

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

- and -

**IN THE MATTER OF
MAJD KITMITTO, STEVEN VANNATTA, CHRISTOPHER CANDUSSO, CLAUDIO
CANDUSSO, DONALD ALEXANDER (SANDY) GOSS, JOHN FIELDING AND
FRANK FAKHRY**

**MOTION
OF THE RESPONDENT JOHN FIELDING**

For an Order Striking Out Certain Paragraphs of the Affidavits Served by Staff
and for a Direction under Rule 28

A. ORDER SOUGHT

The Respondent/Moving Party, John Fielding, requests with notice that this Commission make the following Orders:

1. striking out those parts of the Affidavit of Christine George sworn September 11, 2020 (the “George Affidavit”) that refer to Fielding’s compelled evidence;
2. striking out those parts of the Affidavit of Anne Paiement sworn September 11, 2020 (the “Paiement Affidavit”) that refer to Fielding’s compelled evidence;
3. directing that Staff may seek to tender portions of Fielding’s compelled testimony only if Fielding fails to undertake to testify at the conclusion of Staff’s case; and
4. such further and other relief as Fielding may advise and this Commission may permit.

B. GROUNDS

The grounds for this motion are:

1. this Commission issued a Notice of Hearing under sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, in connection with a Statement of Allegations dated November 23, 2018;
2. on September 11, 2020, Staff served the George and Paiement Affidavits;
3. the George and Paiement Affidavits include portions of Fielding's compelled evidence during interviews with Staff;
4. Staff proposes to seek to introduce into evidence the entirety of the transcript of each Respondents' section 11 interview with Staff through George;
5. Following a long line of decisions of the Commission, Fielding's compelled testimony should not be tendered by Staff as part of its case in chief;
6. Staff may only use Fielding's compelled testimony for two purposes:
 - a. To cross-examine Fielding if he testifies at the hearing; or
 - b. If Fielding does not testify, Staff may seek to tender portions of Fielding's compelled testimony as part of its case in chief.
7. Fielding is entitled to consider all of the evidence advanced by Staff before deciding whether to testify;
8. if Staff is permitted to rely on Fielding's compelled testimony as part of its case in chief, he will be deprived of the decision as to whether to testify. This will prejudice the fairness of his hearing;

9. the reference to Fielding's compelled evidence in the George and Paiement affidavits should be struck out. Staff must not otherwise tender Fielding's compelled testimony as part of its case, subject to the exception identified above at paragraph 6(b);
10. rule 28 of the *Ontario Securities Commission Rules of Procedure and Forms*; and
11. such further and other grounds as Fielding may advise and this Commission may permit.

C. EVIDENCE

Fielding intends to rely on the following evidence for this motion:

1. The motion record of the Respondent/Moving Party Fielding;
2. The motion record of the Respondent/Moving Party Goss; and
3. such further and other evidence as Fielding may advise and this Commission may permit.

DATED this 22nd day of September, 2020.

Frank Addario & Lynda Morgan
Addario Law Group

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

- and -

IN THE MATTER OF MAJD KITMITTO, STEVEN VANNATTA, CHRISTOPHER CANDUSSO,
CLAUDIO CANDUSSO, DONALD ALEXANDER (SANDY) GOSS, JOHN FIELDING AND FRANK
FAKHRY

MOTION
THE RESPONDENT JOHN FIELDING

For an Order Striking Out Certain Paragraphs of the Affidavits Served by Staff
and for a Direction under Rule 28

ADDARIO LAW GROUP
101-171 John Street
Toronto, ON M5T 1X3

Frank Addario
Tel: 416.649.5055
Fax: 866.714.1196
faddario@addario.ca

Lynda Morgan
Tel: 416.649.5051
Fax: 866.714.1196
lmorgan@addario.ca

Lawyers for the Respondent
John Fielding