



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 am. (the “Act”)**

- and -

**AN APPLICATION BROUGHT BY DIANE A. URQUHART
PURSUANT TO s.-s.122(7) OF THE ACT**

REASONS OF THE ONTARIO SECURITIES COMMISSION

1. The applicant Diane A. Urquhart (appearing in person) has brought an application requesting the Ontario Securities Commission (the “Commission”) to grant her consent pursuant to section 122(7) of the *Ontario Securities Act* (the “Act”). The circumstances leading to this application are unusual.

2. Ms. Urquhart has commenced an action in the Ontario Superior Court of Justice in which she claims damages and other relief arising out of what she asserts are illegal issuer bids and prohibited collateral agreements as defined in Part XX of the *Act*. In support of her claim she relies on section 105(1) of the *Act*. The particular relief in her Amended Statement of Claim that is relevant to this application is her claim for this declaration:

“A declaration that the defendants who are current or former Directors and officers of Technovision, or its affiliate iTCANADA, committed issuer bid and collateral agreement offences, notwithstanding that they were not the offeror of the issuer bid they accepted. This is due to them either acting jointly or in concert with the offeror in the issuer bid and collateral agreement offences, or they permitted and acquiesced to the illegal issuer bid and are therefore guilty of the same offence under Section 122(3) of the Ontario Securities Act.”

3. Ms. Urquhart advised that there was a motion pending by the defendants to strike her claim for this declaration from the Amended Statement of Claim on the basis that she had not received the consent of the Commission under section 122(7) to seek relief in relation to section 122(3) of the *Act*. Accordingly, Ms. Urquhart makes this application to the Commission in order to meet the defendants' assertion on the return of the pending motion.

4. In considering this application and the purpose for which it is brought, we are of the view that the consent sought is not required. Any suggestion that consent under section 122(7) is required for whatever use may be made of section 122 in a civil action is misconceived. Section 122(7) provides:

“No proceeding under this section shall be commenced except with the consent of the Commission.”

5. The proceeding referred to in section 122(7) for which consent is required, is a quasi criminal prosecution which would be commenced in the Ontario Court of Justice by way of information under the *Provincial Offences Act*. Section 122(7) makes no requirement for consent by the Commission in relation to a civil action such as Ms. Urquhart has commenced in the Ontario Court of Justice.

6. Apart from the fact that the consent required under section 122(7) is not in relation to a civil proceeding, it would be inappropriate in law for this Commission to grant a consent under section 122(7) so as to use a quasi criminal proceeding in aid of a civil action. Ms. Urquhart clearly stated on the return of her application that she would not be seeking the consent of the Commission under section 122(7), but for the fact that the defendants were taking the position in her civil action that she requires this consent to maintain the claim for the declaration.

7. Accordingly, this application is dismissed.

Dated at Toronto this 16th day of January, 2003.

“H. Lorne Morphy”

H. Lorne Morphy

“Robert W. Davis”

Robert W. Davis