



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

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

ORDER ON A MOTION

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

WHEREAS on March 2, 2010, the Commission issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the Act accompanied by a Statement of Allegations dated March 2, 2010, issued by Staff of the Commission (“**Staff**”) with respect to York Rio Resources Inc. (“**York Rio**”), Brilliante Brasilcan Resources Corp. (“**Brilliante**”), Victor York (“**York**”), Robert Runic (“**Runic**”), George Schwartz (“**Schwartz**”), Peter Robinson (“**Robinson**”), Adam Sherman (“**Sherman**”), Ryan Demchuk (“**Demchuk**”), Matthew Oliver (“**Oliver**”), Gordon Valde (“**Valde**”) and Scott Bassingdale (“**Bassingdale**”), (collectively, the “**Respondents**”);

AND WHEREAS on March 3, 2010, the Commission ordered that the hearing be adjourned until April 12, 2010;

AND WHEREAS on April 12, 2010, Staff, Demchuk and counsel for York appeared before the Commission;

AND WHEREAS on April 12, 2010, Staff informed the Commission that all parties had either been served with notice of the hearing or that service had been attempted on all parties;

AND WHEREAS on April 12, 2010, Staff informed the Commission that counsel for Sherman, counsel for Robinson and counsel for Oliver had contacted Staff and indicated that they could not attend the hearing on April 12, 2010 but could attend at a later date;

AND WHEREAS on April 12, 2010, the Commission heard submissions from Staff, Demchuk and counsel for York;

AND WHEREAS on April 13, 2010, the hearing was adjourned to June 10, 2010;

AND WHEREAS on June 10, 2010, Staff appeared before the Commission and informed the Commission that all parties had either been served with notice of the hearing or that service had been previously attempted on all parties;

AND WHEREAS on June 10, 2010, upon hearing submissions from Staff, the hearing was adjourned to July 21, 2010;

AND WHEREAS on July 21, 2010, Staff appeared before the Commission and informed the Commission that all parties had either been served with notice of the hearing or that service had been previously attempted on all parties;

AND WHEREAS on July 21, 2010, the hearing was adjourned to August 30, 2010 for the purpose of conducting a pre-hearing conference;

AND WHEREAS on August 30, 2010, Staff appeared before the Commission and informed the Commission that all parties had either been served with notice of the pre-hearing conference or that service had been previously attempted on all parties;

AND WHEREAS on August 30, 2010, Staff, York and counsel for Robinson and Sherman appeared before the Commission and the pre-hearing conference was commenced;

AND WHEREAS on August 30, 2010, the Commission ordered that the hearing be adjourned to October 12, 2010 at 3:30 p.m. for the purpose of continuing the pre-hearing conference;

AND WHEREAS on October 12, 2010, Staff appeared before the Commission and informed the Commission that all parties had either been served with notice of the pre-hearing conference or that service had been previously attempted on all parties;

AND WHEREAS on October 12, 2010, Staff, York, Schwartz and counsel for Sherman appeared before the Commission and the pre-hearing conference was continued and scheduling of the hearing on the merits was discussed;

AND WHEREAS on October 12, 2010, the Commission ordered that the hearing on the merits (the “**Merits Hearing**”) shall commence on March 21, 2011 at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th floor, Toronto and shall continue on March 23, 24, 25, 28, 29, 30, 31, 2011 and May 2, 4, 5, 6, 9, 10, 11, 12, 13 and 16, 2011, or such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary;

AND WHEREAS on October 12, 2010, the Commission ordered that the motion brought by Schwartz and York (the “**Dismissal or Adjournment Motion**”) shall be heard on November 26, 2010;

AND WHEREAS on November 5, 2010, the Commission approved a Settlement Agreement between Staff and Robinson;

AND WHEREAS on November 26, 2010, the Dismissal or Adjournment Motion was adjourned to December 13, 2010, peremptory to Schwartz and York, and Schwartz and York were ordered to provide Staff with the name, curriculum vitae, witness summary and any expert’s report for each expert witness they intend to call by December 6, 2010;

AND WHEREAS on December 15, 2010, having considered the submissions of Schwartz, York and Staff at a hearing on December 13, 2010, the Commission dismissed the Dismissal or Adjournment Motion (the “**December 15, 2010 Motion Decision**”);

AND WHEREAS on February 7, 2011 Schwartz and York commenced an appeal to the Ontario Divisional Court from the December 15, 2010 Motion Decision pursuant to section 9 of the Act (the “**Appeal**”);

AND WHEREAS Schwartz and York moved for an adjournment of the Merits Hearing pending the outcome of the Appeal (the “**Adjournment Motion**”);

AND WHEREAS, on February 10, 2011, having considered the submissions of Schwartz and York and Staff, the Commission gave an oral ruling dismissing the Adjournment Motion, and issued reasons for the ruling on March 30, 2011;

AND WHEREAS the Merits Hearing commenced on March 21, 2011 and continued on March 22, 23 and 24, 2011;

AND WHEREAS in the course of the Merits Hearing, on March 28, 2011, Schwartz brought Notice of Motion for an order that the Merits Hearing be terminated or alternatively that “all things and materials relating to York Rio be excluded” from the evidence in the Merits Hearing (the “**Schwartz Motion**”);

AND WHEREAS the Notice of Motion sought leave to bring the Schwartz Motion without notice, pursuant to Rule 3.8 of the Ontario Securities Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the “**Rules**”), and to give oral evidence in support of the Schwartz Motion as permitted under Rule 3.7(3) of the Rules;

AND WHEREAS the Notice of Motion was not served on Staff or the other parties at least ten days before the day the Schwartz Motion was to be heard, as required by Rule 3.2(2) of the Rules;

AND WHEREAS a Memorandum of Fact and Law was not provided in support of the Schwartz Motion, as required by Rule 3.6(1) of the Rules;

AND WHEREAS Schwartz filed and served a binder of materials in support of the Schwartz Motion (the “**Schwartz Motion Materials**”), but no Affidavit or other evidence was provided in support of the Schwartz Motion;

AND WHEREAS on March 28, 2011, Staff filed and served a copy of its Notice of Motion, which had been filed with the Ontario Court of Justice on January 14, 2010, seeking an Order to Extend Detention of Things Seized Pursuant to Section 159(2) of the *Provincial*

Offences Act, R.S.O. c. P.33, as amended (the “**POA**”) (the “**Motion for an Order to Extend Detention**”);

AND WHEREAS on March 28, 2011, upon considering Rule 3.8 and Rule 1.6(2) of the Rules, and particularly considering that Schwartz is self-represented, the Commission, rather than refusing to hear the Schwartz Motion, as permitted by Rule 3.9 of the Rules, adjourned the Merits Hearing to allow Schwartz and Staff to file and serve their respective materials pursuant to the Rules;

AND WHEREAS on March 28, 2011, the Commission ordered that Staff shall file and serve a Memorandum of Fact and Law, by 5:00 p.m. on March 30, 2011, to address, in particular, the question: what is the effect (in terms of admissibility of evidence) of not including reference to York Rio in paragraph 1 of the Search Warrant, which reference was subsequently included in the related detention orders? (the “**Question**”);

AND WHEREAS the Commission ordered that Schwartz shall file and serve a Memorandum of Fact and Law, by 3:30 p.m. on April 1, 2011, to address, in particular, the Question;

AND WHEREAS the Commission ordered that it would hear the oral submissions of Schwartz and Staff in relation to the Schwartz Motion and the Question at 10:00 a.m. on April 5, 2011;

AND WHEREAS on March 29, 2011, Staff informed the Commission that York wished to join the Schwartz Motion and was seeking leave to bring his motion without notice, pursuant to Rule 3.8 of the Rules, and to give oral evidence in support of the Schwartz Motion, as permitted under Rule 3.7(3) of the Rules, and on March 30, 2011, York withdrew his request to join the Schwartz Motion;

AND WHEREAS on March 30, 2011, Staff filed and served a Memorandum of Fact and Law;

AND WHEREAS on April 1, 2011, Schwartz filed and served a Memorandum of Fact and Law;

AND WHEREAS on April 5, 2011, Staff and Schwartz appeared before the Commission and gave oral submissions in relation to the Schwartz Motion, and York attended and informed the Commission that he was not joining the Schwartz Motion;

AND WHEREAS Schwartz submitted, in the Schwartz Motion, that on October 20, 2008, Wayne Vanderlaan ("**Vanderlaan**"), a Provincial Offences Officer employed as a Senior Investigator at the Commission, swore an Information to Obtain a Search Warrant ("**ITO**") under section 158 of the POA;

AND WHEREAS in the ITO, Vanderlaan stated that he had reasonable grounds to believe that at the offices of CD Capital ("**CD Capital**"), operating as Brilliante Brasilcan Resources Corp. ("**Brilliante**") at 1315 Finch Avenue West, Suite 501, Toronto, Ontario (the "**Premises**"), there are things and materials relating to Brilliante, CD Capital, York, Brian Aidelman ("**Aidelman**"), Jason Georgiadis ("**Georgiadis**") and Richard Taylor ("**Taylor**"); that the things to be searched for are documents, records and materials relating to Brilliante, including records relating to CD Capital, Brilliante, York, Aidelman, Georgiadis and Taylor that there are reasonable grounds to believe will afford evidence as to the commission of offences contrary to sections 25, 38, 53, 126.1 and 122 of the Act;

AND WHEREAS in the ITO, Vanderlaan did not include, in the things to be searched for, documents, records and materials relating to York Rio;

AND WHEREAS in the ITO, Vanderlaan stated that Staff has been investigating York Rio since early 2008; that York Rio is an Ontario corporation that lists York as its sole director and 965 Bay Street, Toronto as its address; and that Staff had identified connections between York Rio and Brilliante;

AND WHEREAS the search warrant issued by a Provincial Judge or Justice of the Peace on October 16, 2008 (the "**Search Warrant**") did not include reference to York Rio but identified, as the things to be searched for at the Premises, documents, records and materials relating to Brilliante, Aidelman, York, Georgiadis and Taylor (collectively, the "**Brilliante Respondents**");

AND WHEREAS in an Affidavit sworn January 14, 2010 in support of the Motion for an Order to Extend Detention (the “**Vanderlaan Affidavit**”), Vanderlaan stated that a Detention Order was obtained from a Justice of the Peace on November 18, 2008 and extended on January 19, 2009, July 17, 2009 and August 13, 2009;

AND WHEREAS Vanderlaan appended to the Vanderlaan Affidavit his earlier affidavit, sworn July 10, 2009, which was filed with the Ontario Court of Justice in support of an earlier motion to extend detention (“**Vanderlaan’s July 10, 2009 Affidavit**”), stating that York was the sole director of York Rio from its inception on May 10, 2004 until October 28, 2008, one week after the execution of the Search Warrant, when he ceased to be a director;

AND WHEREAS in Vanderlaan’s July 10, 2009 Affidavit, Vanderlaan stated: (i) that at the time he swore the ITO, he did not have reasonable grounds to believe that the sale of York Rio securities was occurring at the Premises, but only had reasonable grounds to believe that the sale of Brilliante securities was occurring at the Premises; (ii) that observations during the search and evidence seized during the search included call lists, lead lists, scripts and other information indicating that York Rio securities and Brilliante securities were being sold from the Premises; (iii) that Brilliante and York Rio materials were closely intermingled making it difficult to distinguish and/or separate the materials at the Premises; (iv) that sales order forms that were seized identified several false names that were used to sell Brilliante or York Rio securities and that several individuals working at the Premises were selling both Brilliante and York Rio securities; (v) that Staff’s Report to a Justice, filed on November 18, 2008, included an appendix describing the items seized including information as to whether the item seized related to Brilliante or York Rio or did not reference either company; and (vi) that upon considering the Report to a Justice, filed on November 18, 2008; the Justice of the Peace ordered the continued detention of all items seized;

AND WHEREAS on April 5, 2011, Schwartz did not provide the Panel with any additional evidence;

AND WHEREAS on April 5, 2011, having considered the submissions of Schwartz and Staff, the Commission gave an oral ruling dismissing the Schwartz Motion with reasons to follow;

AND WHEREAS on April 5, 2011, the Commission ordered that: (i) the Schwartz Motion is dismissed; and (ii) the Merits Hearing shall resume on May 2, 3, 4, 5, 6, 9, 11, 12, and 13, 2011, and such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary;

AND WHEREAS on April 15, 2011, York brought Notice of Motion for an order that the Merits Hearing be terminated or alternatively that “all things and materials relating to York Rio be excluded” from the evidence in the Merits Hearing (the “**York Motion**”);

AND WHEREAS York filed and served, along with the Notice of Motion, a Memorandum of Fact and Law and stated that he would rely on the Schwartz Motion Materials, but did not provide any affidavit or other evidence in support of the York Motion;

AND WHEREAS the York Motion is very similar to the Schwartz Motion;

AND WHEREAS on April 21, 2011, Staff filed a Memorandum of Fact and Law in response to the York Motion, and advised that it would rely on the Brief of Authorities it had filed and served in the Schwartz Motion;

AND WHEREAS on April 21, 2011, Schwartz and York brought Notice of Motion for an adjournment to allow for Staff to provide disclosure in relation to Runic (the “**Runic Disclosure**”), and to allow the Respondents one month to review the Runic Disclosure and prepare for the continuation of the Merits Hearing (the “**Adjournment Motion**”);

AND WHEREAS on April 27, 2011, Staff advised that it would take no position on the Adjournment Motion;

AND WHEREAS on May 2, 2011, Staff, York and Schwartz appeared before the Commission, and York stated that he was not prepared to address the York Motion and requested that it be heard when the Merits Hearing resumes on June 6, 2011;

AND WHEREAS on May 2, 2011, the Commission adjourned the hearing of the York Motion to May 3, 2011;

AND WHEREAS on May 3, 2011, Staff and York appeared before the Commission, Schwartz having advised Staff that he would not attend, and York gave oral submissions but did not present any evidence in support of the York Motion apart from the Schwartz Motion Materials;

AND WHEREAS on May 3, 2011, the Commission reserved its decision on the York Motion;

AND WHEREAS on May 3, 2011, the Commission granted the Adjournment Motion and ordered that the Merits Hearing will resume on June 6, 2011 at 11:00 a.m., and continue on June 8, 9 and 10, 2011 at 10:00 a.m., June 13, 2011 at 11:00 a.m., June 14, 15, 16 and 17 at 10:00 a.m., June 20, 2011 at 11:00 a.m., June 22 and 23, 2011 at 10:00 a.m., and such further and other dates and times as are agreed by the Parties and fixed by the Office of the Secretary;

AND WHEREAS it is the opinion of the Commission that this Order is in the public interest;

IT IS ORDERED THAT:

- (i) the York Motion is dismissed;
- (ii) the Merits Hearing shall resume on June 6, 2011 at 11:00 a.m., and continue on June 8, 9 and 10, 2011 at 10:00 a.m., June 13, 2011 at 11:00 a.m., June 14, 15, 16 and 17 at 10:00 a.m., June 20, 2011 at 11:00 a.m., June 22 and 23, 2011 at 10:00 a.m., and such further and other dates and times as are agreed by the Parties and fixed by the Office of the Secretary;

DATED at Toronto this 5th day of May, 2011.

“Vern Krishna”

“Edward Kerwin”

Vern Krishna, Q.C.

Edward P. Kerwin