Capital Markets Tribunal
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Citation: *Ontario Securities Commission v Akbar*, 2026 ONCMT 3
Date: 2026-01-21
File No. 2024-7

ONTARIO SECURITIES COMMISSION

- and -

AHMED KAISER AKBAR

REASONS AND DECISION

(Subsections 126.1(1)(b) and 126.2(1) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	James Douglas (chair of the Panel) Sandra Blake M. Cecilia Williams	
Hearing:	June 20, 23, 24, 25, and 26, 2025	
Appearances:	Stacy Reisman Hansen Wong	For the Ontario Securities Commission
	Mitchell Fournie	For Ahmed Kaiser Akbar

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REASONS AND DECISION

1. OVERVIEW

[1] The Ontario Securities Commission brought this application for enforcement proceeding pursuant to s. 127 of the *Securities Act*[1] (***Act***) against the respondent, Ahmed Kaiser Akbar. The Commission alleges that Akbar perpetrated a fraud and made misleading or untrue statements contrary to ss. 126.1(1)(b) and 126.2(1) of the *Act* in relation to two press releases issued by SoLVBL Solutions Inc. and other public filings made by SoLVBL. For the reasons following, and despite the able submissions of counsel for the Commission, we conclude that the Commission failed to prove that Akbar's conduct was a breach of either s. 126.1(1)(b) or s. 126.2(1).

2. BACKGROUND

[2] Akbar is a lawyer with considerable experience in securities law and the workings of the capital markets. In December 2021, Akbar's licence to practise law was suspended by the Law Society of Ontario. It remains suspended.

[3] Akbar was instrumental in the formation, financing and operation of Agile Blockchain Inc., a predecessor company of SoLVBL. Akbar, Rahim Allani and Gad Caro were, directly or indirectly through Akbar's spouse and Allani's and Caro's corporations, the initial investors in and principal lenders to Agile.

[4] On February 10, 2021, SoLVBL was formed through a reverse takeover of Agile and continued to carry on the business of Agile. Its common shares were listed for trading on the Canadian Stock Exchange.

[5] Following the reverse takeover, SoLVBL's officers and directors were replaced with nominees of Agile and included Agile's CEO, Raymond Pomroy, and Agile's CFO, Khurram Qureshi.

[6] From the outset, SoLVBL experienced serious financial problems. It had no revenue, was operating at a loss and had a working capital deficiency. Its MD&A for the three months ended March 31, 2021, included a going concern

[1] RSO 1990, c S.5 (***Act***)

statement. SoLVBL's share price declined steadily through the winter and spring of 2021, and it continued to rely on loans from Akbar, Allani and Caro to fund its ongoing operations.

[7] Regardless of whatever formal titles he may or may not have held, the evidence is clear that, during the relevant period, Akbar was legal counsel to SoLVBL. He performed all the functions one might expect to be performed by in-house counsel of a small publicly traded company, despite not being technically employed in that capacity.

[8] In late April 2021, Akbar, Allani and Caro discussed forming a new company to use SoLVBL's technology to produce non-fungible tokens. On April 27, 2021, Akbar incorporated New Foundation Technologies Corp. Akbar has been the sole director and officer of New Foundation since its incorporation.

[9] On April 29, 2021, SoLVBL entered into a technology licensing agreement with New Foundation pursuant to which New Foundation was granted an exclusive, worldwide licence to use SoLVBL's technology to develop non-fungible token products. The licence agreement called for payment of a one-time fee of $120,000 to SoLVBL. New Foundation's source of funding for the licence fee was, directly or indirectly, Akbar, Allani and Caro. No work was ever performed under the licence agreement and New Foundation never had any business, employees, revenue, products or customers.

[10] On May 13, 2021, and June 3, 2021, SoLVBL issued separate press releases (the **Press Releases**) that dealt with the licence agreement between SoLVBL and New Foundation and which the Commission alleges contained misrepresentations, either overtly or by omission. Akbar prepared the initial drafts of the Press Releases and sent them for review to Allani, Caro, Pomroy, and, for the May press release, Qureshi.

[11] In each of June and July, 2021, SoLVBL filed a Form 7—Monthly Progress Report with the CSE. SoLVBL also filed a Form 10-Notice of Proposed Significant Transaction with the CSE in June 2021. The Commission submits that these filings contained the same or similar misrepresentations as the Press Releases. Akbar prepared the initial drafts of the filings before they were sent to Pomroy and thereafter filed by SoLVBL.

[12] In July 2021, SoLVBL completed two private placements. Research Capital was the investment adviser to SoLVBL for both financings. The initial financing proposal from Research Capital was made in April 2021. As legal counsel to SoLVBL, Akbar was intimately involved in the efforts associated with shepherding the private placements to successful completion.

[13] SoLVBL raised a total of $4 million through the two private placements. Some of the proceeds were used to repay the loans that had been made, directly or indirectly, by Akbar, Allani and Caro to SoLVBL. Other amounts of the proceeds were used to pay operating expenses, including fees payable to Akbar under an independent contractor agreement he entered into with SoLVBL in July 2021.

3. PRELIMINARY ISSUES

3.1 The respondent's motion to admit a transcript

[14] On June 18, 2025, the respondent brought a motion seeking to admit into evidence the transcript from the voluntary investigative interview of Stephen Metcalfe, a representative of Research Capital.

[15] During the merits hearing, the parties advised that they had resolved the motion and the Commission was consenting to entering certain redacted excerpts of the Metcalfe transcript as evidence. The Tribunal issued an order reflecting the agreement reached by the parties.[2]

4. ISSUES AND ANALYSIS

4.1 Overview

[16] The Commission alleges that:

a. Akbar engaged or participated in acts, practices, or a course of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to s. 126.1(1)(b) of the *Act*; and

b. Akbar made statements and omissions that he knew, or reasonably ought to have known, were misleading or untrue and would reasonably be expected to

[2] (2025), 48 OSCB 6083

have a material impact on the price or value of a security, contrary to s. 126.2(1) of the *Act*.

4.2 The respondent's credibility

[17] The Commission asks us to find that Akbar was not a credible witness. It submits that Akbar's testimony was frequently self-serving and inconsistent with documentary evidence and testimony from other witnesses. In addition, the Commission cites numerous examples where it argues that Akbar was successfully impeached during cross-examination using the transcript from a prior compelled examination.

[18] Akbar disputes that he was not a credible witness. He points to instances where, in his submission, the Commission has mischaracterized the evidence or is asking us to draw unsupportable inferences from the evidence. On the issue of impeachment more generally, Akbar submits that the alleged instances of impeachment do not pertain to any relevant and material facts and, moreover, cannot be used to support an inference of liability.

[19] We agree with the Commission's submission that Akbar's testimony was, on occasion, inconsistent with the documentary record and the testimony of other witnesses. For example, his attempt to explain a statement in a SoLVBL public filing drafted by him concerning New Foundation's approaching "a few other technology companies with capabilities to develop NFT products" as meaning New Foundation looked at their websites can only be described as fatuous. Similarly, his testimony concerning the role played or to be played by Allani's company in the business of New Foundation was neither consistent with anything in the documentary record nor with Allani's testimony.

[20] We also agree that there were numerous instances in which Akbar was impeached in cross-examination using the transcript from his prior compelled examination. For example, his testimony in chief on the issue of who comprised New Foundation's "mission-driven team" referenced in the June press release was shown to be inconsistent with his testimony on his compelled examination.

[21] More generally, we find Akbar to have been an evasive, and at times argumentative, witness in cross-examination. Coupled with the testimonial inconsistencies and instances of impeachment described above, we find that

Akbar was not a generally credible and reliable witness. That said, we agree with Akbar's submission that we cannot infer a breach of Ontario securities law from testimonial impeachment alone, nor does our finding that Akbar was not a credible witness necessarily lead to a conclusion that Akbar committed the alleged breaches referred to above.

4.3 Misleading statements and omissions in the Press Releases and other documents

[22] The May press release made statements of fact about:

a. a request for proposal from New Foundation which was won by SoLVBL;

b. New Foundation being an international company; and

c. the upcoming signing of the License Agreement.

[23] The June press release made statements of fact about:

a. Vicky Arora, the Director of Licensing for New Foundation;

b. New Foundation's customers in the USA, Europe and Asia;

c. New Foundation being a US-based company with offices in Los Angeles and London, UK; and

d. New Foundation's mission-driven teams.

[24] The Press Releases omitted, among other information, the facts that:

a. New Foundation was incorporated on April 27, 2021, in Ontario by Akbar who was the sole officer and director;

b. New Foundation shared common shareholders and office space with SoLVBL; and

c. those shareholders had outstanding loans to SoLVBL.

[25] The evidence establishes, and we find that:

a. there was no request for proposal in writing or otherwise;

b. New Foundation was an Ontario company with no international ties;

c. New Foundation had no employees, including a Director of Licensing, and no teams;

d. New Foundation had no customers; and

e. the License Agreement was signed prior to the publication of the May press release.

[26] As indicated above, Akbar prepared the initial drafts of the Press Releases. This is clear from the documentary record and was not disputed by Akbar. Despite some changes being made by others, we find that the substance of the statements at issue in the Press Releases remained the same from Akbar's first draft. Similarly, no attempt was made following the first drafts to address the factual misrepresentations in and omissions from the Press Releases referred to above.

[27] Akbar attempted to characterize the impugned statements as aspirational. On their face, the statements purport to be factual, with no qualifying contingencies and no language to suggest they are forward-looking. They are presented as statements of fact.

[28] We find that the statements made in the Press Releases are false and misleading. They created the misleading impression that SoLVBL won a competitive request for proposal and was entering into a transaction with an established international company, with multiple offices, previous business activity and established customers. The evidence clearly demonstrates that none of this was true.

[29] We agree with the Commission's submission that the Forms 7 and Form 10 referred to above contain the same or similar misrepresentations and omissions as found in the Press Releases. However, Akbar submits that it would be an error of law, and procedurally unfair, for the Tribunal to make findings of liability based on allegations that are not anchored in the Application for Enforcement Proceeding (**AEP**), particularly where the allegations involve fraud. In support of his position, Akbar cites the Court of Appeal for Ontario's decisions in *Rodaro v Royal Bank of Canada*[3] and *Marketology Media Inc. v DGA North American Inc.*[4]

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[3] 2002 CanLII 41834 (ONCA) (***Rodaro***) at paras 60-63
[4] 2024 ONCA 799 (***Marketology***) at para 29

[30] The underpinning for Akbar's submission lies in the language of the AEP. After extensively detailing the alleged misrepresentations in the Press Releases, the AEP briefly references allegations of misrepresentations in SoLVBL's Management Discussion and Analyses from May 31, 2021, to May 1, 2022, which the Commission says were "primarily" drafted by Akbar. It also alleges a failure to correct an entry in SoLVBL's financial statements. The AEP later returns to the issue of SoLVBL's failure to correct public filings, but again specifically refers only to the company's MD&A and financial statements. Nowhere in the AEP is there any reference to the Forms 7 or the Form 10. Importantly, the Commission did not pursue any issue of misrepresentations in SoLVBL's MD&A or financial statements at the hearing.

[31] The Commission relies on a paragraph in the AEP that uses the term "other public filings" but makes no specific reference to what those are. The Commission cites the Divisional Court's decision in *Phillips v Ontario (Securities Commission)*[5] in support of its position. Relying on the Court's decision in that case, the Commission argues that the fact that the Forms 7 and Form 10 were drafted by Akbar and produced by SoLVBL, were contained in the Commission's disclosure, were never the subject of a particulars motion by Akbar, were discussed in the investigator's affidavit filed at the hearing and were discussed in the opening statement and again during the hearing without objection, is a full answer to Akbar's position on point.

[32] None of the cases cited by the parties were directly on point. *Rodaro* holds that it is an error on the part of a trial judge in a civil action to find liability on a theory never pleaded and upon which the parties did not join issue at the trial.[6] *Marketology* reinforces the principle that it is not open to a trial judge to decide a civil case on a basis that was neither pleaded nor explored in evidence.[7]

[33] In *Phillips*, the Divisional Court held that the Commission's Statement of Allegations (now an AEP) should not be treated in the same manner as a criminal information or indictment but should rather be viewed through the lens of the

[5] 2016 ONSC 7901 (Div Ct) (***Phillips***)
[6] *Rodaro* at paras 60-63
[7] *Marketology* at para 29

Tribunal's public interest jurisdiction where "fairness requires sufficient particularization of the allegations to define the issues, prevent surprise and to enable the parties to prepare for the hearing".[8] The Court went on to find that the Statement of Allegations in the case, which clearly alleged that the individual respondents made misrepresentations contrary to s. 44(1) of the *Act* but did not refer to the specific evidence relied upon to establish that breach, did not, on the facts of the case, constitute a denial of procedural fairness.

[34] Unlike the facts in our case, *Phillips* did not address the question of procedural fairness in the context of an AEP that did provide particulars which were later abandoned at the hearing and replaced by new and different particulars. In our view, it is understandable that Akbar did not seek particulars of the allegations in the AEP because particulars of the impugned statements in the MD&A and financial statements were provided. Similarly, while the Forms 7 and Form 10 were in the Commission's disclosure and referenced in the Ferguson affidavit, so were the MD&A and the financial statements. The Commission's opening statement made no specific reference to the Forms 7 and Form 10. When the Chair questioned the purpose of putting the Forms 7 and Form 10 to Pomroy during his examination in chief, Commission counsel described the documents as going to "Mr. Akbar's role" at SoLVBL and part of the "factual matrix". Lastly, when questioned during closing submissions as to whether, in respect of this issue, the Commission had met the requirements of s. 8 of the *Statutory Powers Procedure Act* (***SPPA***),[9] which requires that "reasonable information" regarding allegations against the good character of a respondent be provided, Commission counsel simply referred us back to *Phillips,* a decision that does not specifically address s. 8 of the *SPPA*.

[35] Viewing this issue through the lens of our public interest jurisdiction and relying upon the principles articulated in *Phillips,* we conclude that there was insufficient particularization of the allegations relating to the Forms 7 and Form 10 to define the issues, prevent surprise and allow the respondent to prepare for the hearing.

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[8] *Phillips* at para 54, quoting *YBM Magnex International Inc (Re)* (2000), 23 OSCB 1171 at para 6
[9] RSO 1990, c S.22

Accordingly, we decline to make any determination of liability related to alleged misrepresentations or omissions in those documents.

4.4 Did the respondent engage in a fraud contrary to s. 126.1(1)(b) of the *Act*?

4.4.1 Introduction

[36] The Commission alleges that Akbar directly engaged in acts or a course of conduct that constituted a fraud contrary to s. 126.1(1)(b) of the *Act*. We disagree. We have concluded that the statements and omissions at issue were false or misleading. We have also concluded that Akbar initially drafted the Press Releases which contained the false or misleading statements and omissions and provided his drafts to SoLVBL. However, it was SoLVBL, not Akbar, that made the false or misleading statements and omissions to the investing public when it issued the Press Releases.

[37] Importantly, the Commission did not allege that Akbar participated in a fraud perpetrated on the investing public by SoLVBL, nor did it allege that Akbar perpetrated a fraud on SoLVBL. The gravamen of the Commission's case against Akbar was that, in drafting press releases that contained false statements and omissions, Akbar was the direct perpetrator of a fraud on the investing public contrary to s. 126.1(1)(b) of the *Act,* a proposition which we find unsupportable in both fact and law.

4.4.2 Law on fraud contrary to subsection 126.1(1)(b) of the *Act*

[38] Subsection 126.1(1)(b) of the *Act* provides, in part:

> A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, … that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[39] A fraud analysis under this subsection has two steps, as set out by the Tribunal in *Bridging Finance Inc. (Re)*:[10]

a. determining whether a fraud has occurred, and

b. assessing whether the respondent, directly or indirectly, participated in an act or conduct, related to securities, that they knew (or reasonably ought to have known) perpetrated the fraud.[11]

[40] The term "fraud" is not defined in the *Act*. Previous Tribunal decisions have consistently applied the test for fraud as set out by the Supreme Court of Canada in *R v Théroux*.[12] A finding of fraud requires proof of:

a. Objective element:

i. A prohibited act, which can be an act of deceit, falsehood or other fraudulent means, and

ii. Deprivation caused by that act, which includes detriment, prejudice, or risk of prejudice to the financial interests of the victims.

b. Subjective element:

i. Knowledge of the prohibited act, and

ii. Knowledge that the act could have as a consequence the deprivation of another.

[41] If the conduct of a person or company, whether or not a respondent, meets both elements of the test, the first step of the fraud analysis under the *Act,* namely a finding that there was a fraud, is satisfied.

[42] Once the Tribunal has found that there was a fraud, the second step in the analysis is to consider whether those named as respondents have, as s. 126.1(1)(b) requires, directly or indirectly, participated in any act or conduct,

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[10] 2024 ONCMT 23 (***Bridging***)

[11] *Bridging* at paras 34-35

[12] 1993 CanLII 134 (SCC) (***Théroux***) at para 27; *Meharchand (Re)*, 2018 ONSEC 51 (***Meharchand***) at para 119, citing *Théroux* at para 20; *First Global Data Ltd. (Re)*, 2022 ONCMT 25 (***First Global***) at para 346; *Feng (Re)*, 2023 ONCMT 12 at para 37; *Bridging* at para 34

related to securities, that they knew or reasonably ought to have known perpetrated the fraud.[13]

[43] For the second step of the analysis, where the respondent is the alleged perpetrator of the fraud, as is the case with Akbar, the "knows or reasonably ought to know" requirement in s. 126.1(1)(b) is already satisfied by the initial finding of fraud, it being an included or lower standard of subjective mental element than as required under the *Théroux* test to make that initial finding as against the perpetrator.[14] Therefore, the Commission need show only that the fraudulent conduct was related to securities. That requirement is satisfied if the conduct is directed at investors or other capital markets participants, so as to bring it within the broad protective jurisdiction of the *Act*.[15] The result for the purposes of the analysis of the alleged breach by Akbar, the sole alleged perpetrator of the fraud at issue, is that steps one and two can effectively be combined.

4.4.3 Akbar did not commit a fraud contrary to s. 126.1(1)(b) of the *Act*

[44] The Commission failed to establish that Akbar's conduct in drafting the Press Releases containing false statements and omissions and providing them to SoLVBL breached s. 126.1(1)(b) of the *Act.* Viewed in isolation, the false statements and omissions would arguably satisfy the need to find a prohibited act in accordance with the first branch of the objective element of the *Théroux* test. However, the statements and omissions were not made to investors, as alleged by the Commission, and therefore were not related to securities as required under the second step of the *Bridging* framework and by the language of s. 126.1(1)(b) itself. Moreover, providing the draft Press Releases to SoLVBL did not itself cause any loss or risk of loss to investors as required to satisfy the second branch of the objective element of the *Théroux* test. Considering these conclusions, it is not necessary for us to consider the remaining subjective elements of the fraud test.

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[13] *Bridging* at para 35

[14] *Bridging* at para 36

[15] *Act*, s 1.1; *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 39-45; *Pezim v British Columbia (Superintendent of Brokers),* 1994 CanLII 103 (SCC) at p 589

[45] The first step of the objective element of the *Théroux* test is to determine if there was a prohibited act. An act of deceit or falsehood is established by demonstrating that the respondent represented a situation as being of a certain character when it was not[16] and includes situations where misrepresentations were made to induce others to act.[17] Fraud by "other fraudulent means" includes any act that a reasonable person would consider to be dishonest[18] and can encompass omissions or non-disclosure of important facts.[19]

[46] The Commission alleges that Akbar directly perpetrated the fraud at issue. The Commission does not allege that Akbar perpetrated the fraud against SoLVBL. Nor does the Commission allege that Akbar was a participant in a fraud perpetrated by SoLVBL. Regarding the latter, when the Panel asked the Commission during oral argument whether it intended to make submissions about whether Akbar had participated in a fraud perpetrated by SoLVBL, the Commission responded in the negative and confirmed that their sole argument was that Akbar directly perpetrated the fraud at issue.

[47] Akbar's alleged act of fraud was drafting the Press Releases containing the false and misleading information and omissions. Akbar, the Commission alleges, drafted the false statements knowingly to craft a false narrative of a success story for SoLVBL and further concealed the truth with the omissions.

[48] In oral argument, the Commission took the position that it was Akbar's entire course of conduct leading up to the publication of the Press Releases that constitutes the fraud. That course of conduct includes Akbar's:

a. involvement with SoLVBL's predecessor company and the reverse take-over that created SoLVBL;

b. significant loans to SoLVBL;

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16 *Théroux* at para 18

17 *Bradon Technologies Ltd (Re)*, 2015 ONSEC 26 at para 157, citing *Théroux* at paras 26-27

18 *R v Zlatic,* [1993] 2 SCR 29 at 44-45; *Solar Income Fund (Re)*, 2022 ONSEC 2 at para 85, aff'd *Kadonoff v OSC*, 2023 ONSC 6027; *Meharchand* at para 120; *Quadrexx Hedge Capital Management (Re)*, 2017 ONSEC 3 at para 20, aff'd *Quadrexx Hedge Capital Management Ltd. v Ontario Securities Commission*, 2020 ONSC 4392 [***Quadrexx***]

19 *Hogg (Re)*, 2024 ONCMT 15 (***Hogg***), aff'd *Hogg v Chief Executive Officer*, 2025 ONSC 6214 (Div Ct), at para 136; *Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40 at para 223

c. introduction of members of SoLVBL's board to the company;

d. intimate involvement with New Foundation;

e. drafting the Press Releases containing the false statements and omissions; and

f. exploitation of Pomroy's trust.

[49] The Commission further submits that Akbar caused the publication because he knew that Pomroy:

a. had no experience as a Chief Executive Officer of a public company;

b. relied on Akbar as SoLVBL's company counsel; and

c. trusted Akbar entirely.

[50] The Commission argues that Akbar exploited Pomroy's trust by providing him with the Press Releases containing the false statements, while not telling Pomroy that the statements were false.

[51] Pomroy's evidence was that there were things about being an officer of a public company that he did not know much about, including press releases, so he relied on Akbar to help him. He also testified that Akbar regularly drafted SoLVBL's press releases. Pomroy stated that he had known Akbar for a long time, he trusted what Akbar presented to him and there was no indication that his trust was misplaced. He, therefore, did not double check documents Akbar gave him.

[52] Pomroy testified that he reviewed and approved the Press Releases. Pomroy also confirmed in testimony that it was his practice with press releases to circulate them to management, including the Chief Financial Officer, for comment after receiving the drafts from Akbar.

[53] Akbar submits that the Commission cannot use Pomroy's alleged reliance on him to hold Akbar liable for alleged misstatements to the investing public which were made by SoLVBL, following authorization and approval by Pomroy.

[54] Akbar submits that the Commission has not identified any acts or course of conduct carried out by him in his individual capacity that would amount to a contravention of s. 126.1(1)(b) of the *Act.* At no point did Akbar, in his personal capacity, do anything to represent to the investing public a situation to be of a

certain character when it was not. SoLVBL, the public issuer and corporate entity, made the statements in the Press Releases which were published by it on the authority and approval of its management.

[55] We are not persuaded by the Commission's submissions that Akbar's preparation of the initial drafts of the Press Releases and their delivery to Pomroy constituted a breach of s.126.1(1)(b) of the *Act.* While, as we previously found, the draft Press Releases contained misrepresentations and misleading omissions of fact, the draft Press Releases and the statements made therein are not, in isolation, an "act, practice or course of conduct relating to securities" such as to bring them within the proscriptive language of s. 126.1(1)(b) of the *Act.* The Press Releases arguably become acts relating to securities only when they are issued or published by SoLVBL. Before that, they are simply documents internal to SoLVBL, which are unavailable to investors or the capital markets more generally.

[56] Nor do we accept that Akbar's overall course of conduct contravenes the proscriptive language of s. 126.1(1)(b) of the *Act.* The Commission submits that we should not focus on the fact that SoLVBL issued or published the Press Releases. Rather, the Commission argues that we should do as the Supreme Court of Canada did in *R v Zlatic*[20] and look to the substance of the matter which, as argued by the Commission, extends to Akbar's entire course of conduct as outlined above.

[57] We are of course bound by *Zlatic*. However, that case involved the general fraud provisions of s. 380 of the *Criminal Code*.[21] Subsection 126.1(1)(b) of the *Act*, in contrast to those general provisions, contains specific proscriptive requirements that have been developed through decisions interpreting and applying the language of the subsection.[22] We decline to ignore those specific requirements and look to a concept of broad substance when we are tasked with determining what constitutes securities fraud under that subsection of the *Act*.

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[20] 1993 CanLII 135 (SCC)

[21] RSC 1985, c C-46, s 380

[22] *Bridging* at paras 30-37; *Hogg* at paras 131-147

[58] A fraud contrary to s. 126.1(1)(b) of the *Act* must both be related to securities and directed against a person(s) or company. The Commission has not alleged that Akbar committed a fraud against SoLVBL, the person that received Akbar's false statements and omissions. The alleged fraud is against the investing public, who were the recipients of the Press Releases. However, Akbar did not make the statements at issue to the investing public; SoLVBL did. If SoLVBL had declined to issue the Press Releases as drafted there would be no act or conduct relating to securities and directed to the investing public such as to engage our jurisdiction under s. 126.1(1)(b).

[59] Moreover, there is insufficient evidence for us to conclude that Akbar caused SoLVBL to issue the Press Releases. Pomroy's evidence that he trusted and relied on Akbar is, in this instance, insufficient. While SoLVBL was in serious financial straits, there was no evidence that it was not an operating company. It had a Chief Executive, albeit inexperienced, a Chief Financial Officer and an independent board. Although Akbar knew members of the board and introduced them to SOLVBL, there was no evidence that he controlled them. While Akbar was a significant shareholder and debtholder of SoLVBL, we saw no evidence that he controlled SoLVBL's activities. Pomroy admitted to circulating the draft Press Releases to SoLVBL's management and to reviewing and approving the documents himself.

[60] The Commission's sole argument in this regard is that Pomroy trusted and relied on Akbar. This does not, in our view, amount to evidence that Akbar "caused" SoLVBL to make the public statements that give rise to the alleged fraud. While Pomroy's trust may have been misplaced, there was no evidence that Akbar deceived Pomroy or otherwise duped him or SoLVBL into issuing the Press Releases.

[61] Accordingly, in the circumstances and having regard to the restrictive manner in which the Commission pled and argued its case, we cannot find that Akbar's drafting of the Press Releases and/or his other impugned conduct constituted a breach of s. 126.1(1)(b) of the *Act.*

4.5 Did Akbar make misleading or untrue statements contrary to s. 126.2(1) of the *Act*?

4.5.1 Introduction

[62] The Commission further alleges that Akbar, as the maker of the false or misleading statements in the Press Releases, breached s. 126.2(1) of the *Act.* Again, we disagree. Our earlier finding that it was SoLVBL, not Akbar, that made the false or misleading statements and omissions in the Press Releases is wholly dispositive of the issue of Akbar's liability under s. 126.2(1). Importantly, the subsection does not allow for liability of persons or companies other than those who make the impugned statement or statements. Accordingly, any liability for corporate actors involved in the making of such impugned statement or statements by a corporation would have to be addressed under s. 129.2 of the *Act,* an issue which was not before us in this case.

4.5.2 The law on misleading or untrue statements

[63] Subsection 126.2(1) of the *Act* provides:

> A person or company shall not make a statement that the person or company knows or reasonably ought to know,
>
> > (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
> > (b) would reasonably be expected to have a significant effect on the market price or value of a security, …

[64] There are four elements that must be satisfied to give rise to liability under the subsection:

> (i) a person or company must make a statement that is misleading or untrue;
>
> (ii) the person or company must know, or reasonably ought to know, that the statement is misleading or untrue;
>
> (iii) the statement must be material; and

(iv) the statement must reasonably be expected to have a significant effect on the market price or value of a security.

[65] It is tautological that the proscription applies only to statements made to investors or the investing public, otherwise the materiality and market impact requirements of elements (iii) and (iv) could not be satisfied. In other words, the subsection does not purport to regulate the internal communications of corporations or their communications with external advisors.

[66] The Tribunal's recent decision in *TeknoScan Systems Inc. (Re)*[23] clarified that a misleading statement made by a corporation in a notice to investors was not a statement of the individual corporate managers or directors who prepared and approved the statement. In that case, the notice in question was from the corporation to its shareholders, was signed by the President and CEO of the corporation and was prepared and approved by the individual respondents in their capacities as officers and/or directors of the corporation. In reaching the conclusion that the individual respondents were not personally liable under s. 126.2(1) of the *Act* for the misleading statements in the notice, the Tribunal held, "As a factual matter, the Notice was issued on behalf of TeknoScan, which was a fully functioning corporate entity, and the Notice was not a statement made by each of the Individual respondents."[24]

4.5.3 Akbar did not make the impugned misleading or untrue statements and omissions

[67] The Commission's argument in support of its position that Akbar was the maker of the impugned misleading or untrue statements in the Press Releases was identical for the purposes of his alleged liability under s. 126.2(1) of the *Act* as it was for the purposes of his alleged liability under s. 126.1(1)(b). Namely, the Commission argues that, although SoLVBL issued or published the Press Releases containing the misleading or untrue statements, it did so only because Pomroy relied upon Akbar to have provided accurate and truthful drafts. Our reasons for rejecting this argument as a basis for finding Akbar to have perpetrated the alleged fraud under s. 126.1(1)(b) apply equally to the

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[23] 2024 ONCMT 32 (***TeknoScan***)

[24] *TeknoScan* at para 237

Commission's submission that Akbar made the impugned statements for the purposes of establishing the first element of liability necessary to prove a breach of s. 126.2(1).

[68] Accordingly, the Tribunal's reasoning in *TeknoScan* would appear to apply with equal force to the facts of this case and to lead to a dismissal of the allegation that Akbar breached s. 126.2(1) of the *Act.* However, the Commission argues that: (i) past jurisprudence of the Tribunal confirms that an individual can be responsible for making misleading statements published by a corporation contrary to s. 126.2(1); (ii) the facts in our case are distinguishable from those in *TeknoScan*; and (iii) a finding that Akbar "made" the misleading or untrue statements in the Press Releases in breach of s. 126.2(1) is consistent with a purposive and contextual interpretation of the subsection.

[69] In support of its first argument, the Commission cites three prior decisions of the Tribunal. Two are settlement approvals[25] which, in our view, are distinguishable and of limited precedential value, in particular because in both cases the individual respondents admitted to making the impugned statements and, in one case, the individual respondent was actually quoted in the press releases in issue. The third case cited by the Commission is *Sulja Bros. Building Supplies, Ltd. et al.*,[26] where the Tribunal provided no rationale for concluding that the CEO of a company was liable for a breach of s. 126.2(1) of the *Act* for failing to stop the issuance by the company of press releases containing misleading or untrue statements or to correct those statements before the press releases were issued.[27] As we explain below, we do not find *Sulja* to be helpful in deciding the case before us.

[70] The Commission's attempt to distinguish the facts of this case from those of *TeknoScan* is again predicated on its argument that the trust that Pomroy reposed in Akbar caused Akbar to become the maker of the impugned statements which he, in turn, caused SoLVBL to publish. In support of this argument, the Commission offered no additional evidence that Akbar either

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[25] *Kallo (Re)*, 2024 ONCMT 29; *Pomroy (Re)*, 2024 ONCMT 10

[26] 2010 ONSEC 27 (***Sulja***)

[27] *Sulja* at para 32

personally published the Press Releases or duped Pomroy or SoLVBL into publishing them. Nevertheless, the Commission says the facts of its case are different from those in *TeknoScan* where the corporate officers and directors drafted and approved the offending notice which was subsequently sent by the corporation to its shareholders.

[71] In support of its third argument, the Commission submits that the *Act* does not provide that only corporations can be liable for the statements published by a corporation, a rather broad negative proposition with which we do not disagree in the abstract. The Commission goes on to submit that it is open to us to find that a person or company is the maker of misleading or untrue statements for the purposes of finding liability under s. 126.2(1) of the *Act,* regardless of who published those statements, and that such an interpretation would be consistent with the investor protection purposes of the *Act.*

[72] Akbar responds to the Commission's arguments by referring to the panel's reasons in TeknoScan and specifically to the language from those reasons quoted above. He also refers us to two decisions from capital markets tribunals in other jurisdictions that dealt with similar misrepresentation proscriptions. The first was the decision of the British Columbia Securities Commission (the **BCSC**) in *Re Cerisse*,[28] which dealt with corporate misrepresentations in press releases drafted by an individual who was neither an officer nor a director of the corporation. In dismissing the allegations of misrepresentation against the individual, the BCSC reached the following conclusion: "We find that the mere drafting of press releases combined with attending to the mechanics of dissemination of those releases cannot be said to constitute a respondent '**making**' a statement for the purposes of section 50(1)(d)."[29]

[73] The BCSC also held in *Cerisse* that, while the misrepresentation proscription at issue did not extend to individual corporate actors, the appropriate remedy against officers and directors who authorize, permit or acquiesce in corporate

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[28] 2017 BCSECCOM 27 (***Cerisse***)

[29] *Cerisse* at para 103 [emphasis in original]

misrepresentations was under s. 168.2 of the *British Columbia Securities Act*,[30] which is similar to s. 129.2 of the *Act.*[31]

[74] The second decision Akbar refers to is *Re Bluforest Inc.*,[32] a decision of the Alberta Securities Commission (the **ASC**). In that case, the ASC was dealing with a preliminary issue concerning the liability of individuals for corporate misrepresentations where it was unclear whether the notice of hearing adequately alleged that the individual respondents authorized, permitted or acquiesced in the misrepresentations, thereby engaging the deemed liability provision in s. 194(3) of the Alberta *Securities Act*,[33] which is similar to s. 129.2 of the *Act.* Before concluding that the notice of hearing in the case did not give adequate notice to the individual respondents of liability exposure under the aforesaid Alberta provision, the ASC quoted extensively from the decision of the Court of Appeal of Alberta in *Alberta (Securities Commission) v Workum*.[34] The following excerpt from that quote is apposite:

> A fundamental principle of corporate law is that a registered corporation is an entity separate and distinct from its officers and members. The concept is one of limited liability. A corporation acts through its officers and directors, but they are not personally liable. The corporate veil will only be pierced if a statute clearly imposes personal liability, or in certain other situations, such as a sham company – neither alleged nor applicable in this case. Here, the Act, through [what was then] section 194(4) as well as other provisions, provides a means of imposing personal liability for corporate acts. The corporate veil otherwise remains in place.[35]

[75] Akbar responds to the Commission's statutory interpretation argument by submitting that its adoption would result in an unlimited expansion of potential liability under s. 126.2(1) of the *Act,* reaching beyond corporate officers and directors to anyone who participated in drafting corporate communications. He argues that such an interpretation would be inconsistent with the intent of the

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[30] RSBC 1996, c 418

[31] *Cerisse* at para 102

[32] 2020 ABASC 138 (***Bluforest***) [https://www.asc.ca/-/media/ASC-Documents-part-1/Notices-Decisions-Orders-Rulings/Enforcement/2020/08/Bluforest-Inc-DECISION-20200824-5896410.pdf]

[33] RSA 2000, c s-4

[34] 2010 ABCA 405 (***Workum***)

[35] *Workum* at para 206

Legislature as expressed in s. 129.2 of the *Act* which limits the extension of liability to corporate officers and directors who authorize, permit or acquiesce in the offending misrepresentation.

[76] In our view, the reasoning of the decisions in *TeknoScan, Cerisse* and *Bluforest* is to be preferred to the bald conclusion in *Sulja.* Unlike the panels in *TeknoScan, Cerisse* and *Bluforest,* the panel in *Sulja* provided no interpretive analysis of how they arrived at their decision to find the respondent corporate officer in breach of s. 126.2(1). Importantly, the decision makes no reference to s. 129.2 of the *Act.*

[77] We disagree with the Commission's submission that the facts in our case are distinguishable in any material respect from the facts in *TeknoScan.* Both cases involved allegations of breach of s. 126.2(1) of the *Act* against individuals who drafted corporate communications which were later disseminated to investors by the corporation. The only factual distinction is that the individuals in *TeknoScan* were officers and directors of the corporation, whereas Akbar was neither an officer nor a director of SoLVBL at the relevant time.

[78] As to the Commission's statutory interpretation argument, we again adopt the reasoning in *TeknoScan, Cerisse* and *Bluforest.* To the extent that the Legislature intended individual respondents to be liable for corporate misrepresentations under s. 126.2(1) of the *Act,* its intent is expressed in, and limited by, the language of s. 129.2 of the *Act,* which extends liability to officers and directors who authorize, permit or acquiesce in the misrepresentations of the corporation but not to others such as employees or external consultants.

[79] Accordingly, we are unable to find that the Commission has satisfied the first element required to establish liability under s. 126.2(1) of the *Act* on the part of Akbar for the impugned statements in the Press Releases. As a result of this conclusion, it is unnecessary for us to consider whether the Commission has satisfied the other required elements through the evidence it led in this case.

5. CONCLUSION

[80] In conclusion, we dismiss the application for enforcement proceeding brought by the Commission against Akbar in its entirety. That said, we find Akbar's conduct in this matter to have been reprehensible and unworthy of a lawyer and trusted advisor in the capital markets context. Had the Commission framed its

allegations against Akbar differently, we might properly have concluded that it would have been in the public interest to impose sanctions on Akbar under s. 127 of the *Act*, even absent a contravention of Ontario securities law.

Dated at Toronto this 21st day of January, 2026

"*James Douglas*"

James Douglas

"*Sandra Blake*"

Sandra Blake

"*M. Cecilia Williams*"

M. Cecilia Williams