

**IN THE MATTER OF
BENEDICT CHENG, FRANK SOAVE, JOHN DAVID ROTHSTEIN AND ERIC
TREMBLAY**

**APPLICATION
OF STAFF OF THE ENFORCEMENT BRANCH**
(For revocation of a decision under Section 144 of the *Securities Act*, RSO 1990, c. S.5)

A. ORDER SOUGHT

The Applicant, Staff of the Enforcement Branch (“**Staff**”), requests that the Ontario Securities Commission (the “**Commission**”) make the following orders:

1. An order under Section 144 of the *Securities Act*, RSO 1990, c. S.5 and Rule 15 of the Ontario Securities Commission Rules of Procedure and Forms (“**Rules of Procedure**”), revoking the December 19, 2017 oral decision of the panel in the *Cheng et al.* matter, which ordered that the evidence in the motion regarding privilege to be heard *in camera*;
2. An order making public the confidential portions of the record of the motion regarding privilege in the *Cheng et al.* matter;
3. An order that this application be heard in writing under Rule 23(3) of the Rules of Procedure; and
4. Such further and other orders as counsel may advise and the Commission deem just.

B. GROUNDS

The grounds for the request are:

1. On December 18-22, 2017, the *Cheng et al.* panel heard a motion brought by the Respondent Benedict Cheng (the “**Privilege Motion**”). Mr. Cheng argued that solicitor-client privilege attached to evidence from Michael Killeen that Staff was intending to introduce at the merits hearing.

2. On December 19, 2017, the *Cheng et al.* panel issued an oral decision ordering that the evidence on the Privilege Motion be heard in the absence of the public on the basis that questions of privilege were before the panel (the “**Confidentiality Order**”).
3. In accordance with the Confidentiality Order, the evidence and a portion of the submissions on the Privilege Motion were heard *in camera*.
4. On January 10, 2018, the *Cheng et al.* panel rendered a public decision dismissing the Privilege Motion (“**Privilege Motion Decision**”). The panel held that Mr. Cheng had not established that evidence and documents from Mr. Killeen were privileged.
5. The Privilege Motion Decision is the final decision on this issue. Mr. Cheng subsequently settled the enforcement allegations against him with Staff and the *Cheng et al.* proceedings have concluded.
6. Revoking the Confidentiality Order would not be prejudicial to the public interest. To the contrary, given the Privilege Motion Decision and the open court principle, the public interest would be promoted by making public the portions of the Privilege Motion that were heard *in camera*.
7. In addition, some of the confidential Privilege Motion evidence is relevant to a related enforcement matter currently before the Commission. Staff seeks to disclose this evidence to the respondents in that related matter but cannot do so until that evidence is made public.
8. Mr. Cheng does not object to this application.
9. Staff is relying on a written record in support of this application in accordance with Rule 23(3) of the Rules of Procedure.

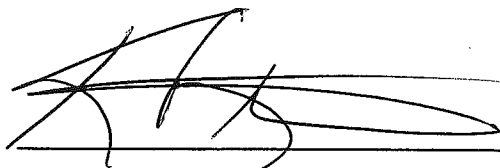
C. EVIDENCE

Staff intends to rely on the following evidence for the application:

1. The Privilege Motion record, including the Confidentiality Order;

2. The Privilege Motion Decision;
3. The *Cheng et al.* Amended Statement of Allegations, dated October 26, 2017;
4. *Cheng v. Ontario Securities Commission*, 2018 ONSC 2502 (Div. Ct.);
5. *Cheng (Re)* (2018), 41 OSCB 5158 (Oral Reasons for Approval of a Settlement);
6. The *Kitmitto et al.* Statement of Allegations, dated November 23, 2018;
7. The *Kitmitto et al.*, Witness List filed by Staff on March 12, 2019; and
8. Such other evidence as counsel may advise and the Commission may permit.

DATED at Toronto this 7th day of October, 2019.

A handwritten signature in black ink, appearing to read 'K. Gustafson', written over a horizontal line.

Katrina Gustafson
Counsel for Staff of the Ontario Securities Commission