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Citation: *Ontario Securities Commission v Emerge Canada Inc*, 2026 ONCMT 14  
Date: 2026-03-20  
File No. 2025-7

**BETWEEN:**

**ONTARIO SECURITIES COMMISSION**

**(Applicant)**

**- and -**

**EMERGE CANADA INC., LISA LANGLEY, DESMOND ALVARES, MARIE  
ROUNDING, MONIQUE HUTCHINS AND BRUCE FRIESEN**

**(Respondents)**

**REASONS FOR DECISION**

**Adjudicators:** Andrea Burke (chair of the panel)  
James D.G. Douglas  
Sandra Blake

**Hearing:** In writing, final written submissions due on February 13, 2026

|                                        |                                         |
|----------------------------------------|-----------------------------------------|
| <b>Appearances:</b> Khrystina McMillan | For the Ontario Securities Commission   |
| Matthew McMurray                       |                                         |
| Lisa Langley                           | For herself and for Emerge Canada Inc.  |
| Eric Brousseau                         | For Desmond Alvares                     |
| Adam Chisholm                          | For Marie Rounding and Monique Hutchins |
| Jennie Baek                            |                                         |
| Rahul Shastri                          | For Bruce Friesen                       |

## TABLE OF CONTENTS

|    |                                |    |
|----|--------------------------------|----|
| 1. | OVERVIEW .....                 | 1  |
| 2. | BACKGROUND.....                | 1  |
|    | 2.1 Relevant Allegations ..... | 1  |
|    | 2.2 Relevant History .....     | 2  |
| 3. | ISSUE.....                     | 6  |
| 4. | ANALYSIS.....                  | 7  |
| 5. | CONCLUSION.....                | 11 |

## REASONS FOR DECISION

### 1. OVERVIEW

[1] The Ontario Securities Commission brought a motion in writing for an order that certain opinion evidence of expert witnesses proposed to be called by the respondents, Emerge Canada Inc. and Lisa Langley, be ruled inadmissible at the merits hearing in this proceeding. For the following reasons, we granted the motion, in part, and dismissed the motion, in part.<sup>1</sup> We granted the motion in part where the Commission satisfied us that the proposed expert evidence was not relevant to the allegations against Emerge Canada or Langley. Our dismissal of the motion in part was with respect to proposed expert testimony that *may* be relevant and where we are not, at this stage of the proceeding, prepared to rule on its admissibility. Our dismissal in part was without prejudice to any party's ability to raise or renew objections to the admissibility of any expert opinion evidence that Emerge Canada and Langley proffer at the merits hearing which has not otherwise been excluded by our ruling on this motion.

### 2. BACKGROUND

#### 2.1 Relevant Allegations

[2] The Commission alleges in the Application for Enforcement Proceeding (**AEP**) that:

a. Emerge Canada was an investment fund manager and portfolio manager that, during the relevant period, was the trustee and manager of six publicly traded funds.

b. Shortly after the launch of the funds, Emerge Canada repeatedly caused the funds to transfer money to the bank accounts of Emerge Canada and its US affiliate.

c. In making the transfers, Emerge Canada:

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<sup>1</sup> *Ontario Securities Commission v Emerge Canada Inc.*, (2026) 49 OSCB 1753; [https://www.capitalmarketstribunal.ca/sites/default/files/2026-02/rad\\_20260220\\_emerge-canada.pdf](https://www.capitalmarketstribunal.ca/sites/default/files/2026-02/rad_20260220_emerge-canada.pdf)

- i. breached its standard of care as an investment fund manager;
  - ii. failed to comply with its obligations respecting conflicts of interest;
  - iii. caused impermissible loans to be made by the funds;
  - iv. failed to maintain an adequate system of controls and supervision;
- and
- v. failed to maintain proper books and records.

[3] The Commission alleges that Langley:

- a. failed to meet her obligations as the Chief Compliance Officer and Ultimate Designated Person of Emerge Canada; and
- b. authorized, permitted or acquiesced in Emerge Canada's breaches of Ontario securities law.

## **2.2 Relevant History**

[4] The Commission delivered a Motion Record and Reply Motion Record.<sup>2</sup> Emerge Canada and Langley did not file evidence or a motion record. The other respondents to this proceeding did not take a position about the proposed expert evidence of Emerge Canada and Langley and did not file any materials.

[5] Following a case management hearing held on July 29, 2025, the Tribunal issued an order<sup>3</sup> requiring, among other things, that each respondent indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will be testifying, by October 31, 2025.

[6] On October 29, 2025, Langley emailed the Tribunal Registrar on her own behalf and on behalf of Emerge Canada, requesting an extension of the October 31<sup>st</sup> deadline. A formal motion was filed on October 31.

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<sup>2</sup> The Motion Record of the Ontario Securities Commission dated January 12, 2026 is marked as **Exhibit 1**, and the Reply Motion Record of the Ontario Securities Commission is marked as **Exhibit 2**.

<sup>3</sup> *Ontario Securities Commission v Emerge Canada Inc*, (2025) 48 OSCB 6683  
[https://www.capitalmarketstribunal.ca/sites/default/files/2025-07/rad\\_20250729\\_emerge-canada.pdf](https://www.capitalmarketstribunal.ca/sites/default/files/2025-07/rad_20250729_emerge-canada.pdf)

- [7] On November 6, 2025, the Tribunal held a hearing to address the motion. Following the hearing, the Tribunal issued an order<sup>4</sup> extending the deadline for Emerge Canada and Langley to indicate any intention to call an expert witness to December 8, 2025.
- [8] By email dated December 8, 2025, Langley advised the other parties that she and Emerge Canada intended to call three witnesses to give expert evidence at the merits hearing. The email identified the witnesses as Barclay T. Leib, Fathi Elloumi and Steven Rostowsky. The email also provided a short summary of the qualifications of each of the witnesses and of their anticipated evidence.
- [9] In a letter to all parties dated December 10, 2025, the Commission raised, among other issues, concerns about the relevance and admissibility of the anticipated evidence of the three expert witnesses identified by Emerge Canada and Langley and, subject to further clarification, indicated its intention to object to their evidence. In their response dated December 12, 2025, Emerge Canada and Langley asserted that the Commission's concerns about their expert evidence should await delivery of the experts' reports.
- [10] At a further case management hearing on December 15, 2025, the parties raised the issue of the admissibility of Emerge Canada's and Langley's proposed expert evidence. All parties agreed that it was best to resolve the issue before the commencement of the merits hearing. The Tribunal's December 15<sup>th</sup> order<sup>5</sup> set out the process to address the issue. It required Emerge Canada and Langley and to deliver by December 31, 2025, written submissions specifying each of the questions that their proposed experts would be asked to address. It further set out a timetable for the filing of written submissions regarding any objections to the proposed expert evidence.
- [11] In accordance with the December 15<sup>th</sup> order, on December 31, 2025, Emerge Canada and Langley delivered a memorandum (**Memorandum**) specifying the

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<sup>4</sup> *Ontario Securities Commission v Emerge Canada Inc*, (2025) 48 OSCB 9326; [https://www.capitalmarketstribunal.ca/sites/default/files/2025-11/rad\\_20251106\\_emerge-canada.pdf](https://www.capitalmarketstribunal.ca/sites/default/files/2025-11/rad_20251106_emerge-canada.pdf)

<sup>5</sup> *Ontario Securities Commission v Emerge Canada Inc*, (2025) 48 OSCB 10337; [https://www.capitalmarketstribunal.ca/sites/default/files/2025-12/rad\\_20251215\\_emerge-canada.pdf](https://www.capitalmarketstribunal.ca/sites/default/files/2025-12/rad_20251215_emerge-canada.pdf)

precise questions that they intended to have their proposed expert witnesses address.<sup>6</sup> The questions were:

- a. Valuation and Market Practice Expert (Lieb):
  - i. What valuation methodologies are commonly used by investment fund managers for assets similar to those held by the Emerge Canada funds during the relevant period?
  - ii. What professional judgment considerations typically arise when valuing such assets, including in circumstances involving limited market data, illiquidity, or complexity?
  - iii. Based on your experience, how do industry participants assess whether a valuation approach falls within an acceptable range of professional and industry practice at a given point in time?
- b. Fund Operations and Governance Expert (Elloumi):
  - i. How are governance, oversight, and internal control frameworks typically structured for investment fund managers of comparable size, strategy, and operational complexity?
  - ii. What roles do third-party service providers, such as fund administrators and valuation agents, typically play in NAV calculation, valuation processes, and oversight?
  - iii. How do investment fund managers customarily rely on such service providers in fulfilling their operational and oversight responsibilities?
- c. Accounting and Audit Interface Expert (Rostowsky):
  - i. What is the scope and purpose of an audit in the context of investment funds, including the matters auditors typically assess and the limitations of that assessment?
  - ii. How do investment fund managers typically interact with auditors with respect to valuation inputs, financial reporting, and year-end audit processes?

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<sup>6</sup> Exhibit 1, Tab Exhibit L Memorandum of Expert Evidence Questions

iii. How should the Manager of the Funds treat the Valuation and Disclosure of the Funds' NAV during interim periods?

[12] On January 12, 2026, the Commission brought this motion in accordance with the Tribunal's order of December 15, 2025. The Commission's motion also sought other relief which has been disposed of by a different panel and is the subject of an order dated February 17, 2026<sup>7</sup> and reasons for decision dated February 27, 2026.<sup>8</sup>

[13] On January 30, 2026, Emerge Canada and Langley filed responding written submissions regarding the Commission's motion objecting to their proposed expert evidence. On February 2, 2026, the Commission filed reply written submissions.

[14] On February 10, 2026, the Registrar sent an email to the parties advising that we wanted further written submissions on the motion, as follows:<sup>9</sup>

a. by 4:30 pm on February 13, 2026, Emerge Canada and Langley shall serve and file further written submissions explaining, for each of the proposed experts, the relevance to the allegations in the AEP of their respective proposed testimony in response to each of the proposed questions; and

b. by 4:30 pm on February 17, 2026, any other party shall serve and file further reply written submissions, if any.

[15] Emerge Canada and Langley did not deliver further submissions on February 13, 2026, or at any time thereafter. On February 17, 2026, the Commission wrote to the Registrar (copying all parties) and advised that because Emerge Canada and Langley had not delivered any further written submissions it would not deliver any further reply written submissions.<sup>10</sup> Subsequently, on February 17, 2026, Langley sent an email to the Registrar in which she stated:

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<sup>7</sup> *Ontario Securities Commission v Emerge Canada Inc*, (2026) 49 OSCB 1534; [https://www.capitalmarketstribunal.ca/sites/default/files/2026-02/rad\\_20260217\\_emerge-canada.pdf](https://www.capitalmarketstribunal.ca/sites/default/files/2026-02/rad_20260217_emerge-canada.pdf)

<sup>8</sup> *Ontario Securities Commission v Emerge Canada Inc*, 2026 ONCMT 11

<sup>9</sup> The Registrar's email of February 10, 2026 at 10:59 a.m. is marked as **Exhibit 3**.

<sup>10</sup> The Commission's email of February 17, 2026 at 11:37 a.m. is marked as **Exhibit 4**.

... It was not clear, perhaps I missed it, how much longer I may have to provide additional context to support our position regarding expert witnesses. I thought we were being asked for full expert witness statements. Now it is my understanding that we need only supply additional context. Is this correct and when is this due by?<sup>11</sup>

[16] We instructed the Registrar to send an email to the parties in response to Langley's February 17, 2026, email explaining our rationale for not giving Emerge Canada and Langley a further opportunity to file additional written submissions. We determined that the motion needed to be resolved on an expedited basis, given that the merits hearing is scheduled to start on March 23, 2026. The Registrar's email dated February 19, 2026, advised:

The panel acknowledges Ms. Langley's inquiry. Below is the communication sent to the parties on February 10. You will see that the deadline is clearly provided and the text is clear as to the request. Since the deadline for providing further submissions has passed, the panel will be making a decision based on the information provided to date. An order concerning the expert evidence motion will be issued shortly.<sup>12</sup>

### **3. ISSUE**

[17] The issue before us on this motion is a narrow one, namely whether expert evidence proposed to be called by Emerge Canada and Langley addressing the questions set out in the Memorandum and reproduced in paragraph [11] above, should be ruled inadmissible at the merits hearing in this matter.

[18] Opinion evidence is ordinarily inadmissible. The test for when the opinion evidence of an expert will be admissible is well-established.<sup>13</sup> The party seeking to adduce expert opinion evidence must demonstrate that the evidence meets the following threshold requirements of admissibility:

- a. the evidence must be logically relevant to an issue in the hearing;

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<sup>11</sup> Lisa Langley's email of February 17, 2026 at 12:07 p.m. is marked as **Exhibit 5**.

<sup>12</sup> The Registrar's email of February 19, 2026 at 2:06 p.m. is marked as **Exhibit 6**.

<sup>13</sup> *R v Mohan*, 1994 CanLII 80 (SCC)

- b. the evidence must be necessary to assist the trier of fact;
- c. the evidence must not be subject to any other exclusionary rule; and
- d. the expert must be properly qualified.

[19] More recently, the Supreme Court of Canada, recognizing that there are inherent risks (e.g. confusion, time, expense, etc.) to admitting expert opinion evidence in any adjudicative process, directed that the admissibility analysis should include as a final step an assessment of whether the proposed expert evidence is sufficiently beneficial to the adjudicative process to outweigh those inherent risks.<sup>14</sup>

#### **4. ANALYSIS**

[20] The Commission argued that the expert evidence that Emerge Canada and Langley propose to call to address the questions set out in the Memorandum does not meet the first, second and fourth threshold requirements for admissibility of opinion evidence set out above.

[21] With respect to the first requirement, the Commission submitted that the proposed evidence must be relevant to the allegations made in the AEP. The proposed evidence would address issues about the valuation of assets, an issue that the Commission submits is not raised by the AEP. Similarly, the Commission argued that, while the adequacy of Emerge Canada's systems of control and oversight pertaining to compliance with securities laws are placed in issue by the AEP, the AEP does not raise issues concerning controls and oversight relating to valuations or net asset value (NAV) calculations. Moreover, the Commission submitted that, to the extent the proposed expert evidence would offer opinions relating to investment fund audits, including their scope and purpose, and the interactions of external auditors with fund managers, these are not issues raised by the allegations in the AEP.

[22] Regarding the second requirement of admissibility, the Commission correctly submitted that the law requires that expert evidence must be "necessary", in so far as it will provide the Tribunal with special knowledge or expertise beyond that

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<sup>14</sup> *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 at para 16

of the Tribunal itself. It is not enough that the evidence might prove “helpful”.<sup>15</sup> Here, the Commission submitted that none of the proposed expert evidence is beyond the expertise of the Tribunal, which itself has specialized expertise in relation to the matters at issue in this proceeding. Moreover, the Commission submitted that some of the evidence to be elicited from the proposed experts appears to address matters of domestic law or go to the ultimate issue before the Tribunal, neither of which would ordinarily be within the permissible scope of expert testimony.

[23] As to the fourth requirement of admissibility, despite the fact that, in the ordinary course, the experts would only be qualified at the merits hearing, the Commission attempted to challenge their qualifications based on the brief summaries of their educational and professional backgrounds provided in the December 8<sup>th</sup> email and the Memorandum. In each case, the Commission argued that none of the proposed witnesses possesses the necessary professional qualifications or experience to offer an expert opinion in response to the questions which are directed to them in the Memorandum. Moreover, the Commission pointed to the fact that it has been unable to find any case in Canada in which any of the three proposed experts has been tendered or qualified to offer expert testimony.

[24] Emerge Canada and Langley argued that the anticipated evidence of the proposed expert witnesses is necessary to assist the Tribunal in deciding the serious and technical allegations made against them by the Commission. They asserted that they are not seeking to introduce expert evidence to interpret Ontario securities law, opine on statutory interpretation or address the ultimate issues before the Tribunal in this case. Nor will their proposed experts offer opinions on whether Emerge Canada or Langley complied with their obligations under Ontario securities law.

[25] Specifically, Emerge Canada and Langley asserted that the evidence to be called through their proposed experts will be confined to three generic areas:

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<sup>15</sup> *North American Financial Group Inc. v Ontario Securities Commission*, 2025 ONSC 2326 (Div Ct) at para 52

- a. industry practices, including fund governance practices, internal controls and compliance norms observed within the Canadian asset management industry;
- b. accounting and audit norms, including generally accepted accounting principles, audit expectations and practices, and materiality considerations; and
- c. financial investigative principles, including the identification and assessment of fraud indicators and the conduct of financial investigations.

In each case, Emerge Canada and Langley argued that this will be relevant to the issues in the proceeding, outside the Tribunal's expertise and necessary to assist the Tribunal in deciding the complex technical issues at stake.

[26] Emerge Canada and Langley submitted that the Commission's objections to their proposed expert evidence are premature in so far as they go to the scope and weight that should be accorded to the evidence at the hearing, rather than to its overall admissibility.

[27] On the issue of relevance of the proposed expert evidence, we agree with the Commission that the AEP makes no allegations relating to valuation methodologies employed by Emerge Canada or the calculation of NAV for any of the funds. Similarly, the Commission correctly points out that accounting and audit practices and principles applicable to Canadian investment fund managers, and more specifically Emerge Canada, are not placed in issue by the allegations in the AEP. There are also no allegations in the AEP that engage what Emerge Canada and Langley describe as "financial investigative principles". Accordingly, none of these are subjects that meet the first threshold requirement for the admissibility of expert evidence in this proceeding.

[28] However, the same is not true for issues relating to Emerge Canada's supervisory practices, record-keeping, internal controls, and compliance systems. These issues are squarely (albeit without much particularity) raised in the AEP, as conceded by the Commission in its argument on this motion. Accordingly, we cannot conclude, at this juncture in the proceeding, that expert evidence addressing these issues would necessarily be irrelevant and therefore fail to meet the first threshold requirement for admissibility of opinion evidence.

- [29] Similarly, it is not possible for us to conclude at this preliminary stage of the proceeding that such evidence will fail to meet the second threshold requirement for admissibility of opinion evidence, namely that the evidence be necessary to assist the Tribunal. While we agree with the Commission's submission that we are an expert administrative tribunal in the area of securities law and practice, we do not at this time have the benefit of knowing what evidence the Commission intends to call on these particular issues and how its case will unfold. Nor do we yet have the benefit of any expert's report from Emerge Canada and Langley on these issues that would allow us to assess the scope of the particular opinion evidence offered against the limits of our own expertise. Accordingly, it is, in our view, premature for us to conclude that opinion evidence on these issues may not be necessary to assist the Tribunal in this matter.
- [30] In our view, it is also premature for us to decide whether any expert proffered by Emerge Canada and Langley on issues of governance, supervision, internal controls, and compliance is properly qualified and therefore meets the fourth requirement for admissibility of opinion evidence. As previously noted, no expert reports had been delivered by Emerge Canada and Langley at the time this motion was heard. While Emerge Canada and Langley had identified three proposed experts in their correspondence referred to above, that correspondence provided only brief descriptions of the experience and qualifications of those individuals. Those descriptions, together with some supplemental biographical searches, formed the basis of the Commission's objections to their qualifications. Before making a decision on the qualifications of any expert witness, the witness would ordinarily be called to testify at the merits hearing regarding those qualifications, opposing parties would be afforded the opportunity to challenge and cross-examine, and the Tribunal would then make a ruling on the expert's qualifications before the expert testifies on substantive matters. All of this may yet occur in this proceeding, depending upon whether Emerge Canada and Langley proceed with their stated intention to call one or more expert witnesses at the merits hearing.
- [31] As indicated above, the final step in the admissibility analysis regarding expert evidence is an assessment of whether the benefits of admission outweigh the inherent risks. In our view, such an assessment at this juncture in the

proceeding is again premature. We have not heard the Commission's case, no expert reports have been delivered, and no experts have been qualified. We are therefore unable, at this time, to identify the benefits and risks of any expert testimony that may be proffered, let alone assess and weigh those benefits and risks.

## **5. CONCLUSION**

[32] For the reasons set out above we granted the motion in part and dismissed the motion in part.

[33] We issued an order setting out the questions, or portions of questions, that are inappropriate for the proposed experts to testify on, and are therefore inadmissible topics for expert evidence, on the grounds that we are satisfied that they are not logically relevant to an issue in the proceeding, as those issues are set out in the AEP.

[34] Our order also identified the questions, or portions of questions, that *may* be the subject of admissible expert evidence at the merits hearing. We have concluded that, *at this stage*, we are not able to find that proposed expert evidence on these questions is inadmissible.

[35] The question of the admissibility of expert evidence on these questions will be deferred to the merits hearing when Langley and Emerge Canada seek to call the evidence. Our order regarding proposed expert evidence on these questions is specifically without prejudice to the other parties' ability to raise or renew any objections to the admissibility of such evidence.

[36] Finally, we also ordered a timetable for the delivery of expert reports, responding expert reports, and reply expert reports. As the date for Emerge Canada and Langley to deliver their initial expert report(s), we selected the date proposed by Emerge Canada and Langley in a letter from Langley to the Commission.<sup>16</sup> The remaining dates were selected with a view to affording the Commission a reasonable time to respond and Emerge Canada and Langley a reasonable time to reply, all prior to the start of the merits hearing.

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<sup>16</sup> Exhibit 1, Tab Exhibit I, December 12, 2025 letter from Lisa Langley

[37] Our Order dated February 20, 2026, provides:

1. the Ontario Securities Commission's motion is granted in part, as follows:

a. the proposed expert opinion evidence addressing the following questions is inadmissible at the merits hearing:

i. What valuation methodologies are commonly used by investment fund managers for assets similar to those held by the Emerge Canada funds during the relevant period?

ii. What professional judgment considerations typically arise when valuing such assets, including in circumstances involving limited market data, illiquidity, or complexity?

iii. Based on your experience, how do industry participants assess whether a valuation approach falls within an acceptable range of professional and industry practice at a given point in time?

iv. What roles do third-party service providers, such as fund administrators and valuation agents, typically play in NAV calculation and valuation processes?

v. What is the scope and purpose of an audit in the context of investment funds, including the matters auditors typically assess and the limitations of that assessment?

vi. How do investment fund managers typically interact with auditors with respect to valuation inputs and year-end audit processes?

vii. How should the Manager of the Funds treat the Valuation and Disclosure of the Funds' NAV during interim periods?

2. the Ontario Securities Commission's motion is dismissed in part, without prejudice to any party's ability to raise or renew objections (including objections about expert qualifications and admissibility) at the merits hearing regarding expert opinion evidence proposed to be called by Lisa Langley and Emerge Canada Inc., addressing the following questions:

- a. How are governance, oversight, and internal control frameworks typically structured for investment fund managers of comparable size, strategy, and operational complexity?
- b. What roles do third-party service providers typically play in oversight?
- c. How do investment fund managers customarily rely on such service providers in fulfilling their operational and oversight responsibilities?
- d. How do investment fund managers typically interact with auditors with respect to financial reporting?

3. the parties shall serve any expert reports addressing the questions in paragraph 2 above according to the following schedule:

- a. by 4:30 pm on February 28, 2026, Lisa Langley and Emerge Canada Inc. shall serve any expert reports;
- b. by 4:30 pm on March 16, 2026, any other party shall serve its responding expert reports, if any; and
- c. by 4:30 pm on March 20, 2026, Lisa Langley and Emerge Canada Inc. shall serve their reply expert reports, if any.

Dated at Toronto this 20th day of March, 2026

*"Andrea Burke"*

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Andrea Burke

*"James D.G. Douglas"*

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James D.G. Douglas

*"Sandra Blake"*

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Sandra Blake