

OSC case against Grant Sanders, ex-CEO of cannabis company Instadose Pharma, thrown out over long delay

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A fraud charge against the former chairman and chief executive officer of Instadose Pharma Corp. has been stayed in Ontario court over excessive delays, marking another blow to the Ontario Securities Commission's enforcement branch.

Justice Jennifer McAleer made the decision earlier this month, after concluding that Grant Sanders' Charter right to a timely trial had been violated. It's been more than two-and-a-half years since the OSC laid a quasi-criminal charge against Mr. Sanders over allegations he had used money from investors in the cannabis company for his own purposes and for the benefit of his family and associates. His 20-day trial was supposed to start this week.

After removing delays attributable to the defence, Justice McAleer found that 771 days had passed – more than 25 months – a violation of the 18-month ceiling that the Supreme Court established for provincial cases in its landmark ruling, R. v Jordan.

Defence lawyer Scott Fenton, who represented Mr. Sanders, said the OSC should never have brought the case against his client in the first place.

“The original investigation was flawed, hurried and incomplete. The stay for delay was the legally correct decision but also a fitting end to a very weak case,” he said.

In a statement to The Globe and Mail, the OSC declined to comment on allegations that its case against Mr. Sanders was flawed.

“Ontario courthouses have experienced unprecedented backlogs over the past few years which have contributed to many serious cases being stayed, this one included,”

spokesperson JP Vecsi said in an e-mail.

Mr. Sanders was charged by the regulator with a quasi-criminal offence in July, 2021. When the OSC identifies wrongdoing, it has the option of prosecuting cases in provincial court or as a regulatory matter. Offences dealt with in provincial court are quasi-criminal and carry larger penalties, including the potential for jail time.

At the time of the charge, Instadose Pharma Corp. was a publicly-listed company with aspirations of becoming a global grower and distributor of cannabis. In a release, the OSC said Instadose had raised more than \$9.4-million from investors since July, 2017. In addition to its accusation that Mr. Sanders had used some of those funds for his own personal use, the OSC alleged Instadose had misrepresented the nature of its business.

Mr. Fenton said this accusation related to a strategic shift the company made – it initially planned on doing business in one area of the world, but decided to target other areas based on market conditions – that was entirely reasonable.

Since the OSC launched its case, Instadose has been taken private, with former shareholders being able to exchange their shares on a one-for-one basis.

The collapse of the OSC's prosecution of Mr. Sanders comes a little more than a year after the spectacular mid-trial unravelling of its case against three former top CannTrust Holdings officials.

In June, 2021, following a joint investigation by the OSC and Royal Canadian Mounted Police, the regulator charged former CannTrust CEO Peter Aceto, former chairman Eric Paul and a former director, Mark Litwin, with quasi-criminal offences in connection to allegations they had illegally grown cannabis at a production facility and then failed to make the proper disclosures to investors. Each was charged with various offences, including fraud and making false statements to the OSC and the market.

But in December, 2022, a little more than a week into the trial, the regulator withdrew its case after one of the key witnesses seemed to change his story on the stand under questioning, undermining the backbone of the allegations: that the

CannTrust officials had allowed cannabis to be grown in unlicensed rooms at the facility.

Justice Victor Giourgas found all three not guilty.

Earlier this year, the regulator announced that its director of enforcement, Jeff Kehoe, would be leaving at the end of February. Mr. Kehoe had served in the role since 2016.

To date, the OSC's enforcement branch has pursued 60 quasi-criminal and criminal cases involving 89 individuals.

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