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Citation: *New Brunswick (Financial and Consumer Services Commission) v. Pierre Emond and Armel Drapeau*, 2016 NBFCST 7

PROVINCE OF NEW BRUNSWICK  
FINANCIAL AND CONSUMER SERVICES TRIBUNAL  
IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c S-5.5

Date: 2016-06-28  
Docket: 2300-E1

BETWEEN :

**Financial and Consumer Services Commission,**

Applicant,

-and-

**Pierre Emond and Armel Drapeau,**

Respondents.

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**ORDER**

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**WHEREAS:**

1. As of July 1, 2013, the New Brunswick Securities Commission is continued as the Financial and Consumer Services Commission and the adjudicative functions of the New Brunswick Securities Commission are now performed by the Financial and Consumer Services Tribunal (“Tribunal”);
2. The Financial and Consumer Services Commission brought a motion seeking to introduce four Affidavits of its investigator Ed LeBlanc into evidence at the hearing on the merits of this matter with a view of using the exhibits to those Affidavits and reducing the time required for the hearing on the merits;
3. The Affidavits of Ed LeBlanc are the following:
  - a) A March 5, 2009 Affidavit filed in a proceeding of the former New Brunswick Securities Commission bearing File Number 3500-03-C1 and to which the Respondents were not parties;

- b) A May 18, 2009 Affidavit which was never filed with either the former New Brunswick Securities Commission nor the Tribunal;
- c) A May 19, 2009 Affidavit filed in this proceeding in support of a motion by Staff of the former New Brunswick Securities Commission seeking temporary orders against the Respondents; and
- d) An April 14, 2011 Affidavit filed in this proceeding in opposition to a motion brought by Armel Drapeau seeking various relief;

- 4. Ed LeBlanc will testify at the hearing on the merits and will be a key witness;
- 5. Local Rule 15-501 *Proceedings before the Tribunal* ("Local Rule 15-501") provides limited circumstances in which an Affidavit can be used as evidence in a hearing on the merits, none of which are applicable in this matter;
- 6. Other than the circumstances contemplated in Local Rule 15-501, the introduction of evidence by Affidavit at a hearing on the merits is only allowed in exceptional circumstances, such as the inability of the Affiant to testify;
- 7. Local Rule 15-501 does not allow the introduction into evidence at a hearing on the merits of Affidavits that: (1) were filed in another proceeding to which the Respondents are not parties; (2) were never filed; or (3) were filed in support of or in opposition to motions in this proceeding;
- 8. The Respondent Pierre Emond is self-represented and the Respondent Armel Drapeau may be self-represented at any eventual hearing on the merits in this matter;
- 9. Allowing the Affidavits and the attached exhibits to be introduced into evidence could affect the Respondents' ability to fully respond to all evidence, including documentary evidence;

**FOR THE REASONS STATED ABOVE, IT IS HEREBY ORDERED THAT:**

- 1. The motion is denied.

**DATED** this 28<sup>th</sup> day of June, 2016.

"original signed by"

Christine M. Bernard

Registrar

Signed for panel members Enrico A. Scichilone, Jean LeBlanc and Gerry Legere pursuant to subsection 40(3) of the *Financial and Consumer Services Commission Act*