Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
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IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

PRO-FINANCIAL ASSET MANAGEMENT INC.,
STUART MCKINNON and JOHN FARRELL

REASONS AND DECISION
(Motion for Exemption and Registration)

Hearing:	June 30, 2015		
Decision:	September 11, 2015		
Panel:	Christopher Portner	-	Commissioner
Appearances:	Alistair Crawley Michael Byers	-	For Stuart McKinnon and Pro-Financial Asset Management
	Derek Ferris Catherine Weiler	-	For Staff of the Commission

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REASONS AND DECISION

I. INTRODUCTION

[1] On June 30, 2015, the Ontario Securities Commission (the "**Commission**") held a hearing to consider a motion (the "**Motion**") brought by Stuart McKinnon ("**McKinnon**") seeking (i) an order pursuant to section 147 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") that would exempt him from the provisions of Part XI of the Act with respect to his application for registration as a mutual fund dealing representative; (ii) an order granting his application for registration as a dealing representative for De Thomas Financial Corp. ("**De Thomas**"); and (iii) an order that he be exempt from the restriction on acting as a registered individual at two separate firms set out in section 4.1 of National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registration Obligation*s ("**NI 31-103**").

[2] In bringing the Motion, McKinnon is, in essence, seeking an order of the Commission that he be granted registration as a mutual fund dealing representative without complying with the registration requirements of the Act, pending the eventual determination of allegations brought by staff of the Commission ("**Staff**") against him in an enforcement proceeding commenced pursuant to section 127 of the Act.

[3] For the reasons that follow, I have concluded that the Motion should not be granted.

II. BACKGROUND

[4] McKinnon was the founder of Pro-Financial Asset Management ("**PFAM**") and has been a director and directing mind of PFAM since its incorporation on November 6, 2002. PFAM was registered as a dealer in the category of exempt market dealer ("**EMD**"), which registration was suspended by a temporary order of the Commission dated May 17, 2013. McKinnon was registered as a dealing representative for PFAM from January 21, 2004 to May 17, 2013.

[5] McKinnon is also the former president and chief executive officer of Legacy Investment Management Inc. ("**Legacy"**) which carried on business as a mutual fund dealer until its registration was suspended on December 4, 2013. McKinnon was registered as a dealing representative and Ultimate Designated Person of Legacy in the categories of mutual fund dealer and EMD. In or about November 2012, McKinnon caused Legacy to transfer certain managed assets and advisors to De Thomas with the intention of transferring his own registration as a dealing representative to De Thomas.

[6] By letter dated December 21, 2012, a Manager of the Compliance and Registrant Regulation Branch of the Commission (the "**CRRB**") advised McKinnon that Staff had recommended to the Director, as such term is defined in subsection 1(1) of the Act (the "**Director**"), that PFAM's application for investment fund manager registration be refused and that its registration as an adviser in the category of portfolio manager and as a

dealer in the category of EMD be suspended (the "**December 21, 2012 Commission Letter**").

[7] The December 21, 2012 Commission Letter provided a detailed summary of Staff's most serious issues with respect to PFAM's suitability for registration which, in general terms, were (i) integrity, including honesty and good faith, particularly in dealings with clients and compliance with Ontario securities law; (ii) proficiency, including prescribed proficiency and knowledge of the requirements of Ontario securities law; and (iii) solvency, as it is an indicator of a firm's capacity to fulfill its obligations and can be an indicator of the risk that an individual will engage in self-interested activities at the expense of clients.

[8] In his Affidavit in support of the Motion sworn on June 19, 2015 (the "**McKinnon Affidavit**"), McKinnon states that, during the period from February 21, 2013 to March 28, 2014, he made repeated written requests, directly and through others, that Staff process the transfer of his dealing representative registration to De Thomas. He also states that, on December 3, 2013, he caused a Form 33-109F7 to be submitted to the Commission requesting the reinstatement of his registration.

[9] In a letter dated February 28, 2013, one of the Senior Legal Counsel of the Enforcement Branch of the Commission wrote to counsel at the time for McKinnon and PFAM, and advised him as follows:

> On December 12, 2012, CRR Staff made it clear to Stuart McKinnon in a meeting that it was of the view that Stuart McKinnon was not suitable for registration under the Securities Act (Ontario) (the **Act**).
>
> …
>
> The Proposal envisions Stuart McKinnon acting as a registered dealing representative sponsored by De Thomas Financial, and as a permitted individual with Legacy (as shareholder) and PFAM (as officer). Staff's concerns with Stuart McKinnon's integrity, proficiency and solvency do not disappear in the event of a reorganization. Stuart McKinnon should be aware that CRR Staff will not recommend that his registration under the Act be granted in any capacity, and is prepared to substantiate its concerns raised in the Recommendation. Any future proposal should not include Stuart McKinnon holding registrable positions or engaging in registrable activity. [Emphasis added.]

[10] On April 13, 2013, PFAM delivered a report to Staff which stated that there was a discrepancy of $1,222,549.45 resulting in a shortfall in the amount available to pay all outstanding liabilities to the holders of certain principal protected notes issued by Société Générale (Canada) and BNP Paribas (Canada) for which PFAM acted as an adviser, selling agent and note administrator.

[11] Pursuant to temporary orders dated May 17, 2013, as extended and amended, and January 14, 2015, the Commission suspended PFAM's registration as a dealer in the category of

EMD and as an advisor in the category of portfolio manager, and its activities as an investment fund manager and, pursuant to an order dated February 27, 2015, the Commission suspended PFAM's registration as an advisor in the category of portfolio manager. PFAM no longer carries on any registrable activities.

[12] On December 9, 2014, the Commission issued a Notice of Hearing in connection with a Statement of Allegations filed by Staff on the same date (the "**Statement of Allegations**") in which Staff makes a number of allegations relating to PFAM, McKinnon and John Farrell, the Chief Compliance Officer of PFAM, including allegations that:

(a) PFAM failed to deal fairly, honestly and in good faith with its clients, in breach of its obligations under subsection 2.1(1) of the Commission's Rule 31-505 – *Conditions of Registration* ("**Rule 31-505**");

(b) PFAM failed to exercise the degree of care, diligence and skill a reasonably prudent person would exercise in the circumstances thereby breaching the standard of care for Investment Fund Managers under paragraph 116(b) of the Act;

(c) PFAM failed to maintain the minimum capital required of a registered firm and failed to report its capital deficiency, contrary to section 12.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**");

(d) PFAM failed to keep satisfactory books, records or other documents, contrary to subsection 19(1) of the Act and contrary to sections 11.5 and 11.6 of NI 31-103;

(e) PFAM failed to establish, maintain and apply policies and procedures that establish an adequate system of controls and supervision, contrary to section 11.1 of NI 31-103 and subsection 32(2) of the Act;

(f) McKinnon breached his obligations as Ultimate Responsible Person and Ultimate Designated Person of PFAM, contrary to former subsection 1.3(2) of Rule 31-505 and, on and after September 28, 2009, contrary to subsection 5.2 of NI 31-103; and

(g) McKinnon and Farrell, as officers and directors of PFAM, authorized, permitted or acquiesced in numerous breaches by PFAM of Ontario securities laws.

[13] On June 12, 2015, McKinnon filed Form 33-109F4 – *Registration of Individuals and Review of Permitted Individuals* requesting that he be registered as a dealing representative of De Thomas. Staff indicates through the Affidavit of Michael Denyszyn, a Senior Legal Counsel in the CRRB, sworn June 24, 2015 that the application has been assigned to a registration officer in the CRRB.

[14] The dates for the hearing on the merits with respect to the Statement of Allegations have not yet been set. The parties are scheduled to appear before the Commission on September 15, 2015, by which time Staff should have disclosed its witness list and summaries and indicated any intention on the part of Staff to call an expert witness and

the respondents should have filed any notices of motion relating to requests for the disclosure of additional documents.

III. THE ISSUES

[15] The issues arising from the Motion are as follows:

(a) Does the Commission have jurisdiction to hear the Motion?

(b) Should the Commission grant McKinnon registration as a mutual fund dealing representative without requiring him to comply with the requirements of the Act?

IV. POSITION OF THE PARTIES

[16] McKinnon submits that there is no reasonable prospect that Staff of the CRRB will recommend that he be registered as a dealing representative pending the disposition of this proceeding, a submission that is substantiated by, among other things, the communication from Staff described in paragraph [9] above. McKinnon also submits that requiring him to incur unnecessary time and cost by going through the motions of a process whose result is a practical certainty would render an unfair outcome that would waste the resources of McKinnon, Staff and the Commission.

[17] McKinnon submits that, for the purposes of the Motion, the Commission can assume that the allegations in the Statement of Allegations are provable. McKinnon is, however, of the view that Staff's allegations, which form the basis of Staff's opposition to his registration, do not concern his registration as a dealing representative, there is no evidence that he poses any risk to his former clients or potential future clients and that there is no public interest requiring protection to justify suspending his registration. He also submits that, if the Commission concludes that the allegations set out in the Statement of Allegations need to be determined before deciding whether McKinnon can be registered in any capacity, the proceeding should proceed expeditiously to a hearing on the merits.

[18] Staff opposes McKinnon's application for exemptive relief on the basis that (i) the Commission does not have jurisdiction in the first instance to make the requested order; (ii) it is prejudicial to the public interest to grant an exemption under section 147 of the Act given this proceeding under section 127 of the Act, PFAM's previous compliance issues which resulted in three sets of terms and conditions, the December 21, 2012 Commission Letter and certain orders of the Commission; and (iii) granting the Motion would create a problematic precedent for Staff which would allow applicants to by-pass established processes for applications for exemptive relief.

[19] Staff submits that the facts of the matter do not meet the test for determining whether a motion is appropriate for determination on a preliminary basis or during the hearing on the merits and that determining whether McKinnon should be granted the requested exemption or registration cannot be resolved without the Commission hearing at least some of the contested facts and evidence that will be presented at the hearing on the merits.

[20] Staff submits that McKinnon's past conduct demonstrates a lack of integrity such that he is unsuitable for registration and that this position, in Staff's view, will be established through evidence to be called at the hearing on the merits. Staff further submits that McKinnon's submissions relating to his conduct at PFAM understate the seriousness of the breaches of the Act alleged in the Statement of Allegations.

V. ANALYSIS

A. Does the Commission have jurisdiction to hear the Motion?

[21] Subsection 26(1) of the Act provides that applications for registration, reinstatement of registration or an amendment to an existing registration must contain such information in such form as the Director may reasonably require. Subsection 27(1) of the Act, entitled *Registration, etc.,* provides that:

> On receipt of an application by a person or company and all information, material and fees required by the Director and the regulations, the Director shall register the person or company, reinstate the registration of the person or company or amend the registration of the person or company, unless it appears to the Director,
>
> (a) that, in the case of a person or company applying for registration, reinstatement of registration or an amendment to a registration, the person or company is not suitable for registration under this Act; or
>
> (b) that the proposed registration, reinstatement of registration or amendment to registration is otherwise objectionable.

[22] Section 25.01 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c S.22 provides that "a tribunal has the power to determine its own procedures and practices and may for that purpose make orders with respect to the procedures and practices that apply in any particular proceeding".

[23] Section 147 of the Act provides that:

> "Except where exemption applications are otherwise provided for in Ontario securities law, the Commission may, on the application of an interested person or company and if in the Commission's opinion it would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose exempting the person or company from any requirement of Ontario securities law".

[24] *McQuillen, Re*, (2014), 37 O.S.C.B. 8580 ("***McQuillen***"), was a matter in which the applicant requested, among other things, an exemption under section 147 of the Act from the 30-day time limit for bringing the application or that the Commission otherwise waive compliance with any such requirement. In opposing the application, Staff submitted that the Commission had no jurisdiction to waive the 30-day notice requirement under subsection 8(3) of the Act. The Commission held that, although there appeared to have been no prior Commission decisions addressing the application of

section 147 of the Act, there is "no reason why section 147 should not be interpreted by its terms to apply to both substantive and procedural requirements of the Act." (*McQuillen, supra* at para. 63.) While I agree with the foregoing conclusion which is consistent with the text of section 147, it should be noted that section 147 includes an exception, namely, that no exemption applications are otherwise provided for in Ontario securities law and a proviso that it would not, in the Commission's opinion, be prejudicial to the public interest to make the exemption order being sought.

[25] In its submissions relating to the issue of jurisdiction, Staff states that it is not taking the position that the Commission does not have jurisdiction under section 147 of the Act to waive any requirements, procedural or substantive, imposed by Ontario securities law, but, rather, that the granting of an order waiving any such requirement does not confer on the Commission jurisdiction under section 27 of the Act to make a decision with respect to registration which is a decision to be made by the Director. (Transcript of the Motion Hearing, June 30, 2015, p. 48, lines 8-19.)

[26] Staff submits that it is the Director and not the Commission that has the authority and responsibility in the first instance to determine whether an applicant for registration is suitable for registration or whether the proposed registration is otherwise objectionable. Staff further submits that the only authority granted to the Commission under section 27 of the Act relating to registration is set out in subsection 27(4) of the Act which authorizes the Commission or the Director to require a registrant that is a registered dealer, registered adviser or registered investment fund manager to direct its auditor to conduct an audit or financial review.

[27] Staff submits that National Instrument 33-109 - *Registration Information* ("**NI 33-109**") sets out the application process for firm and individual registration and the prescribed forms including the Form 33-109F4 filed by McKinnon to which reference is made in paragraph [13] above. As noted by Staff in its Memorandum of Fact and Law, the Form submitted by McKinnon is required to be submitted to the regulator by section 2.2 of NI 33-109. Under National Instrument 14-101 – *Definitions*, the regulator for the purposes of NI 33-109 is the Director.

[28] Pursuant to subsections 7.1(1) and (2) of NI 33-109, exemptions from NI 33-109, i.e., exemptions from providing registration information, in whole or in part, may only be granted by the Director, subject to such conditions or restrictions as may be imposed in the exemption.

[29] McKinnon also seeks an order that he be exempt from the restriction on acting as a registered individual at two separate firms set out in subsection 4.1(1) of NI 31-103 which states that:

> A firm registered in any jurisdiction in Canada must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if either of the following apply:

(a) the individual acts as an officer, partner or director of another firm registered in any jurisdiction in Canada that is not an affiliate of the first-mentioned registered firm;

(b) the individual is registered as a dealing, advising or associate advising representative of another firm registered in any jurisdiction in Canada.

[30] Staff submits that the authority to grant exemptions from any requirement of NI 31-103 is set out in subsections 15.1(1) and (2) of the Instrument which is to the same effect as subsections 7.1(1) and (2) of NI 33-109 described in paragraph [28] above, namely, that exemptions from the Instrument, in whole or in part, may only be granted by the Director subject to such conditions or restrictions as may be imposed in the exemption.

[31] As noted in paragraph [24] above, the exception in section 147 of the Act is that no exemption applications are otherwise provided for in Ontario securities law. Subsections 7.1(1) and (2) of NI 33-109, which deals with registration information, and subsections 15.1(1) and (2) of NI 31-103, which deals with registration requirements and exemptions, expressly provide that only the Director is empowered to deal with applications for exemptions from the provisions of such National Instruments.

[32] It would appear from the foregoing that, notwithstanding the provisions of section 147 of the Act, the Commission may not have the jurisdiction to issue an order exempting McKinnon from complying with the registration requirements under the Act and the related National Instruments described above. Given my finding below relating to the second issue which I must address, namely, whether the Commission should grant McKinnon registration as a mutual fund dealing representative without complying with the requirements of the Act, it is not necessary for me to decide the issue, particularly as it arose in connection with an application of an interlocutory nature and not as part of a hearing on the merits which would have permitted more detailed oral and written submissions.

B. Should the Commission grant McKinnon registration as a mutual fund dealing representative without requiring him to comply with the requirements of the Act?

1. Legal Framework

[33] The purposes of the Act as set out in section 1.1 are:

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in those markets.

[34] Subsection 2.1(2) of the Act states that the primary means for achieving the purposes of the Act include "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants."

[35] As set out in paragraph [21] above, subsection 27(1) of the Act provides that, on receipt of an application from a person together with the required information, documents and fees, the Director shall register the person, reinstate the registration of the person or amend the registration of the person unless it appears to the Director that the person is not suitable for registration under the Act or that the proposed registration or reinstatement is otherwise objectionable.

[36] In considering whether a person or company is not suitable for registration, subsection 27(2) of the Act provides that the Director shall consider whether the person has satisfied (i) the requirements prescribed in the regulations relating to proficiency, solvency and integrity; (ii) such other requirements for registration, reinstatement of registration or an amendment to a registration, as the case may be, as may be prescribed by the regulations; and (iii) such other factors as the Director considers relevant.

[37] Although integrity is not defined in the Act, *Companion Policy 31-103 - Registration Requirements and Exemptions* (**"CP 31-103")** provides some guidance with respect to assessing fitness for registration for individuals with respect to proficiency, integrity, and solvency. In particular, under the heading *Assessing fitness for registration – individuals* in section 1.3 of CP 31-103, the subparagraph entitled *(b) – Integrity* provides that:

> Registered individuals must conduct themselves with integrity and have an honest character. The regulator will assess the integrity of individuals through the information they are required to provide on registration application forms and as registrants, and through compliance reviews. For example, applicants are required to disclose information about conflicts of interest, such as other employment or partnerships, service as a member of a board of directors, or relationships with affiliates, and about any regulatory or legal actions against them.

[38] In *Sterling Grace & Co* (2014) 37 O.S.C.B 8298 ("***Sterling***"), the Commission made the following findings:

> **173** In assessing the integrity of applicants for registration, the Commission has considered factors including, the person or company's dealings with clients, compliance with Ontario securities laws and the use of prudent business practices (*Wall, Re* (2007), 30 O.S.C.B. 7521 at para. 23; cited in *Istanbul, Re* (2008) 31 O.S.C.B. 3799 at para. 66 ("***Istanbul***") and *Sawh, Re* (2012) 35 O.S.C.B. 7431 at para. 257). In our view, those considerations are equally applicable in matters of whether a registration should be suspended or revoked or whether it is appropriate to impose terms and conditions upon it. We agree that an individual's honesty and candour in their dealings with the Commission is also a relevant consideration with respect to integrity (*Pyasetsky Director's Decision*, (2012) 35 O.S.C.B. 2092 at paras. 17-18).

> **174** We agree with the findings of a director of the Alberta Securities Commission in John Doe that the concept of integrity invoked in the registration regime is broader than dishonesty. Rather, it encompasses a duty of care and while a registrant may not be dishonest, he or she may 'be reckless or lackadaisical over whether one complies with the rules or requirements of one's industry' (John *Doe, Re* (2010), 33 O.S.C.B. 1371 (Ont. Securities Comm.) at para. 37, citing *Doe, Re*, 2007 ABASC 296, (Alta. Securities Comm.))
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> (*Sterling, supra* at paras. 173 and 174.)

[39] The Commission has accepted that "conduct related to registrants' activities in matters not related to securities laws may be relevant because it may indicate compromised integrity, particularly where there is a connection between the conduct and the registrant's role and/or position as a securities industry professional." The Commission acknowledged that the conduct of the applicant did not affect his clients, and it was not alleged that the applicant breached Ontario securities laws. Nevertheless, the Commission found that the applicant lacked integrity and denied the applicant's request for transfer of his registration as a mutual funds dealing representative. (*Istanbul, supra.* at paras. 67 and 70.)

[40] It is clear from the foregoing, including, in particular, the provisions of subsection 2.1(2) of the Act, that, before I could grant McKinnon registration as a mutual fund dealing representative, I would have to assess his fitness for registration on the same, or substantially the same, basis as the Director would by considering his integrity, solvency and proficiency. The foregoing would require, at a minimum, detailed written submissions that would provide the information required under the statutory regime relating to registration or a further hearing that would address such requirements.

2. Concerns with Respect to Integrity, Proficiency and Solvency

[41] Staff has raised a number of issues that relate to McKinnon's suitability for registration including issues relating to integrity, proficiency and the solvency of PFAM. Detailed allegations in this regard are set out in the December 21, 2012 Commission Letter, which, as an attachment to the McKinnon Affidavit, forms part of the record relating to the Motion, and, more recently, in the Statement of Allegations. Many of the allegations, if proven, would represent serious breaches of the Act on the part of McKinnon.

[42] McKinnon submits that none of the allegations in the Statement of Allegations pertain to his role as a mutual fund dealing representative but rather to his role as part of the management of a registrant (Transcript of the Motion Hearing, June 30, 2015, p. 17, lines 7-16). McKinnon further submits that there is an absence of evidence in the record to indicate that there are any problems with him serving in the capacity as a mutual fund dealing representative (Transcript of the Motion Hearing, June 30, 2015, p. 19, lines 24-25, p.20, lines 1-2).

[43] Staff submits that, if I was prepared to consider granting the Motion, Staff should be afforded the opportunity to lead evidence with respect to McKinnon's suitability for

registration. In this regard, Staff submits that the common element of *Sterling* and *Istanbul* is that registration can only be granted on the basis of a full and complete evidentiary record and refers to the detailed process relating to registration set out in the Act and the related National Instruments.

[44] Based on the foregoing, I conclude that given (i) the serious and comprehensive nature of the allegations against McKinnon; (ii) the detailed level of the investigation and prior inquiries into McKinnon's and PFAM's activities that led to the December 21, 2012 Commission Letter and the Statement of Allegations; and (iii) the need for a detailed evidentiary record relating to McKinnon's suitability for registration, it would not be in the public interest to by-pass the requirements of the Act relating to registration in this matter and, accordingly, that I should not grant the Motion. I should note in this regard that I make no finding with respect to the merits of any of the allegations against McKinnon and PFAM.

3. Motions Prior to the Hearing on the Merits

[45] Although Staff submits that the Commission does not generally conduct preliminary determinations of matters involving disputed evidence separately from the hearing on the merits, it cites with approval the Commission's decisions in *A Re* (2007), 30 O.S.C.B. 6921 ("***A***") and *Mega C Power Corp.(Re)* (2007) 33 O.S.C.B. 8245 ("***Mega C***") in which the Commission determined that it has broad discretion with respect to the adoption of its own procedures which must be exercised with due regard to all circumstances, interests and the rights of the parties.

[46] The Commission's decisions in *A* and *Mega C* set out the following criteria for the purpose of determining whether a motion is appropriate for determination on a preliminary basis or during the hearing on the merits:

> (a) Can the issues raised in the motions be fairly, properly or completely resolved without regard to contested facts and the anticipated evidence that will be presented at the hearing on the merits? In other words, will the evidence relied upon on the motions likely be distinct from, and unique of, the evidence to be tendered at the hearing on the merits?
>
> (b) Is it necessary for a fair hearing that the relief sought in the motions be granted prior to the proceeding on its merits?
>
> (c) Will the resolution of the issues raised in the motions materially advance the resolution of the matter, or materially narrow the issues to be resolved at the hearing on the merits such that it will be efficient and effective to have them resolved in advance of the commencement of the hearing on the merits?
>
> 35 If the answer to any of these questions is "yes", in our view, the Commission should hear the Constitutional Motions as pre-hearing motions, in advance of the Hearing, absent strong reasons to the contrary.

> 36 In contrast, if the answer to all of these questions is "no", the Commission should be reluctant to address the motions as pre-hearing motions, absent strong reasons to the contrary.
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> (*Mega-C, supra* at paras. 34-36.)

[47] Applying the criteria set out in *Mega C* and for the reasons described above:

(a) It will clearly not be possible to fairly, properly and completely resolve the issues raised in the Motion without regard to contested facts and the anticipated evidence that will be presented at the hearing on the merits. In fact, it is likely that the issues relating to the Motion would be almost entirely replicated at the hearing on the merits.

(b) It is not necessary for a fair hearing that the relief sought in the Motion be granted prior to the hearing on the merits.

(c) It will not be possible to resolve the issues raised in the Motion materials without a hearing which would largely replicate the evidence that will be led at the hearing on the merits. As a result, it is unlikely that a hearing on the Motion would either advance or materially narrow the issues to be resolved at the hearing on the merits.

[48] As fairly acknowledged by McKinnon's counsel in his Memorandum of Fact and Law:

> McKinnon is not requesting that the Commission engage in a duplicative process in which Staff would call evidence to attempt to prove their allegations on this motion/application and then subsequently at the merits hearing.

[49] In my view, to grant the Motion would inevitably result in the replication of evidence led in two separate hearings.

VI. CONCLUSION

[50] For the foregoing reasons, the Motion is dismissed.

Dated at Toronto this 11th day of September, 2015.

"*Christopher Portner*"

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Christopher Portner