

Ontario Capital Markets Tribunal Protects Ontario Securities Commission Witnesses from Compelled Self-Incrimination

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A recent [decision](#) by the Ontario Capital Markets Tribunal (the Tribunal) narrowed the use of testimony compelled by the Ontario Securities Commission (the Commission) in subsequent proceedings before the Tribunal.

The Facts

*TeknoScan Systems Inc (Re)*¹ involved allegations that the respondents, TeknoScan and three of its officers and directors defrauded TeknoScan's investors.

The Commission commenced an investigation. During the proceeding, the Commission brought a motion to "read in", or admit into evidence, transcripts of two of TeknoScan's officers' compelled pre-hearing examinations. The respondents objected on the basis of the *Evidence Act*.² The Commission argued that denying it from using this testimony would weaken its enforcement powers and that it had a presumptive right to read in the officers' evidence against them, unless the officers undertook to testify at the hearing (which in this case, they had not).

The respondents did not contest that the Tribunal had broad discretion to admit hearsay evidence that might otherwise be inadmissible in a court proceeding pursuant to section 15 of the *Statutory Powers Procedure Act*.³ However, they asserted that the tribunal could not or should not exercise its discretion to admit this evidence because:

- i. the officers in question asserted their right not to have compelled incriminating testimony admitted into evidence according to section 9(2) of the *Evidence Act*; and
- ii. reading in the officers' testimonies would violate their general right against self-incrimination pursuant to principles of administrative law and subsumed within the rules of natural justice.

The Tribunal's Decision

The Tribunal concluded that "section 9(2) of the *Evidence Act* overrides the general grant of discretion in s. 15 of the SPPA, through operation of s. 15(2)(b) and arguably also s. 15(3)." Since the respondent officers and directors relied on section 9(2), the transcripts were inadmissible in the case against them.

Ultimately, the respondents' success on this evidentiary issue was short lived. On the evidence that was before it, including from ten witnesses other than the respondent officers and directors, the Tribunal made the following key findings:

- i. TeknoScan and the officers omitted information in their communications with shareholders, rendering their communication dishonest and misleading contrary to section 126.1(1)(b) of the *Securities Act* (Ontario);⁴
- ii. TeknoScan made materially misleading statements contrary to section 126.2(1) of the *Securities Act* (Ontario); and
- iii. the officers authorized, permitted or acquiesced in TeknoScan's breach of section 126.2(1) of the *Securities Act* (Ontario) and they were deemed liable for that breach under section 129.2.

Key Takeaways

This decision brings the evidentiary rules applicable to Tribunal proceedings in line with protections afforded in other administrative proceedings and is welcome news to any witness served with a summons that may lead to enforcement proceedings. While it is not absolute, given that the Tribunal alluded to alternative means of mandating testimony from key individuals, admissions given earlier on in the investigation may be better protected by applicable evidentiary rules.

¹ *TeknoScan Systems Inc (Re)*, [2024 ONCMT 32](#) ("TeknoScan").

² *Evidence Act*, [RSO 1990, c E.23](#).

³ *Statutory Powers Procedure Act*, [RSO 1990, c S.22](#) ("SPPA").

⁴ *Securities Act*, [RSO 1990, c S.5](#).