
Citation: *Financial and Consumer Services Commission v. McKellar et al.*, 2022 NBFCST 6

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *REAL ESTATE AGENTS ACT*, S.N.B. 2011, c 215, THE *MORTGAGE BROKERS ACT*,
S.N.B. 2014, c 41, AND THE *SECURITIES ACT*, S.N.B. 2004, c S-5.5

Date: September 29, 2022
Docket: MS-001-2021

BETWEEN:

Financial and Consumer Services Commission,

Applicant,

– and –

John Albert McKellar and 668054 N.B. LTD.,

Respondents.

ORDER

WHEREAS:

1. The Financial and Consumer Services Commission (“Commission”) filed a motion on September 23, 2022 seeking permission to call Eric Johnson as a witness at the merits hearing scheduled for October 18 to 20, 2022, pursuant to rule 8.7(2) of the *Rules of Procedure*;
2. The Commission filed a *Notice of Witness*, in accordance with rule 8.1 of the *Rules of Procedure*, indicating its intention to call Mike Guitar, a senior investigator with the Commission and lead investigator assigned to this matter, as a witness at the merits hearing. In accordance with rule 8.1, the *Notice of Witness* provided a summary of Mike Guitar’s intended testimony;

3. Mr. Guitar has been on a medical leave since February 22, 2022 and his leave of absence has been extended to at least January 2023. Mr. Guitar's current medical condition prevents him from testifying at the merits hearing;
4. Eric Johnson is an investigator with the Commission who was also assigned as an investigator to this matter. The Commission has confirmed that Mr. Johnson's testimony will be limited to the same facts and matters identified in the *Notice of Witness* it filed for Mike Guitar on October 26, 2021;
5. The Commission's case will be prejudiced without the testimony of Mr. Johnson;
6. The Respondents consent to the Commission's request to substitute Eric Johnson as a witness for Mike Guitar; and
7. The Respondents will not sustain any prejudice if Mr. Johnson is substituted as a witness for Mr. Guitar provided his testimony is limited to the same facts and matters set out in the *Notice of Witness* filed for Mr. Guitar. An adjournment of the merits hearing is not required because the Respondents' ability to know the case and to reply is not negatively impacted.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Given the time constraints associated with this motion, and pursuant to rule 1.11 of the *Rules of Procedure*, the delays associated with filing and responding to a motion are waived;
2. The Commission is granted permission to substitute Eric Johnson as a witness for Mike Guitar at the merits hearing in accordance with Rule 8.7(2) of the *Rules of Procedure*; and
3. Eric Johnson's testimony will be limited to the same facts and matters described in the Commission's *Notice of Witness* for Mike Guitar.

DATED this 29th day of September, 2022.

Mélanie McGrath

Mélanie McGrath
Tribunal Chair