

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the Act)**

– AND –

IN THE MATTER OF ADRIAN SATURLEY AND ADONIS ASSET MANAGEMENT

REASONS FOR DECISION

Decision	October 4, 2024	
Panel	Heidi Walsh-Sampson Tom Atkinson John Maxwell	Commissioner Commissioner Commissioner
Submissions	Christopher I. Robinson Mitch Broughton	Counsel for the Applicants
	Daniel Boyle	Counsel for the Director of the Nova Scotia Securities Commission

Introduction

[1] This decision addresses a pre-hearing motion ("**Motion**") for the issuance of a summons to compel the testimony of certain Commission staff members who contributed to a compliance field examination of Mr. Saturley's former employer, High Tide Wealth Management concluding with a report dated July 24, 2020 ("**Compliance Report**"). This Motion has been filed by the Applicants, in connection with proceedings brought under the Securities Act, R.S.N.S. 1989, c. 418 (the "**Act**").

Background

[2] In September 2021, the Applicants submitted an application for registration under the Act (the "**Application for Registration**"). Adonis Asset Management ("**Adonis**") applied for registration as a portfolio manager and Adrian Saturley applied for registration as the Ultimate Designated Person, Chief Compliance Officer and Sole Advising Representative of Adonis.

[3] Upon receipt of the Application for Registration, it was reviewed by Commission staff who recommended that the Director not grant the registration. The staff recommendations against the Applicants' Application for Registration were included in the Compliance Report that is the subject of this Motion. The Applicants were informed of these recommendations and provided an opportunity to make written submissions to the Director pursuant to s. 32 of the Act.

[4] After reviewing the staff recommendations and the Applicants' submissions, the Director refused to grant the Application for Registration in a written decision dated February 14, 2022 (the "**Director's Decision**").

[5] Following the denial, pursuant to s. 6(2) of the Act, the Applicants requested a hearing and review of the Director's Decision which was heard before a hearing and review panel of three commissioners ("**First Panel**").

[6] During a pre-hearing conference on June 24, 2022, the Applicants sought an order requiring the attendance of the authors of the Compliance Report so they could testify to the contents and the opinions that they had expressed in the report. The First Panel declined to issue such an order (2022 NSSEC 5).

[7] Subsequent to a four-day hearing in October and November 2022, the First Panel rendered a written decision (2023 NSSEC 1) (the "**First Panel Decision**") denying the Applicant's Application for Registration.

[8] The Applicants appealed the First Panel Decision to the Nova Scotia Court of Appeal pursuant to s. 26 of the Act. The Applicants' appeal was allowed and in a written decision (*Saturley v. Nova Scotia (Securities Commission)*, 2024

NSCA 15, 2024) (“**NSCA Decision**”), the Court of Appeal directed that the matter be remitted for new hearing before a different panel of the Commission.

[9] The matter is now before this panel for a hearing and review of the Director’s Decision to deny the Applicants’ Application for Registration.

Request for Summons

[10] A pre-hearing conference was held on February 28, 2024 (“**Pre-hearing Conference**”). At the Pre-hearing conference the Panel invited submissions on the content of the record in these proceedings and, without objection by either Party, it was determined that the record from the First Hearing, which included the Compliance Report, would be adopted, subject to the addition of an affidavit to be submitted by Chris Pottie, former Deputy Director, Registration and Compliance (the “**Hearing Record**”). Accordingly, the Compliance Report forms part of the Hearing Record in these proceedings.

[11] At the Pre-Hearing Conference, counsel for the Applicants advised that if counsel for the Commission did not intend to call two employees of the Commission who were involved in the production of the Compliance Report, Angela Scott and Brian Murphy (together the “**Staff Members**”), to give evidence at the hearing the Applicants would apply for an order to summons them to appear.

[12] In a letter dated March 15, 2024, counsel for the Commission advised that the Director does not intend to call evidence from the Staff Members.

[13] In a letter dated May 3, 2024, counsel for the Applicants advanced this Motion seeking subpoenas to compel the testimony of the Staff Members with arguments to be advanced in writing.

Legal Framework

[14] Under s. 4.1 of the *NSSEC Rule 15-501- General Rules of Practice and Procedure* (“**Rules**”), the Commission has the authority to compel a witness:

4.1 The Commission may, on its own motion or on ex parte application of a Party, issue a

a. Summons to appear at a Hearing and give evidence on oath orally or in writing, or on solemn affirmation if the witness is entitled to affirm in civil matters; or

b. A notice to produce Documents and things, as the Commission deems requisite to a full hearing of the matters in the hearing.

[15] The power to issue summons is instrumental in enforcing the Act and ensuring compliance with regulatory requirements.

Analysis

[16] The decision to grant a summons must be predicated on the necessity of the testimony in question, the relevance of the information the witnesses are likely to provide, and the overall importance of the information to a determination of the matters before the Panel.

Hearing Panel's Authority to Summons

[17] Both parties acknowledge this Hearing Panel's authority to summon or subpoena a witness. However, the counsel for the Director notes that authority is limited to issuance of a summons only where the Hearing Panel determines that the summons is "*requisite to a full hearing of the matters in the Hearing.*"

[18] Although the Director does not rely upon the Compliance Report in these proceedings, the Applicants argue that because it was relied upon in the Director's Decision which is under review there is a "link-of-relevance-to-the-live-issue before the Panel." The Applicants argue that the Staff Members were responsible for preparing the recommendations contained in the Compliance Report and further, that since it forms part of the Hearing Record there is a *prima facie* link of relevance between the proposed witnesses and an issue in these proceedings. In advancing the Motion, the Applicants rely on *Raymond v Halifax Regional Municipality*, 2020 NSSC 316 to argue that once the party requesting a subpoena has established a link of relevance between the proposed witness and an issue in the proceedings, the burden shifts to the opposing party to show good cause such as oppressiveness or abuse of power.

[19] The Director does not allege oppressiveness or abuse of power in the Director's submissions on the Motion. The Director does argue that requiring the Staff Members to attend and give evidence at the hearing is not requisite to a full hearing of the matters in the hearing and in fact would serve only as a distraction from the issue before the Hearing Panel causing undue delay and prolonging the hearing of the matter. The Director also raises potential cost, efficient use of resources and precedent as considerations for the Panel to weigh in considering the Motion. Although worthy of consideration, the Panel does not believe these considerations will cause material prejudice to the Director nor do these considerations satisfy the bar of good cause for denying the Motion.

[20] In the NSCA Decision, the Court of Appeal affirmed that a duty of procedural fairness is owed to the Applicants in the proceedings at hand. The question is whether the duty of procedural fairness owed to the Applicants can be met if the Motion is denied given that the Compliance Report forms part of the Hearing

Record even where the Director is not relying on the Compliance Report in submissions.

- [21] The Applicants submit that, even though the Director does not intend to rely on the Compliance Report in advancing the Director's case, because the Compliance Report is part of the Hearing Record, the duty of procedural fairness includes the right to cross-examine the Staff Members regarding their contributions to the Compliance Report. The Applicants submit that these individuals have critical insights and observations that are essential for a full and fair hearing and review of the Director's Decision.
- [22] The Director acknowledges that these proceedings attract a duty of procedural fairness but insists that the requirements for procedural fairness must be assessed contextually in every circumstance. The Director submits the contextual circumstances of the current matter does not require the cross-examination of the Staff Members to meet the requirements for procedural fairness the NSCA Decision imposes on the proceedings "provided that the panel does not assign any weight to the [Compliance] Report, and grounds its decision only on evidence obtained through Ms. Pottie and Mr. Saturley."
- [23] To that end, the Director submits that Ms. Pottie is responsible for the Compliance Report and was the Commission staff member ultimately responsible for compliance activities.
- [24] The Director submits that the Hearing Panel should rely solely upon evidence obtained through two witnesses: Ms. Pottie and Mr. Saturley.
- [25] In doing so, the Director argues that the Applicants' legitimate expectations for procedural fairness will be met.
- [26] In the NSCA Decision, the Court of Appeal focused on two factors in determine the content of the duty of procedural fairness in the type proceedings currently before the Panel:
- 1) the statutory scheme and procedures adopted by the Commission; and
 - 2) the legitimate expectations of Mr. Saturley and Adonis.
- [27] The statutory scheme here is a hearing *de novo* pursuant to s. 6 (2) of the Act to review the Director's Decision to deny the Applicants' Application for Registration through a full and fair hearing process. A full and fair hearing would necessarily entail a complete review of the Hearing Record.
- [28] The purpose of a hearing and review pursuant to s. 6(2) of the Act is to grant a *de novo* hearing to consider the Applicants' Application for Registration afresh, conduct an independent examination of the evidence and for this Panel to then reach its own conclusions. Accordingly, in order to ensure a full and fair hearing

process, it is incumbent upon this Panel to review the entire Hearing Record. It is only after the contents of the Hearing Record have been reviewed that the Panel can assign weight to the Compliance Report or any other evidence. It is premature to determine what, if any, weight to assign to any particular evidence in the Hearing Record, including the Compliance Report.

[29] The Panel finds that the Applicants have established a link of relevance to the contributions made by the Staff Members to the Compliance Report and the matter at hand. Although the Panel is mindful of the considerations raised by the Director, the Panel also finds that these considerations do not constitute good cause to deny the Motion. The Panel acknowledges that the Director does not rely on the Compliance Report in advancing the Director's case and the Panel will consider this in the context of the other evidence presented at the hearing when assigning weight to the Compliance Report. However, the Panel also finds that in determining the content of the duty of procedural fairness, the legitimate expectations of Mr. Saturley and Adonis in the current proceedings includes the right to cross-examine the Staff Members on their contributions to the Compliance Report which forms part of the Hearing Record.

Decision

[30] After careful consideration of the facts and the submissions of the Parties, the Commission finds that the testimonies of the Staff Members are essential to a fair and full hearing and review of the Applicants' Application for Registration.

[31] The Motion is granted.

Conclusion

[32] The Panel directs that Angela Scott and Brian Murphy shall be summonsed in accordance with the procedures outlined in the Act. They are required to appear before the Commission at a designated time and place to provide their testimonies.

DATED at Halifax, Nova Scotia, this 4th day of October, 2024.

NOVA SCOTIA SECURITIES COMMISSION

(signed) "*Heidi Walsh-Sampson*"

Heidi Walsh-Sampson
Commissioner

(signed) "*Tom Atkinson*"

Tom Atkinson
Commissioner

(signed) "*John Maxwell*"

John Maxwell
Commissioner