thank you.

14 CHAIR: I don't think we have any further questions.
15 Just before you sit down, Mr. Lockhart, I think I should have
16 done this at the beginning of your submissions is mark your
17 Motion Records as exhibits.

18 MR. LOCKHART: Yes.

19 CHAIR: Yes, because they contain affidavits, right.
20 So, the first Motion Record of CNSX Markets Inc. dated September
21 26, 2025, we'll mark that as Exhibit 6.

22 EXHIBIT NO. 6: Motion Record of CNSX Markets Inc.
23 dated September 26, 2025.

24 CHAIR: And the Supplemental Motion Record of CNSX
25 Markets Inc. dated April 23, 2026, we'll mark that as Exhibit 7.

26 MR. LOCKHART: Yes. Thank you.

27 EXHIBIT NO. 7: Supplemental Motion Record of CNSX
28 Markets Inc. dated April 23, 2026.

1 CHAIR: Mr. Pettypiece. Thank you, Mr. Lockhart.

2 MR. PETTYPIECE: I'm sort of hiding behind Mr.

3 Lockhart right now. Did you want me to make submissions sitting
4 from where I am or move to --

5 CHAIR: It's really whatever you're comfortable with.
6 We can see you --

7 MR. PETTYPIECE: Perfect.

8 CHAIR: -- and we can hear you, but if you want to
9 move forward, you're free to do that.

10 SUBMISSIONS BY MR. PETTYPIECE RE CNSX NEW EVIDENCE

11 MOTION:

12 MR. PETTYPIECE: I won't disturb Mr. Lockhart's setup.
13 I'll just submit from here and sitting, if that's okay with the
14 Panel.

15 So, I just -- at the outset, and as the Panel
16 acknowledged at the outset of this hearing, the OSC is taking
17 the view that the CSE's New Evidence Motion should be granted.
18 I will highlight some aspects of our submissions and, in doing
19 that, try and weave in some answers to the questions the Panel
20 has already asked of CSE counsel. And I think my submission
21 will focus more on the test and approach, less so on the meat of
22 the evidence itself.

23 But before getting to what we say are the grounds for
24 granting the motion, just as a preliminary note, we delivered
25 our written submissions on April 23rd, which was the same date
26 that the supplemental record was filed of new evidence by the
27 CSE, and we indicated in our motion that we hadn't had the
28 opportunity to review that record in detail before providing

1 submissions on the motion or the merits.

2 Obviously now, sitting here, we've had plenty of time
3 to look at that material and the OSC's position is that the
4 motion should be granted in respect of both motion records, both
5 the September 2025 and the April 2026 records, and for all the
6 same reasons.

7 Sort of following along on what Mr. Lockhart said
8 during his submissions, we view the second Motion Record from
9 April 2026 to reflect really a continuation and escalation of
10 the same conduct described in the prior record.

11 The other thing the new record does that assists is it
12 provides the evidentiary support for the decision of the
13 Superior Court of Justice that was released early April. In
14 that decision, there is references made to communications from
15 this spring, and obviously none of those communications were in
16 the September 2025 record. So, the Panel now has, you know,
17 corroborating evidentiary support for the findings that were
18 made by the Superior Court which we do reference in our April
19 submissions. So, that was just by way of, you know, clarifying
20 the OSC's position applies to both records.

21 I'll get now to the grounds for why we say the motion
22 should be granted. And sort of the way we view this, and it
23 goes to the question you asked, Adjudicator Burke, is there's
24 sort of three ways to get to the same destination.

25 You can either apply the new and compelling standard
26 that has always been the standard for the last few decades and
27 how those terms are interpreted and grant the motion.

28 The second way is you lean on the exceptional

1 circumstances that this case presents and I'll outline why we
2 say it is exceptional.

3 And the third way is to do, as the CSE suggests, is to
4 essentially redefine what "compelling" means for a respondent in
5 this context when it's impossible to meet that standard
6 otherwise.

7 So, I'll sort of go through each one of those routes
8 in my submission. Hopefully, I'll address the questions that
9 the Panel has asked in doing so but, of course, feel free to
10 interrupt me and ask clarifying questions.

11 So, the first position is really, and as explained in
12 our factum, that, if you were to interpret "new" and
13 "compelling", as this Tribunal has always interpreted it, which
14 is that "new" is evidence that wasn't known at the time the
15 original decision, and "compelling" is evidence that --

16 CHAIR: Or couldn't have been known.

17 MR. PETTYPIECE: Sorry.

18 CHAIR: Or couldn't --

19 MR. PETTYPIECE: Or couldn't have been known. Thank
20 you. And then "compelling" is evidence that would have changed
21 the decision had it been known.

22 Essentially, what we submit is that you can take a
23 different approach to interpreting "compelling" that doesn't
24 disturb the way it's been interpreted in the past and that is,
25 when you're looking at whether the decision was changed, you're
26 not just focused on the win/lose outcome of the decision. The
27 question isn't, you know, if the evidence was known, would one
28 party have won when it would have lost earlier? You can focus

1 and sit on the grounds for the decision. The decision is not
2 just an outcome, it's the grounds. And in this case we say --
3 and if you focus on changing the decision on the grounds for the
4 decision, it no longer becomes impossible for a decision-maker,
5 you know, standing before this Tribunal defending their decision
6 to adduce new evidence because that new evidence might speak to
7 new grounds that could have supported the decision.

8 So, that's the interpretation we're offering. The
9 alternative interpretation we're offering, and what we say, if
10 you were to apply that on the facts of this case, it would be
11 reasonable for this Tribunal to conclude that the new evidence
12 filed would have changed the grounds.

13 Now, I think it was you, Adjudicator Burke, that
14 noted, of course, there was some of this evidence of abusive
15 conduct that was before the Tribunal, I'm sorry, that was before
16 the CSE directors at the time but they didn't mention it. They
17 didn't cite it as grounds in their decision. And for reasons
18 that Mr. Lockhart explains, you know, the conduct has
19 transformed, it's evolved, it's worsened since that decision.

20 And I think one important factor that we have to take
21 note of is the Superior Court of Justice decision. You've got
22 public findings by a court that Mr. Marks's posts, and I am
23 reading the quote here, "are likely to cause reputational" --
24 sorry -- "likely to cause irreparable harm to the CSE's
25 credibility and reputation and the reputations of the targeted
26 individuals."

27 So, you have a public decision making a finding about
28 the same conduct that the CSE is charged to review and how that

1 impacts the reputation of the Exchange. And what we would say
2 is, if the CSE directors were faced with that type of decision,
3 and the underlying conduct that supported it, they would be
4 essentially compelled to deal with it in their decision. They
5 couldn't ignore conduct that goes directly to their reputation
6 in public court findings when they're being charged with
7 assessing the reputational impact on the Exchange.

8 So, we say it's reasonable to conclude that, you know,
9 had we transported these circumstances back to the CSE
10 directors, that it would have changed their decision because it
11 would have changed the grounds for that decision, in that, they
12 would have been compelled to deal with this directly in their --
13 in their decision.

14 So, that's my submission on the first category. I'm
15 happy to answer any questions about that, but I would move on
16 then to explaining why, you know, it would otherwise be
17 exceptional and why that exceptional standard leads essentially
18 to the same result.

19 CHAIR: Isn't there some element, because of the facts
20 of this case, there's some element of artificiality in trying to
21 look at evidence after the decision as new and compelling?
22 There's an extra layer of artificiality. It's not just this was
23 available or could have been available prior to the decision,
24 but it's having to now imagine what would have happened if you
25 could go back in a time machine --

26 MR. PETTYPIECE: Mm-hmm.

27 CHAIR: -- and bring this evidence back to the Panel,
28 the Board panel.

1 MR. PETTYPIECE: Yeah. That's just kind of a
2 consequence of running a hypothetical. Like, any number of
3 scenarios can make it artificial to try and predict what a
4 decision-maker would have done.

5 If new evidence, you know, comes to light, you know,
6 it might have been impossible for them to consider that evidence
7 or if the evidence, you know, relates to the decision-maker's
8 bias or fairness, for example, well, how would they have
9 considered their own bias or fairness in an earlier decision?

10 So, there's a lot of scenarios where it becomes
11 confusing and unworkable to try and transport the evidence back
12 to, you know, maybe a number of years or months to a
13 decision-maker to try and make that decision.

14 So, if the way I've pitched it it becomes too
15 difficult to work through, you know, that's where I would lean
16 on the exceptional circumstances. You're looking as to whether
17 the evidence is new and compelling, but I think what always has
18 to be in the back of the Tribunal's mind is that all of this is
19 really just a discretionary approach to admitting new evidence.
20 Certainly, you've got wider powers to admit evidence under the
21 SPPA, and this is all just an exercise of discretion for policy
22 reasons that reflect the policy reasons in Canada Malting.

23 So, at the end of the day, you know, you have to look
24 at the case in the context that it's brought, take a flexible
25 approach, you know, in response to those circumstances, and make
26 the decision on evidence that supports a just, expeditious and
27 cost effective result.

28 So, maybe with that, I'll dive in a little bit more

1 directly with the exceptional circumstances, second bucket.
2 Sorry.

3 ADJUDICATOR WAECHTER: If I may, just before you go
4 on, what are we to do with the fact that the court appears to be
5 seized of the whole defamation issue and seems to be dealing
6 with it? Where does that leave us?

7 MR. PETTYPIECE: Well, the court's making a decision
8 on a defamation application under the framework for defamation,
9 you know, in accordance with, at least in the case of the
10 decision we have before us, you know, the test for an interim
11 injunction, the court is seized of that application certainly,
12 and there are parallels that can be drawn to an assessment of
13 defamation and what this Tribunal and what the CSE is assessing
14 under its policies in looking at reputation and public interest,
15 but they are different tests. They come with different tests
16 under different frameworks. There is certainly a different
17 policy lens to what this Tribunal is being tasked with doing
18 than with the -- than what the court is concerned with in the
19 defamation action.

20 So, I don't think the court being seized with the
21 defamation application has any impact on this Tribunal's ability
22 to proceed in the way that's outlined in the parties'
23 submissions. So, focusing on exceptional --

24 CHAIR: Stop you for a second. So, before you go on,
25 because I do want to hear your submissions on extraordinary --

26 MR. PETTYPIECE: Yeah.

27 CHAIR: -- I just see that we're bumping up against
28 12:30. So, does it make sense to pause now for a 15-minute

1 break or do you not expect to be very long and you'd rather
2 finish up? We can be flexible. I just don't want to go too
3 much longer.

4 MR. PETTYPIECE: I'm fine with -- I think I can finish
5 up relatively quickly, subject to questions, but I'm not the
6 only one that might need a break, so.

7 CHAIR: Why don't we keep going then as long as we're
8 not going to be longer than about another five minutes, okay?

9 MR. PETTYPIECE: Okay. I will do my best.

10 CHAIR: And I don't mean to cut you off because I
11 don't think you were, on your side, any near -- near the 50
12 minutes, so.

13 MR. PETTYPIECE: Okay. Just on exceptional
14 circumstances generally, all parties, Mr. Marks included through
15 his counsel, acknowledged that the Tribunal can take account of
16 exceptional circumstances in assessing new evidence in a review
17 proceeding. It's in everyone's submissions. And as I
18 mentioned, it really reflects the policy rationale that's
19 addressed in the OSC's submissions for the Canada Malting
20 framework. There is a parallel between how the Tribunal
21 considers new evidence and the test that's applied under Canada
22 Malting. It makes no sense for efficiency purposes, and in
23 considering the complexity of hearings, to admit evidence that
24 wouldn't otherwise speak to the Canada Malting factor for new
25 evidence. That's the approach that has been taken. But at the
26 same time, you know, as I mentioned, it's a discretionary
27 approach and the Tribunal has to be nimble and sensitive to rare
28 circumstances where you might have to tweak that approach and

1 consider new evidence.

2 And we say this is a rare situation for several, you
3 know, interconnected reasons, the first, which we've already
4 touched on, and what the CSE has spent a lot of its submission
5 on, is the conduct's relevant certainly to the underlying
6 suitability assessment and it's continued and escalated since
7 the Board decision in very material ways.

8 I won't spend more time on that but I will note as
9 well that you have the court findings and, as I've already
10 explained, it would be -- it's a very rare and potentially
11 unprecedented situation where, in between the decision under
12 review by an Exchange, and before this Tribunal has reviewed it,
13 there is a court decision that is directly on point with regard
14 to reputational issues and the applicable policies that are
15 being considered by this Tribunal. And part of that is the fact
16 that the assessment, the policy that's at issue, the assessment
17 of suitability is a continuous assessment. It's not a onetime
18 shot. Someone is not assessed for their suitability and they
19 become suitable for life. The policies prescribe assessments at
20 specific points in time, but it flows from the Exchanges's
21 gatekeeping obligations, its mandate, the regulatory framework,
22 that it has to be sensitive to new information as it comes up
23 and as it speaks to suitability in reviewing the conduct of
24 related persons. So, it's a continuous assessment. It's not a
25 onetime assessment.

26 And I guess the analogy that I would draw is, you
27 know, if an Exchange were reviewing an issuer for listing, it's
28 got to look at the financial circumstances of the issuer in

1 order to meet the listing requirements. And if it were to deny
2 that issuer for any issue or for any reason, that decision could
3 come to the OSC or to the Tribunal. And if between those, there
4 is a material change in the issuer's financial circumstances, it
5 goes bankrupt, you know, insolvent, there's some sort of
6 deterioration in the financial situation, that would be
7 something that has to be considered because the assessment of,
8 you know, meeting financial requirements at the Exchange is a
9 current assessment. There is no sense in rendering a decision
10 and spending months on a decision that will be obsolete at the
11 very moment that it's made. So, like, you know, like assessing
12 the financial situation of an issuer, assessing the suitability
13 of a person associated with an issuer is sort of an evergreen
14 assessment. It needs to be sensitive to new circumstances.

15 CHAIR: Can you tie it exactly to the circumstance?
16 How is it evergreen here because maybe I don't -- not -- with
17 New World, not being listed now, right, is my understanding.

18 MR. PETTYPIECE: I don't believe that's correct. I
19 believe New World is still listed. It's just suspended and
20 subject to a failure to file a Cease Trade Order. So, it's not
21 -- it's not -- the issue isn't moot. And I believe Mr. Marks
22 has indicated somewhere in the correspondence, I could try and
23 find the reference but, you know, his resignation as a director,
24 which I believe occurred in November of 2024, is pending the
25 outcome of this proceeding. So, you know, it's still a live
26 issue if...if -- it's a potential that if he wins, he would
27 become a director again so all of this is still live.

28 CHAIR: What about -- what about factually as a

1 control person?

2 MR. PETTYPIECE: Sorry, what's your question?

3 CHAIR: What about factually as a control person in
4 sharable news because that's --

5 MR. PETTYPIECE: To the best of my understanding, and
6 I'm not here to provide facts, he continues to --

7 CHAIR: I don't want you to provide facts if it's in
8 the evidence.

9 MR. PETTYPIECE: I believe it's in the evidence that
10 he is a control person. I don't think there's any newer
11 evidence in that regard, but my friends -- the other parties
12 would be in a better position to speak to that I think.

13 Again, going through the factors that make this
14 exceptional, another is the fact that you have the CSE here, and
15 a question was directed at Mr. Lockhart on this very issue
16 saying this Tribunal should hear this. You're not hearing the
17 CSE say, "Well, remit it back to us. We'll decide. It's a
18 matter of our specific expertise." They're saying, you know,
19 for matters of, it sounded like they agree with us, for matters
20 of efficiency and finality, this Tribunal should conduct that
21 fresh assessment if it decides not to set aside the CSE
22 decision.

23 A new point I would raise that's sort of connected to
24 that, which I don't think we addressed in our written
25 submissions, is, you know, what's required to assess Mr. Marks's
26 conduct is not a nuanced or technical assessment under an
27 Exchange policy. I think it's obvious from the material that
28 was presented by Mr. Lockhart that, you know, you're looking at

1 an assessment about whether statements directed at the
2 reputation of an Exchange is relevant to the policy about
3 bringing the Exchange into disrepute. That's not a technical
4 assessment. It's not an assessment that requires any
5 specialized expertise that would require it to be remitted back
6 to the CSE.

7 I would add to that as well, you know, part of policy
8 2.18 is a general public interest assessment. That's right in
9 the policy. And we've set out in detail in our merits
10 submissions the Exchange framework for recognition, the public
11 interest mandate of the CSE, and what I think you can glean from
12 that is there's an obvious parallel between the purposes of the
13 Act, which this Tribunal is very experienced in applying in
14 making public interest assessments, and the mandate of the CSE.
15 They overlap. They're all focused on fairness and efficiency
16 and confidence in the markets.

17 And the final point I would make on exceptional
18 circumstances is the normal, you know, concern that might arise
19 where a party is just trying to relitigate on a better record or
20 on a padded record isn't really present here, and I think this
21 goes to Adjudicator Waechter's question earlier. I think what
22 the CSE is doing by filing this evidence is refocusing the
23 attention on the most pertinent conduct to the assessment of
24 suitability. It's not a situation where the CSE is trying to
25 win or overcome a loss. What the CSE is doing is it's having to
26 discharge its obligations under its policies under the
27 recognition order to conduct suitability assessment on the most
28 current information and most relevant information available.

1 So, we say the combination of all of those factors
2 make this case exceptional and warrant the admission of the new
3 evidence.

4 CHAIR: Just a quick point of clarification --

5 MR. PETTYPIECE: Yeah.

6 CHAIR: -- because I wrote something down that you
7 said and I think it may not be what you actually meant to say.

8 MR. PETTYPIECE: It happens often.

9 CHAIR: So, you were talking about the CSE here is
10 saying that this Panel should hear it de novo based upon all of
11 the evidence, and you said "if we decide not to set aside the
12 CSE decision." I think you meant if we would otherwise decide
13 to set aside the CSE decision, you're saying we should hear it
14 on broader grounds?

15 MR. PETTYPIECE: I think -- I think their position is
16 you should dismiss the application because -- yeah.

17 CHAIR: I understand.

18 MR. PETTYPIECE: That's their first position. If
19 you're not going to dismiss the application, then they should --
20 then this Tribunal should hear it.

21 CHAIR: Okay. Thank you. So, we're going to take our
22 break now. I think there's only a few minutes left on this side
23 for reply. I'll let you know what it was. It was two or three
24 or four minutes -- four minutes. So, we'll take a break now for
25 15. We'll come back at, why don't we say we'll come back at
26 12:58, just to be totally fair. Okay.

27 MR. MARKS: All right. A question. We're coming back
28 at 12:58 and I will present at that time?

1 CHAIR: You will give your responding submissions on
2 the CNSX motion.

3 MR. MARKS: Okay.

4 CHAIR: Okay.

5 MR. MARKS: And am I allowed to use a presentation for
6 clarity as did Mr. Lockhart?

7 CHAIR: You're allowed to put up documents. Are you
8 talking about your PDF document?

9 MR. MARKS: Yes. Yes. Yes. Yeah. It would keep me
10 focused on the issues I want to discuss.

11 CHAIR: I think that's fine.

12 MR. MARKS: I'm not going to tweak the evidence.

13 CHAIR: I want to talk to you about your PDF because
14 it's not really evidence. It's submissions. But I think that
15 we don't have any objection from the other side about it being
16 used for submissions. There are just some concerns that this
17 Panel has about the contents of that slide presentation, but
18 we're not going to restrict you. You can use it for today but
19 it's not evidence though, okay.

20 MR. MARKS: Okay.

21 --- Recess at 12:43 p.m.

22 --- Upon Resuming at 1:00 p.m.

23 CHAIR: Okay. So, Mr. Marks, it's over to you. Just
24 before we took the break, we were talking about your PDF
25 slideshow that you had circulated as part of your motion
26 materials a little bit earlier this week.

27 So, as I understand it, it's that PDF slideshow you
28 were asking for it to be admitted as part of your New Evidence

1 Motion. And what you will have seen in the other parties'
2 materials, if I'm not summarizing them properly, please stand
3 up, CNSX has said they don't have a problem with you filing your
4 PDF because -- but it's not new evidence. It's in the nature of
5 submissions, and I think the -- is that fair?

6 MR. MCCOOMB: Not quite. What we said is we don't
7 have a problem with Mr. Marks using it as a reference as his
8 presentation --

9 CHAIR: Yes.

10 MR. MCCOOMB: -- in this exercise. We would take
11 issue with it being filed because it's tantamount to filing an
12 additional factum --

13 CHAIR: Okay.

14 MR. MCCOOMB: -- because it's obviously not evidence.
15 So, that would be the distinction I would draw with what you
16 said.

17 CHAIR: Okay. And I'm not sure it's necessarily
18 tantamount to filing a new objection -- a new factum. I mean,
19 quite often in these proceedings the parties do prepare
20 slideshows for openings, that kind of thing, that ended up --
21 end up getting handed up or put up on the screen the first day
22 of the hearing, may be shared with the other parties minutes
23 before. So, I'm just -- I'm just raising that.

24 MR. MCCOOMB: I understand, but what I'm telling you
25 is, based on what I've seen, it is a 62-page argument. And,
26 yes, that may happen in some cases. This isn't one of those
27 cases where I would say it's appropriate for that to be part of
28 deliberations. If he needs it as a background to get through

1 his submissions, I think that's totally fine, but to be handing
2 it in as a supplement, I would say in this case is
3 inappropriate.

4 CHAIR: Okay. That's your position.

5 MR. MARKS: There is -- there actually is new evidence
6 in some of these slides, and if my learned friends want to point
7 out specifically which evidence they object to, they should do
8 so. But there is some evidence. If you want to -- if you want
9 me to give you a new slideshow not to include as evidence, I
10 could take out, you know, the whatever you want to call the --
11 however you characterize it.

12 CHAIR: We're maybe getting -- we're maybe getting
13 ahead of ourselves because I know it is a subject of your
14 motion. I was just canvassing to see whether we have any real
15 objection to it being used as submissions.

16 So, I hear from CNSX that they don't mind you using it
17 as an aid, but they don't want you filing it. I think the OSC's
18 position was slightly different which was the OSC had said you
19 didn't object to it being filed as submissions.

20 MR. PETTYPIECE: Yeah. That's correct. I mean, if
21 he's going to be referring to it on the screen, it probably
22 should be part of the hearing record. The Panel is seeing it so
23 I'm not sure how we get around that.

24 CHAIR: I tend to agree but, Mr. Marks, there are some
25 issues with that slideshow. So, things that I identified, just
26 looking at it, is it does appear to be referring to things that
27 are not in the evidentiary record, some of which are the subject
28 of your New Evidence Motion, like, transcript excerpts. And so

1 it would be appropriate if we let in the transcript to refer us
2 in the slideshow to transcript excerpts -- just hear me out a
3 second -- some of which is nowhere in the record at all.

4 Allegations about damages to investors and implications of the
5 CSE decision to investors, as far as I know, that's not in the
6 record before us, and it's not the subject of a motion.

7 MR. MARKS: That could be -- I mean, that's market
8 data. That's public information.

9 CHAIR: I'm telling you, Mr. Marks, you can't just --
10 you can't just introduce evidence when you're making submissions
11 like --

12 MR. MARKS: That's fine.

13 CHAIR: -- that's not --

14 MR. MARKS: Okay.

15 CHAIR: So, here's -- but here's the thing, we may be
16 able to work around it as a submission. At this point though, I
17 think we're going to have to make a ruling on it if we have an
18 objection from CNSX about -- my concern is we have something up
19 on the screen and it really is something that we have seen. And
20 my...my ordinary practice would be for submissions of that
21 nature, as long as they're appropriate submissions, and don't
22 contain evidence that isn't part of the record, to be part -- to
23 be -- to be something that's filed.

24 MR. MCCOOMB: And that's our difficulty, and let's be
25 -- let's be pragmatic about this I guess is my suggestion. If
26 it's understood that what's being presented is a piece of Mr.
27 Mark's submission that may contain evidence that's not in the
28 record, so long as filing it doesn't put that evidence in the

1 record, then, of course, I'm not going to --

2 MR. MARKS: Fine.

3 MR. MCCOOMB: -- I'm not going to disrupt this
4 process. If it's Mr. Marks, this is his submission aid, fair
5 enough, let's get on with it and he can use it, and it can be
6 filed on that basis that it's a submission but not evidence.

7 CHAIR: And, Mr. Pettypiece, I take it that you're
8 okay with that based on what you said previously?

9 MR. PETTYPIECE: Yeah, exactly. In our written
10 submissions we said, if there is evidence he's trying to tender
11 through this, he should do that separately and clearly and
12 through some other Motion Record.

13 CHAIR: Well, yeah, and we're well beyond that at this
14 point I think, so.

15 MR. PETTYPIECE: I would agree.

16 CHAIR: So, Mr. Marks, to be clear, we're going to
17 allow you to use your PDF slide presentation as an aid to your
18 submissions. We have it filed so it will be -- it will be
19 there. It will be as something that the Panel saw. But to the
20 extent that it refers to evidence that is not in the record, or
21 has not been admitted by this Panel as evidence for the
22 application, it's not going to be evidence. The Panel will look
23 at it with -- we'll look at it with an eye to -- you know, we're
24 not going to take it as evidence as something that isn't already
25 in the record somewhere else, do you understand?

26 MR. MARKS: Okay. Yes. I would like to -- so, how
27 much time will I have because we just spent about seven minutes
28 on this? How much time will I have?

1 CHAIR: You're not going to lose -- you're not going
2 to lose time because of this...this exchange.

3 MR. MARKS: Okay. Thank you. I appreciate that.
4 That was my concern. Thank you.

5 CHAIR: Yeah. So, now you have -- you have 50
6 minutes, Mr. Marks, and if you want to save some of that time
7 for your motions, you're certainly allowed to do that.

8 SUBMISSIONS BY MR. MARKS RE CNSX NEW EVIDENCE MOTION:

9 MR. MARKS: Okay. Okay. I would like to have my
10 slide on the screen from the Registrar because I'm going to be
11 referring to it.

12 So, you know, my learned friends have used the phrase
13 called "exceptional circumstances" multiple times --

14 THE REGISTRAR: Mr. Marks.

15 MR. MARKS: -- I would say -- yes.

16 THE REGISTRAR: I apologize for the interruption.
17 This is the Registrar. Do you have your document prepared to
18 present on Zoom?

19 MR. MARKS: Yes.

20 THE REGISTRAR: You're able to share...share that
21 document on Zoom.

22 MR. MARKS: Yes. Okay. Do you see it now?

23 CHAIR: Yes. And we also see you. You're in the
24 corner. So, we see your face as well but your presentation is
25 the larger part of the screen.

26 MR. MARKS: Okay. Great. So, I will start -- I will
27 start afresh. You know, my learned friends have referred to
28 exceptional circumstances, and I would like to say that there's

1 actually extraordinary circumstances involved here. I mean, on
2 both -- on both sides, you know, there's been extreme actions on
3 both sides. I would grant that to the CSE.

4 Now, this all began with procedural fairness. And I
5 object the CSE relying on extensive post-decision conduct in the
6 materials as substantive evidence supporting the original
7 determination.

8 The central issue before the Tribunal is whether the
9 original January 8 determination was justified based on the
10 evidence rationale and process that existed at the time the
11 determination was allegedly made. The respondents should not be
12 permitted to retroactively justify or supplement that earlier
13 decision through later developed materials, later conduct, or
14 evolving rationale and moving targets that did not form part of
15 the original basis, the original alleged basis underlying the
16 January 8th decision memorandum. Much of the proposed
17 evidence...[inaudible].

18 COURT REPORTER: (Appeals).

19 CHAIR: Mr. Marks, can we ask you to slow down,
20 please? I think the court reporter is having a hard time
21 keeping up. Just a little bit slower, please.

22 MR. MARKS: Oh.

23 CHAIR: Sorry.

24 MR. MARKS: Okay.

25 COURT REPORTER: I can't hear his phonetics clearly
26 when he's talking that fast.

27 MR. MARKS: Okay. I didn't realize I was going that
28 fast. Okay. So, in my submission, my respectful submission,

1 allowing extensive reliance on such post-decision materials
2 risks transforming this proceeding from a determination into a
3 retrospective justification exercise -- a retroactive
4 justification exercise.

5 It should be known that I'm in the capital markets for
6 30 years. I've created tremendous value for investors
7 including, on the CSE alone, I have a slide later on which is in
8 the show, I've created literally a billion dollars in increased
9 valuation for about 12 CSE issuers in a short period of time.
10 There were literally billions of shares traded. The CSE made
11 money from the result of that volume that I brought to the
12 Exchange. I've never had any complaints from -- I've never had
13 any issues with Canadian regulators.

14 CHAIR: Mr. Marks, I just -- Mr. Marks, I just want
15 you to know that, to the extent you make statements of an
16 evidentiary nature like this, we can't take that into account,
17 right. Your submissions have to be based upon the evidence.
18 So, I know it's sometimes difficult. For a lawyer, it's
19 probably easier to know what is a submission and what is
20 evidence. But you really have to make submissions based upon
21 the materials that we have before us in the record.

22 MR. MARKS: Okay.

23 CHAIR: Okay.

24 MR. MARKS: Okay. So, okay. Thank you for clarifying
25 that. So, the point is I merged with a company. I became
26 chairman of a company in September of 2025 on good faith. The
27 stock price increased. The market voted. Shortly thereafter,
28 nearly a month into the transaction, I was informed that I was

1 actually deemed unsuitable a year earlier without any
2 notification, no notice, no notification, no prior warnings,
3 nothing.

4 So, I entered into a transaction and this involved
5 4,000 investors with the stock. They lost their money as a
6 direct result of the CSE deeming me unsuitable and then forcing
7 the unwinding, pressuring for the unwinding of the transaction.
8 Ultimately, the stock was halted and that is where the situation
9 is right now with that stock.

10 So, I think it's very -- it's extraordinary. I've
11 actually never heard and I'm in this business 30 years-plus.
12 Okay. I worked with OTC, Nasdaq. Most -- all my clients are
13 Nasdaq now. I've never heard of anybody being banned from an
14 exchange. I'm going to use that "banned" instead of
15 "unsuitable" because it's just easier for me. I've never heard
16 of anybody been banned without any prior warning about activity,
17 notice, or...or...or an opportunity to appeal the decision. If
18 I would have known about this decision, this alleged decision in
19 January of 2024, I would have appealed it right away, but I was
20 never notified, and the CSE has given various reasons for not
21 doing so, and I entered into a transaction in good faith.

22 So, I'd like to also just show this right here. One
23 second. Okay. So, this is a case of, you know, detrimental
24 reliance which had real world circumstances. Again, the merger
25 proceeded. I became chairman. Investors bought the stock. The
26 stock started increasing, and the CSE created substantial damage
27 through their action.

28 Again, they reviewed the transaction. We have the

1 evidence. They knew who I was. They allowed it to proceed.
2 They confirmed, you know, I had a valid PIF on file. They gave
3 no warning of prior -- any questionable prior activity. And
4 then they used the retroactive rationale to come up with new
5 reasons.

6 And, again, it's been a moving target because in this
7 presentation I have at least seven, there's been at least six,
8 maybe seven, maybe there's going to be eight new reasons that
9 the CSE has used to deem me unsuitable. Like, they keep
10 evolving. Like now it's -- now it's about me posting tweets,
11 social media allegations, by the way, false allegations.

12 There's two things I want to correct which is I think
13 it was my learned colleague...colleague brought up a court
14 order. There's a defamation -- there was a temporary defamation
15 injunction that took place. They made the assertion that I'm
16 ungovernable, I'm some sort of outlaw that, you know, I'm some
17 sort of bad guy. The records show something very different,
18 okay. Again, I've created tremendous value to the Canadian
19 capital markets. I have no regulatory issues in Canada at all
20 so there was nothing...nothing that could bring forth...forth
21 this...this unsuitability finding.

22 Now, again, the CSE claims that there was a court
23 order, an injunction, a temporary injunction order, and I posted
24 afterwards and I violated the injunction. The facts of the
25 case, and which I wrote, and they have documents, so I object to
26 what they're doing because, again, they're trying to
27 mischaracterize me as some sort of, you know, bad guy. On April
28 7th, the judge told us that it will be a few days to make a

1 decision. I never got any notice. On April 7th, again, I have
2 no notice, nothing from the court, no e-mails, nothing in the --
3 nothing. Nobody contacted me.

4 I made a video where we -- it was a video which, by
5 the way, was in the public interest. All my posts, no matter
6 how outrageous they are, ultimately tie back to matters of
7 public interest which is shareholders who were damaged as a
8 result of the CSE's actions, as well as my own damages to myself
9 personally. So, I had no notice from the court. I posted a
10 video and two days later I opened an e-mail from Mr. McCoomb
11 saying that I violated the order.

12 Now, I should note there was a Passover observances
13 those two days so I was not -- I did not have access to my
14 computer. I was not accessing my computer until that Friday.
15 As soon as I saw his e-mail, I let him know, thank you for
16 notifying me. I had nothing from the court but he's used that
17 -- he used that assertion again to keep -- to also then filing
18 a, which I believe is a malicious and false, a criminal
19 harassment complaint to get an arrest warrant issued for me
20 because again what they're trying to do is --

21 CHAIR: So, Mr. Marks -- Mr. Marks --

22 MR. MARKS: Yeah.

23 CHAIR: -- I understand that there's probably a lot
24 going on and there's a lot you want to share with us, but none
25 of that is before us. So, you can -- if you want to keep making
26 submissions but we can't do anything with what you're saying
27 right now. You're not giving evidence right now. You can't
28 give evidence. You need to restrict your submissions to what is

1 in the record.

2 MR. MARKS: Okay. I don't need to be --

3 CHAIR: I just -- I just -- I don't -- I know it's
4 hard. Part of it is I'm advising you in this way because I
5 don't want you to use your time in a way that is not going to be
6 helpful to you. And a lot of this story really does go to the
7 merits of the application. And I'm not saying you can't make
8 submissions on the merits, and some of it weaves in with the
9 evidence piece here but, really, what we're focused on is why
10 you say all of the new materials in the CNSX Motion Record, so
11 there's two of them, why those should not be allowed in to be
12 considered in this hearing.

13 MR. MARKS: Okay. Thank you for clarifying that,
14 Adjudicator Burke. I did bring that up. I explained that,
15 again, these are all retroactive justifications, all after the
16 fact. It's procedurally unfair.

17 What happened here is very clear. I merged -- I
18 entered into a transaction in good faith. Later they claimed I
19 was unsuitable and now all of a sudden they want to force an
20 unwinding meaning a lot of investors will lose money. I will
21 lose money. This is extremely bad for my career. To be deemed
22 unsuitable, to be banned from an exchange is basically a death
23 sentence in Canada. I have not been able to do business in
24 Canada since then. So, naturally, again, there was no -- there
25 was no warning. There was no transparency. There was no
26 notice. And what I saw right away, as soon as I got the
27 communication from Mark Faulkner, I knew there was something
28 wrong. It was very clear to me what happened. It was very

1 clear that he was using, again, this retroactive justification.
2 There was nothing -- and he claimed that I made overpromotional
3 statements. He never produced any evidence of such statements.
4 There were claims of activity that might bring the exchange into
5 disrepute. There was no such activity as far as I know at that
6 time as of, you know, early October or late September. So, I
7 knew right away. And, again, the memo he showed me clearly was
8 backdated, and we brought that up immediately. It referenced
9 activity that never happened at the time.

10 In his January 8th memo, Mr. Faulkner references
11 activity on a website called "CEO.ca". The fact is I never
12 posted on that site until September of 2024, ten months after
13 his alleged -- his alleged decision memo.

14 So, I found those actions to be, frankly, quite, quite
15 extraordinary, even outrageous, okay. I found them outrageous.
16 And my reaction may have been extreme. It may have been
17 extreme. I posted but all my posts it should -- it should be
18 taken into account, I have shareholders that I was accountable
19 to. I have thousands of shareholders I'm accountable to. I
20 have an audience I'm accountable to. We have, you know,
21 hundreds of thousands of people that get our e-mails that follow
22 us, and they need to know what happened. So, I naturally
23 explained what was going on. Now, I may have used aggressive
24 language. I may have used aggressive language and that has come
25 up in the -- in the defamation proceedings that the CSE began.

26 But the courts have found that aggressive language, if
27 a matter is in the public interest, the view is an opinion and
28 it's honestly held, may not be defamation, and this is the court

1 I think is considering.

2 I should also note the court order of April 7th I
3 believe was based on -- I think the judge did not look at the
4 evidence. I don't think my evidence was referenced. I'm not
5 going to get into the details of that, but I think the judge
6 also was triggered, frankly, emotionally triggered by the fact
7 that my learned colleague, Mr. McCoomb, and his learned
8 colleague, keep using these inflammatory allegations of
9 harassment evolved.

10 Here are the facts. My posts were online. I did not
11 contact anybody at home. I did not visit anybody's home. I did
12 not call anybody at home. I called Mr. Faulkner twice at his
13 office. I only call people at their office. I called him twice
14 at his office. We had a long conversation, approximately 40
15 minutes this lasted, maybe 30 minutes the first time. If he was
16 harassed, he would have -- why did he not hang up? Okay.

17 As far as -- now, I contacted -- we posted -- we
18 posted -- a report came in. By the way, as we started
19 publishing these things, we were getting a lot of reports from
20 people who were familiar with CSE from investors, from people in
21 the markets, and they brought up some actually shocking,
22 shocking allegations...[inaudible].

23 COURT REPORTER: (Appeals).

24 CHAIR: Sorry, Mr. Marks, something cut out with
25 the -- can you repeat that last sentence, please? Sorry, the
26 technology seemed -- there seemed to be a --

27 MR. MARKS: Sure. The last sentence was, as we had
28 been reporting on this alleged allegations of misconduct, I will

1 use this word "allegations of misconduct". I used the word
2 "fraud" before which now I realized technically I shouldn't have
3 used that. We'll call it allegations of misconduct. I've
4 gotten many, many reports and we have reports coming in,
5 sources, confidential sources giving us information on
6 executives at the CSE. And I have reported on those, including
7 there is a photo, a public photo of the CEO, Richard Carleton,
8 in a photo with convicted pedophile rapist Peter Nygard, okay.
9 This photo is on their Instagram page. Go back eight years. It
10 was still up there when we published that.

11 So, if the CSE is so concerned about their reputation,
12 why did they not remove that photo? Again, I should also add,
13 this photo was taken I believe in 2018. At that time Peter
14 Nygard was well-known. There were already...[inaudible].

15 CHAIR: Sorry. Sorry. Sorry, Mr. Marks, I'm sorry to
16 interrupt you. Just the tail end of your sentences are getting
17 a bit garbled. I don't know, are you close to a microphone?

18 MR. MARKS: I am close to a microphone.

19 CHAIR: Okay. So, maybe just try talking a little bit
20 slower because when the court reporter has a hard time hearing
21 you, she is going to have to ask you to repeat things. I'm
22 sorry, we want to make sure that we have the transcript accurate
23 showing what you're saying.

24 COURT REPORTER: It's a connection.

25 MR. MARKS: Okay.

26 CHAIR: It's an Internet connection?

27 COURT REPORTER: I think so, yeah.

28 CHAIR: Are you getting any notices of connection

1 issues?

2 MR. MARKS: No. No. My connection is fine. I think
3 -- I think the Tribunal needs to ask for an increased budget for
4 their connectivity.

5 CHAIR: I've always had a hard time determining whose
6 issue it is. Sometimes it's mine at home and sometimes it's
7 somebody else's, but why don't we keep going. If it happens
8 again, what we might do is ask you to just turn off your screen.
9 That might help. I prefer not to do that but let's just keep
10 going.

11 MR. MARKS: Okay. As mentioned, you know, we
12 published a photo. We published a report. We actually reposted
13 a photo from the CSE, this is from their Instagram page, of the
14 CEO, Richard Carleton, with convicted pedophile rapist Peter
15 Nygard. He's currently facing extradition to the U.S. He's
16 currently in prison in Canada. Now, this photo has been on
17 their Website for eight years. If they were so concerned about
18 their reputation, why did they leave it up there?

19 Now, we report on that because we found it very
20 interesting, you know, and we asked what is the connection?
21 Now, again, I never ever convict -- I never accused anybody at
22 the CSE of being involved in any type of sex crimes. That was
23 never brought up, although my learned colleagues are trying to
24 make those allegations. This photo has been on the Website for
25 a long time. We published that and we said what is, you know,
26 what is the nature of this relationship? And we're trying to
27 find out because actually there was concerns because the
28 Department of Justice, the U.S. Department of Justice, in their

1 indictment of Peter Nygard, they mention that Peter Nygard was
2 known for trafficking his sex crime victims to friends and
3 associates. Now, there is that photo with the CEO of the CSE
4 and, you know, that question should be asked, what is the nature
5 of this relationship? Now, I reached out. I did reach out to
6 the -- you know, the photo was posted. The CSE never contacted
7 me. I did reach out --

8 CHAIR: Mr. Marks, Mr. Marks, I'm sorry. I'm going to
9 interrupt you again. You're not really helping yourself in
10 these submissions by doing this because this is you trying to
11 give evidence of things, and you're focusing in on the
12 statements that you don't want included here, right. You're
13 focusing in on materials that you're arguing should not --

14 MR. MARKS: Yes.

15 CHAIR: -- even be considered by us --

16 MR. MARKS: Right.

17 CHAIR: -- or allowed in as part of the application.
18 So, I just want to set you back to sort of what you should be
19 focusing on. And on all your comments about Peter Nygard, like,
20 I can't do anything with that, okay.

21 MR. MARKS: Okay. Would you like -- so, basically,
22 what you would like to hear from me is why this de novo argument
23 should be refused, is that correct?

24 CHAIR: Well, no, that will be an argument potentially
25 in the merits application that we hear next week.

26 What I want to hear from you is why the CNSX
27 materials, the new materials, so the materials from March 25 to
28 the hearing date in May of 2025, and the materials after the

1 hearing date before the panel of the CSE, the Board panel, why
2 those materials should not be included as part of our record on
3 this application, on the merits of the application. Why there
4 should be no further discussion about them. Why they shouldn't
5 be part of anything we look at or decide.

6 MR. MARKS: Okay. Thank you. I think I understand.
7 So, as I've said, the CSE is using, you know, retroactive
8 justification. They're using evidence that emerged after the
9 fact. Okay. My behaviour, I had perfect behaviour up until
10 October of 2025 -- 2024, okay, when I got this...this
11 unsuitability information.

12 Again, the case, this case really is about that
13 original decision. Everything else, all the behaviour, all
14 those things, are things which never would have happened. I
15 mean, I never -- I've never posted about the CEO of the New York
16 Stock Exchange or the Toronto Stock Exchange. I've had issues
17 with the Toronto Stock Exchange. I don't like the way they do
18 certain things but I've never heard of anything like this.

19 So, you know, my reaction was...was -- might have been
20 aggressive but it would never have happened had the CSE not
21 essentially engaged in procedural unfairness which is I would
22 say of Stalinist proportions. You know, I've worked in the
23 Soviet Union. To me, this reminds me of Stalinist activities.
24 You know, he said famously, "show me the man and I'll show you
25 the crime," okay. And that's what we have here. I actually
26 brought that up to Mr. Faulkner early on.

27 So, this entire case, everything here, should be just
28 decided on the merits of what happened with the original

1 decision. Everything else, my aggressive language, all that, it
2 would never have happened if things stopped -- if the CSE
3 actually had...had procedural fairness. Again, this has been a
4 violation of natural law. You know, essentially the CSE harmed
5 me and now they're blaming me for publicizing what happened.
6 Okay. So, they essentially robbed me, I could use other words,
7 and now I've been public about it because the public is
8 involved. This is a public issue. There is again 4,000
9 shareholders which I'm accountable to. So, I've been public --
10 I've been explaining exactly what happened. So, the fact that
11 they are trying to punish me for talking about things that are
12 in the public interest is, frankly, I believe it's a perversion
13 of justice, it really is. It is -- I've never heard of anything
14 like this and I think it destroys the integrity of the Canadian
15 markets and I'm going to -- there is I think later in the
16 evidence we'll talk about the CSE has a pattern, they have a
17 pattern, and the OSC I believe also is engaged in trying to
18 silence criticism. This is what has happened. This is what the
19 whole thing is about, okay. That's what this is about.

20 So, again, the CSE, you know, they're raising these
21 reputations -- the concerns about reputational harm. Nothing
22 has happened. They've had no damages. So, all the stuff that
23 they're claiming, even now, I think should be irrelevant. All
24 these claims about, you know, posts, social media should be
25 irrelevant. Why? Because after more than two years of public
26 criticism, they've admitted that there's been no actual damages
27 to the Exchange, no loss of business, no investor harm, no
28 measurable impact. They didn't suffer.

1 Now, my tweets, ironically, some of my posts get
2 hundreds of thousands of views. Some of my TikTok videos I've
3 had over a million views. Those were about stocks. The content
4 I posted about the CSE got as few as 20 views. Nobody saw it,
5 okay, especially in Ontario. Nobody saw it. Frankly, nobody
6 really cares. That's the reality.

7 And this is why I believe this is a moot point what
8 the CSE is trying to say because, even if I was trying to defame
9 them, first of all, this is -- I brought up all the matters are
10 of, you know, matters of public interest. If I'm insulting
11 issuers, they're all based on actual, you know, factual
12 evidence. There was -- there was misconduct by issuers. Those
13 stocks have all gone lower so I've actually been proven right.
14 I brought up, you know, questions about the fitness and
15 suitability of CSE officials. I filed investigation requests
16 with the OSC, with the BCSC, with other regulators, government
17 officials now. So, these are matters of public interest.

18 This type of action, what's happening right now to ban
19 -- to ban an executive with no reasons, to ban somebody with no
20 reasons after the fact, and cause a stock to be halted, and
21 investors basically to lose their money, again, it's shocking.
22 It's...it's unprecedented. It's extraordinary. It's
23 exceptional and it's -- I think it's -- you know, I think it's
24 -- you could expect that my reaction would be so.

25 Now, I apologize. I'm, you know, again, a very
26 normal, calm person but some things I feel very passionately
27 about, and I do feel very passionately about, you know, helping
28 investors, investor education, protecting investors, I really

1 do. Why? Because, you know, my business is to, you know,
2 create shareholder value, and in order to do that, we have to
3 have investors who are informed and who get a fair shake.

4 So, if I raised issues about the CSE being allegedly
5 the Scam Exchange, the Canada Scam Exchange, that's a term
6 that's been used by people on message boards like CEO.ca, and
7 the fact is their Exchange -- their index is down 85 percent.

8 The reason I mention that is they have, again, this
9 may not sound right, but they have no reputational concerns. No
10 matter what I say cannot damage them. This is a -- this is a
11 fake argument, okay, because I've been saying things for two
12 years. Mark Faulkner, in his testimony, said they had no
13 damages. People are still doing business with the CSE. They're
14 down 85 percent. This is one of the worst performing exchanges
15 on the planet in the middle of one of the hottest markets. The
16 Nasdaq is setting new records today but their market is down 85
17 percent and people still want to list there. Why? They have no
18 other choice. The CSE is the most junior exchange. They take
19 on -- they take on listings from companies that can't get listed
20 on the TSX, on the NEO, or anywhere else, okay. So, those
21 companies have no choice.

22 The investors, investors are speculators. These are
23 speculators. You know, if they see a good story, they'll buy
24 it. So, there is no damage possible.

25 Everything I have said, everything, all my statements
26 may have been aggressive. These are not things that are new.
27 Okay. I've not said anything that is -- that it hasn't been
28 brought to the public's attention, whether it was, you know, the

1 CEO's possible relationship with Peter Nygard, whether, you
2 know, he went to a strip club in Montreal and had lap dances
3 paid for by stock promoters, which is a question of undue
4 influence, and I filed a complaint about potential undue
5 influence with the OSC. These are things that are known. This
6 is not like -- you know, if I say it, it's not going to damage
7 them.

8 And there should be, I really believe that there
9 should be somebody out there who will report on things, whether
10 it's me or somebody else that will hold these exchanges to
11 account because the CSE has been very opaque, very, very opaque.
12 This whole process has been opaque.

13 Again, it's been a Stalinist process. You know,
14 there's no evidence. They did not -- the CSE did not produce
15 any evidence of overpromotion, anything. They refused to do so.
16 We've asked for e-mails. Allegedly they claim that they made
17 this decision by e-mail. They've never produced those e-mails.
18 My counsel asked them for almost two years ago. I'm asking for
19 them now.

20 So, there's I think my reporting is -- my reporting
21 basically, my advocacy for investors, it is the core argument
22 that the CSE is using for this de novo approach. Does that make
23 sense, Your Honour? Did I clarify my case?

24 CHAIR: I'm not -- I'm not a judge so don't call me
25 "Your Honour."

26 MR. MARKS: Oh, I'm sorry.

27 CHAIR: You can call me -- you can call me "Ms. Burke"
28 or you can call me "Adjudicator Burke," whatever you feel better

1 with.

2 MR. MARKS: Okay, Adjudicator Burke. Am I back on
3 track? Am I back on a track to what you're looking for? It's
4 about procedural fairness. This is what this whole thing is
5 about from the original decision, and that's what everything
6 should be judged on, not some after-the-fact, you know, what
7 happens later because those things, this activity would never
8 have happened.

9 And I would like to complete on -- finish on one note.
10 This activity, frankly, it's been juvenile, okay, on my end and
11 their end. This is -- it's actually quite ridiculous and,
12 frankly, nobody has been damaged. This is -- this is juvenile
13 activity. There's already an injunction in place so I can't
14 really make more aggressive activity like this. So, they have
15 nothing -- even if they took me back, they would loss nothing.
16 Nobody would care. The only people who would care is the
17 bruised egos of Mark Faulkner if it comes to -- if the Panel
18 agrees that actually there was procedural unfairness involved
19 and the CEO and those people.

20 And I think the public's interest far outweighs, okay,
21 the public's interest, the Canadian capital markets, the
22 integrity, the integrity of the Canadian capital markets far
23 outweighs the bruised egos of a few executives at the CSE.
24 Thousands of investors who were harmed, the integrity of the
25 capital markets is at stake.

26 And I have a slide which, I mean, I'll just talk
27 about, is if you allow things like this to happen, you know,
28 there's going to be a doom loop. There's already a doom loop

1 right now in terms of people get screwed by situations like
2 this. Investors, they bought a stock. All of a sudden it's
3 halted for no reason, nothing to do with the company, just
4 because the regulator maybe didn't like somebody. They have --
5 they have that leeway. Apparently, they're allowed to ban
6 people if they don't like them. They have a very broad,
7 according to my learned friends, they have a very broad
8 discretion allegedly.

9 So, if an investor gets screwed in a situation like
10 this, they're not going to buy another stock on the CSE. So,
11 the CSE actually hurts themselves. I can guarantee that people
12 are not buying stocks on the CSE. Their volume has declined,
13 not as a result -- not as -- not as a result of anything I said,
14 as a result of they have many underperforming issuers. They
15 have -- I brought to the attention of regulators, including the
16 CSE, they have a number of issuers who have misconduct at the --
17 at the company level.

18 There is a current hearing in place. I believe a
19 company called SponsorsOne which was a \$20 million fraud that
20 could have been easily spotted. I knew it was a fraud five
21 years ago. My question is why didn't the CSE know it was a
22 fraud? And I mention that in a tweet. I post, you know, about
23 SponsorsOne saying, hey, why didn't the CSE catch this? This
24 company is, you know, the OSC is now alleging that there was a
25 \$20 million fraud involved. And the CSE, my learned colleagues,
26 my learned friends used that tweet to claim that was defamatory.
27 I didn't say the CSE committed fraud. I just said why didn't
28 they catch this? You know, why did this slip under their nose?

1 I think that's important for regulators to be held
2 accountable and the fact is that they don't want to be held
3 accountable. This is what this whole thing has been about, this
4 entire case. You know, procedural fairness, again, trying to
5 ban somebody from an exchange, these are the real losses, okay,
6 issuer damage. This is the doom loop that happens and this is
7 real. You know, it may sound dramatic but it's actually real.
8 I've seen this happen. It's happening right now. It's
9 happening right now.

10 So, this is what this case is all about. No notice,
11 no warning, no fair process. They claim they made an unsuitable
12 decision. Did the decision exist? We don't know. The timeline
13 does not match the story. Nothing matches. There's constant
14 contradictions which we're going to show later on.

15 Again, it's been retroactive evidence. Again, this is
16 what the CSE and the OSC bring, retroactive evidence, evolving
17 reasons to deem me unsuitable. They keep changing it seems like
18 every other week. There's been no meaningful appeal process.

19 I should note that I think my learned friend at the
20 OSC should know that apparently the CSE's appeal procedures and
21 policies have not, in fact, they've not been approved by the
22 Ontario Securities Commission or the BCSC. I'm assuming that
23 means they're operating in violation of the Securities Act.

24 So, the fact is this appeal process is, I don't know
25 if it's the right word, is it an illegal process? It is opaque.
26 But this process, their appeal process has not been approved by
27 the regulators, by the OSC and the BCSC. I believe that
28 everybody is, I'm going to use -- I'm going to use a plain word.

1 I'm going to speak in plain English. I believe the regulators
2 are trying to brush everything under the carpet because they're
3 embarrassed by what happened. I think that Mark Faulkner, who
4 we're going to talk about later, is that he -- there was matters
5 of procedural fairness, I brought them up, and then I made them
6 public. That was embarrassing. And I believe this is
7 embarrassing for the OSC that they have this Exchange which is
8 operating in a rogue manner so to speak and with a number --
9 with a number of issues.

10 Ultimately, this comes down to this, the January 8th,
11 I'm going to use the word "J8", okay, the J8 decision, you know
12 like the J6, you know, the Trump thing from a couple of years
13 ago, this is the J8 decision. It was a bad decision either way.
14 So, if the memo did not exist which...which is what I think, if
15 the memo did not exist, then everything was created after the
16 fact. The record was retroactively constructed and that's
17 regulatory misconduct.

18 Scenario number two could be just procedural fairness
19 issues. The CSE deemed me unsuitable. They never bothered to
20 notify me. Imagine this, imagine you, you know, Adjudicator
21 Burke, imagine you fly to Paris. You want to come back to
22 Toronto and you find out at the airport your passport was
23 revoked, your citizenship has been revoked. Why? They decided
24 a year ago. They didn't notify you why. You couldn't appeal
25 it. You couldn't do anything about it. Now you're stuck.
26 Maybe you want to be stuck in Paris, I don't know, but basically
27 this is -- this is exactly what happened.

28 So, scenario two is very serious. It was very

1 callous, extremely callous, and the harm, the harm is obvious.
2 We see the harm that happened. Okay. We see the harm. I
3 continued operating in good faith. I entered into contracts
4 with an issuer expecting to rely -- relying on regulatory --
5 clear, no issues with regulators, and this is what happened. In
6 either case, we've had these -- we would have had these damages.

7 So, that's what this -- that's what this has been
8 about, and we can talk about later all the issues but, again,
9 it's really about, you know, natural...natural justice and
10 procedural fairness. That's what this case should be about.
11 There should be no -- there should be no de novo arguments, no
12 de novo evidence about things that are really not relevant.
13 They are not relevant to the core of this matter.

14 The core of the matter is the procedural fairness
15 issues that were raised from day one, especially from the factum
16 of my previous counsel. It's on the record. I think I'm going
17 to rest my case here.

18 CHAIR: Thank you. I have a question, Mr. Marks. So,
19 I think just putting to you some of the things that I heard from
20 the other side, I mean, I take your point about posts going to
21 criticisms and you say free speech. What about the types of
22 posts that were -- we were taken to this morning by Mr.
23 Lockhart, you know, and I'm not going to repeat them? You were
24 here for them. Would you say that any of that goes to a
25 question of unsuitability? Is it relevant to unsuitability?

26 MR. MARKS: It's not relevant because, again, it's all
27 seen through a retroactive lens. Those posts would never have
28 happened if I -- if I didn't experience procedural fairness

1 issues, if I was not banned without notice, without any basis,
2 without any evidence, with nothing. I've never heard of
3 anything like that. That's why you see -- that's why these
4 extreme reactions. I got to say my -- some of my posts were
5 quite inflammatory, aggressive language. By the way, fact --
6 there were underlying facts in all those posts. There are
7 underlying facts. There's not -- you know, but the language was
8 aggressive. I know -- I know in Canada there's a different
9 standard of language. I'm based in the U.S. with different
10 standards. You know, even the President of the United States
11 uses colourful language, as does Elon Musk, who is the
12 owner/operator of Twitter where all this appears. So, you know,
13 these things are juvenile really.

14 CHAIR: Okay. So --

15 MR. MARKS: What's not juvenile is natural justice --

16 CHAIR: And we --

17 MR. MARKS: -- which is why I made them.

18 CHAIR: We fully understand that and the natural
19 justice piece and that you're going to have a full opportunity
20 to make those arguments when we get to the merits of this
21 application, and we've had a little bit of a precursor of that
22 from you today.

23 When I asked you the question about whether those
24 kinds of things would go to a question of unsuitability, I heard
25 you say, well, no, because they're retroactive. They're
26 materials that weren't before the Board previously. Would it be
27 different if -- is it just the retroactive piece that you say
28 makes them not relevant to suitability?

1 MR. MARKS: I think that's the core. I think that's
2 the core issue because this is -- these things would never have
3 happened if it weren't for the original thing, okay. If
4 somebody, you know, somebody...somebody gets robbed and raped.
5 It's natural that they're going to react, that they're going to
6 complain. They're going to take action, okay. And then you
7 blame -- if you blame that person for taking action, you know,
8 then it becomes -- I think that becomes some sort of circular
9 logic to use their, you know, their actions to...to condemn them
10 I think is circular, especially -- you know, Adjudicator Burke,
11 frankly, again, this is my opinion, I think the CSE's actions in
12 this case were so outrageous. I mean, again, I've never heard
13 of anything. I don't know if you've seen anything like this in
14 your career. I've never heard of anything like this. These
15 actions are so exceptional, extraordinary, that everything
16 should be thrown out here. They should be sanctioned. And you
17 know, the decision should be overturned because just based on
18 this. And that will, I believe, be for in the public's interest
19 because these shareholders will have an opportunity to get their
20 investment back, and I would agree, in fact, hey, I'm a very
21 flexible guy. You know, if they have -- if they don't want me
22 to say things about them, I won't say things about them. I
23 already have an injunction. So, everything going forward would
24 be moot. The CSE's and the OSC's argument about this is moot
25 because, you know, I might have a permanent injunction. I won't
26 say anything about them.

27 And also, at this point, what I've realized is I've
28 matured. You know, after many years, I've actually matured a

1 little bit and I realized, you know what, I shouldn't use such
2 aggressive language when I can be professional about it and use
3 proper journalistic language and actually be much more
4 effective. I could write letters to regulators, to congressmen
5 in the U.S., who are on the hearing committees, and that would
6 be much more effective which I'm doing, okay. So, I could file
7 complaints with the Department of Justice regarding certain
8 activity at the CSE and their executives, again, raising serious
9 matters in the public interest. Those things I think are much
10 more professional.

11 But, no, I think the CSE, this is not a question of
12 suitability because it's juvenile. You know, if they would have
13 contacted me and said, "hey, stop posting, insulting us," I
14 would have said, "okay, no problem" because, you know, it
15 doesn't -- why would I want to insult them if I'm doing business
16 there, right. Like, it doesn't make any sense, Your Honour --
17 excuse me -- Adjudicator Burke.

18 Frankly, this matter has been -- it's been a -- I'm
19 trying to use the -- I'm trying to come up with a polite word to
20 use. I'll use a crude word. I'll just say it was like a
21 pissing contest, okay. This has been a pissing contest between
22 the CSE executives, who feel themselves to be above the law by
23 their actions, clearly, and they have, you know, again, they are
24 employing the biggest -- one of the world's top law firms. They
25 have a staff of six people working on this full time, multiple
26 procedures, against one person, okay. Why? Because they want
27 to silence serious criticism of real activity and what could be
28 precedent. And this case could set a very important precedent.

1 I've never -- again, are you aware of anybody being banned
2 without any reasons or any warning beforehand? I'm not.

3 ADJUDICATOR WAECHTER: Mr. Marks, I'm trying to square
4 what you're saying with what the CSE and the OSC are saying, and
5 if the test or one of the two possible tests is whether the
6 evidence that's in issue in this CNSX motion is new and
7 compelling, on the compelling front, is there a difference
8 between public comments about your experience of procedural
9 fairness versus using language like "fraud," "scam," and so on
10 that we heard this morning? So, when they are asking us to find
11 that this is compelling, new evidence, and I just want to hear
12 from you about whether the contents of that language matters on
13 whether it's compelling.

14 MR. MARKS: No. I think -- I think it all goes back
15 to the beginning. It's all retroactive. I think the language
16 -- I think the language doesn't matter. I mean, what matters,
17 you know, it was commentary in the public's interest. You know,
18 it was -- I commented on things that mattered to investors, you
19 know, the conduct of regulators or allegations of misconduct of
20 regulators, why stocks were halted. I commented on companies
21 which I thought were questionable. And I should say I have a
22 very good track record in spotting frauds. I probably have a
23 one hundred percent success rate.

24 I think my learned friend showed a slide where I was
25 criticizing a company which currently has a \$400 million market
26 cap and they have no -- they have no revenues. It's all been a
27 I'm going to use a pump and dump, I'm going to say legalized
28 pump and dump, but it's basically promotional. It's just -- and

1 people are going to lose their money. People are going to lose
2 their money in the stock. I've seen this firsthand myself, this
3 type of situation, and they're going to lose their money. I
4 think they should -- I think the public has a right to know that
5 they should investigate this stock. They should see if it makes
6 any sense. And, by the way, my comments have been related to
7 that.

8 You have a company with overinflated market cap,
9 overhyped, no underlying business, and this is very typical with
10 the CSE. It's what I refer to as I think in my book which I
11 wrote, I think it was brought into evidence and was number one
12 best seller on Amazon, I call this the "fake it until you make
13 it company." Okay. This is a company where promoters get
14 involved, they pump a stock, and they hope that they're going to
15 use that inflated valuation to buy a business but if it doesn't
16 happen. It will collapse. Ninety percent of the time it
17 collapses. Again, this isn't in the evidence. I didn't have to
18 write this book. I did this because I wanted investors to be
19 educated. The better educated they are, the better off I will
20 be. I'd rather deal with -- I'm not here to pull the wool over
21 the public's eyes, unlike, you know, some of other -- some other
22 people who have not been deemed unsuitable, stock promoters.
23 Again, I mention a double standard.

24 You know, we have George Tsiolis at the OSC fined
25 \$125,000 for operating 600 fake social media accounts. It was a
26 serious fraud.

27 You know, we have Brandon Caldwell, the director or I
28 think he's the majority shareholder of the CSE fined over

1 \$2,000,000 by the CSE for essentially ripping off his customers
2 by overcharging on mutual funds' commissions. The language
3 might be aggressive but that's the nature of the case. Those
4 people have not been deemed unsuitable. So, again, the more --

5 CHAIR: Mr. Marks, can we just stick to submissions on
6 this motion? I understand --

7 MR. MARKS: Yes.

8 CHAIR: -- you want to make that kind of an argument,
9 ultimately, but can we just focus on the motion, please?

10 MR. MARKS: Yes.

11 CHAIR: Okay.

12 MR. MARKS: I have nothing to add.

13 CHAIR: Okay. Thank you. And I think we've been
14 keeping track of time here. So, you used 43, approximately 43
15 of your 50, so you've got seven minutes you can carry over to
16 the other motions if you need them.

17 What I'm going to suggest -- I don't know. Do the
18 CNSX have any reply at all or the OSC? You got three minutes.

19 MR. MCCOOMB: It's one comment.

20 CHAIR: Why don't we do that and then we'll have
21 completed this motion before we break.

22 REPLY SUBMISSIONS BY MR. LOCKHART RE CNSX NEW EVIDENCE
23 MOTION:

24 MR. LOCKHART: I only want to say Mr. Mark's view on
25 retroactivity appears to flow, in part, from the fact that he
26 thinks the decision under review is the January 8th, 2024,
27 decision.

28 This is a hearing and review of the CNSX Board of

1 Directors from May 2025. So, all of the material before that
2 would flow in. And then this is a motion just about the stuff
3 that is after in order to empower this Tribunal to conduct a de
4 novo hearing. So, in our view, it's not retroactive.

5 CHAIR: But it's actually a motion not just what's
6 after -- what's post the May decision, it's also from the period
7 --

8 MR. LOCKHART: Yes.

9 CHAIR: -- March 25 to the May decision.

10 MR. LOCKHART: Yes. There is that portion that is new
11 as well.

12 CHAIR: Okay. Thank you. So, what we will do then is
13 we will now take a 45-minute shortened lunch break. I apologize
14 to everyone for the inconvenience. It's not really at a natural
15 lunchtime. And we will come back at two -- let's say 2:35.

16 --- Lunch Recess at 1:53 p.m.

17 --- Upon Resuming at 2:36 p.m.

18 CHAIR: Please bear with me one moment, Mr. Marks. I
19 just have to get my computer set up again.

20 MR. MARKS: So, is this where I'm going to introduce
21 my motions?

22 CHAIR: Absolutely.

23 MR. MARKS: Okay. So, I only have seven minutes, yes?

24 CHAIR: No. No, no, no. You have 57 minutes.

25 MR. MARKS: Oh, 57 minutes.

26 CHAIR: Yeah. The time that you saved on the last
27 motion --

28 MR. MARKS: Uh-huh.

1 CHAIR: -- carries over --

2 MR. MARKS: Uh-huh.

3 CHAIR: -- to this one if you need it.

4 MR. MARKS: Okay. Can I -- can I rely -- okay.

5 CHAIR: Can you what?

6 MR. MARKS: Should I start now?

7 CHAIR: No. Just one second. Can you just let me get
8 my computer set up, please, Mr. Marks?

9 Okay. Okay. So, Mr. Marks, this is now your
10 opportunity to make your submissions about your motions. And
11 what I was just going to do is I was going to read into the
12 record your various materials and propose that we mark them
13 collectively as a Motion Record that will have an exhibit number
14 so that we have it as part of the record for today's hearing, is
15 that okay with you?

16 MR. MARKS: Sure.

17 CHAIR: Okay. So, what we have is we have a Notice of
18 Motion Leave Motion, a Notice of Motion New Evidence Motion, a
19 Notice of Motion Discovery Motion, an affidavit of Jack Marks
20 sworn May 6, 2026. And then we have something called Exhibit A
21 which is the affidavit of Mark Faulkner sworn April 21, 2025,
22 contained in a Supplementary Application Record in Ontario Court
23 file number CV-25-00747749-0000. We also have something called
24 Exhibit B, the transcript of the cross-examination of Mark
25 Faulkner on April 21, 2025, in the same Ontario Court
26 proceeding. We have Exhibit C, which is decision of the CSE
27 Listing Committee dated January 8, 2024. And we have an Exhibit
28 D, which is your PDF slide presentation that you were using

1 today, titled "OSC Presentation of Record Evidence and
2 Procedural Issues May 13," I think that's it, yeah, "May 13
3 PDF."

4 So, those are eight items. And what I propose to do,
5 Mr. Marks, is just treat them as one large Motion Record and
6 mark all of those eight documents as the next exhibit, which is
7 Exhibit 8. And I just want to clarify that, with the exception
8 of the Notice of Motion Discovery Motion, all of those materials
9 are the versions that were filed by you with the Registrar at
10 1:50 p.m. on May 6. And then the motion, the Discovery Motion
11 Notice of Motion was the one that you amended and filed with the
12 Registrar on May 6 at 6:23 p.m., is that correct?

13 MR. MARKS: Yes. I believe so.

14 EXHIBIT NO. 8: Motion Record of documents filed by
15 Mr. Marks (as described in the hearing).

16 CHAIR: Okay. So, we'll mark all eight of those
17 documents as one collective Motion Record as Exhibit 8. Let me
18 just make sure. And then I just also note that we have written
19 submission letters from both CNSX and from the Ontario
20 Securities Commission filed yesterday in response to your
21 motions, but we don't need to mark those as exhibits because
22 they're considered submissions, but we have those in front of
23 us. And with that, I will give it over to you, Mr. Marks, to
24 make your submissions.

25 MR. MARKS: Okay. So, should I just -- you know, I
26 have notes from the three motions. Should I just start and just
27 read through it? I have about eight pages.

28 CHAIR: Well, let me see if we can simplify this. One

1 thing that I have a question about, so we've dealt with the
2 issue of the PDF submissions, right, that you're going to file
3 those as submissions, not as evidence.

4 MR. MARKS: I may -- I have to look at my notes. I
5 may -- I may -- I have to look at my notes on the PDF.

6 CHAIR: Okay. You were asking for them to be as part
7 of your New Evidence Motion, but those are slides that you
8 prepared in aid of your submissions, right? And as I've
9 discussed --

10 MR. MARKS: Yes.

11 CHAIR: -- with you, it doesn't create evidence.

12 MR. MARKS: Okay. The slides -- hold on a second.
13 Let me just look at my notes. So, I have -- I have basically,
14 you know, in my notes here, basically, the slide deck, you know,
15 contains screenshots and extracts of underlying evidentiary
16 materials, together with chronology evidence and organizational
17 summaries. To the extent portions are argumentative, any
18 objection should be addressed to specific slides rather than
19 through a blanket exclusion of the entire presentation. That's
20 all I have. That's my notes on slides.

21 CHAIR: Okay. And what we've addressed earlier today
22 is that CNSX and the Ontario Securities Commission are okay with
23 you using those slides treating them as a submission to aid in
24 your presentation today and also next week at the merits
25 hearing, but we've made clear that it's not evidence. It's
26 submissions. To the extent it refers to evidence that is
27 already in the record or that is admitted into the record, then
28 it's fine. It's fine to reference it but, for example, if you

1 put in something that isn't part of the record, we, as a Panel,
2 are not going to be able to deal with it. It's not evidence if
3 it's not already in the record.

4 MR. MARKS: Okay. How do I -- okay. So, how do I --
5 there's a few slides which are not really part of the record.
6 How do I use them as evidence?

7 CHAIR: You can't.

8 MR. MARKS: I can't use them as evidence. Okay. So,
9 okay. I mean, there's a few very important slides relating to
10 double standards applied by the CSE showing the breakdown of,
11 you know, people who engage in similar behaviour and were not
12 sanctioned. I think that those --

13 CHAIR: Right. If there was evidence around that,
14 that you had wanted to get permission to bring before the Panel
15 as part of your application, you would have had to bring it by
16 way of an affidavit or some other materials that would attach
17 things that would attest to whatever the story is and get
18 permission from this Panel to bring it in, not just put in a
19 slide and walk us through it in your closing submissions -- in
20 your submissions on the merits.

21 MR. MARKS: Okay.

22 CHAIR: There is a process for bringing in new
23 evidence, right. And you followed part of that process by
24 bringing your Leave Motion and bringing your motion to have the
25 transcript of Mr. Faulkner go in, and the affidavit of Mr.
26 Faulkner go in.

27 MR. MARKS: Right. Right.

28 CHAIR: But a PDF slide presentation that you've

1 created that refers to things that aren't anywhere in the
2 evidentiary record doesn't create evidence.

3 MR. MARKS: It is. Some of those things are
4 mentioned, are in the evidentiary record. They're referenced
5 but I just used screenshots. Okay. I understand.

6 CHAIR: So, it appears like, for example, say we say
7 it's fine for your transcript references to go in. There are
8 slides that have the transcript quoted from, and you say what
9 page it's from, that would be okay.

10 MR. MARKS: Okay.

11 CHAIR: Okay. But it doesn't create the evidence.
12 It's referring to something that already is in the evidence.

13 MR. MARKS: Okay.

14 CHAIR: Okay.

15 MR. MARKS: Okay. I got it.

16 CHAIR: So, what I'm suggesting is everybody is
17 allowing you to refer to your slides but your slides have a
18 limitation. They can't create evidence. They can refer to
19 existing evidence that is before us.

20 MR. MARKS: Okay.

21 CHAIR: Okay.

22 MR. MARKS: Fine.

23 CHAIR: So, then, as I understand it, your New
24 Evidence Motion also is asking to admit the transcript of the
25 Faulkner cross-examination on April 21 of this year and also --

26 MR. MARKS: Yes.

27 CHAIR: -- his affidavit of April 21 filed in the
28 court proceeding we just referred to. I understand, and I'm

1 just maybe trying to short-circuit this, I want to just clarify
2 what the other parties say about these things to see whether
3 there actually is an issue.

4 So, Mr. McCoomb, I've seen your written submissions
5 but if you could just tell us what your position is about those
6 materials.

7 MR. MCCOOMB: Right. Document by document, with
8 respect to the Faulkner April 21 affidavit and the cross
9 transcript, we're prepared -- the CSE is prepared to consent to
10 those materials forming part of the record.

11 With respect to the third piece, which was the January
12 8th, 2024, memo from the CSE, our understanding is we put it in
13 our letter that's already in the record so it doesn't need to be
14 adduced by a way of a New Evidence Motion.

15 CHAIR: Yes. My understanding is that January 8,
16 2024, memo, Mr. Marks, is already in the record of the original
17 proceeding.

18 MR. MARKS: I have screenshots. I have a screenshot
19 with some notes that is relevant pointing -- I have a screenshot
20 of the memo and notes about pointing to activity that never
21 existed at the time of the memo.

22 CHAIR: I understand that that's in your slideshow,
23 yes. Now we're just talking about whether that memo is in the
24 record, right. So, you can refer to that memo. That is in the
25 record.

26 MR. MARKS: Okay.

27 CHAIR: Mr. Pettypiece, recognizing that your
28 submissions about the admissibility of these materials came in

1 very shortly after CNSX's with a slightly different position, so
2 I'm wondering whether that position stands or whether you've
3 amended it in any way.

4 MR. PETTYPIECE: No. The position stands. And just
5 to be clear, the position is that Mr. Marks hasn't established
6 why the standard for admitting new evidence in a proceeding has
7 been met and that standard is new and compelling. We've been
8 discussing it in relation to the CSE's New Evidence Motion
9 earlier today and the same standard applies to Mr. Marks.

10 CHAIR: Okay. So, we're going to need to hear
11 submissions then, Mr. Marks, on those materials because the
12 Ontario Securities Commission is objecting to the transcript and
13 the affidavit going in as new evidence, okay.

14 MR. MARKS: Okay.

15 CHAIR: So, I don't -- I don't -- I'm not going to
16 constrain you in any way as to your submissions but what we're
17 hoping to hear about is, you know, justification for bringing
18 these motions fairly late in this process and getting permission
19 to bring these motions, and then addressing why the new evidence
20 should be allowed in and also addressing why you should be
21 entitled to receive additional disclosure of documents from the
22 CNSX and be able to cross-examine particular individuals.

23 MR. MARKS: Okay. How much time do I have right now
24 to do this?

25 CHAIR: So, we've been going back and forth a little
26 bit but we said you started off with about 57 minutes. I think
27 you have -- I haven't kept track. Let me just see. I think
28 it's about...

1 MR. MCCOOMB: I have 2:42 in my notes is when we
2 started the session.

3 CHAIR: 2:42. Okay. So, it looks like you've got
4 about 50 minutes, Mr. Marks, and if you want to reserve any time
5 for reply, you can do that as well, okay.

6 SUBMISSIONS BY MR. MARKS RE MR. MARKS' THREE MOTIONS:

7 MR. MARKS: Yeah. Okay. So, okay. I'm just going to
8 rely -- so I will rely primarily on my written materials and
9 affidavits and I will only briefly highlight the central points
10 relating to the Leave Motion, the New Evidence Motion and the
11 Discovery Motion.

12 First, with respect to leave, the issues raised in
13 these motions evolved through the course of the proceeding and
14 through more recent evidence and cross-examinations. The
15 evidentiary record has continued to develop and the applicant
16 submits that fairness in the public interest favourably relies
17 on these issues to be heard on the merits rather than excluded
18 strictly on timing grounds.

19 The consequences of the underlying decisions have been
20 serious, including significant investor harm, and ongoing
21 effects of my ability to participate in the Canadian capital
22 markets.

23 Second, regarding the New Evidence Motion, the
24 proposed evidence is not merely about procedural complaints. It
25 goes directly to the credibility, consistency, reliability and
26 evolving rationale underlying the suitability determination.

27 The OSC attempts to characterize these issues as
28 irrelevant because they say this matter should proceed de novo.

1 However, a de novo hearing should not operate as a shield
2 preventing scrutiny of how the original process unfolded, how
3 the rationale evolved over time or whether the underlying
4 process was procedurally reliable.

5 These are highly relevant issues where the
6 consequences were severe and affected not only myself but
7 thousands of investors and market participants.

8 Third, with the Discovery Motion, the applicant is not
9 seeking to -- is not seeking a fishing expedition. The requests
10 are narrow and targeted toward identifying decision-makers,
11 communications and records directly connected to the suitability
12 process and the issues already apparent on the record. The
13 applicant submits that limited additional disclosure in
14 examination are necessary to properly understand the evidentiary
15 basis for the decisions under review and to ensure a fair and
16 transparent process.

17 Finally, this matter raises broader public interest
18 concerns. The CSE has repeatedly raised hypothetical,
19 reputational concerns about criticism of the Exchange, yet
20 there's been no evidence of actual measurable harm to the
21 Exchange itself.

22 By contrast, there is evidence of real world harm
23 affecting more than 4,000 investors, significant trading
24 disruptions, and millions of dollars in losses arising from the
25 underlying regulatory actions.

26 Public confidence in Canadian capital markets depends
27 not only on regulators having authority but on that authority
28 being exercised fairly, transparently, and in a manner capable

1 of meaningful scrutiny.

2 Subject to the Tribunal's questions, those are my
3 submission on the motions. If I have more time I could actually
4 read you in my New Evidence and Discovery Motion because I think
5 the Leave Motion was covered more or less. If we have time, I
6 would like to go through the new evidence, quick notes.

7 So, turning to the New Evidence Motion, I seek an
8 order admitting the April 21, 2026, affidavit of Mark Faulkner,
9 the transcript of Mr. Faulkner's cross-examination, the
10 accompanying presentation materials organizing and summarizing
11 the evidentiary record.

12 I understand the respondent consented to the admission
13 of the Faulkner affidavit. Okay. I understand the respondents
14 consent to the admission of the Faulkner affidavit and the
15 cross-examination transcript, so the CSE has consented. In my
16 respectful submission, these materials --

17 CHAIR: Only the CSE, not the OSC, right? Only the
18 CSE.

19 MR. MARKS: CSE.

20 CHAIR: Yeah.

21 MR. MARKS: CSE. Yeah. Yeah. In my respectful
22 submission, these materials are highly relevant and material
23 because they directly address several issues before the
24 Tribunal. In particular, the evidence raises significant issues
25 relating to the timing of the alleged determination, whether the
26 rationale for the determination evolved over time, whether
27 portions of the evidentiary record were created after the fact,
28 whether concerns existed long before notice was provided or not

1 provided, and whether later-developed reasoning or materials
2 were used to support the original decision.

3 The evidence is also directly relevant to procedural
4 fairness, including whether I received meaningful notice,
5 whether I had an opportunity to respond, and whether the
6 evidentiary record relied upon was contemporaneous, fixed and
7 transparent.

8 The evidence was not previously available because
9 those chronology and record creation issues only became apparent
10 through the recent Faulkner affidavit and cross-examination
11 evidence.

12 I also respectfully submit that there is no unfair
13 prejudice to the respondents because the evidence arises from
14 their own witness. They are fully aware of the material and the
15 issues addressed are already central to the proceeding.

16 With respect to the presentation materials, the
17 presentation containing screenshots and extracts of underlying
18 evidentiary materials, chronology evidence, correspondence,
19 memoranda and other materials directly connected to the issues
20 before the Tribunal.

21 The presentation is intended to organize and
22 synthesize the evidentiary record and assist the Tribunal
23 efficiently to follow the chronology, procedural history and
24 issues related to timing, rationale, notice and procedural
25 fairness.

26 To the extent respondents object to portions of the
27 presentation, I respectfully submit that any objection should be
28 addressed --

1 CHAIR: They're letting -- they're letting -- Mr.
2 Marks, they're allowing you to use your submissions so we don't
3 need to hear from you on those.

4 MR. MARKS: Okay.

5 CHAIR: When I say submissions, I mean your PowerPoint
6 submissions, right.

7 MR. MARKS: Okay. So, let me go to the Discovery
8 Motion, if I may.

9 CHAIR: Can I ask you question about your motion
10 regarding admission of the affidavit and the transcript?

11 MR. MARKS: Sure.

12 CHAIR: So, I had understood from reviewing your
13 previous materials on your Adjournment Motion that refer to you
14 wanting to be able to introduce the transcript or portions of
15 the transcript, that it was only certain portions of the
16 transcript that you were looking to introduce that went to
17 certain issues. Are you saying that the whole transcript of the
18 examination of Mr. Faulkner is --

19 MR. MARKS: I would like to -- yes. Yes. There may
20 have been a mistake. So, I would like to introduce the entire
21 transcript because it's all relevant and I don't have in front
22 of me the exact pieces that we're going to use but all of it is
23 really relevant.

24 CHAIR: Because I can tell you that I've read that
25 whole transcript, looking for the pieces that match up with what
26 you were saying it stood for that was important, and it's my
27 understanding it's not the whole thing. It's portions of it.
28 But at this point I'm sort of left guessing which portions of

1 it.

2 MR. MARKS: You want me to tell you off the top of my
3 head which portions I want to introduce?

4 CHAIR: I guess I'm just wondering do you have a list
5 of the portions that matter to you?

6 MR. MARKS: I don't have -- I mean, I have some of
7 them in the slideshow. Maybe I can refer to my slides but they'
8 are scattered throughout really. I mean, they are scattered
9 throughout. I mean, I could see through it. I mean, I could
10 take a look. Hang on a second.

11 CHAIR: I'm familiar with your slideshow, in that, I
12 know that there are slides that do quote from the transcript and
13 refer to sections of it.

14 MR. MARKS: Right.

15 CHAIR: Am I -- I don't think -- is that all of the
16 transcript that you care about, the ones that are referenced in
17 your slideshow or is there any more?

18 MR. MARKS: I'd like -- those are the key ones. Those
19 are key. There might be a few. Again, I assumed I could
20 introduce certain screenshots of, again, we're talking about
21 double standards -- double standards so there are certain
22 screenshots that give evidence. I think that was mentioned.
23 There was talk about it during the transcript but it may or may
24 not be, you know, I don't know. Basically, you know, I can go
25 through which sections. There's --

26 CHAIR: I don't think you're going to be able to do
27 that here in this time because it will take a while to go
28 through that transcript.

1 MR. MARKS: Right. Right. I'd like to introduce the
2 whole transcript. I mean, I don't know -- you know, it's
3 relevant. It's their witness.

4 CHAIR: Are you looking to only rely upon the sections
5 of the transcript that actually go to the issues that you
6 identify in your motion materials?

7 MR. MARKS: Yes. Yes. I mean, I'd like to include
8 the whole transcript. That's what I'd like to include. I mean,
9 I don't know why. They've consented to it.

10 CHAIR: But the reason for my question is it's not
11 ordinary course that new evidence comes in on these types of
12 hearings. So, there is a test and it's not just relevance.
13 It's new and compelling.

14 MR. MARKS: Okay. So, the new and compelling, and I
15 think I mentioned -- I think it was in my leave -- in my leave
16 -- in my full Leave Motion is that I became self-represented
17 recently, okay. This is in the last two weeks. There is new --
18 and there is new evidence that emerged. The CSE wants to
19 introduce, you know, extraordinary evidence, whatever they're
20 calling it, although it's all after-the-fact evidence.

21 My evidence is all, with Faulkner, all relates
22 directly to the original decision, and that was something which
23 only became available now. His affidavit, with changing reasons
24 for the decision, became only available now. And his transcript
25 refers to multiple contradictions about, you know, the reasons
26 why I was deemed unsuitable and things of that nature.

27 So, that's why I want to include it. I had no
28 opportunity. We didn't know about it. We had no opportunity to

1 get it until now. It only came about because of this other
2 legal proceeding. And, again, I respectfully submit the CSE has
3 not had any issues with me admitting the entire transcript.

4 CHAIR: Thank you.

5 MR. MARKS: Can I continue with my Discovery Motion?

6 CHAIR: Absolutely.

7 MR. MARKS: This motion is brought only if leave is
8 granted with respect to the fresh evidence materials. I'm not
9 seeking broad or open-ended discovery. The request is limited
10 to a defined time frame, to specific individuals, and to issues
11 directly connected to the applicant's suitability determination,
12 the January 8th memorandum, and the development of the
13 evidentiary record.

14 In particular, I seek limited disclosure relating to
15 the timing and creation of the January memo, internal
16 discussions regarding the applicant's alleged suitability or
17 unsuitability, and communications relating to the applicant's
18 PIF and involvement with CSE issuers.

19 I also seek production of the May 2025 Appeal Board
20 hearing record -- I'm sorry. I got that. Let me skip that. We
21 got -- we got that.

22 Okay. Further, I seek limited cross-examinations of
23 individuals directly involved in the relevant decision-making
24 process whose evidence has yet -- has not yet been tested.

25 The purpose of the motion is not delay or fishing
26 expedition. The purpose is to determine when and how the
27 alleged determination was actually made, test the accuracy and
28 reliability of the evidentiary record, and assess whether timely

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1 notice was provided, ensure the Tribunal is not relying on retro
2 -- retrospectively constructed or incomplete record. I
3 respectfully submit that the request is proportionate, targeted
4 and directly connected to the procedural fairness issues now
5 before the Tribunal. And I think in my Discovery Motion I
6 listed which items we needed.

7 Do you want me to go through the actual motion? You
8 have the actual motion notice. It's in the revised Notice of
9 Motion.

10 CHAIR: Yes. We've read it.

11 MR. MARKS: Okay.

12 CHAIR: I have some questions but you can keep -- I
13 can wait until you've finished your submissions.

14 MR. MARKS: Would you -- okay. I mean, it's in the
15 record. Would you like me to read it or you can ask some
16 questions? I mean, I've asked for the specific things. They
17 are there.

18 CHAIR: Yeah. So, here, I have a few questions.

19 MR. MARKS: Okay.

20 CHAIR: The Ontario Securities Commission's responding
21 letter yesterday raised the point about Tribunal rules and
22 source of authority for the Discovery Motion that you are
23 bringing. Can you guide us on where the source of our authority
24 to make the orders that you're seeking arise?

25 MR. MARKS: Um --

26 CHAIR: And I'm not meaning this to be a law school
27 exam but there --

28 MR. MARKS: Okay.

1 CHAIR: -- is an issue that's been raised by the
2 Ontario Securities Commission.

3 MR. MARKS: Okay. Okay. You know, I may have missed
4 it in his notes. I can't point to case law I guess. I mean, I
5 don't have time to point to case law. Maybe if given time, 15
6 minutes, I could probably do it, but I think it's just a
7 question of procedural fairness because those, for example, the
8 e-mails, I'm requesting e-mail -- only -- I'm only requesting
9 e-mails directly for those individuals regarding the January 8th
10 decision and things around the...the unsuitability, and this is
11 because it is critical because the CSE has claimed or Mark
12 Faulkner has stated that the reason that there was never the
13 memo, the January 8th memo, which they have now admitted, they
14 have now admitted was created after the fact, they admitted
15 this, you know, I guess a year later or more than a year later,
16 now Faulkner states that they actually made that decision based
17 on internal e-mail communications between Rob Cook, Mark
18 Faulkner, Rob Theriault. I think it's important for the full
19 evidentiary record to show that. Where are those e-mails? You
20 know, what did they say? Do they exist? It's very critical.

21 And, you know, in terms of cross-examination, it would
22 really be the, you know, the same -- the same thing. I mean,
23 you know, Mark Faulkner has basically denied everything or
24 actually, I'm sorry, let me back up.

25 Let me just say we have not -- we have not had a
26 chance to cross-examine Rob Cook, who is a senior member of that
27 Listing Committee, who was involved with the decision, and he
28 also is -- you know, we pointed out several alleged conflicts of

1 interest which exist, you know, we have alleged exist between
2 him and some of the people, and we have not had an opportunity
3 to address that, excuse me, to test the evidence. It's really
4 -- it's absolutely critical.

5 I mean, this is, Adjudicator Burke, and the Panel, you
6 know, respectfully, this...this is not a trivial case. I know
7 it sounds like it's one person the CSE has tried to, you know,
8 position me as, you know, this disgruntled, American guy, this
9 overaggressive guy who's, you know, been badmouthing us and all
10 that. It goes beyond that.

11 This really is a matter, this type of behaviour that
12 we saw, procedural fairness issues, you know, which really
13 violate natural justice, this totally undermines, you know,
14 confidence and the integrity of the capital markets.

15 So, I think that the Panel should take all measures to
16 ensure that, you know, there is a full complete evidentiary
17 record. Whether I'm right or wrong or whatever, I will leave it
18 to the Panel to determine. But the evidence does need to come
19 forward, otherwise, it's just -- it's not unfair. It's just not
20 unfair to me, it's unfair to the, you know, 4,000 shareholders
21 of New World Solutions who have lost millions of dollars and
22 other Canadians who are going to be affected by this type of
23 behaviour. If it's not -- if it's left unchecked, this will
24 actually, you know, make the CSE feel like it's completely above
25 the law. If they can get away with this, you know, their powers
26 are unchecked.

27 I would -- I would submit that Mark Faulkner is the
28 most powerful man in the Canadian capital markets because he's

1 been able to act with total impunity in very serious matters and
2 nothing has been done about it. So, I think it's very
3 important.

4 And I think the OSC, frankly, should be also concerned
5 about this coming forth. Again, it's a matter of public
6 interest. This issue is going to be a matter of public record
7 and I think the public -- I don't think it would be a good look
8 for the public to know that the OSC did not want this evidence
9 to come forward. I think, frankly, it's shocking that...that a
10 regulator is...is trying to, I'm using the word -- if I may use
11 the word "cover-up," but I don't know what the proper word in
12 legalese, but essentially trying to cover up, you know,
13 misconduct and procedural fairness issues. I think -- I'm not
14 telling him what to -- how to do his job but I think his job,
15 his mandate, is to protect -- is literally investor protection
16 concerns, the broader investor protection concerns which is at
17 least 4,000 shareholders of New World Solutions that have lost
18 \$5,000,000 versus a trivial issue about a transcript and
19 e-mails, excuse me, e-mails which they're claiming.

20 Again, Mark Faulkner says they made the decision
21 internally. We need to test the evidence. What are they trying
22 to hide? That's the question I've been asking sometimes in very
23 aggressive ways and which..which...which the CSE -- which the
24 CSE brought up, but that's been at the heart of it is the
25 procedural fairness questions. They were acting in this opaque
26 manner and, you know, sunlight is the best disinfectant.

27 CHAIR: Mr. Marks, a question for you about your
28 Discovery Motion. So, as I understand it, one piece of it is

1 that you're looking for -- you're asking the CSE to produce to
2 you or asking us to order the CSE to produce to you internal
3 communications among certain individuals related to certain
4 topics.

5 I understand from the record of original proceeding,
6 and I think you referred to this earlier in your other
7 submissions, that your counsel, as early as November 1, 2024,
8 was writing to the CSE demanding copies of internal
9 communications.

10 So, in light of that, and as I see it, that complaint
11 is repeated in multiple places, including in the written
12 submissions that your counsel filed for the May 2025 Board
13 hearing.

14 So, in light of that, can you explain to me why you're
15 bringing this motion now only a few days before the merits
16 hearing which has been scheduled for months? It's not -- I need
17 to understand why -- just wait a second -- I need to understand
18 --

19 MR. MARKS: Sure.

20 CHAIR: -- why, and this is part of the Leave Motion
21 as it relates to your Discovery Motion, why is this happening so
22 late and what is the explanation for that when this was an issue
23 that was certainly raised by your counsel as early as November
24 1, 2024?

25 MR. MARKS: Right. Okay. So, I'm going to try -- I'm
26 going to try to understand or explain as best as I could. We
27 asked for the materials almost two years ago. Those materials
28 are critical to the original decision. The CSE never produced

1 them. We kept asking for them.

2 I think in, you know, later, you know, during the
3 Tribunal I guess submission to get this into the Tribunal, I
4 don't know if he raised it or didn't raise it, but the fact is,
5 you know, there's been a lot of paperwork that's gone through
6 between my counsel. There's been a lot of delays which is out
7 of my hands. My intention was to get through this as fast as
8 possible. Again, I only became self-represented recently. This
9 is -- and I need -- if that matter wasn't raised, it should have
10 been -- I mean, the CSE should have delivered that information,
11 frankly. I think -- I think, if I'm not mistaken, again, I
12 don't have it in front of me, I'm sure my...my counsel asked for
13 this material now. But it's actually come up -- it's actually
14 come up just now in this new affidavit and this new -- this new
15 cross-examination. It was raised again and in a very big way.
16 It was raised in a very big way because apparently the whole
17 thing is, you know, done in this, according to Mr. Faulkner,
18 they don't -- he's basically implying that they don't need to
19 have anything on paper. They don't need to do anything. They
20 made a decision amongst themselves and it's none of your
21 business what we said. That's basically his attitude I think,
22 and I think that's absolutely -- you know, again, everything
23 here comes down to procedural fairness. I only know, you know,
24 if my counsel missed, he didn't have an opportunity to ask or if
25 he did ask. I actually don't know. I don't have the papers in
26 front of me. I just know where we are now.

27 I asked for these materials and I think they are
28 critical. There should be really nothing to hide. I mean,

1 these materials are actually the core, they're actually the core
2 of the whole case. That's why the issue was raised in November
3 of 2024. It was raised day one. It was raised on day one and
4 it's never been addressed. The evidence has never been produced
5 and that's one of the reasons, frankly, behind my, you know,
6 so-called aggressive behaviour is I find that absolutely
7 insulting to investors, that type of arrogance, institutional
8 arrogance, which is what it is and, you know, I believe the CSE
9 should be, frankly, should be sanctioned. I don't know if -- I
10 don't know if the Tribunal has the power in that or the OSC has,
11 but this is -- I don't know. I actually am shocked that I have
12 to explain why I need -- why I need the e-mails. They're at the
13 heart of the whole case.

14 CHAIR: I'm not asking you to explain why you need
15 them, although that's part of it. Like, it's why are you
16 waiting until two days before this hearing is scheduled to bring
17 this motion?

18 MR. MARKS: Okay. Because I only -- again, so I only
19 became self-represented I believe it was ten days ago. I was
20 told to file motions. I filed my motions as soon as I could.
21 So, any motion that you have in front of you, any of my
22 requests, I thought I gave them as soon as I could. Okay. I
23 did everything possible --

24 CHAIR: Mr. Marks. Mr. Marks.

25 MR. MARKS: Yes.

26 CHAIR: Mr. Marks, the Panel gave you the opportunity
27 to file the Leave Motion because you had raised the issue in
28 your Adjournment Motion for the first time. So, the Panel is

1 giving you the opportunity to do it because we want to give you
2 the opportunity to do it.

3 But, again, looking at the record of -- record of
4 proceeding below, I see --

5 MR. MARKS: Right.

6 CHAIR: -- a letter from your counsel, who's been
7 counsel since at least November of 2024, raising the very
8 request, very issue, and it's repeated --

9 MR. MARKS: Okay.

10 CHAIR: -- in multiple materials, and the argument
11 about transparency is made and we want disclosure, including as
12 alternative relief in the May 8, 2025, written submissions filed
13 that went to the Board of the CSE asking for relief and an
14 investigation and disclosure of documents, and yet we're now
15 almost, you know, it's a year later, right --

16 MR. MARKS: Yeah.

17 CHAIR: -- and no steps have been taken even though
18 there have been multiple appearances in this proceeding to
19 schedule steps in the proceeding.

20 MR. MARKS: Okay. So, I would say, you know, I guess
21 maybe my...my...my counsel screwed up. I mean, he did ask for
22 it. If he was supposed to produce a Discovery Motion, he should
23 have done it. My counsel has failed me, clearly. Again, you
24 know, the process has gone on a long time. But I think -- I
25 think that failure of counsel, and I was relying in good faith
26 on my counsel, the fact that he failed to produce Discovery
27 Motions and, by the way, I'm sure you already know based on my
28 tweets, you know, my personality, I pushed him very hard to

1 become very aggressive in getting everything, you know, with a
2 number of things, including litigation, other issues, and he
3 wanted to wait. He's got, apparently, he's got other big
4 clients. I don't know what the issue is. The problem is I was
5 not aware of any deficiency. In good faith, I was not aware of
6 any deficiency in terms of seeking -- that we needed to file a
7 Discovery Motion.

8 I guess what I'm trying to ask in plain English,
9 Adjudicator Burke, is, are you saying basically that my counsel
10 was supposed to have filed a Discovery Motion, is that the
11 bottom line?

12 CHAIR: I'm not saying anything. I'm asking you to
13 explain why you're not -- why this is not being done too late?

14 MR. MARKS: Because I had no control over it. I had
15 no control. I was relying on counsel. And when I was no longer
16 working with counsel, which became I think about two weeks ago
17 or whatever the timeline is, that's when I took action at my
18 earliest -- as soon as I had the opportunity. That's why. I
19 can't explain it any better. I acted in good faith. I relied
20 on counsel. If my counsel didn't do something and, again,
21 apparently there's a record of a lot of delays, a lot of
22 adjournments which was not...not...not something I wanted, okay.
23 I wanted to get this thing done in two years ago almost.

24 So, you know, if it wasn't asked, it was because my
25 counsel didn't ask for it. Again, I relied in good faith. At
26 this point I think the court should consider again -- I think
27 the court should apply natural justice here. Natural justice
28 and procedural fairness in saying, okay, now that I'm

1 self-represented, allow me the opportunity to do what is
2 supposed to be the right steps, which I have been doing, and if
3 you're telling me that, you know, because my counsel screwed up,
4 I don't know what else to say. I've done my best.

5 CHAIR: I'm not saying -- I'm not saying your counsel
6 screwed up, but I am saying your counsel was representing you,
7 and we have to take what your counsel did as being done on the
8 authority of you and representing you. So, it's not like
9 everything starts again from the beginning because you're now
10 self-represented. That's what I'm saying.

11 MR. MARKS: I understand that, but this is a critical
12 issue which is not -- I don't think, you know -- I don't think
13 -- it shouldn't be a big deal. Again, they should have nothing
14 to hide.

15 I could say this, I'll add this, there's going to be
16 civil litigation and those issues I'm going to ask for discovery
17 of that. So, at some point it will become a matter of public
18 record. So, you know, if you don't want to -- you know, I can't
19 -- I can't tell -- I'm not in a position to tell the Tribunal
20 what to do. I've only raised procedural fairness concerns which
21 have been at the heart of this case and really natural justice.
22 I have nothing else to add on this.

23 CHAIR: Thank you. Just one point. On your list of
24 people that you want to cross-examine, it's a bigger list in
25 your Discovery Motion than in your Leave Motion. Your Leave
26 Motion I think refers to two or three names.

27 MR. MARKS: Okay.

28 CHAIR: Do you know whether that was an error? So, in

1 your Discovery Motion -- in your Leave Motion, you refer to Rob
2 Cook, Rob Theriault and Mark Faulkner.

3 MR. MARKS: Okay.

4 CHAIR: In your Discovery Motion, it's a much longer
5 list, was that intentional?

6 MR. MARKS: We could shorten it. No, no. It may have
7 been a mistake. I don't know. We could shorten it. I mean,
8 mainly...mainly I need Rob Cook. Rob Cook is the main one. I
9 would like a further opportunity to cross-examine Mark Faulkner.
10 Rob Cook I think is central to the case, very central. And I
11 would have a very, very short, very quick cross-examination of
12 Trista Cook and Alexandra Cosgrove, which would basically be,
13 you know, five questions maybe. It wouldn't be -- it would just
14 be a few things relating to -- relating to the PIF, that's all
15 it would be related to.

16 CHAIR: Okay.

17 MR. MARKS: I don't see any more than five questions
18 for those two. And with Rob Cook, it might be, you know, I
19 might need some time because he was basically there with Mark
20 Faulkner.

21 CHAIR: Thank you. Okay. So, then we're over to CNSX
22 for responding submissions.

23 MR. MCCOOMB: Thank you. And I'll be I think
24 extremely brief. Just to make sure I understand correctly, my
25 understanding from Mr. Marks's submission is, based on our
26 correspondence of yesterday, he's withdrawing his request for
27 any kind of discovery related to the record of the appeal
28 itself. He made a comment to that effect during his submission

1 this morning or this afternoon, rather. I just want to make
2 sure that's right so I don't spend any time on it. Is that your
3 understanding as well, Madam Adjudicator?

4 CHAIR: I don't think he actually addressed that.

5 MR. MCCOOMB: It's in part because he made a comment
6 to the effect that he stopped short in reading it in his list
7 and said, "oh, no, we got that yesterday."

8 CHAIR: Okay. From what I saw, there was something
9 about a transcript that had been, but not an official
10 transcript, a transcript generated by a Zoom platform maybe.

11 MR. MCCOOMB: That's right. And it was given to Mr.
12 Narwal on May 13th, 2025, the day of the appeal hearing itself.
13 We made sure Mr. Marks had that. I just want to understand if
14 that's what he was referring to when he held back on any
15 submission on that point because, otherwise, he hasn't addressed
16 it in his materials.

17 CHAIR: So, bear with me, and that's my fault for not
18 focusing enough on that. We may have to go back to Mr. Marks on
19 this so just let me just pull up the motion. So, it's the
20 Discovery Motion.

21 Mr. Marks, one thing your motion says you're seeking
22 is production of the record, including the hearing transcript,
23 any audio recording, if available, hearing exhibits, submissions
24 and hearing briefs, correspondence relating to the hearing, and
25 any endorsements, rulings or written reasons arising from that
26 proceeding.

27 My understanding from having reviewed the original
28 record is that certainly the written reasons are part of the

1 record. There is correspondence between the parties relating in
2 the lead-up to that hearing. I don't know if it's everything or
3 whether you say something is missing. We have the written
4 submissions of both sides filed by your counsel and then filed
5 by Mr. McCoomb for that May hearing before the Board panel.
6 There is something about the transcript that seems to have been
7 exchanged. Is there anything that you're still seeking or that
8 you're not satisfied with on that?

9 MR. MARKS: No. No. No. No. No. The only thing
10 I'm really seeking is the two things I addressed which is the
11 e-mails and a cross-examination, that's it.

12 CHAIR: Okay. Yes. Okay. So, it sounds like that
13 ground -- that order -- that relief order is not being sought
14 because it's been satisfied. That's what I understand, right,
15 Mr. Marks?

16 MR. MARKS: Yes.

17 CHAIR: On your Discovery Motion, what I just read
18 about having to do with materials related to the hearing in May
19 2025, you have what you need?

20 MR. MARKS: I have the transcript. I'm looking at it
21 right now. I think I asked for the audio recording, if
22 available. You know, I think I'm fine. I'm willing to
23 compromise if they, you know, just pass -- you know, my main
24 thing is the e-mails and cross-exam. That's all I need.

25 CHAIR: Well, I mean, if it's materials that are part
26 of the original proceeding, and I would say if there is a
27 transcript, that would be part of it presumably, it sounds like
28 you have it. We don't have it.

1 MR. MARKS: Yes. You don't have it?

2 CHAIR: No. We don't have it.

3 MR. MCCOOMB: I don't believe it's part of the
4 original record --

5 CHAIR: Okay.

6 MR. MCCOOMB: -- because it's not an official
7 transcription. But in the interests of trying to help Mr. Marks
8 answer his question about the content of that attendance, we've
9 given him the audio-generated transcript as of a year ago. So,
10 that's the best we've got to work with, as far as I know at this
11 point, in terms of official resources, and I do hope that
12 answers the question as to what went down at that attendance.

13 CHAIR: Okay. So, Mr. Marks, you're not seeking
14 anything further in that regard, materials relating to --

15 MR. MARKS: No, not regarding the hearing. I mean, I
16 would like to know if there's internal communications between
17 the Panel members. I think that would be -- but I don't know if
18 that's available. I don't know, is that available? Can I
19 request that? That would be helpful.

20 CHAIR: You can't request that because it's not part
21 of your motion and it wouldn't ordinarily be something that
22 would be ever part of the record.

23 MR. MARKS: Okay. Okay. All right. Let's move on.

24 SUBMISSIONS BY MR. MCCOOMB RE MR. MARKS' THREE
25 MOTIONS:

26 MR. MCCOOMB: Let's move on. As I said, I'll be very,
27 very brief. Because of the consent I've already communicated on
28 behalf of my client, I will focus on the Discovery Motion which

1 is a separate issue as Mr. Marks has framed it. I will keep
2 this simple and direct, in part, to answer your question,
3 Adjudicator Burke, about where authority flows from.

4 The authority flows, at first instance, from the
5 Securities Act, sections 8 and 21.7. Our understanding of the
6 framework for this proceeding flows from Rule 17 of the Capital
7 Markets Tribunal's Rules of Procedure which, as I said in my
8 letter of yesterday, contemplates something akin to an appeal
9 with a limited right to adduce fresh evidence where it can be
10 established, as I think the OSC has explained quite accurately
11 in its own submission, where that fresh evidence is both new and
12 compelling.

13 The primary difficulty, as observed in our written
14 submissions of yesterday's date, with Mr. Marks's request is
15 that, by and large, the content of the evidence that he seeks to
16 adduce through his Discovery Motion is unknown. And so from our
17 perspective, it, by its nature, can't be explained as how it
18 could be new or compelling. He doesn't know what it is so as to
19 be able to address its character.

20 Now, of course, that's not to say this Panel could
21 never summons an individual to testify or to compel a party to
22 produce documents. It does in different contexts.

23 As Mr. Lockhart explained earlier today, there's
24 relatively scant jurisprudence on what happens in this Tribunal
25 in a Rule 17 Application for Hearing and Review. So, we don't
26 have much to go on. We have maybe some new law after this
27 hearing but, of course, we're limited in that respect to that
28 concept of what's new and what's compelling.

1 So, asking for a broad swath of discovery of
2 correspondence that Mr. Marks, even if it exists, has never laid
3 eyes on, by its nature, cannot be new or compelling.

4 The same goes for testimony of individuals. He
5 doesn't know what they're going to say, it can't be new and
6 compelling.

7 That is as true for the individuals, other than Mark
8 Faulkner, as it is for Mark Faulkner but, of course, as we've
9 said in our letter, if you want to know what Mr. Faulkner says
10 in response to some of Mr. Marks's questions on matters that may
11 or may not have anything to do with what Mr. Marks says in the
12 main on the merits next week, you can have reference to his
13 transcript, two hours of cross-examination at rapid fire.
14 You've already seen it. Again, it's a question of relevance but
15 we don't take issue with it going in to help us expedite all of
16 this.

17 The only other thing I'll say is what I said in my
18 letter, which is this whole proceeding is framed through the
19 modus operandi of this Tribunal, and with particular emphasis
20 here on justice and cost effectiveness and proportionality.
21 This whole exercise needs to be proportional to the ask and to
22 what's gone on. And at this point in time, we will be a year
23 into this. We will now be it seems like three days of hearing,
24 including these motions. That's plenty to get to the bottom of
25 what the issue is as between the parties in this case, and it
26 doesn't entail the sort of at hearing discovery that Mr. Marks
27 is looking for.

28 I'm happy to answer any questions you have but I don't

1 want to reiterate anything I've said in our letter.

2 MR. MARKS: Can I respond?

3 CHAIR: You will have an opportunity.

4 MR. MARKS: Can I respond?

5 CHAIR: Mr. Marks --

6 MR. MARKS: Okay.

7 CHAIR: -- you will have an opportunity to reply after
8 we hear from -- we finish with Mr. McCoomb and we hear from Mr.
9 Pettypiece.

10 MR. MCCOOMB: And I'll take my seat if you don't have
11 any questions.

12 CHAIR: Thank you.

13 MR. MCCOOMB: Thank you.

14 CHAIR: Mr. Pettypiece.

15 SUBMISSIONS BY MR. PETTYPIECE RE MR. MARKS' THREE
16 MOTIONS:

17 MR. PETTYPIECE: I'll be brief as well. We don't have
18 anything further to add with regard to the Leave Motion.

19 I just have, you know, a general point to make that
20 really applies to both the Discovery Motion and the New Evidence
21 Motion and that is again refocusing the analysis on the
22 framework for admitting new evidence. All of these motions are
23 brought under the same framework.

24 And the concern is really -- you know, the new and
25 compelling standard is clear, and the concern isn't just with
26 this proceeding and, you know, letting it slide here just to
27 expedite things and have things go faster in this proceeding.
28 It's what's going to justify that in the Panel's reasons and

1 what might open the door to similar motions being brought in
2 future proceedings and how does that follow on effects of the
3 complexity, cost and duration of those proceedings because,
4 fundamentally, we're dealing with review proceedings that are,
5 by and large, done on the original record of proceeding.

6 There are exceptional instances like we talked about
7 the CSE's motion where new evidence can come in, but just
8 allowing any other evidence to come in because it makes things
9 convenient to move the hearing forward, I would just caution
10 could create problems in future hearings.

11 So, maintaining the integrity of the new and
12 compelling standard, and its parallel to the Canada Malting
13 factor, I think it's just generally an important consideration.

14 Moving more towards Mr. Marks's comments, I didn't
15 hear anything in his submissions that differed substantially
16 from what I saw in the Motion Record and affidavits in terms of
17 the reasons or the grounds I should say for admitting the
18 evidence and seeking production and cross-examination of
19 witnesses.

20 So, we would stand by the comments we made in our
21 written submissions which is he's not explained why this
22 material meets the compelling standard, and that's on any
23 interpretation of that word, whether it would change, again,
24 we're focused on whether it would change the outcome from the
25 original proceeding or the grounds on which the original
26 proceeding was decided and, in our view, which seems to differ
27 substantially from Mr. Marks' view, the heart of this proceeding
28 is the suitability determination, not a trial process.

1 So, that's how we see it. We focused clearly our
2 merits submission entirely on the core substantive assessment
3 that's at issue here and not issues of process which we're not
4 commenting on.

5 So, because the same standard applies to the CSE, as
6 it does to Mr. Marks, he also has the ability to establish
7 exceptional circumstances for admitting this evidence. We say
8 he hasn't done so. It's not enough to just say the words
9 "procedural fairness" over and over again.

10 I think it's incumbent on Mr. Marks to identify
11 precisely what's in the evidence that he seeks that speaks to
12 the issue of whether it's compelling, how it would change the
13 decision, how that evidence over and above what's already in the
14 record on issues of process would change the original decision
15 or this Panel's approach to the Canada Malting factors. I think
16 that's what's on Mr. Marks to explain and I haven't heard an
17 explanation of it.

18 So, subject to questions from the Panel, those are our
19 submissions on the motions.

20 CHAIR: So, a question for you, Mr. Pettypiece. You
21 made submissions earlier on the CNSX motion about compelling and
22 being able to potentially characterize the test for what is
23 compelling as, you know, maybe not changing the Board's decision
24 but having the Board make it on different grounds.

25 So, similarly, is there a world in which the evidence,
26 for example, the affidavits or portions of the transcript around
27 process, recognizing your ultimate position that process and
28 fairness is not what we're talking about here, we're looking at

1 suitability, I understand, but is there a world in which that
2 evidence, had it been before the Panel in May of 2025, and there
3 were issues about process and fairness that were clearly raised
4 in the written submissions filed on behalf of Mr. Marks at that
5 time, is there a scenario in which it could be compelling
6 because the Board might have said something about the fairness
7 of the process?

8 MR. PETTYPIECE: I think we're at a bit of a
9 hypothetical there but --

10 CHAIR: It's always going to be hypothetical.

11 MR. PETTYPIECE: No, I understand. I understand. But
12 what I'm saying is the onus is on Mr. Marks to identify those
13 aspects of his evidence.

14 I see nothing in the material that was filed that
15 would meet the standard that you just described that would
16 change the grounds of the decision or impact the grounds of the
17 decision. If he says there is, then he can point to that line
18 in the transcript and say here's a new fact that's not in the
19 record anywhere else. Here's a specific admission that would
20 have changed that and here's the argument.

21 CHAIR: Hasn't he pointed to the admission that the
22 January 8, 2024, reasons were prepared after January 8, 2024?

23 MR. PETTYPIECE: I believe that's already in the
24 record and I think the CSE even acknowledges that in their
25 submissions that it's after the fact.

26 That's my point. It has to be something over and
27 above what's in the record to justify allowing new evidence.
28 And the CSE is sitting right beside me so they can correct me if

1 I'm wrong, but I don't think there's any dispute that that
2 decision was drafted or finalized after the date on the face of
3 it and I think it's already in the record.

4 CHAIR: Okay.

5 ADJUDICATOR WAECHTER: I have a couple of questions.
6 One, I took from your written submissions that you were saying
7 that, if we let in this proposed new evidence, then we are
8 essentially deciding to hold a hearing de novo, did I
9 misunderstand that?

10 MR. PETTYPIECE: I would maybe describe it in a more
11 detailed way, in that, in the sense that there is a parallel
12 between the new evidence standard and, again, that sort of
13 presupposes what this Tribunal does with that standard, but
14 because there is a parallel between the new evidence standard
15 and the Canada Malting factor, which is that, you know, if that
16 factor is met, the decision can be set aside, ordinarily, if one
17 factor is met, it would be met in the Canada Malting centre.

18 Of course the Tribunal has overriding discretion not
19 to set aside a decision, but our position is that, if the factor
20 is met in this case, the Tribunal is in a situation where it's
21 going to be looking at the de novo or, sorry, the suitability
22 assessment de novo.

23 ADJUDICATOR WAECHTER: I still think that that is you
24 saying that, if we decide the New Evidence Motion, we're
25 essentially deciding the Canada Malting factor.

26 MR. PETTYPIECE: I think, given the relationship
27 between the two standards, most often that will probably be the
28 case. But as I mentioned, the Tribunal has residual discretion

1 under Canada Malting not to set aside a decision. I'm just not
2 quite sure, like, we're talking about in sort of generalities,
3 not quite sure when that would happen or why, and I haven't seen
4 a case where it has happened.

5 ADJUDICATOR WAECHTER: Well, would you say that
6 there's any hazard in us deciding the Evidence Motion before we
7 hear full Canada Malting submissions?

8 MR. PETTYPIECE: I don't think there's a hazard but,
9 in the circumstances of this case, you've got all the
10 submissions before you right now. We've got submissions on the
11 merits which are directed to Canada Malting and directed to the
12 merits de novo. So, it's a bit artificial in this case to pull
13 that apart because it's all in front of you right now.

14 CHAIR: But we haven't heard the oral submissions on
15 those points that we'll be hearing about next week.

16 MR. PETTYPIECE: Right.

17 ADJUDICATOR WAECHTER: And I have -- sorry, do you
18 have anything further on that point?

19 CHAIR: Just triggering off of what Adjudicator
20 Waechter has been asking you about, is there potentially a
21 difference regarding, you know, admitting new evidence because
22 it's new and compelling, and the tie to the Canada Malting
23 factors, is there a difference where the evidence goes to
24 something like process fairness as opposed to what you say is
25 the ultimate question of unsuitability?

26 So, now I'm saying, can we draw a distinction
27 between the type of evidence that Mr. Marks is looking to have
28 admitted as new and compelling going to process and fairness

1 versus the type of evidence that CNSX is looking to have
2 admitted which is an enhanced record of information going to
3 suitability?

4 MR. PETTYPIECE: Yeah. I think -- I think that's a
5 helpful distinction to draw, and it's sort of -- it gets into
6 our merits factum and how we say the Panel should address issues
7 of procedural fairness when they're raised in review
8 proceedings.

9 And the position described in our factum is it's
10 essentially still under the Canada Malting factor. And what the
11 Panel is assessing in terms of issues of fairness under Canada
12 Malting is whether there is an issue of fairness or process that
13 either prevents you from conducting a Canada Malting analysis
14 for some reason or that engages one of the factors.

15 So, I think if we're talking about the standard for
16 admitting new evidence that is process focused, you know, I
17 think your focus is still, you know, looking down the line, is
18 this the type of evidence that would be -- that would raise that
19 issue at the Canada Malting stage? So, there's still a parallel
20 between Canada Malting, but you might not only be focused on the
21 new evidence factor but say, you know, does this new evidence
22 raise an issue of process that would cause me to find, you know,
23 that material evidence was overlooked, for example? That's
24 another Canada Malting factor.

25 So, I think perhaps, when you're talking about issues
26 of process, it broadens a little bit in terms of how you conduct
27 a Canada Malting assessment, but there's still that relationship
28 between, you know, why are we admitting this new evidence?

1 Well, we're only admitting it if it -- if it is material to the
2 Canada Malting analysis.

3 ADJUDICATOR WAECHTER: I have one more just to be sure
4 that I understand where we are here. I'm hearing that CNSX it
5 consents to the new evidence, being the transcript and the
6 affidavit of Mr. Faulkner going in, but I'm hearing you say, and
7 I think you're saying, we should be careful about letting that
8 in. So, how does it work given everybody's status as parties
9 here?

10 MR. PETTYPIECE: Well, I think -- yes, I mean, the OSC
11 is a party as well, and I think my -- the OSC's objection
12 creates the unfortunate situation that it forces a decision on
13 that issue. If we were to consent, you know, it's a different
14 scenario and you wouldn't have to engage in the analysis. But,
15 again, we're focused not just on this proceeding, but all these
16 proceedings, and just allowing new evidence to come in because
17 it seems relevant to an issue that might be tangential to a
18 proceeding is going to create an unwieldy process for potential
19 future proceedings or I shouldn't say is going to but could
20 create an unwieldy process and open the door to these types of
21 motions and more complicating processes going forward.

22 So, that's the lens that we're looking at this, not
23 necessarily hyperfocused on the specific evidence here.

24 ADJUDICATOR WAECHTER: Thank you.

25 CHAIR: I am just mindful of the time. So, Mr. Marks,
26 it's now your opportunity to reply to anything that you've heard
27 from either CNSX's counsel or from the Ontario Securities
28 Commission, and you have -- you have -- you've used up 35

1 minutes of your 57. So, you have -- you have a fair bit of time
2 if you need it. You don't have to by any means use it, but it's
3 not intended to walk over old ground. It's intended to
4 respond --

5 MR. MARKS: Oh.

6 CHAIR: -- directly or reply more directly to what
7 you've heard. We're scheduled to have a 15-minute break
8 shortly. So, if you would like to think about what you want to
9 say or we can deal with it --

10 MR. MARKS: Yeah.

11 CHAIR: -- first. It's really what you think is best.

12 MR. MARKS: So, you're saying I'm going to have -- I
13 could -- I could take my 20 minutes after the break, is that
14 what you're saying?

15 CHAIR: You can but it's not to make the same
16 submissions over again. It's really now to address what new
17 things that --

18 MR. MARKS: I'm going to address --

19 CHAIR: -- had come up.

20 MR. MARKS: I could -- I could address it now. I
21 mean, it will take me, I don't know, maybe 10 minutes to
22 address. Could we just do it now while it's fresh? I think we
23 should just -- you know, can we --

24 CHAIR: I think -- I actually think that we should
25 probably take a break. Let me see.

26 MR. MARKS: Because I think the important issue --

27 CHAIR: That's fine. Ten minutes is fine.

28 REPLY SUBMISSIONS BY MR. MARKS RE MR. MARKS' THREE

1 MOTIONS:

2 MR. MARKS: Yeah. I mean, important issues have come
3 up. I apologize to the Panel that I was, you know, trying to
4 keep from laughing. You know, my learned colleague, Mr.
5 Pettypiece, from the OSC, was doing, you know, world-class,
6 Olympic-level contortionist gymnastics, mental gymnastics. I
7 mean, it's incredible.

8 I think really what -- I'm going to talk about why
9 this is compelling evidence, why it's new, but I'm talking about
10 material evidence. The fact that these e-mails, Mr. Faulkner
11 himself, the chief regulator of the CSE has claimed the entire
12 decision was made in these e-mails, their material, and he's
13 saying that, if you allow this to happen, and this is going to
14 open up the door to whatever. I'm only asking for a few
15 e-mails. This is very targeted, e-mails related to the decision
16 of suitability. I'm assuming there's probably 40 e-mails in
17 total. I'm not looking for a fishing expedition. I'm not
18 looking for, you know, Richard Carleton's e-mails to whoever. I
19 just want these three -- these three people, okay. So, it's not
20 a big deal.

21 And the public interest, the public interest far
22 outweighs, far outweighs, you know, some trivialities about, you
23 know, extra burden or some little extra cost that might happen
24 down the road if somebody has to produce e-mails or whatever.
25 This is -- this is -- frankly, I'm shocked because, again, the
26 OSC's job it should be investor protection concerns which is
27 clearly I think the OSC is more concerned about, you know, their
28 reputation, cover-ups, or convenience than the public -- than

1 the public interest of 4,000 investors who lost \$5,000,000.

2 So, the issue is not simply, you know, whether the
3 e-mails physically existed earlier. Okay. The issue is whether
4 they are of significance and relationship to the evolving
5 rationale underlying the suitability decision only became
6 apparent from the development of evidentiary record and
7 subsequent cross-examination. It's new. We didn't have -- it
8 just became -- now is when it -- I think -- I would think I
9 would say that Mark Faulkner doubled down on why it's critical.
10 This is the last cross-examination, double down on why. And the
11 fact that it wasn't produced before, why -- even when my
12 attorney asked for it, again, I don't know why this -- why there
13 was no discovery, why he didn't push back. But this was the
14 first thing that came up.

15 So, again, I submit that the e-mails are material
16 because they bear directly, the e-mails bear directly on the
17 issues of consistency, credibility, timeline, decision-making
18 processes, and evolution of the rationale relied on by the CSE.
19 So, these are not, you know, collateral procedural complaints.
20 This is not like a trivial thing. They speak directly to the
21 reliability and integrity of the process underlying the
22 decisions under review. This is the core of it. The whole case
23 rests on the e-mails and that is critical because Mark Faulkner
24 is claiming the decision allegedly of January, where they deemed
25 me unsuitable, was based on this, you know, top-secret, internal
26 thing. Well, show us the e-mails. I mean, we've asked for it
27 forever.

28 So, in circumstances involving serious reputational,

1 economic consequences, and there have been serious reputational
2 and economic consequences in the millions of dollars, you know,
3 I would submit that the Tribunal should favour complete and
4 transparent evidentiary record rather than an artificially
5 narrow one. Do I have more time?

6 CHAIR: If you have more -- if you have more that you
7 want to reply to.

8 MR. MARKS: I go back to the e-mails. I have more
9 notes. I have a lot of notes on the e-mails because they're
10 critical.

11 CHAIR: Mr. Marks, I'm going to focus you because, for
12 fairness sake --

13 MR. MARKS: Okay.

14 CHAIR: -- you should really --

15 MR. MARKS: Yes.

16 CHAIR: -- only be replying to things that came up
17 from this side of the room or from the questions that were posed
18 and answered by this side of the room because, otherwise, it's
19 not --

20 MR. MARKS: Okay.

21 CHAIR: -- fair to them because you might be raising
22 new arguments that they won't have a chance to respond to.

23 MR. MARKS: No. No. No. I pretty much I've wrapped
24 up. I just want to say, look, the e-mails I think -- I think
25 it's very clear why the e-mails are critical, absolutely
26 critical.

27 Why it's compelling? Because it's new. We didn't
28 have access to it. It just came up now. He repeated it again.

1 And we should have had it. I think, in fairness, they should
2 have delivered it in whatever. And, again, this was outside of
3 my control because I was not the counsel.

4 So, this is not a big ask. And compare, again, to,
5 just by contrast, I just want to make a contrast, I don't know
6 if I raised this before, the OSC and the CSE, they're arguing
7 compelling new evidence, they raise compelling new evidence, you
8 know, a bunch of tweets, a bunch of insulting tweets, juvenile
9 tweets. That was their compelling evidence and insulted egos of
10 a few executives.

11 My compelling evidence, by contrast, speaks to 5
12 million, excuse me, \$5 million in savings lost by hard working
13 Canadians, 4,000 of these investors, most of them who are
14 immigrants, by the way, so they're going to be burned by the
15 Canadian system forever if they lose their money, and the CSE
16 markets depend on these people. So, that's compelling. The
17 fact is the public interest far outweighs, is much...more more
18 compelling than some sort of an insult tweets. So, again, if
19 they consider their evidence compelling and new, this should be
20 considered compelling and new.

21 And I would say, you know -- so, anyways, I'm not
22 seeking speculative or, you know, open-ended discovery, okay.
23 The request is narrowly tailored, specific to specific
24 individuals, a defined time frame, defined time frame, and a
25 precise subject matter relied upon by the CSE themselves.

26 So, you know, in circumstances where chronology,
27 timing, evolving rationale, retrospective record creation are
28 central, disputed issues, fairness requires access to the

1 underlying contemporaneous communications relied upon by the
2 CSE. I'm done.

3 CHAIR: Thank you. Oh, you have a question.

4 ADJUDICATOR WAECHTER: I just want to be very clear,
5 Mr. Marks, what your response is to the point made by CNSX that
6 there's plenty of material right now to allow us to get to the
7 crux of the matter.

8 MR. MARKS: Should I answer that? Okay. No. I think
9 -- I think -- I think there is, you know, I mean, to me, I would
10 say it looks -- it looks, based on what I saw, from day one, it
11 looked to me like the whole thing was, I'm going to use the word
12 grossly deficient, unsupported instead of using the Ford [ph]
13 word, I'm going to say it was grossly deficient. I think that's
14 the politely correct word.

15 But the e-mails, I mean, that is -- that basically
16 proves the case. I mean, really that will prove the case I
17 think in terms of whether this thing really existed because
18 that's a big deal I think for a regulator because, again, we're
19 talking about market integrity. It really comes down to it.
20 I'm not trying to sound, you know, like -- but really it's the
21 integrity of the capital markets depend on this. If a regulator
22 tells you about something, you believe it's true, okay, you
23 believe it's true. You rely on it.

24 So, if Faulkner is telling us, yeah, we have these
25 e-mails, where are the e-mails and what were the actual
26 consideration?

27 Now, we do see a snippet allegedly, an alleged snippet
28 in some of the evidence. I have a screenshot which is I think

1 part of his affidavit where he claims, this is again a brand new
2 reason, a brand new reason that we just found out about, you
3 know, two weeks ago, a brand new reason for deeming me
4 unsuitable is that I criticized an issuer, a company called
5 AI/ML, a former client. I criticized them and I believe
6 basically I said that their financings were highly dilutive and
7 there was questionable people involved, including somebody who
8 was sanctioned by the OSC. I think Mr. Pettypiece should be
9 concerned about that.

10 So, yes, I brought up a serious whistleblower
11 complaint about somebody who had issues with the OSC before,
12 being involved with questionable financing activity,
13 questionable warrants being issued for I don't know what, really
14 for promotion but not labelled as such. I raised those issues
15 and I used aggressive language and some tweets because I was at
16 the time a shareholder of that company. I had about \$100,000
17 invested in that company which I helped them get through a
18 financing. If it wasn't for me and another investor, they would
19 have probably gone bankrupt.

20 So, I was annoyed with the CEO. I said some choice
21 things about him, and Mark Faulkner used that. Apparently, that
22 was one of the new reasons that I'm unsuitable because I
23 criticized an issuer.

24 And by the way, the stock at that time was about 20
25 cents. Today, I think the stock is three cents. So, yeah, my
26 criticisms were well-founded and it's not -- and it's shocking.
27 I think Mr. Pettypiece -- I mean, I don't know, I'm finding it
28 shocking that he's not more concerned about, you know, investor

1 protection concerns because, again, here's another case.
2 There's, again, you see there's a pattern of these cover-ups
3 of...of where the CSE is trying to shove down criticism,
4 critical criticism.

5 Again, that issue about AI/ML, that was -- it was
6 raised by many investors on the record, or CEO.ca, okay, on
7 message boards, it was raised by many investors.

8 I happen to -- I happen to -- I happen to raise the
9 same issue. I used slightly more colourful language, okay, and
10 that is the latest reason why I should be banned from the
11 Exchange, which I find shocking. I'm doing the regulator's job
12 which, I mean -- by the way, and this, Mr. Pettypiece should
13 know, is why SponsorsOne is coming up for a Tribunal, an
14 enforcement Tribunal I believe because it was a \$20 million
15 fraud because the CSE wasn't paying attention, okay. And I can
16 -- I can name dozens of companies, dozens and dozens of stocks
17 on the CSE which I would call questionable, okay.

18 You know, so...so the fact is that they actually want
19 to cover this up and not open up these e-mails is I'm actually
20 shocked. Maybe I'm naive. I always thought that regulators,
21 their job was investor protection. I mean, if it was the CSE, I
22 know for a fact that they would want, you know, they want to
23 have full transparency. And there's been this opaque, constant
24 opaque, you know, theme throughout the whole matter, throughout
25 the whole, even now, even the OSC is trying to cover up things.

26 And I actually think the Tribunal, it's in their power
27 to, you know, set things right as much as they can in terms of
28 natural law and in the interest -- in the public's interest.

1 It's really in the public's interest, otherwise, you're not
2 going to have a Tribunal. You're not going to have an OSC or a
3 CSE in a couple of years because the markets will just kind of
4 fail. I mean, I'm exaggerating but I think you understand the
5 consequences of, you know, when you have in, again, third world
6 countries where you have corruption, there's a reason why their
7 economies don't work. In the U.S., we have transparency. You
8 know, you have trust in the system. Trust in the system is
9 critical.

10 Here, the trust has been broken. That's the central
11 issue and that is what I believe the CSE wants to -- wants to
12 keep from becoming public and why they're being so aggressive in
13 I think over a trivial matter. A couple of e-mails should not
14 be a big deal. If there's nothing to hide, what's the big deal?

15 Again, I didn't have an opportunity to bring it up
16 because I didn't know that I could bring a Discovery Motion.
17 I'm not a legal expert. You know, this is all new to me that
18 became new in the last two weeks --

19 CHAIR: Okay.

20 MR. MARKS: -- so --

21 CHAIR: But, Mr. Marks --

22 MR. MARKS: Yeah.

23 CHAIR: -- we're now going over old ground. Is there
24 anything new that you want to say in response or reply to what
25 you heard?

26 MR. MARKS: No. Thank you. I appreciate your
27 patience. I think I'm done.

28 CHAIR: Okay. Thank you. So, I think what we're

1 going to do is we're going to take our break that we -- we're
2 going to take our break. We'll come back briefly just to give
3 the parties an idea about what we see happening going forward.
4 So, we'll come back at ten after four. Thank you.

5 --- Recess at 3:57 p.m.

6 --- Upon Resuming at 4:13 p.m.

7 CHAIR: Okay. So, just briefly, what we are going to
8 do is we are going to reserve our decision with respect to all
9 of the motions. So, Mr. Marks, what that means is, we haven't
10 made our decisions yet. We're going to deliberate and consider
11 still, okay.

12 To the extent, we're going to reflect on what we heard
13 today, to the extent that we can dispose of any of the motions
14 before the merits hearing starts up on May 13, we will do so by
15 way of an order. It may be that some of those motions may
16 continue to be reserved pending hearing submissions on the
17 merits of the application itself. To the extent that we can
18 make a decision before the merits hearing, we will do that as
19 soon as we possibly can, and you'll receive an order, okay.

20 So, Mr. Marks, is that clear to you? Do you
21 understand what I've just said?

22 MR. MARKS: I appreciate you asking. No. I didn't
23 understand in plain English the last part. So, what's the
24 bottom line? Like, I mean, I'm sorry, can you --

25 CHAIR: So, the bottom line is we have multiple
26 motions. We have three motions from you and we have the CNSX
27 motion.

28 MR. MARKS: Okay.

1 CHAIR: You've heard some submissions today and some
2 questions today around the implications of making decisions and
3 the impact that that might have on the merits application.

4 So, we're going to consider and deliberate. To the
5 extent we can decide any of the motions that we've heard today
6 before we resume the merits hearing next week, we will do that
7 and we will send an order. It may be that some of our decisions
8 will continue to be reserved until after we've heard submissions
9 at the merits application next week, okay.

10 MR. MARKS: Thank you.

11 CHAIR: Is that clear? Do you have any questions?

12 MR. MARKS: No. So, basically, next week is the
13 merits arguments, yes?

14 CHAIR: Yes, it is. Yes.

15 MR. MARKS: Okay.

16 CHAIR: And so we will resume --

17 MR. MARKS: Okay.

18 CHAIR: Sorry, I cut you off.

19 MR. MARKS: No. No. I'm just asking because I maybe
20 misunderstood. I think -- I thought you said like you could
21 make a decision before the merits argument but, no, that's not
22 the case. For whatever, you're going to reserve --

23 CHAIR: So, we've reserved. We have decisions on four
24 motions from today. We are reserving our decision on all four
25 of those motions. We are going to continue to consider them and
26 determine whether we can make decisions, whether we're in a
27 position to make decisions on those motions in advance of the
28 merits submissions next week.

1 To the extent we can decide any or all of those
2 motions, we will, and we'll do that by way of an order, which
3 you will receive, and we'll try to do that as soon as possible
4 so people have a better sense in order to prepare for the
5 hearing next Wednesday.

6 MR. MARKS: Okay.

7 CHAIR: So, I can't tell you --

8 MR. MARKS: Thank you.

9 CHAIR: -- any more than that, Mr. Marks, because we
10 don't know what our decision is, right.

11 MR. MARKS: No. I appreciate it. I'm sorry to ask --
12 have you repeat it three times but it's a been a very long week
13 and --

14 CHAIR: No. And it's complicated. It's complicated.
15 It's complicated and its lawyer speak and I'm trying to explain
16 it --

17 MR. MARKS: Thank you.

18 CHAIR: -- explain it plainly so that's why I'm asking
19 you.

20 MR. MARKS: Thank you very much.

21 CHAIR: Okay. So, with that then, unless there is
22 anything else anyone wants to raise, we will adjourn for today
23 and we will see everyone at 11 o'clock Toronto time on May 13,
24 Wednesday, May 13. So, we're going from 11:00 until 4:30 on May
25 13. And to the extent we need it, it will be resuming at 12:30
26 p.m. on the 19th of May.

27 MR. MCCOOMB: And for Mr. Marks's benefit, will he be
28 using this link or a new link for signing in for the hearing on

1 that day?

2 CHAIR: Madam Registrar.

3 THE REGISTRAR: So, Mr. Marks, you can continue using
4 the same link. It should be the same for Wednesday, May 13.

5 MR. MARKS: Okay. But am I -- okay. Am I going to
6 get an e-mail or something just confirming just whatever
7 decision, all that? I'm going to get the decision next week
8 some time before the, like --

9 CHAIR: As I've said --

10 MR. MARKS: -- Monday or Tuesday.

11 CHAIR: -- if we are -- if we determine that we are in
12 a position to decide any of the motions, we will do so as soon
13 as we possibly can and we will send an order that will indicate
14 our decision. Now you have a question, Mr. McCoomb.

15 MR. MCCOOMB: No. Just to observe that the discussion
16 we had this morning around scheduling, it was indicated that
17 there will be a scheduling order and that will give Mr. Marks
18 the details about where and when.

19 CHAIR: Definitely, yes. There will be a separate
20 scheduling order that will come out just confirming the times
21 and the dates that we agreed to today.

22 The one thing I would urge the parties to do is
23 consult with one another and figure out how much time you might
24 need and how you want to divide up the time because if you don't
25 need the full two days that we've set aside, that would be a
26 good thing to know. We'll certainly make ourselves available
27 but, you know, try to estimate how much time you need and how
28 you propose to do that. I'm going to canvass the parties at the

1 outset of the hearing on the 13th so that we will -- I don't
2 necessarily have to impose a timetable on people. Hopefully it
3 will be something that everybody can agree to.

4 MR. MCCOOMB: By all means, we'll have that for you.

5 CHAIR: Okay. Thank you.

6 MR. MARKS: Thank you.

7 CHAIR: Thank you for everybody's --

8 MR. MARKS: Thank you.

9 CHAIR: -- submissions today. It was very helpful.
10 Thank you.

11 MR. MARKS: And I appreciate the Panel's patience with
12 multiple explanations. Thank you, guys. Have a good weekend,
13 everybody.

14 CHAIR: That's part of our job. Thank you.
15 --- Whereupon the proceedings concluded at 4:19 p.m.

16 I HEREBY CERTIFY THE FOREGOING
17 to be a true and accurate
18 transcription of my shorthand notes
19 to the best of my skill and ability.

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21 _____

22 Elizabeth Kichula, CSR
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[& - 3:57]

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[evidence - expedition]

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