



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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

**- and -**

**IN THE MATTER OF Y**

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**ORDER**

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**WHEREAS** Y (the “Applicant”) was the subject of a proceeding before the Ontario Securities Commission (the “Commission”), commenced by a Notice of Hearing and accompanied by a Statement of Allegations issued by Staff with respect to Y, other individual respondents and Z Corporation, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”), which is now a completed matter (the “Commission Proceeding”);

**AND WHEREAS** an application (the “Application”) has been made by the Applicant for an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of certain persons that was obtained by Staff of the Commission (“Staff”) in relation to the Commission Proceeding under an order of the Commission made pursuant to section 11 of the Act, in order to provide the Applicant with the ability to make full answer and defence in his criminal trial arising out of charges under section 380(1)(a) of the *Criminal Code* (the “Criminal Proceeding”);

**AND WHEREAS** during the Application the Applicant made a motion for directions (the “Motion”) for an order authorizing Staff to disclose to the Applicant and authorizing the Applicant to use and disclose testimonial and documentary evidence (the “Evidence”) of persons who provided evidence to Staff on a voluntary basis, identified as C12, C13, N7, N8, N11 and N12, (the “Voluntary Witnesses”), in order to provide the Applicant with the ability to make full answer and defence in the Criminal Proceeding;

**AND WHEREAS** the specific materials that are the subject of the Motion are transcripts of examinations, documents that were the subject of the examinations, and other documents produced;

**AND WHEREAS** with the exception of N12, the Voluntary Witnesses received notice of the hearing of the Application (the “Notice of Hearing”);

**AND WHEREAS** the Voluntary Witnesses did not appear at the hearing;

**AND WHEREAS** the Commission heard the Application and the Motion at a hearing held *in camera* on November 20, 2008;

**AND WHEREAS** on December 18, 2008 the Commission made an order concerning C13, who had indicated that he or she had no objection to the Motion as it relates to the Evidence he or she provided to the Commission;

**AND WHEREAS** on December 18, 2008 the Commission ordered that the Application with respect to N12 was adjourned *sine die*, until such time as N12 receives the Notice of Hearing as it relates to him or her;

**AND WHEREAS** C12 and N8 are on the Crown's witness list in the Criminal Proceeding (the "Crown's Witness List");

**AND WHEREAS** N7 and N11 are not on the Crown's Witness List and did not provide a response to the Notice of Hearing:

**AND UPON CONSIDERING** the written and oral submissions of the Applicant and the written and oral submissions of Staff;

**AND WHEREAS** the Commission has determined that it would be in the public interest to grant the Motion with respect C12 and N8;

**AND WHEREAS** the Commission has determined that it would not be in the public interest to grant the Motion with respect to N7 and N11;

**IT IS ORDERED THAT:**

1. Staff may disclose to the Applicant and his counsel the Evidence provided by C12 and N8.
2. The Applicant and his counsel may make disclosure of and use the Evidence provided by C12 and N8, solely for the purpose of the examination of any witness who testifies in the Criminal Proceeding, in order to allow the Applicant to make full answer and defence to the charges made against him in the Criminal Proceeding.
3. Disclosure and use of the Evidence provided by C12 and N8 will be on the basis that:
  - a. The Applicant will pay all costs of photocopying of documents not previously copied and provided to Y;
  - b. The Applicant and his counsel will not use the Evidence other than as expressly permitted by this Order;
  - c. Except as expressly permitted by this Order, the Evidence shall be kept confidential;
  - d. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;
  - e. The Applicant and his counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;
  - f. The Applicant's counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary for the Applicant to make full answer and defence in the Criminal Proceeding;
  - g. The Evidence shall not be used for any collateral or ulterior purpose;
  - h. The Applicant and his counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed; and

- i. This Order does not affect any rights the Respondent has to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act of Ontario*.
4. The Motion is dismissed with respect to N7 and N11, without prejudice to the Applicant renewing his Motion if circumstances change, including N7 and N11 being added to the Crown Witness List.

**DATED** at Toronto this 9<sup>th</sup> day of January, 2009.

*“Lawrence E. Ritchie”*

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Lawrence E. Ritchie

*“Mary G. Condon”*

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Mary G. Condon