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July 31, 2006

VIA FACSIMILE

Ms Kathryn J. Daniels
Ontario Securities Commission
P.O. Box 55, 19th Floor
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Ms. Ann Sonnen
Ontario Securities Commission
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Dear Ms. Daniels and Ms. Sonnen:

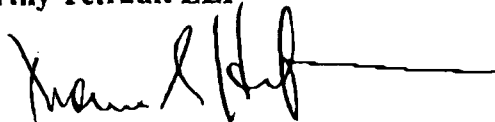
Re: Frank Dunn and Ontario Securities Commission

I am attaching hereto, and serving upon you pursuant to the Rules, a Notice of Cross Appeal herein.

As a matter of convenience I am sending a copy of the Notice of Cross Appeal to Mr. Alan Rock who I understand will be acting as counsel in this appeal.

Yours very truly,

McCarthy Tétrault LLP



Thomas G. Heintzman
TGH/idc
Encl
4106838

c: Alan Rock

Court of Appeal File No.:

COURT OF APPEAL FOR ONTARIO

BETWEEN:

MR. A

Applicant
(Respondent in Appeal)

- and -

ONTARIO SECURITIES COMMISSION

Respondent
(Appellant in Appeal)

NOTICE OF CROSS-APPEAL

THE RESPONDENT CROSS-APPEALS in this appeal and asks that the order of the Honourable Mr. Justice Campbell dated June 27, 2006 made at the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario (the "Order") be set aside and that an order be made:

- (i) declaring that pursuant to the *Canadian Charter of Rights and Freedoms* (the "*Charter*") and in particular ss. 8 and 24(1) thereof, the Respondent is not compelled to testify under oath pursuant to the provisions of the *Ontario Securities Act*, R.S.O. 1990, c.S.5 (the "Act");
- (ii) declaring that, pursuant to the *Charter* and in particular ss. 8 and 24(1), Mr. A cannot be compelled to provide documents pursuant to a Summons to Witness issued by the Ontario Securities Commission (the "OSC") on March 1, 2006 (the "Summons") or pursuant to two orders issued by the OSC dated June 18, 2004 and February 22, 2006 made pursuant to Section 11(1)(a) of the Act; and
- (iii) quashing the Summons.

- 2 -

THE GROUNDS OF THE CROSS-APPEAL ARE AS FOLLOWS:

Background

1. Mr. A was an employee of a company, herein referred to as, B Corporation, from 1976 to 2004.
2. B Corporation has issued a series of public statements reporting the restatement of its financial results for various prior periods.
3. B Corporation has reported that it had terminated Mr. A for cause, following an internal investigation into the events underlying these restatements.

The U.S. Proceedings

4. B Corporation and former senior executives of B Corporation, such as Mr. A, are the subjects of regulatory and criminal investigations in the United States.
5. The United States Securities and Exchange Commission (the "SEC") has issued a formal order of investigation in connection with B Corporation's restatement of its financial statements.
6. American securities law contemplates communication between the SEC and the United States Department of Justice ("DOJ") and expressly authorized the SEC to transmit evidence of violations to the DOJ.
7. The DOJ is responsible for the enforcement of criminal law in the United States.
8. The SEC has subpoenaed records relating to B Corporation's restatements, including the personnel and compensation records of Mr. A. all documents physically located in the

- 3 -

office of Mr. A or his secretaries or assistants and documents concerning, involving or related to communications by or with Mr. A.

9. B Corporation has announced that it has received a United States Federal Grand Jury Subpoena for the production of certain documents, which were sought in connection with an ongoing criminal investigation being conducted by the U.S. Attorney's Office.

The OSC Proceedings

10. The SEC and the OSC have entered into a Memorandum of Understanding, dated January 8, 1988, and an IOSCU Multilateral Memorandum of Understanding concerning Consultation and Cooperation and Exchange of Information dated October 23, 2002 (the "MOUs").
11. Under the MOUs, the OSC provides assistance to the SEC, including providing access to information contained in OSC files.
12. Under the MOUs, the OSC uses reasonable efforts to obtain the necessary authorization to provide assistance to the SEC.
13. On June 18, 2004 and February 22, 2006, the OSC issued orders pursuant to Section 11(1)(a) (the "Section 11(1)(a) Orders") of the Act that appointed several individuals to investigate matters related to B Corporation's restatements.
14. On August 20, 2004 and December 6, 2004, the OSC issued further orders pursuant to Section 11(1)(b) of the Act that appointed several individuals to conduct investigations to assist the SEC in its investigation related to B Corporation's restatements (the "Section

- 4 -

11(1)(b) Orders”), including all of the individuals appointed under the Section 11(1)(a) Orders.

15. The Section 11(1)(b) Order dated August 20, 2004, also specifically named three employees of the SEC (David Stuart, Vincente Martinez and Steve Richards) as individuals authorized to participate in the investigation of B Corporation with the OSC.
16. The OSC issued further investigation orders dated September 20, 2005 and February 22, 2006 under both Section 11(1)(a) and (b) of the Act (the “Combined Orders”) to assist the SEC in its investigation of B Corporation, and appointed further persons to, and removed certain persons from, those investigations.
17. On March 1, 2006, the Investigator issued the Summons under Section 11(1)(a) of the Act requiring Mr. A to attend before the Investigator and to give evidence under oath.
18. The OSC intends to use the entirety of the information obtained under the Orders made under both statutory authorities to fulfil its obligations and transmit the testimony of Mr. A or information therefrom, to the SEC.

Conduct of the Application

19. During the conduct of the Application, counsel for the OSC did not allow any meaningful cross examination of the deponent of the affidavit which was tendered by the OSC on this Application. In particular, the witness was not allowed to give any evidence with respect to the communications between the OSC and the SEC and the real purpose and intent of the OSC in seeking the examination of Mr. A in relation to the OSC’s mandate from the SEC.

- 5 -

20. In settling the order, counsel for the OSC sought to ensure that persons appointed under Section 11(1)(b) be present at, and be informed about, the examination of Mr. A., and the OSC has now appealed from the Order which provides to the contrary.
21. The reasonable inference from all of the circumstances is that the real purpose, intent or effect of the Summons is to obtain the evidence of Mr. A in order to transmit that evidence, or information derived therefrom, to the SEC, where such evidence may be used either directly to incriminate Mr. A or to obtain further evidence to incriminate Mr. A.

Infringement of Mr. A's Right Against Self-Incrimination

22. Pursuant to Section 11 and 13 of the Act, the Summons would compel Mr. A to give evidence under oath and produce documents to the Investigator, which evidence and documents relate to the same matter as the U.S. proceedings.
23. The OSC acknowledges that Mr. A's *Charter* rights are engaged by the issuance of the Summons and that there are risks to those rights by the application of the investigative provisions of the Act, the MOUs and the OSC's mandate on behalf of the SEC.
24. The combined effect of the OSC's obligations under the MOUs, the manner in which the OSC and its counsel have proceeded with the various orders of the OSC under Section 11(1)(a) and (b), and with the application, the settlement of the Order and the appeal herein, demonstrates that the purpose, intent or effect of the Summons is to obtain evidence of Mr. A for the SEC.

- 6 -

25. There is a significant likelihood that any evidence that Mr. A is compelled to give in response to the Summons could be used against him in a criminal proceeding in the United States.
26. The use or potential use of Mr. A's compelled evidence against him would render meaningless Mr. A's right against self-incrimination, protected by the Fifth Amendment to the United States Constitution and s. 7 of the *Charter*.

The Judge Erred In Law

27. The Applications Judge erred in law by compelling Mr. A to testify in circumstances where the reasonable inference or conclusion is that his testimony is being sought by the OSC to transmit it, or information therefrom, to the SEC and that thereby Mr. A's right against self incrimination would be infringed.
28. The Application Judge erred by failing to draw an inference from the OSC's refusal to answer questions at the Cross-Examination of the OSC deponent, Michelle McLaughlin, and/or the OSC's position upon the settlement of the Order, that the purpose, intent, and/or effect of the Summons is to obtain the evidence of Mr. A, and/or information therefrom, for transmittal to the SEC which could be used to incriminate Mr. A or obtain derivative use of that testimony or information.
29. The Application Judge erred in law by failing to find that the SEC and the OSC had "crossed the Rubicon" and that the purpose, intent or effect of the coerced testimony is to incriminate Mr. A or to obtain derivative use of the information obtained from Mr. A to incriminate him.

30. In the circumstances, the Application Judge erred in law in failing to protect Mr. A's rights under s. 7 of the *Charter* to remain silent and not incriminate himself.

Date: July 31, 2006

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BETWEEN:

MR. A

- and -

ONTARIO SECURITIES
COMMISSION

Court File No.

**ONTARIO
COURT OF APPEAL FOR ONTARIO**

Proceeding Commenced at TORONTO

NOTICE OF CROSS-APPEAL

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