

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

- AND -

**IN THE MATTER OF
ISSAM EL-BOUJI**

NOTICE OF MOTION

TAKE NOTICE THAT Issam El-Bouji (“Mr. Bouji”) will make a motion before the Ontario Securities Commission (the “Commission”) at the commencement of the Hearing herein, pursuant to Rules 1.6 and 3 of the Ontario Securities Commission Rules of Procedure at the offices of the Commission, 17th Floor, 20 Queen Street West, Toronto, Ontario, on May 1, 2019, for:

- (i) an order confirming that the Commission has no jurisdiction to hear some or all of the allegations in the Notice of Hearing and Statement of Allegations on the grounds of institutional bias, a breach of natural justice, a breach of its duty of fairness and a misuse of its public interest jurisdiction;
- (ii) an order that the Commission dismiss, stay, or adjourn these proceedings, in whole or in part; and
- (iii) such further and other relief as is appropriate.

PROPOSED METHOD OF HEARING: The motion is to be heard orally and on written material.

THE GROUNDS FOR THE MOTION ARE:

1. The Commission is a corporation without share capital (*Securities Act*, R.S.O. 1990, c. S.5 (the “*Securities Act*”) at s.3(1)). The Commission is governed by a Board of Directors who oversee the management of the financial and other affairs of the Corporation (*Securities Act* at s.3.1). The Commission has the powers of a natural person (*Securities Act* at s.3.2). All of these powers are

subject to the review and enquiry of the Ontario Minister of Finance. The Board Members also sit on hearings under the *Securities Act*.

2. On May 25, 2018, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended in relation to a Statement of Allegations filed by Staff on May 24, 2018 against Mr. Bouji.

3. On April 14, 2014, Mr. Bouji, Global RESP Corporation, Global Growth Assets Inc., Global Education Trust Fund and Margaret Singh entered into a Settlement Agreement with Staff (the "Settlement Agreement"). As part of the Settlement Agreement, Mr. Bouji agreed to not be a director or officer for a nine-year period. By commencing these proceedings, Staff, under the supervision of the Board, is arguably in breach of their commitment in the Settlement Agreement

4. The Settlement Agreement also provided for the payment of \$1,950,575.34 by Mr. Bouji and \$225,000 by others.

5. On April 16, 2014, the Commission purported to make an order, *inter alia*, approving the Settlement Agreement and the payments thereunder and banning Mr. Bouji from being a director or officer for a nine-year period (the "2014 Order").

6. On or about March 29, 2016, Vice Chairs Monica Kowal and D. Grant Vingoe reviewed and approved an undisclosed Staff Memorandum dated March 2, 2016 and other material which has not been disclosed, which deals with how these \$2.1 million payments are to be dealt with.

7. In 2014, Global asked that the \$2.1 million be directed to Global investors or unitholders. The Vice Chairs, however, decided that the Commission would keep the money being paid under the Settlement Agreement pursuant to s. 3.4(0.1) and (2) of the *Securities Act*, subject to the control of the Minister of Finance under s.3.4(2.1), (3) and (4) of the *Securities Act* as it was not "practical" to direct that the monies go to Global investors.

8. Staff has alleged that Mr. Bouji acted as a *de facto* vice-president of sales of Global RESP Corporation during the almost three year period of January 17, 2015 to December 31, 2017 in breach of the 2014 Order.

9. However, the 2014 Order is executory as it states that “[t]he Commission will make an order”. No further order was made. Without that further order, there is no order that Mr. Bouji could have breached and no basis for a hearing under s.127 of the *Securities Act*.

10. The Commission’s failure to make a further order is not a defect or other irregularity in form that can be saved by 1.2(4) of the Commission’s *Rules of Procedure*. In any event, those Rules have no substantive effect.

11. The Commission is attempting to sit in judgment of its own cause and to judge the correctness of its own conduct and to preserve the purported use of these monies. These proceedings raise issues of fairness, natural justice, institutional bias and jurisdiction.

12. The Commission’s structure is fatally flawed. As a Board Member, Commissioner Vingoe owes fiduciary and other duties to the Corporation. He has already exercised these Board powers in this case. Whenever the conduct of the Commission is engaged in any matter, the Commission has an irreconcilable conflict of interest that precludes it from holding a hearing on the same matter. This is especially true when civil court remedies are open to it.

13. In the alternative, if the Commission’s structure is not fatally flawed, it does not permit Vice Chair Vingoe to sit on a matter where he has been personally involved, has reviewed undisclosed material and has had other undisclosed participation. In the further alternative, no Commissioner can sit in judgment of any matter where the Commission’s own conduct is engaged.

14. The Commission’s public interest jurisdiction under s.127 of the *Securities Act* cannot be used in any case where;

- (a) there has not been conduct which was intended to skirt or violate a provision of the *Securities Act*;
- (b) the Commission ‘s own conduct is engaged;
- (c) the Commission is attempting to enforce one of its own orders; or
- (d) the Commission is dealing with monies paid to it by way of an Order or settlement.

15. Such further and other grounds as Counsel may advise and the Commission may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

16. The affidavit of Bethanie Pascutto, sworn April 11, 2019, and the Exhibits attached thereto;
and

17. Such further and other material as counsel may advise and the Commission may permit.

April 12, 2019

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