Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

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

AND

IN THE MATTER OF
MEGA–C POWER CORPORATION, RENE PARDO, GARY USLING, LEWIS TAYLOR SR., LEWIS TAYLOR JR., JARED TAYLOR, COLIN TAYLOR AND 1248136 ONTARIO LIMITED

DECISION

Hearing:	September 30, October 1–2, 5–9, 14–15, 19–23, 27–30, November 24–27, 30, December 1–4, 7–11, 14–18, 21–22, 2009, January 11–15, 18, 20–22, 25–29, March 22–26, 2010	
Decision:	September 7, 2010	
Panel:	James D. Carnwath Kevin J. Kelly	Commissioner (Chair of the Panel) Commissioner
Counsel:	Matthew Britton Jonathon Feasby	for Staff of the Commission
	Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited were self-represented.	
	Mega-C Power Corporation and Gary Usling, no longer being parties, did not participate in the hearing.	

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REASONS AND DECISION

I. INTRODUCTION

[1] This case involves alleged distributions of shares in Mega-C Power Corporation from September 2001 to mid-2003 (the "Relevant Period"). It has a long, complex, even tortured history.

[2] The issues to be decided are relatively simple – did the Respondents, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Ltd. (collectively, the "Taylor Respondents") and Rene Pardo, or any of them:

- trade securities within the meaning of the *Securities Act*, R.S.O, 1990, c. S.5, as amended ("the *Act*") while not registered to do so, contrary to s. 25(1)(a) of the *Act*?
- distribute Mega-C shares where Mega-C filed no prospectus and was not a reporting issuer in Ontario, contrary to s. 53(1) of the *Act*?
- make prohibited representations to the public, contrary to s. 38 of the *Act*?
- should all allegations against the Taylor Respondents be stayed because of delay, Staff's failure to provide disclosure and particulars, Staff bias, Staff's breaches of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), or any one of them?

[3] The proceeding against the respondent Mega-C was withdrawn on June 4, 2007. The proceeding against Gary Usling was settled by Order issued on September 17, 2009.

[4] Sections 25(1)(a), 53(1), 38 and the *Act's* definition of "trade" or "trading" are included in Schedule A annexed to these reasons.

II. MATERIAL FILED

[5] At the opening of the hearing on the merits ("the Hearing"), fourteen Hearing Briefs were filed as exhibits. References to the Hearing Briefs in these reasons will be by volume number, tab and, where necessary, page number (Vol. –, Tab –, p. –).

[6] In addition, approximately 19 binders of Staff disclosure were present in the hearing room, suitably indexed. The 19 binders of disclosure do not constitute evidence except for those documents extracted from the binders and duly entered as an exhibit. Together with the Hearing Briefs there are close to twenty thousand pages of disclosure material.

[7] Finally, there is a complete transcript of the 58 volumes in all. Reference to the transcript will be by transcript page number and line, as required (Tr. –, p. –, l. –).

III. THE MAJOR PLAYERS

[8] Mega-C Power Corporation ("Mega-C"), a company incorporated in the State of Nevada, whose shares are the subject of the allegations made by Staff of the Ontario Securities Commission (the "OSC" or the "Commission"). It is not disputed that Mega-C was originally

incorporated as Net Capital Ventures Corporation and that its name was changed to Mega-C Power Corporation some time between March 1, 2001 and October 1, 2001. Throughout these reasons, references to "Mega-C" and "Mega-C shareholders" refer to the Nevada corporation known as Mega-C Power Corporation.

[9] Mega-C Power Corporation, a company incorporated in the province of Ontario ("Mega-C Ontario").

[10] Rene Pardo, at all material times the President and Chief Executive Officer with effective control of Mega-C, Mega-C Ontario and NetProfitEtc Inc. ("NetProfit"). The latter corporation was owned and controlled by Rene Pardo. It, as well as Mr. Pardo, received common shares in Mega-C, ostensibly for Mr. Pardo's role in organizing and establishing the company's operations and as payment for consulting services.

[11] Gary Usling, at all material times a Director and Chief Financial Officer of Mega-C and holding interests in other recipients of Mega-C shares, including Lauterbrunner Developments.

[12] Lewis Taylor Sr. ("Chip Taylor"), acknowledged by his former counsel to have been involved in, or made, all major decisions on behalf of the Taylor family.

[13] Lewis Taylor Jr. ("Skip Taylor"), son of Chip Taylor, at all material times a Vice–President of Mega-C and President of Mega-C Technologies Inc.

[14] C&T Company Inc. ("C&T"), an Ontario corporation, the original owner of the technology (described later in these reasons) to be developed by Mega-C, owned 50% by the Taylor Respondents and 50% by Russian scientists who developed the technology.

[15] Mega-C Technologies Inc. ("Mega-C Tech"), an Ontario corporation, the vehicle through which C&T and the Taylor Respondents intended to commercialize the technology and the recipient from C&T of a licence to commercialize the technology. Its board of directors in March of 2000 included Lewis Taylor Sr., Paul Pignatelli, Claude Bonhomme, Igor Filipenko and Valeri Shtemberg.

[16] Jared Taylor, son of Chip Taylor, the keeper of the financial records for the Taylor Respondents and the person to whom certain "loans" were made by persons receiving shares in Mega-C.

[17] Colin Taylor, son of Chip Taylor, the sole officer and director and directing mind of 1248136 Ontario Limited.

[18] 1248136 Ontario Limited ("1248136"), the alter ego of Colin Taylor, the notional recipient of Mega-C shares from the portion to which the Taylor Respondents were entitled and from which certain shares were transferred to named individuals at the direction of Colin Taylor.

[19] Paul Pignatelli, Chip Taylor's son–in–law, the recipient of a number of shares from the portion of the Mega-C shares to which the Taylor Respondents were entitled.

[20] The Investors Watchdog Group (the "IWG"), a number of early investors who effectively took over Mega-C's assets in midsummer of 2003.

IV. THE OSC INVESTIGATION

[21] Staff of the Commission ("Staff") led evidence of the investigation through Shauna Flynn, a solicitor called to the bar in 2000. She began working for the OSC as Investigation Counsel in November of 2003.

[22] Ms. Flynn began her evidence by describing the structure and process of the Enforcement Branch of the OSC. The branch is composed of a surveillance unit, a case assessment unit, an investigations unit and a litigation unit. The surveillance unit and the case assessment unit are intake units. The case assessment group focuses on illegal distributions, unregistered sales of securities and disclosure issues. If the case assessment unit or the surveillance unit determines that there is evidence of possible breaches of Ontario securities law, or conduct contrary to the public interest, the matter is referred to the investigation unit for further action. If the investigation unit concludes that there is evidence establishing breaches of Ontario securities law, the file is transferred to the litigation unit to start proceedings.

[23] At every stage of the file there is a Staff member who is assigned as the primary person responsible for the file. Other Staff members are assigned as secondaries. Ms. Flynn said she was assigned as a secondary investigator in February of 2004 and became the primary investigator in July of 2004. Her review of the file revealed that it was opened in January of 2003 in the case assessment unit. It was opened to determine whether shares of Mega-C had been traded in violation of the registration and prospectus requirements of the *Act*. Her review revealed that the primary investigator on the file was Andre Moniz when the file first opened.

[24] Her review further revealed that Andre Moniz had written a number of letters to Rene Pardo and members of the Taylor family seeking information about the transfer of Mega-C shares. Several responses were received.

[25] The file was transferred from the case assessment unit to the investigations unit in February of 2004. Peter Coulis was assigned to the file as senior investigator. Mr. Coulis wrote further letters to individuals seeking further information. He also sent out an investor questionnaire to Mega-C shareholders and spoke on the telephone with individuals involved in the sale of shares. Mr. Coulis' participation in the file ended in July of 2004 when Ms. Flynn became the primary investigator.

[26] Staff called neither Mr. Moniz nor Mr. Coulis to give evidence.

[27] On becoming the primary investigator, Ms. Flynn wrote some follow–up letters to individuals involved as well as their counsel. She conducted a number of voluntary interviews. She also sought and obtained s. 11 orders from the Commission. Briefly put, a s. 11 order permits the named investigator to conduct a wide–ranging inquiry into the affairs of any person or company in respect of which an investigation is being made.

[28] Pursuant to s. 13 of the *Act*, the person carrying out an investigation pursuant to s. 11 has the same power to compel a person to testify on oath or to produce documents as is vested in the

Superior Court of Justice (Ontario) for the trial of civil actions. Failure to comply with a request for information and documents made under s. 13 renders a person or company liable to be committed for contempt by the Superior Court of Justice (Ontario) as if in breach of an Order of that court.

[29] Ms. Flynn remained on the file until March of 2005 when it was transferred to the litigation unit. Other investigative work continued, much of it carried out by Albert Ciorma, a forensic accountant for Staff.

[30] Staff issued the Statement of Allegations on November 16, 2005.

[31] The Commission issued a Notice of Hearing on November 16, 2005, returnable January 31, 2006, to consider Staff's allegations.

V. THE HEARING BRIEFS, Vols. 1–14 (Exs. 4–13)

[32] During her testimony, Ms. Flynn gave an overview of the contents of the fourteen Hearing Briefs. Vol. 1, Tab 2, p. 3 is a letter dated March 11, 2003 from Rene Pardo responding to an inquiry from Andre Moniz. The letter purports to provide a summary background and chronology of the development of the business and financing activities of Mega-C and Mr. Pardo's personal involvement in the company. In addition, seven schedules to the letter give a breakdown of shareholdings in Mega-C as recorded by Mr. Pardo:

- Schedule A shows the number of persons who were shareholders of Mega-C as at March 11, 2003, broken down geographically
- Schedule B shows shares of Mega-C issued from treasury
- Schedule C shows "gifted" (shares) and NetProfit sales
- Schedule D shows third party transferees
- Schedule E shows NetProfit sales in Ontario
- Schedule F shows shares purportedly issued to Ontario subscribers pursuant to the accredited investor exemption
- Schedule G shows a list of current and former Mega-C directors, officers, employees and consultants who held (or had held) Mega-C shares and their province, state or country of residence.

[33] There then follows in Vol. 1 correspondence between Mega-C and third parties referencing the technology to be developed, a report from Dr. Brian E. Conway as to the commercial possibility of the technology and a plethora of documents speaking to the development of a hybrid battery in general and the Mega-C technology in particular.

[34] Hearing Brief Vol. 2 begins with material provided by Mr. Pardo expanding on his March 11, 2003 letter. There follow Tabs 7–15 inclusive identified as letters to various members of the

Taylor Respondents or to their counsel, requesting information. At Tab 16 is a letter from Brian Greenspan, then counsel to Lewis Taylor Sr., purporting to speak for all the Taylors. We shall refer to this letter later in our reasons. Tabs 18–33 contain documents received from persons who voluntarily wrote to the Commission or who replied to questionnaires and forwarded documents in their possession. Tabs 34–42 contain documents that were obtained by Ms. Flynn during the course of her investigation. Tabs 34–39 include correspondence involving Rene Pardo. Tabs 40–42 reference compelled evidence from the Taylor Respondents including a list of persons to whom shares were transferred allegedly at the direction of Lewis Taylor Sr. or members of his family.

[35] In Hearing Brief Vol. 3, Tabs 43–56 are exhibits from the compelled examinations of Paul Pignatelli, Colin Taylor, Jared Taylor and Lewis Taylor Sr. Tabs 57–74 reference exhibits from the examination of Gary Usling. It will be recalled that the proceeding against Gary Usling was settled although he was called as a witness by Lewis Taylor Sr.

[36] In Hearing Brief Vol. 4, Tabs 75–79 are further exhibits from the examination of Gary Usling. Starting at Tab 82A–LL are OSC surveys completed by Mega-C shareholders.

[37] In Hearing Brief Vol. 5, the OSC surveys are collected under sub–Tabs MM–VV inclusive, some with enclosures, some without. Starting at Tab 83 in Vol. 5, are notes prepared by OSC investigators David Adler and Sabine Dobell found under sub–Tabs A–CC inclusive. There follows Tabs 84–93 inclusive containing corporation profile reports and other corporate documents for the various companies involved in the history of Mega-C. At Tabs 94 and 95 are s. 139 certificates establishing that a prospectus was not filed and receipted for Mega-C and that none of the individual respondents is registered under the *Act*. Tab 96 marks the beginning of documents provided by investor witnesses that Staff proposed to call.

[38] Hearing Brief Vol. 6 continues the investor witness evidence referencing K.A. at Tab 97, S.G. at Tab 98, J.F. at Tab 99, L.L. at Tab 100 and S.K. at Tab 101, thereby completing Vol. 6.

[39] Hearing Brief Vol. 7 continues the investor witnesses with N.C. at Tab 102, S.B. at Tab 103, A.L. at Tab 104, A.R. at Tab 105, T.S. at Tab 106 and P.P. at Tab 107, thereby completing Vol. 7.

[40] At Tab 108 of Hearing Brief Vol. 8 is an e–mail from Kirk Tierney, at one time the General Manager of Mega-C, addressed to Tyler Hodgson, described by Ms. Flynn as litigation counsel on the file in November of 2005. The attachments to the e–mail are described by Mr. Tierney as a "summary executable HTML–based sneak peek". Mr. Tierney also refers to videos which he claims show the Taylors involved in infractions of the *Act*. During the course of the e–mail Mr. Tierney promises to deliver the alleged videos and indeed may have done so. However, Staff suggested during the Hearing that Mr. Coulis lost the videos. In the overall index found at the beginning of each Hearing Volume, Tab 108B lists the videos to be found there. The tab is empty.

[41] The balance of Vol. 8 consists of a consulting agreement between Net Capital Ventures Limited and Marvin Winick and copies of offering memoranda and subscription documents.

[42] Hearing Brief Vols. 9–13 inclusive are the banking records of Jared Taylor obtained by Staff through a s. 13 summons.

[43] Hearing Brief Vol. 14 is an analysis of Jared Taylor's bank accounts and an analysis of the Mega-C General Ledger prepared by Albert Ciorma.

VI. THE EVENTS FROM NOVEMBER 16, 2005 TO SEPTEMBER 30, 2009

[44] The Statement of Allegations was issued on November 16, 2005. A Notice of Hearing was issued the same day, returnable January 31, 2006.

[45] On the first appearance on January 31, 2006 various counsel appeared for all parties. Staff had made available the first tranche of disclosure but needed a further six to eight weeks to make further disclosure. The Respondents submitted they needed time to review the disclosure. No objection was taken to an adjournment and the matter was adjourned on consent to March 30, 2006.

[46] The Hearing for March 30, 2006 was adjourned in writing on consent of all parties. A second tranche of disclosure having been made on March 28, 2006, the Respondents requested an adjournment to May 31, 2006 to review the disclosure. Staff consented to the adjournment.

[47] Meanwhile, on May 10, 2006, counsel for all parties appeared before Commissioners LeSage and Davis to speak to a motion brought by Staff pursuant to s. 17 of the *Act*. Staff was seeking permission to disclose compelled testimony in bankruptcy proceedings in Nevada involving Mega-C. Under s. 17 the Commission may authorize the disclosure to any person or company of compelled testimony obtained pursuant to s. 13 if the Commission considers that it would be in the public interest. Following submissions by counsel for all parties, the s. 17 motion was adjourned to June 29, 2006 with a direction from the Panel to agree on timelines.

[48] On May 31, 2006, a pre–hearing conference was held with counsel for all parties in attendance. The matter had been adjourned from March 30. Staff had disclosed a third tranche of material on May 24, 2006 and the Respondents submitted they needed time to review the material. Following submissions, the parties agreed on the adjournment and timelines to be followed. The pre–hearing conference was adjourned on consent to August, 2006 with a direction that the Respondents' written materials were to be submitted by July 28, 2006 and Staff's written materials to be submitted by August 4, 2006.

[49] On June 29, 2006, counsel for all parties appeared to continue the s. 17 motion. Submissions on work–product privilege, common interest privilege and relevance were received by Commissioners LeSage and Davis. The matter was put over on consent to July 13, 2006.

[50] On July 13, 2006, Staff counsel appeared and adjourned the motion on consent to August 10, 2006 in recognition that the Nevada bankruptcy court might have granted a protective order by that time.

[51] On August 10, 2006, the s. 17 motion was to resume, but was adjourned on consent to September 28, 2006 based on advice that the protective order in Nevada was expected within 3–4 weeks.

[52] On August 15, 2006, a pre–hearing conference was held before Commissioner Bates where there were discussions of disclosure issues, particulars, s. 17 issues including disclosure of compelled testimony to the Nevada Trustee in Bankruptcy, and dates for the hearing on the merits.

[53] During the conference, Mr. Hodgson, counsel for Staff, told everyone that a significant party to the Nevada bankruptcy proceeding was represented by Gowlings. Mr Usling was represented by Mr. Sofer, a member of the Gowlings firm. In the Nevada proceeding, a firm known as Northern Growth Fund Management had been represented to the court as a neutral party, unrelated in any way to any of the named Respondents in this proceeding. This representation was clearly incorrect since Gowlings acted for both Northern Growth and for Mr. Usling. On consent of the parties to the s. 17 motion, the matter was adjourned to December 4, 2006.

[54] On December 4, 2006, a pre–hearing conference before Commissioner Bates continued the discussion of the August 15, 2006 issues, in the presence of counsel for all parties. *Charter* motions were filed on behalf of Mr. Usling and Jared Taylor, Colin Taylor and 1248136. The Lewis Taylors Sr. and Jr. brought a motion for particulars. Following submissions, a 4–6 week hearing on the merits was fixed for October 29, 2007 on consent. In addition, another pre–hearing conference was scheduled for February 6, 2007 to review timelines for motions. Apparently the February 6, 2007 date was extended to February 20, 2007 by consent of the parties.

[55] On February 20, 2007, counsel appeared on the further pre–hearing conference. There were now three Notices of Constitutional Motion filed on behalf of the Taylor and Usling Respondents. In addition, there were motions for particulars filed on behalf of the Respondents. Staff withdrew its request for an administrative penalty under s. 127(1)9 of the *Act*. There were discussions of procedures to follow on the *Charter* motions. The s. 17 motion was adjourned to no fixed date. All other matters were adjourned to April 12, 2007 before a Panel composed of Vice-Chairs Ritchie and Turner and Commissioner Wigle.

[56] On April 12, 2007, counsel appeared for Staff and the Taylor Respondents; Mr. Pardo did not attend, nor did Mr. Usling. Staff advised that the parties had agreed to an *in camera* hearing at the request of counsel for the Taylor Respondents. Staff moved by cross–motion to adjourn the constitutional motion as premature.

[57] The Panel issued unredacted confidential reasons on May 18, 2007. On July 26, 2007, redacted reasons were released dismissing the constitutional motion as premature and confidential reasons were released providing that the unredacted reasons were to be published on the first day of the hearing on the merits. Staff was ordered to set out its position and evidence on the *Charter* questions 90 days before the hearing on the merits.

[58] On June 4, 2007, Staff withdrew as against Mega-C.

[59] On August 23, 2007, counsel for all parties but Mr. Pardo appeared before Vice-Chair Turner and Commissioner Wigle. Mr. Pardo appeared representing himself. The Respondents had moved for an Order that Staff provide further particulars. On September 7, 2007 confidential

reasons were issued ordering Staff to provide further particulars as more particularly set out in para. 52 of those reasons.

[60] On October 18, 2007, Mr. Usling moved for an adjournment of the hearing on the merits scheduled for October 29, 2007 because he had terminated his retainer of Mr. Sofer. Mr. Sofer had a conflict of interest. Staff was asked why it had raised the conflict issue at this late date. Staff pointed out that the potential conflict had been known by the Respondents since August 4, 2006 by way of a letter from Staff to the Office of the Secretary with copies to all parties. In that letter it was made clear that Gowlings represented both Mr. Usling and Northern Growth Fund Management. The Usling adjournment motion was adjourned on consent to October 23, 2007.

[61] On October 23, 2007, counsel for the parties and Mr. Pardo on his own behalf appeared before a Panel composed of Vice-Chair Ritchie and Commissioner Thakrar. Staff raised the conflict issue with respect to Mr. Sofer. Mr. Usling had terminated Mr. Sofer's retainer and asked for an adjournment to retain new counsel. All parties but Mr. Pardo consented to an adjournment to November 5, 2007. During the motion, counsel for Staff reported that Staff had identified two more potential conflicts involving Mr. Sofer and so advised him. In the Order adjourning the matter to November 5, 2007, the parties were directed to come with a full shopping list of remaining pre–hearing matters.

[62] On November 5, 2007, all parties were represented by counsel save Mr. Pardo who appeared on his own behalf. Linda Fuerst appeared for Mr. Usling having replaced Mr. Sofer. Ms. Fuerst asked for an adjournment in order to prepare for the matter. Everyone but Mr. Pardo agreed that an adjournment was required to allow Ms. Fuerst to prepare and because of counsel schedules. An Order was issued adjourning the hearing on the merits to commence November 3, 2008 running until December 19, 2008, based on counsel's estimate of the time required for the hearing. The Order required that the constitutional motions be adjourned to the hearing on the merits with the timing of the motion in that Panel's discretion. A Case Management Conference was directed for January 9, 2008 before Vice-Chair Ritchie. Subsequently, the January 9 date was adjourned on consent to March 26, 2008.

[63] On March 26, 2008, a first case conference was held. The reporter was dismissed and the parties entered into discussions on all matters. Following that case conference, a second case conference was scheduled for May 1, 2008 with any unresolved issues at that time to be scheduled for a motion. On May 1, 2008, a second case conference was held in the absence of a reporter. Counsel for the parties appeared before Vice-Chair Ritchie, with Mr. Pardo representing himself. The matter was set for August 6 and 7 for a motions hearing. No party objected to that date.

[64] On August 6 and 7, 2008, counsel for all parties appeared together with Mr. Pardo representing himself before Vice-Chairs Ritchie and Turner. Among the motions that were considered was a stay motion based upon the following allegations joined in by all the Respondents but Pardo:

- a failure by Staff to conduct a fair investigation;
- misrepresentation by Staff to the Commission in obtaining a s. 11 Order;

- failure by Staff to obtain and preserve all evidence from the investigation relevant to this matter;

- failure by Staff to protect information and materials obtained pursuant to s. 13 of the *Act* from improper disclosure and use; and

- an ongoing and continuing refusal to meet Staff's disclosure obligations.

[65] A confidential decision was issued by the Panel on October 1, 2008 in which the Panel ordered that:

- the motion for the stay of this proceeding is dismissed, without prejudice to the moving parties to renew their request at the hearing on the merits;

- Staff should immediately take appropriate steps to ensure that employees in the Enforcement Branch do not have any documents or materials, including e–mails, relevant to this matter that have not been disclosed to the Respondents;

- Staff shall produce a written itemized inventory of documents and materials in its possession that are relevant to this proceeding that Staff does not intend to disclose to the Respondents. The inventory shall disclose in each case the basis upon which Staff proposes to withhold disclosures;

- it may not be necessary for Staff to list each and every document. Rather, a grouping by nature and a generalized description of that group would suffice;

- the itemized inventory described above shall be delivered to the Respondents no later than October 17, 2008; and

- a pre–hearing/Case Management Conference shall be held no later than October 31, 2008 to deal with any outstanding issues related to disclosure, particulars of any of the other matters dealt with in this decision (unless the parties determine such a conference is unnecessary).

[66] On October 17, 2008, Staff provided additional disclosure pursuant to the Commission's October 1, 2008 Order.

[67] On October 22, 2008, a further pre–hearing conference was convened before Vice-Chair Ritchie. Counsel appeared for Staff, Mr. Usling, Jared and Colin Taylor and 1248136. Lewis Taylor Sr. and Jr. were now representing themselves as Mr. Greenspan had withdrawn from the record by a letter of September 30, 2008. They did not appear because of a death in the family. Mr. Platt, counsel for Jared Taylor, Colin Taylor and 1248136, requested an adjournment on medical grounds. On consent, an adjournment was granted to a tentative date in mid-November, 2008 for a further Case Management Conference.

[68] On November 19, 2008, a further pre–hearing conference was held with no reporter. Vice-Chair Ritchie concluded that the period February 19–27, 2009 which had been tentatively

set for the hearing on the merits would be held for any preliminary motions. He directed that if a party requested it, a settlement conference or separate settlement conferences could be arranged without notice to any other party. The hearing on the merits was adjourned to September 7–11, 2009 to continue September 30–October 23, 2009.

[69] On December 11, 2008, a telephone conference was held in Vice-Chair Ritchie's office in the absence of a reporter. Vice-Chair Ritchie directed that any motions were to be heard at the scheduled February 2009 dates but if Lewis Taylor Sr. brought additional motions further dates would be set in April of 2009. The hearing on the merits was confirmed for September–October, 2009.

[70] By motion returnable July 9, 2009 before Vice-Chair Ritchie, Ms. Fuerst obtained leave to withdraw as counsel for Mr. Usling. On the same day, Mr. Platt withdrew as counsel for Jared Taylor, Colin Taylor and 1248136.

[71] Several motions were renewed before Commissioner Carnwath on September 9, 2009. He ordered:

- Mr. Pardo's motion for an adjournment was denied;
- Mr. Usling's stay motion was denied, without prejudice to his right to renew it at the hearing on the merits in support of the stay;
- The Taylors' stay and particulars motion was denied, without prejudice to the right to renew it at the hearing on the merits in support of a stay;
- No further motions were to be brought prior to the hearing on the merits but any motions to be brought 7 days before the hearing were to be heard at the hearing.

[72] On September 17, 2009, a settlement approval hearing was convened with respect to Mr. Usling and the settlement was approved by Commissioners Knight and Kennedy.

[73] On September 29, 2009, a settlement approval hearing was convened involving Mr. Pardo. Commissioners Knight and Condon deferred the settlement to the merits Panel.

[74] On September 30, 2009 the hearing on the merits started before Commissioners Carnwath and Kelly.

VII. FORMATION OF THE PARDO–TAYLOR ALLIANCE

[75] Rene Pardo and Chip Taylor met in the late 1990s. Until May of 2001 they had limited business dealings. In 1999, Chip Taylor was introduced to a new technology owned by C & T. In December of 1999 he entered into a joint venture agreement with C & T to commercialize an application of the new technology. Mega-C Technologies was the vehicle through which C & T and the Taylor Respondents intended to develop the new technology. C & T licensed to Mega-C Technologies the one application that was the subject of the joint venture agreement.

[76] The technology was submitted for testing to Dr. Brian E. Conway, described in his C.V. as Emeritus Professor of Chemistry, University of Ottawa. His C.V. describes him as the Dean of Electrochemistry in Canada and is found at Hearing Brief Vol. 1, Tab 3, p. 175. Dr. Conway described the technology as a hybrid battery/double-layer capacitor, electric energy and charge/storage device. Dr. Conway and his colleague, Dr. Pell, submitted the technology to various tests and completed a report of approximately 83 pages dated December 14, 2001 (Vol. 1, Tab 3, pp. 176–259). They concluded:

> iv. In conclusion, we wish to state that we have been favourably impressed by the test results we have obtained in the relatively short duration of the project assigned to us, so our recommendations for production engineering, and further commercial development, with investment, are positive. Especially with the small cells where the individual cycle period is short, we have been able to demonstrate excellent reproducibility of the charge–discharge cycle curves, with achievement of a cycle/life of at least 1400, continuing to 1500. (Vol. 1, Tab 3, pp. 253–254)

[77] In addition to the report of Drs. Conway and Pell, there is a wealth of additional material on battery storage contained in Hearing Brief Vol. 1, Tabs 12–22 inclusive. Some of the material is specific to the technology tested by Drs. Conway and Pell while other material relates to storage batteries in general. Suffice it to say the Panel finds that the specific unit tested by Drs. Conway and Pell was not a trumped-up fake to fool investors, but rather a technology that had commercial possibilities.

[78] As a result of his personal and business relationship with the Taylor Respondents, Mr. Pardo, in conjunction with Marvin Winick, made a proposal to Lewis Taylor Sr. Mega-C would license from Mega-C Tech the application of the new technology tested in Ottawa and would become responsible for its development and commercialization. The subsequent discussions and negotiations led to Mega-C Tech and Mega-C entering into a "letter agreement" dated September 11, 2001 (Hearing Brief Vol. 1, Tab 4, p. 260). Shortly put, Mega-C agreed to pay Mega-C Tech $5,250,000.00 US, of which $250,000.00 US was to be paid initially; to pay to Mega-C Tech a net royalty of 10% of the gross revenue of Mega-C; and to transfer to Mega-C Tech 10% of all the outstanding shares of Mega-C.

[79] Lewis Taylor Sr. approached Rene Pardo about the indebtedness owed by Lewis Taylor Sr. to third parties, which had grown to approximately $2,000,000.00 US and $1,000,000.00 CDN. To satisfy these debts, Mr. Pardo proposed that he transfer approximately 2,900,000 shares of Mega-C from the 10,000,000 shares already issued to him or to his related companies, to those persons to whom Lewis Taylor Sr. owed money. This was to be done in accordance with the directions of Lewis Taylor Sr. and the agreement of Mr. Pardo. Agreement was reached and in accordance with the directions of Lewis Taylor Sr. and Mr. Pardo, Mega-C issued a number of share certificates, each of which was approved and signed by Mr. Pardo. It is important to understand that the Mega-C share register was kept by Mr. Pardo alphabetically by first name. One would look in vain for an accurate accounting of the number of shares in Mega-C at the disposal of the Taylor Respondents, nor would the share register reveal that approximately 2,900,000 shares of Mega-C were at the disposal of the Taylor Respondents. What appears to have happened is that Lewis Taylor Sr., Jared Taylor or Colin Taylor would direct Mr. Pardo to

transfer "X" number of shares to named individuals, which Mr. Pardo would do by issuing share certificates from his Mega-C shares or from Mega-C shares allocated to NetProfit.

[80] Towards the end of September 2001 Mega-C defaulted in payment of the balance of the $5,000,000.00 US payable under the letter agreement. The Taylors say that Mr. Pardo proposed that the Taylor Respondents could sell their shares in Mega-C to meet their obligations but this was not acceptable to the Taylor Respondents. It is at this point that the Pardo-Taylor alliance ran into difficulty.

VIII. THE "INVESTOR LOANS" ARRANGEMENT

[81] There is strong disagreement between Mr. Pardo and the Taylors over how this arrangement came about. The idea was that the Taylor Respondents would borrow money and would use their Mega-C shares as collateral. The amount of the loan would equal the value of shares that the lender obtained as collateral for the loan. The Taylors say they embarked on the loan arrangement in reliance on Mr. Pardo and Mr. Winick's repeated representations that Mega-C was a reporting issuer and that its shares were freely tradable and unrestricted. Chip Taylor chose his youngest son, Jared Taylor, to be the member of the Taylor family who would actually borrow the money.

[82] Thus, in the period from the fall of 2001 to the spring of 2003, hundreds of people were persuaded to acquire Mega-C shares, either by lending money to Jared Taylor and receiving Mega-C share certificates as collateral for the loan or by direct purchase of shares from NetProfit, controlled by Rene Pardo.

[83] Albert Ciorma did an analysis of Jared Taylor's Canadian and US dollar accounts held in the Toronto Dominion Bank. The documents on which he bases his analysis are found in Hearing Briefs Vols. 9 – 13 inclusive. Volume 14 contains his analysis of those accounts showing the "Funds In" and the "Funds Out" for the accounts during the stated periods. Suffice it to say that in the period January 2, 2001 to May 30, 2003 the analysis shows $5,000,000.00 approximately flowing into Jared Taylor's Canadian dollar account and $5,000,000.00 approximately flowing out. In the period January 10, 2001 to May 30, 2003 the analysis for Jared Taylor's US dollar account shows Funds In of $3,900,000.00 approximately and Funds Out of $3,900,000.00 approximately.

[84] Similarly, Mr. Ciorma did an analysis of Mega-C's General Ledger for the period August 20, 2001 to February 29, 2004. His analysis shows funds received from investors to be $979,515 Canadian and $4,473,750 US. We shall have more to say about Mr. Ciorma's evidence later in these reasons.

IX. THE PROMISSORY NOTES

[85] Once investors had reached a decision to acquire shares in Mega-C from the Taylor Respondents, a certain procedure was followed in at least 406 cases and perhaps many more. Once the purchase price was established, the investor was instructed to make the cheque or draft payable to Jared Taylor. Since many, if not most, investors thought they were buying treasury shares from Mega-C, investors often asked for an explanation as to why Jared Taylor should be the payee. The standard response given by Jared Taylor or the person closing the sale was it had

to be done that way for internal purposes. The explanations were varied but were formulated so as to ensure that it was the Taylor Respondents who would control the money.

[86] Following the transfer of funds, the typical investor would receive a "promissory note" in the following terms:

PROMISSORY NOTE

Date: _____
From: Jared Taylor
To: _____

This is to confirm that you have loaned to me _____ _____ Dollars for

Personal purposes. I warrant I will deliver to you as collateral, as soon as possible, _____ Shares of Mega-C Power Corp.

_____
Jared Taylor

[87] In Hearing Brief Vol. 3, Tab 51 are found 406 such promissory notes. Unlike most promissory notes, no interest rate is expressed and no due date is established. The notes indicate that Jared Taylor received approximately $2,274,015 in US funds and $312,742 in Canadian funds from the makers of those notes. Indeed, Lewis Taylor Sr., in making submissions on October 15, 2009, stated at Tr. 10, p. 111, l. 12:

> … there's never been a question ever that the alleged amount of money that came in from sales, loans or anything – I won't quibble with you. Taylors have always accepted that, never denied the fact that "X", $3-million, give or take, whatever that amount at the end of the day is, came into Jared's accounts. That's not an issue.

[88] Most investors received the note a few days or weeks following the transfer of funds. Some were surprised to learn they had loaned to Jared Taylor, heretofore unknown to them, the sum of money involved. The majority of the notes found at Tab 51 were issued from late 2001 to early 2003 with the bulk of them issued in 2002. At the time, Jared Taylor was a recent graduate from university in his early 20s.

[89] Following the investment, most, but not all, investors would receive a share certificate for Mega-C shares agreed upon signed by Rene Pardo.

[90] Based on the testimony of the investors called by Staff, the questionnaires and the telephone interviews, the Panel finds that the promissory note arrangement was not disclosed to most investors at the time the funds were transferred. Following such transfers, many of those investors accepted the result although unhappy with the process. Some investors protested but to no avail. The Panel concludes that this somewhat meek acceptance of the promissory note

arrangement by many investors flowed from the persuasive manner of the presentations and their conviction that the technology was commercially viable, as reported by Dr. Conway.

X. THE DISINTEGRATION OF MEGA–C

[91] Alarmed by the Taylor loan program, Mr. Pardo hired Kirk Tierney in February 2003. Shortly thereafter, the OSC letter of enquiry dated February 18, 2003 arrived at Mega-C, triggering alarm bells (Hearing Brief Vol. 1, Tab 1, p. 1). Mr. Pardo told Mr. Tierney he was to look after the day to day operations of Mega-C while he dealt with the OSC. Mr. Tierney was told to consult with one Joseph Picarelli, a Florida businessman, as needed. Mr. Tierney became General Manager of Mega-C in late April and continued in that role until December 2003.

[92] Following Kirk Tierney's arrival, first Jared Taylor and then Lewis Taylor Jr. left the Mega-C offices at 100 Caster Ave., leaving Mr. Tierney in actual control, while Messrs. Pardo and Usling remained as figureheads. According to Mr. Tierney, he persuaded a group of early substantial investors, the IWG, to provide $500,000 of interim financing to Mega-C. Also according to Mr. Tierney, he developed a plan whereby a new company would be formed to strike a new arrangement with C&T and obtain access to C&T's technology (Ex. 95). To protect the interests of Mega-C shareholders, the new company would set aside two–thirds of its shares in a trust for Mega-C shareholders. To this end, Mr. Tierney incorporated Axion Power Ontario. Axion Power Ontario merged with a US public company, Tamboril Cigar Company, and became Axion Power International. This arrangement became effective December 31, 2003.

[93] In the meantime, relations between the Taylor Respondents and Mr. Pardo deteriorated further. This culminated in the cancellation by Mega-C Tech of its agreement with Mega-C by letter dated June 10, 2003 (Ex. 190). Following the cancellation, various attempts at arbitration were made between the Pardo-Usling camp and the Taylor Respondents. These attempts finally failed in the fall of 2003. Simultaneously, Mr. Taylor Sr. and his family brought three actions in the Superior Court of Justice (Ontario) (i) against C&T and Mega-C (July 30, 2003); (ii) against Mega-C and C&T (September 11, 2003); and (iii) against Axion and others (February 10, 2004). There is no satisfactory evidence as to the status of these actions.

XI. THE NEVADA BANKRUPTCY

[94] On April 5, 2004, members of the IWG put Mega-C into bankruptcy by way of an involuntary petition in the Nevada bankruptcy court. Those members included John Petersen, lawyer for the group, and Messrs. Appel, Granville and Averill. Other petitioning creditors included Axion Power and the Tamboril Cigar Company.

[95] On April 9, 2004, Mega-C consented to the petition over the signature of one Sally Fonner, described as President and CEO of Mega-C. Ms. Fonner and Mr. Petersen were known to each other and she had been the President of Tamboril Cigar Company.

[96] The bankruptcy of Mega-C triggered litigation both in the bankruptcy itself and elsewhere. For our purposes, the only relevance of the bankruptcy is the Taylor Respondents' motion (reserved to the hearing on the merits) for a stay of proceedings. The stay is sought based on delay and on the alleged improper conduct of Staff in the conduct of its investigation, particularly its role in the Nevada bankruptcy.

[97] In the bankruptcy a contest developed among Axion, the Taylor Respondents and the "unaffiliated" shareholders of Mega-C. Each group felt it was the body to represent the interests of the Mega-C shareholders. The Taylor Respondents made strenuous efforts to get their note-holders to align themselves with Jared Taylor, who submitted proofs of claim on behalf of those who chose to do so.

[98] The trust agreement for the Mega-C shareholders developed by Axion ultimately prevailed, in that the court–appointed trustee, William Noall, favoured its proposal as being in the best interests of the Mega-C shareholders. Axion had proposed that 67% of its shares would be held in trust for Mega-C shareholders, though there is conflicting evidence on the ultimate percentage. The Taylor proposal was rejected. There is evidence that the Taylors have appealed.

[99] The Taylors submit Staff acted improperly in the Nevada bankruptcy proceeding by opposing the Taylors' attempt to represent the Mega-C shareholders. Further, the Taylors say Staff suggested to the presiding judge that there was a way for the judge to get around the confidentiality requirements surrounding the Taylors' compelled testimony.

XII. STAFF WITNESSES

(a) Shauna Flynn

[100] Shauna Flynn was examined–in–chief on Monday, October 5, 2009 and briefly on October 6. Having identified the Hearing Briefs for the purpose of entering them as exhibits, Ms. Flynn expanded on the contents of some of the Hearing Briefs that related to the Statement of Allegations. This included identifying share certificates issued by Mega-C to the various respondents.

[101] In particular, Ms. Flynn detailed the contents of a letter dated March 11, 2003 from Mr. Pardo to Andre Moniz, Investigation Counsel for the OSC. The letter is in response to Mr. Moniz's enquiries about the activities of Mega-C. Mr. Pardo described the past and present efforts undertaken to promote the sale of Mega-C shares. He identified an aggregate of 715,389 common shares sold for US $1.50 per share to approximately 21 US investors. He identified the sale of approximately 800,000 common shares issued at US $5 per share for gross proceeds of approximately $4 million, the bulk of which was raised from 14 US residents. Approximately US $460,000 was raised from 15 Ontario residents. Mr. Pardo described this as a "private placement" made pursuant to an offering memorandum dated April 2, 2002 and October 1, 2002, attached as appendix 22 to his letter. He identified the shares received by his company, NetProfit, of which approximately 1 million shares were sold to 73 Ontario investors claimed to be accredited. He reported to Mr. Moniz that he had recently become aware that the Taylor Respondents were making transfers in connection with pledges of shares as collateral for loans made to them.

[102] In Schedule A to his letter, Mr. Pardo identified the number of persons who held Mega-C shares by country of origin. There were 146 US shareholders, 1,103 Canadian shareholders and 27 international shareholders. In Schedule C to his letter, Mr. Pardo identified a list of Ontario residents who obtained their shares from him or his company, NetProfit. The schedule is organized alphabetically by first names. Ontario residents who acquired their shares from

shareholders other than Mr. Pardo or NetProfit are listed in Schedule D to his letter. Schedule E identifies NetProfit sales in Ontario in 2002 and Schedule F identifies shares issued to Ontario residents pursuant to the accredited investor exemption. Finally, Schedule G lists current and former Mega-C directors, officers, employees and consultants who hold (or held) Mega-C shares and their place of residence. It is not disputed that Mr. Pardo acted as share transfer agent for Mega-C and the accuracy of the schedules in the letter to Mr. Moniz rests entirely upon the extent to which his evidence on those matters is accepted.

[103] Ms. Flynn referred to a letter received from Brian Greenspan found at Hearing Brief Vol. 2, Tab 16. Mr. Greenspan set out the view of the Taylor family as to how Mega-C developed. He described Lewis Taylor Sr. as the head of the Taylor family and as being involved in or making all major decisions on behalf of the Taylor family. He said both Mr. Pardo and Marvin Winick told the Taylor Respondents that Mega-C was a reporting issuer and that the issued shares of Mega-C were freely tradable and unrestricted. His letter confirmed the details of the "letter agreement" referred to by various witnesses in the course of the proceeding. He identified the transaction whereby Mr. Pardo transferred 2,900,000 shares of Mega-C to persons to whom the Taylors owed money in accordance with the directions of Lewis Taylor Sr. Those share certificates did not contain any restrictions nor any indication that they were not freely tradeable.

[104] Mr. Greenspan also stated that at the end of September 2001, since Mega-C could not honour its obligations under the letter agreement, Mega-C defaulted pursuant to its terms. According to Mr. Greenspan, Mr. Pardo proposed that the Taylors could sell a number of their shares in Mega-C, but the Taylors rejected this proposal. It was then that Messrs. Pardo and Winick proposed the loan arrangement whereby the Taylor Respondents would borrow money and use their Mega-C shares as collateral. In reliance on Messrs. Pardo and Winick and their repeated representations that Mega-C was a reporting issuer and that its shares were freely tradeable, Mr. Taylor agreed with the loan transaction proposal and proceeded accordingly. Jared Taylor was chosen to borrow the money.

[105] Mr. Greenspan then described the demonstration meetings whereby investors were invited to acquire Mega-C shares. According to Mr. Greenspan's submissions, Lewis Taylor Sr. took little part in these demonstrations; Lewis Taylor Jr., a Vice President of Mega-C, assisted in preparation of reports and proposals to develop business markets in the applications and participated in technology presentations; Colin Taylor, other than providing a letter directed to Rene Pardo and Mega-C listing the lenders into whose name shares ought to be transferred, had no involvement. Essentially, Jared Taylor kept the financial records for the Taylor family as instructed by his father.

[106] Ms. Flynn identified at Hearing Brief Vol. 3, Tab 44 a list of individuals to whom members of the Taylor family transferred shares and who paid Jared Taylor, approximately 400 in all. In Vol. 2, Tab 40, she identified the "non–lenders list" being a list of individuals to whom shares were transferred in consideration of past debts owing by the Taylors.

[107] Mr. Pardo cross–examined Ms. Flynn on October 6, 2009. He had two areas of concern. He questioned her about the effect of voluntary cooperation with the OSC as it related to possible sanctions following a finding that security laws were breached. He attempted to get Ms. Flynn to agree that under hypothetical facts posed to her, Mega-C shares could be regarded as freely

tradeable. The questions were convoluted, obviously not clear to Ms. Flynn and certainly not to the Panel.

[108] Ms. Flynn's cross–examination by Lewis Taylor Sr. started on the morning of October 6, 2009, continued all day Wednesday, October 7 and ended shortly after lunch on Thursday, October 8. Mr. Taylor's cross–examination of Ms. Flynn was unfocused, abusive and of no assistance to the Panel. Mr. Taylor Sr. insisted on putting hypothetical questions to the witness, inviting her to come to legal conclusions and putting propositions to the witness as fact when those propositions had no foundation in the evidence. Pursuant to subsection 23(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, the Panel finally put a limit on Mr. Taylor Sr.'s cross–examination to the effect that it would terminate on 11:30 Friday, October 9th. Mr. Taylor chose to stop his cross–examination on Thursday after lunch, explaining that he had so much more material to delve into with Ms. Flynn that the 11:30 deadline on Friday made it impossible for him to continue with any utility.

[109] Jared Taylor began his cross–examination of Ms. Flynn on the afternoon of Thursday, October 8, 2009, continued until 11:30 on Friday, October 9, continued on the morning of Wednesday, October 14, and ended on the morning of Thursday, October 15. Jared Taylor's cross–examination of Ms. Flynn was less focused than that of his father, equally abusive and equally of no assistance to the Panel. The areas he wished to explore were irrelevant to the allegations but related rather to the Taylors allegations that the Staff investigation was biased, prejudiced and dishonest.

[110] Colin Taylor cross–examined Ms. Flynn. He continued in the same vein as the preceding two members of his family including accusing Ms. Flynn of dishonesty. His approach to the cross–examination may be best revealed by his concluding exchange with the witness at Tr. 10, p. 85, l. 13:

> Q: Well, Ms. Flynn, I've listened to you over the last week and a half, and you seem to be taking a very cavalier attitude towards a very serious –
>
> Chair: Just a minute, Mr. Taylor, do you have a question for this witness?
>
> Mr. Colin Taylor: Yes, I do.
>
> Mr. Colin Taylor: Q: After having listened to everything you said, how can anyone come to any other conclusion then you're nothing but a lazy, incompetent investigator?
>
> Chair: Oh, Mr. Taylor, are you finished?

[111] Lewis Taylor Jr. cross–examined Ms. Flynn. He was less focused than the preceding members of his family and less abusive. His cross–examination was of no assistance to the Panel.

[112] Mr. Britton did not exercise his rights to re–examination.

[113] The Panel finds Ms. Flynn's evidence helpful and reliable to the extent that it identified the material in the exhibits and gave some structure to the narrative of Mega-C's history. Not surprisingly, she became defensive under the onslaught of the Taylor cross–examinations,

particularly where she was asked to draw conclusions from hypothetical or unestablished facts. Her discomfort was greatest when she was unable to answer in one word, questions that would have been more appropriate for other persons involved in the investigation who were not called by Staff.

(b) Albert Ciorma

[114] Staff called Albert Ciorma, a Certified Management Accountant. He started with the OSC in December 2003 as a senior accounts clerk. In 2005 he moved to Enforcement as an Assistant Investigator and was later promoted to Investigator in 2007. His duties were to investigate potential breaches of the *Act*.

[115] In December 2006, Mr. Ciorma was assigned to the Mega-C file to assist the litigator on that file. He conducted an analysis of Jared Taylor's bank accounts and the general ledgers of Mega-C. The purpose of his investigation was to identify what happened to money that investors paid to Jared Taylor.

(i) Jared Taylor's Bank Accounts

[116] The bank accounts were a Canadian dollar account and a US dollar account, both in the name of Jared Taylor. Mr. Ciorma served a summons on the TD Bank pursuant to s. 13 of the *Act*. When he received the documents from the bank, he sorted them in an Excel program to provide a summary that would be understandable to a reader.

[117] Mr. Ciorma asked the bank to provide the account profiles and opening documents, application forms and corporate resolutions for the two accounts and then asked for the monthly statements from January 1, 2001 to May 31, 2003 including any supporting documentation for any transactions equal to or above $1,000. That information is compiled at Hearing Brief Vol. 9, Tab 111, and continues in Vols. 10, 11, 12 and 13.

[118] Mr. Ciorma then turned to Hearing Brief Vol. 14, where at Tab 112, p. 7718 is found the summary page for Jared Taylor's Canadian dollar account compiled from January 2, 2001 to May 30, 2003. The first half of the analysis shows the funds going into the account and the second half shows the funds going out of the account.

[119] Mr. Ciorma's analysis shows the following sources of the money flowing into Jared Taylor's TD Canadian dollar account, and is set out below:

Jared Taylor Account – TD Bank
(personal until August 4, 2001, Business from August 4, 2001)

(January 2, 2001 to May 30, 2003)

FUNDS IN (pages 2–10)

Total Funds from Investors	$690,228.77
Total Funds from Jared Taylor	$2,465,090.19
Total Funds from Colin Taylor and 1248136 Ontario Ltd. (Colin Taylor is sole director)	$292,715.81

Total Funds from NetProfitEtc. (Rene Pardo is sole director)	$37,000.00
Total Funds from Taylor Jr., Elgin Investments Inc. (Taylor Jr. is sole director) and Mega-C Technologies Inc. (Taylor Jr. is a director)	$249,000.00
Total Funds from Taylor Sr.	$1,420.24
Total Funds from Mega-C Power Corporation (The directors are Rene Pardo and Gary Usling)	$119,000.00
Total Funds from Minervest Investments Inc. (The directors are Rubin Miklosh and Gary Coleman. Rubin Miklosh is also a director at Select Micro Electronics Corp. with Sharon Taylor.)	$2,500.00
Total Funds from Miscellaneous sources	$1,159,600.56
Total Funds In	$5,016,555.57

FUNDS OUT (pages 11–35)

Total Funds to Colin Taylor, Shardina Estates Limited and 1248136 Ontario Ltd. (Colin Taylor is sole director in both corporations)	–$544,292.21
Total Funds to 2018251 Ontario Inc. (Jared Taylor and Taylor Jr. are directors)	–$294,006.75
Total Funds to Rene Pardo, 503124 Ontario Limited and NetProfitEtc. (Rene Pardo is sole director of both corporations)	–$224,720.72
Total Funds to Jared Taylor	–$716,955.34
Total Funds to Taylor Jr. and Corporations to which he is associated	–$1,260,149.91
Flannigan, Kenneth Legere and Wayne Webber. Page 33 of Pardo's March 2004 transcript indicates that this company is related to the Taylors)	–$41,000.00
Total Funds to Nicole Pignatelli	–$30,000.00
Total Funds to Taylor Sr. and his wife	–$78,463.12
Total Funds to Miscellaneous sources	–$1,817,935.62
Total Funds Out	–$5,007,523.67

[120] There follow at pp. 7719–7727 the individual entries for each transaction of funds going into Jared Taylor's Canadian account. The investors' transactions, for example, identify the investor, the date of the cheque or draft, the amount of the cheque or draft, the page number in the disclosure briefs where the bank statement to Jared Taylor may be found and, finally, the disclosure page numbers where the bank record for each transaction may be found. Similarly, at p. 7728, the bank record for each transaction of funds going out of the Canadian dollar account may be identified in the same way.

[121] In order to understand Mr. Ciorma's pagination, it is important to note that Hearing Brief Vol. 14 was not prepared when he recorded his analysis. The disclosure page numbers for Jared Taylor's bank statements and the disclosure page numbers for the bank records are found at the bottom right hand corner of the records found in Vol. 14, Tab 112 of the Hearing Briefs.

[122] Mr. Ciorma did a similar analysis of Jared Taylor's US dollar account at the TD Bank beginning at p. 7753, which is set out below:

Jared Taylor USD Account – TD Bank
(January 10, 2001 to May 30, 2003)

FUNDS IN (pages 2–7)

Total Funds from Investors	$1,984,864.73
Total Funds from Colin Taylor	$107,267.67
Total Funds from Elgin Investments Inc. (Taylor Jr. is the director)	$120,000.00
Total Funds from Lewis Taylor	$4,000.00
Total Funds from Jared Taylor	$273,734.80
Total Funds from Taylor Sr.	$1,420.24
Total Funds from NetProfitEtc. (Rene Pardo is sole director)	$25,000.00
Total Funds from Mega-C Power Corporation (Rene Pardo and Gary Usling are the directors)	$370,000.00
Total Funds from Miscellaneous sources	$1,033,622.12
Total Funds In	$3,918,489.32

FUNDS OUT (pages 8–12)

Total Funds to NetProfitEtc. (Rene Pardo is sole director) and Rene Pardo	–$348,000.00
Total Funds to Nicole Pignatelli	–$75,000.00
Total Funds to Lewis Taylor	–$2,300.00
Total Funds to 1248136 Ontario Ltd. (Colin Taylor is sole director) and Colin Taylor	–$87,000.00
Total Funds to Jared Taylor	–$1,391,929.11
Total Funds to Mega-C Technologies Inc. (one of the directors is Lewis Taylor)	–$185,014.00
Total Funds to Autoquest and Proscapes Express (Gavin Riches is the director. Jared Taylor refers to Gavin as an associate of his father's on page 134)	–$229,219.58
Total Funds used as cash	–$136,000.00
Total Funds to Green Forest Holdings Inc. (Gary Coleman is sole director. Coleman is also a director in 2018251 Ontario Inc. with Taylor Jr.)	–$316,055.08
Total Funds to Island Critical Care Corporation (Directors are Sean Flannigan, Kenneth Legere and Wayne Webber, Page 33 of Pardo's March 2004 transcript indicates that this company is related to the Taylors)	–$20,000.00
Total Funds to Minervest Investments Inc. (The directors are Rubin Miklosh and Gary Coleman. Rubin Miklosh is also a director at Select Micro Electronics Corp. with Sharon Taylor)	–$7,876.20
Total Funds to Mega-C Power Corporation (The directors are Rene	–$49,990.00

Pardo and Gary Usling)	
Total Funds to Miscellaneous	–$1,068,695.44
Total Funds Out	–$3,917,079.41

[123] There follows at pp. 7754–7759 an analysis of each individual transaction in the US dollar account identified by date, amount, disclosure page numbers of the bank statements sent to Jared Taylor and the disclosure page numbers of the bank records themselves. Analysis of each transaction for Funds Out is found at pp. 7760–7764.

[124] An examination of the Funds Out from the Canadian dollar account reveals that approximately 3,200,000 Canadian dollars was paid to Rene Pardo or companies with which he is associated and to the Taylor Respondents, companies with which they are associated, members of the Taylor family or associates of the Taylor family. An examination of the funds paid to miscellaneous recipients from the Canadian dollar account shows $1,800,000 approximately going to what appeared to be household expenses of Jared Taylor. Not a penny of the Canadian dollar Funds Out went to Mega-C.

[125] The examination of the US$ Funds Out shows approximately 2,700,000 dollars going to Rene Pardo or companies with which he was associated, the Taylor Respondents and companies with which they were associated, members of the Taylor family and associates of the Taylor family. The total funds shown by Mr. Ciorma going to Mega-C is $49,990.

(ii) Mega-C's General Ledger

[126] Mr. Ciorma turned to his analysis of the Mega-C general ledger. The general ledger appears to have been prepared by Marvin Winick, often described in the evidence as the accountant for Mega-C. Mr. Ciorma explained that his analysis was designed to see how much money was received from investors by Mega-C and if any money went back to the respondents or from the respondents to Mega-C. The general ledger that he used can be found at Hearing Brief Vol. 4, Tab 80. Mr. Ciorma's analysis of the general ledger can be found beginning at Hearing Brief Vol. 14, Tab 112, p. 7765. His analysis covered the period from August 20, 2001 to February 29, 2004.

[127] Mr. Ciorma's analysis was as set out below:

Mega-C Power Corporation General Ledger Analysis
(Period August 20, 2001 to February 29, 2004)

FUNDS IN (pages 2–4)

Total Funds from Investors – CDN$	$979,515.00	Canadian Dollars
Total Funds from Investors – US$	$4,473,750.00	US Dollars
Total Funds from Jared Taylor	$30,000.00	US Dollars
Total Funds from NetProfitEtc. (Rene Pardo is sole director)	$295,454.01	Canadian Dollars
Total Funds from NetProfitEtc. (Rene Pardo is sole director)	$823,627.63	US Dollars

Total Funds from Gary Usling and Lautterbrunnen Development Inc. (Gary Usling is sole director)	$98,101.08	Canadian Dollars
Total Funds from Gary Usling	$30,000.00	US Dollars

FUNDS OUT (pages 5–8)

Total Funds to Investors	–$120,000.00	US Dollars
Total Funds to Gary Usling, Lautterbrunnen Development Inc. Euromart International Bancorp Inc. and Varone Importing Inc. (Gary Usling is a director in these companies)	–$94,099.59	Canadian Dollars
Total Funds to Jared Taylor	–$374,000.00	US Dollars
Total Funds to Mega-C Technologies Inc. (Lewis Taylor is a director)	–$217,354.00	Canadian Dollars
Total Funds to Lewis Taylor and Mega-C Technologies Inc. (Lewis Taylor is a director)	–$1,826,176.00	US Dollars
Total Funds to Rene Pardo and 503124 Ontario Limited (Rene Pardo is sole director)	–$167,488.19	Canadian Dollars
Total Funds to Rene Pardo	–$3,507.36	US Dollars
Total Funds to NetProfitEtc. (Rene Pardo is sole director)	–$233,036.88	Canadian Dollars
Total Funds to NetProfitEtc. (Rene Pardo is sole director)	–$407,070.00	US Dollars

[128] It will be seen from p. 7765 that Mr. Ciorma distinguished between funds received in Canadian dollars and US dollars and funds paid out in Canadian dollars and US dollars.

[129] When we examined the identity of the investors who provided Funds In as shown on p. 7766, we recognized A.R. and J.F. as investor witnesses who made their cheques directly payable to Mega-C. They were not part of the 400 or so investors who were invited by Jared Taylor to acknowledge that the money they had paid him was a loan for his personal purposes, secured by Mega-C shares. Among the investors in US dollars we find persons referred to throughout the evidence as forming part of the IWG. These investors appear, for example, as directors of Axion and include Messrs. Averill and Patterson.

[130] Of the Funds Out, $120,000 US appears to have been returned to investors. Approximately $94,000 Canadian was transferred to Gary Usling or companies of which he was a director. Approximately $30,000 in Canadian funds and $344,000 US dollars was transferred to Jared Taylor. Approximately $1,800,000 US dollars was transferred to Mega-C Technologies, of which Lewis Taylor Sr. was a director. $167,000 Canadian approximately was transferred to Rene Pardo and 503124 Ontario Limited, of which he was a director. $233,000 Canadian and $407,00 US was transferred to NetProfit, of which Rene Pardo was the sole director.

[131] The effect of the Funds Out transfers noted by Mr. Ciorma for the period August 20, 2001 to February 29, 2004 was to identify the sums retained by Mega-C after giving effect to the transfers to the Pardo, Taylor and Usling interests. The sum of $2,626,624 US approximately and

$661,097 Canadian approximately remained to be disbursed in other directions as Mega-C decided.

[132] The further effect is that the Taylor Respondents, Rene Pardo and Gary Usling, together with companies they controlled or were associated with, received $2,730,000 US approximately and $712,000 Canadian approximately from the funds in the applicable period.

[133] In the pages following (pp. 7766–7772), the individual investors are identified and referenced to the general ledger and the recipients of the amounts paid out in the applicable period are identified in the same way.

[134] Mr. Ciorma's cross–examination by Mr. Pardo started on October 19, 2009 and lasted for half the morning. Lewis Taylor Sr. started his cross–examination at 11:30 am on October 19, 2009 and continued for all of Tuesday, October 20 and Wednesday, October 21 till 3:30 in the afternoon. Jared Taylor then cross–examined Mr. Ciorma for the balance of October 21 and continued well into Thursday, October 22, 2009. Finally, Lewis Taylor Jr. also cross–examined Mr. Ciorma. In all of these cross–examinations, Mr. Ciorma was invited to characterize transactions and agree with statements made by the cross–examiners that did not form part of his analysis of the Jared Taylor bank accounts. Time and again, whether by Mr. Pardo, Lewis Taylor Sr., Jared Taylor or Lewis Taylor, Jr., questions were posed to Mr. Ciorma usually beginning with "if such and such were so, would you agree that therefore ….?" Mr. Pardo wanted Mr. Ciorma to characterize payments made by the various players that Mr. Ciorma did not examine. Lewis Taylor Sr. wanted Mr. Ciorma to agree with his analysis of the payments that passed back and forth between Mega-C, C&T and Mega-C Technologies. Mr. Ciorma refused to be drawn into these inquiries and continued to hew to his description of what he did – he examined the bank accounts of Jared Taylor, both the Canadian and the US dollar accounts, and reported on the money that went into and out of those accounts. If the Taylor Respondents wanted to develop further evidence of the significance of these transfers, it was open to them to do so. Both Mr. Taylor Sr. and Jared Taylor had an opportunity to testify. They chose not to do so.

[135] When asked to comment on a series of disjointed questions about those matters in which he did engage, he was able to find the appropriate reference in the Hearing Briefs and Disclosure Briefs with little difficulty. The Panel finds him to have been professional in carrying out his analysis and a trustworthy and reliable witness who was scrupulous in staying within the limits of the work he performed. The same comments apply to his analysis of the Mega-C General Ledger.

(c) Investor Witnesses

(i) S.K.

[136] Staff called S.K., a 78 year old gentlemen retired from the printing business. Exhibits entered through him are found in Hearing Brief Vol. 6, Tab 101. His evidence is found in Tr. 16–17. He rated his investing knowledge as average. He confirmed he was not an accredited investor. SK learned of Mega-C through his chiropractor. He went to the premises of Mega-C at 100 Caster Avenue to see a demonstration and at that meeting met Chip Taylor, Skip Taylor and Jared Taylor together with another person named Silvano. It was Skip Taylor who talked about

the potential for the battery. S.K. formed the opinion that Skip Taylor was not a "battery man" but he knew how the operation worked to some extent. Skip Taylor gave S.K. a marketing brochure which can be found at Vol. 6, Tab 101, p. 3613. Following further discussions with the Taylors, S.K. was taken on a tour of the plant which he described as basically empty. He could tell by looking at the laboratory that it had not been used for a long time.

[137] A few weeks later, S.K. called Jared Taylor and indicated he wanted to invest in Mega-C. He met with Jared Taylor who said that the shares would cost US $5 each. Jared told S.K. to bring a certified cheque payable to Jared Taylor for US $12,500 to buy 2,500 shares. When S.K. asked for a receipt, Jared Taylor presented to him a document in the form of a promissory note dated December 4, 2002 which confirmed that S.K. had loaned Jared Taylor the money for personal purposes. In the note, Jared Taylor warranted he would deliver as collateral, as soon as possible, 1,250 shares of Mega-C. S.K. objected to the form of the transaction and refused to sign any acknowledgement that he was lending money to Jared Taylor. In his evidence, he was adamant that he was purchasing shares from Mega-C treasury. S.K. repeated several times that he never understood that there was any kind of loan arrangement before the note was produced to him and his wife and he never had any intention to loan money to Jared Taylor.

[138] In cross–examination, both Lewis Taylor Sr. and Jared Taylor made much of the fact that the original bank draft handed to Jared Taylor had to be replaced because it did not conform with his bank's requirements. The original draft was signed on December 4 and returned by the bank. S.K. delivered a new draft dated December 17, 2002. The Panel was left with the impression that S.K. was content to issue a second replacement draft because he felt it was the only way he would get the shares he had agreed to purchase. Much of S.K.'s cross–examination by the Taylor Respondents concentrated on matters subsequent to the transaction completed by S.K. and having to do with bankruptcy proceedings involving Mega-C in Nevada. The Panel finds the exploration of these matters irrelevant to the allegations upon which the Panel is required to adjudicate, except for the motions for a stay. The Panel finds that S.K. agreed to buy the shares in the form explained to him by Jared Taylor because he accepted Jared Taylor's representation that that was the only way he could get the shares. Despite vigorous suggestions to the contrary put to him in cross–examination, S.K. continued to assert he purchased shares and did not loan any money to Jared Taylor.

(ii) S.G.

[139] Staff called S.G., a retired woman with considerable investment experience, particularly in real estate. She was an accredited investor. Her evidence may be found beginning at Tr. 18 and continues a few weeks later in Tr. 20. Relevant documents involving the evidence of S.G. may be found in Hearing Brief Vol. 6, Tab 98. S.G. was introduced to NetProfit by Gary Usling. Mr. Usling told S.G. that Rene Pardo had an outstanding track record in the area of Information Technology and that NetProfit was an umbrella company for five subsidiaries, all involved in dot-com projects. S.G. purchased 200,000 shares in NetProfit for US $60,000 on January 16, 2001. Subsequently, Mr. Usling told S.G. that the NetProfit investments were not succeeding and that he was going to transfer his attention to Mega-C. He proposed to S.G. that she exchange her NetProfit shares for Mega-C shares, which S.G. did. The exchange was structured in such a way that Mr. Usling purchased the NetProfit shares for the sum of $1 and issued shares in Mega-C in return. Mr. Usling told S.G. she could take her loss in NetProfit as a tax loss during the year

2000. S.G.'s holding company received the share certificate for 20,000 shares in Mega-C signed by Rene Pardo.

[140] S.G.'s evidence is of little assistance to the Panel. She was persuaded to invest in NetProfit by Gary Usling and when that investment soured, she accepted shares in Mega-C at the suggestion of Mr. Usling. This transaction has little or no bearing on the allegations against Mr. Pardo and the Taylor Respondents. Her cross–examination by Lewis Taylor Sr. on the subsequent bankruptcy in Nevada was, as we have stated earlier, irrelevant to the allegations against the respondents.

(iii) J.F.

[141] Staff called as a witness J.F., a lawyer with 40 years experience. Exhibits entered through him are found in Hearing Brief Vol. 6, Tab 101. His evidence is found at Tr. 19. Latterly, J.F. has practised with two major firms in downtown Toronto. J.F. had known Gary Usling for over 20 years and had business dealings with him.

[142] Mr. Usling recommended NetProfit to J.F. as a good investment, describing it as a company with four or five matters under development. J.F. purchased a quantity of shares in NetProfit and in addition received an option to acquire an additional 100,000 shares of NetProfit at 10¢ per share. As was the case with S.G., Gary Usling at some point spoke to J.F. to the effect that the companies within NetProfit were not doing that well, except for one, which was Mega-C. Mr. Usling suggested to J.F. that he swap his shares in NetProfit for shares in Mega-C and this was done. He received a share certificate for 2,381 shares in Mega-C by way of certificate dated October 1, 2001 signed by Rene Pardo as president (Vol. 6, Tab 99, p. 3503).

[143] Some months later, in a letter dated June 12, 2002 (Vol. 6, Tab 99, p. 3510), J.F. wrote to Gary Usling confirming that his options to buy 100,000 shares of NetProfit had been converted to an option to purchase 10,000 shares of Mega-C for US $1 per share. The letter confirmed that J.F. was told by Rene Pardo and Gary Usling that it was their intention to have Mega-C go public in September 2002. The letter also confirmed that Messrs. Pardo and Usling were obliged to give J.F. three days notice of the initial public offering to allow him to exercise his option.

[144] A few days later, J.F. wrote Mr. Pardo to confirm that Mr. Pardo had requested J.F. to exercise his option to buy the 10,000 shares of Mega-C. Eight thousand of these shares were directed to J.F.'s wife (Vol. 6, Tab 99, p. 3506) and 2,000 shares to a friend. When it appeared that Mega-C was not going public, J.F. became concerned and started writing to Mr. Pardo to get information on the fortunes of Mega-C. He received a form letter dated March 2003 addressed to "Dear Shareholder" in which Mr. Pardo gave a positive, if not glowing, report on the future of Mega-C.

[145] By letter dated March 19, 2003, J.F. wrote Mr. Pardo seeking answers to 11 pointed questions directed to the condition of Mega-C (Vol. 6, Tab 99, p. 3516).

[146] On April 23, 2003, J.F. sent an email to Messrs. Usling and Pardo confirming a telephone conversation he had with Mr. Pardo on April 2, 2003. The email confirms Mr. Pardo's representation to J.F. that the company had about 5 million dollars US to proceed with the

development of the battery/supercapacitor and that J.F's existing shares could be sold in the "gray market" and could probably be sold in the range of US $3-$4.

[147] Finally, on February 23, 2004, J.F. received a letter from Rene Pardo confirming that Mega-C could not raise funds to continue with the development and commercialization of the energy cells. A letter suggested that a recent transaction involving Axion Power Corporation would allow further development of the technology within a new venture and that J.F.'s shares could entitle him to continue to be involved with the Mega-C technology.

[148] The Taylor Respondents, particularly Lewis Taylor Sr., cross–examined J.F. at length. The cross–examination centred mainly on events following the collapse of Mega-C, a cross–examination which the Panel finds irrelevant to the Panel's consideration of the allegations made against the respondents. The only relevance was the attempt by the Taylor Respondents to establish that the OSC had conspired with the group of Mega-C shareholders who had taken over the company and had thereby deprived the Taylors of "their technology". We shall have more to say about this matter later in these reasons.

[149] We find J.F. to be a reliable witness. He gave his evidence in a matter-of-fact and composed manner, displaying no vindictiveness or animosity against the respondents despite his loss of $10,000 through the exercise of his options. Moreover, his evidence was confirmed by the correspondence he directed to Mr. Pardo, which the latter did not dispute. We conclude he was told by Messrs. Pardo and Usling that Mega-C would shortly be registered as a public company and that a grey market existed for the sale of his shares at an approximate price of US $3 to $4.

(iv) P.B.

[150] Staff called as a witness P.B., a woman in her 30s who had worked for the previous 14 years as an insurance broker. Exhibits entered through her are found in Hearing Brief Vol. 5, Tab 99. Her evidence is found in Tr. 21. She learned of Mega-C through a friend who knew the Taylor family and who described their efforts to bring battery technology to Canada with the intention of developing it. P.B. attended a presentation at 57 Temperance Street in Toronto where there were present Messrs. Pardo, Taylor Sr., Taylor Jr. and Jared Taylor. She was greeted at the door by Jared Taylor and entered a room where there were about 10 people waiting to view the demonstration and to hear a presentation on the Mega-C technology. Lewis Taylor Sr. spoke briefly about how he brought the technology to Canada and then Lewis Taylor Jr. took over. P.B. described him as a dynamic speaker who told the meeting about the Russian scientists who had developed the technology, that Loma Linda, a university hospital in the United States, was interested in its development and that the technology had been tested by a well known Canadian scientist, Dr. Conway.

[151] P.B. said there was a discussion on the stock going public and that it was going to "take off" because Mega-C was going to reinforce the fact that this was a proven technology, thanks to Dr. Conway's report. She said that Lewis Taylor Jr. predicted the stock would go up to about $20 a share and that Rene Pardo and Lewis Taylor Sr. nodded in agreement. She added that Lewis Taylor Jr. confirmed that Borealis was going to invest in Mega-C. Both Lewis Taylor Jr. and Rene Pardo confirmed that Mega-C would be listed on an exchange, she thought the Toronto Stock Exchange.

[152] Shortly after the meeting, P.B. purchased approximately 4,300 shares and wrote a cheque to Rene Pardo's company, 503124 Ontario Limited, for $10,000. She explained that the purchase price was US $1.50 per share. Mr. Pardo instructed her to write "promissory note" on the cheque that she wrote (Vol. 5, Tab 99, p. 3238).

[153] Following her purchase P.B. kept in touch with the friend that had introduced her to Mega-C but nothing developed. Finally, in 2006 she received a phone call from someone she thought to be Lewis Taylor Sr., who reported that another company had come along to buy the shares of Mega-C, which was in bankruptcy.

[154] The Panel found P.B. to be a pleasant and agreeable witness, displaying no ill–will towards the respondents during her testimony. She was unshaken in cross–examination with respect to her account of the meeting at Temperance Street and we conclude that events happened at that meeting as she described them, and as confirmed by others at that meeting. We find her to be a reliable witness.

(v) T.S.

[155] Staff called T.S., a specification writer in the architectural field. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 106. His evidence is found at Tr. 21. Through his dentist, T.S. was introduced to Mr. Jurgen Volling, who mentioned he was involved with a company that was making a new hybrid battery which was going to revolutionize the energy source industry.

[156] Mr. Volling told T.S. that the battery was ready to be put on the market and that T.S. had an opportunity to invest in Mega-C, which would shortly go on the market, probably in the spring of 2003. Mr. Volling also told T.S. that Mega-C would likely be listed on the New York Stock Exchange or NASDAQ and that more than likely, the stock would multiply in value and would have to be split. Mr. Volling told T.S. that Rene Pardo provided him with the information that he was passing on to T.S.

[157] T.S. issued a cheque dated November 4, 2002 to NetProfit for Cdn. $20,000, for which he received a share certificate dated October 22, 2002 for 2,667 shares in Mega-C. T.S. said this reflected a purchase price of US $5 per share. The cheque was handed to Mr. Volling, who explained that the cheque had to be made out to NetProfit because Mega-C was "some sort of a corporation where you had to have a block of $100,000 before you could buy a Mega-C share". By issuing the cheque to NetProfit, T.S. was able to buy a smaller amount of shares in Mega-C, according to Mr. Volling.

[158] Sometime in the spring of 2003, T.S. went to the Mega-C offices, where he met with Mr. Pardo along with some other investors. Mr. Pardo repeated that the battery was not far from being ready to go on the market and showed the visitors around the offices. T.S. described the plant as very small with one battery in a sort of open area that was supposedly the battery prototype. He was not at all impressed with the premises. Mr. Pardo did tell T.S. that it would not be very long before Mega-C was listed and once it was the shares would split and would increase considerably in value. T.S. invested a further $24,000 in the enterprise, financed by his line of credit. Beginning in 2004, it became apparent to T.S. that things were not going well with

Mega-C and he wrote several times to the OSC and others seeking to promote an investigation into the affairs of Mega-C.

[159] The cross–examination of T.S. by the Taylor Respondents is of no assistance to the Panel, concentrating as it did on events subsequent to the facts giving rise to the allegations. The cross–examination was another attempt by the Taylor Respondents to demonstrate that the OSC was avoiding an investigation of those persons whom the Taylor Respondents believe were responsible for them losing "their technology". It is clear that T.S. had no interaction with the Taylors until the failure of Mega-C. His evidence does confirm that Mr. Pardo did not hesitate to tell prospective investors that Mega-C would be listed on a stock exchange and that the shares would increase considerably in value. The Panel has no reason to believe that T.S. was attempting to embroider or fabricate evidence. We find he was attempting to tell the truth as best he could remember.

(vi) K.A.

[160] Staff called K.A., a man in his late 40s and president of a number of family companies operating in Western Ontario. Exhibits entered through him are found in Hearing Brief Vol. 6, Tab 97. His evidence is found at Tr. 22. He described his investment experience as intermediate and dealt with a broker for personal investments. He was not an accredited investor.

[161] He was introduced to Mega-C through a friend and attended a meeting in downtown Toronto with approximately 14 to 18 other persons. Present at the meeting were the Messrs. Taylor Sr., Jr. and Jared Taylor, together with Rene Pardo. They were introduced to the technology and saw a demonstration of a battery. Later in the fall of 2002, K.A. and a group from Western Ontario went to the same location in downtown Toronto and saw a PowerPoint presentation given by Rene Pardo. Promotional materials were handed out including an executive overview of Mega-C (p. 3241), a list of proposed additional directors of Mega-C (p. 3286) and other materials. K.A. and members of his family were persuaded to invest in Mega-C at various times in the fall of 2002 and on into February of 2003. K.A. prepared a list of the shares that the family received and the certificate numbers, found at p. 3320. The family invested a total of $40,000, all by cheques made payable to Jared Taylor for which they received promissory notes found at p. 3295 and following. When asked why the cheques were made payable to Jared Taylor, K.A. replied that he thought it was similar to brokerage houses, that the money was going into a cash account and once the share structure was established for the corporation, then the shares would be issued. He said the promissory note was basically some collateral for surrendering the money.

[162] In cross–examination, K.A. acknowledged to Lewis Taylor Sr. that it was very clear in his mind that the Taylors thought the monies advanced were advanced as loans. Indeed, K.A. signed a document (Ex. 80) in which he acknowledged that all sums advanced by himself and his family were loans to Jared Taylor.

[163] The balance of the cross–examinations conducted by the Taylor Respondents consisted of visiting events following the advancement of the funds by K.A. and his family and dealing with events in Nevada and the various attempts by competing interests to gain control of Mega-C, none of which has anything to do with the allegations made by Staff.

(vii) A.L.

[164] Staff called as a witness A.L., a man in his middle 60s and the owner of a farm equipment business in Western Ontario. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 104. His evidence is found in Tr. 23. He described his investment knowledge as poor and was not an accredited investor.

[165] He heard about Mega-C through the owner of a trade magazine that people in his area used for advertising and selling used equipment. The owner of the trade magazine, Ian Micklethwaite, sent two faxes to A.L. describing the Mega-C technology and announcing a meeting to which interested persons could attend to receive further information. The second fax (p. 3884) said that it was anticipated a second block of stock would close in the next week or less, split possibly 5:1 in late December and then launch on the New York NASDAQ Exchange in April/May of 2003, opening at around US $30.00 a share, all according to a US brokerage. The fax invited recipients to get in on the ground floor.

[166] A.L. attended a meeting on November 29, 2002 at 100 Caster Avenue. He described it as a non–descript kind of facility looking rather like a strip mall with a store front. There were a number of people there including Ian Micklethwaite and Jurgen Volling, who met A.L. at the door and handed out some documents. It was his recollection that Chip Taylor did the bulk of the talking and described the technology, "how exciting it was and also got into the shares and the opportunity". A.L. was told that the shares were being offered at US $5.00 at that point but they were going to go on the NASDAQ very soon and would be opening at about $30.00. He saw a demonstration of the technology in the sense that he was shown a battery on a test bench. He was told that it was ready to go into production but there was no actual demonstration. A.L. was given a document entitled Mega-C Power Presentation, Reserve Shares Form on November 29, 2002 (Ex. 126). A.L. understood that this was an opportunity to buy shares directly from Mega-C, an opportunity to invest in a private company that was expected to go public in a short period of time. He was assured that he would be able to sell the shares at some point. He and his wife went into a room with Jurgen Volling and filled out the document and a few days later made out a cheque to NetProfit for Cdn. $10,000, for which he received 1,283 shares in Mega-C.

[167] A.L. received his share certificate some time later in a form letter dated October 2002 addressed to "Dear Shareholder" from Rene Pardo (p. 3901). The form letter said that prior to public listing he would be asked to exchange the enclosed certificate for new certificates to be issued and signed by "our Corporate Transfer Agent". A.L.'s examination–in–chief concluded with a brief description of his involvement in the bankruptcy, including a telephone call from Colin Taylor advising him not to sign anything in connection with making a claim in bankruptcy, other than that proposed by the Taylors. In cross–examination, Lewis Taylor Sr. dwelt on A.L.'s identification of Lewis Taylor Sr. as the person who did most of the talking, something that other witnesses testified was done by Lewis Taylor Jr. A.L. continued to maintain that it was Mr. Taylor Sr. who carried the conversation.

[168] Mr. Taylor then picked up a copy of Ex. 120, a reserve form, and asked A.L. if he had any understanding why it had never been produced before in the proceeding. The Chair reminded Mr. Taylor not to testify, pointing out that it had not been established that it had never been produced. Mr. Taylor Sr. responded he had read all 29,000 pages and did not believe it was there.

This necessitated the production of the document in the disclosure which was found at Binder 16, Tab 3, p. 7716. Mr. Taylor denied he said what he said and this required an adjournment while the reporter prepared a transcript of the exchange between the Chair and Mr. Taylor. Mr. Taylor then retreated to the position that it was the signed copy of Exhibit 120 that he had never seen. Suffice it to say, the Panel did not accept his explanation. Forty minutes were wasted preparing the transcript of the exchange. This is but one of many egregious examples of Mr. Taylor Sr. putting facts to a witness that had not been established in the evidence, which he was reminded time and again not to do.

[169] The cross–examination of A.L. by the Taylor Respondents did not assist the Panel in assessing his evidence. What was clear to the Panel was that A.L. was confused as to the roles taken by Lewis Taylor Sr. and Lewis Taylor Jr. However, his description of the presentation at 100 Caster Avenue does not vary in any great particular from the description of other purchasers of Mega-C shares who attended such an event.

(viii) S.J.B.

[170] Staff called S.J.B., a resident of Toronto and the CEO of a TSX listed public company. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 103. His evidence is found in Tr. 24. He described his knowledge of investing as good and has spent many years trying to raise money for venture start–ups. He declared himself familiar with that process, the laws connected with it and the difficulties associated with it. S.J.B. has a B.A. degree and a law degree from the University of Toronto. He declared himself to be an accredited investor within the meaning of the *Act*.

[171] S.J.B. was introduced to Mega-C by a friend and associate who thought it would be a good investment opportunity. The friend provided him with a "sort of a prospectus" which described the opportunity and set out some of the applications of the technology (Vol. 7, Tab 103, p. 3719).

[172] S.J.B. attended a meeting at 56 Temperance Street, Toronto, in December 2001. He was introduced to Rene Pardo and Lewis Taylor Jr. who described the opportunity in some detail. They conveyed the idea that S.J.B. was a potential early stage investor and was going to get a big increase in the value of stock purchased at various levels as financing took place and various large players came on board. He was told Mega-C would be listed on the "NASDAQ Bulletin Board", a kind of low–level NASDAQ listing. Names of later stage investors were mentioned to S.J.B. including OMERS, Ontario Power Generation and Borealis.

[173] S.J.B. looked at the opportunity and decided that while he was very enthused about the technology he did not like the structure of the deal. He thought it was at a pretty early stage and he personally did not have the time nor energy to pursue another green technology with due diligence. Ultimately, he put in what he considered to be a token investment of $18,000. This was done at a first meeting at Temperance Street. He purchased 12,000 shares at US $1.50 and made out a cheque payable to Mega-C Power Corporation dated December 24 for US $18,000.

[174] Mr. Feasby reviewed with S.J.B. three documents: first, a confidential term sheet for Ontario Residents found at Tab 103C; second, a subscription agreement for Canadian Residents

found at Tab 103D; and third, a confidential offering memorandum found at Tab 103E. Referring to the limitations on share transfers of Mega-C in each of the documents, Mr. Feasby asked S.J.B. if the statements reflected his understanding that he could not resell his Mega-C shares before the company went public. S.J.B. replied that is what he understood the law to be and he understood that he was buying securities that were so restricted.

[175] Mr. Feasby then drew S.J.B.'s attention to the first two pages of Tab 103C, pp. 3746–3747 which S.J.B. identified as a summary of special warrants convertible into freely tradeable common shares of Mega-C. S.J.B. had expected he would be buying Mega-C warrants and that at some point he would get freely tradeable common shares in exchange for those warrants. That is why he was surprised to receive a share certificate for his Mega-C shares. Quite a bit later he heard from his friend, P.G., who took S.J.B. to a meeting at Caster Avenue, where they met with Kirk Tierney. At this point, Mega-C was in bankruptcy in Nevada and the IWG had taken control of it. Subsequently, S.J.B. received correspondence from Sally Fonner, inviting him to a shareholders' meeting near the Toronto airport. He did not attend the shareholders meeting, described by several witnesses as a raucous one. In effect, S.J.B. abandoned any hope of recovering anything for the shares he purchased.

[176] In cross–examination by Lewis Taylor Sr., S.J.B.'s attention was drawn to Vol. 1, Tab 2, p. 40, which is Schedule C to Mr. Pardo's letter to the Commission dated March 11, 2003. Schedule C purports to be a share register created by Mr. Pardo of those shares gifted by NetProfit to various persons. S.J.B. is shown as one such person. He was surprised to learn that his shares did not come from Treasury but from another source. He was also surprised to learn that his friend, P.G., had received a commission for introducing him to Mega-C. The subsequent cross–examination of S.J.B. by the Taylor Respondents concentrated on those matters taking place following the purchase of his shares involving the bankruptcy of Mega-C, the appearance of Sally Fonner and the takeover of Mega-C by IWG. These matters, the Panel finds, are irrelevant to the allegations the Panel is required to consider.

(ix) N.C.

[177] Staff called as a witness, N.C., a man in his mid forties, formerly employed as a police officer and currently the proprietor of a paralegal firm. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 102. His evidence is found in Tr. 25. In early 2003, a friend of his told him about Mega-C and put him in touch with one Elliott Gaum, later called as a witness by Lewis Taylor Sr. Mr. Gaum told N.C. that Mega-C was on the cusp of going public in March of that year and that it was developing a fuel cell that was going to take the world by storm. There were "heavy hitters" that were showing interest in becoming involved in the company.

[178] Mr. Gaum suggested to N.C. that he speak to Jared Taylor who would be involved in facilitating an investment in Mega-C. N.C. did so, perhaps a half a dozen times before he invested. Jared Taylor told N.C. that the company was about to explode and that he was building the company up, creating a type of frenzy over the fact that it was about to go public in March. Jared Taylor told N.C. the company would be listed on the NASDAQ Stock Exchange. The price per share was US $5 and Mr. Taylor suggested to N.C. that he would be looking at six or seven times his initial investment as a return. The method of investment would be for N.C. to make out a cheque to Jared Taylor and send it to Mr. Gaum, who in turn would direct it to Mr. Taylor.

[179] N.C. decided to invest in Mega-C and sent Elliott Gaum a bank draft dated February 11, 2003 for US $10,000 payable to Jared Taylor. Other documents introduced included a letter from Rene Pardo thanking him for his investment and enclosing a share certificate for 2,000 shares in Mega-C. Mr. Feasby referred N.C. to p. 3702, which was a second bank draft payable to Jared Taylor for US $5,000, a further investment in Mega-C. It was sent to Jared Taylor via Elliott Gaum.

[180] Following his investments, N.C. also spoke to Lewis Taylor Sr. who was "right on line" with Elliott Gaum and Jared Taylor by indicating the company was going public in March, that there were some large investors such as Mitsubishi and Warren Buffett who were showing keen interest and that great things were going to happen. He also referred to the listing to take place on NASDAQ. N.C. never received a share certificate for his second investment. What he did receive was an "Acceptance of Mega-C Power Collateral" form from Jared Taylor which read as follows:

> This is to confirm that I have received from you 1,000 shares of Mega-C Power Corp. in full settlement of my personal loan to you of US $5,000

which N.C. acknowledged by signing at the bottom. He was asked why he signed the document in the face of his position throughout his evidence, from which he never wavered, that he never loaned Jared Taylor any money and that the acknowledgement he signed was the first time he ever heard of a loan. We took from his response that he concluded it was the only way he would get his share certificate. He never did.

(x) A.R.

[181] Staff called A.R., a builder and developer in his late 30s. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 105. His evidence is found in Tr. 34. He was introduced to Mega-C by a friend and attended a meeting at the office of a pension fund manager in downtown Toronto. Present were Lewis Taylor Sr., Lewis Taylor Jr., Rene Pardo, Gary Usling and some others. A.R. had met Skip Taylor as a child at school; they were family friends. Lewis Taylor Jr. gave a demonstration of a capacitor. A.R. was told that they were taking Mega-C public in the next 6 months to a year. He was also told that there would be a subsequent offer at an increased price over the current $5 range, perhaps at $7.50 or $10. After doing some due diligence, A.R. bought 10,000 shares at $5 a share. The documents supporting his evidence may be found at Vol. 7, Tab 105, p. 3913 and following. A.R. purchased a further 10,000 shares at US $5 per share for a total of 20,000 shares.

[182] When A.R. learned that the company was in trouble, he went to see Rene Pardo. He learned that "the wheels were coming off at Mega-C" and he told Mr. Pardo he wanted his money back. Mr. Pardo in turn offered him 90,000 shares in Mega-C which A.R. accepted. However, he would not sign a document saying that Mr. Pardo had gifted the shares to him, pointing out that it was consideration being paid because people had not been truthful with him.

[183] In cross–examination by Lewis Taylor Sr., he denied having worked for Mega-C or Axion and, when shown that he was named as a consultant to Mega-C in Mr. Pardo's share register, A.R. vehemently denied this. When shown his entry in the share register as having received a gift of 90,000 shares in Mega-C, A.R. vehemently denied it was a gift.

[184] Mr. A.R.'s evidence was straightforward and believable. It particularly calls into question the accuracy of many of the entries in the share register created by Mr. Pardo.

(d) Investor Witnesses Contacted By Staff

[185] In addition to the investors called by Staff to testify, Staff sent questionnaires to numerous investors whose names came to Staff's attention. The responses are found in Hearing Brief Vol. 4, Tab 82A–LL and in Vol. 5, Tab 82MM–VV. They number 48. A typical questionnaire with responses is annexed as Schedule B to these reasons.

[186] In addition to the oral testimony and the questionnaires, members of Staff conducted telephone interviews with numerous investors whose names came to Staff's attention. The results of these interviews are found in Hearing Brief Vol. 5, Tab 83A–CC. They number 29. A typical interview is annexed as Schedule C to these reasons.

[187] Based on the oral testimony, the questionnaires and the telephone interviews, the Panel makes several findings of fact. Investors found their way to Mega-C in a variety of ways. Some knew the respondents personally, many were gathered in by persons authorized by the respondents to promote Mega-C, many heard about Mega-C through business associates and friends.

[188] Many investors at one time or another attended a demonstration of the technology either in Toronto or at the company's office at 100 Caster Ave., Vaughan, Ontario. Many investors attended information sessions where materials extolling the technology were distributed. Almost all investors heard oral presentations made by Lewis Taylor Sr., Lewis Taylor Jr., Rene Pardo, and to a much lesser extent by Jared Taylor.

[189] At these oral presentations, investors heard at least one, and usually more, of the following representations:

- The technology had unlimited potential to revolutionize the storage of electricity;
- Mega-C was shortly going public and was probably going to be listed on the NASDAQ Exchange;
- The technology was shortly going into production;
- Investors' funds would be used to bring the technology to market;
- Large companies were going to both invest in and purchase from Mega C once production began;
- The shares were going to increase in value and would shortly be worth much more than the price asked of investors.

[190] Of course, not all of the Messrs. Taylor and Pardo were present at every presentation. Not all of them made each of the representations listed above. Nevertheless, we are satisfied on the preponderance of the evidence that at one time or another each one or more of them made one or more of these representations. We are further satisfied that the investors were persuaded to invest

by the representations coupled with the opinion of Dr. Conway that the technology appeared to have commercial possibilities.

[191] In particular, we find the Taylor Respondents knowingly participated in a common enterprise conceived and led by Lewis Taylor Sr. As his own counsel at the time wrote "Chip Taylor, as the head of the Taylor family, was involved in or made all major decisions on behalf of the Taylor family" (Hearing Brief Vol. 2, Tab 16, p. 1080).

[192] Quite simply, the common enterprise was to sell shares in Mega-C to the public in the guise of a loan to Jared Taylor, secured by share collateral. To qualify for the exemption in the *Act* afforded to legitimate loan transactions, the loans must be made in good faith. We shall have more to say about this good faith aspect later in these reasons.

[193] The oral evidence which we have accepted is amplified by the hearsay evidence of the questionnaires and telephone interviews. The Panel may take hearsay evidence into account where it is supported and corroborated by other evidence (*Re Ochnik* (2006) 29 O.S.C.B. 3929, para. 26, and *Alberta Securities Commission v. Brost* [2008] A.J. No. 1071 (Alt. C.A.) para. 36). The oral evidence of the witnesses called by Staff provides such support and corroboration.

(e) The Evidence Of Kirk Tierney

[194] Staff called Kirk Tierney. Exhibits entered through him are found in Hearing Brief Vol. 8, Tab 108. His evidence is found in Tr. 29–33 inclusive. Mr. Tierney was placed in charge of Mega-C by the investors who had become dissatisfied with the course of Mega-C early in 2003. Mr. Tierney's title was General Manager. He testified on five consecutive days, December 7, 8, 9, 10 and 14, 2009. Mr. Tierney's evidence was helpful to the extent that it shed light on the events in 2003 when the IWG intervened in the affairs of Mega-C. This aside, we reject Mr. Tierney's testimony for the following reasons:

- There are two kinds of unresponsive witnesses. The more common is the witness who cannot remember, does not know and generally is unable to recall or describe the simplest matters. The other kind, of which Mr. Tierney is a classic example, is the witness who takes every question as an opportunity to promote a particular mindset and point of view, in this case to paint the Taylors as fraudulent villains.
- During the course of his long answers he seldom lost an opportunity to paint himself in the best light possible. At every turn he cast himself as a potential saviour of Mega-C from the clutches of the Taylor Respondents.
- The animosity between Mr. Tierney and Lewis Taylor Sr. was palpable during the latter's cross–examination of Mr. Tierney. Lewis Taylor Sr. contends that "his technology" was stolen from him by the I.W.G, with the active help of the OSC. Mr. Taylor regarded Mr. Tierney as the personification of that group during his cross–examination. Mr. Tierney's responses, not surprisingly, attempted to blunt the direction of Lewis Taylor Sr.'s questions and, if possible turn the question to Mr. Tierney's advantage in attempting to score a point.

- Mr. Tierney, along with a host of others, is a defendant in a lawsuit brought by Lewis (Chip) Taylor, Chip Taylor in trust, Jared Taylor, Elgin Investments Inc., and Mega-C Technologies Inc. in the Superior Court of Justice (Ontario). The action seeks a declaration that all the assets and profits of Axion Power Corporation in its various manifestations are beneficially owned by Mega-C, a declaration that the agreement of association is a valid and binding agreement, and damages in the amount of 250 million dollars. As with many other witnesses, the cross–examination of Mr. Tierney by Lewis Taylor Sr. appeared to be nothing less than a dress rehearsal for future litigation between the Taylors and those who supplanted them in Mega-C.

[195] Apart from filling in the narrative history of Mega-C, the Panel finds Mr. Tierney's evidence to be of no assistance in this matter.

XIII. PARDO WITNESSES

(a) Rene Pardo

[196] Mr. Pardo chose to testify. His testimony began in the afternoon of December 15, 2009 and including cross–examinations and re–examinations continued on December 16, 17, 18, 21 and 22. Following the holiday recess, his evidence continued on Monday, January 11, 12, 13 and ended on January 14, 2010. Unfortunately, and for reasons not entirely his fault, the value of Mr. Pardo's testimony was not directly proportional to the time he spent in the witness box. The transcripts containing his testimony run from Vol. 34 – 43 inclusive.

[197] Mr. Pardo began his testimony in Hearing Room A with a lengthy and somewhat unfocused description of his early business activities. His reputation did not suffer in his description of those activities. Unfortunately, Mr. Pardo speaks in a low voice and testifies in an unfocused manner. The Panel concluded the Hearing had to move to the smaller hearing room with better sound equipment and this was done in the afternoon of December 15, 2009. The Hearing continued there with the exception of one day in March.

[198] He described his early meetings with Lewis Taylor Sr. about the technology invented by the Russian scientists. There were two technologies, one under the control of C&T and the other under the control of Select Molecular Technologies. For our purposes, it is sufficient to understand that C&T controlled the technology tested by Professor Conway and Select Molecular controlled the technology demonstrated to Loma Linda Medical Centre of California.

[199] On September 11, 2001, Mega-C wrote Lewis Taylor Jr., in his capacity as president of Mega-C Tech, setting out a summary of the agreement reached between those two companies. The letter was acknowledged and signed by Lewis Taylor Jr. This is the "letter agreement" often referred to in the evidence. Under the letter agreement, Mega-C would raise US $5.25 million for Mega-C Tech of which US $250,000 would be provided initially. Mega-C Tech would issue to Mega-C 49% of the total shares issued and outstanding of Mega-C Tech for a nominal consideration, no later than the beginning of trading of Mega-C on a recognized stock exchange or the balance of US $5 million having been raised, whichever occurred earlier. Mega-C had the right to appoint 3 of 7 directors on Mega-C Tech. Conversely, Mega-C Tech had the right to appoint 2 directors to the board of Mega-C.

[200] Pursuant to these financial arrangements Mega-C Tech granted to Mega-C Power exclusive worldwide unlimited rights for developing the technologies owned by Mega-C Tech. Mega-C was to pay Mega-C Tech a 10% royalty on its quarterly revenues received from the sale of Mega-C Tech products. Mega-C was to pay for the development of the technology carried out by Mega-C Tech. Mega-C Tech undertook to use $3 million of the money raised to develop a research and development facility (Hearing Brief Vol. 1, Tab 4, p. 260).

[201] Also at Vol. 1, Tab 4, p. 263 is an agreement of association dated April 2, 2002 made between Mega-C Tech, Mega-C and C&T. Under the agreement, Mega-C Tech was to transfer 50% of Mega-C Tech shares to Mega-C, conditional upon payment of $2 million to Mega-C Tech, or Mega-C shares of that value. Further, Mega-C was to pay Mega-C Tech $3 million which funds were earmarked for a new corporation created for the purposes of investment in a research facility. In addition, Mega-C Tech was to receive 10% of all the issued and outstanding Mega-C shares with a covenant against dilution. The total of $5 million payable by Mega-C was to be paid in $400,000 increments every 60 days beginning February 1, 2003. This agreement is often referred to in the evidence as the April 2002 agreement.

[202] Mr. Pardo's evidence with respect to the beginnings of Mega-C and the distribution of its shares is unsatisfactory in many respects. We identified factors which contributed to this conclusion:

- Mr. Pardo's method of testifying we have earlier described as unfocused. In responding to questions or testifying in his own behalf, he first made an answer, then qualified it and then either went backwards in time or forwards in time to, as he would put it, "provide clarity". Clarity was seldom provided.

- Mr. Pardo's memory was faulty about the details of the share transfers made during the time he acted as transfer agent for Mega-C. He told us that in many instances, shares that were allocated to the Taylor Respondents were done in a "notional" sense where a share certificate number might be created for a particular block of shares, but no share certificate was produced. When instructed by the Taylors, as he testified he often was, Mr. Pardo would in turn ask his assistant, Sherry Bates, to prepare a share certificate and deduct from the notional Taylor shares a number sufficient to respond to the request for transfer made by one of the Taylor Respondents.

- The manner of Mr. Pardo's cross–examination by Lewis Taylor Sr. did not help the situation. Like other witnesses, Mr. Pardo has been sued by Mr. Taylor Sr. Mr. Taylor's mission in cross–examining Mr. Pardo was to get him to acknowledge that the loan program proceeds went to pay obligations of Mega-C to C&T and/or Mega-C Tech. Mr. Pardo denied that this was the case. On this topic, the Panel prefers the evidence of Albert Ciorma to throw light on what happened.

- Lewis Taylor Sr. cross–examined Mr. Pardo starting Wednesday, December 16 and continuing December 17, 18, 21, 22, Monday, January 11, 2010 and ending Tuesday, January 12, 2010. The cross–examination was of virtually no assistance to the Panel; the Panel implored Mr. Taylor from time to time to confine his questions to matters relevant to the allegations. Mr. Taylor Sr. was either incapable or unwilling to do so.

[203] Nevertheless, a review of the material in Hearing Brief Vol. 1, Tab 2, p. 3 and following, together with his oral evidence permits the Panel to find as follows. Mega-C issued approximately 15,700,000 shares. Of these Rene Pardo personally received 10,550,000, mainly in satisfaction of an invoice he submitted to Mega-C for services performed before its formation. Three million shares were issued to NetProfit, owned and controlled by Mr. Pardo, for a further 3 million shares at his disposal. Smaller amounts of shares were issued to the Russian scientists who developed the technology such as the Messrs. Filipenko, Shtemberg and Malitsky. The Taylor Respondents received some few hundred thousands of shares by way of share certificates. Mr. Pardo further described what he called "gifted shares". NetProfit and Mr. Pardo transferred approximately 9,800,000 shares of Mega-C to approximately 271 individuals for what he called "no consideration". However, it is clear from the evidence that the shares were transferred to persons who had made previous investments in businesses unrelated to Mega-C but related to Mr. Pardo and the Taylor Respondents. Mr. Pardo acknowledged at Vol. 1, Tab 2, p. 14 that NetProfit sold about 1,300,000 shares, half of which he said were reinvested in NetProfit and the other half applied to the repayment of NetProfit's indebtedness.

[204] Mr. Pardo's testimony and his response to the OSC in his voluntary statement acknowledged that approximately 1 million shares were sold to approximately 124 Ontario residents as more particularly set out in Schedule C found in Hearing Brief Vol. 1, Tab 2, p. 25. It is in Schedule C, among other locations, where 1248136, a company incorporated and controlled by Colin Taylor, is shown to have received approximately 1,800,000 shares of Mega-C. According to Schedule C, Gary Usling received 1,250,000 shares. Joseph C. Pardo Limited received 100,000 shares, and Paul Pignatelli, Lewis Taylor Sr.'s son–in–law, received 233,000 shares.

[205] We find it unnecessary to pursue the tangled web of share transfers and the agreements made among Mega-C, Mega-C Tech, C&T, Select Molecular and other corporations referred to in the evidence. We do find that the Taylor Respondents received more than sufficient Mega-C shares, whether recorded on the books of the company or not, for Mr. Pardo to issue share certificates to the approximately 400 persons who allegedly loaned Jared Taylor sums of money, and in return for which they received share certificates signed by Rene Pardo. Ex. 194 is a note to Sherry Bates from Jared Taylor. It sets out the changes to lists he had forwarded directing share certificates to go to certain named people. Ex. 195 is of the same type in which Jared advises Sherry Bates "but, for issuing the shares, follow the blue marks my Dad made on the older list and ignore my list until a later date". Similar directions to Sherry Bates were received from Colin Taylor on behalf of 1248136 and from Paul Pignatelli.

(b) Nedeljko Ulemek

[206] Mr. Pardo called Nedeljko Ulemek as a witness. He obtained an engineering degree in Yugoslavia and ultimately started his own business in Mississauga involving office equipment. He exported computer material to countries in Eastern Europe and spent a lot of time in Russia where he learned the Russian language.

[207] In the early 1990s, he registered a company called Select Vostok as he wished to import to Canada Russian technology involving capacitors. He met with the Borisenkos, father and son, and retained them to build prototypes of a capacitor that he could use to demonstrate its

capabilities to people in North America. The agreement between Vostok and the Borisenkos is filed as Ex. 202. Mr. Ulemek was introduced to the Taylors by Samuel Disabitino and this led to an agreement between Mr. Ulemek, Mr. and Mrs. Lewis Taylor Sr. and Mr. Disabitino (Ex. 203). Mr. Ulemek testified that Lewis Taylor Sr. insisted there be a new company that would take over from Select Vostok to promote and advertise and further development the technology. This was Select Molecular Corporation. While Select Molecular was working on its capacitor technology, Mr. Ulemek introduced Messrs. Miklosh, Rubin and Valeri Shtemberg to the Taylors and the Borisenkos. These latter gentlemen were developing electrical storage based on carbon electrolytes. Messrs. Rubin and Miklosh had formed a company which we know as C&T.

[208] Mr. Ulemek testified that the Taylors and Messrs. Rubin and Shtemberg had a meeting behind his back and started to develop the two technologies without his knowledge. He said he lost track of the activities of C&T and the Taylors until 2002, when the activities of Mega-C and Mega-C Technology were brought to his attention, including some prospectuses prepared at that time. On February 20, 2003, Mr. Ulemek sued the Taylors, Mr. Borisenko, Mega-C Tech, Mega-C and Select Molecular in the Superior Court of Justice (Ontario). His view of the dispute between him and the Taylors is recited in the statement of claim (Ex. 204). An agreement of understanding between Mega-C Tech and Select Molecular dated February 2, 2001 was produced. It was signed by Lewis Taylor for Mega-C Tech and by Colin Taylor for Select Molecular. Mr. Ulemek concluded his examination–in–chief by saying that a few months before his appearance at the hearing on the merits, the Taylors had asked him to drop the suit against them because it was a probable obstacle to their claim in their bankruptcy proceeding in Nevada.

[209] Mr. Ulemek was cross–examined by both Lewis Taylor Sr. and Colin Taylor. The cross examination followed a pattern that one would expect from adversaries in litigation. A little heat was generated but not much light. The Panel concludes that Mr. Ulemek's evidence is of no help to us in considering the allegations.

XIV. TAYLOR INVESTOR WITNESSES

[210] Lewis Taylor Sr. called a number of witnesses to support the Taylor Respondents' contention that the promissory note arrangement exempted the transfer of Mega-C shares from the requirements of the *Act* as detailed in the Statement of Allegations. These witnesses, and the transcripts and page number of the transcripts where their evidence may be found are as follows:

- Mr. P.B. (Tr. 26, p. 8)
- A.B. (Tr. 28, p. 7)
- E.J. (Tr. 28, p. 39)
- A.M. (Tr. 44, p. 110)
- H.B. (Tr. 49, p. 110)
- B.R. (Tr. 27, 51, p. 72)

- J.V. (Tr. 51, p. 105)
- W.V. (Tr. 51, p. 123)

[211] Some of the above named witnesses were business associates of Lewis Taylor Sr. or personal friends of Mr. Taylor. Others did not know the Taylor Respondents before being invited to invest in Mega-C. All of them had opted to file claims with the Nevada bankruptcy court on a form provided to them by Jared Taylor. That form, in the case of Mr. P.B., was filed as Ex. 137. The form sets out that Jared Taylor has a deadline to meet to submit supporting documentation in his possession regarding the Nevada bankruptcy. The recipient of the form is invited to submit an acknowledgement of the terms of the promissory note and that Jared Taylor had previously listed the recipient's interest in the promissory note in an action brought in the Superior Court of Justice (Ontario) as well as in the Nevada bankruptcy court. All of the above named witnesses received and signed an acknowledgement in the form of Ex. 137, thereby going on record in both Nevada and Ontario that they had indeed loaned sums of money to Jared Taylor for his personal use, secured by the collateral of Mega-C shares. In doing so, they threw in their lot with the Taylor Respondents in the competing interests before the Nevada bankruptcy court as opposed to the IWG and the group of unaffiliated shareholders.

(a) Mr. P.B.

[212] Mr. P.B. testified as a witness for the Taylor Respondents. His evidence was taken Wednesday, December 2, 2009 and appears in Tr. 26. Mr. P.B. lived in the same condominium as Elliot Gaum who introduced him to Mega-C and ultimately to Lewis Taylor Sr. He was sufficiently impressed by what he learned about Mega-C from Mr. Gaum and Lewis Taylor Sr. that he transferred US $200,000 to Jared Taylor in exchange for a promissory note and the receipt of 40,000 Mega-C shares.

[213] Since P.B. was the first investor called by the Taylor Respondents, the examinations–in–chief conducted by Lewis Taylor Sr. of those witnesses require comment. Mr. Taylor's examination of Mr. P.B. is a perfect example of the lengths to which Mr. Taylor went to lead his witnesses and to put the answer to his questions in the witnesses' mouths. Beginning at page 10 line 12 of the transcript, the following exchanges are found:

> Q. Thank you. Is it true that in November and December of 2002 you entered into a series of loan transactions with my son Jared Taylor —
>
> A. Yes.
>
> Q. —totalling $200,000 US or — give or take whatever the exchange rate, 300 and some odd thousand dollars Canadian, whatever that exchange would have been at that time?
>
> A. Yes, that's correct.
>
> Q. Did you subsequently receive shares in Mega-C Power?
>
> A. Yes, I did.

Q. Okay. And did they come with a – were they signed by Rene Pardo?

A. They were signed by Mr. Pardo.

Q. Did you make a request as to what names the certificates should be made out to?

A. Yes, I did.

Q. And was that done out satisfactorily and accurately as far as you're concerned?

A. Yes, it was.

Q. Thank you. The certificates, do you continue to have them in their original form and –

A. Yes, I do.

Q. Okay. Did I explain to you that the purpose of the loans, which were made to my son Jared, notwithstanding the promissory notes says for personal purposes were actually to be used for debt reduction concerning a licence agreement I had with Mega-C Power?

A. Yes, that was explained to me at the beginning.

[214] It can be seen that the fundamental question of whether the amounts transferred to Jared Taylor over the history of Mega-C and whether those funds were ever used for the benefit of Mega-C has been answered not by Mr. P.B. but by Mr. Taylor in the manner in which he phrased his questions.

[215] At the close of Lewis Taylor Sr.'s questions, the following exchange took place between the Chair and Mr. Taylor, found at p. 46 starting at l. 11:

> The Chair: When you're conducting your examinations of your witnesses in chief, as we call it, you must try and avoid putting the answer in the witness's mouth. It's the difference between "you understood that such and so" as opposed to "did you understand such and so".
>
> Lewis Taylor, Sr.: So I should emphasize the question more.
>
> The Chair: Yes. In other words, it has to be open, otherwise it's what's called a leading question.
>
> Lewis Taylor, Sr.: It's cheating.
>
> The Chair: No, it's not cheating, it's not cheating. It's unfamiliarity with the business.

Lewis Taylor, Sr.: I'm sorry sir.

The Chair: And I recognize that. But the difficulty is from your point of view, which is why I'm suggesting this to you, is that if you plant the answer then the tendency is to ignore it because it's been planted by the questioner, you see?

Lewis Taylor, Sr.: Would you have an example of one of those questions that I —

The Chair: Yes, you said to the witness, "You understood that this was a loan to Jared" —

Lewis Taylor, Sr.: All right, I understand.

The Chair: "didn't you" sort of thing. Well, when he answers that what else could he say, you see? And so you say, "Did you understand that this was," that's all, because —

Lewis Taylor, Sr.: I'm going to write that right down here.

The Chair: Then the power of the answer is much greater when the questions is open–ended as opposed to closed.

[216] Lewis Taylor Sr.'s manner of examination–in–chief continued with Mr. P.B. and continued throughout the examination of subsequent witnesses called by the Taylor Respondents. Whether by accident or by design, and despite repeated warnings from the Panel, Mr. Taylor continued to lead his witnesses in their examination, thereby bringing into question the reliability of their evidence. For these reasons, the Panel finds Mr. P.B. to be an unreliable witness on the crucial issue of the "loan program".

(b) A.B.

[217] A.B. testified as a witness for the Taylor Respondents. He is a proprietor of a golf driving range west of Toronto and appears to be in his late 70s or early 80s. A.B. was somewhat confused in his evidence with respect to the transaction he entered into involving the Mega-C shares. He said he met a Bob Penner at Whistler who talked about the technology being developed by Mega-C. He visited the location at 100 Caster Avenue and decided to invest in Mega-C to the extent of $5,000. When examined by Lewis Taylor Sr. he was asked the following question:

Q. Is it — was the proposition put to you that you would enter into — the means of getting involved would be through a loan transaction with Jared Taylor?

A. Yes, it was strictly a loan, and my son also bought the same amount of shares as myself.

[218] This exchange was followed by further questions from Mr. Taylor which the Panel find to be leading.

[219] In cross–examination by Mr. Feasby, A.B. first said that he loaned the money to Jared Taylor. Later in his cross–examination, A.B. agreed that he specifically recalled loaning the money to Mega-C (Tr. 28, p. 34, l. 19). The Panel's overall impression of A.B.'s evidence was that he was unclear about many of the matters put to him both through examination–in–chief and cross–examination. His evidence does not assist the Panel on the crucial issue in this case.

[220] In testifying before the Panel, it appears to the Panel that these investors had little choice but to support the Taylor Respondents' characterization of the loan program. For better or for worse, they were allied with the Taylor Respondents.

[221] The manner of Lewis Taylor Sr.'s examination–in chief of these witnesses was to pose leading questions of the most blatant kind. The extract from the evidence of Mr. P.B. is but one example of Mr. Taylor's method of questioning.

[222] Occasionally, a witness would depart from the looked for answers and then self–correct. At Tr. 26, p. 28, Mr. P.B. was asked a question and responded:

> A. Yes. It was after I had purchased some, I don't know if it was after I had purchased all the shares, but it was after I had purchased some shares. Or after I entered into the promissory note, at least one, so …

Lewis Taylor Sr.'s manner of examination–in–chief caused the Panel to draw his attention to its counter–productive results, as noted above.

[223] We approach the evidence of the above witnesses, identified by their initials, with considerable caution. We do so for two reasons – first, the obvious alignment of the witnesses with the Taylor interests and second, the leading questions put to the witnesses by Lewis Taylor Sr. This combination persuades us that their evidence is of little assistance in attempting to determine the good faith of the Taylor Respondents vis–à–vis the loan program.

XV. OTHER WITNESSES CALLED ON BEHALF OF THE TAYLOR RESPONDENTS

[224] Witnesses called by Lewis Taylor Sr. on behalf of the Taylor Respondents in addition to those above include the following persons, identified by their initials. Their evidence can be found in the corresponding volume and page number of the transcripts of the evidence:

- C.K. (Tr. 44 p. 5)
- S.N. (Tr. 48 p. 5)
- J.B.K. (Tr. 26 p. 89)
- B.A. (Tr. 53 p. 4)
- N.T. (Tr. 53 p. 17)

The evidence of the above five witnesses is of no assistance to the Panel. Questions posed to them by Lewis Taylor Sr. were not responsive to the allegations but rather pursued matters peripheral and irrelevant to the Statement of Allegations. The balance of questions were directed

to the financial and other relationships between the Taylor Respondents and Mr. Pardo and were almost totally unrelated to the Statement of Allegations. We find the evidence of these witnesses to be of no assistance.

[225] Two police officers, A.M. (Tr. 44, p. 110) and S.L. (Tr. 44, p. 152), testified as to the manner in which A.M. was interviewed by a member of OSC Staff. We shall have more to say about their evidence later in these reasons.

(a) Marvin Winick

[226] Marvin Winick was under subpoena by Commission Staff and was held for the benefit of Lewis Taylor Sr. who chose to call Mr. Winick as his witness. His evidence is found in Tr. 50, p. 6 and following. Mr. Winick could remember little of the details of his services to Mega-C as someone who kept its accounting records. His answers were confined mainly to "I cannot remember", "I don't remember", and other professions of an inability to recall details of his services. The one salient feature that was introduced from his voluntary testimony before Commission Staff was the fact that the S.B.-2 filing required for Mega-C to be registered on NASDAQ was never completed. His evidence is of little or no assistance to the Panel.

(b) Jurgen Volling

[227] Lewis Taylor Sr. called Jurgen Volling on behalf of the Taylor Respondents. His evidence is found in Tr. 44, p. 35 and subsequently at p. 165. Mr. Volling is a mechanical engineer and has been in the energy business for about 40 years. Through Lewis Taylor Jr. he was introduced to Rene Pardo who offered him a position with Mega-C. His job description included finding clients that could use the Mega-C technology with a major emphasis on utilities and big electricity users. In his examination–in–chief he stated that attempting to sell stock in Mega-C was not part of his job description.

[228] During cross–examination by Mr. Feasby for Staff, Mr. Volling acknowledged that he received a "bonus" from Rene Pardo that amounted to 10% of any shares purchased by people he brought in to Mega-C. He was specific in pointing out that he did not apply the "bonus" of shares for his own benefit but gave them to charitable organizations or pastors of religious groups.

[229] Mr. Feasby's cross–examination of Mr. Volling continued on January 28, 2010. His evidence is found in Tr. 52, p. 68. Mr. Feasby produced to Mr. Volling documents which indicated that he had directed the shares he received as a "bonus" to members of his family. It was clear from Mr. Volling's cross–examination by Mr. Feasby that Mr. Volling had indeed directed shares to which he was entitled by virtue of his introducing investors to Mega-C, to members of his family. He had no credible explanation why he had failed to make this clear in his earlier cross–examination. The Panel has no confidence in the credibility of Mr. Volling and his evidence is of no assistance to the Panel.

(c) Claude Bonhomme

[230] Lewis Taylor Sr. called Claude Bonhomme to testify. His evidence is found in Tr. 52, p. 6 and following. He had known Mr. Taylor for about 15 years, the same period of time he had known Mr. Pardo. He described his business activities as someone who financed and structured

new companies. He had been in that business for 40 years or so. Mr. Taylor Sr. invited Mr. Bonhomme to become a director of Mega-C Tech. He accepted the invitation and joined Lewis Taylor Jr., Paul Pignatelli and Messrs. Shtemberg and Filipenko as a director of Mega-C Tech. He was also dealing with Colin Taylor in connection with Select Molecular, a company Mr. Bonhomme was trying to organize through funding or to find someone to take over the development of its technology.

[231] During cross–examination by Mr. Pardo, Mr. Bonhomme said he asked Mr. Taylor to meet with Mr. Pardo about the technology Mr. Taylor was developing. He said to Mr. Pardo:

> I asked Mr. Taylor to meet with you. I was not privy to your negotiations. I was just told what was going on after the fact, and I advised Mr. Taylor to make sure that he retained a royalty on the technology. (Tr. 52 p. 25 ll. 6–10 inclusive)

[232] Mr. Pardo then asked Mr. Bonhomme about 2.5 or 3 million dollars raised by the Taylor Respondents and if Mr. Bonhomme was under the impression that that money went to Mega-C or to the benefit of C&T. Mr. Bonhomme responded:

> That I can't tell because I was not involved in the receipt of the money but all I can tell you is that that money was secured on the basis there were notes that were supposed to be paid back. (Tr. 52, p. 28, ll. 6–9 inclusive)

In response to a question from Mr. Pardo about the loan program, Mr. Bonhomme responded:

> Well, sir, if I may suggest here, I was not involved with the operation of Mega-C Power, I don't know what you were doing, I haven't seen the books of Mega-C Power, I don't know what that money was advanced for, I haven't seen an audited statement describing what this money was advanced for, so I can't give you any opinion. (Tr. 52, p. 32, ll. 5–11 inclusive)

Mr. Pardo then posed the following question:

> Do you recall in … may have been 2003 or 2004, actually 2004 at the time Sally Fonner was around, do you recall a conversation that we had when I explained to you that I provided Mr. Taylor 3 million shares and you were totally surprised, and that your reaction was, "I should have had 1.5 million of them? Do you recall that conversation?
>
> A: No I didn't tell you 1.5 but I told you I should have received some of the consideration and I agree I told you that, and that's why I got the 500,000 shares that came in. (Tr. 52, p. 36, ll. 12–22 inclusive)

[233] Mr. Bonhomme acknowledged that he received 100,000 shares in Mega-C in 2001 for his investment in NetProfit. He said that the 500,000 shares he expected to receive was something that he and Mr. Taylor Sr. shook hands on and it was a matter of indifference to him whether it came from the 3 million shares or "the previous allotment to Mr. Taylor" (Tr. 52, p. 37, ll. 22–25 inclusive). During cross examination by Mr. Feasby, Staff counsel, Mr. Bonhomme acknowledged that he filed a claim with the bankruptcy court in Nevada for 500,000 shares

describing the basis for his claim as follows: "I am submitting a claim for 500,000 shares of Mega-C Power Corporation which I was to receive directly as a result of Rene Pardo's debt settlement with Jared Taylor and myself" (Ex. 300).

[234] During re–examination by Lewis Taylor Sr., Mr. Bonhomme confirmed to Mr. Taylor that the fact Mr. Taylor had received 3 million shares in Mega-C was a surprise to him and he felt he should have shared in those shares. That was exactly the nature of the conversation he had with Mr. Taylor, said Mr. Bonhomme. He agreed that it was absolutely clear in his mind that Mr. Pardo told him that Lewis Taylor Sr. had received 3 million shares.

[235] Nowhere in his testimony did Mr. Bonhomme confirm the closing submission by Mr. Taylor Sr. that the loan program required Jared Taylor to take the money he received and show it to Rene Pardo, who would then issue shares to the recipient of the note and deduct the amount shown to him from the monies owed by him to Mr. Taylor Sr.

(d) Joseph Koppel

[236] Lewis Taylor Sr. called Joseph Koppel as a witness. His evidence is found in Tr. 50, p. 89 and following in Tr. 51, p. 6. Over the last number of years he has invested in high–tech companies through mutual associates. Mr. Koppel met Mr. Taylor Sr., who introduced Mr. Koppel to Select Molecular, a company developing energy storage. Through Mr. Taylor Sr., Mr. Koppel met Rene Pardo.

[237] He learned that Mr. Taylor planned to join forces with Mr. Pardo regarding a licence for the technology that would be promoted by Mega-C. Because of the help Mr. Koppel gave to Mr. Pardo, his understanding was that Mr. Pardo was going to "gift him" certain shares in Mega-C, much as was to happen with Claude Bonhomme.

[238] We pause to note that Mr. Taylor Sr. conducted his examination of Mr. Koppel by asking leading questions. In Tr. 50, p. 97, l. 19:

> Q. Past support. OK, then. But in any case, the shares that was – – were given to you were an independent transaction or a gift from Mr. Pardo.
>
> A. Yes.
>
> Q. And you may have had an – – a moral obligation or something to continue to help if you chose.
>
> Chair: Well don't put the answer to him, please.
>
> Lewis Taylor Sr.: I am sorry.
>
> Chair: Goodness gracious, Mr. Taylor. After all these weeks – –
>
> Lewis Taylor Sr.: I just don't catch on.

[239] We subsequently learned that Mr. Koppel received 100,000 shares in Mega-C for the help he gave to Mr. Pardo.

[240] Mr. Koppel testified he continued to work closely with Mr. Pardo, on the understanding that he would receive further shares in Mega-C, which never took place. When the OSC intervened, Mr. Koppel flew to Miami and met with Joe Bibace, Joe Piccarelli and Ron Bibace, members of the IWG. He became involved as an informal mediator in an attempt to find some sort of reconciliation between different parties. When the mediation attempts failed, Mr. Koppel retained Toronto counsel and became a member of the group of unaffiliated shareholders of Mega-C, one of the three parties vying to represent the interests of Mega-C shareholders in the bankruptcy. Mr. Taylor Sr. led Mr. Koppel through a detailed discussion of proceedings in the bankruptcy court in Nevada which was of little or no assistance to the Panel. In cross–examination by Mr. Britton, we learned from Mr. Koppel that the bankruptcy proceedings in Nevada were completed, the proposal of Axion including the protection of Mega-C shareholders was accepted by the court and the respective proposals by the Taylors and the unaffiliated shareholders were rejected. We learned further that the Taylor Respondents have appealed the bankruptcy decision to the Superior Court in California.

(e) Colin Taylor

[241] Colin Taylor testified on his own behalf. His evidence is found in Tr. 43, p. 12 and following. He produced in support of the loan program the acknowledgements signed by those persons who had filed their claims in the Nevada bankruptcy, based on the promissory notes they received from Jared Taylor.

[242] He produced an agreement of purchase and sale made between himself and third parties to evidence the fact that he had other shareholders in 1248136 (Ex. 251). The agreement of purchase and sale appears to record that the assets of 1248136 were to be purchased by shareholders of 1248136 other than Colin Taylor. He made this point to submit that if he had instructed anyone to place Mega-C shares in his company, the other shareholders in 1248136 would have been beneficially entitled to the value of those shares. This submission ignores the fact that no certificates were ever issued to 1248136 but rather notionally attributed to it.

[243] In Hearing Brief Vol. 3, Tab 46, pp. 1646–1647 is a direction signed by Colin Taylor addressed to Rene Pardo. In the direction, Colin Taylor asks "please transfer from 1248136 Ontario Limited shares in Mega-C Power Corp. to the following people:" There then follows a list of approximately 175 named persons to whom shares are asked to be transferred ranging from 56,000 shares to 100 shares. In his testimony Colin Taylor explained the document by telling the Panel that he received a telephone call from Rene Pardo asking him to go to the office. The list of shareholders was produced to him by Mr. Pardo who asked him to sign at the bottom because an error had been made in linking the shares with Mr. Taylor's company. Colin Taylor complied with the request and subsequently phoned his brother Jared to tell him what happened. Mr. Jared Taylor told him that if Rene Pardo had asked him to sign the direction that he could trust Rene Pardo.

[244] During his testimony, Colin Taylor exhibited all the tendencies of someone attempting to be as unresponsive as possible to the questions put to him. He said he could not remember why

he incorporated 1248136, he did not know what businesses his brother or his father were associated with, he could not recall whether he was a director of Shardina Estates Limited. When asked why his brother Jared Taylor transferred $544,292.21 to him, he replied:

> A. You know, that was some time ago, and to speak to what the amount was for and for what reason, I can't recall at this time.

[245] Colin Taylor had an opportunity and did cross–examine Rene Pardo. At no time did he put to Rene Pardo his explanation for signing the direction to Mr. Pardo to transfer shares from 1248136. We draw an adverse inference from his failure to do so.

[246] For the above reasons we reject Colin Taylor's evidence in its entirety. We find he attempted to deceive the Panel. The attempt failed.

XVI. ANALYSIS

(a) Standard of Proof and Onus of Proof

[247] The standard of proof that must be met in administrative proceedings is the civil standard of the "balance of probabilities" (*F.H. v. McDougall* [2008] 3.S.C.R. 41 ("*McDougall*") at para. 40). The OSC has adopted and endorsed the statement of the law in *McDougall* (*Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 at paras. 26-28). Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test (*McDougall*, above, at para. 46).

[248] If a respondent has engaged in an activity for which registration is required and for which an exemption is claimed, the onus is on the respondent to prove facts establishing the availability of the exemption (*Re Lydia Diamond Exploration of Canada Ltd.* (2003), 26 O.S.C.B. 2511 at paras. 83-84).

(b) The s. 25 Allegations

(i) The Law

[249] Shortly put, s. 25(1)(a), during the Relevant Period, said no person shall trade in a security unless registered as a dealer, or as a salesperson, partner, or officer of a registered dealer (see Schedule A to these reasons).

[250] "Trade" or "trading" includes a sale or disposition of a security for valuable consideration and any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing (see Schedule A to these reasons). It is not disputed and we find that none of Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Colin Taylor and Jared Taylor was a registrant within the meaning of the *Act*.

[251] The Commission has adopted a contextual approach when determining whether or not conduct constitutes an act in furtherance of a trade:

> There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.
>
> (*Re Costello* (2003), 26 O.S.C.B. 1617 ("*Re Costello*") at para. 47)

[252] In *Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 ("*Re Momentas*"), the Commission stated:

> Such approach requires an examination of the totality of the conduct and the setting in which the acts have occurred, the primary consideration of which is the effects the acts had on those to whom they were directed [citations omitted].
>
> . . . .
>
> The inclusion of the word "indirectly" in the definition of acts in furtherance of trade reflects the intention by the Legislature to capture conduct which seeks to avoid registration requirements by doing indirectly that which is prohibited directly [citations omitted].
>
> (*Re Momentas*, above, at paras. 77 and 79)

[253] As stated in *Re Momentas*, examples of activities found in the jurisprudence that have fallen within the definition of a trade as "acts in furtherance" include:

a. providing potential investors with subscription agreements to execute;

b. distributing promotional materials concerning potential investments;

c. issuing and signing share certificates;

d. preparing and disseminating materials describing investment programs;

e. preparing and disseminating of forms of agreements for signature by investors;

f. conducting information sessions with groups of investors; and

g. meeting with individual investors.

(*Re Momentas*, above, at para. 80)

[254] A person may qualify for an exemption from the registration requirements. During the Relevant Period, the accredited investor exemption was introduced on November 30, 2001, when revised OSC Rule 45-501, *Ontario Prospectus and Registration Exemptions*, took effect ((2001), 24 O.S.C.B. 7011) ("Rule 45-501"). Section 2.3 of Rule 45-501 provides an exemption from the

prospectus and registration requirements if the purchaser purchases the security as principal and is an accredited investor, which is defined in section 1.1 of Rule 45-501 to include:

> (m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000;
>
> (n) an individual whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year.

(ii) Rene Pardo

[255] In his letter to the OSC dated March 11, 2003, Rene Pardo set out in various schedules his transfers of Mega-C shares. He acknowledges his then solicitor told him that his transfers of Mega-C shares "may not have been undertaken in full compliance with Ontario securities laws" (Hearing Brief Vol. 1, Tab 2, p. 3).

[256] The Schedule C to the letter of March 11, 2003 (p. 25) records transfers of Mega-C shares as "gifts" which Mr. Pardo claimed were exempt. However, by his own evidence Mr. Pardo testified many of those transfers were made from Lewis Taylor Sr.'s allocated shares, in payment of his obligations previously incurred to those transferees. We find these transfers to have been made for valuable consideration, nullifying any possible "gift" exemption.

[257] Albert Ciorma testified as to the "Funds In" and "Funds Out" of the Mega-C bank account from August 20, 2001 to February 29, 2004. Mega-C received from investors Cdn. $979,515 and US $4,473,750. In the same period Mega-C paid to Rene Pardo Cdn. $400,000 approximately and US $400,000 approximately. At the then rate of exchange this represents approximately $1,000,000 Cdn. (Vol. 14, Tab 112, p. 7765 and following).

[258] It is not disputed that Mr. Pardo signed all but two or three of the share certificates issued by Mega-C, acts which we find to be in furtherance of trading. We find that Mr. Pardo participated in numerous meetings with investors at which he made representations to potential investors which we find to have been made in furtherance of a sale or disposition of a security for valuable consideration. Based on the foregoing, we find Mr. Pardo to have infringed s. 25 of the *Act* unless he qualifies for an exemption from s. 25.

[259] We reject Mr. Pardo's submission that his conduct did not contravene s. 25(1)(a) because he did not sell the shares for valuable consideration; we accept Staff's submission that the definition of "trade" and "trading" in the Act does not require that the person who traded receive valuable consideration for the transaction, and in any event, we find that Mr. Pardo received valuable consideration for certain trades.

[260] Mr. Pardo also says he relied on a legal opinion to the effect that the shares of Mega-C he transferred were freely tradeable.

[261] Assuming, without deciding, that the defence of reliance on legal advice is available to Mr. Pardo, on the facts of this case the defence will fail unless he can establish four things:

- the lawyer had sufficient knowledge of the facts on which to base the advice;
- the lawyer was qualified to give the advice;
- the advice was credible given the circumstances under which it was given; and
- that Mr. Pardo made sufficient enquiries and relied on the advice.

(*Re YBM Magnex International Inc.* (2003), 26 O.S.C.B. 5285; *Blair v. Consolidated Enfield Corp.* (1993), 15 O.R. (3d) 783 at 796–801 (C.A.), aff'd [1995] 4 S.C.R. 5)

[262] In cross–examination, Lewis Taylor Sr. asked Mr. Pardo whether they had attended together at the offices of a lawyer, Mr. Bouchard. He asked further if they had asked Mr. Bouchard whether the shares were freely tradeable. Mr. Pardo responded "most likely" (Tr. 35, p. 144, l. 25). In cross–examination, Mr. Pardo could not remember having a conversation with Mr. Bouchard. He confirmed that he had never mentioned Mr. Bouchard's alleged legal advice in any of his interactions with Staff. The general reference to Mr. Bouchard is so vague and incomplete that it falls far short of meeting the requirements referred to above. The evidence is of no assistance to Mr. Pardo establishing the exemption he claims (Tr. 42, p. 151, l. 5).

[263] In his examination–in–chief, Mr. Pardo claimed that he received advice from a lawyer by the name of Bozidar Crnatovic. Mr. Pardo's evidence about the advice he received from Mr. Crnatovic was unfocused and difficult to follow. Apparently, according to Mr. Pardo, he was told that shares sold by a vendor who had received those shares as a gift could be sold in a secondary market transaction and from that point forward were freely tradeable. Mr. Pardo did not get this opinion in writing because he did not see it as important. He did tell the Taylors about the advice he received, that the shares were freely tradeable.

[264] Mr. Pardo then produced Ex. 250, a recorded telephone conversation that he had with Mr. Crnatovic in August 2001. A reading of the transcript of that telephone conversation persuades us that Mr. Crnatovic hardly remembered who Mr. Pardo was and clearly confirms that he gave no legal opinion on freely tradeable shares before Mr. Pardo called him. He had some unclear things to say about gifted shares and freely tradeable shares at the time of the telephone conversation. There is no evidence Mr. Crnatovic was qualified to give the opinion that Mr. Pardo says he did. It is impossible to conclude that Mr. Crnatovic had sufficient knowledge of the facts on which to base any of the advice Pardo says he received. There is of course no document setting out the advice Mr. Crnatovic is supposed to have given. The evidence of the legal opinion falls far short of meeting the requirements noted above to advance a defence of reliance on a legal opinion. We find no due diligence defence available to Mr. Pardo based on his having received a legal opinion that gifted shares thereby became freely tradeable.

[265] Based on the foregoing, we find Rene Pardo to have contravened s. 25(1)(a) of the *Act*.

(iii) The Taylor Respondents

[266] Turning to the Taylor Respondents, there is ample evidence that Lewis Taylor Sr., Lewis Taylor Jr. and Jared Taylor engaged in meetings with a wide variety of investors at which they made representations that were designed to persuade people to invest in Mega-C. We find these to be acts in furtherance of trading.

[267] Lewis Taylor Jr. prepared an assortment of materials which were also designed to persuade people to invest in Mega-C. It is not disputed by the Taylors that Mr. Jared Taylor received the funds from the "lenders", arranged for them to receive their shares and distributed the funds from his personal bank accounts to members of his family and corporations in which they were involved (Ex. 194).

[268] As noted earlier, Colin Taylor attempted to persuade the Panel that his direction to Rene Pardo to transfer shares from 1248136 was merely an act to correct a mistake that Mr. Pardo made. His attempt failed for reasons given earlier in this decision. We find he participated with other members of his family in trading in securities.

[269] In response to the s. 25(1)(a) allegations, the Taylor Respondents rely on the definition of trading found in s. 1(1) of the *Act*. It provides any sale or disposition of a security for valuable consideration constitutes trading but exempts a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith. The Taylors submit that the "loan program" exempts them from being subject to the definition of trading.

[270] We reject the Taylor submissions that the loans made under the "loan program" were made in good faith for the following reasons.

[271] We accept Albert Ciorma's evidence that of the total "Funds In" to Jared Taylor's Canadian and US dollar accounts, only US $49,990 went to Mega-C. Most investors were told and believed the money was to be spent on developing the technology (Tr. 14, Tab 112, p. 7753).

[272] We accept the uncontradicted evidence of Albert Ciorma which shows funds of the Taylor Respondents going into Jared Taylor's accounts and being withdrawn from them. In the Canadian account, the Taylor Respondents (including associated companies) put in approximately Cdn. $102,000 more than they took out. In the US account they took out approximately US $1,979,000 more than they put in. Thus the amount in favour of the Taylor Respondents is approximately US $1,900,000.

[273] Albert Ciorma establishes that total Canadian "Funds In" for "miscellaneous" is approximately Cdn. $1,160,000 and miscellaneous Funds Out is $1,800,000 leaving approximately Cdn. $640,000 unaccounted for. In the US dollar account the Funds In and Out are virtually a wash. Both miscellaneous "Funds Out" seemed to have been spent on personal, household, credit card and cash expenses. Certainly, none of the money went to Mega-C.

[274] As noted earlier, the evidence from the oral testimony of investors called by Staff compels us to find that most investors thought they were buying shares. This evidence supports the hearsay evidence to the same effect obtained from investors through the questionnaires and the telephone interviews, to which we give considerable weight. For reasons earlier expressed,

we find the evidence of the Taylor witnesses on the legitimacy of the loan program to be unconvincing.

[275] Neither Lewis Taylor Sr. nor Jared Taylor testified when given the opportunity. In civil cases, an unfavourable inference may be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party (Sopinka Lederman and Bryant, *The Law of Evidence in Canada*, 3rd Ed. (Markham: Lexis Nexis Canada 2009), p. 377, para. 6.449).

[276] If any two persons could shed light on the bank account activities of Jared Taylor it would be he or his father. We accept Mr. Greenspan's submission in the letter of April 28, 2004 (Hearing Brief Vol. 2, Tab 16, p. 1075) that Lewis Taylor Sr. "was involved in or made all major decisions on behalf of the Taylor family". Jared Taylor was, of course, the person in charge of the bank accounts. From their failure to testify, we draw an adverse inference against their submission that the loans were made in good faith. (See *Miller v. Carley*, 2009 CanLII 39065 (ON S.C.) and the authorities referred to therein.)

[277] Jared Taylor was in his early 20s at the time of the so-called loans. Applying ordinary life experience and common sense, we conclude that hundreds of strangers would not have chosen to advance large sums of money to Jared Taylor in return for a promissory note that bore no interest rate and no payment due date. We find the large majority of "lenders" accepted the arrangement because they believed it was the only way to acquire Mega-C shares.

[278] Accordingly, we conclude that the exemption is not available. Lewis Taylor Sr. as the deviser of the scheme, Lewis Taylor Jr. as the creator of the "prospectus" literature, Jared Taylor as the manager of the money and Colin Taylor as the director of distribution of shares from 1248136, all participated in trading and acts in furtherance of trading of Mega-C shares for which there was no prospectus and while being non–registrants.

[279] The Taylors attempted to shelter under the alleged legal advice passed on to them by Rene Pardo about freely tradeable shares. The defence is even frailer than that advanced by Mr. Pardo on his own behalf and has no merit, for the reasons outlined above.

[280] Based on the foregoing, we find Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 to have contravened s. 25(1)(a) of the *Act*.

(c) The s. 53(1) Allegations

[281] Section 53(1) of the *Act* provides that no person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director. "Distribution" for the purposes of our decision is defined in s. 1(1) of the *Act* as a trade in securities of an issuer that have not been previously issued. The definition is a broad one, and includes "any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution".

[282] We find Mega-C to be an issuer within the definition of that term found in s. 1(1) of the *Act*. We have found that each of the named respondents have traded in securities. We further find that in many instances, each of the respondents traded in shares of Mega-C not previously issued; we reject Mr. Pardo's submission that certain of the shares were issued in the secondary market. Rene Pardo issued thousands of Mega-C shares to persons whom he has not established to be accredited investors. A.R., whose evidence is found in Tr. 34, p. 6, l. 4 and following, was but one of many such investors. On the schedules to his March 11, 2003 letter to the OSC, Rene Pardo showed A.R. on Schedule B as a "consultant" and on Schedule F as an accredited investor. On the evidence of A.R., we find he was neither. This is but one example of Mr. Pardo's attempts to cast his trading and distribution of Mega-C shares in a manner to attract what he thought were exemptions under the *Act*.

[283] We have found that the Taylor Respondents had control over the disposition of shares from Mega-C not previously issued. The shares have been described in the evidence as "notional" or "earmarked". All the Taylor Respondents traded in Mega-C shares as we have found earlier. We have previously found that the loan program was not exempt from the trading definition nor were the Mega-C shares freely tradeable. The only remaining exemption available to the Taylor Respondents on the question of distribution is the exemption for distribution to accredited investors. We are not satisfied the Taylor Respondents proved their entitlement to reliance on the accredited investor exemption because there is ample evidence that many transfers of Mega-C shares were made to investors who were not accredited investors and where no other exemption to the registration and prospectus requirements applied. There is ample evidence that Lewis Taylor Sr. and Colin Taylor directed shares to be issued and there is ample evidence that Jared Taylor and Lewis Taylor Jr. acted in furtherance of the distributions.

[284] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 to have contravened the provisions of s. 53(1) of the *Act*.

(d) The s. 38 Allegations

[285] The provisions of s. 38 of the *Act* are found in Schedule A to these reasons. Subsection (2) of s. 38 prohibits a person from giving an undertaking relating to the future value or price of the security with the intention of effecting a trade. We find that the evidence in this case does not support a finding that the various representations made by the respondents constitute an undertaking. An undertaking carries with it the sense of a promise or guarantee that something will take place. It would be an unusual sales pitch designed to effect a sale of shares that did not contain within it some speculative discussion about how high the shares might go. The majority of investors purchase shares in the hope they will go up in value. (See *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 at paras. 164-170.) On the evidence in this case, we find no such undertakings.

[286] Subsection (3) of s. 38 prohibits any representation that a security will be listed on any stock exchange or that application has been or will be made to list such security upon any stock exchange with the intention of effecting a trade in a security except with the written permission of the Director. Two exemptions apply — if an application has been made to list the securities being traded and securities of the same issue are currently listed on any stock exchange, or the stock exchange has granted approval to the listing conditional or otherwise, or has consented to

or does not object to the representation. Neither of the exemptions listed in subsection (3) of s. 38 has been established. We reject Mr. Pardo's submission that he did not contravene s. 38(3) if he did not receive any valuable consideration as a result of making a prohibited representation; we accept Staff's submission that s. 38(3) requires only that the representation be made with the intention of effecting a trade in a security. We find that at one time or another, all the respondents but Colin Taylor represented to investors that an application would be made or had been made to list Mega-C shares on a stock exchange. We are not satisfied that Colin Taylor made such a representation.

[287] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr. and Jared Taylor to have contravened s. 38(3) of the *Act*.

XVII. THE TAYLOR RESPONDENTS' MOTIONS

[288] Over the course of this proceeding, the Taylor Respondents and Mr. Usling brought a variety of motions, some while represented by counsel, others while unrepresented. Mr. Greenspan and Mr. Platt represented some or all of the Taylors at different times. Mr. Sofer and Ms. Fuerst represented Gary Usling from time to time.

[289] To make sense of the motions, it is first necessary to remember that the motions brought by Mr. Usling no longer require adjudication as his matter has been resolved. Nevertheless, the Taylors from time to time indicated in their material that they relied on certain submissions made in the Usling motions. The Panel has not lost sight of those reliances.

[290] To complicate matters further, various submissions by the Taylor Respondents throughout the motions before and during the Hearing have been advanced in support of not just one, but several of their motions. There were continuing themes advanced by the Taylors to support their motions which include the following:

- Delay on the part of Staff in their conduct of the proceeding.
- Staff raising at the last minute the conflict of interest question involving J.F., a lawyer with a large Toronto firm.
- Bias on the part of Staff against the Taylor Respondents throughout the proceeding.
- Bias on the part of the Panel hearing the stay motion of August 6–7, 2008.
- Institutional bias of the Panel conducting the hearing on the merits.
- Failure on the part of Staff to provide particulars of the allegations.
- Improper disclosure of compelled testimony and failure to take steps to minimize the prejudice flowing from such disclosure.
- Failure by Staff to obtain and preserve all evidence relevant to the allegations.
- Failure of Staff to disclose the material relied on in applying for the s. 11 Orders.

[291] In Commission decisions issued in 2007 and 2008, the motions for a stay of proceedings and the motions based on infringement of the Taylor *Charter* rights were found to be premature and were put over to the hearing on the merits, so that a complete record would be available to consider the motions. Indeed, on September 9, 2009, Commissioner Carnwath heard a motion for adjournment brought by Mr. Pardo and a motion for a stay brought by the Taylor Respondents based on similar submissions. The stay motions were put over once again so that a complete record would be available.

[292] The hearing on the merits having been finally set for September 30, 2009, the first three days of the hearing on the merits were spent arguing the motions. Some usefulness can be derived from this exercise to the extent that the Taylors identified the motions that they submitted were still in issue and the reasons supporting their submissions. In effect, the relief sought was a stay of proceedings based on the following four separate motions:

- Delay
- Failure to provide disclosure and particulars
- Staff and Panel bias
- Breaches of the *Charter*

(a) Delay

[293] We reject the Taylor Respondents' motion for a stay of proceedings based on delay. We do so for a number of reasons. From the outset, the matter was destined to be complicated. Six individuals and two corporations were named in the title of proceeding, all of whom were entitled to representation. All were, at one time or another, represented by counsel; those counsel changed from time to time until eventually, each of the named respondents represented himself or itself. Simple matters such as an adjournment required consultation among the parties and counsel in Order to find a convenient date. Moreover, the investigation carried out by Staff was complicated by the sheer number of corporations and individuals, many of whom played a significant role in Mega-C. Recordkeeping by Mr. Pardo of the shareholders of Mega-C was deficient. The source of shares issued to investors was difficult to determine.

[294] Staff opened the Mega-C file in January of 2003 and the Statement of Allegations and Notice of Hearing were issued on November 16, 2005, some two years and 10 months later. We find this period to be well within the limits of what such an investigation would require in terms of time, given the way the Mega-C shares were transferred and the number of persons involved. We find the initial investigation did not contribute to the delay.

[295] The Statement of Allegations was issued on November 16, 2005. The first appearance was held on January 31, 2006 and there followed a number of appearances dealing with disclosure and other pre-hearing matters, as well as the Nevada bankruptcy. Beginning in late 2006, many appearances were taken up with *Charter* issues brought by Mr. Sofer on behalf of Mr. Usling. At no time between November of 2005 and October 18, 2007 did anyone object to the adjournments that were ordered by various Panels from time to time.

[296] On October 18, 2007, Mr. Usling requested an adjournment of the hearing on the merits scheduled for October 29, 2007 because he had terminated his retainer of Mr. Sofer. The adjournment request was put over to October 23, 2007. Mr. Sofer's withdrawal required Mr. Usling to get new counsel, which he did in the person of Ms. Fuerst. She appeared on November 5, 2007 and asked for an adjournment to make the necessary preparations for the hearing. All parties agreed that an adjournment to November 2008 was needed because of counsel schedules, etc. The hearing on the merits was adjourned to November 3, 2008.

[297] The Taylor Respondents made much of the prejudice they suffered because of the year's adjournment created by Mr. Sofer's conflict of interest. They alleged that Staff brought a particular conflict of interest to the attention of Mr. Sofer days before the October 18, 2007 pre–hearing conference. What is clear from the transcript of that pre–hearing conference is that Mr. Sofer had been alerted in August of 2006 of the potential conflict involving someone from his firm who was appearing in the Nevada bankruptcy court. The nature of that appearance required counsel to undertake that he had no connection to any of the persons before the bankruptcy court. Thus it was for Mr. Sofer to consider his position and take whatever course of action he felt was appropriate regarding his retainer. It was not for Staff to make that decision for him until such time as he indicated how he planned to proceed.

[298] During the course of the pre–hearing conference of October 23, 2007, Staff counsel also told the Panel that she had discovered two other possible conflicts of Mr. Sofer a few days before. One of these apparently involved J.F., a lawyer in Mr. Sofer's firm, who was a Mega-C investor and a proposed witness for Staff. There is insufficient evidence for us to find that Mr. Usling ended his retainer of Mr. Sofer because of something counsel learned a few days before the pre–hearing conference. In any event, the withdrawal of Mr. Sofer resulted in a year's delay. We cannot conclude that period alone is sufficient to support a stay of proceedings based on delay.

[299] Following the motions hearing that took place on August 6–7, 2008, an Order was issued on October 1, 2008 requiring a case management conference to be held by October 31, 2008. The matter returned on October 22, 2008 at which time Mr. Platt, counsel for Jared Taylor and Colin Taylor, requested an adjournment on medical grounds. No objection was taken and the hearing on the merits which had been set for November 3, 2008 was adjourned to February 19, 2009. Whatever the reason for this delay of the hearing on the merits, the delay was not caused by Staff.

[300] Taking all the above into account, we reject the Taylor Respondents' motion for a stay of proceedings based on delay.

(b) Failure to provide disclosure and particulars

[301] The Taylor Respondents submit that Staff failed to make timely disclosure and to provide particulars of the allegations. That failure prevented them from making full answer and defence and denied them procedural fairness, say the Taylors. They point out that on at least two occasions Staff declared disclosure to be complete, only to provide further disclosure at a later date. This is evidence of Staff's bias against the Taylors, they submit.

[302] At the outset there were three tranches of disclosure. On May 31, 2006, before Commissioner Susan Wolburgh Jenah, Staff declared disclosure to be complete. Additional disclosure followed. Successive motions for further disclosure and particulars were brought and on August 23, 2007, further particulars were Ordered so as to connect individual respondents to the allegations.

[303] Following the hearing on August 6–7, 2008, on October 1, 2008, Staff was Ordered to review files to ensure full disclosure and to provide an inventory of documents which Staff submitted need not be disclosed. On October 17, 2008, Staff complied with this Order.

[304] The Taylors seemed to take the view that once Staff declared disclosure to be complete they were barred from subsequent disclosure. At the same time, they sought further disclosure which Staff provided. In matters of this kind the investigation is open–ended and can continue up to the hearing of the merits, as long as disclosure and particulars are timely and the Statement of Allegations and Notice of Hearing are amended with respect to any new allegations or request for relief. Albert Ciorma's report (Hearing Brief Vol. 14) and the particulars contained therein is an example of the ongoing nature of an investigation.

[305] Arguments over disclosure and particulars are not unknown to the litigation process, often resulting in contested motions as in this case. We make the following two observations. First, the material filed in this matter is voluminous and detailed. Fourteen Hearing Briefs, 21 binders of disclosure and 311 exhibits were before us. One might have concluded there was too much material rather than too little, had it not been carefully indexed. Second, there was no evidence the Taylors were unable to make full answer and defence because of lack of disclosure or failure to provide particulars. Cross–examinations of Ms. Flynn and Mr. Ciorma each took approximately 1 week. The Taylor Respondents were able to find and produce dozens of documents from the disclosure binder to put to witnesses they cross–examined. We note that of the 311 exhibits, approximately one-third deal with the Nevada bankruptcy and were introduced by Mr. Taylor Sr.

[306] We reject the submission that Staff failed to make timely disclosure and provide sufficient particulars, such that the Taylor Respondents were denied procedural fairness and prevented from making full answer and defence.

(c) Staff Bias

[307] The Taylors submit that Staff exhibited bias towards the Taylor Respondents throughout the proceeding. They identify Staff's intervention in the Nevada bankruptcy, the failure to call certain members of Staff involved in the investigation, the failure to prevent the circulation of compelled evidence, delay caused by Staff (previously dealt with in these reasons), and an attempt by Staff counsel to suborn a police officer witness.

[308] Staff, in its wisdom, took an active part in the Nevada bankruptcy, limited to efforts to prevent the Taylor Respondents from purporting to represent the interests of Mega-C shareholders. This action by Staff was taken in the public interest, Staff submits. In the result, the Axion proposal for the protection of Mega-C shareholders in the bankruptcy was accepted by the bankruptcy court and the proposals by the Taylor Respondents and the unaffiliated Mega-C

shareholders were rejected. More than anything else, it was this finding of the bankruptcy court and Staff's participation that caused Lewis Taylor Sr. to conduct himself in a manner we find ungovernable. He missed no opportunity to criticize Mr. Britton, Staff counsel, accusing him of fraud and witness tampering. His recurring theme was that "his technology" has been stolen from him.

[309] An examination of the e-mails generated by Staff while in Nevada did nothing to dispel Mr. Lewis Taylor Sr.'s conviction that Staff was "out to get him".

[310] Tyler Hodgson created an investigation note on February 2, 2006. Addressed to Gerald Gordon, US counsel for the Trustee in Bankruptcy, the note contains the following:

> I communicated in a without prejudice discussion that the OSC had an interest in ensuring that a Nevada court did not find the Taylor loans to be legitimate and made in good faith and would consider making the appropriate representations to this end to the Nevada bankruptcy court. (Ex. 15)

[311] In a further investigation note dated October 1, 2006, Mr. Hodgson says:

> Gordon states that the plan is to convert Mega-C into Axion shares and hope that Axion "hits a home run". The significant remaining obstacle for the estate is to wipe out the Taylor claim. (Ex. 31)

[312] On several occasions, Lewis Taylor Sr. lost control of his emotions to the point where the Chair would ask him if he needed "five minutes". The offer was usually accepted. On one occasion, following a ruling from the Chair, Mr. Taylor advanced on the Panel in a threatening and intimidating manner (Tr. 36, pp. 86–87).

[313] We find that Staff intervened in the bankruptcy because it concluded it was in the public interest to protect Ontario Mega-C shareholders from the Taylor Respondents. This action by Staff required Staff to prefer the interests of the Axion Mega-C shareholders against the interests of those shareholders represented by the Taylor Respondents and by the group of unaffiliated shareholders. Presumably Staff took this action because of its confidence in the merit of the allegations. It was a risk Staff was prepared to take. Staff was right and justified in intervening.

[314] Staff's decision not to call the Staff employees involved in the investigation was within the prosecutorial discretion of how Staff wishes to conduct its case. There is no property in a witness – it was open to the Taylor Respondents to call whatever witnesses they chose to support their position in response to the allegations.

[315] The compelled evidence of the Taylor Respondents was given to Mr. Hausman, Canadian counsel for Mega-C in the bankruptcy. Since Mega-C was a respondent in the proceeding, Staff had an obligation to disclose the evidence generated by the compelled testimony of the Taylors to Mega-C. Subsequently, that compelled testimony fell into other hands in the Nevada bankruptcy, although Staff took no active part in the release of that compelled testimony. Staff used its best efforts to recover compelled testimony from the persons into whose hands it fell. The Taylors say this is just another example of Staff bias.

[316] We find that while it would have been preferable for Staff to be more specific about the uses to which the compelled testimony could be put in the Mega-C bankruptcy, Staff's failure to do so does not support a finding of bias against the Taylor Respondents.

[317] The evidence of two police officers called by Lewis Taylor Sr. is more disturbing. A.M., a member of the Toronto Police Service testified as follows: he was called by Staff counsel, on September 26, 2007. As a result of that conversation, A.M. formed the opinion that Staff counsel was attempting to influence his evidence as a witness in the Mega-C proceeding. He arranged a meeting with that counsel and two other members of Staff, one of whom was an investigator who was a former police officer of 20 years experience. As a precaution, A.M. arranged for a colleague, S.L., to sit in on the meeting. A.M. had made notes of the meeting and was given permission to refer to them. As the meeting progressed, A.M. warned Staff counsel about attempts at intimidating him, at which point counsel said "I guess I have to talk to people I know in Toronto Police to have you make a statement". Matters deteriorated and the former police officer suggested that he be left alone with A.M. and S.L. This was done. After an exchange of views, the Staff investigator concluded the interview by saying "I don't think we are going to see each other again and that should be the end of everything". A.M. was unshaken in cross–examination by Staff.

[318] S.L. confirmed that he was at the interview on September 27, 2007. He confirmed that A.M. felt that Staff counsel was trying to intimidate him and trying to coerce him into saying something that he did not want to say. He confirmed the reference by Staff counsel to knowing senior officers or higher ranking officers in the police service and that A.M. could be compelled to be a part of the investigation. S.L. formed the opinion that Staff counsel wanted A.M. to change his testimony from one position to another and that's what he objected to.

[319] A.M. and S.L. testified on January 15, 2010. The respondents' evidence ended on March 22, 2010. There was ample time for Staff to call any one of the three members of Staff present at the meeting with A.M. on September 27, 2007. No evidence was called in reply to counter the evidence of A.M. and S.L. We find that the events of that day happened much as the two officers described them. The actions of Staff counsel were unwarranted, inappropriate and overreaching.

[320] Does the investigatory approach of Staff counsel with the two officers support a conclusion that Staff were biased against the Taylor Respondents? We find that it does not. The attempt to influence A.M.'s testimony was unsuccessful. It takes more than an over–zealous attempt to enlist a favourable witness, to support a finding of bias.

[321] For the above reasons, we reject the Taylor Respondents' submission that the proceeding against them should be stayed on the basis of Staff bias.

(d) Hearing Panel Bias

[322] On the second day of the Hearing, October 1, 2009, Lewis Taylor Sr. sounded a note that remained constant through the balance of the Hearing. At Tr. 2 pp. 158–159, the following exchange took place between the Chair and Mr. Taylor Sr.

> Chair: So as I understand your submission, your submission to us is that you cannot receive a fair hearing from this Panel; that is myself and my colleague, Mr. Kelly. Is that it?
>
> Mr. Lewis Taylor Sr.: To put it bluntly, yes, sir.
>
> Chair: All right.
>
> Mr. Lewis Taylor Sr.: Okay? And I'd like to take the personality out of it. I have nothing but respect for you, sir. You've been brought in three days ago.
>
> Chair: So would it be fair to say that it wouldn't matter who was sitting here? You wouldn't get --
>
> Mr. Lewis Taylor Sr.: It would not matter who it was.
>
> Chair: All right. I understand your submissions.
>
> Mr. Lewis Taylor Sr.: We're talking about the Commission itself…

[323] As we understand the submissions of Lewis Taylor Sr. and Jared Taylor, they point to the fact that Vice-Chairs Turner and Ritchie presided over the motions heard on August 6 and 7, 2008. In doing so they heard the allegations of the Taylors about the misconduct of Staff during the course of the investigation. The two Commissioners had to know of the serious nature of those allegations.

[324] Nevertheless, say the Taylors, the same two Commissioners later appeared before the Standing Committee of the Legislature and endorsed the enforcement activities of Staff, all the while knowing of the serious allegations made by the Taylors in their August 6 and 7, 2008 motions hearing. Therefore, the Taylors submit, the Commission is biased in favour of Staff and therefore biased against the Taylors.

[325] This in turn leads to a submission that any OSC hearing panel is prejudiced against the Taylor Respondents. Institutionally, as the argument goes, the Commission in its adjudicative role will never deal fairly with the Taylors because to do so would reflect on the reputation of Staff and call into question the submissions of Vice-Chairs Turner and Ritchie before the Standing Committee.

[326] It is difficult to know how to respond to such an argument. There is no evidence whatsoever to conclude that Vice-Chairs Turner and Ritchie were motivated to conclude as they did in the motion hearing of August 6-7, 2008 by other than their consideration of the material before them. The Ontario Legislature has mandated the structure of the Commission and how it is to function. Internal guidelines are in place to protect against concerns of actual and perceived bias. We reject the Taylor Respondents motion for a stay based on the institutional bias of the Commission.

(e) Breaches of the *Charter*

[327] Allegations of *Charter* breaches were advanced in several motions brought by Gary Usling and the Taylor Respondents. The allegations were based on a variety of submissions, some already rejected in the preceding discussions of motions alleging delay, failure to disclose and bias.

[328] Since Mr. Usling and the Taylors often incorporated each other's submissions by reference in their respective materials, we have endeavoured to deal with all of them. It should be remembered that the *Charter* arguments at the various motion conferences centred on whether they should abide the full hearing on the merits. Three different Panels found they should.

[329] Many *Charter* submissions involve the s. 11 Orders and the subsequent compelled testimony. The Taylor Respondents submit that:

- the word "expedient" in s. 11 is unconstitutionally vague;
- Staff breached the confidentiality expectations of the respondents and the implied undertaking rule;
- Staff breached its obligation to make full and frank disclosure to the Commission when seeking the s. 11 Orders;
- Staff selectively enforced s. 16 and the implied undertaking rule;
- Staff failed to comply with its disclosure obligations to the respondents;
- Staff failed to preserve evidence, namely videotapes made by Kirk Tierney;
- Staff failed to investigate and prosecute fairly.

[330] We reject the submission that word "expedient" in s. 11 in unconstitutionally vague. If the OSC is satisfied that it is appropriate, practical, or fit for the purpose of protecting the public, that is sufficient to make the appointments to investigate pursuant to s. 11.

[331] We reject the submission that Staff breached the respondents' expectation of confidentiality and the implied undertaking rule. Earlier in these reasons, we found that Staff had an obligation to disclose the compelled testimony of the respondents to the Canadian counsel for Mega-C in the bankruptcy hearing. At the time, Mega-C was a respondent in this proceeding and entitled to the disclosure. We further found that Staff took no active part in the release of the compelled testimony in the Nevada bankruptcy proceeding. We find no merit in this submission.

[332] We reject the submission that Staff selectively enforced s. 16 and the implied undertaking rule. Apparently, in litigation in Ontario between Mr. Usling and the insurer for Mega-C over an insurance matter, Staff objected to Mr. Usling producing the disclosure in that litigation. We find Staff was entitled to do so. Moreover, the issue was restricted to the interests of Mr. Usling, not the Taylor Respondents.

[333] We reject the submission that Staff breached an obligation to make full disclosure to the Commission when seeking the s. 11 Orders in this case. The respondents' submissions on this point are based on cases involving injunctions, wiretap authorizations and search warrants, where the potential for irreparable harm from highly intrusive state intervention are present. It is no surprise that courts require full disclosure from an applicant in such situations.

[334] Provincial securities legislation gives much less power to investigators. The OSC can appoint persons to conduct investigations where there is an important social element of protection of the public. The question was considered by Iacobucci J. in a commentary on the investigative power of the British Columbia Securities Commission:

> Clearly, this purpose of the *Act* justifies enquiries of limited scope. The *Act* aims to protect the public from unscrupulous trading practices which may result in investors being defrauded. It is designed to ensure that the public may rely on honest traders of good repute able to carry out their business in a manner that does not harm the market or society generally. An inquiry of this kind legitimately compels testimony as the *Act* is concerned with the furtherance of a goal which is of substantial public importance, namely, obtaining evidence to regulate the securities industry.
>
> (*British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3, at para. 35)

[335] Staff's obligation is to satisfy the Commission that it should appoint one or more persons as it considers expedient for the due administration of Ontario securities law or the regulation of capital markets. The information provided in support of a s. 11 Order should contain a concise summary of the relevant facts sufficient to engage the OSC's jurisdiction to make the Order. Anything more than that would impair the OSC's obligation to investigate expeditiously and its ability to carry out its mandate – to provide protection to investors from unfair, improper or fraudulent practices.

[336] We reject any suggestion that the Taylor Respondents were willing to testify voluntarily. That willingness was subject to conditions that Staff properly treated as a refusal.

[337] We reject the submission that Staff failed to comply with its disclosure obligations. Earlier in these reasons we found no merit in this submission.

[338] We reject the submission that Staff failed to preserve evidence that might have assisted the Taylor Respondents. This submission flows from the evidence of Kirk Tierney who testified that he took videos of some presentations carried out at 100 Caster Avenue by, among others, the Taylor Respondents. He gave them, he says, to Peter Coulis, one of the OSC investigators. Mr. Tierney says that if the tapes are missing, Peter Coulis must have lost them. Assuming without deciding that Peter Coulis did lose the videotapes, we find no prejudice to the Taylor Respondents. Kirk Tierney was not videotaping the presentations to investors to create a record favourable to the Taylors. He was inserted in Mega-C to preserve the technology for the IWG. We can come to no other conclusion than that the tapes would reveal the Taylor Respondents making representations to investors that we have earlier found were acts in furtherance of trading

in securities and acts contrary to s. 38. We fail to see how the videotapes would assist the Taylors.

[339] We reject the submission that Staff failed to investigate and prosecute fairly. In support of their position, the respondents rely on an article written by Birkenbosch and Casey. However, the authors support the position taken by Staff on this question. At page 3 of their article, we find:

> As part of an investigation into chelation therapy, the College of Physicians and Surgeons sought to review the records of a physician in *Strauts v. College of Physicians and Surgeons (British Columbia)*. The doctor refused, contending that procedural fairness required that he be shown copies of any letters of complaint against him. The British Columbia Court of Appeal affirmed the Order requiring him to make his patient records available for inspection by investigators appointed by the College and stated the following with respect to procedural fairness in the investigative stage:
>
> > The approach of the Courts with respect of the College has been to recognize its purpose and functions as being to serve and protect the public. That is clear from the statute itself. That end is not accomplished by imposing on the College in its investigative function the panoplies of administrative law that protect the members at the adjudicative stage of the College's proceedings. In my opinion the Court should not find itself cloaking the individual member of the College with rights at the stage of investigation – as is the case here – that would or could work contrary to the public interest. Where the stage is adjudicative the member is and must be protected by all of the principles over the years which have been developed by the Courts to ensure fairness at every stage of the adjudicative process.
> >
> > Here we are concerned with the investigative process and in my opinion the Courts must be mindful of the public factor and duties of the College to protect the public interest when it comes to what principles of fairness the College must follow at that stage.
>
> Although the results in the foregoing cases vary according to their facts, the general analyses in the decisions can be reconciled. The decisions in which it was held that there was no duty to act fairly were those in which the investigative stage had no decision–making element. On the other hand, when the investigator had the power to draw conclusions or make findings as to the rights of a party, the duty was often found to apply.
>
> (Wendy–Anne Berkenbosch and James T. Casey, "The Duty of Fairness in the Investigative Stage of Administrative Proceedings" (2002), 40 Admin. L.R. (3d) 50; *Strauts v. College of Physicians and Surgeons of British Columbia* [1997] B.C.J. No. 1518)

[340] Staff has no decision–making power in carrying out an investigation. Following investigation, Staff's only power is to issue a Statement of Allegations, where appropriate, and to prove those allegations in a hearing before the Commission. Moreover, we are not persuaded that Staff investigated or prosecuted unfairly, but rather the reverse.

[341] We find nothing in the activities of Staff in the conduct of this matter that would constitute a breach of the *Charter*.

(f) Conclusion on the Taylor Respondents' Motions

[342] The relief sought by the Taylors is a stay of proceedings. Our task is to determine whether the four areas identified above ─ delay, failure to provide disclosure and particulars, bias and *Charter* breaches attract a finding of abuse of process. In doing so we propose to examine the cumulative effect of our individual findings, in the light of *R. v Regan*, [2002] 1 S.C.R. 297 ("*Regan*").

[343] In *Regan*, the Supreme Court of Canada concluded that a stay of proceedings will be granted only as a remedy for an abuse of process in the "clearest of cases". Regardless of whether the abuse causes prejudice to the accused, because of an unfair trial, or to the integrity of the justice system, a stay of proceedings will only be appropriate when two criteria are met: (i) the prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome; and (ii) no other remedy is reasonably capable of removing that prejudice.

[344] We find no abuse of process in these proceedings. The cumulative effect of the overall delay, the sequential tranches of disclosure and particulars, the allegations of bias and breaches of the *Charter*, while troubling in some respects does not rise to the level of abuse of process required to call for a stay of proceedings. The conduct complained of was not so oppressive or vexatious as to violate the fundamental principles of justice underlying the community's sense of fair play and decency. (See *Regan* paras 50 and 53-55.)

[345] Our decision on the merits stands.

XVIII. CONCLUSION

[346] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited contravened s. 25(1)(a) of the *Act*, contrary to the public interest.

[347] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited contravened s. 53(1) of the *Act*, contrary to the public interest.

[348] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., and Jared Taylor contravened s. 38(3) of the *Act*, contrary to the public interest.

[349] We direct the parties to appear before the Panel on September 28, 2010 at 2:30 p.m. at which time the Panel will set the date for a sanctions and costs hearing.

[350] DATED in Toronto this 7th day of September, 2010.

"James D. Carnwath"	*"Kevin J. Kelly"*
James D. Carnwath	Kevin J. Kelly

SCHEDULE A

Part XI — Registration

25. (1) Registration for trading — No person or company shall,

(a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

Part XV — Prospectuses — Distribution

53. (1) Prospectus required — No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

38. (1) Representations prohibited — No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he, she or it or any person or company,

(a) will resell or repurchase; or

(b) will refund all or any of the purchase price of, such security.

(2) **Future value —** No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

(3) **Listing —** Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,

(a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or

(b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

127. (1) Orders in the public interest — The Commission may make one or more of the following orders if in its opinion it is in the public interest to make the order or orders:

1. An order that the registration or recognition granted to a person or company under Ontario securities law be suspended or restricted for such period as is specified in the order or be terminated, or that terms and conditions be imposed on the registration or recognition.

2. An order that trading in any securities by or of a person or company cease permanently or for such period as is specified in the order.

2.1 An order that acquisition of any securities by a particular person or company is prohibited, permanently or for the period specified in the order.

3. An order that any exemptions contained in Ontario securities law do not apply to a person or company permanently or for such period as is specified in the order.

4. An order that a market participant submit to a review of his, her or its practices and procedures and institute such changes as may be ordered by the Commission.

5. If the Commission is satisfied that Ontario securities law has not been complied with, an order that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order,

i be provided by a market participant to a person or company,

ii. not be provided by a market participant to a person or company, or

iii. be amended by a market participant to the extent that amendment is practicable.

6. An order that a person or company be reprimanded.

7. An order that a person resign one or more positions that the person holds as a director or officer of an issuer.

8. An order that a person is prohibited from becoming or acting as a director or officer of any issuer.

8.1 An order that a person resign one or more positions that the persons holds as a director or officer of a registrant.

8.2 An order that a person is prohibited from becoming or acting as a director or officer of a registrant.

8.3 An order that a person resign one or more positions that the person holds as a director or officer of an investment fund manager.

8.4 An order that a person is prohibited from becoming or acting as a director or officer of an investment fund manager.

8.5 An order that a person or company is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

9. If a person or company has not complied with Ontario securities law, an order requiring the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.

10. If a person or company has not complied with Ontario securities law, an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the noncompliance.

1. (1) "trade" or **"trading"** includes,

(a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,

(b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,

(c) any receipt by a registrant of an order to buy or sell a security,

(d) any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in clause (c) of the definition of "distribution" for the purpose of giving collateral for a debt made in good faith, and

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

SCHEDULE B

SCHEDULE "B"

[redacted], [redacted]

Kindly provide answers to the following questions:

1. How and when were you first introduced to Mega-C Power?
   BY A FRIEND WHO WORKED FOR MEGA-C. Oct 2002.

2. Who asked you to invest in the securities of Mega-C Power?
   MY FRIEND IN MEGA-C. HE HAD ALREADY INVESTED A SIZEABLE AMOUNT.

3. When were you asked to invest?
   SEPT. 2002 AFTER A DEMONSTRATION MEETING AT MEGA-C OFFICE - 100 CASTER AVE

4. Can you describe what technology Mega-C Power was promoting?
   THE TECHNOLOGY WAS DESCRIBED AS BEING A HIGH CAPACITY RECHARGEABLE ELECTRICAL STORAGE CELL WITH THE ADD-ON CAPABILITIES TO AN INFINITE SIZE.

5. Did you attend a presentation or witness any demonstrations of the Mega-C Power technology by any of its representatives? If so, when and where did it occur? Who conducted the demonstration?
   [redacted] ATTENDED AT 100 CASTER A PRESENTATION & DEMONSTRATION CONDUCTED BY SKIP TAYLOR my son also attended with me. An Environmental Consultant with United Nations attended the demonstration as well.

6. What were you told at the demonstration?
   THIS TECHNOLOGY WOULD BE THE ANSWER TO WIND & SOLAR STORAGE. WOULD BE USED IN HUNDREDS OF APPLICATIONS - THEY HAD A WHEEL CHAIR - SAID IT WAS BEING RUN BY THESE STORAGE BATTERIES - 3HR CHARGE TO GIVE 8 HRS OF OPERATION

7. Was the product described as merely in the development/testing stage, about to start production, or already in production?
   READY TO START PRODUCTION. FACILITIES HAD BEEN ACQUIRED FOR PRODUCTION TO BEGIN IN SPRING 2003.

8. Did you purchase the Mega-C Power common shares as a result of any presentation or demonstration? If so, who accepted your payment for the shares?
   AS A RESULT OF ABOVE DEMONSTRATION, I PURCHASED SHARES [redacted] THROUGH JURGEN VOLLING, WHO WORKED FOR MEGA-C AT THAT TIME.

SCHEDULE C

Wednesday November 17, 2004; 2:00
PM Interviewer: David Adler

Mega-C Power Corporation – Questions for Shareholders

A. Background Information on Shareholders:

- Full Name: **[Redacted]**
- Date of Birth: **Will not answer**
- Home Address *(or confirm home address on Investor List)*: **As on list.**
- Telephone Numbers: **[Redacted]**
- Education University: **degree**
- Occupation: **[Redacted]**

  Prior Investment Experience

  - Brokerage account(s) (*do they have any?*): **No**
  - Classes of securities invested in *(stocks, bonds, mutual funds, GICs:* **None**
  - Risk tolerance: **Not applicable**
  - Self-described level of securities knowledge: **"next to nil":**

B. Introduction to Mega-C:

- How did you first find out about Mega-C? (If *referral, by who?)* **From a friend [Redacted] who gave her Sylvano's phone number.**
- Other than your investment, do you have any relationship with Mega-C or anyone who works at Mega-C? (i.e. *are you a friend, relative, etc. of person selling shares)* ***No.***
- When did Mega-C first contact you? By what means? *(telephone, invitation to presentation, etc.)*How did Mega-C get your name

- Who did you speak to with respect to Mega-C? To your knowledge, did they work for Mega-C? *(Get the name of everyone spoke with – at least the first name, if can't remember full name)* **Sylvano – did not know last name, thinks he is an investor as well...**

C. Mega-C Presentations:

- Did you attend any presentations with respect to Mega-C? **No**
- Who invited you?
- Where was it held? When?Who else was present?
- Who gave the presentation? What was said?
- Did you take any notes? *(If so, ask for a copy)*

D. Mega-C Shareholdings

- How many Mega-C shares do you own? **400**
- How did you come to hold these shares? (i.e., *did you purchase them, were they given to you, etc.)* Purchase she thought, but when she sent in cheque she received a paper from Jared Taylor saying that he considered it a loan, so she asked for her money back. She never heard anything from him and eventually she received the share certificate.
- Do you know who held the shares before you? Did you understand that you were buying them straight from Mega-C (i.e. *from treasury)* or did you understand that you were buying them from someone else's shareholdings? Whose? **Straight from Mega-C**
- Did you receive a share certificate? When? Who signed **it? Yes, in the spring or early summer 2003 – could not remember who signed it.**

(i) If Purchased Mega-C Shares:

- How many shares did you purchase? When? **400 December 2002**
- At what price per share? **Total of about CAN $3200; she think it was US $5.00**
- How did you pay? *(cheque/bank draft)* **Cheque in Canadian funds.**
- Who was the cheque payable to? (i.e. *Mega-C, NetProfit, numbered company, Rene Pardo, Gary Usling, etc.)* **Jared Taylor**
- Do you have a copy of the cancelled cheque? *(if so, ask them to send a copy)* **No**

- Who did you give the cheque to? **Mailed to Jared Taylor.**

- Did you sign any documents when you purchased the shares? What did you sign? Who asked you to sign it?

- *If they were asked to sign a "promissory note" and a "debt settlement agreement", why* were you asked to sign these documents? What explanation was given for what you were signing? What were you told? By whom? *(attempt to ascertain whether they thought they were lending money or purchasing shares)*

- Prior to your purchase of Mega-C shares, were you provided with any material on Mega-C? Did you receive an offering memorandum? **No**

(ii) If shares obtained otherwise:

- When did you obtain Mega-C shares?

- Who did you receive them from?

- Why did you receive Mega-C shares? (i.e. *service provided, invested in previous companies, were friends of Pardo, Usling, Taylors, were owed money by someone)*

- ***If service provided,*** what service did you provide?

    - Who did you provide it to?

    - Was there a written contract governing the services to be provided? *(if so, obtain copy)*

- ***If invested in previous company (i.e. NetProfit),*** **what previous business did you invest in?**

    - Whose business was it?

    - How much did you invest?

    - What was your understanding of why you were receiving Mega-C shares? (attempt to ascertain whether they thought they were exchanging their shares or whether the Mega-C shares were simply a gift)

    - Were you asked to return your shares in *(previous company invested in)? Who* asked you this?

    - Who did you return them to? When?

- ***If they received shares as a result of a debt owing,*** who owed you money?

    - In relation to what? Is there an underlying contract?

    - Did you sign any documentation saying you were receiving Mega-C shares in satisfaction for the debt? Did you keep a copy? (f so, *obtain a copy)*

E. Representations

- What were you told about your investment in Mega-C? By whom? **Sylvano told her it was wonderful investment. When she phoned him "he did all the talking."**

- Before you purchased the shares, were you told anything about the expected return on the investment or its future value or price? What were you told? Who told you this? **Her friend Bill told her if she buys the shares in December they will double in value by February and triple by May. She said she thought Bill was just repeating what Sylvano told him.**

- Before you purchased the shares, were any representations made regarding listing or applying to *list* Mega-C shares on a stock exchange? Which stock exchange? What were the representations? Who told you this? (i.e.: *Will be listed? Applied or will apply to be listed?)* **It would be listed in the near future.**

- Were you told if the shares could be traded? What specifically were you told? Who told you this? **Nothing said to her.**

- What were you told about the investment risks? Who told you this? **Nothing said to her.**

- What were you told that the investment funds would be used for? Who told you this? **For an energy cell.**

F. Accredited Investor Exemption

- Did _____ *(the person who sold them Mega-C shares)* ask you about your financial situation? Did you tell them anything about your financial situation? Was there any discussion regarding the .value of your assets? Net worth? **No**

- Any discussion regarding your income? **No**

- Any discussion regarding whether you can afford the investment? **No**

- Did any material you received from Mega-C make reference to the term "accredited investor"? What material? What did it say? When did they send it? Did you keep it? *(if so, obtain a copy)* **No**

- Are you familiar with the term "accredited investor"? *If yes_* **No**

    - What do you understand it means? How did you gain this understanding?

    - Would you fit within the definition of an accredited investor?

    - Did anyone tell you whether or not you qualified as an accredited

investor? Or that the OSC recognized you as an accredited investor?

- Would either of the following descriptions apply to you at the time of your initial purchase?

  (i) Excluding your home, your financial assets less liabilities exceeds one million dollars. [OSC Rule 45-501 s.l.l "accredited investor" (m)]; **No**

  (ii) In each of the two most recent years, your net income before taxes exceeded

  $200,000; or your combined net income with your spouse exceeded $300,000 *and* it is likely that you will exceed the same net income level in the current year [OSC Rule 45-501 s.l.l "accredited investor" (n)]; **No**

- **Did you sign a certificate stating that you were an accredited investor? How many did you sign? Did you retain a copy?** *(if so, ask them to send in a copy)* **No**

G. Conclusion

Is there any other information that you would like to tell us? She thinks the Taylors had been to Bill's house, "they made use of his hospitality."