Ontario

Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Ontario Securities Commission v Cloth*, 2026 ONCMT 34
Date: 2026-11-02
File No. 2025-5

BETWEEN:

ONTARIO SECURITIES COMMISSION

(Applicant)

- and -

JASON CLOTH and CREATIVE WEALTH MEDIA FINANCE CORP.

(Respondents)

REASONS AND DECISION

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

Adjudicators:	James Douglas (chair of the panel) Sandra Blake Geoffrey D. Creighton	
Hearing:	May 19, 20, 21, 27, 28 and August 4, 2026	
Appearances:	Hanchu Chen Sean Grouhi	For the Ontario Securities Commission
	Andrew Guaglio	For Jason Cloth
	No one participating on behalf of Creative Wealth Media Finance Corp.	

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REASONS AND DECISION

1. OVERVIEW

[1] The Ontario Securities Commission brought this application for an enforcement proceeding pursuant to s. 127 of the *Securities Act*[1] (the ***Act***) against the respondents, Creative Wealth Media Finance Corp. (**Creative Wealth**) and Jason Cloth. The Commission alleges that Creative Wealth and Cloth perpetrated a fraud contrary to s. 126.1(1)(b) of the *Act* arising from their sale to investors of interests in loans made or purported to be made to borrowers engaged in the media production business. The Commission also alleges that Cloth is deemed liable under s. 129.2 of the *Act* for Creative Wealth's contraventions of Ontario securities law.

[2] For the reasons that follow, we find that the respondents perpetrated a fraud on investors contrary to s.126.1(1)(b) of the *Act* in connection with the interests in loans sold to those investors by Creative Wealth. We decline to make a finding, for the reasons articulated below, that Cloth is also deemed liable contrary to s. 129.2 of the *Act* for Creative Wealth's contraventions of Ontario securities law.

2. BACKGROUND

2.1 The business of Creative Wealth

[3] Creative Wealth is an Ontario company incorporated in May 2013. It was deemed to have filed an assignment in bankruptcy on November 28, 2023.

[4] Creative Wealth was a private lending business that financed film and television productions by providing loans to independent producers. The funds to make these loans were raised from investors who purchased an interest in the loans. Creative Wealth charged investors a facilitation fee or commission fee as a percentage of the amount invested.

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

[5] Media projects for which Creative Wealth raised funds typically involved BRON Media Corp. and various affiliated and related entities, including single purpose vehicles, as producers.

2.2 Cloth's role in the business of Creative Wealth

[6] At all material times, Cloth was the sole director and officer of Creative Wealth.

[7] All of Creative Wealth's transactions were made at the direction of Cloth and he alone had authority to direct fund transfers. Jenifer George, a longstanding employee of Creative Wealth testified that, "[Creative Wealth] Media Finance is really just Jason"[2].

2.3 Personnel

[8] Creative Wealth employed two individuals to assist with accounting and record-keeping responsibilities, George and Jamie Roy. Both testified at the merits hearing.

[9] George worked as Cloth's assistant and her responsibilities included authenticating, but not making decisions about, bank transfers from Creative Wealth and other entities' bank accounts.

[10] Roy held an operational role with Creative Wealth-related businesses and was primarily responsible for maintaining a database to track transactions with investors in the various media projects. Roy reported to George, but if assigned a task directly by Cloth, would report to him.

2.4 The agreements between Creative Wealth and investors

[11] Creative Wealth entered into two types of investment agreements with investors:

a. participation agreements related to a specific media project; or

b. secured loan commitment agreements related to multiple projects that were marketed as a slate or a group and referred to as a "series".

[12] Participation agreements were accompanied by term sheets that represented that the proceeds of the investor's loan, less the facilitation fee, would be used

[2] Hearing Transcript, May 19, 2026, at p 34

exclusively "to finance the pre-production, production, post-production and delivery of the Project". Similarly, in the case of secured loan commitment agreements, it was represented to investors, expressly or by reference to the related agreements with borrowers, that their funds would be used to finance only the project or projects that formed part of the relevant series.

[13] In the case of both participation agreements and secured loan commitment agreements, Creative Wealth represented to investors that there was a capital raise limit or cap for the relevant project or series. For example, in the case of the secured loan commitment agreements entered into between Creative Wealth and investors relating to the "Series B" loans, the agreements provided that the loan in aggregate would be up to US$20 million.

2.5 Records

[14] The database maintained by Roy was used to record the amount of money raised from investors for each project, the amount of money repaid to investors, and the amount of money outstanding to investors. The data was obtained from investor agreements and banking records.

[15] Creative Wealth's general ledger tracked amounts paid by Creative Wealth to, and received by Creative Wealth from, production companies. It included information about the media project or series the particular transaction related to.

[16] Creative Wealth operated five bank accounts. Two US dollar and two Canadian dollar accounts were used for the purposes of receiving funds from and disbursing funds to investors, borrowers and others, including a real estate development company and a construction company owned or otherwise associated with Nicholas Kyriacopoulos, as described in further detail below. The fifth bank account was a US dollar account used for collecting facilitation fees.

2.6 Merits hearing

2.6.1 Respondents' participation in the hearing

[17] Cloth did not appear personally at the merits hearing. However, both respondents appeared through counsel, though to differing degrees.

[18] With respect to Creative Wealth, counsel for its trustee in bankruptcy briefly appeared on the first day of the hearing to inform the panel that it would not be appearing or making submissions at the merits stage of this proceeding.

[19] Counsel for Cloth attended each day of the evidentiary phase of the merits hearing. Cloth did not take a position on the Commission's allegations, but made no factual admissions. Counsel for Cloth did not cross-examine any witnesses or make substantive submissions on any issues that arose during the hearing. As described in more detail below, counsel for Cloth sought to be removed from the record shortly before the scheduled date for oral closing submissions.

2.6.2 Witnesses

[20] The Commission called six witnesses at the merits hearing. In addition to George and Roy, the Commission called Michael Ho, a senior forensic accountant in the Enforcement Division of the Commission, and three investor witnesses.

[21] The three investor witnesses were CO, RH and SM:

a. CO invested in specific film projects based on representations that the investments were low risk, asset-backed, bonded and insured, and that investors would be repaid at maturity. He understood his funds would be used only for the particular project identified in each contract;

b. RH also invested in a number of projects, including "Pathway" (described later in these reasons) which he believed he fully financed; and

c. SM, a longtime family friend of Cloth, invested life-insurance proceeds following her husband's death. SM testified that she trusted Cloth's investment advice and expected regular returns and repayment of her principal.

3. PRELIMINARY ISSUES

3.1 Admissibility of Cloth's compelled interview transcripts

[22] Prior to closing its case, the Commission sought to introduce into evidence excerpts from the transcripts of two compelled interviews of Cloth conducted pursuant to a summons issued under s. 13 of the *Act*. The summons was issued to Jason Cloth, Chief Executive Officer Creative Wealth Media Finance Corp. and

Managing Director BRON Creative Corp. It was, at the very least, implicit from the correspondence preceding the interviews between Ho and then-counsel for the respondents that Cloth would be interviewed on his own behalf and on behalf of Creative Wealth. On the record at the outset of the interview held on June 29, 2023, counsel clarified that they were appearing on behalf of both Cloth and Creative Wealth.

[23] The Commission acknowledged in oral argument[3] that the admissibility of the transcript excerpts turned on the proper exercise of our discretion under s. 15(1) of the *Statutory Powers Procedure Act*[4] (the ***SPPA***). That section grants us the discretion to admit and act on, among other things, any oral testimony relevant to the subject-matter of the proceeding before us, subject to privilege or statutory proscription.

[24] Responding to questions posed by the panel, the Commission appeared to accept the longstanding principle that fairness should govern the exercise of our discretion under s. 15(1) of the *SPPA* to admit the transcript excerpts at issue. Nevertheless, it advanced a number of arguments intended to circumscribe the scope of our discretion, including:

a. our fairness considerations should not extend to a consideration of whether the evidence at issue was fairly obtained;

b. the Divisional Court's recent ruling in *Hogg v Chief Executive Officer*[5] should not be interpreted to mean that the *SPPA* applies equally to this proceeding and any related Part VI investigation;

c. the transcript excerpts at issue are not hearsay for the reason (somewhat contradictorily) that they fall within the party admissions exception to the hearsay rule; and

d. the transcript excerpts at issue should be presumptively admissible.

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[3] The Commission also addressed this issue in its written submissions on the merits, though those were filed after the panel's oral ruling on the admissibility of the transcript excerpts and accordingly were not considered in the preparation of these reasons.

[4] RSO 1990, c S.22 (the ***SPPA***)

[5] 2025 ONSC 6214

[25] In addition to these arguments, the Commission pointed to the following indicia of fairness in connection with the evidence obtained through the compelled interviews of Cloth:

a. the respondents were provided with the Commission's s. 11 investigation order(s) prior to the examinations;

b. the respondents were informed in advance that the examinations would take place pursuant to the Commission's s. 13 summonsing powers;

c. prior to the examinations, counsel for the respondents requested and the Commission provided copies of documents that might be referred to during the interviews;

d. Cloth's testimony was taken under solemn affirmation;

e. at the outset of the first examination, Cloth was informed that any evidence he gave during the examination could be used in a proceeding commenced under the *Act*;

f. the second examination was expressly a continuation of the first; and

g. the respondents were represented by counsel at both examinations.

[26] Considering the foregoing indicia of fairness, together with the fact that the respondents did not undertake to testify at the hearing and, although represented by counsel, did not object to the admission into evidence of the compelled transcript excerpts, we concluded that there would be no manifest unfairness to the respondents by allowing the excerpts to become part of the evidentiary record at the hearing. In reaching this conclusion, we were of the view that, in the circumstances of this case, any prejudicial effect on the respondents of admitting the transcript excerpts was outweighed by their probative value. In view of the basis upon which we reached our conclusion, we did not find it necessary to address the Commission's arguments referred to in paragraph [24] above. Accordingly, pursuant to s. 15(1) of the *SPPA*, we granted leave to the Commission to file the excerpts tendered from the compelled examinations of Cloth.

3.2 Fenton Law Barristers' motion to get off the record

[27] Shortly before the date set for oral closing submissions, Fenton Law Barristers filed a motion pursuant to rule 24(2) of the Tribunal's *Rules of Procedure* to be removed as counsel of record for Cloth on the grounds that there had been a breakdown in the solicitor-client relationship. In support of their motion, Fenton Law filed a brief affidavit of Shreeya Devnani affirmed July 31, 2026,[6] which simply indicated that Cloth had been arrested and charged with fraud in Chicago, USA, on July 28 and that there had been a breakdown of Fenton Law's solicitor-client relationship with Cloth, rendering their continued representation of him untenable. At the request of the panel, Fenton Law also filed an affidavit of service (affirmed by Devnani on August 4, 2026)[7] of the motion on Cloth by email on July 31.

[28] The motion was heard on August 4, 2026, the date previously reserved for oral closing submissions. The Commission took no position on the motion. Neither Cloth nor Creative Wealth appeared on the motion or otherwise opposed or took any position in response thereto. In response to a question from the panel as to the status of Cloth's liberty, counsel from Fenton Law advised that his only information was as publicly reported in the press, namely that bail had been granted to Cloth in the fraud proceeding referred to above. The Commission subsequently filed an affidavit[8] with the Tribunal that confirmed, among other things, that Commission counsel had spoken to an Assistant US Attorney assigned to the matter in the US, and was advised by him that Cloth had been released from custody on bail.

[29] Cloth was properly served with Fenton Law's motion. Neither he nor anyone else opposed the order sought. We were satisfied that Cloth had been informed of the date of the oral closing submissions, that a breakdown in the solicitor-client relationship between him and Fenton Law had occurred, and that Cloth was free to participate in the hearing on his own behalf should he so choose. Accordingly, we granted the motion, with reasons to follow. We did so on condition that

[6] We mark the affidavit of Shreeya Deynani affirmed July 31, 2026, as exhibit 48
[7] We mark the affidavit of Shreeya Deynani affirmed August 4, 2026, as exhibit 49
[8] We mark the affidavit of Michelle Spain affirmed August 4, 2026, as exhibit 50

Fenton Law serve a copy of our order on Cloth and file an affidavit of service, including a copy of the email serving Cloth with our order and a copy of any prior email(s) serving Cloth with notice of the motion.

4. ISSUES AND ANALYSIS

4.1 Introduction

[30] The Commission alleges that:

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

b. Cloth, as the sole director and officer of Creative Wealth, authorized, permitted or acquiesced in Creative Wealth's non-compliance with Ontario securities law and should be deemed liable under s. 129.2 of the *Act*.

4.2 Securities Fraud

4.2.1 The elements of fraud under section 126(1)(b)

[31] Section 126.1(1)(b) of the *Act* states that 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, perpetrates a fraud on any person or company.

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

[33] 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*.[9] A finding of fraud requires proof of:

a. the *actus reus,* or objective element, which consists of:

[9] 1993 CanLII 134 (SCC) (***Théroux***)

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

ii. deprivation caused by that act, which may come in the form of 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 prohibited act, and

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

[34] If the conduct of a person or company, whether or not a respondent, meets both elements of the test, the first step of the fraud analysis is satisfied.

[35] If a fraud has been committed, the second step is to consider whether the named respondents have directly or indirectly participated in any act or conduct, related to securities, that they knew or ought to have known perpetrated the fraud.

[36] As the Tribunal noted in *Bridging Finance Inc (Re),*[10] 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' subjective knowledge already established applying the *Théroux* framework at step one.

[37] In this case, the allegations of fraud are against Cloth and Creative Wealth as primary perpetrators, so the focus of our analysis is upon the *Théroux* framework, and whether the objective and subjective elements of fraud have been established. We will also explain our conclusion that Creative Wealth bears corporate responsibility for the acts of Cloth. Thereafter, we will address the

[10] 2024 ONCMT 23 (***Bridging***) at paras 35-37

remaining issue at the second step, namely whether the implicated conduct related to securities.

[38] In addressing the objective element, the prohibited acts may include deceit or falsehood, or "other fraudulent means". That latter phrase has been interpreted by the Tribunal and courts to include many different sorts of dishonest conduct. In *Théroux* itself, the Court noted it could include "the use of corporate funds for personal purposes, nondisclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property."[11]

[39] Here, the Commission alleges four different instances that constitute fraud – three by diverting investor funds and one by nondisclosure of important facts. We will examine each of these instances.

4.2.2 Objective element

4.2.2.a Diversion of funds to a real estate development

[40] First, the Commission alleges that the respondents improperly diverted investor funds to advance loans to a real estate development company. Payments were made primarily using Series B investor funds but also included small amounts of Series D and Series E investor funds. The payments were made without the investors' knowledge.

[41] All of the investments were pursuant to agreements with investors which set out a defined use for the investors' funds. Series B, for example, was promised to be used as "capital to support secured Film Financing". Series D was "capital to support Bron Life Documentary Financing". Series E was "capital to support Bron Gaming (Schedule D programme slate) Financing". In other cases, the agreements were even more precise, as they were participation agreements related to specific named media projects.

[42] Despite the number of specific media projects and series for which the respondents raised funds from investors, Creative Wealth maintained no segregated accounts for those projects or series. All funds came and went from

[11] *Théroux* at 16

the five bank accounts described above. To demonstrate diversions of funds, therefore, the Commission engaged in a number of "source and use" analyses of the activity in the bank accounts.

[43] Because of the commingling of funds in the bank accounts, the Commission focused on time periods where it was clear that funds were coming in or going out for certain purposes. This permitted the Commission to conclude that funds were being diverted to payments other than those for which they had been raised. The approach was conservative, and we find the Commission's source and use analyses to be reliable. By their nature, they are likely under-inclusive of misapplications of funds.

[44] The Commission also received from the respondents the database maintained by Creative Wealth, that kept track of transactions with investors in the various media projects. In addition, the Commission received Creative Wealth's general ledger for the period from 2018 through October 2022, and a variety of other document disclosure.

[45] With respect to this first allegation of improper diversion, through a combination of its source and use analysis, and other documents produced by the respondents, the Commission concluded that approximately $53.8 million of investors' funds were transferred from Creative Wealth to Conacher Kingston (a real estate development company) and Olympus Home (a construction company), companies owned or associated with Kyriacopoulos.

[46] Cloth repeatedly admitted to the Commission that Creative Wealth used Series B investors' funds ("capital to support secured Film Financing") to make advances to a Conacher Kingston real estate development project. As he put it in his compelled interview, "I took in money for films that I used for this investment [Conacher Kingston]. It did not go to the films, okay."[12] He also said that, when raising Series B investments in the relevant period, "Well, we didn't tell them it was going into the real estate deal. If that's what you're trying to get to, no,

[12] Exhibit 45, Excerpts of the Transcripts of the Compelled Interviews of Jason Cloth (**Compelled Transcripts Excerpts**), August 24, 2023, at p 233

they weren't made aware of that...[O]n the real estate side, no, we didn't tell anybody."[13]

[47] We find that the Commission has established that the respondents improperly diverted approximately $53.8 million of investors' funds, raised for other specified purposes, to Conacher Kingston and Olympus Home.

4.2.2.b Diversion of funds to different media projects

[48] Second, the Commission alleges that the respondents used investor funds to finance media projects other than those represented to and agreed by investors in their respective investment agreements.

[49] For example, between October 17, 2018, and November 2, 2018, approximately $4.75 million was diverted from a project called "Nightingale" to other purposes, including a project named "Bombshell". As another example, between September 15 and 17, 2021, $1.95 million was diverted from two investors who invested in three distinct media projects to other purposes, partly to fund three entirely different media projects. Finally, Creative Wealth's records show that US$2.42 million was diverted from Series E investors (capital to support Bron Gaming) to a different project called "Robin Hood".

[50] We find that the Commission's evidence demonstrates that between October 2018 and the end of 2021, the respondents on several occasions used investors' money raised to fund specific media projects for media projects other than as agreed or promised.

4.2.2.c Diversion of funds to repay other investors

[51] Third, the Commission alleges that the respondents used investor funds raised for specific purposes, to repay existing investors instead. The most striking example of this was the diversion of most of the funds raised for Series E (capital to support Bron Gaming). A spreadsheet prepared by Creative Wealth in August 2022 is consistent with the Commission's source and use analysis. Both compare deposits made by Series E investors with wire transfers out to earlier investors and for other projects. The evidence established that, of approximately US$7.9

[13] Compelled Transcripts Excerpts, June 29, 2023, at p 81

million raised from investors in Series E, at least $4.19 million was instead used to repay earlier investors in other projects.

[52] Cloth admitted in his compelled interview that he redirected the funds because "we just couldn't defend the plethora of lawsuits that was going to come our way and to stem a few of them that were just knocking at the door, we paid out the money that we had in the account".[14] He confirmed that he did so without informing the Series E investors.

[53] Cloth was well aware of what he was doing. He also admitted that "I fully understand that some of the things that went on were not right, but at the time of evaluating what my options were, in my mind, it was the better option."[15]

[54] Quite apart from the Series E misapplication of funds, the Commission's evidence, drawn from its source and use analyses and Creative Wealth's own records, established that such diversions to repay investors happened on other occasions in respect of at least $1.62 million of investor funds.

4.2.2.d Failure to disclose raising more than stated maximums

[55] Finally, the Commission alleges that the respondents raised funds that exceeded the maximum specified in agreements. It alleges that the respondents' failure to disclose that Creative Wealth had raised, or would be raising, more than the amount necessary to fund specific media projects, was objectively dishonest.

[56] The most egregious example of this, established by the Commission through both documentary evidence and live witness testimony, was a media project called "Pathway".

[57] We heard from witness RH that he understood that he had provided all the funds required for the Pathway project. RH signed an investor agreement stating that US$6.57 million, the amount invested by RH, represented the entire budget for Pathway. His share was shown in the term sheet as 100%. However, the database maintained by Creative Wealth shows that approximately US$14.7 million was raised from 45 investors for Pathway. RH testified that he received

[14] Compelled Transcripts Excerpts, June 29, 2023, at p 123

[15] Compelled Transcripts Excerpts, June 29, 2023, at p 126-127

no money back on Pathway and, according to the database, US$14.6 million remains owing by Creative Wealth to Pathway investors.

[58] Another example was a project called "Leave No Trace", where almost the entire budget of US$4,615,000 was raised from investors, despite the investor agreements representing that half of the budget would be provided by a company related to Cloth.

[59] We find that the evidence from the investor agreements and the database established that, in some cases, the respondents raised funds that exceeded the maximum specified and represented to investors.

4.2.2.e Prejudice to investors' economic interests

[60] The second part of the objective element of fraud asks whether the dishonest act caused a deprivation, which may come in the form of actual loss, or of placing the victim's economic interests at risk.

[61] We find the respondents' conduct, described above, resulted in such deprivation. By putting investors' money raised under investor agreements stating specific uses, to different uses – real estate projects, other media projects, repayment of other investors, or over-raising for projects -the respondents exposed investors to different and undisclosed risks, such as the probability that their funds invested for a specific project might not be applied to the project at all.

[62] Moreover, there was evidence of actual investor losses. CO, RH and SM each testified that they lost substantial amounts by investing with Cloth and Creative Wealth, and each testified as to the devastating effect it had upon them, for different reasons and in different ways. CO lost at least US$2,719,010, which represented a large percentage of his total wealth. RH lost at least US$13.07 million, and fell into depression. SM, a personal friend of Cloth, was solicited directly by Cloth to invest the proceeds of her deceased husband's life insurance into Series B, and essentially lost it all.

[63] We find the Commission has proven both aspects of the objective element as against Cloth and Creative Wealth. They engaged in deceit, falsehoods and other

fraudulent acts, and deprivation to investors was the result.[16] We turn to consider the subjective element.

4.2.3 Subjective, or mental, element

[64] We find Cloth had subjective knowledge of the objective acts of fraud described above, and he understood that deprivation of investors could result. Cloth's own testimony in his compelled interview (some of which we have set out above) confirms his understanding of what was being done with investors' funds. Cloth directed the impugned transfers from the Creative Wealth bank accounts. The Commission's evidence, both in Cloth's compelled interview and other documents produced by the respondents, established that he knew Series B investors' funds were used to make payments to a real estate development company. He explained his decision to use Series E investor funds to repay other investors. He knew RH invested the entire amount to be used for Pathway. He was aware of the structure, terms and intent of the investor agreements and their dedication of funds to defined purposes.

[65] From that knowledge, we infer that Cloth also understood that using investors' funds for purposes different from those to which they had agreed, put investors' economic interests at risks.

[66] Although not necessary to establish the subjective element for fraud, we note that Cloth acknowledged on several occasions that his actions were "not right" or "offside". He had explanations, but no excuse.

4.2.4 Corporate liability of Creative Wealth

[67] We turn, finally, to the corporate liability of Creative Wealth. When the respondent is a corporation, it is sufficient to show that the directing mind(s) of the corporation perpetrated a fraud through or using the corporate vehicle. This is known as the "identification doctrine". The evidence is clear that Cloth was the directing mind of Creative Wealth. He was its CEO, founder, and sole director.

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[16] The Commission has invited us to determine a single figure aggregating all of the amounts implicated in each of the frauds we have found. We decline to do so at this stage in the proceeding. The calculation of a single figure would involve a careful aggregation of large amounts of data, excluding overlaps and amounts which may properly have been applied under agreements, including for agreed fees. Such a calculation has not been presented to our satisfaction.

Since Cloth was the directing mind of Creative Wealth, Creative Wealth is equally responsible for the fraud perpetrated by Cloth.

[68] 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.[17] In this case, the conduct of Cloth met all those conditions.

[69] Creative Wealth is therefore liable by reason of its responsibility for the acts of its directing mind, Cloth.

4.2.5 The fraudulent conduct related to securities

[70] Once the Tribunal has found that there was a fraud, the second step in the analysis is to consider whether those named as respondents have, as s. 126.1(1)(b) requires, directly or indirectly, participated in any act or conduct, related to securities, that they knew or reasonably ought to have known perpetrated the fraud.[18]

[71] As noted above and explained in *Bridging*, where the respondents are the primary perpetrators of a fraud, as is the case here, the "knows or reasonably ought to know" requirement in s. 126.1(1)(b) is already satisfied by the initial finding of fraud. It is an included or lower standard of subjective mental element than required to make that initial finding as against the perpetrator.[19] Therefore, the remaining task for the Commission is to show that the fraudulent conduct was related to securities.

[72] The investment instruments in this matter were either:

a. participation agreements, representing an undivided fractional interest in Creative Wealth's loans to film and television production companies; or

b. loan commitment agreements, in the case of "Series" investments, representing secured loans to Creative Wealth to fund its loan commitments to film and television production companies.

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[17] *Bridging* at paras 63-64

[18] *Bridging* at para 35

[19] *Bridging* at para 36

[73] A typical agreement comprised a cover page, bearing Creative Wealth's name and a title identifying the investment (such as "Secured Series D Loan Commitment Agreement", or "Participation Agreement" with a particular project named in the opening recital). There followed a detailed agreement with the terms on which the investor would advance funds by loan, or purchase a fractional interest, receive payments on the investment, and so forth. A summary Term Sheet, and sometimes security documents, were appended. Pursuant to the investment instruments, in broad terms, Creative Wealth agreed to receive capital in exchange for a future return of capital, plus interest.

[74] These instruments were accordingly "securities" within the meaning of s. 1(1) of the *Act*. Each of the agreements was "a bond, debenture, note or other evidence of indebtedness" pursuant to clause (e) of the definition of "security".

[75] All of the conduct we have found to constitute fraud related to the conduct of Cloth and Creative Wealth in respect of the investment agreements. Those agreements were "securities". The frauds were therefore related to securities, and all elements of section 126.1(1)(b) have been established.

4.3 Section 129.2 of the *Act*

[76] The Commission also alleges that Cloth is deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act* in connection with Creative Wealth's breach of s. 126(1)(b) as described above. Section 129.2 attributes liability to directors or officers who authorize, permit or acquiesce in a company's non-compliance with Ontario securities law.

[77] Cloth was the sole director and officer of Creative Wealth at all relevant times. We have also found that he directed all relevant activity of Creative Wealth that gave rise to our finding that the company contravened s. 126.1(1)(b) of the *Act*.

[78] Nevertheless, recent Tribunal decisions have concluded that, where an individual director or officer has been found directly liable for a contravention of Ontario securities law identical to the contravention of his/her corporation, as in the case of Cloth, it is unnecessary to consider whether that individual should also be deemed liable under s. 129.2 as a result of the corporate contravention.[20] The

[20] *Hogg (Re)*, 2024 ONCMT 15 (***Hogg Merits***) at paras 218-220

reasoning in these decisions 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.[21] As the Commission offered no compelling reason to depart from this reasoning, we decline to deem Cloth liable pursuant to s. 129.2 of the *Act* for Creative Wealth's contravention of Ontario securities law.

5. CONCLUSION

[79] For the above reasons, we find that the respondents perpetrated securities fraud contrary to s. 126.1(1)(b) of the *Act*. We decline to make a finding pursuant to s. 129.2 of the *Act* that Cloth be deemed liable for Creative Wealth's contravention.

[80] We therefore require that the parties contact the Registrar by 4:30 p.m. on November 16, 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 November 30, 2026.

[81] If the parties are unable to present 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 November 16, 2026.

Dated at Toronto this 2nd day of November, 2026

"James Douglas"

James Douglas

"Sandra Blake"

Sandra Blake

"Geoffrey D. Creighton"

Geoffrey D. Creighton

[21] *Hogg Merits* at paras 215-230