



Ontario  
Securities  
Commission

Commission des  
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de l'Ontario

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Citation: El-Bouji (Re), 2020 ONSEC 5  
Date: 2020-02-06  
File No. 2018-28

## **IN THE MATTER OF ISSAM EL-BOUJI**

### **REASONS FOR DECISION**

**Hearing:** January 23, 2020

**Decision:** February 6, 2020

**Panel:** D. Grant Vingoe  
Lawrence P. Haber  
Raymond Kindiak

Vice-Chair and Chair of the Panel  
Commissioner  
Commissioner

**Appearances:** Joseph Groia  
Bethanie Pascutto

Derek Ferris  
Ryan Lapensee

For Issam El-Bouji

For Staff of the Ontario Securities  
Commission

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## REASONS FOR DECISION

### I. OVERVIEW

- [1] On January 21, 2020, the Ontario Securities Commission (the **Commission**) and the Ontario Ministry of Finance announced that Vice-Chair Vingoe, the Chair of the Panel in this proceeding, would commence serving as Acting Chair and Chief Executive Officer (CEO) of the Commission on April 15, 2020, following the effective time of the resignation of Maureen Jensen, current Chair of the Commission.
- [2] Vice-Chair Vingoe determined that these circumstances may give rise to the apprehension of bias in the current proceeding. Since the merits hearing dates in this proceeding are scheduled to continue beyond the date of the change in Vice-Chair Vingoe's role, the Panel requested submissions from the parties concerning Vice-Chair Vingoe's continued participation as a member of the Panel for the remainder of the merits hearing.
- [3] On January 23, 2020, after receiving submissions, the Panel advised the parties of its decision that Vice Chair Vingoe would cease participating as a Panel member in this proceeding, with reasons to follow. These are the reasons for that decision.

### II. PROCEDURAL HISTORY

- [4] A brief procedural history is provided for context. Staff of the Commission (**Staff**) filed a Statement of Allegations against the Respondent on May 24, 2018 and this proceeding was commenced by the issuance of a Notice of Hearing on the following day. Several attendances and motions followed. In 2019, the Respondent brought a motion seeking to halt the proceedings against him on the basis that the Commission lacked jurisdiction to hear some or all of the allegations. Among other things, he asserted institutional bias as a basis for the Commission's lack of jurisdiction. That motion was determined in Reasons and Decision issued on October 7, 2019.<sup>1</sup> The issues considered in that motion are separate and distinct from the issue currently before this Panel.
- [5] The schedule for the merits hearing was set by Order of the Commission issued on October 15, 2019.<sup>2</sup> The merits hearing in this proceeding ultimately commenced on January 14, 2020 before the current three-member Panel, which was assigned by the Office of the Secretary of the Commission. Over the course of three days in January 2020, this Panel heard opening submissions from both parties and the examinations of five of Staff's witnesses, one of which is not yet complete. Staff's final witnesses, the Respondent's evidence, if any, and closing submissions are currently anticipated to require several more hearing days, some of which are scheduled for late April 2020.
- [6] At the end of the last merits hearing date, January 17, 2020, the Respondent's counsel indicated he would be bringing a motion seeking an Order for Staff to disclose certain additional documents. The Panel directed that the motion would

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<sup>1</sup> *El-Bouji (Re)*, 2019 ONSEC 33, (2019) 42 OSCB 8094.

<sup>2</sup> *El-Bouji (Re)*, (2019) 42 OSCB 8420.

be heard in writing and indicated that a decision would be made at the next scheduled merits hearing date, January 23, 2020.

### **III. ADJUDICATION GUIDELINE**

[7] The prevailing practice at the Commission has been for the Chair of the Commission not to adjudicate due to the Chair's scope of responsibilities, which includes management of Staff. Subsection 3(1) of the Commission's *Adjudication Guideline* states: "The Secretary will not assign the Chair of the Commission to any Panel."

[8] In addition, pursuant to s. 2(1) of the *Adjudication Guideline*, Members of the Commission shall not participate in a hearing where to do so would give rise to bias. Subsection 2(2) provides the following test to determine whether a reasonable apprehension of bias exists:

...would a reasonable and informed person, viewing the matter realistically and practically — and having thought the matter through — conclude that there is bias on the part of the Panel or individual Panel Members impairing their duty to fairly and impartially adjudicate the matter?

[9] Due to his anticipated assumption of the Acting Chair's duties, Vice-Chair Vingoe determined that he would follow the procedure set out in s. 2(4)(b) of the *Adjudication Guideline*:

A Panel Member who becomes aware of circumstances at any time during a hearing that may give rise to bias shall:

[...]

(b) Request the other Panel Members' advice as to whether the circumstances might give rise to bias.

If the other Panel Members determine that the circumstances might give rise to bias, the Panel Member should consider removing himself or herself immediately. In the alternative, the Panel may decide to inform the parties of the circumstances and invite them to make submissions on the Panel Member's continued participation in the hearing. The Panel should provide the parties with reasons for its decision.

### **IV. COMMUNICATIONS TO AND SUBMISSIONS BY THE PARTIES**

[10] Accordingly, the parties were informed of the circumstances and were invited to make submissions on Vice-Chair Vingoe's continued participation as a Panel member for:

- a. the outstanding written motion by the Respondent requesting Staff's disclosure of documents, and
- b. the remainder of the proceeding, subject to an ethical wall being established such that Vice-Chair Vingoe would not interact with Staff with regard to this proceeding other than in a hearing or through written communications made through the Registrar, with a copy to all parties.

