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Citation: *Ontario Securities Commission v Liquid Marketplace Inc*, 2026 ONCMT 32

Date: 2026-09-30

File No. 2024-10

BETWEEN:

ONTARIO SECURITIES COMMISSION

(Applicant)

- and -

**LIQUID MARKETPLACE INC., LIQUID MARKETPLACE CORP.,
RYAN BAHADORI, AMIN NIKDEL AND DENNIS DOMAZET**

(Respondents)

REASONS AND DECISION

(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators: James Douglas (chair of the panel)
Mary Condon
Geoffrey D. Creighton

Hearing: In-person: November 24, 25, and 26; December 4, 15, 16, and 17,
2025; and June 18 and 19, 2026

Appearances: Khrystina McMillan For the Ontario Securities Commission
Christine Gorgi
Johanna Braden

Ryan Bahadori and Amin Nikdel On their own behalf and for Liquid
Marketplace Inc. and Liquid
Marketplace Corp.

Dennis Domazet On his own behalf

David Conklin For Liquid Marketplace Inc., Liquid
Marketplace Corp., Ryan Bahadori and
Amin Nikdel (oral closing submissions
only)

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1. OVERVIEW

- [1] The Ontario Securities Commission brought this application for an enforcement proceeding pursuant to s. 127 of the *Securities Act*¹ (**Act**) against the respondents, Liquid Marketplace Inc., Liquid Marketplace Corp. (together **LMP**), Ryan Bahadori, Amin Nikdel and Dennis Domazet. The allegations arise from LMP's creation and sale of tokens representing fractional interests in collectible assets (**LMP Tokens**) and its operation of an online platform (the **LMP Platform**) on which those tokens could be bought and sold.
- [2] The Commission alleges that the LMP Tokens are securities and that:
- a. LMP, Bahadori and Nikdel perpetrated a fraud through misrepresentations concerning the nature and attributes of the LMP Tokens and the underlying collectibles, contrary to s. 126.1(1)(b) of the *Act*;
 - b. LMP traded and distributed those securities without registration or a prospectus, contrary to ss. 25(1) and 53(1) of the *Act*;
 - c. LMP contravened Ontario securities law by operating an unrecognized exchange, contrary to s. 21(1) of the *Act*, or an unregistered and unapproved alternative trading system, contrary to s. 6.1 of National Instrument 21-101;
 - d. Bahadori, Nikdel and Domazet are deemed liable for LMP's contraventions of Ontario securities law, under s. 129.2 of the *Act*; and
 - e. Bahadori, Nikdel and Domazet made materially misleading statements to the Commission during its investigation, contrary to s. 122(1)(a) of the *Act*.
- [3] LMP, Bahadori and Nikdel contest the characterization of the LMP Tokens as securities and the allegations of fraud against them, but do not otherwise make submissions respecting the registration, prospectus or marketplace allegations against LMP. Bahadori and Nikdel contest the allegations that they materially misled the Commission but make no submissions regarding the allegations of their deemed liability under s. 129.2 of the *Act*. Domazet contests all the allegations made against him.

¹ RSO 1990, c S.5 (**Act**)

- [4] For the reasons that follow, we conclude that the LMP Tokens, together with the rights and conditions surrounding them, were investment contracts and therefore securities under the *Act*. LMP created an investment opportunity in which purchasers depended on LMP to create and maintain the LMP Tokens, operate the LMP Platform, facilitate trading, maintain ownership records and arrange for the authentication, appraisal, custody and insurance of the underlying collectibles.
- [5] We find that LMP and Bahadori perpetrated a securities fraud by making repeated misrepresentations about the core attributes of the LMP Tokens and the underlying collectibles. We also find that Nikdel participated in that fraud and knew or reasonably ought to have known that the conduct in which he participated perpetrated a fraud. Purchasers did not receive what had been represented to them, and their pecuniary interests were placed at risk.
- [6] We also find that LMP engaged in the business of trading in securities without registration, distributed securities without filing a prospectus, and operated a marketplace without complying with the applicable requirements of Ontario securities law. Further, we find Bahadori and Nikdel, as directors and officers who authorized or permitted that conduct, are deemed under s. 129.2 of the *Act* to have contravened Ontario securities law in respect of those breaches.
- [7] We do not find Domazet liable under s. 129.2. Where the evidence established that he knew of elements of LMP's fraudulent conduct, he raised concerns rather than quietly accepting or agreeing to the conduct. The Commission did not establish that he knew of LMP's registration, prospectus or marketplace breaches.
- [8] Finally, we find that Nikdel contravened s. 122(1)(a) of the *Act* by making a materially misleading statement to the Commission concerning the compensation received by the individual respondents from LMP. We do not find that the Commission established its allegations under s. 122(1)(a) against Bahadori or Domazet.

2. BACKGROUND

- [9] The allegations against the respondents relate to the activities of LMP during the period from April 2022 to early 2025. LMP sold LMP Tokens to purchasers and

operated the LMP Platform on which LMP Tokens were initially sold and thereafter bought and sold by purchasers.

- [10] Bahadori and Nikdel were co-founders of LMP and were directors and officers of LMP from its inception. Bahadori held himself out to be the Chief Executive Officer of LMP, whereas Nikdel was variously described as the Chief Operating Officer or Chief Technical Officer. Domazet was the Chief Financial Officer of LMP from in or about the fall of 2021.
- [11] Bahadori was responsible for a wide range of LMP's operational activities, including:
 - a. negotiating arrangements with third-party suppliers and service providers;
 - b. negotiating arrangements with the owners of collectibles;
 - c. entering into partnership arrangements;
 - d. entering into relationships with third-party advisors;
 - e. marketing the business; and
 - f. designing the LMP Platform.
- [12] Nikdel, on the other hand, was generally responsible for the technical aspects of LMP's business which included minting LMP Tokens, maintaining the LMP Platform and maintaining LMP's social media portals. Nikdel also shared some operational and marketing responsibilities with Bahadori.
- [13] Upon joining LMP, Domazet became responsible for financial, accounting and tax matters relating to LMP's business. The evidence demonstrated that Domazet's role extended to matters relating to risk management and corporate strategy more generally.
- [14] Over the relevant period, LMP sold LMP Tokens through the LMP Platform in connection with 37 separate collectibles. The underlying collectibles were typically physical trading cards, such as sports cards or Pokémon cards.
- [15] The number of LMP Tokens available for sale on the initial sale or "drop" for each of these collectibles was determined by dividing the collectible's offering price in USD by the constant USD ten cent token price, less any of the available LMP

Tokens retained by the original owner of the collectible. LMP represented that once all LMP Tokens available on an initial drop were sold, the original owner of the collectible would be paid and those tokens would move to the LMP Platform for trading.

- [16] The total proceeds from the initial drop for all 37 collectibles sold through the LMP Platform were approximately US\$2.7 million. Following the initial drop, the LMP Tokens relating to these collectibles were listed and traded on the LMP Platform. LMP earned transaction fees both from the initial drops and the subsequent trades.
- [17] Users of the LMP Platform were required to open an account through the LMP website, verify their identity and deposit funds. Once account holders had deposited funds, they could purchase LMP Tokens on the initial drop or by trading LMP Tokens amongst themselves on the LMP Platform.
- [18] LMP promoted the LMP Tokens as investments, as value-appreciating assets and as a hedge against inflation. Promotional materials also emphasized the promise of liquidity that fractionalized ownership through LMP Tokens and the ability to trade LMP Tokens through the LMP Platform brought to the marketplace for collectibles.
- [19] LMP and the LMP Platform ceased operations in or about late 2024 or early 2025. Neither funds nor LMP Tokens held in accounts opened by users of the LMP Platform have been distributed to account holders.

3. PRELIMINARY ISSUES

3.1 The admissibility of compelled transcripts

- [20] During the hearing, the Commission sought to introduce into evidence two sets of excerpts from the compelled evidence of the individual respondents obtained during interviews conducted pursuant to summonses issued under s. 13 of the *Act*.
- [21] The individual respondents initially objected to the introduction into evidence of both sets of transcript excerpts tendered by the Commission. For the following reasons, we ordered that the Commission be permitted to introduce the first set of excerpts into evidence. As to the second set, prior to the close of the

Commission's case, the parties reached an agreement on the content of those excerpts and the terms upon which they would be entered into evidence. The agreement provided that the Commission would not use one respondent's transcripts against another respondent, except that the transcripts could be used to establish corporate conduct, and that corporate conduct may be relied upon, in turn, to prove the s. 129.2 allegations against each individual respondent.

- [22] The Commission sought to introduce the first set of excerpts through the affidavit of Charlie Pettypiece. Pettypiece was the Commission's primary investigator in this matter. The Commission advised that the excerpts were being tendered in support of its allegations that each of the individual respondents had breached s. 122(1)(a) of the *Act* by making misleading statements during their compelled examinations.
- [23] Since the respondents' objections to the admission of the excerpts were, at least in part, based on factual matters concerning the conduct of the compelled examinations, we deferred our ruling on admissibility and allowed the entire Pettypiece affidavit, including the transcript excerpts, to be introduced during Pettypiece's examination-in-chief. This permitted the individual respondents to cross-examine Pettypiece on all matters relevant to those objections. This was done with the concurrence and understanding of the parties that, if we ruled the excerpts inadmissible, they would be excluded from the record and an appropriately redacted copy of the Pettypiece affidavit would be filed.
- [24] Before addressing the arguments advanced by the parties, it is worth noting that we made it clear to the parties at the outset that we would not be entertaining arguments respecting admissibility of the excerpts based on any purported invocation of the protections afforded by s. 9 of the Ontario *Evidence Act*.² This direction was in light of the Divisional Court's recent decision in *Hogg v Chief Executive Officer*,³ which is binding upon us.
- [25] In addition to responding directly to the arguments raised by the respondents, the Commission advanced several general propositions by way of framing its argument. First, it argued that the excerpts at issue were not technically hearsay

² RSO 1990, c E.23

³ 2025 ONSC 6214 (Div Ct) (***Hogg Appeal***), aff'g *Hogg (Re)*, 2024 ONCMT 15 (***Hogg Merits***)

because they were being proffered, not for the truth of their content, but rather for the fact that the statements were made and therefore did not engage the reliability concerns normally associated with hearsay. Secondly, the issue concerning the admissibility of s. 13 examination transcripts is the proper exercise of our discretion under s. 15(1) of the *Statutory Powers Procedure Act (SPPA)*.⁴ That exercise should be governed by considerations of fairness, assuming no exclusionary rules apply, and informed by considering the probative value versus the prejudicial effect of the evidence at issue. Thirdly, fairness when addressing admissibility of evidence should be a lower standard than fairness when determining liability, with the former being relevant to admissibility only when it approaches abuse of process. Fourthly, s. 13 examination transcripts should be presumptively admissible. And lastly, refusing to admit transcripts of s. 13 examinations would leave the Commission with no reasonable or expedient way of proving a breach of s. 122(1)(a) of the *Act*.⁵

- [26] We agreed that the compelled testimony at issue is not technically hearsay because it is not being tendered for the truth of its contents. We also agreed that fairness should govern our discretion under s. 15(1) of the SPPA to admit or decline to admit the transcript excerpts at issue. However, we did not accept the proposition that unfairness approaching abuse of process must be established to justify a denial of admissibility but, for the reasons that follow, did not regard it necessary to determine the point in order to dispose of the admissibility issue in this case. Similarly, while we agreed that s. 13 examination transcripts are admissible, we declined to find them to be presumptively so given that such a finding might be seen to fetter our discretion under s. 15(1) of the SPPA. Finally, we agreed that the admission of s. 13 transcripts is the only reasonable and expedient way of proving a breach of s. 122(1)(a) predicated on an allegation of making a misleading statement during a Part VI compelled examination.
- [27] Domazet argued that s. 18 of the *Act* prohibited the introduction into evidence of the excerpts from the transcript of his compelled examination to establish his liability for the alleged breach of s. 122(1)(a) of the *Act*. The section provides:

⁴ RSO 1990, c S.22 (**SPPA**)

⁵ *Agucci (Re)*, 2013 ONSC 45 (**Agucci Motion**) at para 132

Testimony given under section 13 shall not be admitted in evidence against the person from whom the testimony was obtained in a prosecution for an offence under section 122 or in any other prosecution governed by the *Provincial Offences Act*.⁶

Domazet's position was that the bar in this section against admitting s. 13 compelled testimony in a prosecution also extended to a s. 127 proceeding where a breach of s. 122(1)(a) is alleged.

- [28] The Commission referred us to the Divisional Court's decision in *Wilder v Ontario Securities Commission* (**Wilder**),⁷ which clarified that a s. 127 proceeding was a remedial route available to the Commission when pursuing liability of market participants under s. 122(1)(a) of the *Act*,⁸ albeit the case did not deal with misleading statements in the context of a s. 13 examination. The Commission noted that the language of s. 18 of the *Act* is expressly directed only at quasi-criminal prosecutions of breaches of s. 122 which are governed by the *Provincial Offences Act* (**POA**).⁹ In this regard, the Commission acknowledged that, either by design or by a flaw in drafting, s. 18 appears to bar the admission of s. 13 testimony needed to prove liability on a quasi-criminal charge under s. 122(1)(a) for making misleading statements during a compelled examination. When the panel asked whether this meant that s. 122(1)(a) was not intended to apply to misleading statements made during a s. 13 examination, the Commission noted that the subsection expressly prohibits making misleading statements to "any person appointed to make an investigation or examination under the Act" and reminded us that we should interpret the *Act* in a purposive and remedial way in order to give effect to and foster the goals of investor protection and preservation of capital markets integrity.¹⁰ The Commission also referred us to caselaw where the Tribunal has interpreted s. 122(1)(a) as applying to misleading statements made during s. 13 examinations.¹¹

⁶ *Act*, s 18

⁷ 2001 CanLII 24072 (ONCA) (**Wilder**)

⁸ *Wilder* at paras 15-24

⁹ RSO 1990, c P.33

¹⁰ *Wilder* at paras 19-23

¹¹ *Rosborough (Re)*, 2022 ONCMT 11 (**Rosborough**) at paras 88-114; *Agueci (Re)*, 2015 ONSC 2 (**Agueci Merits**) at para 34; *Goldpoint Resources Corporation (Re)*, 2011 ONSC 12 at paras 238-247; *Goldbridge Financial Inc (Re)*, 2011 ONSC 3 at paras 86-89

- [29] We agreed with the Commission that Domazet’s argument that s. 18 of the *Act* is a complete bar to the introduction into evidence of the excerpts from the transcript of his compelled examination has no merit. To rule otherwise would fly in the face of the plain language of the section which limits its application to quasi-criminal prosecutions for breaches of s. 122 of the *Act* governed by the POA. Moreover, such a ruling would be contrary to the spirit of the Divisional Court’s decision in *Wilder* and to prior Tribunal jurisprudence.¹² Lastly, interpreting s. 18 of the *Act* as a complete bar to admitting compelled transcripts in a s. 127 proceeding for a breach of s. 122(1)(a) during a compelled examination could effectively preclude such proceedings altogether, contrary to a purposive and remedial interpretation of the legislation.
- [30] Bahadori and Nikdel characterized their objections to the introduction of excerpts from their compelled interviews as based on “fundamental fairness” and the “proper scope of the Commission’s investigative powers” under Part VI of the *Act*. Specifically, they submitted that the excerpts should not be admitted against them in connection with their alleged breaches of s. 122(1)(a) of the *Act* for the following reasons:
- a. they were not provided with advance documentary disclosure;
 - b. they did not have access throughout the examinations to all the documents that would be put to them;
 - c. they were required to adhere to confidentiality restrictions that prevented them from collaborating or consulting with one another;
 - d. there was an “injustice” inherent in the Commission exercising both investigatory powers and enforcement powers; and
 - e. they were unrepresented at some of the examinations and given no warning that their answers might be used against them in a subsequent proceeding under the *Act*.
- [31] Responding to Bahadori’s and Nikdel’s argument, the Commission submitted that Part VI investigations, including their power to compel testimony and

¹² *TeknoScan Systems Inc (Re)*, 2024 ONCMT 32 at para 285; *Rosborough* at para 89; *Agueci Merits* at para 635

documentary evidence under s. 13, are part of the securities regulatory and enforcement framework enshrined in the *Act* and therefore are not themselves inherently unfair. It asserted that there is no right against self-incrimination in the regulatory sphere and that market participants should be aware, not only that their evidence may be compelled, but that it may be used against them in a regulatory proceeding arising from a Part VI investigation. In this regard, the Commission referred us to the introductory remarks given by Pettypiece at each of the respondents' interviews in which he warned them that it was an offence under the *Act* to make misleading statements during their examination and that testimony given on the examination may be used against them in a proceeding under the *Act*.

- [32] Regarding Bahadori's and Nikdel's argument that imposing confidentiality on them as witnesses was unfair, the Commission again pointed out that the confidentiality restrictions imposed upon the respondents are embodied in s. 16 of the *Act* and are themselves not inherently unfair. It referred us to the Tribunal's decision in *Katanga Mining Limited v Ontario Securities Commission (Katanga)*,¹³ where the panel described the confidentiality restrictions under the *Act* as being "essential to the integrity and effectiveness of regulatory investigations".¹⁴ The Tribunal in that case also highlighted additional salutary benefits of the *Act*'s confidentiality restrictions, including deterring the tailoring and destruction of evidence, encouraging candid cooperation of witnesses, preserving investigative and market integrity, and protecting privacy interests.¹⁵ Accordingly, the Commission's position was that there was nothing sinister or unfair about the confidentiality restrictions prescribed in Part VI or in how they applied to the respondents in the case.
- [33] We agreed with the Commission that the compelled nature of the examinations and the confidentiality restrictions imposed on witnesses are part of the structure of the *Act* and are not themselves inherently unfair. In this regard, we adopted the Tribunal's reasoning in *Katanga* regarding the salutary benefits of the

¹³ 2025 ONCMT 16 (*Katanga*)

¹⁴ *Katanga* at para 10

¹⁵ *Katanga* at paras 11-13

confidentiality restrictions in Part VI. Neither Bahadori nor Nikdel offered any evidence that either compulsion or confidentiality gave rise to an unfairness in their specific cases. On one or more occasions during Bahadori's and Nikdel's examinations, their counsel stated on the record that his clients were committed to cooperating with the Commission and answering any questions the Commission may have, despite the compelled nature of the examinations. Counsel for Bahadori and Nikdel made no complaint either on the record or otherwise regarding the application of the confidentiality restrictions to Bahadori or Nikdel. Accordingly, we found no merit in the argument that either compulsion or confidentiality gave rise to what Bahadori and Nikdel characterized as a fundamental unfairness to them as witnesses.

[34] With respect to Bahadori's and Nikdel's arguments regarding disclosure and the use of documents, the Commission acknowledged that we retain a discretion under s. 15(1) of the SPPA to admit or decline to admit the transcript excerpts at issue. With that acknowledgment, it argued that our discretion should be governed by an assessment of whether the evidence is more prejudicial than probative, with prejudice, and by extension fairness, assessed through the lens of reliability. In this regard, it submitted that:

- a. Bahadori and Nikdel offered no evidence as to why the compelled testimony in question was unreliable;
- b. the evidence itself was not related to any particular document;
- c. the documents at issue in the proceeding were overwhelmingly obtained from the respondents;
- d. the respondents were represented throughout the investigation by experienced counsel who did not raise any objections to the level of documentary disclosure provided; and
- e. when counsel requested in advance an indication of the topics and documents that would be canvassed, it was provided.

[35] We adopted the analytical framework in *Agueci (Re)* which was grounded on the principle that fairness should govern the exercise of our discretion under s. 15(1) of the SPPA to admit or decline to admit the compelled transcript evidence at

issue.¹⁶ In applying that framework, we agreed with the Commission that the probative value and reliability of the evidence in question should be among the factors that should inform the exercise of our discretion. Here, there could be no doubt as to the probative value of the evidence in question as it is, practically speaking, the only evidence that was available to prove that the allegedly misleading statements were made by Bahadori and Nikdel. As to reliability, the evidence was transcribed by a certified court reporter and is being tendered, not for the truth of its contents, but simply to prove that the words were said. Accordingly, reliability is beyond question.

[36] Other factors that we took into consideration in the exercise of our discretion are that the misstatements at issue did not relate specifically to any documents, the respondents were represented by experienced counsel throughout the investigation (including on those occasions when they chose to attend examinations without counsel present), and counsel did not object to either the level of documentary disclosure during the investigation or the use made of documents by the Commission during examinations. Indeed, the record demonstrated that counsel on one or more occasions was informed in advance of examinations of the topics and documents that would be canvassed. Considering all these factors, we did not accept Bahadori's and Nikdel's submission that the documentary disclosure during the investigation gave rise to an unfairness that would warrant excluding the proffered transcripts of their compelled examinations.

[37] Accordingly, we ruled against the objections raised by Domazet and Bahadori and Nikdel and admitted the excerpts of the transcripts of their compelled interviews for the purpose of proving the allegations of breaches of s. 122(1)(a) of the *Act* made against them in this proceeding.

4. ISSUES

[38] The issues we must decide are as follows:

- a. Are the LMP Tokens securities?

¹⁶ *Agueci Motion* at paras 130-133

- b. Did LMP, Bahadori and Nikdel commit a fraud contrary to s. 126.1(1)(b) of the *Act*?
- c. Did LMP engage in unregistered trading contrary to s. 25(1) of the *Act*?
- d. Did LMP illegally distribute securities contrary to s. 53(1) of the *Act*?
- e. Did LMP illegally operate a marketplace contrary to s. 21(1) of the *Act* or s. 6.1 of National Instrument 21-101?
- f. Were Bahadori, Nikdel and Domazet directors or officers of LMP who authorized, permitted or acquiesced in LMP's breaches of Ontario securities law pursuant to s. 129.2 of the *Act*?
- g. Did Bahadori, Nikdel and Domazet mislead the Commission contrary to s. 122(1)(a) of the *Act*?

5. ANALYSIS

5.1 Are the LMP Tokens securities?

[39] The threshold question for the determinations to follow is whether the activities engaged in by LMP and its principals involved securities. Accordingly, we address this issue first.

5.1.1 Characteristics of LMP Tokens

[40] LMP sold "tokenized collectibles". During the relevant period, 37 such collectibles were sold. The collectibles were mostly physical trading cards of various kinds. A collectible was valued and then that value was divided into tokens that were each worth USD 10 cents. The LMP Tokens were sold to purchasers who had set up accounts on the LMP Platform in a so-called "initial drop". The LMP Tokens could then be sold by purchasers on the LMP Platform which offered a real-time ability to enter market, limit or stop orders on the marketplace.

[41] Most of the proceeds of the initial drop went to the seller of the collectible, with LMP retaining a commission fee. Sellers also typically retained some portion of ownership of the specific asset. If all LMP Tokens associated with a collectible were not sold in the initial drop, those who did purchase LMP Tokens were told by LMP that they could get their money back. The issue of how LMP Token ownership was recorded by LMP is addressed later in these reasons.

[42] Another feature of these arrangements was that owners of LMP Tokens could vote to sell the underlying physical asset and receive the proceeds of the sale according to the number of LMP Tokens they owned. These sales could take place in one of two ways. First, an owner of an unspecified minimum number of LMP Tokens could offer a “buyout” to the remaining owners, and the LMP Terms of Use described the way in which a vote to accept a buyout offer could occur. Here, the sale price for a buyout was described as the price at which the LMP Tokens were trading on the LMP Platform, plus a premium. Secondly, owners of LMP Tokens could vote to send a collectible to auction. Purchasers received emails indicating the start and end periods of the voting opportunity for a buyout or to send a collectible to auction. In both cases, the vote in favour of the action was required to reach approval by 80% of the LMP Tokens associated with the collectible.

5.1.2 The investment scheme for LMP Tokens involved securities

[43] The parties agree that, in determining whether these transactions involved the sale of securities, we should consider the definitions of “security” enumerated in s. 1(1) of the *Act* and the analysis of those definitions in key decisions, such as *Pacific Coast Coin Exchange of Canada v Ontario Securities Commission* (***Pacific Coast Coin***)¹⁷ and *R v Boughner*.¹⁸ However, they disagree on how that legal analysis applies to the facts in this matter.

[44] The Commission points to two alternative definitions of “security” in s. 1(1) which it says apply to the present facts. The first of these is the “investment contract” definition, which has four elements as set out by the Supreme Court of Canada in the *Pacific Coast Coin* decision: (i) an investment of money; (ii) with the expectation of profit; (iii) in a common enterprise; (iv) where the profits derive significantly from the efforts of others. In the alternative, it submits that the “evidence of title” definition¹⁹ also applies to the present facts.

[45] The Commission argues that all elements of the test set out in *Pacific Coast Coin* are met in the present case. It encourages us to consider the specific elements

¹⁷ 1977 CanLII 37 (SCC) (***Pacific Coast Coin***)

¹⁸ 1948 CarswellOnt 133 (Ont High Ct of Justice)

¹⁹ *Act*, s 1(1) “security” (b)

of the test through the lens of the investor protection purpose set out in the *Act* as well as a focus on the “economic substance” of the transactions at issue.

[46] The Commission argues that the scheme here involved the investment of money to acquire the LMP Tokens, which were promoted as an investment that would see the underlying assets appreciate in value. In addition, it argues that the efforts of LMP to manage the business were critical to its success, thus creating a common enterprise as between LMP and purchasers of the LMP Tokens. Such efforts included:

- a. tokenizing the collectibles on the blockchain;
- b. creating, maintaining and promoting the LMP website and platform so that the LMP Tokens could be traded;
- c. managing sales votes;
- d. arranging auctions and buyouts;
- e. storing, authenticating, appraising, and insuring collectibles; and
- f. significantly, maintaining proper records about purchaser ownership of LMP Tokens.

[47] In the alternative, the Commission submits that the scheme here constituted the sale of securities under the definition in the *Act* that provides that a security includes “any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company”.²⁰ The Commission argues that the LMP Tokens issued by LMP constituted “receipts” which were evidence of fractional ownership of the underlying collectibles.

[48] In contrast, the respondents, LMP, Bahadori and Nikdel (Domazet makes no submissions on this issue) argue that the value of the LMP Tokens being bought and sold derived from the underlying collectibles, not the LMP Platform. In this sense, they are similar to co-ownership of a variety of collectibles which are bought and sold through auction houses. LMP simply provided a mechanism through which those interests in collectibles could be recorded and transferred. In particular, they submit that there was no common enterprise here, there was

²⁰ *Act*, s 1(1) “security” (b)

no pooling of the capital of purchasers, and no deployment of purchaser capital in the business of LMP itself. LMP made no operational decisions that influenced the value of the underlying collectibles. In other words, LMP was not operating a business in the same way that the courts found Pacific Coast Coin or Boughner were doing. Market participants could take possession of physical collectibles through a buyout offer to other holders of fractional tokens.

- [49] The respondents point to Canadian Securities Administrators Staff Notice 46-308 entitled “Securities Law Implications for Offerings of Tokens”.²¹ This notice provides guidance about when an offering of tokens may or may not involve an offering of securities. Specifically, the respondents say that the notice addresses the situation where tokens are not fungible and have unique characteristics “that result in the purchaser exercising their personal preferences to value it as a mode of entertainment or as a collectible item”. The notice goes on to add the situation where “any objective future market value of the token is primarily based on market forces and not on continued development of a business by the issuer”. The notice concludes that possible implications are that “(T)he value of the token may be based on its unique characteristics, and not on the efforts of others. There may not be a common enterprise”. The respondents point to this guidance as being relevant to LMP’s situation, such that the LMP Tokens should not be considered to be securities.
- [50] Finally, the respondents emphasize that the Commission has provided no evidence that investors were harmed by the activities of LMP, thus removing the need to examine the facts here through the lens of investor protection. They also note that investor protection is only one of the purposes identified in s. 1.1 of the *Act*.
- [51] We agree with the respondents that it is essential to carefully apply the legal tests to the facts in evidence in this matter. The first issue we must address is whether we are considering the scheme as a whole, or the characteristics of the

²¹ CSA Staff Notice 46-308 *Securities Law Implications for Offerings of Tokens*, June 11, 2018, online (pdf): https://www.osc.ca/sites/default/files/pdfs/irps/csa_20180611_46-308_implications-for-offerings-of-tokens.pdf

LMP Tokens only, in order to determine if a security is involved. We agree with previous decisions that context matters,²² so we consider the scheme as a whole.

- [52] There can be no dispute that purchasers invested money here. Did they do so in the expectation of profit? We disagree with the respondents that the fact that purchasers might theoretically be in a position to purchase the physical asset following a sale vote means that the fractional interests represented by the LMP Tokens cannot involve securities. The enterprise of creating these fractional interests strongly suggests that the predominant purpose is financial investment rather than possession of a physical asset. The principals of LMP gave social media interviews, and provided other marketing materials, in which they extolled the financial benefits of fractional interests in collectibles. In another promotional example, LMP was described in an April 2022 news release as a “large-scale platform where people can buy, sell, own, and trade portions of rare collectibles in real-time.”
- [53] While we acknowledge that a significant portion of the initial proceeds of creating these fractional interests appears to have gone to the seller of the collectible, the creation of fractional interests, the mobilization of the “initial drop” and the maintenance of the marketplace for ongoing purchases and sales of LMP Tokens all point to this being a common enterprise orchestrated by LMP that involved the trading of securities. LMP created an investment opportunity that allowed investors to participate in trading that was more affordable, liquid and fungible than the enterprise of buying and selling the physical assets. The “economic substance” of the scheme was that of an investment opportunity. The efforts of LMP are crucial to the success of the scheme. For example, the process of providing “sale votes”, which LMP would orchestrate, to allow for sale of the collectible, implies that individual owners of LMP Tokens did not have full autonomy over the decision to sell or retain the physical asset. As the majority in *Pacific Coast Coin* noted, “the key to the success of the venture is the efforts of

²² *Pacific Coast Coin* at p 127; *Polo Digital Assets, Ltd (Re)*, 2022 ONCMT 32 at para 43; *Hogg Merits* at para 107

the promoter alone, for a benefit that will accrue to both the investor and the promoter".²³

- [54] With respect to the respondents' argument that the Commission has not demonstrated actual harm to investors other than itself (through setting up an account on the LMP Platform), we note that harm to investors is not a specific criterion enumerated by the test in *Pacific Coast Coin* to identify when a security exists. It is true that *Pacific Coast Coin* describes a founding principle of securities law as being "remedial legislation". However, the majority decision goes on to state that the legislation is not aimed "solely at schemes that are actually fraudulent; rather it relates to arrangements that do not permit the customers to know exactly the value of the investment they are making."²⁴
- [55] The respondents also note that there are now several other goals in s. 1.1 of the *Act* in addition to investor protection. While this is true, investor protection remains a principal goal of the *Act*, and we are bound to give effect to the precedent established in *Pacific Coast Coin* regarding how to define a security.
- [56] Given the dependence that investors in these LMP Tokens had on LMP to create the tokens, authenticate, appraise, store and insure underlying collectibles, run the LMP Platform appropriately, facilitate buying and selling and maintain ownership records, we conclude that these circumstances are sufficient to establish that the LMP Tokens, together with any related rights, terms and conditions, involved an investment contract and required that purchasers receive the protection of securities law.
- [57] As noted above, the Commission also makes the alternative argument that the LMP Tokens themselves could be considered to be securities under paragraph (b) of the definition of a security in s. 1(1) of the *Act*, which deals with documents constituting evidence of title to property or assets. Since we have determined that the investment scheme operated by LMP constituted an "investment contract" we do not address this alternative submission here.

²³ *Pacific Coast Coin* at p 130

²⁴ *Pacific Coast Coin* at p 114

5.2 Did LMP, Bahadori and Nikdel commit a fraud contrary to s. 126.1(1)(b) of the Act?

[58] The Commission alleges that LMP, Bahadori and Nikdel engaged in a course of conduct that they knew, or ought to have known, perpetrated a securities fraud. The alleged fraud related to one cluster of matters that can be summarized as the core attributes of the LMP Tokens, and another cluster of matters related to the underlying collectibles themselves.

[59] For the reasons that follow, we find that LMP, Bahadori and Nikdel all committed securities fraud in respect of both these clusters of matters. LMP and Bahadori were the primary perpetrators of the fraud and Nikdel was a party to the fraud by his participation in the fraudulent acts.

5.2.1 The elements of fraud under s. 126.1(1)(b)

[60] Subsection 126.1(1)(b) of the *Act* addresses securities fraud. The section provides, in relevant part:

126.1(1) 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.

[61] The section captures two kinds of persons: those who perpetrate a securities fraud, and those who participate, directly or indirectly, in that conduct.

[62] The first step, therefore, is to determine if one or more persons have committed a fraud. For this purpose, the Tribunal has repeatedly adopted the framework set out by the Supreme Court of Canada in *R v Théroux*.²⁵ That decision sets out the following elements:

- a. the *actus reus*, or objective element, which consists of:
 - i. an act of deceit, falsehood, or some other fraudulent means; and

²⁵ 1993 CanLII 134 (SCC) (*Théroux*)

- ii. deprivation caused by that act, which may come in the form of an actual loss or the placing of the victim's pecuniary interests at risk; and
 - b. the *mens rea*, or subjective element, which consists of:
 - i. subjective knowledge of the act referred to above; and
 - ii. subjective knowledge that the act could have as a consequence the deprivation of another.
- [63] If it is determined at the first step that a fraud has been committed, the second step is to consider whether those named as respondents have directly or indirectly participated in any act or conduct, related to securities, that they knew or reasonably ought to have known perpetrated the fraud.
- [64] As the Tribunal noted in *Bridging Finance Inc (Re)*,²⁶ the second step is straightforward for respondents who were primary perpetrators of the fraud. It need only be determined whether the acts or conduct by which these respondents perpetrated the fraud related to securities. The section's "knows or reasonably ought to know" requirement is satisfied because it is a lower standard than the primary perpetrators' *mens rea* already established applying the *Théroux* framework at step one.²⁷
- [65] The second step, for respondents who were not the primary perpetrators of the fraud themselves, requires consideration of both their objective acts and their subjective knowledge. The objective element is that they must have, directly or indirectly, engaged or participated in acts or conduct that related to securities. The subjective element is that they knew, or ought to have known, that their participation in the primary perpetrators' conduct would result in the fraud.²⁸
- [66] The fraud alleged against LMP, Bahadori and Nikdel related to the LMP Tokens and their underlying collectibles. We have already determined that the sale of LMP Tokens involved securities, and therefore the fraud, if committed, related to securities.

²⁶ 2024 ONCMT 23 (*Bridging*)

²⁷ *Bridging* at para 36

²⁸ *Bridging* at para 37

5.2.2 The objective element: misrepresentations regarding core characteristics of LMP Tokens

5.2.2.a LMP Tokens as fractional ownership interests

- [67] The essence of LMP Tokens, as they were promoted to purchasers, was that they were fractional ownership interests in the underlying collectibles. Purchasers were told they could become a co-owner of the assets, by buying LMP Tokens. They were told that their fractions, or portions, of ownership were “represented” or “proven” or “confirmed” by the LMP Tokens. As Bahadori explained in a news article, also posted on the LMP webpage, “with Liquid Marketplace, it’s quite simple: these physical tokens give you direct co-ownership interest in that physical asset.”
- [68] The reason for this co-ownership, LMP represented, was that legal ownership of the collectibles was transferred from their original owners (the **Collectors**) to the holders of LMP Tokens pursuant to a Listing Agreement. LMP’s “Terms of Use” stated that Collectors “must” enter a Listing Agreement to list a collectible on the LMP Platform. Those Terms of Use also explained that, pursuant to the Listing Agreement, the Collector would convey all right, title and interest in the collectible to the holders of the LMP Tokens representing such collectible.
- [69] These representations were not true. In respect of ownership, LMP obtained Listing Agreements in respect of only five of the 37 collectibles ultimately listed on its platform. In four of those five cases, the agreements represented that the Collector had “good and clear title” to the collectible in question. Beyond that, however, the evidence established that LMP did nothing further (apart from, perhaps, a conversation with the Collector) to establish the ownership, or ownership history, of the collectibles, such as documentation establishing ownership or proof of purchase. Both Bahadori and Nikdel stated this in their compelled examinations.
- [70] Thus, the vast majority of collectibles listed on the LMP Platform, and for which LMP Tokens were purchased, were not supported by Listing Agreements. Ultimately, LMP largely abandoned the use of Listing Agreements.
- [71] Bahadori, in his compelled interview, explained the process of discussion with a Collector, and listing, in frank terms:

They say, 'Hey, I want to sell my card.' 'Okay, cool, come and list it on Liquid Marketplace. How much did you want to get for it?' 'I want \$50,000.' 'Okay, great, can you send us pictures front and back?' Sends us pictures front and back, we create a 3D render, they ship it off, or our director of assets will bring it, and it is listed on the platform for sale...It is all by conversation...It is not structured like in emails or agreements, and that is why we scrapped the agreements. We found them burdensome...We wanted it to just be very easy, very seamless. It doesn't need to be so burdensome.²⁹

[72] Nevertheless, some two months after the last of the few Listing Agreements was executed, Bahadori gave a social media interview in which he stated that listing agreements were being sent to the Collectors prior to the collectible being listed on the LMP Platform.

[73] Accordingly, contrary to the representations made to purchasers, the LMP Tokens did not represent legal fractional co-ownership of collectibles.

5.2.2.b LMP Tokens as tokens on the blockchain

[74] LMP made numerous representations to purchasers that LMP Tokens were digital assets, recorded and transferable on the blockchain. LMP's support website, for example, states:

your fractionalized ownership or 'Portion' of a collectible is represented by an ERC-20 digital asset that exists and is transferable on the Ethereum network. Based on the smart contract within that digital asset you are now a genuine part-owner of the physical collectible item underlying the token.

[75] Because of their purported nature as ERC-20 tokens on the Ethereum blockchain, LMP represented in its Terms of Use that a LMP Token purchaser owned the token completely and had the exclusive right to swap, sell or give away their LMP Tokens. In a social media interview, Bahadori elaborated that purchasers could

²⁹ Exhibit 11, Excerpts of the Transcripts of the Compelled Examinations of Ryan Bahadori, Amin Nikdel and Dennis Domazet (**Compelled Transcript Excerpts**), Transcript of the Compelled Examination of Ryan Bahadori, March 30, 2023 (**Bahadori March 30, 2023, Transcript**) at p 293, line 15 to p 294, line 15

take these tokens off the LMP Platform and store them in their own third-party cold storage wallet. Consistent with this, LMP's website contemplated withdrawal fees.

[76] LMP's promotional materials to purchasers described these and other benefits of having the LMP Tokens on a well-known and highly used blockchain platform.

[77] The reality was quite different. In the case of two collectibles listed on the LMP Platform, no ERC-20 tokens were ever minted. In many cases, they were not minted until months after a collectible was listed on the LMP Platform.

[78] Minting of tokens was entirely paused for a period from mid-2022 until early 2023, despite at least 13 new collectibles being listed on the LMP Platform over that period. Nikdel, who was primarily responsible for the minting of LMP Tokens, explained that:

we were going through a transitory period. We were also wondering if creating these tokens should still be happening, what value they had, if they actually had any function...So for a period of time we just stopped doing it. And then after a while we were like, okay, now it doesn't make a whole lot of sense, so we reminted them again...We couldn't find a good enough solution as to why not to do it.³⁰

[79] For his part, Bahadori described the minting process as an "administrative burdensome task" and watching Nikdel having to do it as "quite annoying".

[80] This resulted in periods of time when LMP Tokens were being sold on the LMP Platform for collectibles in respect of which no tokens had been minted. When asked on his compelled examination what users were buying if there were no tokens to sell, Nikdel responded that they were still buying ownership interests in LMP Tokens that they thought existed.

[81] Just as importantly, even when ERC-20 tokens were in fact minted, the interests of LMP Token purchasers were not recorded on the blockchain. All tokens minted by LMP were immediately transferred into a single LMP Token Wallet and simply

³⁰ Exhibit 23, Compelled Transcript Excerpts, Transcript of the Compelled Examination of Amin Nikdel, June 29, 2023, at p 167, lines 16-28

stayed there. Purchasers of LMP Tokens could not, in fact, withdraw their LMP Tokens from the LMP Token Wallet to store in their own wallets.

- [82] Even the LMP Token Wallet was not kept current to reflect the collectibles' status on the LMP Platform. For example, the evidence showed that two days prior to the merits hearing, the LMP Token Wallet still held all the LMP Tokens minted in respect of a collectible that had been sold off the LMP Platform three years before. When asked about that collectible in his compelled interview, Bahadori stated that although he knew that they should be destroying them as things sell, "it is all quite burdensome when we have a lot of other things going on".
- [83] Instead of being recorded on the blockchain, the interests of holders of LMP Tokens were tracked on an off-chain, internal ledger, using back-end exchange software licensed by LMP from a third party. Transactions between accounts on the LMP Platform were settled by the exchange software on a real-time basis, and account balances tracked on the software's ledger were reflected in the account holders' balances shown on the LMP Platform. As a result, contrary to all the representations made to purchasers about the ERC-20 tokenization and Ethereum capabilities, the LMP Tokens were not in fact digital assets, recorded and transferable on the blockchain.

5.2.2.c Protection of LMP Tokens in bankruptcy

- [84] As a corollary of the (misrepresented) blockchain tokenization of LMP Tokens, LMP represented that holders of the LMP Tokens would be protected in the event of a bankruptcy or other business-ending event of Liquid Marketplace.
- [85] These representations occurred primarily in media interviews by Bahadori, alone or with Nikdel. For example, in a YouTube livestream (with Nikdel), Bahadori stated that LMP had structures in place to address its bankruptcy or shutdown. He described a process in which the auditors would retrieve the collectibles from storage in the vault, auction them and distribute the proceeds to token holders. In his description, Bahadori stressed that this was a benefit of tokenization and having everything recorded on the blockchain. All that ownership, he noted, was recorded, could not be duplicated, and could not be "fudged". He described it "as easy as that".

[86] In fact, LMP had no structures or processes in place to deal with the prospect of bankruptcy or other business-ending events. By no later than August 2025, the LMP Platform and website went offline without any notice to purchasers. LMP Token holders received no communication from LMP about the status of the Platform, and no money back for the holdings in their LMP accounts at the time the Platform went offline.

5.2.3 The objective element: misrepresentations regarding authentication, appraisal, custody and insurance of collectibles

[87] The misrepresentations described above are those relating to the core attributes of the LMP Tokens themselves. The Commission also alleges that LMP, Bahadori and Nikdel made several misrepresentations as to the underlying collectibles. This matters because the value of the LMP Tokens for purchasers was intended to reflect the value embodied in those underlying collectibles.

5.2.3.b Authentication and appraisal

[88] It was important to investors that the underlying collectibles were authentic and offered at a reasonable market value.

[89] LMP made numerous representations in promotional materials to the effect that the collectibles were verified and authenticated before being tokenized and listed on the LMP Platform. A good example was found on LMP's support website, which stated:

Each collectible that is listed on the platform goes through an extensive authentication process managed by industry-leading authenticators. Additionally, we only agree to offer previously graded and authenticated assets with thoroughly documented ownership.

[90] Similarly, LMP made numerous promotional representations as to the appraisal of collectibles. Again, a good example was found on its support website:

We work with some of the most renowned experts relevant to the particular collectible. We constantly monitor global collectible markets for data on sales amounts and assets sold. We use this data, together with our expert partners, to determine a fair offering price for each collectible.

LMP represented that the appraisal price was how it determined the number of LMP Tokens into which an asset would be divided.

[91] In fact, LMP did not authenticate or obtain any records of ownership and provenance for any of the collectibles on its platform. When asked what steps LMP took to ensure a Collector owned a collectible asset, Nikdel stated in his compelled interview that “we ask them who did you get it from”, but apart from that conversation, Collectors were not asked for any documentation to support their ownership.

[92] Contrary to its representations, LMP did not appraise or establish a fair market price for the collectibles on its platform. Bahadori described how prices were established in his compelled interview as follows:

Originally, we were tracking down and trying to figure out what would be deemed a fair market price for that asset. We realized that eBay doesn't do something like that. I mean why are we doing an extra step for people that want to sell their assets? It is their responsibility, not ours. So we let them set their own prices and come up with what they think is a fair market value, and if it doesn't sell, it doesn't sell. It's not our business.³¹

[93] Bahadori stated that this change in approach happened “after the first or second asset that we listed. It was a very, very fast decision”. When confronted with the fact that the LMP website still said that LMP determined a fair offering price, Bahadori responded, “There is a lot of stuff that needs to be changed in terms of wording, and that's why there are a lot of changes to the terms of use that we are looking to push out.”³²

[94] The Commission alleges, and we find, three other areas of misrepresentation in respect of LMP’s pricing of certain collectibles, contrary to its statements to LMP Token purchasers assuring a fair offering price (as described above):

a. LMP added an additional 8% to the (unappraised) offering price stipulated by the Collectors;

³¹ Exhibit 23, Compelled Transcript Excerpts, Bahadori March 30, 2023, Transcript at p 283, lines 4-13

³² Exhibit 23, Compelled Transcript Excerpts, Bahadori March 30, 2023, Transcript at p 284, lines 22-25

b. LMP sold collectibles for prices significantly in excess of values determined by Professional Sports Authenticator (a third-party industry service that “graded” collectibles and, in some cases, assigned them values); and

c. LMP moved collectibles to the secondary trading LMP Platform which had not sold out on the initial drop (in other words, in cases where LMP users had implicitly rejected the stipulated price).

[95] Each of these actions was at odds with various public statements by LMP about the pricing and treatment of collectibles to assure a fair offering price.

5.2.3.c Custody and insurance

[96] Given the physical nature of the underlying collectibles, LMP made representations to purchasers concerning the safe storage of the collectibles. These related primarily to the physical custody of the collectibles, and insurance covering them.

[97] LMP’s terms of use stated that collectibles would be held in a secure third-party vault under a Custody Agreement between the Collector and a subsidiary of LMP. By purchasing an LMP Token, the purchaser would be deemed to have entered that Custody Agreement as a “Tokenholder”. Neither the Collector nor any Tokenholder could take possession of the collectible or direct the Custodian.

[98] LMP’s public statements also represented that the collectibles were insured and stored in vaults that were “fully” insured. Finally, LMP represented that the vault was audited on a quarterly basis “to prove all assets on our platform are in fact safely stored within that vault”, and those auditors’ reports would be released on the LMP Platform.

[99] The reality was very different. LMP entered no Custody Agreements with any Collectors with respect to any collectibles listed on the LMP Platform. Although it had a draft Custody Agreement, it was never used because (as advised by LMP through counsel, in response to a summons) the terms of the arrangement it contemplated “were understood by the parties involved”.

[100] Nor did LMP maintain any insurance over the collectibles that were listed on the LMP Platform. It relied on the vaults where the collectibles were stored to provide insurance over collectibles stored in their vaults.

- [101] During the relevant period, collectibles listed on the LMP Platform were stored in three different locations. First, for the very few purely “digital” collectibles, storage was in a bank safety deposit box in Toronto, Ontario, for which Bahadori and Nikdel were the signatories. They both admitted there was no insurance on the digital collectibles in that safety deposit box.
- [102] Secondly, initially and until July 2022, the real-world, physical collectibles were stored in a vault in Delaware, USA. In the summer of 2022, LMP learned that this vault held insurance with a third-party insurer that provided weight-based coverage for all items stored in its vault. The policy would pay a specific amount of money per pound in the event of loss. As Nikdel testified, this was a matter of great concern since “these cards weigh maybe ten grams, but the thing is worth hundreds of thousands of dollars”.
- [103] LMP moved the collectibles in July 2022 to the Collectors Universe vault (the “CU Vault”), also located in Delaware, USA. The CU Vault provided to LMP a brief “Evidence of Insurance” document, which stated that Collectors Holdings, Inc, plus a number of related companies, had insurance for all risks of physical loss or damage for values up to US\$150 million.
- [104] There was no evidence as to whether the US\$150 million was sufficient to cover all items stored in the CU Vault, and Bahadori and Nikdel each admitted in their compelled interviews that they had no knowledge whether it was sufficient.
- [105] Finally, despite the representations described above, no auditor completed audits of the vaults containing the collectibles.

5.2.4 The objective element: prejudice to investors’ economic interests

- [106] We have determined above that LMP and Bahadori made repeated misrepresentations to purchasers of the LMP Tokens concerning both the core attributes of the tokens they were purchasing, and the authentication, appraisal, custody and insurance of the collectibles underlying those tokens. We will consider Nikdel’s role in these misrepresentations separately, below.
- [107] We find that all these matters put the purchasers’ pecuniary interests at risk. Purchasers did not get what they bargained for. The tokens were not what they were described to be and the way the collectibles were treated was not as

promised. Ultimately, the LMP Platform closed down with no communication or compensation to holders of LMP Tokens on the platform. Those holders suffered actual loss, not just a risk of loss.

5.2.5 The subjective, or mental, element

[108] Having established the objective element of a fraud (the *actus reus*), we now turn to consider the subjective, or mental, element (the *mens rea*).

[109] The Tribunal's jurisprudence, based on the test set out in *Théroux* and recently reiterated in *Bridging*,³³ *Hogg*,³⁴ *Feng (Re)*³⁵ and *First Global Data Ltd (Re)*³⁶ requires us to determine whether a particular respondent had subjective knowledge of, first, the acts we have found to fulfil the objective element of fraud, and second, that those acts could have as a consequence deprivation of another. That latter knowledge may be knowledge that the other's economic interests are put at risk.

5.2.5.a Subjective knowledge of the fraudulent acts

[110] As to the first branch of the test, most of the impugned statements were made either on the LMP website (particularly the Terms of Use), social media feeds (e.g. Instagram, Discord), or by Bahadori in social media or other interviews (several of which were reposted by LMP).

[111] There was no suggestion by Bahadori, or otherwise in the evidence, that he did not knowingly make the statements attributed to him. Indeed, the evidence establishes that in several instances he either knew they were false at the time they were made, or he continued to make them after becoming aware they were false.

[112] We find that Bahadori was aware of the true facts in relation to the core attributes of the LMP Tokens and the underlying collectibles. We also find that he was aware, as a result, of the falsity of the statements made about those subjects as described above, in the various forms those statements were made.

³³ *Bridging* at paras 30-37

³⁴ *Hogg Merits* at paras 131-147

³⁵ 2023 ONCMT 12 at paras 35-40

³⁶ 2022 ONCMT 25 (*First Global Data*) at paras 345-347

5.2.5.b Subjective knowledge that the acts could cause deprivation

- [113] The second branch of the test for the subjective element asks if the particular respondent had subjective knowledge that the acts (in this case, the falsehoods) could have as a consequence deprivation of another (in this case, the purchasers of LMP Tokens), including by placing another's economic interests at risk.
- [114] The matters about which false statements were made went to key investment attributes of the LMP Tokens and their underlying collectibles. They related to matters which were promoted as establishing the value and legal nature of the LMP Tokens. They were matters repeatedly stressed by LMP as selling points for the LMP Tokens and the LMP Platform.
- [115] Where a respondent makes a misstatement, knowing that others will act upon it, the inference of subjective knowledge that the economic interests of another would be put at risk, is clear.³⁷ We find that Bahadori had such subjective knowledge in respect of the misstatements as to the attributes of the LMP Tokens and the underlying collectibles.
- [116] Accordingly, having found both the objective element, and the subjective element, we conclude that Bahadori was a primary party in perpetrating a fraud on the purchasers of LMP Tokens.

5.2.6 Nikdel's role in the fraud

- [117] We turn now to the role of Nikdel in respect of the fraud. Nikdel was the Chief Technology Officer of LMP, as well as its co-founder and a director (with Bahadori). He was also Chief Operating Officer. Nikdel was present for at least some of the interviews in which Bahadori made statements described above and reposted some of them on his own LinkedIn page. He was generally responsible for LMP's technological activities and, we find, aware of the statements made on LMP's website and social media feeds. Nikdel did not attempt to disavow any statements made on LMP's website, or its social media feeds.
- [118] There is a continuum of levels of involvement in a fraud, as contemplated by s. 126.1(1)(b). The section imposes liability on a person who directly engages in an

³⁷ *Hogg Merits* at para 141; *Théroux* at p 19-20

act that the person knows perpetrates a fraud, but it also extends liability to a person who indirectly participates in a course of conduct that the person reasonably ought to know perpetrates a fraud. Different actors may fall at different points on that continuum. The determination is specific to the facts of the case.

[119] In this case, we have no hesitation in finding that Nikdel is on that continuum. Having found that Bahadori committed fraud, there is ample evidence that Nikdel, at the very least, participated in that fraud. Even if he was not the person who made the specific statements to purchasers of the LMP Tokens, he was aware of and facilitated them. We note that he did prepare portions of slide decks presented to investors for corporate fundraising by LMP which contained clear misrepresentations of the kind described above. Those decks, however, were not provided to the purchasers of LMP Tokens, whom we have found were the victims of the fraud in this case.

[120] Nikdel had sufficient subjective knowledge such that he knew or ought to have known that the acts of Bahadori in which he participated perpetrated a fraud. He knew the true state of affairs and he knew that Bahadori's statements and those made through various LMP channels, some or all of which he was responsible for or maintained as CTO, were misrepresentations. Like Bahadori, he knew that the economic interests of purchasers of LMP Tokens would be put at risk. That is sufficient to establish his liability for the fraud in which he participated.

5.2.7 Corporate liability of LMP

[121] We turn, finally, to the corporate liability of LMP. When the respondent is a corporation, it is sufficient to show that the directing mind(s) of the corporation knew or ought reasonably to have known that the corporation perpetrated a fraud.³⁸ This is known as the "identification doctrine". The evidence is clear that Bahadori was a directing mind of LMP. He was its CEO, co-founder, a director, and testified that he was generally responsible for its operational activity. Since Bahadori was a directing mind of LMP, LMP is equally responsible for the fraud perpetrated by Bahadori.

³⁸ *Al-Tar Energy Group Corp et al (Re)*, 2010 ONSEC 11 at para 286

[122] The identification doctrine only operates where the directing mind's conduct was within that person's assigned field of operation, not in total fraud of the corporation itself, and was by design or result partly for the corporation's benefit.³⁹ In this case, the conduct of Bahadori met all those conditions.

[123] LMP is therefore liable by reason of its responsibility for the acts of its directing mind, Bahadori. This is so whether or not Nikdel was also a directing mind, a question we need not determine.⁴⁰

5.2.8 Conclusion

[124] We therefore find that each of LMP, Bahadori and Nikdel committed securities fraud contrary to s. 126.1(1)(b) of the *Act*.

5.3 Did LMP engage in unregistered trading contrary to s. 25(1) of the Act?

[125] Registration is one of the primary tools used to give effect to the overall goals of securities law. It ensures that those who participate with regularity in the securities markets are honest, competent and solvent.⁴¹ It is a breach of s. 25(1) of the *Act* to trade securities without registration or without an acceptable exemption from the registration requirement.

[126] Therefore, the first question to be addressed is: was LMP trading? The relevant definition of trade or trading for present purposes is "any sale or disposition of a security for valuable consideration."⁴² In addition, the definition refers to "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing."⁴³

[127] Based on the evidence, there can be little doubt that LMP was trading. It was creating and issuing the LMP Tokens apparently based on the value of the underlying assets and offering them for sale on its platform. Its promotional materials made clear that it was offering investment opportunities and its revenues were derived from these activities.

³⁹ *Bridging* at paras 63-64

⁴⁰ *First Global Data* at para 427

⁴¹ *Hogg Merits* at para 187

⁴² *Act*, s 1(1) "trade" or "trading" (a)

⁴³ *Act*, s 1(1) "trade" or "trading" (e)

[128] The second question then is whether LMP was engaged in the business of trading, so as to trigger the registration requirement. To determine whether a person or company is engaged in the business of trading, triggering the registration requirement under s. 25(1) of the *Act*, the Tribunal has adopted the criteria set out in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the “business trigger” test).⁴⁴ Those criteria include:

- a. engaging in activities like a registrant, including stating in any way that the firm will buy or sell securities, or setting up a company to sell securities or promoting the sale of securities;
- b. acting as a market maker;
- c. carrying on the activity with repetition, regularity or continuity, whether or not that activity is the sole or even the primary endeavour;
- d. receiving or expecting to receive compensation for carrying on the activity, regardless of the form of compensation; and
- e. directly or indirectly soliciting securities transactions.⁴⁵

[129] Again, the continuous nature of LMP’s activities in creating and issuing the LMP Tokens for 37 collectibles, the promotional efforts to solicit investors, the number of transactions that took place on the platform, the revenue LMP earned from these activities and the fact that 481 accounts were set up for Ontario investors all lead to the finding that LMP was engaged in the business of trading, and as such was required under s. 25(1) of the *Act* to be registered.

[130] LMP bears the burden of showing that an exemption from registration was available. It has not done so.

5.4 Did LMP illegally distribute securities contrary to s. 53(1) of the *Act*?

[131] The next question to be addressed is whether LMP was distributing securities contrary to s. 53(1) of the *Act*. According to s. 1(1) of the *Act*, a “distribution”

⁴⁴ *Hogg Merits* at para 192

⁴⁵ Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, s 1.3 “Factors in determining business purpose”

can mean several things. However, the most common meaning is that a “distribution” is a “trade in securities of an issuer that have not been previously issued.”⁴⁶ An issuer is “a person or company who has outstanding, issues or proposes to issue, a security.” As described above, LMP created fractional interests in underlying physical assets in the form of LMP Tokens that were valued at USD 10 cents each. These LMP Tokens were sold to purchasers in an “initial drop”, following which the LMP Tokens could be traded on LMP’s platform. This activity constituted a trade in securities that were not previously issued, i.e., a distribution.

[132] Subsection 53(1) of the *Act* prohibits the distribution of a security “unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director”. There is no evidence that LMP attempted to file a preliminary or a final prospectus. Similarly, the respondents did not seek to claim any exemption from the prospectus requirement in s. 53(1).

[133] We find that LMP distributed securities illegally, contrary to s. 53(1).

5.5 Did LMP illegally operate a marketplace contrary to s. 21(1) of the *Act* or s. 6.1 of National Instrument 21-101?

[134] The Commission alleges that LMP operated a marketplace in Ontario without obtaining the approvals required under Ontario securities law. More specifically, the Commission submits that the LMP Platform constituted either an exchange or an alternative trading system (**ATS**) and that LMP carried on that activity without being recognized as an exchange or registered and approved as an ATS.

[135] The *Act* contemplates three categories of marketplaces: exchanges, quotation and trade reporting systems, and ATSs.⁴⁷ Only the first and third categories are potentially engaged in this proceeding. The Companion Policy to National Instrument 21-101 – *Marketplace Operation* (**Companion Policy 21-101CP**) identifies two essential characteristics of a marketplace:

- a. that it brings together orders for securities of multiple buyers and sellers;
- and

⁴⁶ *Act*, s 1(1) “distribution” (a)

⁴⁷ *Act*, s 1(1) “marketplace”

b. that it uses established, non-discretionary methods under which the orders interact with each other.⁴⁸

[136] A person or company may not operate a marketplace in Ontario without first satisfying the applicable regulatory requirements. An exchange must be recognized by the Commission under s. 21(1) of the *Act*, while an ATS must, among other things, be registered as an investment dealer, be a member of a self-regulatory organization, and obtain Commission approval to operate as an ATS under s. 6.1 of National Instrument 21-101.⁴⁹

[137] This allegation arises from the trading functionality that LMP made available through its online platform. After purchasing LMP Tokens during an initial drop, users could buy and sell those LMP Tokens on the LMP Platform. The platform displayed market information for individual LMP Tokens, including trading history, price charts, depth charts and an order book. Users could place market, limit and stop orders, and buy and sell orders were matched using a licensed back-end exchange software. Trades were recorded and settled through the platform's internal systems.

[138] There is no dispute that LMP was neither recognized as an exchange nor approved to operate an ATS. We have earlier determined that the creation and sale of LMP Tokens involved "securities". Accordingly, the central questions are whether the LMP Platform possessed the characteristics of a "marketplace" within the meaning of the *Act* and National Instrument 21-101 and whether the marketplace was operating in Ontario.

[139] Marketplace regulation is an important element to achieve the investor protection purposes of the *Act*. The regulation of marketplaces is designed to ensure that their structure, operations and governance are consistent with market integrity and investor protection.⁵⁰ The Commission submits, and we

⁴⁸ Companion Policy 21-101CP *Marketplace Operation*, s 2.1(2), online (pdf): https://www.osc.ca/sites/default/files/2020-10/ni_20200914_21-101cp_unofficial-consolidation.pdf

⁴⁹ National Instrument 21-101 *Marketplace Operation* (September 10, 2020), (2020), 43 OSCB 7157, online (pdf): https://www.osc.ca/sites/default/files/2020-11/ni_20200910_21-101_marketplace-operation.pdf

⁵⁰ *Execution Access, LLC (Re)*, 2017 ONSC 37 at para 10

agree, that a determination of whether a respondent is carrying on business as a marketplace in Ontario should be given a broad and purposive analysis.⁵¹

[140] In this case, however, the analysis is relatively straightforward. The LMP Platform has the two essential characteristics of a marketplace described in Companion Policy 21-101CP. The whole point of the LMP Platform was to bring together orders from multiple buyers and sellers of LMP Tokens. Buy and sell orders were entered into the licensed exchange software, which automatically matched buy and sell orders and processed the transactions. If an order could not be matched, the order would be placed on the order book where other users of the platform could see it. This was all performed automatically based on a non-discretionary established algorithm, including a time priority rule.

[141] The only remaining question is whether LMP was carrying on this activity in Ontario. It clearly was. LMP is a Canadian-incorporated company, its directors and officers reside in Ontario, and the LMP Platform offered direct trading access to Ontario-resident participants.

[142] As a result, we conclude that LMP illegally operated a marketplace in Ontario.

5.6 Were Bahadori, Nikdel and Domazet directors or officers of LMP who authorized, permitted or acquiesced in LMP's breaches of Ontario securities law pursuant to s. 129.2 of the Act?

[143] The Commission alleges that Bahadori, Nikdel and Domazet are deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act* in respect of each of the breaches found against LMP. The section attributes liability to directors and officers who authorize, permit or acquiesce in a company's non-compliance with Ontario securities law.

[144] Both Bahadori and Nikdel were directors and officers of LMP during the relevant time period. While there is evidence in corporate records that indicated Domazet was also a director of LMP at all relevant times, he disputes that he had ever been legally appointed as such and there is no evidence of a shareholder vote or resolution so appointing him. Nevertheless, the evidence is clear that Domazet was the CFO of LMP during the material time. Whether he was formally

⁵¹ *World Stock Exchange, Re*, 9 ACCS 658 at pp 24-25

appointed as such by the board of directors of LMP is of no consequence because, by his own admission, he performed duties and functions similar to those normally performed by a CFO which brings him within the definition of an “officer” under the *Act*.⁵²

5.6.1 Bahadori’s and Nikdel’s liability

- [145] Recent Tribunal decisions have concluded that where an individual has been found directly liable for a breach of the *Act*, it is not necessary to consider whether the individual should also be deemed liable under s. 129.2. The *Hogg (Re)* decision contains a summary of the reasons for this conclusion, which stems from the principle that finding multiple breaches of law based on the same facts or sanctioning someone more than once for the same wrongful conduct is generally discouraged.⁵³
- [146] The Commission argues that we should decline to follow *Hogg* and the other recent Tribunal decisions which reached the same result on this issue. In doing so, it cites no authority directly on point but simply refers to the general principle articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*⁵⁴ that an administrative tribunal should address and provide reasons regarding all principal issues before it.⁵⁵ Bahadori and Nikdel do not address this issue in argument.
- [147] Despite the Commission’s argument to the contrary, given that we have found Bahadori and Nikdel directly liable for breaching s. 126.1(1)(b) of the *Act*, we decline, for the reasons articulated in *Hogg*, to deem them also liable for the same breach by LMP. Accordingly, we restrict our analysis for their deemed liability under s. 129.2 to the remaining breaches found to have been committed by LMP.
- [148] The Commission argues that Bahadori and Nikdel were the founders, directors and the CEO and CTO/COO, respectively, of LMP. As such, the evidence demonstrated that they participated in and/or were aware of all aspects of LMP’s

⁵² *Act*, s 1(1) “officer” (c)

⁵³ *Hogg Merits* at paras 215-230

⁵⁴ 2019 SCC 65 (**Vavilov**)

⁵⁵ *Vavilov* at para 127

business, including its trading in securities without registration, its distribution of securities without providing a prospectus and its operating an illegal marketplace. Accordingly, the Commission argues that there can be no dispute that Bahadori and Nikdel authorized or permitted LMP's breaches found in relation to those activities.

[149] We agree with the Commission. LMP was a relatively small company. On the evidence and by their own admission, Bahadori and Nikdel (sometimes to a lesser extent) were involved in all significant decisions and operational activity of LMP. Accordingly, we find that they each authorized or permitted the registration, prospectus and marketplace breaches of LMP and are therefore deemed liable for the company's non-compliance pursuant to s. 129.2 of the *Act*.

5.6.2 Domazet's liability

[150] Regarding Domazet, the Commission argues that, as CFO, he acquiesced in the breaches we have found were committed by LMP. In the Commission's submission, to acquiesce means to agree quietly without protest. They rely on the transcript excerpts from Domazet's compelled interviews tendered into evidence pursuant to the agreement amongst the parties as demonstrating his acquiescence in LMP's breaches.

[151] With respect to LMP's breach of s. 126.1(1)(b), the Commission identifies several instances where Domazet was aware of elements of LMP's fraudulent conduct. For example, Domazet's transcript evidence showed that he was aware that LMP was not authenticating or verifying collectibles as represented and was aware that, at some point, LMP stopped or paused the minting of tokens. However, in all the instances identified by the Commission in which Domazet was aware of LMP's impugned conduct, the Commission acknowledges that Domazet objected or voiced concerns about the conduct, as opposed to simply quietly consenting. In these instances, the Commission argues that Domazet was nevertheless liable for LMP's breach of s. 126.1(1)(b) because he did not ensure that proper steps were taken to address his concerns.

[152] Respecting LMP's other breaches of Ontario securities law as found herein, the Commission points to no evidence in Domazet's compelled transcript that demonstrates he knew whether LMP was a registrant, had qualified a prospectus

for the sale of LMP Tokens or had taken the necessary steps to obtain regulatory approval for the operation of a marketplace. Instead, the Commission argues that Domazet, as CFO, ought to have known of these breaches and is therefore liable for acquiescing in them.

[153] In support, the Commission cites *Rex Diamond Mining Corporation et al (Re)*,⁵⁶ a 2008 Tribunal decision that dealt with the obligation of the corporate respondent to file a material change report in connection with the suspension and cancellation of mining leases in Sierra Leone. The panel in that case found the company's CFO to have acquiesced in the corporate reporting breach, not because the evidence demonstrated that he knew of the status of the leases but because, in the panel's view, he ought to have known of their status.⁵⁷

[154] Domazet argues that, to establish his liability under s. 129.2, the Commission must prove that: (1) he had knowledge of the misconduct at issue at the relevant time; (2) he had the requisite authority or ability to prevent the misconduct; and (3) he failed to take reasonable steps to prevent the misconduct. In his submission, to establish his acquiescence in the corporate breaches at issue, the Commission is required to prove, not only that he had knowledge of the misconduct, but that he also had the authority or ability to influence or prevent it. Domazet cites the Tribunal's decision in *Momentas Corporation et al (Re)*,⁵⁸ a case which clearly suggests that some degree of knowledge or intention is required to establish liability under s. 129.2⁵⁹ and defines "acquiesce" to mean "agree or consent quietly without protest."⁶⁰ Domazet submits that the evidence failed to establish that he had the requisite knowledge of or authority to prevent LMP's impugned conduct in order to deem him liable under s. 129.2.

[155] We agree with the Commission that acquiescence for the purpose of establishing liability under s. 129.2 is a relatively low bar. Conduct on the part of a director or officer of a company that has failed to comply with Ontario securities law which

⁵⁶ 2008 ONSEC 18 (***Rex Diamond***)

⁵⁷ *Rex Diamond* at paras 240-241

⁵⁸ 2006 ONSEC 15 (***Momentas***)

⁵⁹ *Momentas* at paras 97-119

⁶⁰ *Momentas* at para 118

constitutes quiet agreement or acceptance without protest is enough to establish liability. However, we accept Domazet's submission that actual knowledge is a prerequisite to liability and do not subscribe to the Commission's argument that deemed or implied knowledge is sufficient. While the language of s. 129.2 deems liability on the part of a director or officer for corporate non-compliance, it contains no language that deems or imputes knowledge to the director or officer of the impugned corporate conduct. In instances where the mental element required to establish liability is on an "ought to have known" basis, the *Act* expressly so provides.⁶¹ Without such language, acquiescence to corporate misconduct unknown to the director or officer in question requires a logical leap that is unsupported by the plain language of the legislation. To the extent that the decision in *Rex Diamond* can be read to suggest otherwise, we decline to follow it and note that it is inconsistent with how the language of s. 129.2 appears to have been interpreted and applied by the panel in *Momentas*.

[156] Turning to the question of whether Domazet acquiesced in LMP's breach of s. 126.1(1)(b), in the instances where the Commission established his knowledge of elements of LMP's fraudulent conduct, the Commission acknowledges that Domazet did not quietly accept or agree but rather protested or raised concerns. Accordingly, and by the Commission's own definition, he did not acquiesce in LMP's breach. However, the Commission argues that Domazet was required to do more, up to and including resigning from LMP. In support, the Commission cites the Tribunal's decision in *Paramount Equity Financial Corporation (Re)*.⁶² The Commission acknowledges, however, that the discussion in that case regarding an individual corporate officer's acquiescence in corporate wrongdoing and failure to take definitive preventative steps in response "up to and including resignation,"⁶³ was in relation to a finding of fraud against the officer, not in relation to a finding of liability under s. 129.2 of the *Act*.

[157] Without accepting Domazet's submission that authority to control the misconduct at issue is a prerequisite for director or officer liability under s. 129.2, the plain

⁶¹ For example, *Act*, ss 126.1(1), 126.2(1), 126.3(1)

⁶² 2022 ONSC 7 (*Paramount*)

⁶³ *Paramount* at para 107

language of the section simply does not support the Commission's position. Nothing in the language of s. 129.2 requires a director or officer who does not acquiesce in the corporate breach at issue to take positive steps to prevent or correct the breach. As the decision in *Paramount* was dealing with a different breach under a different section of the *Act*, we find that it does not directly apply to the issue before us. That said, we acknowledge that there may be instances where the evidence demonstrates a change in facts or circumstances so as to alter a party's non-acquiescence to acquiescence. However, we do not find that to be the case on the admissible evidence before us in this case. Finally, our finding that Domazet did not acquiesce in LMP's breach of s. 126.1(1)(b) of the *Act* is not a finding that he adequately discharged his duties as an officer of LMP under corporate law (an issue that was not argued), nor is it intended in any way to be an endorsement of his conduct.

[158] As to the other breaches of Ontario securities law found against LMP, the Commission failed to establish that Domazet had knowledge of the impugned conduct. Moreover, there is no circumstantial evidence admissible against Domazet from which we are prepared to infer such knowledge. While we accept the Commission's submission that Domazet's responsibilities as CFO of LMP went beyond accounting matters to include such things as risk management, there is no evidence that Domazet was responsible for securities regulatory compliance and therefore must have been aware of LMP's registration status, its compliance with securities offering requirements or its status as a marketplace.

[159] Accordingly, we dismiss the allegation that Domazet, in his capacity as CFO of LMP, is deemed liable under s. 129.2 for the company's non-compliance with Ontario securities law.

5.7 Can the respondents rely on a legal advice defence?

[160] The Commission argues that the respondents are not entitled to rely on a defence of reliance on legal advice in response to the allegations against them. However, none of the respondents advance such a defence. LMP, Bahadori and Nikdel refer to their pursuit of legal advice as evidence that they acted in good faith, but otherwise do not advance reliance on legal advice as a distinct defence to any alleged breach of Ontario securities law. Domazet advances no argument

whatsoever on the point. In any event, the mere fact that legal advice was sought does not displace our findings concerning the respondents' knowledge of the actual operation of the LMP Platform and the representations made to purchasers, nor does it affect our foregoing findings and conclusions regarding the respondents' breaches of Ontario securities law.

[161] Even if a defence of reliance on legal advice is available in respect of one or more of the alleged breaches of securities law in this case (a point which is not argued and upon which we make no finding), the Commission correctly points out that applicable Tribunal jurisprudence requires the party advancing the defence to show "the advice was sufficiently clear, specific and connected to the impugned act, by addressing the question raised by that impugned act."⁶⁴ On the evidence adduced, this was demonstrably not the case in connection with any legal advice sought and obtained by any of the respondents.

5.8 Did Bahadori, Nikdel and Domazet mislead the Commission contrary to s. 122(1)(a) of the Act?

[162] The Commission alleges that each of the individual respondents made misleading statements to the Commission during the investigation in contravention of s. 122(1)(a) of the *Act*. Among other things, the section prohibits any person from making a statement to an investigator appointed under the *Act* that, in a material respect, is misleading or untrue or does not state a fact that is necessary to make the statement not misleading. Liability arises without proof of any mental element, although past decisions of the Tribunal have taken inadvertence, forgetfulness and confusion on the part of the maker of the statement into account when assessing liability.⁶⁵

[163] In general, the allegations against the individual respondents are that they made misleading statements to the Commission during the investigation in respect of the total compensation they received from LMP. These misleading statements were allegedly made both during the respondents' compelled interviews and in correspondence between the Commission and the respondents' counsel. With

⁶⁴ *Solar Income Fund (Re)*, 2022 ONSC 2 at para 243, aff'd *Kadonoff v OSC*, 2023 ONSC 6027 (Div Ct)

⁶⁵ *Go-To Developments Holdings Inc (Re)*, 2025 ONCMT 8 at para 155

respect to the correspondence, we note that the potential for liability under s. 122(1)(a) of the *Act* is not limited to statements made during compelled testimony.

- [164] Determining whether a statement is misleading requires a contextual analysis.⁶⁶ The clarity, specificity and overall context within which a question is posed, or an enquiry is made will contribute to the assessment of whether the response is misleading. For example, general questions posed without context may not elicit the answer sought or expected but that does not necessarily mean that the answer is misleading. Similarly, questions posed without reference to relevant documents in the possession of the party making the enquiry may lead to imprecise, but not necessarily misleading, responses.⁶⁷
- [165] As to materiality, the Commission submits that it should be assessed for the purposes of s. 122(1)(a) by determining how far the answer departs from the truth, citing the decision of the British Columbia Securities Commission in *Nuttall (Re)*⁶⁸ and the decisions of the Alberta Securities Commission in *Kilimanjaro Capital Ltd (Re)*⁶⁹ and *Hagerty (Re)*.⁷⁰ Domazet, on the other hand, argues that materiality should be assessed only by reference to the allegations contained in the Application for Enforcement Proceeding (**AEP**). The other respondents made no submissions on the issue of materiality. In our view, neither the Commission nor Domazet is correct. Adopting the Commission's position could lead to liability for erroneous answers to questions posed that bear no relevance to the investigation. Domazet's position, on the other hand, is too narrow in that it may absolve someone who makes a misleading statement that is germane to an issue relevant to the scope of the investigation at the time the statement is made but which does not ultimately relate to the allegations in the AEP.
- [166] In this context, relevance to the investigation should be interpreted and applied expansively, in keeping with the purposes of the *Act* and consistent with the oft-quoted statement of the Court of Appeal for Ontario in *Wilder v Ontario*

⁶⁶ *Bridging* at paras 243, 247

⁶⁷ *Bridging* at paras 267-268

⁶⁸ 2011 BCSECCOM 521

⁶⁹ 2021 ABASC 14

⁷⁰ 2014 ABASC 237

Securities Commission that, “[i]t is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring that those involved in those markets, whether as direct participants or as advisors, provide full and accurate information to the OSC.”⁷¹

[167] In this case, the primary reference for determining the scope of relevance is the s. 11 Order dated May 2, 2023. The Order makes clear that among the issues being investigated by the Commission is the possibility of a fraud having been perpetrated by LMP and/or the individual respondents in breach of s. 126.1(1)(b) of the *Act*. In our view, questions relating to the source and use of funds connected to the impugned activity which are received or paid by persons who may have engaged in a fraud contrary to s. 126.1(1)(b) will, almost invariably, be material to the investigatory mandate. Accordingly, to the extent that the questions and answers relate to the amounts that the individual respondents paid themselves through LMP, we find they satisfy the materiality requirement in s. 122(1)(a) of the *Act*.

5.8.1 Bahadori’s compelled testimony

[168] The first of the impugned statements made by Bahadori was in his compelled interview held on March 30, 2023. During that interview he responded in the negative to the question, “Any other companies that you have incorporated other than Baha Industries Inc.?” The excerpt from the interview tendered in support of the alleged breach is devoid of context. It is clear from the question that they had been discussing Baha Industries Inc. in the prior exchange, but without that context we are not able to conclude that Bahadori’s response is misleading for purposes of a s. 122(1)(a) analysis, let alone material.

[169] During his second compelled interview held on September 14, 2023, Bahadori was questioned directly about compensation that he and the other individual respondents had received from LMP. The context for the questions was a letter dated August 14, 2023, that counsel for the respondents had provided to the Commission in response to undertakings given on the first compelled examination of Nikdel held on June 29, 2023. Responding to an undertaking to

⁷¹ *Wilder* at para 22

advise of all compensation, including the amount and form thereof, provided to the individual respondents in connection with their work for LMP, the letter stated that salaries paid to each of the individual respondents in 2022 were \$102,153.86 and stated that no salaries were paid in 2023.

[170] Pursuing a line of questioning arising from this response, the examiner asked Bahadori whether the salary listed for him in the August 14, 2023, letter was the totality of the compensation he received in connection with the LMP business, to which Bahadori's answer was "that's correct". Bahadori provided the same response to essentially the same question when asked about compensation paid by LMP to Nikdel and Domazet. If the exchange had ended there, we would have no difficulty concluding that Bahadori's answers to the questions posed to him were materially misleading. The evidence was clear that, during the period from 2021 through 2023, all three individual respondents received significantly more compensation from LMP, primarily through their consulting companies (their "Kooney" companies) than was reflected in the August 14, 2023, letter.

[171] However, the examiner went on to ask Bahadori about indirect compensation received by the individual respondents through corporations. Bahadori responded that he would have to "double-check" and an undertaking was given. Since the gravamen of the Commission's complaint is that the individual respondents failed to disclose the existence of and substantial payments from LMP to their Kooney companies, this latter exchange tends to qualify Bahadori's earlier responses and undermines their misleading nature. Similarly, when asked about compensation received in 2021, Bahadori's response was "I would have to double-check". Accordingly, taking into consideration this latter series of questions and answers, we are unable to conclude that the earlier impugned responses were, in context, misleading. That said, and while we are unable to assess Bahadori's credibility on the basis of the transcript alone, his expressed need to "check" to determine whether he received substantial payments from LMP over the relevant period through his Kooney company stretches the limit of our credulity.

5.8.2 Nikdel's compelled testimony

[172] The Commission particularizes in the AEP Nikdel's alleged breach of s. 122(1)(a) during his compelled testimony as arising from his response to a question about

his compensation from LMP. In written argument, the Commission attempts to expand this to include a compelled response relative to corporations in which Nikdel was involved. In keeping with past authorities of the Tribunal, we are not prepared to allow the Commission to expand the scope of the case against Nikdel after the close of evidence and during closing argument.⁷² The Commission did not seek to amend the AEP at any time prior to or during the merits hearing and it would be unfair to allow them to pursue for the first time during argument what amounts to a separate breach.

[173] As to the original allegation in the AEP, Nikdel attended a compelled interview on June 29, 2023. During the interview, he was asked to provide an overview of his compensation from LMP. He responded that, to the best of his recollection, he was paid \$150,000 per year. Later in the interview, he was asked whether, aside from the \$150,000 annual salary, he received any other form of compensation. His response was “Myself, no,” which was untrue and misleading in a material respect or, at the very least, he failed to state a fact (i.e., that he also received indirect compensation through his Kooney company) that was necessary to make the statement not misleading, as required by s. 122(1)(a).

5.8.3 Domazet’s compelled testimony

[174] In the case of Domazet, the allegation in the AEP regarding a breach of s. 122(1)(a) arising from his compelled testimony relates to a response to a question regarding companies that he had incorporated. The excerpt from the compelled interview transcript provides very little context. However, it is clear that the exchange in question was early in the interview. It clearly followed an earlier exchange about companies which are not identified in the excerpt. The exchange at issue did not relate specifically to compensation received from LMP.

[175] Domazet was asked what he correctly characterizes in argument as a very general question about companies he had incorporated that had not previously been mentioned in the interview. He responded by referencing several companies, none of which was his Kooney company through which he had received some of the consulting fees paid to him by LMP. Domazet qualified the

⁷² *Agueci Merits* at para 7

answer with, “That’s it for operating companies”. The examiner did not pursue the qualification by asking about dormant or dissolved companies. The evidence at the hearing showed that, at some point, Domazet ceased receiving consulting payments from LMP through his Kooney company and thereafter received those payments through one of the operating companies he identified in his impugned response. Considering the context of the question and the qualified answer itself, we are unable to conclude that Domazet’s response was misleading.

5.8.4 Letter dated August 14, 2023

[176] Returning to the letter referred to above from counsel for the respondents to the Commission dated August 14, 2023, it is beyond question that it was submitted to a person appointed to conduct an investigation under the *Act* and contains misleading statements concerning the compensation received by the individual respondents from LMP over the relevant period. The impugned question and answer are as follows:

To advise of all compensation provided to Amin Nikdel, Ryan Bahadori and Dennis Domazet in connection with their work for LMP, including the amount and form of compensation.

Salaries Paid in 2022:

a) Dennis Domazet, T4 2022: \$102,153.86

b) Ryan Bahadori, T4 2022: \$102,153.86

c) Amin Nikdel, T4 2022: \$102,153.86

No salaries where [sic] paid in 2023.⁷³

The letter was submitted by respondents’ counsel and does not contain any caveat that the information therein is that of their clients. It does, however, say that counsel is providing responses on behalf of Nikdel to requests made during his compelled interview held on June 29, 2023.

⁷³ Exhibit 8, Pettypiece Affidavit, Letter from Goodmans Re Requests arising from the Compelled Examination of Amin Nikdel, Exhibit 10, Volume 1

- [177] During his second compelled interview held on November 16, 2023, Nikdel was asked who prepared the response in question and his answer was, “This was prepared by myself, Ryan and Dennis.”
- [178] Bahadori concedes during his second compelled interview that he prepared a number of the responses contained in the letter but not the response in question dealing with compensation. He did, however, concede that he skimmed the answers before the letter was provided to the Commission. During his final compelled interview held on November 17, 2023, Bahadori testified that the response regarding compensation “would have been” prepared by Domazet.
- [179] Domazet, on the other hand, denied that he prepared the response during his second compelled interview held on November 10, 2023, but conceded that he probably reviewed it and that he should have paid more attention to its content.
- [180] Based on the transcript excerpts alone, we are unable to resolve the credibility gaps amongst the individual respondents concerning their respective roles, if any, in preparing the impugned response. Again, Bahadori’s response strains credulity given his admitted role in preparing a number of other responses in the letter. Nevertheless, only Nikdel clearly admitted to having participated in the preparation of the response. Moreover, and perhaps more importantly, counsel for the respondents expressly submitted the response to the Commission only on Nikdel’s behalf. Accordingly, we find that Nikdel submitted to the Commission the materially misleading statements concerning the individual respondents’ compensation from LMP contained in the August 14, 2023, letter in breach of s. 122(1)(a) of the *Act*.

6. CONCLUSION

[181] For the above reasons, we conclude that:

- a. the LMP Tokens, together with the rights and conditions surrounding them, were investment contracts and are therefore securities under the *Act*;
- b. Bahadori, Nikdel and LMP acted fraudulently by misrepresenting the core attributes of the LMP Tokens and attributes of the underlying collectibles themselves, contrary to s. 126.1(1)(b) of the *Act*;

- c. LMP engaged in the business of trading in securities without being registered to do so and without an applicable exemption from the registration requirement, contrary to s. 25(1) of the *Act*;
- d. LMP engaged in distributions of securities without filing a preliminary prospectus or prospectus and without an applicable exemption from the prospectus requirement, contrary to s. 53(1) of the *Act*;
- e. LMP operated a marketplace, without either recognition as an exchange contrary to s. 21(1) of the *Act* or registration as a dealer and approval to operate an ATS contrary to s. 6.1 of National Instrument 21-101;
- f. Bahadori and Nikdel are deemed under s. 129.2 of the *Act* to have not complied with Ontario securities law in relation to LMP's contraventions of ss. 21(1), 25(1) and 53(1) of the *Act* and s. 6.1 of National Instrument 21-101; and
- g. Nikdel made misleading statements to the Commission, contrary to s. 122(1)(a) of the *Act*.

[182] Also for the above reasons, we decline to find:

- a. Bahadori and Nikdel liable under s. 129.2 for LMP's breach of s. 126.1(1)(b);
- b. Domazet liable under s. 129.2 for any of LMP's contraventions of Ontario securities law; and
- c. that Bahadori and Domazet misled the Commission in contravention of s. 122(1)(a) of the *Act*.

[183] We therefore require that the Commission, LMP, Bahadori and Nikdel contact the Registrar by 4:30 p.m. on October 14, 2026, to arrange for a case management hearing for the purpose of scheduling a hearing regarding sanctions and costs and the delivery of materials in advance of that hearing. The case management hearing is to take place on a mutually convenient date that is fixed by the Registrar, and that is no later than October 30, 2026.

[184] If the parties to the sanctions and costs hearing are unable to provide a mutually convenient date for the case management hearing to the Registrar, each party may submit to the Registrar, for consideration by a panel of the Tribunal, a one-

page written submission regarding a date for the hearing. Any such submission shall be submitted by 4:30 p.m. on October 14, 2026.

Dated at Toronto this 30th day of September, 2026

"James Douglas"

James Douglas

"Mary Condon"

Mary Condon

"Geoffrey D. Creighton"

Geoffrey D. Creighton