



Ontario  
Securities  
Commission

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**File No.: 2022-14**

**IN THE MATTER OF  
XIAO HUA (EDWARD) GONG**

**NOTICE OF MOTION OF THE ONTARIO SECURITIES COMMISSION**  
(Evidentiary and procedural issues related to the Stay Motion)

**A. ORDER SOUGHT**

The Moving Party, the Ontario Securities Commission (**OSC**) requests, with notice, that the Capital Markets Tribunal make the following orders:

- a) An order striking the following documents from the Stay Motion - Motion Record filed by Mr. Gong on March 27, 2023 (the **Stay Motion Record**):
  - i. Affidavit of You Xiaowen (English Translation), dated November 11, 2016 (page 216 to 218 of the Stay Motion Record);
  - ii. Authenticated Deposition of Gengwu Peng (English Translation), dated January 26, 2017 (page 220 to 236 of the Stay Motion Record); and
  - iii. Privilege Breach: INNOV8 Report of Findings from Assessment from Ringtail Database and Surrounding OSC Communications (the **INNOV8 Report**) authored by Marlon Hylton and Roger Yick (page 1299 to 2137 of the Stay Motion Record).

- b) An order striking the 14 transcripts (the **Transcripts**) listed in Exhibit 5 at the hearing on May 29, 2023 of the OSC's motion for summary dismissal of the Stay Motion (the **Summary Dismissal Motion**) from the evidentiary record filed in support of the Stay Motion;
- c) The issuance of a summons under R. 27(b) to Mr. Gong requiring that he produce, subject to privilege, all documents disclosing the records over which Mr. Gong claims privilege as a result of the review of 5890 potentially privileged records referred to in the correspondence from Mr. Gong's former counsel dated September 3, 2020;
- d) In the alternative, if the relief in paragraph (a)(iii) is not granted by the Tribunal, the issuance of a summons under R. 27(b) to Mr. Gong, Mr. Hylton and/or Mr. Yick requiring that one or more of them produce, subject to privilege, the following documents:
  - i. Copies of the curricula vitae of Hylton and Yick;
  - ii. All materials reviewed by Hylton and Yick to support the preparation of the Innov8 Report including the materials referenced in Part III(a)1 (page 2) of the Innov8 Report (supplied to Innov8 by Mr. Gong's former counsel on August 20, 2020 and October 13, 2020);
  - iii. Copies of the reports from the current version of the Ringtail database referred to in Part III(a)2 (page 3) of the Innov8 Report;
  - iv. The data comprising the "back-end components" underlying the "targeted analyses" referenced in Part III(a)2 (page 3) of the Innov8 Report;
  - v. All records relating to the "video conference, using screen share with Mr. William Adams, Head of Discover, NUIX" referred to in Part III(a)2 (page 3) of the Innov8 Report including screen shots, video capture and notes;

- vi. Copies of the files for the screen shots on page 6 of the Innov8 Report showing the date that the screen shots were taken; and
  - vii. Copies of “back-end tables and logs” reviewed by Hylton and York to support the statement in the first paragraph on page 10 of the Innov8 Report.
- e) In the alternative, if the relief in paragraph (a) iii is not granted by the Tribunal, an order striking the following portions of the Innov8 Report from the Stay Motion Record:
- i. Paragraph 4 on page 1 of the Innov8 Report (page 1299 of the Stay Motion Record); and
  - ii. All content in the body of the Innov8 Report after the third 3 paragraph on page 8 (pages 1306 to page 1308 of the Stay Motion Record) and Tabs 10 to 12 to the Innova8 Report (pages 1331 to 1237 of the Stay Morion Record).
- f) An order granting permission to amend the Statement of Allegations dated June 13, 2022 (the **SOA**) in the form attached as Schedule A to correct an inadvertent typographical error; and
- g) such further relief as counsel may advise and the Tribunal may permit.

## **B. GROUNDS**

The grounds for this motion are:

### **(i) The Criminal Proceeding**

1. Between December 2016 and August 2022, the OSC’s Joint Serious Offences Team (**JSOT**) conducted an investigation into Mr. Gong and companies controlled by him.

The matter was referred by JSOT to the Crown for prosecution under the *Criminal Code*.

2. On December 20, 2017, Mr. Gong was personally charged with the following offences:
  - a. fraud of a value exceeding \$5000 under s. 380(1)(a) of the Criminal Code;
  - b. possessing property obtained by crime under s. 354(1) of the Criminal Code;
  - c. laundering proceeds of crime under s. 462.31 of the Criminal Code; and
  - d. using, trafficking or possessing forged documents under s. 368(1) of the Criminal Code.
3. On January 15, 2021, the Crown indicted Mr. Gong's company, Edward Enterprise International Group Inc. (the **Edward Group**).
4. Mr. Gong entered a guilty plea on behalf of the Edward Group, as its directing mind (the **Edward Group Guilty Plea**) and signed an Agreed Statement of Facts dated February 9, 2021 (the **ASF**) in relation to the guilty plea. Charges against Mr. Gong personally were withdrawn on consent as part of the negotiated resolution. The Edward Group was convicted of two counts:
  - a. conducting or being a party to a scheme by which a person on payment of a sum of money, became entitled under the scheme to receive from the Edward Group or any other person, a larger sum of money than the amount paid, by reason of the fact that the other persons have paid under the scheme, contrary to subsection 206(1)(e) of the Criminal Code; and

- b. knowing or believing that documents were forged, to wit: 024 share certificates, caused other persons to deal with or act on the documents as if they were genuine, contrary to subsection 368(1)(b) of the Criminal Code.
5. According to the ASF, Mr. Gong, personally and by directing representatives of his companies, ran an operation that promoted the products and shares under the Edward Group umbrella. Mr. Gong and the Edward Group operated primarily in Canada and recruited members in China. Mr. Gong and employees under his direction solicited investors to invest funds to receive a package that consisted of health supplements and “O24” shares (or later Canadian National Television shares). Investors were promised large returns. However, the shares could not convey their purported interest because O24 had been dissolved years prior. The operation included a pyramid or multi-level marketing selling structure. Investors were told that they could make money by recruiting other investors. Between January 2012 and December 2017, approximately 40,000 people in China invested and hundreds of millions of dollars were raised.

**(ii) The Section 127 Proceeding**

6. On June 13, 2022, the OSC filed a statement of allegations (**SOA**) against Mr. Gong personally in this section 127 proceeding before the Capital Markets Tribunal (**Tribunal**). The OSC seeks, among other things, orders to remove Mr. Gong from the capital markets based largely on the admissions made by him in the Edward Group Guilty Plea and ASF, or on reasonable inferences directly available from those admissions.

**(iii) Stay Motion**

7. On December 1, 2022, the Mr. Gon filed a motion seeking a stay of the proceeding (the **Stay Motion**). On March 27, 2023, Mr. Gong filed and served the Stay Motion Record which consisted of the skeletal Affidavit of Allana Neto sworn March 27, 2023 (the **Neto Affidavit**) which purported to introduce over 2100 pages of documentary materials and referring to Transcripts which consisted of over 1500 pages of transcripts from Mr. Gong’s preliminary hearing in the criminal proceeding. The Stay Motion

Record also included the affidavits from Chinese law enforcement officials listed in paragraph (a) i and ii above (the **Affidavits**).

8. In addition, the Stay Motion Record included the Innov8 Report which purports to include expert opinion evidence relating to an alleged breach of a privilege review protocol by the OSC including opinion evidence relating e-discovery industry practices.

**(vi) Motion for Summary Dismissal of the Stay Motion**

9. On April 20, 2022, the OSC brought the Summary Dismissal Motion on the grounds that the Stay Motion did not disclose a tenable case for a stay of proceedings. In the OSC's submissions filed in support of the Summary Dismissal Motion, the OSC referenced certain procedural and evidentiary issues arising out of the Stay motion Record including issues relating to the Transcripts and the Innov8 Report. However, the OSC recognized that these issues did not need to be resolved prior to hearing the Summary Dismissal Motion and would become moot if the Summary Dismissal Motion was granted.
10. The Summary Dismissal Motion was heard on May 29, 2023. The Summary Dismissal Motion was dismissed in Reasons and Decision issued by the Tribunal on July 20, 2023.

**(iii) Order Striking Evidence of Witnesses not Produced for Cross-Examination**

11. Starting on May 17, 2024, the OSC requested that Mr. Gong confirm that he would make the witnesses for the Affidavits and the Transcripts and Hylton and Yick available for cross-examination as required by R. 32(3) of the Capital Markets Tribunal *Rules of Procedure* (the **Rules**). Despite numerous follow ups, Mr. Gong has not responded.
12. The contents of the Affidavit and Transcripts are irrelevant to the Stay Motion.

**(iv) Issuance of Summons to Mr. Gong regarding Innov8 Report Materials**

13. In the May 17, 2024 correspondence, the OSC also requested that Mr. Gong provide the materials related to the preparation of the Innov8 Report listed in paragraph (d) of the Order Sought section above. Assuming the Tribunal does not grant the OSC's request to strike the Innov8 Report from the record, the OSC requires this information to cross-examine Hylton and Yick and otherwise respond to the Innov8 Report. The requested information includes CVs for Hylton and Yick which is required for the OSC to assess if the authors can be qualified to provide expert opinion evidence.

**(v) Issuance of Summons to Mr. Gong regarding Results of Privilege Review**

14. Correspondence from Mr. Gong's counsel in early September 2020 indicates that the privilege screening process was to be complete in September 2020. However, Mr. Gong never provided a final list of the documents over which he claimed privilege after the completion of the screening process. The issue of the extent of access by the OSC to documents over which privilege was claimed by Mr. Gong (as opposed to documents which were potentially privileged but did not from the basis of a subsequent privilege claim) is relevant to the Stay Motion.

15. Starting on June 13, 2024, the OSC requested that Mr. Gong provide a listing of the documents over which Mr. Gong claimed privilege arising out of the completion of the privilege screening process in September 2020. Despite numerous follow ups, Mr. Gong has not responded to date.

**(v) Order Striking Portion of the Innov8 Report**

16. Assuming the Tribunal does not grant an order striking the Innov8 Report in its entirety from the Stay Motion Record and that Mr. Gong is otherwise able to establish that Hylton and Yick are qualified to provide expert opinion evidence, the contents of Innov8 Report go beyond the scope of proper expert evidence. Specifically, the Innov8 Report purports to conclude that "the OSC displayed questionable conduct surrounding the breach of Mr. Gong's privilege." An evaluation of the OSC's conduct, if required,

is beyond the scope of the expertise of the authors of Innov8 Report, the proper scope of expert evidence and is within the scope of issues to be determined by the Tribunal.

**(vi) Permission to amend the SOA**

17. During the preparation of responding affidavits for the Stay Motion, the OSC noted that there was an inadvertent typographical error in the SOA. Specifically, the entity “O24 Pharma PLC” is erroneously identified in the SOA as “024 Pharma PLC”. The digit “0” was used rather than the capital version of the letter “O”. The amendment is necessary to ensure that the SOA corresponds to the wording of the ASF, does not affect the substance of the SOA and is not unfairly prejudicial to Mr. Gong.

18. Rules 1, 3, 22(1) 27(b), 28, 30 and 32(3) of the Tribunal’s *Rules of Procedure*.

19. Sections 10.1, 12(1)(b) and 25.0.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22.

20. Such further and other grounds as counsel may advise and the Tribunal deems just.

**C. EVIDENCE**

Staff of the Ontario Securities Commission intends to rely on the following evidence for the motion:

- a. The Motion Record of Mr. Gong dated March 27, 2023;
- b. Affidavit of Michael Ho affirmed October 3, 2024 with exhibits; and
- c. Such other evidence as counsel may advise and the Tribunal may permit.

October 3, 2024

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