

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 MAJD KITMITTO

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

A. ORDER SOUGHT

The Moving Party, Majd Kitmitto, requests with notice that this Commission make an Order:

1. Striking out those parts of the Affidavit of Christine George sworn September 11, 2020 (the “George Affidavit”) that refer to Mr. Kitmitto’s compelled evidence;
2. Striking out those parts of the Affidavit of Anne Paiement sworn September 11, 2020 (the “Paiement Affidavit”) that refer to Mr. Kitmitto’s compelled evidence;
3. Directing that Staff may seek to tender Mr. Kitmitto’s compelled testimony only if Mr. Kitmitto does not undertake to testify at the conclusion of Staff’s case; and
4. Such further and other relief as counsel may advise and this Commission may permit.

B. GROUNDS

The grounds for this motion are:

1. This Commission issued a Notice of Hearing pursuant to ss. 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 Affidavit and the Paiement Affidavit;
3. Certain paragraphs of the George Affidavit and the Paiement Affidavit include compelled evidence of Mr. Kitmitto that he gave during his compelled interview with Staff;
4. Staff intends to introduce into evidence the entirety of the transcript of each Respondent's s. 11 interview with Staff through Christine George;
5. Following a long line of decisions of the Commission, Mr. Kitmitto's compelled evidence should not be tendered by Staff as part of its case in chief;
6. Staff may only use the compelled testimony of Mr. Kitmitto for two purposes:
 - a. To cross-examine Mr. Kitmitto if he testifies at the hearing; or
 - b. If he does not testify, to tender portions of Mr. Kitmitto's compelled testimony as part of its case in chief, if permitted to do so by the Panel;
7. Mr. Kitmitto is entitled to consider all of the evidence advanced by Staff before deciding whether he will testify at the hearing;

8. If Staff is permitted to rely on Mr. Kitmitto's compelled testimony of as part of its case in chief, he will effectively be deprived of that decision, which would prejudice the fairness of his hearing;
9. Accordingly, the reference to Mr. Kitmitto's compelled evidence in the George Affidavit and the Paiement Affidavit should be struck out and Staff must not otherwise tender Mr. Kitmitto'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 counsel may advise and this Commission may permit.

C. EVIDENCE

Mr. Kitmitto intends to rely on the following evidence for this motion:

1. The motion record of Respondent Fielding;
2. The motion record of Respondent Goss; and
3. Such further and other evidence as counsel may advise and this Commission may permit.

DATED this 22nd day of September, 2020.



Ian R. Smith
Andrew Guaglio

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