

DATE: 20260708

SUPERIOR COURT OF JUSTICE

HEARD: MAY 4, 2026

REASONS FOR JUDGMENT

[2] On April 7, 2026, Merritt J. issued an interim injunction after finding that (i) Mr. Marks' comments about the CSE and its employees were "clearly defamatory" and (ii) any defences based

on justification and fair comment “will inevitably fail”: *CNSX Markets Inc. v. Marks*, 2026 ONSC 2023 (“*Merritt Injunction*”), at paras. 37, 40. The injunction:

- a. prohibited Mr. Marks from contacting officers and employees of the CSE and their families, pending hearing of the Application; and
- b. restrained Mr. Marks from using certain words and phrases when communicating on X (formerly Twitter), TikTok, LinkedIn, YouTube or other social media or media platform about the CSE or any of its employees, directors, officers, shareholders, agents or affiliates, pending hearing of the Application.

[3] CSE now seeks a permanent injunction and an order requiring Mr. Marks to remove outstanding defamatory content that he posted online.

[4] Mr. Marks argues that a permanent injunction is unjustified. He says that he is a journalist doing important work that has prevented scores of investors from losing millions of dollars.

[5] As Mr. Marks is not in Ontario, the long motion proceeded before me virtually. Mr. Marks represented himself. While he complained that he did not have sufficient time to make his submissions, the parties received equal time.

[6] Briefly, the motion is granted in large part. Mr. Marks has engaged in a defamatory and harassing online campaign against CSE and its employees. Mr. Marks publications are neither justified, nor eligible for defences like fair comment or responsible communication on matters of public interest. Therefore: (a) Mr. Marks is permanently enjoined from making any public allegations about any employee, director, officer, shareholder, agent or affiliate of the CSE; (b) Mr. Marks will permanently abide by the content restrictions placed on him by Merritt J. with respect to the Applicant; (c) Mr. Marks is permanently enjoined from using any tags (@) or hashtags (#) in posts about CSE/CNSX; and (d) Mr. Marks shall remove from the social media platforms and websites on which they were and remain posted the statements identified by the Applicant in Exhibit “UUU” referred to in the Affidavit of Elizabeth Ford sworn on April 17, 2026.

HISTORY

[7] The Applicant, CNSX Markets Inc., operates the Canadian Securities Exchange (CSE), which is a securities exchange recognized as an exchange by the Ontario Securities Commission and the British Columbia Securities Commission. In these reasons, I use “CNSX” and “CSE” interchangeably.

[8] The Respondent, Jack Marks, also known as Jacob Mestechkin, is a shareholder of New World Solutions Inc. Mr. Marks controls and publishes the website The Wall Street Reporter where he publishes his opinions and promotes various securities. In 2022, Mr. Marks published a book titled *Ten Bagger Blueprint: Learn How To Make +10X to +100X Profits in Cheap Stocks!*

[9] To maintain the integrity of its operations as a regulated exchange, the CSE exercises discretionary authority over the admission and continued eligibility of issuers to its platform under its published Listing Policies. Under those Policies, the CSE Listing Committee decides whether an individual is suitable to act as a director, officer, promoter, or significant shareholder of a CSE Listed Issuer.

[10] In January 2024, following an investigation, the Committee found Mr. Marks unsuitable to act for a CSE Listed Issuer called AI/ML Innovations Inc. Before that decision could be communicated, AI/ML ended its arrangement with Mr. Marks. As a result, the CSE did not provide the investigation results to AI/ML, or to Mr. Marks.

[11] In August 2024, a separate CSE-listed issuer, New World Solutions (“NWS”), submitted a proposal to acquire a BC numbered company. After conducting initial due diligence, the CSE decided that it would not object to the transaction. Some weeks later, NWS publicized that “Jacob Marks” would serve as Chair of the Board, and that Mr. Marks held 22.9% of NWS’s outstanding shares. That prompted CSE to have further discussions with NWS where, CSE says, it discovered that “Jacob Marks” is the same person as “Jack Marks”. The CSE also discovered numerous promotional posts by Mr. Marks on various social media websites, which, in its view, appeared to promote securities without properly disclosing his compensation – an allegation that the US Securities and Exchange Commission made in 1998.

[12] On October 3, 2024, the Committee issued a decision objecting to Mr. Marks’ appointment as an officer, director, promoter or controlling shareholder of any CSE-listed issuer. CSE emailed the decision to Mr. Marks the same day. Mr. Marks unsuccessfully appealed the decision to the CSE’s Board and, when that failed, applied for hearing and review before the Capital Markets Tribunal. The application was scheduled to be heard on its merits on May 8 and 13, 2026.

[13] Around the same time, Mr. Marks began a campaign against CSNX on various social media websites, including Twitter/X and Instagram. Mr. Marks’ impugned publications and harassing behaviour targeted numerous individuals employed by or associated with CSE, including:

- a. Mark Faulkner, Senior Vice President, Listings & Regulation
- b. Rob Theriault, Vice President, Listings & Regulations
- c. Robert Cook, Senior Vice President, Market Development
- d. Tracey Stern, Chief Legal Officer
- e. Richard Carleton, Chief Executive Officer
- f. Jane Helmstadter, Mr. Carleton’s wife

[14] As described above, Merritt J. granted CSE’s request for an interim injunction against Mr. Marks on April 7, 2026.

PARTY POSITIONS

CNSX

[15] CNSX says that Mr. Marks has published more than 300 defamatory and abusive posts naming individual CSE personnel. He has “repeatedly and baselessly accused the CSE and its employees of civil and criminal fraud, conspiracy, and other misconduct.” Moreover, he has threatened to persist in his attacks, unless the CSE reverses its October 2024 decision.

[16] Since the commencement of these proceedings, Mr. Marks’s campaign has intensified – he has published over 150 additional social media posts and broadened his targets to include CSE personnel’s family members.

[17] The Applicant relies on Merritt J.’s interim injunction and the findings contained therein. I discuss those findings below. CNSX argues that this Court has already confirmed that the impugned publications are defamatory and part of a campaign of harassment. In order to grant the injunction, Merritt J. had to be satisfied that any proffered defences would “inevitably fail” – which is “fatal” to Mr. Marks’ position on this motion.

[18] In the alternative, CNSX argues, there is more than enough evidence for me to find that:

- a. The impugned publications are grossly defamatory, and, in some cases, constitute harassment.
- b. The statements are not true. Mr. Marks’ public allegations, which includes posts stating that Mark Faulkner and Richard Carleton are “#Canada biggest DRUG DEALERS” that have been “pushing shitco #pennystocks pimping #marijuana #psychedelics #cocaine and other illegal substances”, are baseless.
- c. While CNSX acknowledges that it makes decisions about which there is legitimate public interest, Mr. Marks’ defamatory statements cannot be construed as fair comment. The statements are “blatantly false and spiteful, calculated to undermine public confidence in the CSE and its personnel and to create leverage and pressure ostensibly to force the CSE to capitulate to Mr. Marks’ demands.”
- d. None of Mr. Marks’ publications are responsible communications in the public interest. Mr. Marks is a stock promoter, not a journalist. In any event, his comments were neither in the public interest nor responsible.

[19] Given the enduring and disproportionate harm that online defamatory statements can cause, and Mr. Marks’ “pervasive and egregious” conduct, permanent injunction and take-down orders are appropriate.

[20] CNSX seeks no damages. It wants Mr. Marks to stop his unlawful behaviour.

Jack Marks

[21] Mr. Marks accuses CNSX of seeking “an extraordinary and highly intrusive remedy that constitutes prior restraint.”

[22] Mr. Marks says that the proceeding “is not a conventional defamation dispute”. Rather it raises the “fundamental issue of whether a regulated securities exchange” can invoke judicial authority to suppress “ongoing public criticism”.

[23] Mr. Marks says that his publications “concern matters of clear public importance, including securities regulation, investor protection, exchange governance, and capital markets integrity[.]” He notes that “even exaggerated, rhetorical, or vehement expression may fall within protected conduct.” He says that the Applicant “seeks to recast public criticism as harassment, opinion as fact, and commentary as misconduct.”

[24] Mr. Marks argues that injunctions against expression must remain proportionate, carefully tailored, and justified by clear evidence of harm. The injunction CNSX seeks is none of those things.

[25] Mr. Marks says that CNSX’s initial determination about him in January 2024 – the one that was never sent out – was procedurally flawed. He argues that that decision “was used retrospectively to support a later outcome”, namely the October 2024 decision that Mr. Marks could not act for a CSE-listed issuer. Mr. Marks says that CNSX’s flawed process goes to “the integrity of regulatory decision-making” and, as such, he is entitled to question it, including in harsh and biting ways.

[26] Mr. Marks argues further that:

- a. The injunction should be denied because there is no proof of irreparable harm.
- b. His posts received very few impressions online.
- c. While his tone might seem exaggerated or extreme to some people, his communications are targeted to and appropriate for a US market which is where ninety-seven percent of his audience is located.
- d. He did not intend to attorn to Ontario.
- e. He has been a journalist for thirty years.
- f. When he reports on first-hand accounts, including his own, he acts as a journalist.
- g. The public interest in his reporting greatly outweighs the Applicant’s “hurt feelings”.

- h. He never accused either the Applicant or its employees of criminal conduct.
- i. Everything he said is fair comment. He gives the example of his posts linking CSE's CEO Richard Carleton to Peter Nygaard, a well known former Canadian businessman now serving a prison sentence for multiple counts of sexual assault. Mr. Marks says it is fair to ask why the CEO of an important financial institution would be photographed at a party with a person (Nygaard) accused of serious sex offences, and why the CEO would continue to maintain that photo on their Instagram page.
- j. A YouTube video that Merritt J. extensively reviewed is being taken out of context. The video was initially entitled "TRUE CRIME! Peter Nygard Pedo RAPIST Stock Exchange CEO Richard Carleton: ABOVE THE LAW? Comment is Canada's Jeffrey Epstein or worse." The title of the YouTube video was then changed to "TRUE CRIME: Peter Nygard RAPIST PEDO Sleazy Friend: "Tricky Dick" CEO Canada PENNY STOCK Exchange!" Mr. Marks argues that YouTube is known for hyperbole and satire. Mr. Marks says he was joking when he asked "Could Dick Carleton be a sex tourist?"
- k. Other YouTube videos are "educational".

ISSUES

[27] This case presents the following issues:

- a. Should the long motion be adjourned for 30 days?
- b. Did Mr. Marks defame CNSX and/or its employees? If he did, are any of the impugned communications justified, or covered by any defences?
- c. If the answer to (b) is "no" for any of the impugned communications, what is the appropriate remedy?

[28] Mr. Marks bears the burden of proof on the adjournment. CNSX bears the burden of proof with respect to whether the impugned communications are defamatory. Mr. Marks bears the burden of proof with respect to whether any communications are justified, or otherwise subject to a defence.

[29] CNSX bears the burden of proof with respect to its requested remedies.

[30] At the interim injunction hearing, Mr. Marks suggested that this court lacks jurisdiction over him "because he is an American and lives on the west coast of the United States and does not have a meaningful connection to Ontario": *Merritt Injunction*, at para. 16. Justice Merritt concluded that the issue would be determined on the motion. She found that "[f]or now, it is

sufficient that there is a serious issue to be tried with respect to jurisdiction”: *Merritt Injunction*, at para. 17.

[31] At the interim injunction, Mr. Marks also argued that Ontario is not the correct forum. However, Merritt J. found that he did not discharge his persuasive burden to show why the factors relevant to that question favour a jurisdiction other than Ontario: *Merritt Injunction*, at para. 21.

[32] Mr. Marks’s Responding Application Record on the motion before me does not address either of the above complaints. He does not reiterate his objection to the court’s jurisdiction, nor does he argue that Ontario is an inappropriate forum. He did say in his oral submissions that he never attorned to Ontario. However, once Mr. Marks filed a reply to the injunction application that went beyond contesting jurisdiction, he is deemed to have attorned to the matter being heard in Ontario: *Tacora Resources Inc. v. 1128349 B.C. Ltd.*, 2026 ONCA 306, at para. 49, citing *Van Damme v. Gelber*, 2013 ONCA 388, 115 O.R. (3d) 470, at para. 22. Mr. Marks has not explained why I should disregard that general principle.

[33] Almost all of Mr. Marks’ arguments go to the appropriateness of injunctive relief – not whether this court is empowered to grant it.

[34] At the hearing for the interim injunction, Merritt J. concluded that “there is strong evidence Mr. Marks sent defamatory emails to various people at CNSX and at other locations in Ontario”: *Merritt Injunction*, at para. 20. I agree with that assessment. In addition, I find it likely that people in Ontario viewed the defamatory publications, given that the posts tag an Ontario entity and include hashtags that carry particular meaning in Ontario. Accordingly, were it necessary to reach the issue, I would find that at least some of the defamatory conduct is linked to Ontario.

ANALYSIS

[35] The following analysis contains my findings of fact on a balance of probabilities.

Issue A: Mr. Marks’ request for a 30-day adjournment

[36] At the beginning of the hearing, Mr. Marks asked for a 30-day adjournment because of (a) late delivery of crucial evidence from the Applicant before a cross-examination and (b) the expected receipt of relevant materials from the British Columbia and Ontario regulators that would bear on the issues for decision.

[37] I declined to grant the adjournment. The following are my reasons for doing so.

[38] With respect to late delivery of evidence before cross-examination, the said examination occurred on April 21, 2026. Mr. Marks was unable to pinpoint any specific disadvantage from what he says was delayed evidence. He did not ask for any adverse inferences to be drawn. There is not indication that Mr. Marks raised the concern before Merritt J., after she had set the hearing date for the long motion. Accordingly, I found Mr. Mark’s complaint too vague to warrant a 30-day adjournment.

[39] With respect to the pending information from the regulators, at the hearing before me there was no way to know how long that would take. It is also unclear how that information related to whether CNSX is entitled to the relief it seeks. When I asked Mr. Marks to explain the link between the expected information and the alleged defamation and harassment, he said the information goes to his fitness and suitability to act for a CSE-listed issuer. While that may be an important question on any appeal of the CSE's decision, it is not relevant to whether Mr. Marks' publications are defamatory, justified or fair comment. That is because Mr. Marks' commentary about the Applicant and its employees is so extreme that any question about the validity of the CSE's decision about him is irrelevant to this proceeding.

Issue B: Defamation

[40] As Merritt J. noted in the earlier proceeding, there is a high bar to issuing injunctive relief, particularly in regard to expressive behaviour. In effect, the case supporting the relief must be "close to ironclad": Todd L. Archibald, Stephen E. Firestone & P. Tamara Sugunasiri, *Ontario Superior Court Practice*, 2026 Ed. (Toronto: LexisNexis Canada, 2025), at p. 1-158, citing *Upper Canada District School Board v. Gilcig (c.o.b. Seaway Media)*, 2017 ONSC 2904, 9 C.P.C. (8th) 420.

[41] Justice Merritt concluded that this case is ironclad, because of the ample evidence that Mr. Marks engaged in grossly defamatory and harassing behaviour.

[42] I agree.

The Law

[43] In order to prove defamation:

- a. the impugned words must be defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;
- b. the words in fact referred to the plaintiff; and
- c. the words were published, meaning that they were communicated to at least one person other than the plaintiff.

Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28.

[44] The court must consider the statement in the "natural and ordinary meaning" of its words, which is a "matter of impression": *Chopak v. Patrick*, 2020 ONSC 5431 (Div. Ct.), at para. 36.

[45] The court must determine whether the alleged statement would tend to lower a plaintiff's reputation in the eyes of the ordinary observer. If it would, the court must then decide whether the statement is subject to a defence. The available defences turn, in part, on whether the statement is one of fact or an expression of opinion. Statements of fact capable of objective proof require the

court to consider the defence of justification. If the statement is one of opinion, then defences like fair comment and/or responsible communication on a matter of public interest might apply: *Chopak*, at para. 41.

[46] Fair comment is “an objectively honest expression of opinion with respect to facts which are true and known to the persons to whom the comment is made”: *Gilcig*, at para. 41.

[47] To sustain a defence of fair comment:

- a. the comment must be on a matter of public interest;
- b. the comment must be based on fact;
- c. the comment, though it can include inferences of fact, must be recognizable as comment; and
- d. viewed objectively, the comment must be one that a person could honestly express on the proved facts; however
- e. even if the comment satisfies the objective test, the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice.

Grant, at para. 31, citing *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420, at para. 28.

[48] The defence of responsible communication on matters of public interest is available “to anyone who publishes material of public interest in any medium”: *Grant*, at para. 96, citing *Jameel v Wall Street Journal Europe SPRL*, [2006] UKHL 44, [2007] 1 A.C. 359, at para. 54. The test for the defence is that: (i) the publication must be on a matter of public interest, and (ii) the publication must be shown to have been responsible, in that the publisher was diligent in trying to verify the statements, having regard to all the relevant circumstances: *Grant*, at para. 98.

[49] As outlined in *Grant*, at para. 126, the factors in assessing whether the publisher was diligent in trying to verify the allegation include:

- a. the seriousness of the allegation;
- b. the public importance of the matter;
- c. the urgency of the matter;
- d. the status and reliability of the source;
- e. whether the plaintiff's side of the story was sought and accurately reported;
- f. whether the inclusion of the defamatory statement was justifiable;

- g. whether the public interest lay in the fact the statement was made rather than its truth ("reportage"); and
- h. any other relevant circumstances.

Application

[50] Having reviewed the record and the evidence, I find that the publications are clearly defamatory. I adopt and rely upon the following findings from the *Merritt Injunction*:

[26] Mr. Marks has repeatedly made public allegations of fraud, conspiracy, and other criminal conduct against the CSE and its employees... subjecting them to public ridicule and reputational harm. Mr. Marks has accused CSE and its personnel of acting in bad faith and engaging in unlawful conduct thereby undermining the credibility of the CSE.

[27] Mr. Marks' statements impute criminal and unethical conduct to the CSE and allege the professional incompetence of its personnel.

[28] Mr. Marks' posts clearly refer to the CSE and name several of its employees and officials including Mark Faulkner, Rob Theriault, Robert Cook, Tracey Stern, and Richard Carleton, Chief Executive Officer.

[29] The posts have been published on X (formerly Twitter), LinkedIn, YouTube and on his website.

[30] On March 26, 2026 Mr. Marks sent an email to Mr. Carleton's wife Jane Helmstadter asking about his relationship with Peter Nygard and enclosing photos and documents saying that Mr. Carleton:

1. is a pal of rapist pedophile Peter Nygard,
2. is involved in fraud, scams, corruption,
3. is involved with crooked copy Mark Faulkner
4. is involved in fabricating fraudulent documents,
5. is involved in a sloppy cover up,
6. is involved in a conspiracy with others at the CSE
7. is protected by fellow dirty cops

[31] In the documents, Mr. Marks also says that there is:

1. a criminal investigation by the RCMP into Mr. Carleton, Rob Cook, Rob Theriault, Tracey Stern and Mark Faulkner;
2. an investigation by the OS;
3. an investigation by the BCSC;
4. the CSE is being sued for fraud and a cover up by their own former chief counsel; and
5. money laundering and money is being funneled into drug trafficking, sex trafficking, terrorist groups and drug gangs.

[32] Mr. Marks also says that Mr. Faulkner is dumb and corrupt.

...

[35] On March 26, 2026 Mr. Marks emailed several people with the subject line: "ATT: Murray Stahl & Eri Sites - CSE - TRUE CRIME: Penny Stock FRAUD, Sex Trafficking & CROOKED COPS at Canada Scam Exchange Facing Prison Time?" making allegations similar to those referred to above and suggesting that he will be organizing protests outside Mr. Stahl's offices with a large inflatable pig or rat with a photos. The email also forwards an email from the Wall Street Reporter with the subject line: "TRUE CRIME: Penny Stock FRAUD, Sex Trafficking & CROOKED COPS at Canada Scam Exchange Facing Prison Time?" and enclosing documents with allegations similar to those above.

[36] [The week before the interim hearing], Mr. Marks posted a video on his YouTube channel [that] is over an hour long and called: "TRUE CRIME! Peter Nygard Pedo RAPIST Stock Exchange CEO Richard Carleton: ABOVE THE LAW? Comment is Canada's Jeffrey Epstein or worse." The title of the YouTube video has now been changed to "TRUE CRIME: Peter Nygard RAPIST PEDO Sleazy Friend: "Tricky Dick" CEO Canada PENNY STOCK Exchange!"

[51] The above statements are defamatory. Understood in their natural meaning, the statements would tend to lower – indeed, dramatically lower – the reputation of the people and organizations about whom they are made.

[52] Mr. Marks did not deny issuing any of the above-noted statements. I asked Mr. Marks if he agreed that any of the publications were defamatory. He did not. He immediately pivoted to the defences – which do not affect something is defamatory. I asked Mr. Marks if he agreed that any of the publications might damage either the CNSX's or its employees' reputations. Mr. Marks did not give a clear answer.

[53] Therefore, I find the defamatory nature of the publications – of which there are approximately 300 examples – to be uncontested.

[54] The next issue is whether there are any defences to the publications. I find there are none.

i. Justification

[55] While Mr. Marks denies making “any unfounded factual allegations of criminal conduct”, his motion materials do not explicitly rely on the defence of justification. I agree with CSE that, to the extent that Mr. Marks’ publications allege any facts, they are baseless. Mr. Marks adduced no objective proof of his statements. Therefore, I will focus on whether his publications are fair comment, or responsible communication on a matter of public interest.

ii. Fair Comment

[56] With respect to the defence of fair comment, the parties agree that information and commentary about the CNSX and the CSE are matters of public interest. Persons who express negative, even damaging opinions about either of those entities may be protected by the defence.

[57] Here, however, the defence fails, largely though not exclusively because of the clear malice that the communications betray.

[58] Mr. Marks may feel targeted by CSE’s objection to him. But his response has been disproportionate.

[59] Mr. Marks’ communications are false, malicious, crude, and relentless. They do not present factual statements but, rather, attacks and insinuations. Mr. Marks has not demonstrated that a person could honestly form the opinions expressed in his publications based on knowledge of any underlying facts. For example, based on the facts adduced in this proceeding, a reasonable person would not reach the conclusion that Mr. Faulkner is “crooked”, and “raping shareholders” by “fraudulently” halting trading, and pursuing a personal vendetta; or that the CSE is “brazenly fraudulent”, corrupt, abusing its power, and raping and robbing investors; or that the CSE involves “crack, corruption and crony kleptocrates”.

[60] The communications cited just above are clearly malicious. Other examples include “deliberately misrepresenting the CSE as the “#Canada #Scam #Exchange” at least 29 times on Mr. Marks’ Twitter account; referring to a senior official as “crooked cop Mark Faulkner”, including a “little pig” emoji around his name, and accusing him of fraud and other criminal misconduct; and posting a crudely edited photo of Mr. Faulkner with a toothbrush mustache as a clear allusion to Adolf Hitler, while tagging multiple of Mr. Faulkner’s family members in the post”: *Merritt Injunction*, at para. 47.

[61] In sum Mr. Marks has not established the required criteria for fair comment. The defence fails.

iii. Responsible Communication

[62] I have already found that, as a public securities regulator, the CNSX's activities are of legitimate concern to the public in general.

[63] However, Mr. Marks has not established that *his* reporting satisfies the defence of responsible communication, because his reporting is neither (a) on matters of public interest or (b) responsible.

[64] First, Mr. Mark's publications are not on matters of public interest. That is chiefly because Mr. Marks is so focussed on his personal complaints against the CSE rather than on questions of, for example, governance and policy. Mr. Mark's publications "are not grounded in evidence except in the loosest possible sense. For example, he takes a single photograph of Mr. Carleton with Peter Nygard and then says in his video that they are 'besties'": *Merritt Injunction*, at para. 42.

[65] A representative example of Mr. Marks' communication style is his YouTube video on Mr. Carleton. I agree with Merrit J.'s analysis of the video reproduced below:

[43] Another obvious example is the YouTube video where Mr. Marks makes a conscious effort to paint Mr. Carleton as a best friend of Peter Nygard and engaged in similar conduct. The only evidence of any connection between Mr. Carleton and Peter Nygard is a single photograph of them together.

[44] In the YouTube Video, Mr. Marks says he will "expose scam stocks", and "corrupt, crooked cops, dirty cops", "scumbag regulators" and pedophile rapist Peter Nygard and "his very good friend Richard Carleton -Tricky Dick". He refers to the CSE as the "Canadian Scam Exchange- the worst failing stock exchange on the planet". He refers to a criminal investigation and says they committed "serious securities fraud" "massive fraud" and says they are "unfit" to be anywhere near securities.

[45] In the YouTube video Mr. Marks also says that Mr. Carleton and Mr. Falkner's conduct is criminal. He says that "fat slob Mark Falkner" and Rob Cook like to drink a lot and they are criminals who need to go to prison immediately. He implies an inappropriate relationship between "Dicky Carleton and his young gentleman friend James Black". He questions whether CSE executives were on rapist pedophile Peter Nygard's island. He offers a reward of \$10,000 USD to victims or anyone who comes forward with information about CSE that leads to their arrest and imprisonment. Mr. Marks suggests that Mr. Carleton is a sex tourist because he travels.

Merritt Injunction, supra.

[66] Even if I were to find that one or more of the impugned publications do relate to topics in of public interest, the communications are so extreme in tone and content that they fail to meet the standard of being "responsible". I appreciate that commentary and critique must be protected against legal sanction based solely on their tone. Satire, sarcasm, and even aggressive rhetoric may serve the underlying values protected by the *Charter's* freedom of expression. In this case,

however, the tone of the publications dovetails with how far they are from being responsible. Looking at the required relevant factors in turn:

- a. Mr. Marks makes very serious allegations, including of “corruption or other criminality on the part of a public official”: *Grant*, at para. 111. That requires greater diligence and a higher level of scrutiny and verification before the allegations are reported. The higher standard also applies to allegations that “impinge substantially” on a person’s reasonable expectation of privacy: *Grant*, at para. 111.
- b. The public importance in this case is low. While actions taken by CSE and its employees can be of vital public interest, I find that Mr. Marks engaged in a campaign of retribution against CSE solely because it decided that he could not act for NWS. Whether a particular person is entitled to act for a CSE-listed issuer is a regulatory decision that will tend to be of low public interest. In some circumstances, the public interest could be greater. The decision might indicate larger systemic issues or underhanded or unethical behaviour: see *Grant*, at para. 112. But Mr. Marks presented no credible evidence of any such circumstances. Moreover, even if CSE’s decision regarding Mr. Marks did suggest larger concerns, that could not defend the type of attacks Mr. Marks launched against CSE and its employees.
- c. There was and is no urgency to the publications. At the time of the hearing before me, Mr. Marks remained engaged in the legal process challenging the CSE’s decision. The Supreme Court of Canada suggests in *Grant*, at para. 113, that “[i]f a reasonable delay could have assisted the defendant in finding out the truth and correcting any defamatory falsity without compromising the story’s timeliness, this factor will weigh in the plaintiff’s favour”. That is not this case. Nothing turned on Mr. Marks being able to immediately communicate his outrage at the CSE’s actions.
- d. Mr. Marks does not have any status as a journalistic source:
 - i. I accept CSE’s claim that Mr. Marks is a stock promoter, not a reporter. As Mr. Marks writes in his book, he tries to “make stocks go UP”. I am satisfied that his goal is to make money.
 - ii. I am not persuaded that, in any of the commentary adduced for this motion, Mr. Marks acted as a journalist. Most of what Mr. Marks says is purely personal opinion – not the result of any legitimate investigative efforts or inquiry. Mr. Marks acknowledges that he relies on his own knowledge, based on what he says CSE did to him. I find that he lacks all objectivity.

- iii. Mr. Marks did not point to a single publication where he straightforwardly lays out his case against the CSE. Instead, Mr. Marks makes allegations of criminal conduct as fact – which is the antithesis of journalistic reporting.
- iv. I am not satisfied that Mr. Marks followed journalistic protocols before publishing his comments. For example, he never approached any of his targets to provide comment.
- e. I also find Mr. Marks unreliable. For example, he claims that his reporting has saved investors millions of dollars. Nothing in the record corroborates that claim. While Mr. Marks says that his statements are “based on facts known to me or capable of being verified”, his submissions do not point to any. Instead, Mr. Marks goes into great detail about the CSE’s ill treatment of him. He relies on mundane emails between CSE personnel who discovered Mr. Marks’ online commentary and discussed with concern its tone and content. Mr. Marks further notes that, on Twitter/X, Mark Faulkner followed a person named Chris Parry, who Mr. Marks alleges has defamed him. Neither the emails nor who Mr. Marks followed on X is probative.
- f. In view of the above findings, Mr. Marks did not exercise the required level of diligence before publishing his inflammatory allegations: see *Grant*, at paras. 114-15.
- g. Mr. Marks argues that he was treated unfairly when CSE did not inform him that they were ready to issue a negative decision about AIML in January 2024. He says that if he had known about that earlier decision, he would have approached the agreement with NWS differently. Even if Mr. Marks has valid objections to CSE’s treatment of him, that cannot be a defence for his extreme commentary. Mr. Marks was unable to point to any publications that focused on those alleged procedural deficiencies. Instead, he has attacked CSNX and its employees in the manner of an online “troll”.
- h. Mr. Marks’ contention that he has never accused the Applicant or its employees of criminal behaviour cannot be entertained. The examples listed throughout these reasons show the opposite. Mr. Marks’ submissions rest in part on the idea that he is just “asking questions”. I find that posture disingenuous. Viewed in their natural context and meaning, his statements suggest that the Applicant and its employees have engaged in heinous and/or criminal behaviour.
- i. As none of the publications report on statements made by others in the context of a dispute, they do not qualify as reportage: see *Grant*, at paras. 119-21.
- j. As described earlier, Mr. Marks’ publications are shot through with malice. Examples include:

1. a post labelling Mark Faulkner and Richard Carleton as “#Canada biggest DRUG DEALERS” that have been “pushing shitco #pennystocks pimping #marijuana #psychedelics #cocaine and other illegal substances”;
2. a post stating that “@CSE_News [is] more #CORRUPT than any third-world shithole exchange”;
3. a post alleging that Mr. Faulkner was “caught RED HANDED committing FRAUD”;
4. a post accusing Mr. Faulkner and the CSE of antisemitism;
5. a post describing named CSE personnel as “PEDO’s & coke heads”; and
6. a post suggesting that capital is fleeing from Canada “Because of CORRUPT INEPT FRAUDSTERS like Mark Faulkner @Emefef at #Canada #Scam Exchange @CSE_News and his pedo friends”.

[67] In view of the above, I am not persuaded that Mr. Marks’ defamatory publications are responsible reporting on a matter in the public interest. The defence fails.

[68] To summarize, Mr. Marks has not established any defences to any of the defamatory publications. At the hearing, most of his submissions focussed on why his publications were warranted because of how the CSE treated him. His submissions are either unreliable, or not responsive to the legal and factual questions before this court.

[69] I will now consider the appropriate remedy or remedies.

Issue C: What is the appropriate remedy?

[70] CNSX seeks a permanent injunction to prohibit Mr. Marks from making any social media posts about it or its personnel, as well as a take-down order.

[71] Mr. Marks opposes the permanent injunction. Since he argues that his commentary is not defamatory, is fair comment and/or is responsible communication, he does not appear to take a position on whether he should remove the publications.

The Law

[72] Defamatory statements made on the Internet can cause enduring and disproportionate reputational harm because they are “instantaneous, seamless, interactive, blunt, borderless, and far-reaching”. They are also more likely to be believed: *Leeb et al v. Kenny*, 2023 ONSC 4655, at para. 24; *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 (C.A.), at para. 31.

[73] A permanent injunction “is an extraordinary remedy which should be used sparingly”: *St. Lewis v. Rancourt*, 2015 ONCA 513, 337 O.A.C. 15 (“*St. Lewis*”), at para. 16, leave to appeal refused, [2015] S.C.C.A. No. 407. The test for ordering a permanent injunction after a finding of defamation requires either that:

- a. there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiffs for defamation; or
- b. there is a real possibility that the plaintiffs will not receive any compensation, given that the enforcement against the defendant of any damage award may not be possible.

Astley v. Verdun, 2011 ONSC 3651, 106 O.R. (3d) 792, at para. 21, cited in e.g. *St. Lewis*, at para. 13; *Rainy River (Town) v. Olsen*, 2017 ONCA 605, 6 C.P.C. (8th) 1, at para. 5; and *Soliman v. Bordman*, 2021 ONSC 7023, 79 C.C.L.T. (4th) 273, at para. 210.

[74] The Court of Appeal for Ontario provides further guidance for permanent injunctions in *Labourers’ International Union of North America, Local 183 v. Castellano*, 2020 ONCA 71, 444 D.L.R. (4th) 183 (“*LIUNA (ONCA)*”), explaining that:

1. The conditions included in a permanent injunction must relate to the prevention of the continuation of the established cause of action (or a legal right): at paras. 23-35. A condition that is unrelated to the established cause of action or legal right would be overbroad, and conditions must be “reasonably necessary to remedy the defamation and to prevent the defamation campaign from continuing”: at para. 31.
2. For a permanent injunction barring all commentary from being made about another party, the court should make a finding that the party enjoined is “incapable of discerning between defamatory comments and legitimate criticism, such that a blanket injunction [is] required”: at para. 20; see generally at paras. 18-22. It should be “reasonably necessary to address the identified likelihood of future defamation”: at para. 20.

[75] In *Miranda v. Balita Media Inc.*, 2026 ONCA 223, at paras. 33-36, the Court of Appeal cautions that a permanent injunction must be precise and limited in scope as it relates to the statements a party is prevented from making. In some cases, an order should define or perhaps provide an exhaustive list of specific statements to avoid: *Miranda*, at para. 35.

[76] On an interim basis, Merritt J. prohibited Mr. Marks from making:

Statements or images referring to any of the CSE and/or its employees, directors, officers, shareholders, agents as;

- a. Hitler;
- b. rats;

- c. pigs;
- d. criminals;
- e. rapists;
- f. pedophiles;
- g. corrupt;
- h. crooked;
- i. dirty;
- j. pursuing a personal vendetta;
- k. fraudulent;
- l. crony kleptocrats;
- m. abusing power;
- n. raping and robbing investors;
- o. being involved with crack; or
- p. being involved in a conspiracy or cover-up.

Statements accusing any of the CSE and/or its employees, directors, officers, shareholders, agents of:

- a. using drugs or being drug addicts;
- b. antisemitism;
- c. crimes;
- d. fraud;
- e. having a relationship with Peter Nyguard, Jeffrey Epstein, or any other persons convicted of sexual offences;
- f. drug trafficking;
- g. sex trafficking;

- h. raping shareholders;
- i. being involved with drug gangs;
- j. being involved with terrorist groups; or
- k. fraudulently halting trading.

Merritt Injunction, at para. 57.

Application

[77] A permanent injunction against expressive activity is a profound remedy. Given Canada's constitutional protection for the fundamental freedom of expression, a permanent injunction requires me to find that this case presents extraordinary circumstances.

[78] For the following reasons, I find that the case does present extraordinary circumstances making a permanent injunction appropriate, albeit not on the exact terms proposed.

[79] CNSX and CSE are public entities which must not be shielded against legitimate criticism. Their critics need not confine themselves to genteel, restrained commentary.

[80] CNSX does not seek financial compensation. It wants Mr. Marks to cease his unlawful publications. I do not fault the Applicant for seeking relief directly against the expression itself, as opposed to financial redress. However, that means that the other possible means of enforcing a defendant's compliance with an order – damages – is not available.

[81] I find that there is a likelihood that Mr. Marks will continue to publish defamatory statements.

[82] First, Mr. Marks has published defamatory statements since these proceedings started and, possibly, after Merritt J. issued her decision. Since I cannot tell when, exactly, Mr. Marks received Justice Merritt's decision, I decline to find that he defied the injunction. But his behaviour following that hearing suggests that he persisted in his campaign against CSE and was undeterred or unbothered by the legal proceedings. Furthermore, I accept that he employed additional strategies such as emailing several people including Mr. Carleton's wife Jane Helmstadter on March 26, 2026. In those communications, he repeated his baseless inquiries, attacks, and allegations: *Merritt Injunction* at paras. 30, 34.

[83] Second, I have no confidence that Mr. Marks will moderate his behaviour without permanent injunctive relief. Based on Mr. Marks's written and oral submissions, he does not think his publications are wrongful. He does not acknowledge that a single one of his statements crossed the line. He tries to explain away the most extreme publications or comments as rhetoric, oriented to a different national audience, or a joke. He minimizes posts such as one in which he retweets a photo of a CSE employee with Peter Nygaard, that includes hashtags like #sexoffender, as simply

asking questions. Mr. Marks thinks that there is nothing untoward about his behaviour. Therefore, I find, Mr. Marks does not or cannot appreciate the difference between legitimate criticism of CSE or its personnel, and defamatory comments about them: *LIUNA (ONCA)*, at para. 20.

[84] Third, and in the alternative, I am persuaded that Mr. Marks is unwilling to apply reasonable discernment, in good faith, to determine the distinction between defamatory and non-defamatory comment. In other words, Mr. Marks is ungovernable.

[85] Fourth, I find that Mr. Marks' campaign against the Applicant engages none of the protected interests of freedom of the press. Mr. Marks did not act as a journalist when he made his hundreds of posts. On balance, I do not find that assertion credible or reliable. Mr. Marks is a stock promoter – not a journalist. While Mr. Marks argued that his investigative journalism has saved many investors millions of dollars, the record contains no evidence to support that argument other than Mr. Marks' say-so. Conversely, I find, he receives commissions or payments for the promotion of certain stocks.

[86] Fifth, "harm" need not be financial. Mr. Marks makes much of the fact that CSE's witnesses admitted that they were not aware of quantifiable or measurable harm resulting from his posts. While that point could be relevant to the question of damages, it is much less relevant to whether a defamed person has suffered any harm. It can be difficult, even impossible, to precisely determine how much or what kind of harm defamatory comments cause. That does not mean that no harm occurred. Like Merritt J., I am satisfied that Mr. Marks' commentary has already caused, and will likely continue to cause, "irreparable harm to the CSE's credibility and reputation and the reputations of the targeted officials" given the number of posts, their presence across several social media platforms, Mr. Marks' targeting of at least five officials in addition to the CSE itself, and the allegations of fraud, criminal misconduct and professional incompetence: *Merritt Injunction*, at para. 52.

[87] Sixth, any freedom of expression concerns that attach to publications about a public regulator are much lower, and in this case absent, when it comes to personnel. Therefore, even if Mr. Marks was engaged in good faith journalistic inquiry, which he is not, I would find that Mr. Marks should be permanently restrained from making commentary about the individuals he has repeatedly defamed.

[88] Having said all of the above, solely out of consideration for the profound importance and constitutional protection of freedom of expression, and because the Applicant is a public regulator, I decline to issue a blanket prohibition against Mr. Marks saying anything about CNSX and/or CSE ever again. Instead, I continue the list of prohibited phrases and images crafted by Merritt J. In addition, I prohibit Mr. Mark from using any tags ("@" followed by a social media handle) and/or hashtags (words preceded by "#") in any commentary he makes about the Applicant. Tags and hashtags are an important way that social media users increase the visibility of their posts to readers and other users. It is appropriate to restrict such tools when the court seeks to minimize the risk of harm from future defamatory content. This part of my order is without prejudice to the Applicant seeking further relief if Mr. Marks' defamation continues.

[89] Accordingly, I find, the most appropriate remedy is to order the following:

- a. With respect to CSE personnel, on a permanent basis:
 - i. Mr. Marks, and any of his agents or affiliates including the Wall Street Reporter, is enjoined from making any public allegations on any social media website about CNSX's or CSE's employees, directors, officers, shareholders, agents, or affiliates.
 - ii. Except through his counsel, Mr. Marks shall not personally contact any of CNSX's or CSE's employees, directors, officers, shareholders, agents, or affiliates.
 - iii. Given that Mr. Marks has agreed to not contact any family members of the above persons, and none of those individuals were represented at the hearing, I decline without prejudice to make an order concerning individuals not related to CNSX/CSE.
- b. With respect to the regulator, I decline to permanently enjoin Mr. Marks from ever again speaking about CNSX and/or CSE. However:
 - i. Mr. Marks shall continue to be enjoined by the list of prohibited words, statements and activities reproduced in paragraph 76 of these reasons.
 - ii. In any future commentary that Mr. Marks makes about CNSX and/or CSE, he shall not tag (“@”) anyone or employ hashtags (“#”) of any kind. I find these restrictions necessary so that, if Mr. Marks finds a way to continue to defame CSE/CNSX, the reach of his post(s) is correspondingly limited while CSE seeks a legal remedy.
 - iii. My decision is without prejudice to the Applicant renewing its request for a permanent injunction against Mr. Marks mentioning CNSX/CSE at all, should Mr. Marks persist in his defamatory conduct.
- c. I find it appropriate to require Mr. Marks to remove all of the defamatory content relating to the Applicant. Mr. Marks shall remove the statements identified by the Applicant in Exhibit “UUU” referred to in the Affidavit of Elizabeth Ford sworn on April 17, 2026, from the social media platforms and websites on which they were and remain posted.

ORDER

[90] In conclusion, I make the following order:

- a. The motion is granted in part:

- i. On a permanent basis, Mr. Marks, and any of his agents or affiliates including the Wall Street Reporter, (collectively, “**Mr. Marks**”) is enjoined from making any public allegations in posts or other commentary on X (formerly Twitter), Tiktok, LinkedIn, or any other social media platform or website, about any of CNSX’s or CSE’s employees, directors, officers, shareholders, agents or affiliates.
 - ii. Except through his counsel, Mr. Marks shall not contact any of CNSX or CSE’s employees, directors, officers, shareholders, agents, or affiliates.
 - iii. With respect to CSE/CNSX, Mr. Marks shall continue to observe the list of prohibited words, statements and images reproduced in paragraph 76 of these reasons.
 - iv. In any future posts or publications about CNSX and/or CSE, Mr. Marks may not use tags (social media handles including “@”) or hashtags (words preceded by “#”) of any kind.
 - v. Within thirty days, Mr. Marks shall remove the statements identified by the Applicant in Exhibit “UUU” referred to in the Affidavit of Elizabeth Ford sworn on April 17, 2026, from the social media platforms and websites on which those statements were and remain posted.
 - vi. The request to enjoin Mr. Marks from any future mention of CNSX and/or CSE is dismissed without prejudice.
- b. I urge the parties to come to an agreement on costs. If they do not, within 45 days they may each make submissions limited to five pages in length, together with any offers to settle and bills of costs. There shall be no right of reply.
 - c. Within 14 days, the parties may submit for my signature an order consistent with the above provisions.

Mathen, J.

CITATION: CNSX Markets Inc. v. Jack Marks, 2026 ONSC 3952
COURT FILE NO.: CV-25-00747749-0000
DATE: 20260708

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CNSX MARKETS INC

Applicant

– and –

JACK MARKS

Respondent

REASONS FOR JUDGMENT

Mathen J.

Released: July 8, 2026