IN THE MATTER OF

THE SECURITIES ACT
S.N.B. 2004, c. S-5.5

- and -

IN THE MATTER OF

PIERRE EMOND, ARMEL DRAPEAU and JULES BOSSÉ
(RESPONDENTS)

Dates of Hearing of Motion:	21 April 2011 9 May 2011
Date of Reasons for Decision on Preliminary Motion (Part 2):	19 July 2011

Panel:

Guy G. Couturier, Q.C., Panel Chair

Anne La Forest, Panel Member

Céline Trifts, Panel Member

Appearances:

Jake van der Laan & Mark Wagg	For Staff of the New Brunswick Securities Commission
Jack Blackier & Michel Arseneault Barry Spalding	For respondent Armel Drapeau
Pierre Emond, *per se*	

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REASONS FOR DECISION ON MOTION – PART 2

1. BACKGROUND

[1] On 21 April 2011, a Panel of the New Brunswick Securities Commission (the "Commission") heard a preliminary motion ("Motion") in this matter. The Motion was filed with the Commission by the respondent Armel Drapeau ("Drapeau") on March 29, 2011, and sought redress on a number of points. On 2 May 2011 the Commission issued its Reasons for Decision on Motion ("2 May 2011 Reasons") on three of the claims for relief. Under the heading "Background" found in the 2 May 2011 Reasons, the Commission sets out the factual setting, and it does hereby incorporate by reference paragraphs [1] through [7] of the 2 May 2011 Reasons.

[2] The fourth claim was for an order compelling the Staff of the Commission ("Staff") to produce all documents, without any redactions, that relate to the allegations made against the Respondents in this matter.

[3] In addressing this claim, Staff provided the Commission with two sets of documents. First, the Commission was provided with un-redacted versions of the documents which Staff claimed need not be disclosed to the Respondents. According to Staff, these documents are either irrelevant, subject to public interest privilege or otherwise subject to mandatory confidentiality. Second, Staff provided the Commission with redacted documents over which it claimed informer privilege either on its own or in conjunction with some aspect of recognized privilege. Staff adopted the position that not only were the Respondents not entitled to view the un-redacted documents over which informer privilege was claimed, nor was the Commission.

[4] On 6 May 2011, the Commission issued a decision, without reasons annexed, dismissing the claim of Drapeau's motion that addressed the production by Staff of the first set of documents, but directing Staff to immediately deliver to the Commission, the "*un-redacted versions of the redacted items*"; i.e. the second set of documents.

[5] The un-redacted versions of the second set of documents were produced, and reviewed by the Commission on 9 May 2011, just prior to the convening of its hearing. At the commencement of the hearing, the Commission rendered an oral ruling, and directions, on the issue of these un-redacted documents. What follows are the reasons underlying the rulings of 6 and 9 May 2011.

[6] Finally, as a point of information, it is here noted that in order to allow the Commission to properly appreciate Staff's position on the issue of the disclosure, Staff provided the Commission with a spreadsheet ("Spreadsheet"). This document was entered into evidence by consent and marked as Exhibit 2. The Spreadsheet details Staff's various redactions by item and page and outlines the basis for each redaction made. In these reasons, the Commission, for consistency and ease of reference, will mainly refer to the item numbers of the redacted items as assigned on the Spreadsheet.

2. ANALYSIS AND DISPOSITION

[7] Staff maintains that there are several grounds that justify the non-disclosure of the un-redacted items:

i. relevance
ii. informer privilege
iii. public interest immunity
iv. mandatory statutory confidentiality

(a) "methodology "

[8] It is the Commission's role to review the exercise of Staff's discretion in refusing to provide un-redacted material. This requires the Commission to review the items which Staff has refused to disclose. Following this review, it is then incumbent on the Commission to rule on what, if any, information ought to be disclosed. As stated by the Alberta Securities Commission in *Re Arbour Energy Inc.*[1]:

> "Our *task is not to confirm or reject each particular disclosure by Staff but rather to undertake our own analysis and reach our own conclusions on the disclosability of the disputed material and to make appropriate directions in light of governing law and principles."*

[9] As indicated in *Deloitte & Touche LLP v. Ontario (Securities Commission)*[2] the review process must be one that *"provides fair consideration for the respondents in jeopardy and enables them to meet the case against them yet also is sensitive to the third party's privacy interests and expectations."*

[1] 2008 ABASC 143 at para 7
[2] [2003] 2 S.C.R. 713 at para 28

[10] The first step in the review is to assess relevance. The Commission recognizes, as articulated by the Supreme Court of Canada in *R.* v. *Stinchcombe*[3] and in *Deloitte,* that Staff is required to disclose all relevant information to the Respondents.

[11] Staff's statutory duty to disclose is outlined in Part 7 of Local Rule 15-501 *Procedures for Hearings before a Panel of the Commission* ("LR 15-501"):

> *7(1)* ***Disclosure by Applicant*** *– An Applicant in a Proceeding, including Staff in an Enforcement Proceeding shall, as soon as is reasonably practicable after service of a Notice of Hearing deliver to all Respondents copies of all documents intended to be relied upon as evidence at the Proceeding;*
> *[. . .]*
>
> *7(3)* ***Privilege*** *– No disclosure is required to be made of information which is protected by privilege.*
> *[. . .]*
>
> *7(6)* ***Common Law*** *– Nothing in this section derogates from Staff's obligation to make disclosure as required by common law.*

[12] Fundamentally, the Commission adheres to the approach that if information is irrelevant, it does not need to be disclosed. However, if information is relevant, it must be disclosed unless protected by reason of a privilege or immunity. The determination of relevance is made on the basis of the evidence before it, as it relates to the Statement of Allegations[4].

[13] Staff relies upon two categories of privilege: public interest immunity and its subset, informer privilege. In the alternative Staff argues the legitimacy of its position on the basis of mandatory confidentiality, citing certain sections of the *Securities Act* (the "*Act*") and the *Right to Information and Protection of Privacy Act* ("RIPPA")[5]. We first address the matter of relevance followed by a discussion of privilege and mandatory confidentiality.

[3] [1991] 3 S.C.R. 326; 1991 CarswellAlta 192
[4] Deloitte & Touche LLP v. Ontario (Securities Commission) [2003] 2 S.C.R. 713 at para 26
[5] S.N.B. R-10.6

(b) "relevance"

[14] The Commission must first, as stated, find that the material that is sought to be disclosed is relevant to the proceeding[6]. The legislation contains no provision that defines "relevance" and thus the Commission must consider the applicable jurisprudence. A leading authority is *R.* v. *Stinchcombe*. In *Stinchcombe*, Justice Sopinka of the Supreme Court of Canada voiced what has become the standard of relevance in matters of criminal law on disclosure of information:

> *"If the information is of no use then presumably it is irrelevant and will be excluded in the exercise of the discretion of the Crown. If the information is of some use then it is relevant and the determination as to whether it is sufficiently useful to put into evidence should be made by the defence and not the prosecutor."*[7]

[15] In *Deloitte*, this concept was contextualized to apply to securities law proceedings, and is useful for purposes of the present analysis. In that case, the Court of Appeal approved the following rationale, adopted by the Ontario Securities Commission at paragraphs 40 and 41 of its decision:

> "[40] *Relevant material in the Stinchcombe, supra, sense includes material in the possession or control of Staff and intended for use by Staff in making its case against the Philip respondents. Relevant material also includes material in Staff's possession which has a reasonable possibility of being relevant to the ability of the Philip respondents to make full answer and defence to the Staff Allegations. This latter category includes material that the Philip respondents could use to rebut the case presented by Staff; material they could use to advance a defence; and material that may assist them in making tactical decisions: ...*
>
> [41*] In deciding whether material in its possession could reasonably be relevant to the Philip respondents, Staff was obliged to take a generous view of relevance. Staff was not privy to defence strategies or tactics, or to material in the possession of the Philip respondents, which could alter the significance of documents in Staff's possession. As Cory J. Said in Dixon, supra, at p. 258:*

[6] R. v. Thomas 1998 CarswellOnt 1331 at para 10
[7] 1991 CarswellAlta 192 at para 33

> *The right to disclosure of all relevant material has a broad scope and includes material which may have only marginal value to the ultimate issues at trial."*

[16] The Commission here determines that the "relevance threshold" is one that is low. Whether an item is relevant is to be assessed by considering the nature of the allegations against the Respondents, as detailed in the Statement of Allegations, and whether the impugned material would be reasonably considered to be relied upon as evidence at the proceeding. The Commission considers material to be irrelevant if it has a marginal connection with the current proceedings and/or is not something that cannot be reasonably expected to be relied upon by Staff in proving its allegations.

[17] Staff indicates on the Spreadsheet, as well as argues, that indeed certain items will not be relied upon by it as evidence in this proceeding. The Commission has reviewed the documents in question, and is satisfied that items 16, 17, 18, 21, 25, 30, 31, 32, 33 and 34 are redactions that conceal the identity of persons or discuss matters unrelated to this proceeding. The Commission is satisfied that by applying the low threshold test of relevance, these items are simply irrelevant to the current proceedings, and are not to be disclosed.

[18] The items listed in the Spreadsheet as 24, 39, 40, 41, 42, 43, 44, 45 and 46 contain discussions with Québec's *Autorité des marchés financiers*, mainly regarding names of a proposed audit firm. Again, based on Staff's representations and the evidence before it, the Commission is satisfied that these items are not something that can be reasonably expected to be relied upon by Staff in proving their allegations. Again using the threshold, the Commission finds that these items are irrelevant to the current proceedings, and are excluded from disclosure. Other than these items, the Commission concludes that all other items that have been redacted pass the relevancy threshold.

(c) "informer privilege"

[19] Informer privilege allows for the greatest protection of information. To succeed in obtaining a declaration that an informer privilege applies, the evidence should support the conclusion that the identity of the person must be concealed for his or her own protection. Other considerations include, risk to ongoing investigations or to intelligence gathering techniques or risk to innocent persons, which have no present application.[8] Citing *R v. Leipert*[9], Staff submits that once informer privilege is found, courts, and by implication the Commission, is not entitled to balance the benefit inuring from the privilege against countervailing considerations. This privilege is non-discretionary and broad in application; innocence at stake is the only exception to the informer privilege rule.[10]

[20] As noted at the outset of these reasons, Staff initially withheld unredacted copies of documents over which it claimed informer privilege. Items 1-11, 13-15, 26-29 and 37-38 on the Spreadsheet were withheld from the Commission on that basis. Staff argued that these redacted items consisted of the name and contact details of an individual Staff characterizes as a confidential source (the "Source"), the name and contact details of an investor Staff claims can identify the Source (the "Investor"), details concerning the relationship between the Investor and the Source and specific dates which may identify the Source.

[21] Although the Commission does not dispute the extent and nature of informer privilege, it does question Staff's position as to who is to make the preliminary determination that a person is indeed an "informer".

[22] In *Named Person v. Vancouver Sun*[11], the Supreme Court of Canada set out a detailed procedure to be followed by the judge in determining whether informer

[8] R. v. Garofoli, [1990] 2 S.C.R. 1421, quoting Watt J. in R. v. Parmar (1987), 61 O.R. 2d) 132.
[9] [1997] 1 S.C.R. 281
[10] R. v. Leipert, [1997] 1 S.C.R. 281 at para 21; Named Person v. Vancouver Sun, 2007 SCC 43 at paras 27-28
[11] 2007 SCC 43

privilege applies. Staff disputes this process and maintains that the determination whether an individual is an "informer" is to be made by the Investigator, and not the Commission deciding the case. It was on this basis that the Commission was provided with redacted documents.

[23] The procedure set out in Part D of the *Named Person* decision[12] is affected by the particular facts of the *Named Person* case but, that said, is intended to provide guidance in all cases where a question of informer privilege arises[13]. The procedure contemplates, at paragraph 46, an *in camera* session to "*determine if sufficient evidence exists to determine that the person is a confidential informer and therefore able to claim informer privilege"*. Paragraph 47 continues:

> "*It is the responsibility of the judge at this stage to demand from the parties some evidence which satisfies the judge, on balance, that the person is a confidential informer. Once it has been established on the evidence that the person is a confidential informer, the privilege applies*."

[24] To be satisfied that such a strict privilege is to be applied, the Commission needs relevant and reliable evidence to classify someone as an informer. There also needs to be a process in place to allow the Commission to make an independent assessment of the person and material to determine whether or not, as here, the Source is indeed an informer. Given the position taken by Staff, the focus was not on providing the Commission with the information necessary to engage in such an assessment.

[25] In this case, we have only the affidavit of Senior Investigator Ed LeBlanc, sworn on 14 April 2011, indicating that the Source repeatedly requested confidentiality. Mr. LeBlanc does go on, at paragraph 8, to summarize the nature of the information provided by the Source relating to the Investor, but that is his opinion, and is unfortunately uncorroborated. The evidence, as a result, does not satisfy the burden the Commission determines as needed to qualify the Source as an informer.

[12] 2007 SCC 43 at paras 45 - 61
[13] 2007 SCC 43 at para 44

(d) "privilege"

[26] Having disposed of Staff's claim of informer privilege, the Commission now turns to Staff's other common law claims of privilege. The remaining items at issue are items 1-11, 13-15, 22-23, 26-29 and 35-38 on the Spreadsheet.

[27] The principles applicable to privilege are discussed in the Supreme Court of Canada decision of R. *v. McClure*.[14] In that case, the Court states as follows: "[t]he law recognizes a number of communications as worthy of confidentiality. The protection of these communications serves a public interest and they are generally referred to as privileged." The Wigmore test, adopted in *McClure,* is generally used to determine which communications are protected by which is commonly known as the "public interest privilege"[15]:

> *(1) The communications must originate in a confidence that they will not be disclosed.*
>
> *(2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.*
>
> *(3) The relation must be one which in the opinion of the community ought to be sedulously fostered.*
>
> *(4) The injury that would inure to the relationship by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.*

[28] Some such "confidential relationships" are not protected by a class privilege, such as solicitor-client, but may be protected on a case by case basis. Examples of such relationships include doctor-patient, psychologist-patient, journalist-informant and religious communication. In this case, items 22, 23, 35, and 36 clearly fall within the rationale for these kinds of communication.

[14] 2001 SCC 14 at para 26
[15] 2001 SCC 14 at para 29

[29] Items 22 and 23 on the Spreadsheet are identified as "without prejudice" settlement discussions with counsel for entities not named in these proceedings. Upon review, the Commission is satisfied that this information is as labelled by Staff, and clearly fits within the Wigmore test for privilege. In the balancing and weighing of interests required by item four of the Wigmore test, the Commission is satisfied that the public interest in protecting these types of without prejudice settlement discussions outweighs any prejudice to be suffered by the Respondents by their non-disclosure.

[30] Staff submits that items 35 and 36 are not to be disclosed as they are confidential communications between Staff and staff of the Autorité des marchés financiers. Upon review of these items, the Commission is also satisfied that they are protected by public interest privilege and meet all elements of the Wigmore test. The Commission finds, as did the Alberta Securities Commission in *Arbour*[16], that the protection of communications and information sharing between securities regulators is a valid exercise of public interest immunity or privilege. As well, the Commission is of the opinion that the protection of these communications outweighs any prejudice to the Respondents' right to make full answer and defence to Staff's allegations.

[31] The remaining items for consideration are items 1-11, 13-15, 26-29 and 37-38. As noted earlier in this decision, following a 6 May 2011 Commission directive, Staff provided unredacted versions of these items for the Commission's review on 9 May 2011 just prior to our oral decision. These items contain the identity of the Source and the identity of the Investor.

[32] Though declining to designate the Source as an informer, the Commission does accept that the Source clearly and repeatedly requested confidentiality in his or her communications with Staff. The Commission is also cognizant of the public policy rationale for protecting the identity of an individual who contacts a securities regulator in confidence. As stated by the Alberta Securities Commission in *Arbour*[17], and in the Commission's view is equally applicable to New Brunswick:

[16] 2008 ABASC 143 at para 108
[17] 2008 ABASC 143 at paras 20 and 21

"[20] There is another aspect to this type of material that we consider important. The Commission is charged with regulating the Alberta capital market in the public interest, for purposes including protection of investors and fostering confidence in the fairness of the capital market. Integral to this function is communication with the public. An essential part of such communication is contact initiated by members of the public – whether seeking information, conveying concerns, or providing information about suspected improper activity in the capital market. This sort of communication (and Staff responses) can assist, inform or reassure the callers. It can also serve the capital market more broadly: it can assist Staff in detecting problems or misconduct in the capital market and in developing responses ranging from targeted communication, through compliance reviews or changes in Alberta securities laws or policies, to formal investigations.

[21] We consider there to be a clear and significant public interest in fostering the type of communication embodied in Item 1 - public initiated contacts - and candour in such communication. We believe that this requires recognition and protection of the legitimate, reasonable expectation of callers that their communication in this form will be kept private. The very fact that they pose their questions or express their concerns about particular investment products, promotions, persons or companies to Staff implies that they are uncomfortable (or have been unsuccessful) in doing so more directly to the particular persons or companies. Callers should not be concerned that their communication will, without their knowledge and permission, be relayed to the persons or companies who might be the object of their inquiries. More generally, if this expectation of privacy is not honoured, the candour essential to such communication, if not the communication itself, could cease in future. The consequent communication "chill" would, we believe, be injurious to the public interest.

[22] So, to the extent that any of the disputed Item 1 material is relevant - and it would be marginally relevant at best - we believe that the important public interest in fostering such communication through nondisclosure outweighs any impact of nondisclosure on a Respondent's ability to make full answer and defence to an allegation in the Notice of Hearing (see R. V. Chan, 2002 ABQB 287(CanLII), 2002 ABQB 287 at para. 145). In sum, the disputed Item 1 material is in our view the sort of communication appropriately protected by public interest immunity."

[33] In the oral ruling of 9 May 2011, the Commission grouped items 1-11, 13-15, 26-29 and 37-38 into two categories, based on the pages noted on the Spreadsheet:

i. pages 2, 6, 7, 8, 17, 18 and 26 on the Spreadsheet (containing items 4, 9, 11, 13, 15, 26, 28 and 37 which disclose the identity of the Source); and

ii. pages 1, 3, 4, 5 and 27 (containing items 1-2, 6-8 and 38) which disclose only the name, and related dates and information, of the Investor.

The Commission inadvertently referred to "pages" instead of the more appropriate, "items", found on the pages. This caused confusion, as the name of the Investor or information that could identify the Investor is also found on pages 2, 6, 8 and 18 (as items 3, 5, 10, 14, 27 and 29). The Commission's intention was to separate the items that identify the Source from the items that identify the Investor. Specifically, and consequently, the items numbered 4, 9, 11, 13, 15, 26, 28 and 37, that identify the Source, are to remain redacted, as the redactions of these items protect communications that meet the Wigmore test for the application of public interest privilege. If the information in these items was to be disclosed, in the Commission's assessment, the injury to the relationship between the public and the regulator would outweigh any benefit to be gained by the Respondents.

[34] The more challenging question is whether or not to disclose the identity of the Investor found in items 1-3, 5-8, 10, 14, 27, 29 and 38 of the Spreadsheet. It may be that the general privilege applicable to protect the identity of an informer who has requested confidentiality can be extended to protect information, including the name of an investor who can identify an informer. However, in this case, there is no evidence to support this conclusion.

[35] Staff argues that information provided to the investigator, including the identity of the Investor, is protected from disclosure on a basis of a "reasonable expectation of privacy". It cites as authority the passage found in *Arbour* at paragraph 21 already cited above.

[36] The Commission has reviewed the documentation relating to the Investor's identification. It has considered the submissions of Staff and the Respondents relating to the disclosure of this information. In particular, it has assessed the affidavit evidence of Ed LeBlanc, Investigator,[18] wherein he states that the person who disclosed the

[18] Affidavit - Ed LeBlanc - April 14, 2011, paragraph 4, 5, 6 and 7

identity of the Investor had requested on a number of occasions that his or her identity remain confidential.

[37] We note that the basis of withholding the identity of the Investor is not any statement made by the Source but rather the interpretation of the information relating to the Investor made by Mr. LeBlanc.

[38] LR 15-501, embodies the presumption in favour of disclosure, unless prevented by privilege or at common law. The common law concept of "public interest immunity" is drawn from the doctrine of legitimate expectations. This doctrine articulated in *Libbey Canada Inc. v. Ontario (Minister of Labour)*[19] and was approved by Ontario Court of Appeal in *Re Coughlan, where it is stated*[20]

> *"The doctrine of reasonable expectations in administrative law is founded on notions of fairness. Broadly speaking, those who deal with government bodies and agencies entrusted with the authority to wield power for the public good should be able to rely on representations made to them by those bodies and agencies and to govern their affairs accordingly. In some circumstances, the court will intervene by way of judicial review where a public authority attempts to resile from a representation to the detriment of someone who has relied on the representation. Judicial intervention is, however, limited to cases where the unfairness manifests. As Lord Justice Bingham said in R. v. Board of Inland Revenue Ex Parte M.F.K., [1990] 1 All E.R. 91 at pp. 110-11:*
>
> > *If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. If in private law a body would be in breach of contract in so acting or estopped from so acting a public authority should generally be in no better position. The doctrine of legitimate expectation is rooted in fairness. But fairness is not a one way street. It imports the notion of equitableness, of fair and open dealing, to which the authority 1 is as much entitled as the citizen. The Revenue's discretion, while it exists, is limited. Fairness requires that its exercise would be on a basis of full disclosure. Counsel for the applicants accepted that it would not be reasonable for the representee to rely on unclear or equivocal representation. Nor I think on such facts as the present, would it be fair to*

[19] (1999), 42 O.R. (3rd); 1999 CarswellOnt 251 at para 61
[20] 31 Admin L.R.(3rd); 2000 CarswellOnt 4993 at para 60

> *hold the Revenue bound by anything less than a clear, unambiguous and unqualified representation."*

[39] There is no evidence that the Investor in any way relied upon representations made by Staff or by the Investigator LeBlanc. Consequently the Commission finds no evidence to conclude that the concept of "public interest immunity" would extend to the Investor in this case.

*[*40] In the matter before the Commission it is also relevant to consider the purpose of the disclosure request. Fundamentally the purpose, as expressed by Drapeau, is to allow for the full and proper answer and defence to the allegations. The Commission has no reason to doubt these grounds.

[41] In *Arbour*, the Alberta Securities Commission considered a similar issue, and states at paragraph 36

> "*[36] We do, however, consider certain of the disputed Item 29 material to be relevant. Given that the allegations in the Notice of Hearing relate, among other things, to securities distributions, we consider that the names of the supposed Arbour investors and the dates and amounts of their respective investments, as recorded by Staff on the unanswered questionnaires, might be of reasonable possible use to a Respondent is making full answer and defence to the allegations. We posit that a Respondent might wish to follow up by contacting the supposed investors directly."*

[42] Unless the reason invoked by Staff for withholding the name of the Investor otherwise falls within a recognized class of privilege or is otherwise justified at common law, the decision militates in favour of disclosure. The balancing and weighing of interests in this case leads the Commission to that conclusion.

(e) "mandatory confidentiality"

[43] Subsection 21(2) of RIPPA and sections 177 and 199.1 of the *Act* are invoked by Staff to justify the non-disclosure of certain redacted items – namely the identity and identifying information – of the Source and the Investor.

[44] However the Commission disagrees. Although Section 21 of RIPPA deals with requests for information made to the head of a "public body", it does not, in the Commissions view, apply to current enforcement proceedings. Indeed Section 3 of RIPPA specifically states that RIPPA will not limit disclosure obligations in enforcement proceedings:

> *Application*
>
> *3 This Act*
>
> *[. . .]*
>
> *(c) does not limit the information otherwise available by law to a party to legal proceedings,*
>
> *(d) does not affect the power of a court or tribunal to compel a witness to testify or to compel the production of documents, [. . .]*

[45] The Commission also finds that sections 177 and 199.1 of the *Act* do not assist Staff. Section 177 clearly limits the investigator's discretion not to disclose information "*pursuant to an investigation"* and is subordinate, in our view, to the disclosure obligations under the *Act* and its regulations. In light of LR 15-501, it has no application to information relied upon to support allegations in an enforcement proceeding. Similarly, section 199.1 primarily relates to non-disclosure of information, as framed in terms of cooperation between Commissions pertaining to the administration of securities law. Section 199.1 is found in Part 16, General Provisions, of the *Act* and the Commission is of the view that section 199.1 is not intended to override the normal rules of disclosure in enforcement proceedings, as codified in LR 15-501.

[46] For the reasons set out above, the disclosure and withholding of documentation will be made in accordance with the 6 May 2011 Decision and the Disclosure Decision issued orally on 9 May 2011, as amended herein.

Dated this 19 day of July, 2011.

"original signed by"

Guy G. Couturier, Q.C., Panel Chair

"original signed by"

Anne La Forest, Panel Member

"original signed by"

Céline Trifts, Panel Member

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