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| Unofficial English Translation | | |  |
| Autorité des marchés financiers c. Technologies Timechain inc. | | | 2022 QCTMF 74 |
| FINANCIAL MARKETS  ADMINISTRATIVE TRIBUNAL | | | |
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| CANADA | | | |
| PROVINCE OF QUÉBEC | | | |
| MONTRÉAL | | | |
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| FILE NO.: | 2022-015 | | |
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| DECISION NO.: | 2022-015-004 | | |
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| DATE: | December 1, 2022 | | |
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| BEFORE: | | Mtre. Antonietta Melchiorre | | |
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| AUTORITÉ DES MARCHÉS FINANCIERS | | | |
| Applicant  v. | | | |
| **TECHNOLOGIES TIMECHAIN INC.**  and  **LOUIS CLÉROUX**  and  **JÉRÉMIE PICARD**  and  **MATHIEU COCHER**  Respondents  and  **HUI YING SUN**  and  **NATANIA LEMIEUX**  and  **CAISSE DESJARDINS**  and  **SCOTIABANK**  and  **BINANCE CANADA LTD.**  and  **FTX** **EXCHANGE PLATFORM**  and  **FIREBLOCKS**  and  **VIRGOCX INC.**  and  **APAYLO FINANCE TECHNOLOGY INC.**  and  **THE LAND REGISTRAR**  Impleaded parties | | | |
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| DECISION  (Lifting of the order for non-publication, non-dissemination and non-disclosure of the names of the investors involved in the case) | | | |
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# WARNING: An order for the non-publication, non-dissemination and non-disclosure of the residential addresses of the respondents and the impleaded parties, as well as the bank account numbers subject to the Tribunal’s freeze orders, has effect in this case.

# OVERVIEW

1. The Autorité des marchés financiers (“the AMF”) is asking the Financial Markets Administrative Tribunal (the “Tribunal”) to lift an order for the non-publication, non-dissemination and non-disclosure of the names of the investors involved in the case, issued ex officio by the Tribunal on June 2, 2022.
2. According to the AMF, this order is no longer necessary from this point on in the case. Maintaining the order is no longer relevant.
3. The respondents are not contesting this request.
4. The Tribunal must therefore decide whether to lift the order for the non-publication, non-dissemination and non-disclosure of the names of the investors involved in the case.
5. After analysis, the Tribunal has decided that the order should be lifted.

# ANALYSIS

1. On May 30, 2022[[1]](#footnote-1), as a matter of urgency and following a hearing that was not attended by the respondents or the impleaded parties, the Tribunal issued a decision that included various orders, including orders to cease engaging in any transaction in securities and to cease acting as securities dealers or advisers, as well as freeze orders.
2. Lacking sufficient time to provide detailed reasons for its decision and recognizing the urgency of the situation, the Tribunal mentioned, upon rendering the operative part of its decision, that its reasons would follow soon as possible. The Tribunal gave its detailed reasons on July 19, 2022.
3. At a hearing of the AMF’s request, the Tribunal issued several orders prohibiting or restricting access to representations made before Tribunal or the disclosure of the information contained in such representations.
4. More specifically, at the request of the AMF, the Tribunal issued an order prohibiting publication of the names of the investors involved in the case.[[2]](#footnote-2)
5. On June 2, 2022, between the time that the Tribunal issued the operative part of its decision (May 30, 2022) and the time it gave detailed reasons for its decision (July 19, 2022), the Tribunal issued the following orders *ex officio*:

* An order for the non-publication, non-dissemination and non-disclosure of the names of investors involved in the case;
* An order for the non-publication, non-dissemination and non-disclosure of the residential addresses of the respondents and the impleaded parties, as well as the bank account numbers subject to the freeze orders of the Tribunal referred to in the originating application and in the operative part of the Tribunal’s decision;
* An order sealing certain exhibits and sealing the original version of redacted exhibits, while allowing the redacted version of exhibits to remain publicly available[[3]](#footnote-3).

1. The open court principle is a fundamental principle of our law. This principle is entrenched in section 115.7 of the *Act respecting the* *regulation* *of the financial sector*[[4]](#footnote-4).
2. However, this principle is not absolute. The Tribunal may, even ex-officio, deviate from this principle when necessary “in the interest of good morals and public order” or to preserve them[[5]](#footnote-5). Whenever the Tribunal is asked to restrict or limit open judicial proceedings[[6]](#footnote-6), the Tribunal exercises discretion based on the facts and circumstances of the case at the time of the application, with consideration for the applicable law[[7]](#footnote-7).
3. The Tribunal may or may not, at its discretion, issue an order preventing the publication, dissemination or disclosure of information for a specified period. This decision depends on the circumstances of the case.
4. Furthermore, the order by the Tribunal could at some point become less necessary or even unnecessary. The question is whether the Tribunal, in this case, may change or even revoke the order.
5. In a recent decision[[8]](#footnote-8), the Supreme Court set down the possibility that a court could amend or revoke an order, particularly in light of material changes in the circumstances that initially justified the order, or at the request of an affected party unable to make submissions during the initial proceeding.
6. This Supreme Court decision was recently cited in *Automobile Protection Association* *(APA)* v. *Bank of Nova Scotia*. The Superior Court noted that decisions leading to orders *[Translation] “[…] can always be revised or amended in the event of material changes in the factual or legal circumstances or simply if changes in the evidence allow the Court a fuller picture of the situation”*[[9]](#footnote-9)(references omitted).
7. However, the authority of a court to review its own decisions must be set out in law.[[10]](#footnote-10) The *Act respecting the regulation of the financial sector* makes such provision.
8. The order issued in this case may be reviewed or revoked by the Tribunal in accordance with section 115.15.7 of the *Act respecting the regulation of the financial sector*, which reads as follows:

“115.15.7 The Tribunal may, on application, review or revoke a decision or an order it has rendered or made

(1) if a new fact is discovered which, had it been known in sufficient time, could have warranted a different decision;

(2) if an interested party, owing to reasons considered sufficient, could not make representations or be heard; or

[…]."

1. According to the AMF, its request to lift the order is not a request to “review or revoke” a decision within the meaning of section 115.15.7 of the *Act respecting the regulation of the financial sector*. Rather, its request is meant to terminate the order. The AMF underscored that the Tribunal had not specified the term of the order.
2. With respect, the Tribunal disagrees with this interpretation. First, orders need not be issued for a specific term. The fact that the order does not include a time limit does not preclude the need to comply with s. 115.15.7 of the *Act respecting the regulation of the financial sector*.
3. An application to lift an order does constitute an application for revocation within the meaning of section 115.15.7 para. 1 (1o) of the *Act respecting the regulation of the financial sector,* whereby a party must establish the existence of new facts that would justify a different decision by the Tribunal.
4. Proof of the existence of “new facts” is akin to the existence of significant changes in the circumstances affecting the initial order, as mentioned by the Supreme Court in *Canadian Broadcasting Corporation* v. *Manitoba, supra.*
5. In any event, in reviewing an order it has given, the Tribunal is not sitting on an appeal of a decision initially given by the Tribunal.
6. To persuade the Tribunal to revoke the order, the party must establish the existence of material facts or circumstances that, had they been known to the Tribunal, could have warranted a different decision.
7. Furthermore, the Tribunal issued the non-publication, non-dissemination and non-disclosure order on June 2, 2022 before hearing the arguments of the parties[[11]](#footnote-11). The AMF therefore had the opportunity to later make representations or be heard in accordance with s. 115.15.7 para. 1 (2) of the *Act respecting the regulation of the financial sector*. In the latter case, an application to contest the order must be made as soon as possible after the contested order is issued.
8. To support its request to have the order lifted, the AMF essentially contends that it has taken a series of reasonable and effective measures to protect the confidentiality of the investors most sensitive personal information and to protect their right to privacy.
9. More specifically, the AMF redacted the investors’ personal contact information (addresses, telephone numbers, email addresses, etc.) and the bank account numbers of the investors named in the exhibits entered on the record, and will continue to do so.
10. The AMF asked the Tribunal to order the sealing of certain exhibits and original redacted exhibits containing the personal information of the investors involved in the case, and the Tribunal agreed.
11. The AMF also identified investors involved in the case by their initials in the originating instrument.
12. The AMF added that the investors referred to in its proceedings and subject to the sealing order are in direct contact with the respondents. When the request for partial lifting of a freeze order was made, respondent Louis Cléroux testified before the Tribunal that he had been in contact with the investors concerned by the application. This testimony was confirmed by one of the investors during his testimony before the Tribunal. In light of such contact, identification of the investors by name does not raise issues for their safety, reputations or dignity.
13. In light of the new facts brought before the Tribunal and steps by the AMF to protect the privacy of investors, the Tribunal considers that the non-publication, non-dissemination and non-disclosure order with respect to the names of the investors involved in the case is no longer necessary.

**DISPOSITION**

**FOR THESE REASONS**, the Financial Markets Administrative Tribunal, pursuant to sections 93, 97 paragraph 1, 115.7, 115.8 and 115.15.7 of the *Act respecting the regulation of the financial sector*:

**ALLOWS** the request by the Autorité des marchés financiers to lift the order for non-publication, non-dissemination and non-disclosure of the names of investors involved in the case;

**LIFTS** the order for non-publication, non-dissemination and non-disclosure of the names of investors involved in the case;

**ORDERS** the Autorité des marchés financiers to notify the respondents and impleaded parties of this decision.

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|  | | **Mtre. Antonietta Melchiorre**  **Administrative Judge** |
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| Mtre.Ilana Amouyal and Mtre.Hamza Abouabdelmajid  (Counsel for the Autorité des marchés financiers)  For the Autorité des marchés financiers | | | | |
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| Louis Cléroux  Appearing in person | | | | |
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| Hearing dates: | | October 28 and November 7, 2022 | | |

1. *Autorité des marchés financiers* v. *Timechain Technologies Inc.*, 2022 QCTMF 36. [↑](#footnote-ref-1)
2. Corrected minutes of May 27, 2022. [↑](#footnote-ref-2)
3. Email dated June 2, 2022 from the Tribunal Secretariat. [↑](#footnote-ref-3)
4. CQLR, c E-6.1. It also appears in section 59 of the *Rules of Procedure of the Financial Markets Administrative Tribunal* (“Rules of Procedure of the Tribunal”), CQLR, c E-6.1, r 1 [↑](#footnote-ref-4)
5. Sections 115.7 and 115.8 of the *Act respecting the regulation of the financial sector* and sections 59 and 62 of the Tribunal’s Rules of Procedure. [↑](#footnote-ref-5)
6. Unless the right to restrict or limit open sittings is provided by law. [↑](#footnote-ref-6)
7. In particular, taking into account the lessons recently learned in *Sherman Estate* v. *Donovan*, 2021 SCC 25. [↑](#footnote-ref-7)
8. *Canadian Broadcasting Corporation* v. *Manitoba* 2021 SCC 33. [↑](#footnote-ref-8)
9. 2022 QCCS 935, para. 36. [↑](#footnote-ref-9)
10. *Pop* v. *Boulanger*, 2017 QCCA 1009, para. 39 [↑](#footnote-ref-10)
11. This applies even though the Tribunal has the right to make such orders “*ex officio*.” [↑](#footnote-ref-11)