

CANNABIS CONTROL COMMISSION

**December 5, 2022**

**In-Person**

EXECUTIVE SESSION MEETING MINUTES

**Documents:**

- Discussion Items for Executive Session 9
- 20221123 Draft Charter V8 with DR feedback.

**In Attendance:**

- Chair Shannon O'Brien
- Commissioner Nurys Camargo
- Commissioner Ava Callender Concepcion
- Commissioner Kimberly Roy
- Commissioner Bruce Stebbins
- Executive Director Shawn Collins
- General Counsel Christine Baily
- Chief of Enforcement and Investigation Yaw Gyebi
- Chief Operations Officer Alisa Stack
- Chief Communications Officer Cedric Sinclair
- Paralegal Sabiel Rodriguez
- Mediator Susan Podziba

**Minutes:**

I. Call to Order

- The Chair called the meeting to order and deferred to Mediator Susan Podziba (Mediator Podziba) to conduct the Mediation Executive Session.

II. Discussion – Mediation Regarding Commission Governance, G.L. c. 233, § 23C, and public records not subject to disclosure under G.L. c. 4, § 7 (26).

- Mediator Podziba gave an overview of the discussion items and the work that had been completed since the last Executive Session. She asked Direct Reports (DR) to share initial feedback. The Chief Communications Officer Cedric Sinclair (CCO Sinclair),



General Counsel Christine Bailey (GC Bailey), Chief Operations Officer Alisa Stack (COO Stack), Chief of Investigations and Enforcement Yaw Gyebi (CIE Gyebi), Executive Director Shawn Collins (ED) and the Chair made introductory remarks regarding the Charter.

- Mediator Podziba commenced a review of the Interactions Between and Among Commissioners, and the Executive Director, Leadership Teams, and Staff section of the Charter and requested feedback on a requested edit to No. 1. CIE Gyebi noted the confusion when Commissioners went out of the project management structure. The Chair stated that she hoped the Charter would develop a better rapport between staff and Commissioners and formalize the process for requesting resources. CCO Sinclair pointed out that sometimes a Commissioner's interest conflicted with those of the Commission. Mediator Podziba emphasized the need for mutual respect. COO Stack noted that conflict resolution was not addressed in the Charter, and in response, Commissioner Camargo replied that accountability was addressed. CIE Gyebi noted that conflicts on policy were addressed in the Commission's deliberations which his department relied on in administrative actions. GC Bailey discussed the different role of Legal from other departments due to the attorney-client relationship. Mediator Podziba noted the need to "normalize" conflict for the Commission. COO Stack noted that she liked how lines of communication were addressed in the Charter, especially as it related to Open Meeting Law. The Chair suggested using Executive Sessions to discuss difficult situations and noted her desire for the Commission to enter these discussions yearly. Commissioners Concepcion and Camargo concurred. Commissioner Roy agreed with COO Stack's statement related to conflict resolution and asked for her input on process. COO Stack deferred to Commissioners to discuss a conflict resolution piece to put into the Charter that worked for them and what they thought was sustainable for their successors. GC Bailey echoed the comments from CIE Gyebi relative to having difficult conversations in a public meeting. Commissioners, the ED, and DRs discussed how conflict on policy matters had been resolved in Public Meetings. Mediator Podziba noted that there should be a section in the Charter related to conflict resolution. Commissioner Camargo suggested that it would be helpful for the DR to come back with recommendations. GC Bailey asked for clarification on the types of conflicts they were trying to resolve and whether they were seeking to address conflict between Commissioners or conflict between Commissioners and staff. Mediator Podziba explained that it was both and it was her intent to make the conflict resolution productive. Commissioner Stebbins asked if the conflict section should differentiate between solving for policy questions and for priorities. CIE Gyebi referenced the hectic nature of the Commission's work environment the need to slow the pace down. Commissioner Camargo noted that Commissioners were having the conversation with the ED, in his role as the traffic cop. COO Stack noted the need to think about the staff especially as it related to the remote environment and the need for them to think about a workforce with diverse needs and preferences. The Chair acknowledged her point but noted a difficulty in connecting with the staff. Commissioner



Roy described her process for requesting staff resources. CIE Gyebi appreciated Commissioner Roy's process and how it helped keep his staff better resourced.

- Mediator Podziba reviewed questions related to No. 9(b) relative to personnel actions. GC Bailey noted the legal implications surrounding certain discussions of personnel issues. COO Stack discussed her edits to Nos. 11 and 12. Commissioner Roy related the Commissioner's rights and authority to stop by any dispensary related to No. 11. Commissioner Concepcion noted that the edits to No. 11 were more related to formal invitations and discussed the 30A implications. COO Stack needed to understand when Commissioners need staff. Mediator Podziba agreed to break down No. 11 further. CIE Gyebi discussed the role of standard operating procedures (SOP) in developing processes and discussed 30A concerns. He also noted that Commissioners had a right to visit dispensaries, but cautioned Commissioners to be careful. The Chair discussed the tragedy in Holyoke as it related to No. 9 and stressed the need to know what was going on in the industry, and in investigations. Commissioner Camargo concurred and discussed the incident further. Commissioner Concepcion agreed with the Chair and wanted to understand issues before a public meeting. Commissioner Roy expressed that Commissioners needed to know when public safety and health was in jeopardy. The ED responded that this topic was discussed in the External Communications section as No. 11. Mediator Podziba mentioned the role of an SOP and whether No. 9 conflicted with page 13, External Communications, No. 11. Mediator Podziba and Commissioner Concepcion noted that No. 11 on page 13, under External Communications, might not fit all situations. GC Bailey pointed to No. 9 in relation to 30A and noted that Commissioners should be aware of publicly available information, but Commissioner should stay away from discussing and drawing legal conclusions on a matter. CIE Gyebi provided proposed language and noted the need to use caution. Commissioner Concepcion offered further edits and recommendations for the language. Commissioner Stebbins agreed with No. 11 on page 13, and that they could have conversations as long as Commissioners were not acting with bias. Commissioner Concepcion explained the role of Commissioners acting as judges and the requirement to maintain impartiality. Mediator Podziba provided further edits. The Chair noted that ultimately Commissioners needed to preserve impartiality as they are the ultimate arbiters as regulators. CIE Gyebi discussed potential conflicts and reiterated that the Commissioners were the decision makers. He provided examples of how he has handled investigations and discussed the posting of investigative materials. Mediator Podziba asked CCO Sinclair and GC Bailey to share their opinion. CCO Sinclair noted that the language that CIE Gyebi proposed was too descriptive and offered further language to No. 9. He added that staff reputations were also on the line and noted an example. He emphasized the need to create a safe space where Commissioners and staff were both protected. GC Bailey noted that the Commissioners had different roles, but their ultimate role was adjudicator. She also noted that staff should feel comfortable with sharing information in confidence. She discussed the role of CIE Gyebi and the fact that some investigations could be conducted in private.



COO Stack noted that an SOP had been developed to protect sensitive information and that it could be shared and reviewed. CIE Gyebi explained his edits and that the perspective of GC Bailey and CCO Sinclair were not mutually exclusive.

The Commission took a short recess.

- Mediator Podziba revisited the conversation on No. 9 in the Interactions Between and Among Commissioners, and the Executive Director, Leadership Teams, and Staff section. Commissioner Roy explained that Commissioners could not be completely in the dark on certain matters and asked how the Commission balanced the adjudicatory role with understanding the situation. Commissioner Stebbins asked for No. 9 to be broken down to respect their roles and their need to know. CIE Gyebi opined that the Charter should be aspirational in nature and again noted 30A. He spoke about the role of fire walls and that he was trying to protect the Commission. Mediator Podziba observed that consensus had been reached and there was a need to wordsmith the language. GC Bailey asked Commissioners to detail the tension that they face. Commissioner Concepcion mentioned a need to stay informed. The Chair also noted that the timeline of investigations was a source of tension and noted the burden on licensees and the public. She explained the infrastructure created by the legislation created an overly “criminal” nature, and the need to understand (1) what regulation were, (2) why the Commission was regulating something and (3) who the Commission was serving. She expressed the desire to understand investigations in order to communicate about them. Commissioner Concepcion noted that she does not feel the pressure from outside entities and that people and entities do not understand 30A and the role of Commissioners. The Chair agreed but wanted to ensure that Commissioners communicated with licensees. Commissioner Roy discussed how she has handled questions on investigations and asked for talking points from staff.
- Mediator Podziba moved to the Structural Mechanisms for Joint Commissioner and Staff Work section of the Charter. Mediator Podziba, and COO Stack noted that it read like an SOP. Mediator Podziba explained that there was a desire to have a one stop shop where Commissioners could understand the process. The Chair noted that even with the SOPs, Commissioners were still confused about the process. Mediator Podziba asked if the Charter should reference the SOP instead of having it integrated into the Charter. COO Stack recommended that the SOP be referenced. Commissioner Camargo commented that the Charter was meant to be a handbook for Commissioners. The Executive Director warned that the conversation might culminate in creating a two-tiered Charter. CIE Gyebi noted that he liked the SOP process as it allowed his staff to detail their work. COO Stack said that the Commission could copy and paste the SOPs into the Charter. Mediator Podziba preferred to look at the Charter instead of copy and pasting it. COO Stack noted that there could be an issue if the agency updated the SOP but the text of an old SOP remained in the Charter. COO Stack stated that that SOPs were updated at least annually.



- Mediator Podziba moved to review Legislative and Executive Branch Outreach section. GC Bailey noted that Legal often received questions from other agencies and asked (1) what the Commission was reviewing, (2) what kind of interactions they were looking to review and (3) how policy reviews should be completed. She provided further examples of how the process worked in terms of subpoenas. She agreed with the language in this section if it was only related to policy. The ED noted that it was related to policy and provided further clarification into the process. Mediator Podziba said that the section was not clear to GC Bailey and asked how the section could be clearer. GC Bailey requested language in the Charter to incorporate limiting language related to the role of the Legal Department. She mentioned her role to let Commissioners know when they are in compliance, and she distinguished compliance from policy. GC Bailey noted the new equity legislation and the role of municipalities as an example. She added that the Department of Government Affairs and Policy (DGAP) perspectives might not be in alignment with the Legal Department's. Mediator Podziba asked GC Bailey to provide draft additional draft language. CCO Sinclair felt that there was some utility in getting staff feedback. Commissioner Camargo provided a hypothetical on how the process would work if a Commissioner was abiding by the policy, but not communicating her priority to other Commissioners. GC Bailey explained the utility to reaching out to the Legal department in the process. Commissioner Stebbins noted that it could be built into No. 7. The Chair commented that the ED was the traffic cop, punching bag and bottle neck. She echoed Commissioner Camargo's hypothetical and cited some intricacies in the process. The Chair also raised previous comments related to the addition of a Chief of Staff and noted that Commissioners needed to know what subjects other Commissioners were already leading. COO Stack noted that utility of an SOP in the process. She explained the role of the Executive Director in outreach and opined that the Charter was silent on that point. She also discussed that there might be technological fixes related to the sharing of information. GC Bailey related the open meeting law implications when a public document shared an opinion. Commissioner Stebbins noted the responsibility of Commissioners to bring topics to Public Meeting in order for other Commissioners to understand the work that was being done individually. He explained that bringing those topics forward at public meeting allowed for conversations to take place about those projects. Mediator Podziba said that the reporting mechanisms were outlined in the Charter. She entertained clarifying questions from Commissioner Concepcion and CCO Sinclair. The proposed agenda item section was discussed, as well as potential utility in having the conversation at a public meeting. Commissioner Camargo mentioned the need to not being afraid of communicating and pushing back on each other at a public meeting. The Chair recommended this approach and added that flexibility should be built into this process. She explained that staff should never be embarrassed at a public meeting. Commissioner Concepcion noted that she used opening comments to communicate her priorities and ongoing projects. Mediator Podziba provided some language edits to No. 1, relative to the role of the ED. The ED explained that his role could be expanded further in



No. 5. COO Stack noted that there was an opportunity to expand the role of ED to an earlier section. The ED echoed COO Stack's comments related to the roles of responsibilities. Commissioner Roy asked a question related to CANNRA and wanted to get involved. She asked whether the section was related to the state entities. CCO Sinclair noted that the conversation was relevant to more than CANNRA. GC Bailey raised the issue of the role of appointing authorities and the level of communication between Commissioners and the appointing authority. The ED expressed that it depended on the posture of the conversation and whether it implicated policy. CIE Gyebi saw utility in adding language related to communication with the appointing authorities.

The Commission took a short recess.

- Mediator Podziba moved to review the External Communications section. She provided background and mentioned previous conversations on the topic. CCO Sinclair noted that logistically there could be challenges related to implementing the proposed changes to No. 2 and provided feedback. Mediator Podziba asked how press engagements were handled. CCO Sinclair detailed how press engagements were currently handled.

The Commission took a short recess.

- Mediator Podziba moved to review the External Communication section of the Charter. The Chair felt that the Chair's statutory language should be included and emphasized the need to respect the Communications Department's responsibilities. CCO Sinclair noted that the statute did not designate the Chair as the spokesperson. The Chair believed that certain sections of the statute assigned certain roles to the Chair. CCO Sinclair related the history of the Commission and noted that the previous Chair did not act as a spokesperson for the Commission. The Chair stated her preference for the staff to facilitate press engagements but to not dictate the process. CIE Gyebi opined that there were five Commissioners, and he thinks of them as "the Commission." He then opined about the ED's role and the role of the Staff. The Chair noted her preference that Commissioners retain the ultimate power related to the press engagement. The Chair opined that, in some sections, the ED would be the appropriate spokesperson. CIE Gyebi felt that the legislation was ambiguous related to how the Commission communicated. Commissioner Camargo advocated balance and some shared contribution to communications. The Chair noted dissatisfaction with how the scrum process currently worked and expressed that staff should not be able to tell the Commissioners whether they can speak or not. She also noted that there was a happy medium and the Chair should have a say on reaching that medium. Commissioner Camargo pointed out that the Chair was describing two separate issues: the (1) scrum and (2) the role of the Chair related to acting as the spokesperson. The Chair wished to discuss the role of the Chair





further in regard to communications. COO Stack noted that she found the section confusing and spoke about how staff could be external communicators. She asked about the intent of the section. Commissioner Concepcion provided further clarity related to the section and why it was developed. Commissioner Roy asked a clarifying question and asked CCO Sinclair to detail how a previous press engagement worked. CCO Sinclair noted how the previous press inquiries were handled. He articulated intricacies in the process and the difficulty related to incorporating the Chair in the process. The Chair opined that notifications would be helpful. Mediator Podziba asked how many press inquiries were typically received on a daily basis. CCO Sinclair relayed how some of the process was handled, and CIE Gyebi noted that an additional step has an impact on staff. He discussed resources and the need to make the Charter broad so that it may work for Commissioners. COO Stack reiterated that she found this section confusing and discussed the role of SOP and Policy. In response, Commissioner Roy and COO Stack debated three possible options for the Communications Department. GC Bailey mentioned the public records request implications of the communicating with different Commissioners. The board discussed the mechanics guiding how the press scrum worked. In response, the Chair noted her understanding of the process and her preference not to have the Staff tell the Commissioners how to speak. Mediator Podziba explained that there was agreement and noted that there needed to be a review of SOPs. Commissioner Camargo asked Mediator Podziba to summarize the conversation and discuss next steps. Mediator Podziba replied that there were too many proposed edits currently, and so she would review the SOPs and redraft the section. The Chair discussed COO Stack's concern related to not muzzling communications. COO Stack found No. 6 specifically confusing, and asked a question related to how the section applies to already approved processes. COO Stack noted that they should think about their successors when considering this section. GC Bailey explained that there were situations where the Commission has dual jurisdiction on a subject matter and recommended changes to No. 13(c). She also advised that Commissioners should not use personal social media accounts for official business. She explained that there have been materials developed to guide Commissioners and noted a previous situation. Commissioner Concepcion raised the issue of the need to determine when one's opinion was their personal statement and not an opinion on behalf of the entire Commission. The Chair noted that there needed to be an ethics training and Mediator Podziba noted that there also needed to be a social media training. CCO Sinclair cited No. 5 and the impact on staff and Commissioners. The Chair noted that she was not a part of the development and that her preference was not to have Commissioners muzzled. CCO Sinclair noted that they have discussed various approaches to the issue. Commissioner Roy commented that there could be a situation where Commissioners could work together to swap positions. CCO Sinclair opined about how other Commissioners were affected. Commissioner Concepcion noted that she did not have a problem with the current process. Mediator Podziba then provided an overview and set forth next steps.



- Mediator Podziba moved to review the Roles and Responsibilities section and discussed how it was developed. Commissioner Roy mentioned that (b) potentially limited the ED's authority and emphasized his role to direct, manage and coordinate staff. Mediator Podziba proposed some language alterations. COO Stack offered a standard clause of "by and through Staff." Mediator Podziba began a discussion regarding (i). GC Bailey proposed the language changes to (i) to ensure that the ED had hiring and firing authority. Commissioner Roy asked if the section should address negotiating with unions. GC Bailey proposed language changes to (i) and noted she would work with Mediator Podziba to draft language. Mediator Podziba discussed the EDs short and long-term goals. GC Bailey noted the role of the ED in litigation, and that litigation is an external communication. Mediator Podziba solicited any proposed changes. The ED proposed language and commented about the importance of knowing what he can testify to and what he should avoid testifying about, particularly when decisions had not been made on issues. Commissioner Roy noted the adjudicatory function and that there was not language included on the subject. CIE Gyebi mentioned that the 30A process needed to evolve. GC Bailey noted that the Suitability Review Committee process was not a formal hearing process and the role of the hearing officer in conducting formal hearings. She discussed the ED's role in approving or disapproving recommendations and emphasized that the regulatory process was an implementation process. Commissioner Concepcion raised delegation of authority and noted the implications. The ED explained that he did not make suitability determinations but he instead made recommendations. GC Bailey offered to work on drafting language on this issue. CIE Gyebi agreed that powers cannot be taken away from the ED to follow and enforce the laws of the Commonwealth, because of the statute and opined that suitability was an authority that the Commission had not relinquished. GC Bailey observed that in a traditional licensing agency the ED would have the ultimate authority to make the call. GC Bailey noted on 30A at the Commission, the process was governed by statute and case law and there was not a need to discuss it in the Charter. CIE Gyebi noted his preference to keep the language broad in order to not box in the process.
- Mediator Podziba moved to review the Executive Director section. COO Stack recommended striking "strategic" out of the first goal and stated her reasoning behind striking that word. The Chair noted her preference to table the discussion as this is part of a larger discussion. Mediator Podziba noted the reasoning behind employing the word "strategic" in lieu of a previous word i.e., "broad based," that was used. GC Bailey proposed language about advancing the legislature's mandate and the mission of the Commission.
- Mediator Podziba moved to next steps and confirmed the Commissioners were comfortable with sharing the next version of Charter with the Department Heads and requested that GC Bailey conduct a legal review. Mediator Podziba stated the necessity for an additional two meetings, and given the diversity of opinion, she would put together a plan. She discussed how prior mediation meetings differed from current sessions.





### III. Adjournment

- Commissioner Stebbins moved to adjourn executive session.
- Commissioner Camargo seconded the motion.
- The Chair took a roll call vote:
  - Commissioner Camargo – Yes
  - Commissioner Concepcion – Yes
  - Commissioner Roy – Yes
  - Commissioner Stebbins – Yes
  - Chair O'Brien – Yes
- The Commission unanimously approved the motion.

