



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

IN THE MATTER OF Y

ORDER
(Section 17 of the *Securities Act*)

WHEREAS Y (the “Applicant”) was the subject of a proceeding before the Ontario Securities Commission (the “Commission”), commenced by a Notice of Hearing and accompanied by a Statement of Allegations issued by Staff with respect to Y, other individual respondents and Z Corporation, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”), which is now a completed matter (the “Commission Proceeding”);

AND WHEREAS an application (the “Application”) has been made by the Applicant for an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of persons identified as C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, C14, C15, N1, N2, N3, N4, N5, N6, N7, N8, N9, N10, N11, N12, O1, O2, O3 and O4 (the “Respondents”) that was obtained by Staff of the Commission (“Staff”) in respect of the subject matter of the Commission Proceeding under an order of the Commission made pursuant to section 11 of the Act, in order to provide the Applicant with the ability to make full answer and defence in his criminal trial arising out of charges under section 380(1)(a) of the *Criminal Code* (the “Criminal Proceeding”);

AND WHEREAS the specific materials that are the subject of the Application are transcripts of examinations conducted under section 13 of the Act, documents that were the subject of the examinations, and other documents produced (the “Evidence”);

AND WHEREAS the Commission heard the Application at a hearing held *in camera* on November 20, 2008;

AND WHEREAS, with the exception of N1 and N12, the Respondents received notice of the hearing of the Application (the “Notice of Hearing”);

AND WHEREAS on December 18, 2008, the Commission made an order concerning C1, C3, C5, C6, C10, C11, C14, N4, N9 and O1 (the “Non-Objecting Respondents”), who indicated that they had no

objection to the order sought by the Applicant in respect of all information provided by them to the Commission;

AND WHEREAS on December 18, 2008, the Commission made an order that the Application with respect to N1 and N12 was adjourned *sine die*, until such time as those Respondents receive the Notice of Hearing as it relates to them;

AND WHEREAS C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4 provided compelled testimony to the Commission in the Commission Proceeding and are on the Crown's Witness List in the Criminal Proceeding (the "Crown's Witness List");

UPON CONSIDERING the written and oral submissions of the Applicant, the written and oral submissions of Staff, the written submissions of counsel for O2, and the oral submissions of counsel for N4;

AND WHEREAS the Commission has determined that it would be in the public interest to grant the relief sought by the Applicant in respect of use and disclosure of the evidence provided by C4, C9, N3, N6, N10, O2, O3 and O4 (the "Evidence"), for the purposes of the Applicant's full answer and defence in the Criminal Proceeding;

AND WHEREAS the Commission has determined that it would not be in the public interest to grant the relief sought by the Applicant at this time in respect of use and disclosure of the evidence provided by N2/O5, who is opposed to the Application and who is not on the Crown's Witness List;

IT IS ORDERED THAT, pursuant to paragraph 17(1)(b) of the Act:

1. Staff may disclose to the Applicant and his counsel the Evidence provided by C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4.
2. The Applicant and his counsel may make disclosure of the Evidence obtained from C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4, solely for the purpose of the examination of any witness who testifies in the Criminal Proceeding, in order to allow the Applicant to make full answer and defence to the charges made against him in the Criminal Proceeding.
3. Disclosure and use of the Evidence obtained from C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4 will be on the basis that:
 - a. Staff shall not make disclosure to the Applicant of testimonial and documentary evidence of C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4 for a period of seven days from the date of this Order;
 - b. The Applicant and his counsel will not use the Evidence other than as expressly permitted by this Order;
 - c. Except as expressly permitted by this Order, the Evidence shall be kept confidential;
 - d. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;
 - e. The Applicant and his counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

- f. The Applicant's counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary for the Applicant to make full answer and defence in the Criminal Proceeding;
 - g. The Evidence shall not be used for any collateral or ulterior purpose;
 - h. The Applicant and his counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed;
 - i. This Order does not affect any rights the Respondents may have relating to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act of Ontario*; and
 - j. This Order does not affect the prohibition on use of compelled testimony contained in section 18 of the Act.
4. The Application is dismissed with respect to N2/O5, without prejudice to the Applicant renewing his Motion if circumstances change, including N2/O5 being added to the Crown Witness List.

DATED at Toronto this 9th day of January, 2009.

“Lawrence E. Ritchie”

Lawrence E. Ritchie

“Mary G. Condon”

Mary G. Condon