



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  
DAVID CHARLES PHILLIPS and JOHN RUSSELL WILSON**

**ORDER**

**(Rule 3 of the Ontario Securities Commission's  
*Rules of Procedure (2012), 35 O.S.C.B. 10071*)**

**WHEREAS** on June 4, 2012, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing in relation to a Statement of Allegations filed by Staff of the Commission ("**Staff**") against David Charles Phillips ("**Phillips**") and John Russell Wilson ("**Wilson**") (together, the "**Respondents**");

**AND WHEREAS** pursuant to the Notice of Hearing an attendance in this matter was held on June 25, 2012 at which time the Commission adjourned the matter to Tuesday, August 28, 2012;

**AND WHEREAS** on August 28, 2012, the Commission ordered that the hearing on the merits shall commence on February 11, 2013 and continue, if necessary, until March 6, 2013, except for February 12, 18 and 26, 2013;

**AND WHEREAS** at a Pre-Hearing Conference held on October 12, 2012, the Commission heard submissions from Staff and from counsel for the Respondents;

**AND WHEREAS** counsel for the Respondents advised that the Respondents would bring a motion for further disclosure from Staff (the "**Disclosure Motion**") pursuant to Rule 4.3 of the Commission's *Rules of Procedure (2012), 35 O.S.C.B. 10071* (the "**Rules**") and might bring a motion for adjournment of the hearing on the merits pursuant to Rule 9 of the Rules (the "**Adjournment Motion**");

**AND WHEREAS** the Disclosure Motion was heard on November 26, 2012 and the Reasons and Decision on the Motion were issued on November 30, 2012;

**AND WHEREAS** on January 23, 2013, the Respondents sought an adjournment of the hearing on the merits pursuant to Rule 9 of the Rules, and Staff consented to the request;

**AND WHEREAS** on January 25, 2013, the Commission granted the request and ordered that the hearing on the merits would commence on Monday, June 3, 2013 and continue, if necessary, until June 25, 2013, except for June 4 and June 18, 2013 (the “**Merits Hearing**”);

**AND WHEREAS** on April 25, 2013, Staff filed an Amended Statement of Allegations in the matter;

**AND WHEREAS** the Merits Hearing commenced before a three-member Panel of the Commission (the “**Panel**”), comprised of Commissioner Carnwath (Chair of the Panel), and Commissioners Kerwin and Scott, on June 5, 2013 and continued on June 6, 7, 10, 11, 12, 13, 17, 19, 20 and 24, 2013;

**AND WHEREAS** on June 24, 2013, following the completion of the evidence phase of the Merits Hearing, Staff and the Respondents (the “**Parties**”) agreed and the Panel ordered that closing arguments would be heard before the Panel on September 9, 2013, that Staff would file and serve its written submissions on July 31, 2013, and that the Parties would agree on dates for the Respondents to file and serve their written submissions and for Staff to file and serve its written reply submissions;

**AND WHEREAS** on July 22, 2013, the Respondents filed and served a Notice of Motion, to be heard in writing, seeking an order that Commissioner Carnwath recuse himself on the basis of a reasonable apprehension of bias (the “**Recusal Motion**”), along with a Memorandum of Fact and Law and Book of Authorities in support of the Recusal Motion (together with the Notice of Motion, the “**Motion Materials**”);

**AND WHEREAS** Staff consented to a written hearing of the Recusal Motion, and the Panel directed that Staff file and serve its responding motion materials by July 31, 2013;

**AND WHEREAS** on July 29, 2013, Staff filed and served a Memorandum of Fact and Law and Book of Authorities, in response to the Recusal Motion;

**AND WHEREAS** Staff submits that the Respondents have not demonstrated any bias or reasonable apprehension of bias on the part of Commissioner Carnwath and that the Respondents are out of time to bring the Recusal Motion;

**AND WHEREAS** Commissioner Carnwath, while not accepting the submissions of the Respondents in the Recusal Motion, has recused himself for the sole purpose of permitting the efficient and uninterrupted continuation of the proceeding;

**AND WHEREAS** the Respondents state, in their Motion Materials, that “Provided that the other two members of the Panel are satisfied that they have not prejudged the allegations made against the Respondents, the Respondents consent to conclude the proceeding with a two-member Panel”;

**AND WHEREAS** Commissioners Kerwin and Scott are satisfied that they have not prejudged the allegations made against the Respondents;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order;

**IT IS ORDERED THAT:**

1. the Merits Hearing will continue before and be decided by Commissioners Kerwin and Scott; and
2. the Parties are requested to contact the Office of the Secretary by August 8, 2013 to schedule a brief appearance before Commissioners Kerwin and Scott to consider the implications of this Order, if any, on the hearing scheduled for September 9, 2013 and the dates for the Parties to file and serve their written closing submissions in the Merits Hearing.

**DATED** at Toronto this 1<sup>st</sup> day of August, 2013.

*“Edward P. Kerwin”*

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Edward P. Kerwin

*“C. Wesley M. Scott”*

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C. Wesley M. Scott