



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
YORK RIO RESOURCES INC., BRILLIANTE BRASILCAN RESOURCES CORP.,
VICTOR YORK, ROBERT RUSIC, GEORGE SCHWARTZ, PETER ROBINSON,
ADAM SHERMAN, RYAN DEMCHUK, MATTHEW OLIVER,
GORDON VALDE AND SCOTT BASSINGDALE**

ORDER ON A MOTION

**(Section 127 of the *Securities Act*;
Rule 3 of the Ontario Securities Commission *Rules of Procedure*)**

WHEREAS the hearing on the merits in this matter (the “**Merits Hearing**”) commenced on March 21, 2011;

AND WHEREAS further to the orders issued in this matter dated May 5, 2011 and May 10, 2011;

AND WHEREAS on June 16, 2011, the sixteenth day of the Merits Hearing, pursuant to Rule 3.1 of the Ontario Securities Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the “**Rules**”), George Schwartz (“**Schwartz**”) filed and served a request that a time and date be scheduled for the hearing of a motion before the Ontario Securities Commission (the “**Commission**”) for (i) an order for the exclusion from the evidence admitted at the Merits Hearing of his compelled evidence and any other compelled evidence obtained by Staff of the Commission (“**Staff**”) in the investigation of him; and (ii) an order that the compelled evidence admitted at the Merits Hearing be sealed by the Commission to ensure that it is not disclosed to any police force (the “**Exclusion of Evidence Motion**”);

AND WHEREAS on July 20, 2011, the eighteenth day of the Merits Hearing, Schwartz advised the Commission that he would not be able to proceed with the motion until he completed the cross-examination of Wayne Vanderlaan, a Provincial Offences Officer employed as a Senior Investigator at the Commission;

AND WHEREAS on August 10, 2011, after the twenty-fourth day of the Merits Hearing, Schwartz filed and served another request that a time and date be scheduled for the hearing of the Exclusion of Evidence Motion;

AND WHEREAS on August 11, 2011, the Commission ordered that the Exclusion of Evidence Motion be heard on August 22, 2011;

AND WHEREAS on August 11, 2011, the Commission ordered that Schwartz file and serve his Notice of Motion by August 12, 2011 in accordance with Rule 3.2 of the Rules;

AND WHEREAS on August 12, 2011, Schwartz advised the Commission that he would not be able to file and serve his Notice of Motion that day, but could do so by August 15, 2011;

AND WHEREAS on August 12, 2011, Schwartz and Staff agreed that the extension requested by Schwartz would not require an adjournment of the hearing of the Exclusion of Evidence Motion scheduled to be heard on August 22, 2011;

AND WHEREAS on August 12, 2011, pursuant subrule 1.6(2) of the Rules, the Commission ordered that Schwartz file and serve his Notice of Motion by August 15, 2011;

AND WHEREAS on August 15, 2011, Schwartz filed and served his Notice of Motion and other motion materials, including the affidavit of Schwartz sworn August 15, 2011 and a Memorandum of Fact and Law;

AND WHEREAS on August 18, 2011, Staff filed and served written submissions on the Exclusion of Evidence Motion;

AND WHEREAS the hearing of the Exclusion of Evidence Motion was held on August 22, 2011;

AND WHEREAS on August 22, 2011, Staff cross-examined Schwartz on his affidavit sworn August 15, 2011 in accordance with Rule 3.7 of the Rules;

AND WHEREAS on August 22, 2011, the Commission reserved its decision on the Exclusion of Evidence Motion;

AND WHEREAS on September 21, 2011, the Commission invited Schwartz and Staff to provide additional written submissions on *R. v. Wilder* (2001), 53 O.R. (3d) 519 (“*Wilder*”) by September 28, 2011 (Schwartz) and September 30, 2011 (Staff);

AND WHEREAS on September 27, 2011, Schwartz filed and served his supplementary submissions with respect to *Wilder*;

AND WHEREAS on September 28, 2011, in the course of the Merits Hearing, Staff inquired whether oral submissions on *Wilder* were necessary and requested that oral submissions, if any, be heard on November 1, 2011;

AND WHEREAS on September 28, 2011, Schwartz did not appear before the Commission for the Merits Hearing but informed the Commission through Victor York that he did not wish to make oral submissions on *Wilder*;

AND WHEREAS on September 29, 2011, Schwartz submitted a request by email for an opportunity to make oral submissions on *Wilder* on November 1, 2011;

AND WHEREAS on September 30, 2011, the Commission allowed Schwartz’s request for an opportunity to make oral submissions on *Wilder* on November 1, 2011;

AND WHEREAS on September 30, 2011, Staff filed and served supplementary written submissions with respect to *Wilder*;

AND WHEREAS on November 1, 2011, Schwartz and Staff appeared and made oral submissions on *Wilder*;

AND WHEREAS on November 1, 2011, the Commission reserved its decision on the Exclusion of Evidence Motion;

AND WHEREAS the Commission considered the written submissions, oral arguments and motion materials of Schwartz and Staff;

AND WHEREAS the Merits Hearing is an administrative proceeding pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”), Staff has not commenced a quasi-criminal proceeding in the Ontario Court of Justice in relation to this matter pursuant to section 122 of the Act and there is no evidence that quasi-criminal charges will be laid in relation to this matter;

AND WHEREAS a respondent’s compelled evidence is admissible against him or her in an administrative proceeding;

AND WHEREAS a respondent’s compelled evidence is not admissible against him or her in a quasi-criminal or criminal proceeding;

AND WHEREAS there is no basis for holding an *in camera* hearing or sealing any compelled evidence;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

AND FOR THE REASONS for this order which will be issued in due course;

IT IS ORDERED THAT the Exclusion of Evidence Motion is dismissed;

IT IS FURTHER ORDERED THAT the Merits Hearing will resume on December 19, 2011 at 10:00 a.m.

DATED at Toronto this 8th day of November, 2011.

“*Vern Krishna*”

“*Edward P. Kerwin*”

Vern Krishna, Q.C.

Edward P. Kerwin