Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
P.O. Box 55, 19th Floor 20 Queen Street West 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
THE JUNIPER FUND MANAGEMENT CORPORATION,
JUNIPER INCOME FUND,
JUNIPER EQUITY GROWTH FUND and ROY BROWN
(a.k.a. ROY BROWN-RODRIGUES)**

REASONS AND DECISION WITH RESPECT TO THE ADJOURNMENT MOTION
**(Section 144 of the *Securities Act* and
Rule 9.2 of the Ontario Securities Commission *Rules of Procedure*)**

Hearing:	September 16, 2011	
Decision:	November 24, 2011	
Panel:	Vern Krishna, Q.C.	- Commissioner and Chair of the Panel
	Margot C. Howard	- Commissioner
Appearances:	Derek Ferris	- For Staff of the Ontario Securities Commission
	Alex Valova	- Agent for Roy Brown (a.k.a. Roy Brown-Rodrigues)
	Larry Ellis	- Solicitors for Grant Thornton, in its capacity as Receiver of Juniper Fund Management Corporation, Juniper Income Fund and Juniper Equity Growth Fund

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REASONS AND DECISION WITH RESPECT TO THE ADJOURNMENT MOTION

I. INTRODUCTION

[1] On September 16, 2011, at the commencement of the Ontario Securities Commission ("**Commission**") merits hearing in the matter of Juniper Fund Management Corporation ("**JFM**"), Juniper Income Fund ("**JIF**"), Juniper Equity Growth Fund ("**JEGF**") and Roy Brown (a.k.a. Roy Brown-Rodrigues) ("**Brown**") (collectively, the "**Respondents**"), Brown brought a motion pursuant to section 144 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to revoke or vary the confidential order of Commissioner Krishna dated August 30, 2011 and Reasons dated September 7, 2011, which dismissed Brown's motion for an adjournment (referred to collectively as the "**Adjournment Decision**").

[2] Brown did not appear on September 16, 2011. However, he sent an agent to represent him. We had concerns whether the agent satisfied the Law Society of Upper Canada's ("**LSUC**") requirements to act as a representative for Brown and we heard submissions on this issue.

[3] Brown filed a motion record containing a Notice of Motion and Affidavit of Brown sworn September 14, 2011. We ordered that the motion record should remain confidential pursuant to subsection 9(1)(b) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") since it contained personal medical information.

[4] Oral submissions were provided by Brown's agent, Staff of the Commission ("**Staff**") and counsel for the Receiver (the "**Receiver**") of JFM, JEGF and JIF. The motion hearing itself was a public hearing. We explained there was no need to hold a confidential hearing as specific details regarding Brown's health were not discussed orally on the record.

[5] After hearing submissions from the parties, we dismissed Brown's request to vary or revoke the Adjournment Decision. We also found that Brown's agent did not fulfill the LSUC requirements to act as a representative before an administrative tribunal in the context of a complex contested adjournment motion. We indicated that reasons would be issued in due course. These are those reasons.

II. THE ISSUES

[6] The two issues are as follows:

1. Can an agent who is not a licensed member of the LSUC represent a respondent in a contested motion before the Commission?

2. Should the Adjournment Decision be revoked or varied pursuant to section 144 of the Act?

III. ANALYSIS

A. Representation at Commission Hearings

[7] At the motion hearing Brown was represented by an agent who was not licensed under the *Law Society Act*, R.S.O. 1990, c. L.8, as amended (the "**LSA**").

[8] Staff did not oppose the agent's participation and the Receiver did not provide submissions on this issue.

[9] The agent informed us that she was a foreign trained law student currently completing the LSUC's National Committee on Accreditation ("**NCA**") process and that she would be commencing articles soon. We were not provided with specifics about the number of NCA exams and timing of exams that needed to be completed, and the agent explained that she could not confirm when her articles would commence because that would depend on her completion of the NCA requirements. The agent explained that in the meantime she was working as a law student on a contract basis at a law firm, and that is how she came to be introduced to Brown. She confirmed she was not a friend or family member of Brown. The agent took the position that she was able to represent Brown because anyone could act as an agent before an administrative tribunal.

[10] We reviewed the applicable legislation, LSUC By-Laws, LSUC *Rules of Professional Conduct* and the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "***Commission Rules***") and found that a law student cannot act as an agent in a contested motion before an administrative tribunal.

[11] Rule 1.7.1 of the *Commission Rules* states that a party may be self-represented or may be represented by a representative. The term "representative" is defined in Rule 1(1) of the *Commission Rules* as follows:

> "representative" means, in respect of a proceeding to which the Rules apply, a person authorized under the *Law Society Act*, R.S.O. 1990, c. L.8, as amended, to represent a person in a proceeding. [emphasis added]

[12] Section 26.1 of the LSA establishes that only a licensee of the LSUC may practice law or provide legal services in Ontario:

> **Prohibitions**
> **Non-licensee practising law or providing legal services**
>
> 26.1 (1) Subject to subsection (5), no person, other than a licensee whose licence is not suspended, shall practise law in Ontario or provide legal services in Ontario.
> ...
> (5) A person who is not a licensee may practise law or provide legal services in Ontario if and to the extent permitted by the by-laws.

[13] Subsection 1(1) of the LSA defines a licensee as:

"licensee" means,
(a) a person licensed to practise law in Ontario as a barrister and solicitor, or
(b) a person licensed to provide legal services in Ontario.

[14] Since the agent is not a licensee, we examined whether the agent was permitted to practice law or provide legal services pursuant to exemptions set out in the LSUC By-Laws.

[15] Subsection 30(1) of LSUC By-Law 4 specifies that a friend or family member with the following characteristics may without a license provide legal services:

Acting for friend or neighbour

5. An individual,
   i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
   ii. who provides the legal services only for and on behalf of a friend or a neighbour,
   iii. who provides the legal services in respect of not more than three matters per year, and
   iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Acting for family

5.1. An individual,
   i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
   ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), and
   iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

[16] The agent did not qualify under the friend and family exemption to represent Brown pursuant to LSUC By-Law 4. She specifically admitted she was not a friend or family member of Brown. The friends and family exemption set out in By-Law 4 specifies that the friend or family member cannot receive compensation for their services, and we understand that Brown was going to compensate the agent for her services.

[17] We also assessed whether the agent was permitted to practice law or provide legal services pursuant to exceptions set out in the LSUC By-Laws in her capacity as a law student employed by a law firm. As the agent has not yet started her articles, we reviewed the applicable By-Laws which address non-articling law students.

[18] A non-licensee (such as a law student) may in limited circumstances provide legal services if directly supervised by a lawyer. Rule 5.01 of the LSUC's *Rules of Professional Conduct* and its commentary recognizes this:

> **Rule 5 Relationship to Students, Employees, and Others**
>
> **5.01 SUPERVISION**
> Application
> 5.01 (1) In this rule, a non-lawyer does not include an articled student.
>
> **Direct Supervision required**
> (2) A lawyer shall in accordance with the By-Laws
> (a) assume complete professional responsibility for his or her practice of law, and
> (b) shall directly supervise non-lawyers to whom particular tasks and functions are assigned.
>
> **Commentary**
> By-Law 7.1 governs the circumstances in which a lawyer may assign certain tasks and functions to a non-lawyer within a law practice. Where a non-lawyer is competent to do work under the supervision of a lawyer, a lawyer may assign work to the non-lawyer. The non-lawyer must be directly supervised by the lawyer. A lawyer is required to review the non-lawyer's work at frequent intervals to ensure its proper and timely completion. ...
>
> [emphasis added]

[19] LSUC By-Law 7.1 governs operational obligations and responsibilities for lawyers and deals with the supervision of assigned tasks to non-licensees. It sets out the type of work that may be delegated to a non-licensee and it also specifies work that cannot be delegated to a non-licensee. The relevant sections of LSUC By-Law 7.1 state:

> 5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,
> (a) to give or accept an undertaking on behalf of the licensee;
> (b) to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
> (c) to take instructions from the licensee's client.
>
> ...
>
> 6. (1) A licensee shall not permit a non-licensee,
> (a) to give the licensee's client legal advice;

(b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the Law Society Act to do so;

(c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);

(d) to sign correspondence, other than correspondence of a routine administrative nature; or

(e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee.

[emphasis added]

[20] Further, subsection 34(2) of LSUC By-Law 4 sets out the circumstances where a law student may provide legal services:

Student under articles of clerkship

34. (1) A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society.

Other law student

(2) A law student may, without a licence, provide legal services in Ontario if the law student,

(a) is employed by a licensee who holds a Class L1 licence, a law firm, a professional corporation described in clause 61.0.1 (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;

(b) provides the legal services,

(i) where the law student is employed by a licensee, through the licensee's professional business,

(ii) where the law student is employed by a law firm, through the law firm,

(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (c) of the Act, through the professional corporation, or

(iv) where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of

Ontario or the municipal government in Ontario, respectively; and

(c) provides the legal services,

(i) where the law student is employed by a licensee, under the direct supervision of the licensee,

(ii) where the law student is employed by a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,

(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of a licensee who holds a Class L1 licence who practise law as a barrister and solicitor through the professional corporation, or

(iv) where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.

Same

(3) A law student may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the law student,

(a) is employed by a licensee who holds a Class P1 licence, a legal services firm or a professional corporation described in clause 61.0.1 (1) (c) of the Act;

(b) provides the legal services,

(i) where the law student is employed by a licensee, through the licensee's professional business,

(ii) where the law student is employed by a legal services firm, through the legal services firm, or

(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation; and

(c) provides the legal services,

(i) where the law student is employed by a licensee, under the direct supervision of the licensee,

(ii) where the law student is employed by a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm, or

(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,

(A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or

(B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation.

Interpretation: "law student"

(4) For the purposes of subsections (2) and (3), "law student" means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society.

[21] Together, LSUC By-Laws 4 and 7.1 govern the type of work that may be delegated to a non-licensee who is a non-articling law student. By-Law 4 permits that certain work may be delegated to a law student. However, there is a requirement that the law student must be employed by the law firm and be directly supervised. In this case, the agent informed us that she worked on an occasional contract basis for the firm and that she was hired directly by Brown. The agent was not working on behalf of another lawyer or under the direct supervision of another lawyer. She was directly retained by the client. We have concerns that the agent was providing legal advice while not employed at a firm and adequate supervision was not provided to the agent who is a law student.

[22] In addition, as per subsection 6(1)(b) of LSUC By-Law 7.1, a non-licensee cannot act on behalf of a person in a proceeding before an adjudicative body unless it is a "scheduling or other related routine administrative matter before an adjudicative body" as set out in subsection 5(1)(b) of LSUC By-Law 7.1. The agent appeared before the Commission to argue a contested adjournment motion in a lengthy complex regulatory proceeding involving Staff and multiple respondents, some of which are in receivership. This is by no means a "scheduling or other related routine administrative matter before an adjudicative body" contemplated by subsection 5(1)(b) of LSUC By-Law 7.1. Therefore, in the circumstances we find that it is inappropriate for the agent to represent Brown.

[23] Despite the fact that we found it was inappropriate for Brown to be represented by an agent, we still heard submissions from the agent and allowed her to participate since

Brown himself was not present at the hearing and we wanted to ensure that Brown would not be prejudiced by his absence at the hearing.

B. Brown's Request to Vary the Adjournment Decision Pursuant to Section 144 of the Act

1. The Positions of the Parties

[24] The Adjournment Decision dismissed Brown's request to adjourn the merits hearing *sine die*. The Panel found that given the objections of Staff and the Receiver, the significant delay in this matter and the various interests involved, including the interests of anticipated witnesses, unitholders of JEGF and JIF and the prejudice to Staff, Brown would have to put forth persuasive evidence in order to persuade the Commission that his adjournment request should be granted and he had not done so. While an adjournment was not granted, the Panel stated that the Commission would make reasonable accommodations for Brown's medical appointments and would consider requests for reasonable accommodation during the merits hearing. The merits hearing was rescheduled to commence on September 16, 2011.

[25] Mr. Brown now seeks to vary the Adjournment Decision pursuant to section 144 of the Act. In his written materials, he requests that the merits hearing start in December 2011. He takes the position that he currently is not medically fit to proceed with the merits hearing and that he will only be able to proceed once he has had the opportunity to undergo all the necessary medical tests, been diagnosed and received treatment. He contends that he has difficulty to convey thoughts and arguments clearly and coherently to the Commission which indicates he is not in a proper position to defend himself and testify at the hearing. He also emphasized that he is unable to work a full schedule and he is not working 12 hours a day and that the Commission misunderstood the evidence about his ability to work at the last appearance. As a result, the Commission should reconsider the Adjournment Decision in light of this misunderstanding.

[26] Brown takes the position that there would be no prejudice to any of the parties if the matter is adjourned to a later date because: (1) he submits that more than 97% of the funds have already been returned to unitholders, (2) witnesses might be inconvenienced to return at a later date, but the inconvenience to a witness and their memory is minimal, and (3) Staff had requested adjournments in the past and did not complain of prejudice in those instances.

[27] In support of his motion to vary the Adjournment Decision, Brown filed a motion record which contained an Affidavit of Brown sworn September 14, 2011. The affidavit sets out Brown's symptoms and medical tests (both completed and upcoming). In addition, the affidavit contained a Doctor's letter which discussed Brown's symptoms and upcoming medical tests. However, there is no diagnosis as medical tests are still ongoing.

[28] Staff objects to Brown's request for an adjournment. In particular, Staff emphasized in oral submissions that:

> Staff opposes the request largely for the same reasons we opposed the earlier request on August the 25th. We are prepared to go today. We have our witnesses all lined up. The first one is here. The matter is old. It dates back to a proceeding commenced in March of 2006. Witnesses have been summonsed three times already. There have been either four- or five prior adjournments, depending on whether you're going to count the one that was in 2009. It is simply not in the public interest, really, for the reasons set out in [the Adjournment Decision] to adjourn the matter, yet again, for what it would amount to be a sine die type adjournment without any sort of fixed date.
>
> (Hearing Transcript dated Sept. 16, 2011 at p. 17 line 23 to p. 18 line 11)

[29] Staff also submits that any additional adjournment would be prejudicial because the recollection of witnesses fades with time. Thus, it is in the public interest to have the witnesses testify sooner rather than later to ensure that their recollection and the evidence that they give in oral testimony is accurate. Further, it is costly to reschedule a hearing on the merits and difficult to book hearing dates in the near future as the Commission's hearings calendar is very busy.

[30] In addition, Staff takes the position that the hearing on the merits can proceed in the absence of Brown's participation. Specifically, Staff points out that Brown has agreed to an Agreed Statement of Facts. An Affidavit of Brown and excerpts of transcripts will be filed in evidence. The Receiver's reports, which were approved by the Superior Court, will also be filed. Further, Brown has also filed a volume of his own documents to support his defense. Staff explained:

> And Mr. Brown has -- he's testified. There's transcripts in the material setting out his position on those transactions and those trades. That evidence will be before you in this hearing whether Mr. Brown is here or not. This is a case where you may recall a receiver was appointed in May 2006. So volumes 4 to 8 are simply receiver reports. So Mr. Brown has -- he knows very well the evidence that Staff is relying on. In fact, he's had one opportunity already in terms of dealing with the receiver and responding to those receiver reports, which have been approved by the Superior Court. Those are before you in the material. His affidavit is before you. You will know what his position is whether he's here or not to advocate on his own behalf. So in terms of the fairness of an ex parte hearing, I don't want you to think that just because Mr. Brown isn't in the hearing room you won't be, you won't get a sense from the documents about what his position is.
>
> (Hearing Transcript dated Sept. 16, 2011 at p. 19 line 21 to p. 20 line 14)

[31] The Receiver also objects to any adjournment. The Receiver spoke to the impact of further delay in this proceeding on the receivership and the beneficiaries of the receivership, which are the unitholders of JEGF and JIF. The Receiver explained that:

> … it is a complex case and there's a lot to recall and I think that there's a real cost to it. And, of course, the party that bears that cost is the unitholder ultimately. So I think that there is some prejudice there. And I think the bigger prejudice, of course, is time. And until the receiver knows how this case is going to play out -- in other words, there may be four more adjournments, five more adjournments, two more adjournments, and until the receiver knows how this case is going to play out, how this trial is going to play out, it can't crystallize its costs in order to estimate a holdback. And we need to do that right now. Because we're in a position where we've made a tremendous effort to locate missing investors. We are at the point where we think we've found those we're going to find. And we'd like to make a final distribution and discharge this receiver. And we can't do that at this point in time because we do not know how this case is going to play out.
>
> (Hearing Transcript dated Sept. 16, 2011 at p. 27 lines 4 to p. 22)

2. Section 144 of the Act

[32] As stated above, Brown requests that the Adjournment Decision be varied pursuant to section 144 of the Act. Subsection 144(1) states:

> **Revocation or variation of decision**
>
> 144. (1) The Commission may make an order revoking or varying a decision of the Commission, on the application of the Executive Director or a person or company affected by the decision, if in the Commission's opinion the order would not be prejudicial to the public interest.

[33] Section 144 of the Act is mostly relied upon to make changes to existing Commission Orders, most often in the context of temporary orders or exemptions in take-over bid applications, where new facts come to light or a new law is enacted which would change the effect of the initial order (*Re Independent Financial Brokers of Canada* (2009), 32 O.S.C.B. 9043).

[34] In this case, we must determine whether new facts have come to light that would affect the original Adjournment Decision made.

[35] Upon considering the motion record provided by Brown and all the submissions of the parties, we do not find that any new information has been provided that would merit varying the original Adjournment Order. Brown's motion record contained similar evidence and arguments that were presented to the Commission when the Adjournment Decision was made. While a new doctor's letter was filed in support of this new motion,

the letter does not provide any new information about Brown's medical condition that would affect the original Adjournment Decision. Further, Brown submits that the Commission misunderstood his testimony about his ability to work. However, at this stage we do not have sufficient evidence about Brown's work history and work ability to justify varying the initial Adjournment Decision. Therefore, we find that the Adjournment Decision should not be varied.

3. Rule 9 of the Commission's *Rules of Procedure*

[36] In addition to section 144 of the Act, we also considered the factors set out in Rule 9.2 of the *Commission's Rules*. This Rule sets out a list of relevant, but non-exhaustive, factors to be considered when deciding whether to grant an adjournment:

> **9.2 Factors Considered –** In deciding whether to grant an adjournment, the Panel shall consider all relevant factors, including, but not restricted to, the following:
>
> (a) whether an adjournment would be in the public interest;
>
> (b) whether all parties consent to the request;
>
> (c) whether granting or denying the adjournment would prejudice any party;
>
> (d) the amount of notice of the hearing date that the requesting party received;
>
> (e) the number of any previous adjournment requests made and by whom;
>
> (f) the reasons provided to support the adjournment request;
>
> (g) the cost to the Commission and to the other parties for rescheduling the hearing;
>
> (h) evidence that the party made reasonable efforts to avoid the need for the adjournment; and
>
> (i) whether the adjournment is necessary to provide an opportunity for a fair hearing.

[37] In coming to our decision, we considered the factors set out in 9.2(a), (b), (c), (e) and (g) to be relevant to the situation at hand.

[38] The parties do not consent to this adjournment. Staff and the Receiver vehemently oppose any adjournment and want to resolve the matter and have finality.

[39] We find that both Staff and the JEGF and JIF unitholders would be prejudiced by an adjournment. Staff is ready to litigate this case and witnesses are lined up to testify. The memories of witnesses may fade over time, and further delay may affect the quality of the oral testimony of the witnesses. In addition, an adjournment would inconvenience witnesses as they would have to make further arrangements in order to testify before the Commission if the matter is adjourned yet again. With respect to the Receiver, each time

the matter is adjourned the Receiver has to prepare for the case and this work is billed to the funds, which reduces the amount available for distribution to the unitholders. This cost is an unfair burden to the unitholders. Most importantly, the Receiver cannot wind up JEGF and JIF until this proceeding is completed, which means that unitholders will have to wait longer to get any amounts owing to them if an adjournment is granted.

[40] This matter has a long procedural history dating back to 2006 and there have been a number of adjournments. The following is a summary of key dates and adjournment requests and this chronology was also considered in the initial Adjournment Decision:

- The alleged violations of the Act occurred in 2005 and 2006. The Commission issued the Temporary Order on March 8, 2006, and the merits proceeding in this matter was commenced on March 21, 2006 by way of a Notice of Hearing issued in connection with the Statement of Allegations;

- Between March 8, 2006 and September 4, 2007, there were nine appearances at which the matter was adjourned because the investigation of Staff and the investigation of the Receiver were on-going. Brown opposed the adjournment of the matter at some of these appearances;

- On September 4, 2007, the Commission ordered the merits hearing to commence on April 7, 2008;

- On March 31, 2008, the Commission heard a motion for Brown's request to adjourn the merits hearing on the grounds that he was no longer represented by counsel, he had not seen Staff's disclosure volumes which were served on his former counsel and needed additional time to prepare for the merits hearing. Staff opposed the adjournment request and indicated that Staff counsel was not available to attend on June 16, 2008. The Commission adjourned the merits hearing to June 16, 2008;

- On June 4, 2008, Staff brought a motion to adjourn the merits hearing on the basis of unavailability of Staff counsel. On June 6, 2008, the Commission ordered, on consent, that the merits hearing would commence on a date to be set by a pre-hearing conference commissioner or such other date as agreed to by the parties and confirmed by the Office of the Secretary. No pre-hearing conference dates were scheduled at that time;

- In January 2009, the Office of the Secretary tentatively scheduled the merits hearing for June 15 to 19, 2009, but Brown indicated that he could not attend the merits hearing on those dates for medical reasons;

- Throughout 2009 and during early 2010, Staff contacted Brown on various occasions to set dates for a pre-hearing conference, but Brown indicated that he would not be able to represent himself at either a pre-hearing conference or the merits hearing due to his health issues and financial situation;

- A pre-hearing conference took place on March 2, 2010. The pre-hearing conference was continued on April 30, 2010, at which the Commission scheduled the merits hearing to commence on November 15, 2010;

- Pre-hearing conferences were held on June 16, 2010, October 1 and 20, 2010 and November 1, 2010;

- By order dated November 5, 2010, the Commission adjourned the merits hearing due to Commission unavailability;

- On January 24, 2011, the Commission ordered that the merits hearing commence on September 14, 2011;

- On August 25, 2011, a confidential hearing was held to consider an adjournment request from Brown. The Adjournment Decision ordered that the merits hearing shall commence on September 16, 2011, rather than on September 14, 2011, and shall proceed on the other scheduled dates set out in the order in this matter dated January 24, 2011.

[41] To summarize, the alleged misconduct took place six years ago, and the allegations have been outstanding for five years. There have been four adjournments. In our view, it is necessary to hear this matter and have some finality. This proceeding cannot be adjourned indefinitely.

[42] There is a cost to delaying merits hearings. The Commission's hearings calendar is busy and it would be difficult to reschedule the matter and have it heard in the near future. Staff and the Receiver have spent time and effort preparing for this merits hearing and to adjourn it again would create additional preparation costs in the future.

III. CONCLUSION

[43] The Panel considers it in the public interest to proceed with the merits hearing. Brown's motion to vary the Adjournment Decision is dismissed. While the hearing on the merits must proceed, Brown may make requests for reasonable accommodation during the hearing. In addition, the Panel will permit Brown's doctor to testify, on a voluntary basis, solely on the issue of reasonable accommodation if Brown consents and is present (either by telephone conference or in person). In our view, Brown should have the opportunity to participate if his doctor will be providing information about his condition and reasonable accommodations.

DATED at Toronto on this 24th day of November, 2011.

"*Vern Krishna*"	"*Margot C. Howard*"
Vern Krishna, Q.C.	Margot C. Howard