



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
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Toronto ON M5H 3S8

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Toronto ON M5H 3S8

**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 documentary evidence of Z Corporation that was obtained by Staff of the Commission (“Staff”) in respect 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 all documents produced by Z Corporation which were subsequently disclosed to the Applicant for use in the Commission Proceeding (the “Z Corporation Evidence”);

AND WHEREAS the documents in the possession of Staff over which Z Corporation claims privilege were never disclosed to the Applicant for use in the Commission Proceeding and are not the subject of the Application;

AND WHEREAS Z Corporation has indicated that it consents to the order sought by the Applicant in respect of the Z Corporation Evidence, with the exception of privileged documents collected by Staff during the investigation in the Commission Proceeding;

UPON CONSIDERING the written submissions of the Applicant, the written submissions of Staff and the written submissions of counsel for Z Corporation, and having found 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 Z Corporation for the purposes of the Applicant’s full answer and defence in the Criminal Proceeding;

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

1. Staff may disclose the Z Corporation Evidence to the Applicant and his counsel.

2. The Applicant and his counsel may make use and disclosure of the Z Corporation Evidence, 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 Z Corporation Evidence will be on the basis that:
 - a. The Applicant will pay all costs of photocopying of documents not previously copied and provided to him;
 - 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.

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

“Lawrence E. Ritchie”

Lawrence E. Ritchie

“Mary G. Condon”

Mary G. Condon