

IN THE SUPREME COURT  
OF THE STATE OF NEVADA

MICHAEL PATRICK LATHIGEE,

Appellant,

— *vs.* —

BRITISH COLUMBIA SECURITIES COMMISSION,

Respondent.

Case No. 78833

**JOINT APPENDIX**  
**Volume 6, Bates Nos. JAX961–1203**

Appeal from Case No. A-18-771407-C  
Eighth Judicial District Court For Clark County  
Hon. Adriana Escobar

Jay D. Adkisson, SBN 12546  
Adkisson PLLC  
2505 Anthem Village Dr  
Suite E599  
Henderson, NV 89052  
Ph: 702-953-9617  
Fax: 877-698-0678  
jay@jayad.com

Micah S. Echols, SBN 8437  
Marquis Aurbach Coffing  
10001 Park Run Drive  
Las Vegas, NV 89145  
Ph: 702-382-0711  
Fax: 702-382-5816  
mechols@maclaw.com

Counsel for Appellant,  
Michael Patrick Lathigee

Kurt R. Bonds, SBN 6228  
Matthew M. Pruitt, SBN 12474  
Alverson Taylor & Sanders  
6605 Grand Montecito Pkwy  
Suite 200  
Las Vegas, NV 89149  
Ph: 702-384-7000  
Fax: 702-385-7000  
efile@alversontaylor.com

Counsel for Respondent,  
British Columbia  
Securities Commission

**INDEX TO JOINT APPENDIX**

<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>LOCATION</u></b>
Complaint for Recognition of Foreign-Country Money Judgment (filed 03/20/18)	Vol. 1, Bates Nos. JAX1–16
Answer of Defendant Michel Patrick Lathigee (filed 04/09/18)	Vol. 1, Bates Nos. JAX17–20
First Amended Answer of Defendant Michael Patrick Lathigee (filed 06/06/18)	Vol. 1, Bates Nos. JAX21–25
Scheduling Order (filed 07/23/18)	Vol. 1, Bates Nos. JAX26–28
Order Setting Civil Jury Trial (filed 09/05/18)	Vol. 1, Bates Nos. JAX29–31
Motion for Summary Judgment by Defendant Lathigee (filed 10/19/18)	Vol. 1, Bates Nos. JAX32–33
Memorandum in Support of Motion for Summary Judgment by Defendant Lathigee (filed 10/19/18)	Vol. 1, Bates Nos. JAX34–148
Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Plaintiff's Countermotion for Summary Judgment (filed 11/09/18)	Vol. 1, Bates Nos. JAX149–211 through Vol. 2, Bates Nos. JAX212–394 through Vol. 3, Bates Nos. JAX395–536 through Vol. 4, Bates Nos. JAX537-753 through Vol. 5, Bates Nos. JAX754–960 through Vol. 6, Bates Nos. JAX961–1203 through Vol. 7, Bates Nos. JAX1204–1217

<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>LOCATION</u></b>
Reply in Support of Defendant Lathigee's Motion for Summary Judgment (filed 11/21/18)	Vol. 7, Bates Nos. JAX1218–1235
Reply to Defendant's Opposition to Plaintiff's Countermotion for Summary Judgment (filed 11/30/18)	Vol. 7, Bates Nos. JAX1236–1392 through Vol. 8, Bates Nos. JAX1393–1409
Transcript of December 4, 2018 Hearing on Motions for Summary Judgment	Vol. 8, Bates Nos. JAX1410–1431
Statement of Facts in Support of Defendant Lathigee's Motion for Summary Judgment (filed 12/18/18)	Vol. 8, Bates Nos. JAX1432–1460
[British Columbia Securities Commission's Proposed] Findings of Fact, Conclusions of Law and Judgment (submitted 12/18/18)	Vol. 8, Bates Nos. JAX1461–1482
Order Granting Joint Application for Relief from Trial Deadlines (filed 01/10/19)	Vol. 8, Bates Nos. JAX1483–1486
Findings of Fact, Conclusions of Law and Judgment (filed 05/14/19)	Vol. 8, Bates Nos. JAX1487–1506
Notice of Entry of Order [with Findings of Fact, Conclusions of Law and Judgment] (filed 05/14/19)	Vol. 8, Bates Nos. JAX1507–1528
Notice of Appeal (filed 05/17/19)	Vol. 8, Bates Nos. JAX1529–1530

# EXHIBIT 19

This Act is current to August 29, 2018

See the [Tables of Legislative Changes](#) for this Act's legislative history, including any changes not in force.

## **SECURITIES ACT**

### **[RSBC 1996] CHAPTER 418**

#### ***Contents***

##### **Part 1 — Interpretation**

- 1 Definitions
- 2 Insiders
- 3 Definition of special relationships
- 3.1 Exemption orders
- 3.2 Designations

##### **Part 2 — The Commission**

- 4 Commission continued
- 4.1 Application of *Administrative Tribunals Act* to commission
- 5 Commission is an agent of the government
- 6 Panels of commission
- 7 Delegation of commission powers and duties
- 8 Executive director
- 9 Officers and employees
- 10 Public service benefits
- 11 Obligation to keep information confidential
- 12 Repealed
- 13 Appointment of experts

##### **Part 3 — Financial Administration**

- 14 Minister of Finance
- 15 Revenue and expenditure
- 15.1 Claim for wrongful benefit
- 16 Administrative services
- 17 Fiscal agent
- 18 Investment
- 19 Borrowing powers
- 20 Accounting
- 21 Business plan
- 22 Annual report

##### **Part 4 — Self Regulatory Bodies, Exchanges, Quotation and Trade Reporting Systems and Clearing Agencies**

- 23 Interpretation
- 24 Recognition

- 25 Recognition required for exchanges and clearing agencies
- 25.1 Designated exchange
  - 26 Duty to regulate, conduct and provide information
  - 27 Powers of the commission
  - 28 Review of action
  - 29 Repealed
  - 30 Records of transactions
  - 31 Auditors
  - 32 Audits of members of exchanges and self regulatory bodies
- 32.1 Duties of auditor oversight body
- 32.2 Auditor oversight body may adopt rules, standards or policies
- 32.3 Auditor oversight body may require disclosure
- 32.4 Directors, officers of auditor oversight body not compellable
- 33 Exemption order by commission

## **Part 5 — Registration**

- 34 Persons who must be registered
- 35 Granting registration
- 36 Conditions imposed on registration and registrants
- 37 Repealed
- 38 Further information may be required from applicant
- 39 Repealed
- 40 Termination or suspension of employment
- 40.1 Suspension of registration
  - 41 Surrender of registration
  - 42 Repealed

## **Part 6 — Exemption from Registration Requirements**

- 43-47 Repealed
- 48 Exemption order by commission or executive director

## **Part 7 — Trading in Securities Generally**

- 49 Calling at or telephoning residence
- 50 Representations prohibited
- 51 Registered dealer acting as principal
- 52 Disclosure of investor relations activities
- 53 Use of name of another registrant
- 54 Representation or holding out of registration
- 55 Approval of commission or executive director not to be represented
- 56 Declaration as to short position
- 57 Manipulation and fraud
- 57.1 Repealed
- 57.2 Insider trading, tipping and recommending
- 57.3 Front running
- 57.4 Defences
- 57.5 Obstruction of justice
- 57.6 Duty to comply with undertaking
- 57.7 Records

**Part 8 — Trading in Exchange Contracts**

- 58 Trading on an exchange in British Columbia
- 59 Trading on an exchange outside British Columbia
- 60 Exemption order by commission or executive director

**Part 9 — Prospectus**

- 61 Prospectus required
- 62 Voluntary filing of prospectus
- 63 Contents of prospectus
- 64 Executive director's discretion
- 65 Receipts for prospectus
- 66-71 Repealed
- 72 Order to provide information regarding distribution

**Part 10 — Exemptions from Prospectus Requirements**

- 73-75 Repealed
- 76 Exemption order by commission or executive director
- 77 List of defaulting reporting issuers

**Part 11 — Circulation of Materials**

- 78 Waiting period
- 79-80 Repealed
- 81 Defective preliminary prospectus
- 82 Material given on distribution
- 83 Obligation to send prospectus
- 84 Exemption order by commission or executive director

**Part 12 — Continuous Disclosure**

- 84.1 Repealed
- 85 Continuous disclosure
- 86 Repealed
- 87 Initial and subsequent insider report
- 87.1 Repealed
- 88 Order relieving reporting issuer
- 89 Halt trading order
- 90 Further information from directors, officers, promoters or control persons
- 91 Exemption order by commission or executive director

**Part 13 — Take Over Bids and Issuer Bids****Division 1 — Interpretation**

- 92 Definitions
- 93-97 Repealed

**Division 2 — Exemptions**

- 98 Making a bid
- 99 Recommendation relating to bid
- 100 Repealed

**Division 3 - 6**

- 101-113 Repealed

**Division 7 — Special Applications**

- 114 Applications to the commission

115 Applications to the court

#### **Part 14 — Proxies**

116 Definitions

117 Repealed

118 Voting if proxies provided

119 Exemptions

#### **Part 15 — Self Dealing**

120-122 Repealed

123 Repealed

124 Repealed

125 Standard of care for investment fund manager

126-127 Repealed

128 Repealed

129 Repealed

130 Exemptions

130.1 Independent committee for mutual funds

#### **Part 16 — Civil Liability**

131 Liability for misrepresentation in prospectus

132 Liability for misrepresentation in circular or notice

132.1 Liability for misrepresentation in prescribed disclosure document

133 Standard of reasonableness

134 Liability in margin contracts

135 Right of action for failure to deliver documents

135.1 Right of action for failure to deliver prescribed disclosure documents

136 Liability for insider trading, tipping and recommending

136.1 Accounting for benefits

136.2 Due diligence defence for insider trading

137 Action by commission on behalf of issuer

138 Rescission of contract

138.1 Rescission of purchase of security under prescribed disclosure document

139 Rescission of purchase of mutual fund security

140 Limitation period

#### **Part 16.1 — Civil Liability for Secondary Market Disclosure**

##### **Division 1 — Interpretation and Application**

140.1 Definitions

140.2 Application

##### **Division 2 — Liability**

140.3 Liability for secondary market disclosure

140.4 Burden of proof and defences

##### **Division 3 — Damages**

140.5 Assessment of damages

140.6 Proportionate liability

140.7 Limits on damages

##### **Division 4 — Procedural Matters**

140.8 Leave to proceed



140.9 Notice

140.91 Restriction on discontinuation, etc., of action

140.92 Power of the commission

140.93 No derogation from other rights

140.94 Limitation period

## **Part 17 — Investigations and Audits**

141 Provision of information to executive director

141.1 Compliance review for SRO or exchange

141.2 Compliance review of registrant or custodian

141.3 Compliance review of reporting issuer

141.4 Compliance review of other market participants

141.5 Warrant for private residence

142 Investigation order by commission

143 Power of investigator

144 Investigator's power to compel evidence

145 Appointment of expert

146 Report to commission

147 Investigation order by minister

148 Evidence not to be disclosed

149 Report to minister

150 Costs payable by person investigated

151 Order to freeze property

152 Appointment of receiver, receiver manager or trustee

153 Examination of financial affairs

154 Repealed

## **Part 18 — Enforcement**

155 Offences generally

155.1 Additional remedies

155.2 Enforcement of court orders

156 Execution of warrant issued in another province

157 Order for compliance

158 Section 5 of the *Offence Act*

159 Limitation period

160 Costs of investigation

161 Enforcement orders

162 Administrative penalty

162.1 Demand on third party

162.2 Settlements

163 Enforcement of commission orders

164 Failure to comply with filing requirements

## **Part 19 — Reviews and Appeals**

165 Review of decision of executive director

166 Review of decision of person acting under delegated authority

167 Appeal of commission decision

## **Part 19.1 — Interjurisdictional Cooperation**

- 167.1 Definitions
- 167.2 Delegation and acceptance of authority
- 167.3 Subdelegation
- 167.4 Revocation
- 167.5 Adoption or incorporation of extraprovincial securities laws
- 167.6 Exercise of discretion, interprovincial reliance
- 167.7 Review of extraprovincial decision
- 167.8 Appeal of decision of an extraprovincial securities commission
- 167.9 Appeal of determination of the commission

## Part 20 — General Provisions

- 168 Admissibility in evidence of certified statements
- 168.1 False or misleading statements prohibited
- 168.2 Contraventions attributable to employees, officers, directors and agents
- 169 Filing and inspection of records
- 169.1 Information collection and sharing
- 170 Immunity of commission and others
- 171 Discretion to revoke or vary decision
- 172 Conditions on decisions
- 173 Authority of persons presiding at hearings
- 174 Hearing fees and charges
- 175 Extrajurisdictional evidence
- 176 Extrajurisdictional request for evidence
- 177 Committal for contempt
- 178 Executive director may refund fee
- 179 Review of fees and charges
- 180 Notices generally
- 181 Reference to record includes amendment
- 182 Required records
- 183 Lieutenant Governor in Council regulations
- 184 Commission rules
- 185 *Regulations Act* applies to commission rules
- 186 Regulation prevails over commission rule
- 187 Administrative powers respecting commission rules
- 188 Policy statements

## Part 1 — Interpretation

### Definitions

#### 1 (1) In this Act:

**"adviser"** means a person engaging in, or holding himself, herself or itself out as engaging in, the business of advising another with respect to investment in or the purchase or sale of securities or exchange contracts;

**"associate"** means, if used to indicate a relationship with any person,

(a) a partner, other than a limited partner, of that person,

- (b) a trust or estate in which that person has a substantial beneficial interest or for which that person serves as trustee or in a similar capacity,
- (c) an issuer in respect of which that person beneficially owns or controls, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all outstanding voting securities of the issuer, or
- (d) a relative, including the spouse, of that person or a relative of that person's spouse, if the relative has the same home as that person;

**"auditor oversight body"** means a self regulatory body that

- (a) regulates the auditing or review of financial statements that are required to be filed under this Act, and
- (b) is recognized under section 24;

**"business day"** means a day other than Saturday or a holiday;

**"Business Development Bank of Canada"** means the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

**"class of exchange contracts"** includes a series of a class of exchange contracts;

**"class of securities"** includes a series of a class of securities;

**"clearing agency"** means a person who

- (a) in connection with trades in securities, acts as an intermediary in paying funds, in delivering securities or in doing both of those things,
- (b) provides centralized facilities through which trades in securities or exchange contracts are cleared, or
- (c) provides centralized facilities as a depository of securities;

**"commission"** means the British Columbia Securities Commission continued under Part 2;

**"commission rule"** means a rule made or deemed to be made by the commission under section 184;

**"commodity"** means

- (a) any good, article, service, right or interest of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit,
- (b) the currency of any jurisdiction,
- (c) a gem, gemstone, or other precious stone, or
- (d) any other prescribed good, article, service, right or interest, or a class of any of those;

**"contract"** includes a trust agreement, declaration of trust or other similar instrument;

**"contractual plan"** means a contract or other arrangement for the purchase of securities of a mutual fund by payments over a specified period or by a specified number of payments where the amount deducted from any one of the payments as sales charges is larger than the amount that would have been deducted from that payment for sales charges if deductions had been made from each payment at a constant rate for the duration of the plan;

**"control person"** means

- (a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or
- (b) each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,

and, if a person or combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

**"dealer"** means a person who trades in securities or exchange contracts as principal or agent;

**"decision"**, in relation to the commission, the executive director or a designated organization, means a direction, decision, order, ruling or requirement made under a power or right conferred by this Act or the regulations;

**"designated organization"** means an organization that is authorized under section 184 (2) (e) to exercise a power or perform a duty of the executive director;

**"director"** means a director of a corporation or an individual performing a similar function or occupying a similar position for a corporation or for any other person;

**"distribution"** means, if used in relation to trading in securities,

- (a) a trade in a security of an issuer that has not been previously issued,
- (b) a trade by or on behalf of an issuer in a previously issued security of that issuer that has been redeemed or purchased by or donated to that issuer,

- (c) a trade in a previously issued security of an issuer from the holdings of a control person,
- (d) a trade by or on behalf of an underwriter in a security that was acquired by the underwriter, acting as underwriter, before February 1, 1987, if the security continues, on February 1, 1987, to be owned by or on behalf of that underwriter so acting,
- (e) a trade deemed to be a distribution
  - (i) in an order made under section 76 by the commission or the executive director, or
  - (ii) in the regulations,
- (f) a transaction or series of transactions involving further purchases and sales in the course of or incidental to a distribution, and
- (g) a prescribed class of trade or transaction;

**"distribution contract"** means a contract under which a mutual fund or its legal representative grants to a person the right to purchase the securities of the mutual fund for distribution or to distribute the securities of the mutual fund on behalf of the mutual fund;

**"economic interest"** means

- (a) a right to receive or the opportunity to participate in a reward, benefit or return from a security or an exchange contract, or
- (b) the exposure to a risk of a financial loss in respect of a security or an exchange contract;

**"exchange contract"** means a futures contract or an option that meets both of the following requirements:

- (a) its performance is guaranteed by a clearing agency;
- (b) it is traded on an exchange pursuant to standardized terms and conditions set out in that exchange's bylaws, rules or regulatory instruments, at a price agreed on when the futures contract or option is entered into on the exchange,

and includes another instrument or class of instruments that meets both of those requirements and is designated as an exchange contract in an order the commission may make for the purpose of this definition;

**"exchange issuer"** means an issuer whose securities are listed and posted for trading on an exchange recognized for the purpose of this definition by the commission, but does not include

- (a) an issuer, or
- (b) a class of issuers

described in an order which the commission may make for the purpose of this definition;

**"executive director"** means the executive director appointed under section 8;

**"forward-looking information"** means disclosure regarding possible events, conditions or financial performance that is based on assumptions about future economic conditions and courses of action and includes future oriented financial information with respect to prospective financial performance, financial position or cash flows that is presented either as a forecast or a projection;

**"futures contract"** means any obligation to make or take future delivery of

- (a) a commodity,
- (b) a security, or
- (c) cash if the amount of cash is derived from, or by reference to, a variable including
  - (i) a price or quote for a commodity or security,
  - (ii) an interest rate,
  - (iii) a currency exchange rate, or
  - (iv) an index or benchmark,

but does not include an obligation, or a class of obligations, described in an order made under section 3.1;

**"holder in British Columbia"** means, in respect of a security of an issuer, a holder of the security of the issuer whose last address as shown on the books of the issuer is in British Columbia;

**"individual"** means a natural person, but does not include

- (a) a partnership, unincorporated association, unincorporated syndicate, unincorporated organization or trust, or
- (b) a natural person in the person's capacity as a trustee, executor, administrator or personal or other legal representative;

**"insider"** means

- (a) a director or an officer of an issuer,
- (b) a director or an officer of a person that is itself an insider or a subsidiary of an issuer,
- (c) a person that has
  - (i) beneficial ownership of, or control or direction over, directly or indirectly, or
  - (ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly,

securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any

securities held by the person as underwriter in the course of a distribution,

- (d) an issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security,
- (e) a person designated as an insider in an order made under section 3.2, or
- (f) a person that is in a prescribed class of persons;

**"insurer"** means an insurance company;

**"investment fund"** means a mutual fund or a non-redeemable investment fund;

**"investment fund manager"** means a person that directs the business, operations or affairs of an investment fund;

**"investor relations activities"** means any activities or oral or written communications, by or on behalf of an issuer or security holder of the issuer, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer, but does not include

- (a) the dissemination of information provided, or records prepared, in the ordinary course of the business of the issuer
  - (i) to promote the sale of products or services of the issuer, or
  - (ii) to raise public awareness of the issuer,that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,
- (b) activities or communications necessary to comply with the requirements of
  - (i) this Act or the regulations, or
  - (ii) the bylaws, rules or other regulatory instruments of a self regulatory body, exchange or quotation and trade reporting system,
- (c) communications by a publisher of, or writer for, a newspaper, news magazine or business or financial publication, that is of general and regular paid circulation, distributed only to subscribers to it for value or to purchasers of it, if
  - (i) the communication is only through the newspaper, magazine or publication, and
  - (ii) the publisher or writer receives no commission or other consideration other than for acting in the capacity of publisher or writer, or
- (d) activities or communications that may be prescribed for the purpose of this definition;

**"issuer"** means a person who

- (a) has a security outstanding,
- (b) is issuing a security, or
- (c) proposes to issue a security;

**"management contract"** means a contract under which a mutual fund is provided with investment advice;

**"material change"** means,

- (a) if used in relation to an issuer other than an investment fund,
  - (i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer, or
  - (ii) a decision to implement a change referred to in subparagraph (i) made by
    - (A) the directors of the issuer, or
    - (B) senior management of the issuer who believe that confirmation of the decision by the directors is probable, and
- (b) if used in relation to an investment fund,
  - (i) a change in the business, operations or affairs of the investment fund that would be considered important by a reasonable investor in determining whether to purchase or continue to hold a security of the investment fund, or
  - (ii) a decision to implement a change referred to in subparagraph (i) made
    - (A) by the directors of the investment fund or the directors of the investment fund manager,
    - (B) by senior management of the investment fund who believe that confirmation of the decision by the directors is probable, or
    - (C) by senior management of the investment fund manager who believe that confirmation of the decision by the directors of the manager is probable;

**"material fact"** means, when used in relation to securities issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the securities;

**"misrepresentation"** means

- (a) an untrue statement of a material fact, or
- (b) an omission to state a material fact that is
  - (i) required to be stated, or



- (ii) necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made;

**"mutual fund"** means

- (a) an issuer of a security that entitles the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the security,
  - (b) an issuer described in an order made under section 3.2, and
  - (c) an issuer that is in a class of prescribed issuers,
- but does not include an issuer, or a class of issuers, described in an order made under section 3.1;

**"mutual fund distributor"** means a person distributing a security under a distribution contract;

**"mutual fund in British Columbia"** means a mutual fund that is

- (a) a reporting issuer, or
  - (b) organized under the laws of British Columbia,
- but does not include a private mutual fund;

**"mutual fund manager"** means a person who provides investment advice under a management contract;

**"non-redeemable investment fund"** means

- (a) an issuer
    - (i) whose primary purpose is to invest money provided by its security holders,
    - (ii) that does not invest
      - (A) for the purpose of exercising or seeking to exercise control of an issuer, other than a mutual fund or a non-redeemable investment fund, or
      - (B) for the purpose of being actively involved in the management of any issuer in which it invests, other than a mutual fund or a non-redeemable investment fund, and
    - (iii) that is not a mutual fund,
  - (b) an issuer designated in an order made under section 3.2, and
  - (c) an issuer that is in a class of prescribed issuers,
- but does not include an issuer, or a class of issuers, described in an order made under section 3.1;

**"officer"**, with respect to an issuer or a registrant, means

- (a) a chair or vice chair of the board of directors, or a chief executive officer, chief operating officer, chief financial officer, president, vice president, secretary, assistant secretary, treasurer, assistant treasurer or general manager,
- (b) an individual who is designated as an officer under a bylaw or similar authority of the registrant or issuer, or
- (c) an individual who performs functions similar to those normally performed by an individual referred to in paragraph (a) or (b);

**"person"** includes an individual, corporation, partnership, party, trust, fund, association and any other organized group of persons and the personal or other legal representative of a person to whom the context can apply according to law;

**"portfolio manager"** means an adviser who manages the investment portfolio of clients through discretionary authority granted by one or more clients;

**"portfolio security"** means, if used in relation to a mutual fund, a security held or proposed to be purchased by the mutual fund;

**"private mutual fund"** means a mutual fund that is

- (a) operated as an investment club, if
  - (i) the securities issued by it are held by not more than 50 persons and it has never sought to borrow money from the public,
  - (ii) it does not pay or give any remuneration for investment, management or administration advice in respect of trades in securities or exchange contracts, except normal brokerage fees, and
  - (iii) all of its members are required, for the purpose of financing its operations, to make contributions in proportion to the securities issued by it that each member holds, or
- (b) administered by a trust company but which has no promoter or manager other than a trust company, and consists of
  - (i) a pooled fund that is maintained solely to serve registered retirement savings plans, retirement income plans, deferred profit sharing plans, pension plans or other similar plans registered under the *Income Tax Act* (Canada),
  - (ii) a common trust fund as defined by the *Financial Institutions Act*, or
  - (iii) a pooled fund that is maintained by a trust company in which money, belonging to various estates and trusts in its care, is commingled, with the authority of the settlor, will-maker or trustee, for the purpose of facilitating investment if no general solicitations are made to sell securities in the fund;

**"promoter"** means, if used in relation to an issuer, a person who

- (a) acting alone or in concert with one or more other persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, or
- (b) in connection with the founding, organization or substantial reorganization of the business of the issuer, directly or indirectly receives, in consideration of services or property or both, 10% or more of a class of the issuer's own securities or 10% or more of the proceeds from the sale of a class of the issuer's own securities of a particular issue,

but does not include a person who

- (c) receives securities or proceeds referred to in paragraph (b) solely
  - (i) as underwriting commissions, or
  - (ii) in consideration for property, and
- (d) does not otherwise take part in founding, organizing or substantially reorganizing the business;

**"registrant"** means a person registered or required to be registered under this Act;

**"regulation"**, except in sections 155 (1) (d), 183, 184, 186 and 188, includes a commission rule;

**"related financial instrument"** means

- (a) an instrument, agreement, security or exchange contract the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security, or
- (b) any other instrument, agreement or understanding that affects, directly or indirectly, a person's economic interest in respect of a security or an exchange contract;

**"reporting issuer"** means an issuer that

- (a) has issued securities in respect of which
  - (i) a prospectus was filed and a receipt was issued,
  - (ii) a statement of material facts was filed and accepted, or
  - (iii) a securities exchange take over bid circular was filed, under a former enactment,
- (b) has filed a prospectus or statement of material facts and the executive director has issued a receipt for it under this Act,
- (c) has any securities that have been at any time listed and posted for trading on any exchange in British Columbia, regardless of when the listing and posting for trading began,

- (d) is an issuer that has exchanged its securities with another issuer or with the holders of the securities of that other issuer in connection with an amalgamation, merger, reorganization, arrangement or similar transaction if one of the parties to the amalgamation, merger, reorganization, arrangement or similar transaction was a reporting issuer at the time of the amalgamation, merger, reorganization, arrangement or similar transaction,
- (e) is designated as a reporting issuer in an order made under section 3.2,
- (e.1) is a person that is within a prescribed class of persons, or
- (f) has filed a securities exchange take over bid circular under this Act for the acquisition of securities of a reporting issuer and has taken up and paid for securities subject to the bid in accordance with the circular,

unless the commission orders under section 88 that the issuer has ceased to be a reporting issuer;

**"salesperson"** means an individual employed by a dealer to make trades on the dealer's behalf in securities, exchange contracts or both;

**"securities regulatory authority"** means a person empowered by the laws of a jurisdiction to regulate trading in securities or exchange contracts or to administer or enforce laws respecting trading in securities or exchange contracts;

**"security"** includes

- (a) a document, instrument or writing commonly known as a security,
- (b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person,
- (c) a document evidencing an option, subscription or other interest in or to a security,
- (d) a bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than
  - (i) a contract of insurance issued by an insurer, and
  - (ii) an evidence of deposit issued by a savings institution,
- (e) an agreement under which the interest of the purchaser is valued, for the purposes of conversion or surrender, by reference to the value of a proportionate interest in a specified portfolio of assets, but does not include a contract issued by an insurer that provides for payment at maturity of an amount not less than 3/4 of the premiums paid by the purchaser for a benefit payable at maturity,

- (f) an agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person,
- (g) a profit sharing agreement or certificate,
- (h) a certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,
- (i) an oil or natural gas royalty or lease or a fractional or other interest in either,
- (j) a collateral trust certificate,
- (k) an income or annuity contract, other than one made by an insurer,
- (l) an investment contract,
- (m) a document evidencing an interest in a scholarship or educational plan or trust,
- (n) an instrument that is a futures contract or an option but is not an exchange contract, or
- (o) a permit under the *Oil and Gas Activities Act*,

whether or not any of the above relate to an issuer, but does not include an exchange contract;

**"self regulatory body"** means a regulatory body other than a government or governmental authority;

**"spouse"** means a person who

- (a) is married to another person, and is not living separate and apart, within the meaning of the *Divorce Act* (Canada), from the other person, or
- (b) is living with another person in a marriage-like relationship;

**"subsidiary"** means an issuer that is controlled by another issuer;

**"trade"** includes

- (a) a disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or a transfer, pledge, mortgage or other encumbrance of a security for the purpose of giving collateral for a debt,
- (a.1) entering into a futures contract,
- (b) entering into an option that is an exchange contract,
- (c) participation as a trader in a transaction in a security or exchange contract made on or through the facilities of an exchange or reported through the facilities of a quotation and trade reporting system,

- (d) the receipt by a registrant of an order to buy or sell a security or exchange contract,
- (e) a transfer of beneficial ownership of a security to a transferee, pledgee, mortgagee or other encumbrancer under a realization on collateral given for a debt, and
- (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e);

**"underwriter"** means a person who,

- (a) as principal, agrees to purchase a security for the purpose of distribution,
  - (b) as agent, offers for sale or sells a security in connection with a distribution, or
  - (c) participates directly or indirectly in a distribution described in paragraph (a) or (b),
- but does not include
- (d) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer,
  - (e) a mutual fund that accepts its securities for surrender and resells them,
  - (f) a corporation that purchases shares of its own issue and resells them, or
  - (g) a bank with respect to prescribed securities or banking transactions;

**"voting security"** means a security of an issuer that

- (a) is not a debt security, and
  - (b) carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing.
- (2) For the purposes of this Act, an issuer is affiliated with another issuer if
- (a) one of them is the subsidiary of the other, or
  - (b) each of them is controlled by the same person.
- (3) For the purposes of this Act, an issuer is controlled by a person if
- (a) voting securities of the issuer are held, other than by way of security only, by or for the benefit of that person, and
  - (b) the voting rights attached to those voting securities are entitled, if exercised, to elect a majority of the directors of the issuer.
- (4) For the purposes of this Act, a person beneficially owns securities that are beneficially owned by

- (a) an issuer controlled by that person, or
- (b) an affiliate of that person or an affiliate of any issuer controlled by that person.

## Insiders

**2** (1) The following persons are insiders of a mutual fund that is a reporting issuer:

- (a) a mutual fund manager for the mutual fund;
- (b) a mutual fund distributor for the mutual fund;
- (c) an insider of a manager or distributor described in paragraph (a) or (b).

(2) and (3) [Repealed 2006-32-2.]

## Definition of special relationships

**3** For the purposes of sections 57.2 and 136, a person is in a special relationship with an issuer if the person

- (a) is an insider, affiliate or associate of
  - (i) the issuer,
  - (ii) a person that is proposing to make a take over bid, as defined in section 92, for the securities of the issuer, or
  - (iii) a person that is proposing
    - (A) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with the issuer, or
    - (B) to acquire a substantial portion of the property of the issuer,
- (b) is engaging in or is proposing to engage in any business or professional activity with or on behalf of the issuer or with or on behalf of a person described in paragraph (a) (ii) or (iii),
- (c) is a director, officer or employee of the issuer or of a person described in paragraph (a) (ii) or (iii) or (b),
- (d) knows of a material fact or of a material change with respect to the issuer, having acquired the knowledge while in a relationship described in paragraph (a), (b) or (c) with the issuer, or
- (e) knows of a material fact or of a material change with respect to the issuer, having acquired the knowledge from another person at a time when
  - (i) that other person was in a special relationship with the issuer, whether under this paragraph or any of paragraphs (a) to (d), and
  - (ii) the person that acquired knowledge of the material fact or material change from that other person knew or reasonably

ought to have known of the special relationship referred to in subparagraph (i).

### Exemption orders

- 3.1** (1) If the commission considers that to do so would not be prejudicial to the public interest, the commission may, for the purposes of this Act and the regulations, order that
- (a) an obligation, or a class of obligations, is not a futures contract,
  - (b) an issuer, or a class of issuers, is not a mutual fund, or
  - (c) an issuer, or a class of issuers, is not a non-redeemable investment fund.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's own motion.

### Designations

- 3.2** (1) If the commission considers it to be in the public interest, the commission may, for the purposes of this Act, order that
- (a) a person is an insider, or
  - (b) a person or a person within a class of persons is a mutual fund, a non-redeemable investment fund or a reporting issuer.
- (c) and (d) [Repealed 2007-37-3.]
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's own motion.

## Part 2 — The Commission

### Commission continued

- 4** (1) The British Columbia Securities Commission is continued as a corporation consisting of up to 11 members appointed as follows by the Lieutenant Governor in Council after a merit-based process:
- (a) one member designated as the chair and chief executive officer of the commission;
  - (b) one or more members designated as vice chairs after consultation with the chair;
  - (c) other members appointed after consultation with the chair.
- (2) The commission is responsible for the administration of this Act.
- (3) [Repealed 2003-47-61.]
- (4) The Lieutenant Governor in Council may set the terms and conditions of the appointments of the members of the commission including, but not limited to, appointing members of the commission for different terms of office, or for



limited, specified purposes or functions or for all purposes or functions of the commission.

(5) [Repealed 2003-47-61.]

(6) The members of the commission must be reimbursed for any reasonable expenses necessarily incurred by them in the performance of their duties.

(7) If a member of the commission is appointed for a limited, specified purpose or function of the commission, the member

(a) is not to be considered a member of the commission for any other purpose or function than that specified, and

(b) must not participate in any aspect of the commission's business outside the limited, specified purpose or function for which the member was appointed.

(8) [Repealed 2003-47-61.]

(9) The commission may hold hearings in or outside British Columbia in conjunction with any other body empowered by law to administer or regulate trading in securities or exchange contracts and may consult with that other body during the course of a hearing.

(9.1) [Repealed 2006-32-6.]

(10) A person who is the chair, a vice chair or a member of the commission may exercise the powers and must perform the duties delegated to that person by the commission under section 7.

### **Application of *Administrative Tribunals Act* to commission**

**4.1** The following provisions of the *Administrative Tribunals Act* apply to the commission:

(a) Part 1 [*Interpretation and Application*];

(b) Part 2 [*Appointments*], except the following:

(i) section 7 (3) [*powers after resignation or expiry of term*];

(ii) section 9 [*responsibilities of the chair*];

(iii) section 10 [*remuneration and benefits for members*];

(c) section 43 [*discretion to refer questions of law to court*];

(d) section 46 [*notice to Attorney General if constitutional question raised in application*];

(e) section 46.1 [*discretion to decline jurisdiction to apply the Human Rights Code*];

(f) section 55 [*compulsion protection*];

(g) section 61 [*application of Freedom of Information and Protection of Privacy Act*].

### **Commission is an agent of the government**

- 5** (1) The commission is an agent of the government.
- (2) The commission has the power and capacity of a natural person of full capacity.
- (3) The *Business Corporations Act* does not apply to the commission, but the Lieutenant Governor in Council may order that one or more of the provisions of that Act apply.
- (4) The commission is not liable to taxation, except insofar as the government is liable.

### Panels of commission

- 6** (1) The chair may establish one or more panels of the commission, and, in matters referred to a panel by the chair, a panel has the powers of the commission.
- (2) The chair may refer a matter that is before the commission to a panel or a matter that is before a panel to the commission or another panel.
- (3) A panel consists of 2 or more members of the commission appointed by the chair.
- (4) The chair may terminate an appointment to a panel and may fill a vacancy on a panel before the commencement of a hearing.

### Delegation of commission powers and duties

- 7** (1) Subject to subsections (2) and (3), the commission may delegate its powers and duties under this Act or another enactment to the chair, a vice chair, a member of the commission or the executive director.
- (2) The commission must not delegate a power or duty referred to in section 114 (1), 137, 142, 143, 145, 148 to 152, 157, 162, 163 or 165 to the executive director.
- (3) The commission must not delegate the power to make rules under section 184.
- (4) Unless the parties consent, a member of the commission must not sit on any hearing required to be held by the commission with respect to any matter in relation to which the member exercised a power or performed a duty referred to in section 142, 143, 145 or 148 to 152 and which was delegated to the member under subsection (1).

### Executive director

- 8** (1) The commission must appoint a person to be the executive director.
- (2) The executive director is the chief administrative officer of the commission and must obey the policy directives given by the commission.
- (3) The executive director may exercise the powers and must perform the duties vested in or imposed on
- (a) the executive director under this Act, and

- (b) the commission under this Act that are delegated to the executive director by the commission.
- (4) The executive director, by conditional or unconditional written authority, may delegate the executive director's powers and duties under this Act or another enactment to any person employed under section 9.
- (5) Despite subsection (4), the executive director must not delegate
  - (a) powers or duties of the commission that are delegated to the executive director by the commission, or
  - (b) a power or duty referred to in section 81, 89, 161, 166 (3) or 182.
- (6) A person to whom the executive director, by written authority under subsection (4), delegates powers and duties may exercise the powers and must perform the duties in accordance with the written authority.
- (7) Persons employed in the office of the executive director as directors are deputies of the executive director.

## Officers and employees

### 9 The commission may

- (a) appoint officers and employees of the commission necessary to enable the commission and the executive director to perform their duties and exercise their powers under this Act,
- (b) define the duties of the officers and employees, and
- (c) determine the remuneration of its members, and the remuneration and classification of the officers and employees.

## Public service benefits

- 10** (1) The *Public Service Benefit Plan Act* applies to the commission and to the officers and employees.

(2) and (3) [Repealed 1999-44-104.]

## Obligation to keep information confidential

- 11** (1) Every person acting under the authority of this Act must keep confidential all facts, information and records obtained or provided under this Act, or under a former enactment, except so far as the person's public duty requires or this Act permits the person to disclose them or to report or take official action on them.
- (2) Subject to subsections (3) and (4), the facts, information and records referred to in subsection (1) must be released to the Ombudsperson at the request of the Ombudsperson.
- (3) All facts, information and records that are obtained
  - (a) from a law enforcement agency, or

(b) pursuant to an investigation under this Act,  
must only be released to the Ombudsperson if the Ombudsperson first  
produces the written consent of

(c) the law enforcement agency, or

(d) the person from whom the facts, information or records were  
obtained pursuant to the investigation,

to release the facts, information or records.

(4) All facts, information and records that could lead to the identification of an informant under this Act must only be released to the Ombudsperson if the person to whom the Ombudsperson makes the request first obtains the written consent of the informant to release the facts, information or records.

## Repealed

**12** [Repealed 2006-32-8.]

## Appointment of experts

**13** (1) The commission may appoint an expert to assist it in any way it considers expedient.

(2) The commission may submit any record or thing for examination to an expert appointed under subsection (1), and the commission has the same power as is vested in an investigator under section 144 (1) and (2) to summon and enforce the attendance of witnesses before the expert and to compel them to give evidence under oath or in any other manner, and to produce records and things or classes of records and things.

(3) If an expert has made an examination or conducted an investigation under this section, the commission may require the person whose records or things were examined or investigated to pay prescribed fees or charges for the costs of the examination or investigation.

## Part 3 — Financial Administration

### Minister of Finance

**14** In this Part, "**Minister of Finance**" has the same meaning as in the *Financial Administration Act*.

### Revenue and expenditure

**15** (1) Revenue received under this Act, including but not limited to revenue from administrative penalties under section 162 and any cost recoveries under this Act, but not including revenue

(a) from fines referred to in section 155,

(b) [Repealed 2006-32-9.]

must be paid to the commission.

- (2) Subject to subsection (3), money received by the commission may be expended for any costs involved in the administration and enforcement of this Act and for any costs involved in operating the commission.
- (3) Money received by the commission under section 155.1 (b), 157 (1) (b), 161 (1) (g) or 162 may be expended only for the purpose of educating securities market participants and members of the public about investing, financial matters or the operation or regulation of securities markets.
- (3.1) The commission may not expend money received under section 155.1 (b), 157 (1) (b) or 161 (1) (g) unless the period referred to in section 15.1 (5) has expired.
- (4) [Repealed 2006-32-9.]
- (5) This section applies despite section 12 of the *Financial Administration Act*.

### **Claim for wrongful benefit**

- 15.1** (1) The commission must notify the public in accordance with the regulations if the commission receives money from an order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g).
- (2) A person may make a claim to money referred to in subsection (1) by submitting an application in accordance with the regulations within 3 years from the date of the first notification made under subsection (1).
  - (3) If the commission receives an application under subsection (2), the commission may, in accordance with the regulations, pay to the applicant all or a part of the amount claimed.
  - (4) [Repealed 2011-29-120.]
  - (5) After 3 years from the date of the first notification made under subsection (1), and after adjudicating all claims in accordance with the regulations, the commission may retain any money not paid or payable under subsection (3).

### **Administrative services**

- 16** The Lieutenant Governor in Council may designate administrative services that the commission must obtain from the government or from any government corporation, agency, branch, department or other government organization or entity that is specified in the order making the designation.

### **Fiscal agent**

- 17** The Minister of Finance is the fiscal agent of the commission.

### **Investment**

- 18** (1) The commission must place with the Minister of Finance, for investment, any money the commission receives but does not immediately require for carrying out the purposes of this Act.

- (2) Money placed with the Minister of Finance under this section is to be treated for all purposes as money placed with that minister under section 40 (5) of the *Financial Administration Act*.

### **Borrowing powers**

- 19** Subject to the approval of the Lieutenant Governor in Council and the Minister of Finance, the commission, for the purpose of carrying out any power, right, function or duty conferred or imposed on the commission under this or any other Act, may borrow the sums of money the commission considers necessary or advisable.

### **Accounting**

- 20** (1) The commission must establish and maintain accounting policies and systems satisfactory to the Minister of Finance.
- (2) Whenever required by the Minister of Finance, the commission must render detailed accounts of the commission's revenues and expenditures for the period or to the day the Minister of Finance designates.
- (3) All books or records of account and other financial records must at all times be open for inspection by the Minister of Finance or a person designated by that minister.
- (4) The chair of the Treasury Board may direct the Comptroller General to examine and report to Treasury Board on any or all of the financial and accounting operations of the commission.
- (5) At least once in every fiscal year, the accounts of the commission must be audited and reported on by an auditor appointed by the Lieutenant Governor in Council, and the costs of the audit must be paid by the commission.
- (6) The fiscal year for the commission is a period of 12 months beginning on April 1 in each year and ending on March 31 in the next year.

### **Business plan**

- 21** At least once in every fiscal year of the commission and as directed by the Treasury Board, the commission must submit to the Treasury Board, for review and approval, a business plan that includes
- (a) a proposed budget for the subsequent 3 fiscal years,
  - (b) management objectives for the next 3 years, and
  - (c) other information that the Treasury Board may specify.

### **Annual report**

- 22** (1) Within 90 days after the end of each fiscal year of the commission, the commission must prepare and submit to the minister a report for that fiscal year.

- (2) The report must be laid before the Legislative Assembly by the minister as soon as practicable.
- (3) The report must contain
  - (a) a summary of the commission's operations for the fiscal year of the report,
  - (b) a financial statement in the form required by the Minister of Finance showing the revenues, expenditures, assets and liabilities of the commission for the fiscal year of the report, and
  - (c) any other information that the minister may specify.
- (4) The financial statement referred to in subsection (3) (b) must be prepared in accordance with generally accepted accounting principles.

## **Part 4 — Self Regulatory Bodies, Exchanges, Quotation and Trade Reporting Systems and Clearing Agencies**

### **Interpretation**

- 23** A reference in sections 26 to 32 to a self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency means a person that has been recognized as a self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency, as the case may be, under section 24.

### **Recognition**

- 24** On application, the commission may recognize a person as
- (a) a self regulatory body,
  - (b) an exchange,
  - (c) a quotation and trade reporting system, or
  - (d) a clearing agency.

### **Recognition required for exchanges and clearing agencies**

- 25** A person must not carry on business as an exchange or clearing agency in British Columbia unless the person is recognized by the commission under section 24.

### **Designated exchange**

- 25.1** (1) If a person is not carrying on business as an exchange, but is carrying on business as a quotation and trade reporting system, or is otherwise facilitating transactions of securities or exchange contracts, the commission may, if it considers it to be in the public interest, order that
- (a) the person is an exchange for the purposes of this Act and the regulations, and
  - (b) the person must not carry on business as a quotation and trade reporting system, or facilitate transactions of securities or exchange

contracts, unless the person is recognized by the commission under section 24 (b).

- (2) An order under subsection (1) may be made on application by an interested person or on the commission's own motion.

### **Duty to regulate, conduct and provide information**

- 26** (1) Subject to this Act, the regulations and any decision made by the commission, a self regulatory body, an exchange or a quotation and trade reporting system must regulate the operations, standards of practice and business conduct of its members or participants, and the representatives of its members or participants, in accordance with its bylaws, rules or other regulatory instruments.
- (2) A self regulatory body, an exchange or a quotation and trade reporting system must provide to the commission or to the executive director, at the request of the commission or the executive director,
- (a) a copy, or a partial copy as specified in the request, of the charter, as defined in section 1 of the *Financial Institutions Act*, of the self regulatory body or exchange, or
  - (b) any information or record in the possession of the self regulatory body, exchange or quotation and trade reporting system relating to
    - (i) a registrant or former registrant,
    - (ii) a client or former client of a registrant or of a former registrant,
    - (iii) an issuer,
    - (iv) trading in securities or exchange contracts,
    - (v) any of the self regulatory body's, exchange's or quotation and trade reporting system's
      - (A) bylaws, rules, other regulatory instruments or policies, or
      - (B) directions, decisions, orders or rulings that are made under any of its bylaws, rules, other regulatory instruments or policies,
    - (vi) the charter, as defined in section 1 of the *Financial Institutions Act*, of the self regulatory body, exchange or quotation and trade reporting system, or
    - (vii) this Act or the regulations.

### **Powers of the commission**

- 27** (1) If the commission considers it to be in the public interest, the commission may make any decision respecting the following:
- (a) a bylaw, rule or other regulatory instrument or policy, or a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy, of a self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency;



- (b) the procedures or practices of a self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency;
  - (c) the manner in which an exchange or a clearing agency carries on business;
  - (d) the trading of securities or exchange contracts on or through the facilities of an exchange, or the trading of securities on or through the facilities of a quotation and trade reporting system;
  - (e) an exchange contract trading on an exchange;
  - (f) a security listed on an exchange or quoted on a quotation and trade reporting system;
  - (g) issuers, whose securities are listed on an exchange or quoted on a quotation and trade reporting system, to ensure that they comply with this Act and the regulations.
- (2) A person affected by a decision made by the commission under subsection (1) must act in accordance with the decision.

### Review of action

- 28** (1) The executive director or a person directly affected by a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a self regulatory body, an exchange, a quotation and trade reporting system, or a clearing agency may apply by notice to the commission for a hearing and review of the matter under Part 19, and section 165 (3) to (8) applies.
- (2) An applicant under subsection (1), other than the executive director, must send a copy of the notice requesting a hearing and review to
- (a) the executive director, and
  - (b) the affected self regulatory body, exchange, quotation and trade reporting system or clearing agency.
- (3) If the executive director is the applicant under subsection (1), the executive director must send a copy of the notice requesting a hearing and review to
- (a) the affected self regulatory body, exchange, quotation and trade reporting system or clearing agency, and
  - (b) the persons directly affected by the direction, decision, order or ruling referred to in subsection (1).

### Repealed

- 29** [Repealed 2007-37-7.]

### Records of transactions

- 30** (1) An exchange or a quotation and trade reporting system must keep a record showing the time and date when each transaction on the exchange or

quotation and trade reporting system was recorded.

- (2) If a client of a member or participant produces to an exchange or a quotation and trade reporting system a written confirmation of a transaction on the exchange or quotation and trade reporting system, the exchange or quotation and trade reporting system must supply to the client
  - (a) particulars of the time at which the transaction was recorded, and
  - (b) verification or otherwise of the matters set out in the confirmation.

## Auditors

- 31** (1) An exchange or a quotation and trade reporting system must appoint an auditor.
- (2) If the commission determines it is appropriate, a self-regulatory body must appoint an auditor.
- (3) An auditor appointed under subsection (1) or (2) must
  - (a) be practising as an auditor in Canada, and
  - (b) first be approved by the commission.

## Audits of members of exchanges and self regulatory bodies

- 32** (1) An exchange must appoint a panel of auditors from auditors who are practising as auditors in Canada.
- (2) If the commission determines it is appropriate, a self regulatory body must appoint a panel of auditors from auditors who are practising as auditors in Canada.
- (3) Each member of an exchange and a self regulatory body, as the case may be, must appoint an auditor from the panel appointed under subsection (1) or (2).
- (4) An auditor appointed under subsection (3) must
  - (a) examine the financial affairs of the member
    - (i) as required by the bylaws, rules or other regulatory instruments or policies of the self regulatory body or exchange, and
    - (ii) in a manner satisfactory to the commission, and
  - (b) report on each examination to the self regulatory body or exchange, as the case may be.
- (5) A bylaw, rule or regulatory instrument referred to in subsection (4) respecting the practice and procedure of examinations does not come into force until it has been approved by the commission.

## Duties of auditor oversight body

- 32.1** For the purposes of section 26, an auditor oversight body is not required to regulate the operations, standards of practice and business conduct of its members or participants except to the extent that the regulation relates to the

auditing or review of financial statements that are required to be filed under this Act.

### **Auditor oversight body may adopt rules, standards or policies**

**32.2** For the purposes of performing its duties under section 26, an auditor oversight body may adopt a rule, standard or policy for regulating its members or participants on the basis that a government, a governmental authority or another regulatory body applies the same rule, standard or policy.

### **Auditor oversight body may require disclosure**

- 32.3** (1) If a member or participant of an auditor oversight body receives from the auditor oversight body a written request to provide information or records relevant to the auditing or review of financial statements that are required to be filed under this Act, the member or participant must provide the information or records specified, or that are within the class described, in the request, including information or records relating to or prepared by an issuer whether or not the issuer is named in the request.
- (2) An auditor oversight body may, in a written request under subsection (1), specify a reasonable time or interval when the information or records are to be provided to the auditor oversight body.
- (3) For greater certainty, if a member or participant of an auditor oversight body is in possession of information or a record that is subject to solicitor-client privilege, the member or participant must not provide the information or record to the auditor oversight body unless the person, in respect of which the solicitor-client privilege exists, consents to its disclosure.
- (4) If a person consents to the disclosure to an auditor oversight body of information or a record that is subject to solicitor-client privilege, the consent neither negates nor constitutes a waiver of solicitor-client privilege and the privilege continues for all other purposes.

### **Directors, officers of auditor oversight body not compellable**

**32.4** An auditor oversight body or a director, officer, employee or agent of an auditor oversight body must not be required to testify or produce evidence, in any proceeding to which the auditor oversight body is not a party other than a criminal proceeding, about records or information obtained in the discharge of the auditor oversight body's duties.

### **Exemption order by commission**

- 33** (1) If the commission considers that to do so would not be prejudicial to the public interest, it may order that
- (a) a self regulatory body, an exchange or a quotation and trade reporting system, or
  - (b) a class of self regulatory bodies, exchanges or quotation and trade reporting systems

is exempt from one or more of the requirements of this Part or of the regulations relating to this Part.

- (2) An order under subsection (1) may be made on application by an interested person or on the commission's own motion.

## **Part 5 — Registration**

### **Persons who must be registered**

**34** A person must not

- (a) trade in a security or exchange contract,
- (b) act as an adviser,
- (c) act as an investment fund manager, or
- (d) act as an underwriter,

unless the person is registered in accordance with the regulations and in the category prescribed for the purpose of the activity.

### **Granting registration**

**35** (1) Subject to subsection (2), the executive director must grant an applicant registration, renewal or reinstatement of registration or an amendment to registration, as the case may be, unless

- (a) the executive director considers that the applicant is not suitable for registration in the capacity applied for, or that the proposed registration is objectionable, or
- (b) the applicant has not paid the prescribed fee.

- (2) If an applicant or partner, director or officer of an applicant is not a resident of British Columbia on the date of application, the executive director may refuse to register the applicant unless, at the time of application, the applicant meets the requirements of subsection (1) and, in addition, the applicant or the applicant's partner, director or officer

- (a) is registered in a capacity corresponding to that of a dealer, underwriter, adviser, salesperson, advising employee, partner, director or officer under the law of the jurisdiction respecting trading in securities or exchange contracts, as the case may be, in which the applicant last resided, and
- (b) has been so registered for at least one year immediately before the date of application.

- (3) The executive director must not refuse to grant, renew, reinstate or amend a registration without giving the applicant an opportunity to be heard.

### **Conditions imposed on registration and registrants**

- 36** (1) The executive director may restrict a registration or a renewal or reinstatement of registration and may impose conditions of registration on the registrant and, without limiting these powers, may
- (a) restrict the duration of the registration,
  - (b) restrict the registration to trades in specified securities or exchange contracts or a specified class of securities or class of exchange contracts, and
  - (c) direct that any or all of the registration exemptions set out in the regulations do not apply to the registrant.
- (2) The executive director acting under subsection (1) must not restrict a registration or impose a condition of registration on a registrant without giving the registrant or intended registrant an opportunity to be heard.
- (3) A registrant must comply with a restriction or condition imposed
- (a) under the regulations, or
  - (b) by the executive director under subsection (1).

## **Repealed**

**37** [Repealed 2006-32-11.]

## **Further information may be required from applicant**

**38** The executive director may require

- (a) within a specified time, further information or records to be submitted by
  - (i) an applicant,
  - (ii) a partner, an officer, a director, a governor or a trustee of, or any person performing a similar function for, an applicant,
  - (iii) an employee of an applicant, or
  - (iv) a person who beneficially owns, directly or indirectly, or exercises control or direction over, 10 percent or more of the voting securities of an applicant,
- (b) at any time, verification by affidavit or otherwise of any information or records submitted by an applicant, or
- (c) an examination under oath, to be conducted by a person designated in writing by the executive director, of
  - (i) the applicant,
  - (ii) a partner, officer, director, governor or trustee of, or any person performing a similar function for, the applicant,
  - (iii) an employee of the applicant, or
  - (iv) a person who beneficially owns, directly or indirectly, or exercises control or direction over, 10 percent or more of the voting securities of an applicant.

**Repealed**

**39** [Repealed 2007-37-9.]

**Termination or suspension of employment**

**40** If the employment of an individual registrant is terminated or suspended, the registration of the individual registrant is immediately suspended until the executive director reinstates the registration.

**Suspension of registration**

- 40.1** (1) After giving a registrant an opportunity to be heard, if the executive director considers it in the public interest to do so, the executive director may suspend the registration or impose conditions or restrictions on the registration.
- (2) If the executive director considers that the length of time required to provide an opportunity to be heard under subsection (1) could be prejudicial to the public interest, the executive director may, without providing an opportunity to be heard, suspend a registration, or impose conditions or restrictions on the registration, to have effect for not longer than 15 days.

**Surrender of registration**

- 41** (1) If a registrant applies to surrender registration, the executive director must accept the surrender unless the executive director considers it prejudicial to the public interest to do so.
- (2) On receiving an application under subsection (1), the executive director may, without providing an opportunity to be heard, suspend the registration or impose conditions or restrictions on the registration.

**Repealed**

**42** [Repealed 2002-32-18.]

**Part 6 — Exemption from Registration Requirements****Repealed**

**43-47** [Repealed 2006-32-14.]

**Exemption order by commission or executive director**

- 48** (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or the executive director may order that
- (a) a trade, intended trade, security, exchange contract or person, or
  - (b) a class of trades, intended trades, securities, exchange contracts or persons

is exempt from one or more of the requirements of Part 5 or the regulations related to Part 5.

- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.

## Part 7 — Trading in Securities Generally

### Calling at or telephoning residence

**49** (1) In this section, "**residence**" includes a building or part of a building in which the occupant resides permanently or temporarily and any appurtenant premises.

(2) A person must not

- (a) attend at any residence, or
- (b) telephone from inside British Columbia to any residence inside or outside British Columbia

for the purpose of trading in a security or exchange contract.

(3) Subsection (2) does not apply if

(a) the person calls at or telephones the residence

- (i) of a close personal friend, a business associate or a client with whom or on whose behalf the person calling or telephoning has been in the habit of trading in securities or exchange contracts, or

(ii) of a person who

(A) has received a copy of a prospectus filed under this Act, and

(B) has requested that information respecting a security offered in that prospectus be provided to that person by the person calling or telephoning,

and the person calling or telephoning refers only to the request for information respecting that security.

(b) [Repealed 2006-32-15.]

(4) For purposes of this section, a person is conclusively deemed to have called or telephoned if a salesperson, advising employee, partner, director, officer or agent of the person calls or telephones on that person's behalf.

(5) The commission may exempt from subsection (2) a person or class of persons trading in

- (a) securities or exchange contracts generally,
- (b) a specific security or exchange contract, or
- (c) class of securities or a class of exchange contracts.

**Representations prohibited**

- 50** (1) A person, while engaging in investor relations activities or with the intention of effecting a trade in a security, must not do any of the following:
- (a) represent that the person or another person will
    - (i) resell or repurchase the security, or
    - (ii) refund all or any of the purchase price of the security;
  - (b) give an undertaking relating to the future value or price of the security;
  - (c) represent, without obtaining the prior written permission of the executive director,
    - (i) that the security will be listed and posted for trading on an exchange or quoted on any quotation and trade reporting system, or
    - (ii) that application has been or will be made to list and post the security for trading on an exchange or quote the security on any quotation and trade reporting system;
  - (d) make a statement that the person knows, or ought reasonably to know, is a misrepresentation;
  - (e) engage in an unfair practice.
- (2) Subsection (1) (a) does not apply to a representation
- (a) in respect of a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, or
  - (b) contained in a written agreement if the security involved has an aggregate acquisition cost in excess of a prescribed amount.
- (3) A person, with the intention of effecting a trade in an exchange contract, must not do any of the following:
- (a) represent that the person or another person will
    - (i) refund all or part of any margin put up or premium paid in respect of the exchange contract, or
    - (ii) assume all or part of the obligation under the exchange contract;
  - (b) give an undertaking relating to the future value of the exchange contract;
  - (c) make a statement that the person knows, or ought reasonably to know, is a misrepresentation;
  - (d) engage in an unfair practice.
- (4) For the purposes of this section, an **"unfair practice"** includes any of the following:



- (a) putting unreasonable pressure on a person to purchase, hold or sell a security;
- (b) taking advantage of the person's inability or incapacity to reasonably protect his or her own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security;
- (c) imposing terms or conditions that make a transaction inequitable.

### **Registered dealer acting as principal**

**51** (1) [Repealed 2006-32-14.]

(2) If a registered dealer

- (a) intends, as principal, to effect a trade in a security with a person who is not a registered dealer, and
- (b) issues, publishes or sends a notice, circular, pamphlet, letter, advertisement, telegram or some other record to that person to effect that trade,

the registered dealer must not contract for the sale or purchase of the security unless, before contracting and before accepting payment or receiving any security or other consideration under or in anticipation of the contract, the registered dealer has stated in the record referred to in paragraph (b) that the registered dealer proposes to act as principal in the trade.

- (3) A statement made in compliance with this section or the regulations that a registered dealer proposes to act or has acted as principal in respect of a trade in a security does not prevent that dealer from acting as agent in respect of a trade of that security.

### **Disclosure of investor relations activities**

**52** (1) An issuer, or an issuer's security holder, who knows that a person is engaged in investor relations activities on behalf of the issuer or a security holder of the issuer must disclose to any person who inquires

- (a) the fact of the engagement, and
- (b) on whose behalf the person is engaged.

- (2) A person engaged in investor relations activities, and an issuer or security holder on whose behalf investor relations activities are undertaken, must ensure that every record disseminated, as part of the investor relations activities, by the person engaged in those activities clearly and conspicuously discloses that the record is issued by or on behalf of the issuer or security holder.

### **Use of name of another registrant**

- 53** A registrant must not use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless the first registrant is a partner, officer or agent of, or is authorized in writing by, the other registrant.

### **Representation or holding out of registration**

- 54** (1) A person must not represent that the person is registered under this Act unless
- (a) the representation is true, and
  - (b) in making the representation, the person specifies the person's category of registration under this Act.
- (2) A person must not make a statement about something that a reasonable investor would consider important in deciding whether to enter or maintain a trading or advising relationship with the person if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

### **Approval of commission or executive director not to be represented**

- 55** A person must not represent that the commission or the executive director has in any manner approved or passed on the merits of
- (a) the financial standing, suitability for registration or conduct of any registrant,
  - (b) any security, exchange contract or issuer,
  - (c) an issuer's disclosure, or
  - (d) a credit rating organization or a credit rating.

### **Declaration as to short position**

- 56** (1) A person who places an order for the sale of a security through a registered dealer acting on the person's behalf and who
- (a) does not own the security, or
  - (b) if the person is acting as agent knows that the person's principal does not own the security,
- must, at the time of placing the order to sell, declare to the registered dealer that the person or the person's principal, as the case may be, does not own the security, and that fact must be disclosed by the dealer in the written confirmation of sale.
- (2) Subject to the regulations, for the purposes of subsection (1), a person does not own a security that
- (a) has been borrowed by that person,
  - (b) is subject to any restriction on its sale, or
  - (c) may be acquired by that person on the exercise of a right to acquire the security by purchase, conversion, exchange or any other means.

**Manipulation and fraud**

- 57** A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct
- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract, or
  - (b) perpetrates a fraud on any person.

**Repealed**

**57.1** [Repealed 2007-37-14.]

**Insider trading, tipping and recommending**

**57.2** (1) In this section, "**issuer**" means

- (a) a reporting issuer, or
  - (b) any other issuer whose securities are publicly traded.
- (2) A person must not enter into a transaction involving a security of an issuer, or a related financial instrument of a security of an issuer, if the person
- (a) is in a special relationship with the issuer, and
  - (b) knows of a material fact or material change with respect to the issuer, which material fact or material change has not been generally disclosed.
- (3) An issuer or a person in a special relationship with an issuer must not inform another person of a material fact or material change with respect to the issuer unless
- (a) the material fact or material change has been generally disclosed, or
  - (b) informing the person is necessary in the course of business of the issuer or of the person in the special relationship with the issuer.
- (4) A person who proposes to
- (a) make a take over bid, as defined in section 92, for the securities of an issuer,
  - (b) become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with an issuer, or
  - (c) acquire a substantial portion of the property of an issuer,
- must not inform another person of a material fact or material change with respect to the issuer unless
- (d) the material fact or material change has been generally disclosed, or
  - (e) informing the person is necessary to effect the take over bid, business combination or acquisition.

- (5) If a material fact or material change with respect to an issuer has not been generally disclosed, the issuer, or a person in a special relationship with the issuer with knowledge of the material fact or material change, must not recommend or encourage another person to enter into a transaction involving a security of the issuer or a related financial instrument of a security of the issuer.

## Front running

### 57.3 (1) In this section:

**"investor"** means a person

- (a) who has indicated an intention to purchase or trade a security or an exchange contract, or
- (b) for whose account an order is or would be placed;

**"material order information"** means information that relates to

- (a) the intention of an investor to purchase or trade a security or an exchange contract, or
- (b) one or more unexecuted orders,

if the execution of one or more orders, the placement of one or more orders to carry out the intention, or the disclosure of any of the information, would reasonably be expected to significantly affect the market price of the security or the exchange contract;

**"order"** means an order to purchase or trade a security or an exchange contract.

- (2) For the purposes of this section, a person is connected to an investor if the person

- (a) is an insider, affiliate or associate of the investor,
- (b) is an investment fund manager of the investor,
- (c) is engaging or proposes to engage in a trading or advising relationship with or on behalf of the investor or a person referred to in paragraph (a) or (b),
- (d) is a director, officer or employee of the investor or of a person described in paragraph (a), (b) or (c),
- (e) knows of material order information relating to the investor, having acquired the knowledge while in a relationship described in paragraph (a), (b), (c) or (d), or
- (f) knows of material order information relating to the investor, having acquired the knowledge from another person at a time when
  - (i) that other person was connected to the investor, whether under this paragraph or any of paragraphs (a) to (e), and

- (ii) the person that acquired knowledge of the material order information from that other person knew or reasonably ought to have known of the connection referred to in subparagraph (i).
- (3) A person that is connected to an investor and knows of material order information relating to the investor must not enter into a transaction involving
  - (a) a security or an exchange contract that is the subject of the material order information, or
  - (b) a related financial instrument of a security or an exchange contract referred to in paragraph (a).
- (4) A person that is connected to an investor must not inform another person of material order information relating to the investor unless it is necessary in the course of the business of the person or the investor.
- (5) A person that is connected to an investor and knows of material order information relating to the investor must not recommend or encourage another person to enter into a transaction involving
  - (a) a security or an exchange contract that is the subject of the material order information, or
  - (b) a related financial instrument of a security or an exchange contract referred to in paragraph (a).

## Defences

- 57.4** (1) A person does not contravene section 57.2 (2) if, at the time the person enters into the transaction involving the security, exchange contract or related financial instrument, the person reasonably believes that the other party to the transaction knows of the material fact or material change.
- (2) A person does not contravene section 57.2 (3) or (4) if, at the time the person informs the other person of the material fact or material change, the person reasonably believes that the other person knows of the material fact or material change.
- (3) A person does not contravene section 57.2 (2) or 57.3 (3) if the person
- (a) enters into the transaction under a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan, in which the person agreed to participate before obtaining knowledge of the material fact, material change or material order information, or
  - (b) enters into the transaction as a result of a written legal obligation
    - (i) imposed on the person, or
    - (ii) that the person entered into before obtaining knowledge of the material fact, material change or material order information.
- (4) A person does not contravene section 57.2 (2) or 57.3 (3) if the person entered into the transaction

- (a) as agent under the specific unsolicited instructions of the principal,
  - (b) as agent under specific instructions that the agent solicited from the principal before obtaining knowledge of the material fact, material change or material order information,
  - (c) as agent or trustee for another person because of that other person's participation in a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan, or
  - (d) as agent or trustee for another person to fulfill a written legal obligation of the other person.
- (5) A person that is not an individual does not contravene section 57.2 (2) or (5) or 57.3 (3) or (5) if no individual involved in making the decision to enter into the transaction or make the recommendation on behalf of the person
- (a) has knowledge of the material fact, material change or material order information, and
  - (b) is acting on the recommendation or encouragement of an individual who has that information.
- (6) A person does not contravene section 57.3 (3) if, at the time the person enters into the transaction, the person reasonably believes that
- (a) the investor has consented to the person entering into the transaction, and
  - (b) the other party to the transaction knows of the material order information.
- (7) A person does not contravene section 57.3 (4) if, at the time the person informs the other person of the material order information,
- (a) the person reasonably believes that the investor has consented to the person informing the other person, and
  - (b) the person informs the other person that both the person and the other person are connected to the investor for the purposes of section 57.3.
- (8) A person does not contravene section 57.3 (5) if, at the time the person recommends or encourages the other person to enter into a transaction,
- (a) the person reasonably believes that the investor has consented to the person recommending or encouraging, and
  - (b) the person informs the other person
    - (i) of the material order information, and
    - (ii) that both the person and the other person are connected to the investor for the purposes of section 57.3.

## Obstruction of justice

**57.5** (1) A person must not

- (a) refuse to give any information or produce any record or thing, or
- (b) destroy, conceal or withhold, or attempt to destroy, conceal or withhold, any information, record or thing

reasonably required for a hearing, review, investigation, examination or inspection under this Act.

- (2) A person contravenes subsection (1) if the person knows or reasonably should know that a hearing, review, investigation, examination or inspection is to be conducted and the person takes any action referred to in subsection (1) before the hearing, review, investigation, examination or inspection.

**Duty to comply with undertaking**

- 57.6** A person that gives a written undertaking to the commission or the executive director must comply with the undertaking.

**Records**

- 57.7** Subject to the regulations, a person referred to in section 141 (2) must keep records of the person's business transactions and financial affairs, and of the transactions that the person executes on behalf of others, for a period of 6 years from the date the record is created.

## **Part 8 — Trading in Exchange Contracts**

**Trading on an exchange in British Columbia**

- 58** (1) A person must not trade in an exchange contract on an exchange in British Columbia unless
- (a) the exchange is recognized by the commission under section 24 (b), and
  - (b) the form of the exchange contract has been accepted by the commission.
- (2) On application by an exchange in British Columbia, the commission by order may accept a form of exchange contract for the purpose of subsection (1) (b).
- (3) The commission must not refuse to accept a form of exchange contract under subsection (2) without giving the applicant an opportunity to be heard.

**Trading on an exchange outside British Columbia**

- 59** (1) A registrant must not trade in an exchange contract on behalf of another person on an exchange outside British Columbia unless the exchange is recognized by the commission.
- (2) On application by an exchange outside British Columbia or on the commission's own motion, the commission by order may recognize an exchange outside

British Columbia for the purposes of subsection (1).

- (3) The commission must not refuse to recognize an exchange under subsection (2) without giving the applicant an opportunity to be heard.

### **Exemption order by commission or executive director**

- 60** (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or executive director may order that
- (a) a trade, intended trade, exchange contract or person, or
  - (b) a class of trades, intended trades, exchange contracts or persons
- is exempt from one or more of the requirements of this Part or the regulations relating to this Part.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.

## **Part 9 — Prospectus**

### **Prospectus required**

- 61** (1) Unless exempted under this Act, a person must not distribute a security unless
- (a) a preliminary prospectus and a prospectus respecting the security have been filed with the executive director, and
  - (b) the executive director has issued receipts for the preliminary prospectus and prospectus.
- (2) A preliminary prospectus and a prospectus must be in the required form.

### **Voluntary filing of prospectus**

- 62** Even though a person is not distributing securities, a preliminary prospectus and a prospectus that are in the required form may be filed for
- (a) the purpose of enabling the issuer to become a reporting issuer, or
  - (b) any other prescribed purpose.

### **Contents of prospectus**

- 63** (1) A prospectus must provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed.
- (2) A preliminary prospectus must substantially comply with the requirements of this Act and the regulations respecting the content of a prospectus.
- (3) and (4) [Repealed 2006-32-18.]

### **Executive director's discretion**



- 64** (1) Before issuing a receipt for a preliminary prospectus or for a prospectus, the executive director may impose additional filing requirements and conditions if the executive director considers that it is in the public interest to do so.
- (2) The executive director may accept a form of prospectus or preliminary prospectus that is in accordance with the law of another jurisdiction if it contains full, true and plain disclosure of all material facts relating to the security to be distributed.

### Receipts for prospectus

- 65** (1) Subject to section 64 (1), the executive director must issue a receipt for a preliminary prospectus as soon as practicable after it has been filed under this Part.
- (2) Subject to the regulations, the executive director must issue a receipt for a prospectus filed under this Part unless the executive director considers it to be prejudicial to the public interest to do so.
- (3) The executive director must not refuse to issue a receipt for a prospectus without giving the person who filed the prospectus an opportunity to be heard.

### Repealed

**66-71** [Repealed 2006-32-18.]

### Order to provide information regarding distribution

- 72** (1) If a person proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer information or material that is necessary to enable the person to comply with this Part or the regulations, the executive director may order the issuer to provide to that person the information and material that the executive director considers necessary.
- (2) The information and material supplied under subsection (1) may be used by the person to whom it is provided for the purpose of complying with this Part and the regulations.
- (3) If a person proposing to make a distribution of previously issued securities of an issuer is unable
- (a) to obtain any or all of the signatures to the certificates required by this Part and the regulations, or
  - (b) to comply otherwise with this Part and the regulations,
- the executive director may make an order exempting that person from any of the provisions of this Part or the regulations, on being satisfied that
- (c) the person has made all reasonable efforts to comply, and
  - (d) no person is likely to be prejudicially affected by the failure to comply.

## Part 10 — Exemptions from Prospectus Requirements

**Repealed**

**73-75** [Repealed 2006-32-18.]

**Exemption order by commission or executive director**

- 76** (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or the executive director may order that
- (a) a trade, intended trade, security or person or class of trades, intended trades, securities or persons is exempt from one or more of the requirements of Part 9 or the regulations related to Part 9, and
  - (b) a trade or intended trade or class of trades or intended trades is deemed to be a distribution.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.
- (3) On application of an interested person, the commission or the executive director may determine whether the distribution of a security has been concluded or is currently in progress.

**List of defaulting reporting issuers**

- 77** The commission may publish a list of defaulting reporting issuers.

**Part 11 — Circulation of Materials****Waiting period**

- 78** (1) In this section, "**waiting period**" means the interval between the issue of a receipt by the executive director for a preliminary prospectus and the issue of a receipt by the executive director for the prospectus in respect of the same distribution.
- (2) Despite section 61, but subject to Part 7, during the waiting period for the distribution of a security, a dealer or the issuer of the security may
- (a) communicate with a person
    - (i) identifying the security proposed to be distributed,
    - (ii) stating the price of the security, if determined,
    - (iii) stating the name and address of a person from whom purchases of the security may be made, and
    - (iv) stating further information permitted or required by the regulations,so long as the dealer or issuer states the name and address of a person from whom a preliminary prospectus may be obtained,
  - (b) give out a preliminary prospectus, and

- (c) solicit expressions of interest from a prospective purchaser, so long as before the solicitation, or as soon as practicable after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is sent to the prospective purchaser.

## Repealed

**79-80** [Repealed 2006-32-20.]

## Defective preliminary prospectus

- 81** If the executive director considers that a preliminary prospectus does not substantially comply with section 63 (1), the executive director may, without giving notice, order that trading that is permitted by section 78 (2) in the security to which the preliminary prospectus relates cease until a revised preliminary prospectus satisfactory to the executive director is filed and sent to each recipient of the defective preliminary prospectus in accordance with the regulations.

## Material given on distribution

- 82** From the date of issue of a receipt for a prospectus relating to a security, a person distributing the security may give out
- (a) the prospectus,
  - (b) any record filed with or referred to in the prospectus, and
  - (c) any record used in section 78 (2) (a).

## Obligation to send prospectus

- 83** (1) A dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which section 61 applies must, subject to the regulations, send to the purchaser,
- (a) before entering into the written confirmation of the agreement of purchase and sale resulting from the order or subscription, or
  - (b) not later than midnight on the second business day after entering into the agreement,
- the latest prospectus filed or required to be filed, with respect to the security, and any amendment to that prospectus, filed or required to be filed, under this Act.
- (2) Despite subsection (1), a dealer is not required to send an amendment to a prospectus to a purchaser if the agreement of purchase and sale of the security has been entered into before the obligation to file the amendment arises under section 67.
- (3) An agreement of purchase and sale referred to in subsection (1) is not binding on the purchaser if the dealer from whom the purchaser purchases the security receives, not later than 2 business days after receipt by the purchaser of the latest prospectus, any amendment to the prospectus or another prescribed document, that the purchaser is entitled to receive under this Act, written

notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement.

- (4) Subsection (3) does not apply if the purchaser
- (a) is a registrant, or
  - (b) disposes of the beneficial ownership of the security referred to in subsection (3), otherwise than to secure indebtedness, before the end of the time referred to in subsection (3).
- (5) For the purposes of this section, subject to subsection (7), receipt of the latest prospectus, any amendment to the prospectus or another prescribed document, that the purchaser is entitled to receive under this Act, by a dealer who
- (a) is acting as agent of the purchaser, or
  - (b) after receipt begins to act as agent of the purchaser,
- with respect to the purchase of a security referred to in subsection (1), is deemed to be receipt by the purchaser on the date on which the dealer received that prospectus, amendment or other prescribed document.
- (6) For the purposes of this section, receipt of the notice referred to in subsection (3) by a dealer who acted as agent of the seller with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller on the date on which the dealer received the notice.
- (7) For the purposes of this section, a dealer does not act as agent of the purchaser unless the dealer is acting solely as agent of the purchaser with respect to the sale in question and has not received and has no agreement to receive compensation from or on behalf of the seller with respect to that sale.
- (8) The onus of proving that the time for giving notice under subsection (3) has ended is on the dealer from whom the purchaser has agreed to purchase the security.
- (9) If the issuer acts as the issuer's own dealer in respect of a trade, this section applies to the issuer as if the issuer were a dealer.

#### **Exemption order by commission or executive director**

- 84** (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or the executive director may order that a person or class of persons is exempt from one or more of the requirements of this Part or of the regulations relating to this Part.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.

## **Part 12 — Continuous Disclosure**

**Repealed**

**84.1** [Repealed 2006-32-22.]**Continuous disclosure**

- 85** A reporting issuer must, in accordance with the regulations,
- (a) provide prescribed periodic disclosure about its business and affairs,
  - (b) provide disclosure of a material change, and
  - (c) provide other prescribed disclosure.

**Repealed****86** [Repealed 2006-32-24.]**Initial and subsequent insider report**

- 87** (1) In this section, "**reporting issuer**" does not include a mutual fund.
- (2) An insider of a reporting issuer must, in accordance with the regulations,
- (a) file reports disclosing the insider's
    - (i) beneficial ownership of, or control or direction over, directly or indirectly, securities of the issuer, and
    - (ii) interest in, or right or obligation associated with, a related financial instrument of a security of the issuer, and
  - (b) make other prescribed disclosure.

**Repealed****87.1** [Repealed 2006-32-26.]**Order relieving reporting issuer**

- 88** If the commission considers that it would not be prejudicial to the public interest to do so, it may, on the application of a reporting issuer, order that the reporting issuer is deemed to have ceased to be a reporting issuer.

**Halt trading order**

- 89** (1) If
- (a) the commission or the executive director
    - (i) considers that there are unexplained and unusual fluctuations in the volume of trading in, or market price of, a security or exchange contract,
    - (ii) becomes aware of information, other than information filed under this Act, that when disclosed to the public may cause or is likely to cause unusual fluctuations in the volume of trading in, or market price of, a security or exchange contract,
    - (iii) considers that there may have been a material change in the business or operations of an issuer that, when disclosed, could significantly affect the market price of a security issued by it, or

- (iv) considers that circumstances exist or are about to occur that could result in other than an orderly trading of a security or exchange contract, and
  - (b) the commission or the executive director considers it to be in the public interest,
- the commission or executive director may, without providing an opportunity to be heard, order that all trading in that security or exchange contract be halted for a specified period not longer than 15 business days.
- (2) Notice of every order made under subsection (1) must be sent immediately to the issuer whose securities are affected by it.
- (3) If
  - (a) a security affected by an order made under subsection (1) is listed and posted for trading on an exchange in British Columbia, or
  - (b) an exchange contract affected by an order made under subsection (1) is traded on an exchange in British Columbia,the commission or executive director must immediately send written notice of the order to the exchange, and the order becomes effective, for all purposes and in respect of all persons, as soon as the exchange receives the notice.
- (4) If the commission or the executive director considers it necessary and in the public interest, the commission or executive director may, after providing the issuer whose securities are affected by it with an opportunity to be heard, make an order extending the order made under subsection (1) until a hearing is held and a decision is rendered.

### **Further information from directors, officers, promoters or control persons**

- 90** (1) The commission or the executive director may require a director, an officer, a promoter or a control person of an issuer, within the time the commission or executive director specifies, to submit information.
- (2) Information submitted under subsection (1) must be in the required form.

### **Exemption order by commission or executive director**

- 91** (1) The commission or the executive director may order that a person or class of persons is exempt from one or more of the requirements of this Part or the regulations related to this Part if
- (a) the requirement in respect of which an exemption is to be granted conflicts with a similar requirement of the law of the jurisdiction in which the reporting issuer is incorporated, organized or continued, or
  - (b) the commission or the executive director considers that to do so would not be prejudicial to the public interest.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.

## Part 13 — Take Over Bids and Issuer Bids

### Division 1 — Interpretation

#### Definitions

**92** In this Part:

**"interested person"** means

- (a) an issuer whose securities are the subject of a take over bid, issuer bid or other offer to acquire,
- (b) a security holder, director or officer of an issuer referred to in paragraph (a),
- (c) an offeror,
- (d) the executive director, and
- (e) any person not referred to in paragraphs (a) to (d) who, in the opinion of the commission or the Supreme Court, as the case may be, is a proper person to make an application under section 114 or 115;

**"issuer bid"** means a direct or indirect offer to acquire or redeem a security or a direct or indirect acquisition or redemption of a security that is

- (a) made by the issuer of the security, and
- (b) within a prescribed class of offers, acquisitions or redemptions;

**"take over bid"** means a direct or indirect offer to acquire a security that is

- (a) made by a person other than the issuer of the security, and
- (b) within a prescribed class of offers to acquire.

#### Repealed

**93-97** [Repealed 2006-32-28.]

### Division 2 — Exemptions

#### Making a bid

**98** A person must not make a take over bid or an issuer bid, whether alone or acting jointly or in concert with one or more persons, except in accordance with the regulations.

#### Recommendation relating to bid

**99** (1) When a take over bid has been made, the directors of the issuer whose securities are the subject of the take over bid must

- (a) determine whether to recommend acceptance or rejection of the take over bid or determine not to make a recommendation, and

- (b) make the recommendation, or a statement that they are not making a recommendation, in accordance with the regulations.
- (2) An individual director or officer of the issuer whose securities are the subject of a take over bid may recommend acceptance or rejection of the take over bid if the recommendation is made in accordance with the regulations.

**Repealed**

**100** [Repealed 2006-32-30.]

**Division 3 - 6****Repealed**

**101-113** [Repealed 2006-32-30.]

**Division 7 — Special Applications****Applications to the commission**

- 114** (1) On application by an interested person, if the commission considers that a person has not complied or is not complying with a requirement under this Part, the commission may make an order
- (a) restraining the distribution of any record used or issued in connection with a take over bid or an issuer bid,
  - (b) requiring an amendment to or variation of any record used or issued in connection with a take over bid or an issuer bid and requiring the distribution of amended, varied or corrected information,
  - (c) directing any person to comply with a requirement under this Part,
  - (d) restraining any person from contravening a requirement under this Part, or
  - (e) directing the directors and officers of any person to cause the person to comply with or to cease contravening a requirement under this Part.
- (2) On application by an interested person or on the commission's own motion, the commission may order that a person is exempt from any requirement under this Part or the regulations relating to this Part if the commission considers that it would not be prejudicial to the public interest to do so.

**Applications to the court**

- 115** (1) On application by an interested person, if the Supreme Court is satisfied that a person has not complied with a requirement under this Part, the Supreme Court may make whatever interim or final order the Supreme Court thinks fit, including, without limitation, an order
- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of a requirement



- of this Part or the regulations,
- (b) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security,
  - (c) requiring any person to dispose of any securities acquired in connection with a take over bid or an issuer bid,
  - (d) prohibiting any person from exercising any or all of the voting rights attaching to any securities, or
  - (e) requiring the trial of an issue.
- (2) If, in a proceeding under subsection (1), the executive director is not the applicant, the executive director
- (a) must be given notice of the application, and
  - (b) may appear at the proceeding as a party.

## Part 14 — Proxies

### Definitions

**116** In this Part:

**"form of proxy"** means a written or printed form that, on completion and execution by or on behalf of a security holder, becomes a proxy;

**"proxy"** means a completed and executed form of proxy by which a security holder has appointed a person as the security holder's nominee to attend and act for the security holder and on the security holder's behalf at a meeting of security holders;

**"security holder"** means a holder in British Columbia of a voting security of a reporting issuer.

### Repealed

**117** [Repealed 2003-24-10.]

### Voting if proxies provided

**118** (1) The chair at a meeting has the right not to conduct a vote by way of ballot on a matter if the form of proxy used at the meeting provides for a means by which the security holder whose proxy is solicited may specify how the securities registered in the security holder's name are to be voted.

(2) Subsection (1) does not apply if

- (a) a poll is demanded by a security holder present at the meeting in person or represented at it by proxy, or
- (b) more than 5% of all voting rights attached to all the securities, that are entitled to be voted and to be represented at the meeting, are represented by proxies who are required to vote against what would

otherwise be the meeting's decision on the matters referred to in subsection (1).

(3) Voting securities of an issuer that are

(a) registered in the name of

(i) a registrant or the registrant's nominee, or

(ii) a custodian or the custodian's nominee, and

(b) not beneficially owned by the registrant or the custodian, as the case may be,

must not be voted by the registrant or custodian at any meeting of the issuer's security holders except in accordance with the regulations.

(4) Subsection (3) does not apply to a registrant or custodian who is a trustee of securities held under a trust instrument that regulates how those securities are to be voted.

## Exemptions

**119** (1) This Part does not apply to a reporting issuer who complies with the requirements of the law of the jurisdiction in which the reporting issuer carries on business or is incorporated, organized or continued, so long as those requirements are substantially similar to the requirements of this Part.

(2) The commission may order that a person or class of persons is exempt from one or more of the requirements of this Part or the regulations related to this Part if

(a) the requirement in respect of which an exemption is to be granted conflicts with a similar requirement of the law of the jurisdiction in which the reporting issuer is incorporated, organized or continued, or

(b) the commission considers that to do so would not be prejudicial to the public interest.

(3) An order under subsection (2) may be made on application by an interested person or on the commission's own motion.

## Part 15 — Self Dealing

### Repealed

**120-122** [Repealed 2006-32-33.]

### Repealed

**123** [Repealed 2006-32-34.]

### Repealed

**124** [Repealed 2006-32-33.]

**Standard of care for investment fund manager**

**125** Every investment fund manager must

- (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund, and
- (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

**Repealed**

**126-127** [Repealed 2006-32-33.]

**Repealed**

**128** [Repealed 2006-32-36.]

**Repealed**

**129** [Repealed 2006-32-33.]

**Exemptions**

**130** On application by an interested person or on the commission's own motion, the commission may order that a person or transaction or a class of persons or transactions is exempt from one or more of the requirements of this Part or the regulations related to this Part if

- (a) the requirement in respect of which an exemption is to be granted conflicts with a similar requirement of the law of the jurisdiction in which the reporting issuer is incorporated, organized or continued, or
- (b) the commission considers that to do so would not be prejudicial to the public interest.

**Independent committee for mutual funds**

**130.1** A prescribed requirement of this Part does not apply to a mutual fund or a class of mutual funds, or a responsible person, with respect to a transaction or a class of transactions if, in accordance with the regulations, the mutual fund has established an independent committee and

- (a) the independent committee has approved the transaction, or
- (b) the transaction is within a class of transactions approved by the independent committee.

**Part 16 — Civil Liability****Liability for misrepresentation in prospectus**

**131** (1) If a prospectus contains a misrepresentation, a person who purchases a security offered by the prospectus during the period of distribution

- (a) is deemed to have relied on the misrepresentation if it was a misrepresentation at the time of purchase, and
- (b) has a right of action for damages against
  - (i) the issuer or a selling security holder on whose behalf the distribution is made,
  - (ii) every underwriter that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made,
  - (iii) every director of the issuer at the time the prospectus was filed,
  - (iv) every person whose consent to disclosure of information in the prospectus has been filed, and
  - (v) every person who signed the prospectus.
- (2) A person referred to in subsection (1) (b) (iv) is liable only with respect to a misrepresentation contained in a report, opinion or statement made by the person.
- (3) If the person referred to in subsection (1) purchased the security from a person or underwriter referred to in subsection (1) (b) (i) or (ii) or from another underwriter of the securities, the purchaser may elect to exercise a right of rescission against that person or underwriter, in which case the purchaser has no right of action for damages against that person under subsection (1).
- (4) A person is not liable under subsection (1) if the person proves that the purchaser had knowledge of the misrepresentation.
- (5) A person is not liable under subsection (1) if the person proves that
  - (a) the prospectus was filed without the person's knowledge or consent and that, on becoming aware of its filing, the person gave reasonable general notice that it was so filed,
  - (b) after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus, the person withdrew the person's consent to it and gave reasonable general notice of the withdrawal and the reason for it,
  - (c) with respect to any part of the prospectus purporting
    - (i) to be made on the authority of an expert, or
    - (ii) to be a copy of, or an extract from, a report, opinion or statement of an expert,the person had no reasonable grounds to believe and did not believe that
    - (iii) there had been a misrepresentation, or
    - (iv) the relevant part of the prospectus

- (A) did not fairly represent the report, opinion or statement of the expert, or
  - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert,
- (d) with respect to any part of the prospectus purporting
- (i) to be made on the person's own authority as an expert, or
  - (ii) to be a copy of, or an extract from, the person's own report, opinion or statement as an expert,
- but that contained a misrepresentation attributable to failure to fairly represent the person's report, opinion or statement as an expert,
- (iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the prospectus fairly represented the person's report, opinion or statement as an expert, or
  - (iv) on becoming aware that the relevant part of the prospectus did not fairly represent the person's report, opinion or statement as an expert, the person, as soon as practicable, advised the commission and gave reasonable general notice that
    - (A) the person's report, opinion or statement was not fairly represented, and
    - (B) the person would not be responsible for that part of the prospectus, or
- (e) with respect to a false statement
- (i) purporting to be a statement made by an official person, or
  - (ii) contained in what purports to be a copy of, or an extract from, a public official document,
- it was a correct and fair representation of the statement or copy of, or an extract from, the document, and the person had reasonable grounds to believe and did believe that the statement was true.
- (6) A person is not liable under subsection (1) with respect to any part of the prospectus purporting
- (a) to be made on the person's own authority as an expert, or
  - (b) to be a copy of, or an extract from, the person's own report, opinion or statement as an expert
- unless the person
- (c) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or
  - (d) believed that there had been a misrepresentation.
- (7) A person is not liable under subsection (1) with respect to any part of the prospectus not purporting

- (a) to be made on the authority of an expert, and
  - (b) to be a copy of, or an extract from, a report, opinion or statement of an expert
- unless the person
- (c) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or
  - (d) believed that there had been a misrepresentation.
- (8) Subsections (5) to (7) do not apply to the issuer or a selling security holder.
- (8.1) A person is not liable for a misrepresentation in forward-looking information if the person proves that
- (a) the document containing the forward-looking information contained, proximate to that information,
    - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
    - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
  - (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.
- (8.2) Subsection (8.1) does not relieve a person of liability respecting forward-looking information in a financial statement or forward-looking information in a document released in connection with an initial public offering.
- (9) An underwriter is not liable for more than the total public offering price represented by the portion of the distribution underwritten by the underwriter.
- (10) In an action for damages under subsection (1), the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.
- (11) The liability of all persons referred to in subsection (1) (b) is joint and several as between themselves with respect to the same cause of action.
- (12) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.
- (13) The amount recoverable by a plaintiff under this section must not exceed the price at which the securities purchased by the plaintiff were offered to the public.

- (14) The right of action for rescission or damages conferred by this section is in addition to and not in derogation from any other right the purchaser may have.
- (15) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a prospectus, the misrepresentation is deemed to be contained in the prospectus.
- (16) [Repealed 1999-20-23.]

### **Liability for misrepresentation in circular or notice**

- 132** (1) If a take over bid circular, issuer bid circular, notice of change or notice of variation is required to be sent under the regulations and that document contains a misrepresentation, a person to whom the circular or notice was sent is deemed to have relied on the misrepresentation, and has a right of action for
- (a) rescission against the offeror, or
  - (b) damages against
    - (i) each person who signed the certificate in the circular or notice,
    - (ii) every director of the offeror at the time the circular or notice was signed,
    - (iii) every person whose consent has been filed as prescribed, and
    - (iv) the offeror.
- (2) A person referred to in subsection (1) (b) (iii) is liable only with respect to a misrepresentation contained in a report, opinion or statement made by the person.
- (3) If a directors' circular or a director's or officer's circular or a notice of change in respect of a directors' circular or a director's or officer's circular is required to be sent under the regulations and that document contains a misrepresentation, a person to whom the circular or notice was sent is deemed to have relied on the misrepresentation and has a right of action for damages against every director or officer who signed the circular or notice.
- (4) A person is not liable under subsection (1) or (3) if the person proves that the person exercising the right of action had knowledge of the misrepresentation.
- (5) A person is not liable under subsection (1) or (3) if the person proves that
- (a) the circular or notice was sent without the person's knowledge or consent and that, on becoming aware of that fact, the person gave, as soon as practicable, reasonable general notice that it was so sent,
  - (b) after sending of the circular or notice and on becoming aware of any misrepresentation in the circular or notice, the person withdrew the person's consent to it and gave reasonable general notice of the withdrawal and the reason for it,
  - (c) with respect to any part of the circular or notice purporting
    - (i) to be made on the authority of an expert, or

- (ii) to be a copy of, or an extract from, a report, opinion or statement of an expert,

the person had no reasonable grounds to believe and did not believe that

- (iii) there had been a misrepresentation, or

- (iv) the relevant part of the circular or notice

- (A) did not fairly represent the report, opinion or statement of the expert, or

- (B) was not a fair copy of, or extract from, the report, opinion or statement of the expert,

- (d) with respect to any part of the circular or notice purporting

- (i) to be made on the person's own authority as an expert, or

- (ii) to be a copy of, or an extract from, the person's own report, opinion or statement as an expert,

but that contained a misrepresentation attributable to failure to fairly represent the person's report, opinion or statement as an expert

- (iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the circular or notice fairly represented his report, opinion or statement as an expert, or

- (iv) on becoming aware that the relevant part of the circular or notice did not fairly represent the person's report, opinion or statement as an expert, the person, as soon as practicable, advised the commission and gave reasonable general notice that

- (A) the person's report, opinion or statement was not fairly represented, and

- (B) the person would not be responsible for that part of the circular or notice, or

- (e) with respect to a false statement,

- (i) purporting to be a statement made by an official person, or

- (ii) contained in what purports to be a copy of, or extract from, a public official document,

it was a correct and fair representation of the statement or copy of, or extract from, the document, and the person had reasonable grounds to believe and did believe that the statement was true.

- (6) A person is not liable under subsection (1) or (3) with respect to any part of the circular or notice purporting

- (a) to be made on the person's own authority as an expert, or

- (b) to be a copy of, or an extract from, the person's own report, opinion or statement as an expert



unless the person

- (c) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or
- (d) believed there had been a misrepresentation.

(7) A person is not liable under subsection (1) or (3) with respect to any part of the circular or notice not purporting

- (a) to be made on the authority of an expert, and
- (b) to be a copy of, or an extract from, a report, opinion or statement of an expert

unless the person

- (c) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or
- (d) believed there had been a misrepresentation.

(8) Subsections (5) to (7) do not apply to the offeror.

(8.1) A person is not liable for a misrepresentation in forward-looking information if the person proves that

- (a) the document containing the forward-looking information contained, proximate to that information,
  - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
  - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
- (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

(9) The liability of

- (a) all persons referred to in subsection (1) (b), or
- (b) all directors and officers referred to in subsection (3),

is joint and several as between themselves with respect to the same cause of action.

(10) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

- (11) In an action for damages under subsection (1) or (3) based on a misrepresentation affecting a security offered by the offeror in exchange for securities of the offeree issuer, the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.
- (12) [Repealed 2006-32-40.]
- (13) The right of action for rescission or damages conferred by this section is in addition to and not in derogation from any other right available.

### **Liability for misrepresentation in prescribed disclosure document**

- 132.1** (1) If a prescribed disclosure document contains a misrepresentation, a purchaser who purchases a security offered by the disclosure document
- (a) is deemed to have relied on the misrepresentation if it was a misrepresentation at the time of purchase, and
  - (b) has a right of action for damages against
    - (i) the issuer,
    - (ii) every director of the issuer at the date of the disclosure document, and
    - (iii) every person who signed the disclosure document.
- (2) The purchaser may elect to exercise a right of rescission against the issuer, in which case the purchaser has no right of action for damages against the issuer.
- (3) A person is not liable under subsection (1) if the person proves that the purchaser had knowledge of the misrepresentation.
- (4) A person is not liable under subsection (1) if the person proves that
- (a) the disclosure document was delivered to purchasers without the person's knowledge or consent and that, on becoming aware of its delivery, the person gave written notice to the issuer that it was delivered without the person's knowledge or consent,
  - (b) on becoming aware of any misrepresentation in the disclosure document, the person withdrew the person's consent to the disclosure document and gave written notice to the issuer of the withdrawal and the reason for it, or
  - (c) with respect to any part of the disclosure document purporting
    - (i) to be made on the authority of an expert, or
    - (ii) to be a copy of, or an extract from, a report, an opinion or a statement of an expert,the person had no reasonable grounds to believe and did not believe that
    - (iii) there had been a misrepresentation, or
    - (iv) the relevant part of the disclosure document

- (A) did not fairly represent the report, opinion or statement of the expert, or
  - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert.
- (5) A person is not liable under subsection (1) with respect to any part of a disclosure document not purporting
- (a) to be made on the authority of an expert, or
  - (b) to be a copy of, or an extract from, a report, opinion or statement of an expert
- unless the person
- (c) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or
  - (d) believed that there had been a misrepresentation.
- (6) Subsections (4) and (5) do not apply to the issuer.
- (7) In an action for damages under subsection (1), the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.
- (7.1) A person is not liable for a misrepresentation in forward-looking information if the person proves that
- (a) the document containing the forward-looking information contained, proximate to that information,
    - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
    - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
  - (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.
- (8) The liability of all persons referred to in subsection (1) (b) is joint and several as between themselves with respect to the same cause of action.
- (9) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.
- (10) The amount recoverable by a plaintiff under this section must not exceed the price at which the securities were offered under the disclosure document.

- (11) The right of action for rescission or damages conferred by this section is in addition to and not in derogation from any other right the purchaser may have.
- (12) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a disclosure document, the misrepresentation is deemed to be contained in the disclosure document.

### **Standard of reasonableness**

- 133** In determining what is a reasonable investigation or what are reasonable grounds for belief for the purposes of sections 131 and 132, the standard of reasonableness must be that required of a prudent person in the circumstances of the particular case.

### **Liability in margin contracts**

- 134** (1) If a registered dealer makes a contract with a client to buy and carry on margin the securities of any issuer, and
- (a) while the contract continues, the dealer sells securities of the same issuer for any account in which the dealer, the dealer's director, the dealer's firm, or a partner in the dealer's firm has a direct or indirect interest, and
  - (b) the effect of the sale is to reduce the amount of those securities in the hands of the dealer or under the dealer's control in the ordinary course of business to below the amount of those securities that the dealer should be carrying for all the dealer's clients,
- the dealer must immediately disclose those facts to the client, and the contract with the client is voidable at the election of the client.
- (2) If a client elects under subsection (1) to void the contract, the client may, in respect of that contract, recover from the dealer
- (a) all money paid by the client to the dealer with interest, and
  - (b) any securities deposited by the client with the dealer.
- (3) If a client elects under subsection (1), the client must send written notice to the registered dealer within 30 days after the disclosure made to the client under that subsection.
- (4) A dealer is not liable under subsection (1) if the dealer proves that the reduction of the amount of securities to below the amount the dealer should be carrying was unintentional.

### **Right of action for failure to deliver documents**

- 135** A person who is
- (a) a purchaser of a security to whom a prospectus, any amendment to a prospectus or other prescribed document was required under section 83 to be sent but which prospectus, amendment to a prospectus or

other prescribed document was not sent or was not filed under the Act, or

- (b) a person to whom a take over bid circular, issuer bid circular, notice of change or notice of variation was required under the regulations to be sent but which circular or notice was not sent,

has a right of action for damages or rescission against the dealer or offeror who failed to comply with the applicable requirement.

### **Right of action for failure to deliver prescribed disclosure documents**

**135.1** A person who is a purchaser of a security distributed under a prescribed disclosure document has a right of action for damages or rescission against the issuer if the person did not receive the disclosure document within the prescribed time.

### **Liability for insider trading, tipping and recommending**

**136** (1) If an issuer, or a person in a special relationship with an issuer, contravenes section 57.2, a person referred to in subsection (2) of this section has a right of action against the issuer or the person in a special relationship with the issuer.

(2) A person may recover losses incurred in relation to a transaction involving a security of the issuer, or a related financial instrument of a security of the issuer, if the transaction was entered into during the period

- (a) starting when the contravention occurred, and
- (b) ending at the time the material fact or material change is generally disclosed.

(3) If a court finds a person liable in an action under subsection (1), the amount payable to the plaintiff by the person is the lesser of

- (a) the losses incurred by the plaintiff, and
- (b) an amount determined in accordance with the regulations.

(4) For the purposes of subsection (1), in determining the losses incurred by a plaintiff, a court must not include an amount that the defendant proves is attributable to a change in the market price of the security that is unrelated to the material change or the material fact.

### **Accounting for benefits**

**136.1** (1) If a person is an insider, affiliate or associate of an issuer, and if the person contravenes section 57.2, the person must pay to the issuer an amount equal to

- (a) the benefit that the person received as a result of the contravention, and
- (b) the benefit that all persons received as a result of the contravention.

- (2) If a person contravenes section 57.3, the person must pay to the investor, as defined in that section, an amount equal to
- (a) the benefit that the person received as a result of the contravention, and
  - (b) the benefit that all persons received as a result of the contravention.

### **Due diligence defence for insider trading**

**136.2** A person is not liable under section 136 or 136.1 (1) if, after a reasonable investigation occurring before the person

- (a) entered into the transaction,
- (b) informed another person of the material fact or material change, or
- (c) recommended or encouraged a transaction,

the person had no reasonable grounds to believe that the material fact or material change had not been generally disclosed.

### **Action by commission on behalf of issuer**

**137** (1) On application by

- (a) the commission, or
- (b) any person who
  - (i) was, at the time of a transaction referred to in section 136, or
  - (ii) is, at the time of the application,a security holder of the issuer,

the Supreme Court may, if satisfied that

- (c) the applicant has reasonable grounds for believing that the issuer has a cause of action under section 136.1 (1), and
- (d) the issuer has
  - (i) refused or failed to commence an action under section 136.1 (1) within 60 days after receipt of a written request from the applicant to do so, or
  - (ii) failed to prosecute diligently an action commenced by it under section 136.1 (1),

make an order, on any terms as to security for costs or otherwise that it considers proper, requiring the commission or authorizing the person or the commission to commence or continue an action in the name of, and on behalf of, the issuer to enforce the liability created by section 136.1 (1).

(2) On application by

- (a) the commission, or
- (b) any person who

- (i) was, at the time of a transaction referred to in section 136.1 (2), or
- (ii) is, at the time of the application,  
a security holder of the investor,  
the Supreme Court may, if satisfied that
  - (c) the applicant has reasonable grounds for believing that the investor has a cause of action under section 136.1 (2), and
  - (d) the investor has
    - (i) refused or failed to commence an action under section 136.1 (2) within 60 days after receipt of a written request from the applicant to do so, or
    - (ii) failed to prosecute diligently an action commenced by it under section 136.1 (2),

make an order, on any terms as to security for costs or otherwise that it considers proper, requiring the commission or authorizing the person or the commission to commence or continue an action in the name of, and on behalf of, the investor to enforce the liability created by section 136.1 (2).

- (3) If an action under section 136.1 (1) or (2) is commenced or continued by the directors of the issuer, the Supreme Court may order the issuer to pay all costs properly incurred by the directors in commencing or continuing the action, as the case may be, if it is satisfied that the action is in the best interests of the issuer and its security holders.
- (4) If an action under section 136.1 (1) or (2) is commenced or continued by a person who is a security holder of the issuer, the Supreme Court may order the issuer to pay all costs properly incurred by the security holder in commencing or continuing the action, as the case may be, if it is satisfied that
  - (a) the issuer refused or failed to commence the action or, having commenced it, failed to prosecute it diligently, and
  - (b) the action is in the best interests of the issuer and its security holders.
- (5) If an action under section 136.1 (1) or (2) is commenced or continued by the commission, the Supreme Court must order the issuer to pay all costs properly incurred by the commission in commencing or continuing the action, as the case may be.
- (6) In determining whether an action or its continuance is in the best interests of an issuer and its security holders, the court must consider the relationship between the potential benefit to be derived from the action by the issuer and its security holders and the cost involved in the prosecution of the action.
- (7) Notice of every application under subsection (1) or (2) must be sent to the commission and the issuer, or the investor, as the case may be, and each of them may appear and be heard.

- (8) An order made under subsection (1) or (2) requiring or authorizing the commission to commence or continue an action must provide that the issuer or investor, as the case may be,
- (a) cooperate fully with the commission in the commencement or continuation of the action, and
  - (b) make available to the commission all records and other material or information relevant to the action and known to, or reasonably ascertainable by, the issuer or investor.

### **Rescission of contract**

**138** (1) If section 51 (2) applies to a contract and is not complied with, a person who has entered into the contract may rescind it by sending a written notice of rescission to the registered dealer within 60 days of the date of the delivery of the security to the person or by the person if the person is, at the time the notice of rescission is given, the beneficial owner of the security purchased.

(2) If a registered dealer

- (a) is required by the regulations to give to a client a written confirmation of a trade in a security setting out that the registered dealer has acted as principal in the transaction, and
- (b) has failed to comply with that requirement,

a person who has entered into the contract may rescind it by sending a written notice of rescission to the registered dealer within 7 days of the date of the delivery of the written confirmation of the contract.

- (3) In an action for rescission to which this section applies, the onus of proving compliance with section 51 or the regulations is on the registered dealer.
- (4) An action for rescission must not be commenced under this section after the end of 90 days from the date of sending the notice under subsection (1) or (2).

### **Rescission of purchase of security under prescribed disclosure document**

**138.1** A purchaser of a security may rescind the purchase if

- (a) the security is acquired under an exemption from section 34 or 61,
- (b) the exemption requires the delivery of a prescribed disclosure document, and
- (c) the purchaser delivers a notice to the issuer not later than midnight on the second business day after the purchaser signs the agreement to purchase the securities.

### **Rescission of purchase of mutual fund security**

**139** (1) Every purchaser of a security of a mutual fund in British Columbia may, if the amount of the purchase does not exceed a prescribed amount, rescind the purchase by sending a written notice to the registered dealer from whom the purchase was made,



- (a) in the case of a lump sum purchase, within 48 hours after receipt of the confirmation, or
  - (b) in the case of a contractual plan, within 60 days after receipt of the confirmation of the initial payment.
- (2) Subject to subsection (4), the amount a purchaser may recover on exercise of a right to rescind under subsection (1) must not exceed the net asset value, at the time the right is exercised, of the securities purchased.
- (3) The right to rescind a purchase made under a contractual plan may be exercised only with respect to payments scheduled to be made within the time specified in subsection (1) for rescinding a purchase made under a contractual plan.
- (4) Every registered dealer from whom the purchase of a security of a mutual fund was made must reimburse the purchaser who has exercised the purchaser's right of rescission in accordance with this section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the securities for which the written notice of rescission was given.

### Limitation period

- 140** Unless otherwise provided in this Act or in the regulations, an action to enforce a civil remedy created by this Part or by the regulations must not be commenced
- (a) in the case of an action for rescission, more than 180 days after the date of the transaction that gave rise to the cause of action, or
  - (b) in the case of an action other than for rescission, more than the earlier of
    - (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
    - (ii) 3 years after the date of the transaction that gave rise to the cause of action.

## Part 16.1 — Civil Liability for Secondary Market Disclosure

### Division 1 — Interpretation and Application

#### Definitions

**140.1** In this Part:

**"compensation"** means compensation received during the 12-month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights,

granted during the same period, valued as of the date that the compensation is awarded;

**"core document"** means

- (a) a prospectus, a take over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements and an interim financial report of the responsible issuer, where used in relation to
  - (i) a director of a responsible issuer who is not also an officer of the responsible issuer,
  - (ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or
  - (iii) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager,
- (b) a prospectus, a take over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, an interim financial report and disclosure required under section 85 of the responsible issuer, where used in relation to
  - (i) a responsible issuer or an officer of the responsible issuer,
  - (ii) an investment fund manager, where the responsible issuer is an investment fund, or
  - (iii) an officer of an investment fund manager, where the responsible issuer is an investment fund, or
- (c) any other document that is within a class of documents prescribed for the purpose of this definition;

**"document"** means a written communication, including a communication prepared and transmitted only in electronic form,

- (a) that is required to be filed with the commission, or
- (b) that is not required to be filed with the commission and
  - (i) that is filed with the commission,
  - (ii) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with an exchange or quotation and trade reporting system under its bylaws, rules or regulations, or

- (iii) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer;

**"expert"** means a person whose profession gives authority to a statement made in a professional capacity by the person, including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but does not include an entity prescribed for the purposes of this section;

**"failure to make timely disclosure"** means a failure to disclose a material change in the manner and at the time required under this Act;

**"influential person"** means, in respect of a responsible issuer,

- (a) a control person,
- (b) a promoter,
- (c) an insider who is not a director or officer of the responsible issuer, or
- (d) an investment fund manager, if the responsible issuer is an investment fund;

**"issuer's security"** means a security of a responsible issuer and includes a security

- (a) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and
- (b) which is created by a person on behalf of the responsible issuer or is guaranteed by the responsible issuer;

**"liability limit"** means,

- (a) in the case of a responsible issuer, the greater of
  - (i) 5% of its market capitalization, and
  - (ii) \$1 million,
- (b) in the case of a director or officer of a responsible issuer, the greater of
  - (i) \$25 000, and
  - (ii) 50% of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,
- (c) in the case of an influential person who is not an individual, the greater of
  - (i) 5% of its market capitalization, and
  - (ii) \$1 million,
- (d) in the case of an influential person who is an individual, the greater of
  - (i) \$25 000, and

- (ii) 50% of the aggregate of the influential person's compensation from the responsible issuer and its affiliates,
- (e) in the case of a director or officer of an influential person, the greater of
  - (i) \$25 000, and
  - (ii) 50% of the aggregate of the director's or officer's compensation from the influential person and its affiliates,
- (f) in the case of an expert, the greater of
  - (i) \$1 million, and
  - (ii) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation, and
- (g) in the case of each person who made a public oral statement, other than an individual referred to in paragraph (d), (e) or (f), the greater of
  - (i) \$25 000, and
  - (ii) 50% of the aggregate of the person's compensation from the responsible issuer and its affiliates;

**"management's discussion and analysis"** means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and financial performance of a responsible issuer as required under this Act;

**"public oral statement"** means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed;

**"release"** means, with respect to information or a document, to file with the commission or any other securities regulatory authority or an exchange or to otherwise make available to the public;

**"responsible issuer"** means

- (a) a reporting issuer, or
- (b) any other issuer with a real and substantial connection to British Columbia, any securities of which are publicly traded;

**"trading day"** means a day during which the principal market for the security is open for trading.

## Application

**140.2** This Part does not apply to

- (a) the purchase of a security offered by a prospectus during the period of distribution,

- (b) the acquisition of an issuer's security pursuant to a distribution that is exempt from section 61, unless the acquisition is within a class of prescribed acquisitions,
- (c) the acquisition or disposition of an issuer's security in connection with or pursuant to a take over bid or issuer bid, unless the acquisition or disposition is within a prescribed class of acquisitions or dispositions, or
- (d) a prescribed transaction or class of transactions.

## **Division 2 — Liability**

### **Liability for secondary market disclosure**

- 140.3** (1) Where a responsible issuer or a person with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against
- (a) the responsible issuer,
  - (b) each director of the responsible issuer at the time the document was released,
  - (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document,
  - (d) each influential person, and each director and officer of an influential person, who knowingly influenced
    - (i) the responsible issuer or any person acting on behalf of the responsible issuer to release the document, or
    - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document, and
  - (e) each expert where
    - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
    - (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
    - (iii) if the document was released by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.
- (2) If a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period

between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against

- (a) the responsible issuer,
  - (b) the person who made the public oral statement,
  - (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement,
  - (d) each influential person, and each director and officer of the influential person, who knowingly influenced
    - (i) the person who made the public oral statement to make the public oral statement, or
    - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement, and
  - (e) each expert where
    - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
    - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
    - (iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.
- (3) If an influential person or a person with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against
- (a) the responsible issuer if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
  - (b) the person who made the public oral statement,
  - (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
  - (d) the influential person,

- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement, and
- (f) each expert where
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
  - (iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.
- (4) Where a responsible issuer fails to make a timely disclosure, a person who acquires or disposes of the issuer's security between the time when the material change was required to be disclosed in the manner required under this Act and the subsequent disclosure of the material change has, without regard to whether the person relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against
  - (a) the responsible issuer,
  - (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure, and
  - (c) each influential person, and each director and officer of an influential person, who knowingly influenced
    - (i) the responsible issuer or any person acting on behalf of the responsible issuer in the failure to make timely disclosure, or
    - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.
- (5) In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.
- (6) In an action under this section,
  - (a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation, and
  - (b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.
- (7) In an action under subsection (2) or (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of

the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

### **Burden of proof and defences**

- 140.4** (1) In an action under section 140.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person is not liable, subject to subsection (2), unless the plaintiff proves that the person
- (a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation,
  - (b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation, or
  - (c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.
- (2) A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 140.3 in relation to an expert.
- (3) In an action under section 140.3 in relation to a failure to make timely disclosure, a person is not liable, subject to subsection (4), unless the plaintiff proves that the person
- (a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change,
  - (b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change, or
  - (c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.
- (4) A plaintiff is not required to prove a matter set out in subsection (3) in an action under section 140.3 in relation to
- (a) a responsible issuer,
  - (b) an officer of a responsible issuer,
  - (c) an investment fund manager, or
  - (d) an officer of an investment fund manager.
- (5) A person is not liable in an action under section 140.3 in relation to a misrepresentation or a failure to make timely disclosure if that person proves that the plaintiff acquired or disposed of the issuer's security



- (a) with knowledge that the document or public oral statement contained a misrepresentation, or
  - (b) with knowledge of the material change.
- (6) A person is not liable in an action under section 140.3 in relation to
  - (a) a misrepresentation if that person proves that
    - (i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person conducted or caused to be conducted a reasonable investigation, and
    - (ii) at the time of the release of the document or the making of the public oral statement, the person had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation, or
  - (b) a failure to make timely disclosure if that person proves that
    - (i) before the failure to make timely disclosure first occurred, the person conducted or caused to be conducted a reasonable investigation, and
    - (ii) the person had no reasonable grounds to believe that the failure to make timely disclosure would occur.
- (7) In determining whether an investigation was reasonable under subsection (6), or whether any person is guilty of gross misconduct under subsection (1) or (3), the court must consider all relevant circumstances, including
  - (a) the nature of the responsible issuer,
  - (b) the knowledge, experience and function of the person,
  - (c) the office held, if the person was an officer,
  - (d) the presence or absence of another relationship with the responsible issuer, if the person was a director,
  - (e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations,
  - (f) the reasonableness of reliance by the person on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts,
  - (g) the period within which disclosure was required to be made under the applicable law,
  - (h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert,
  - (i) the extent to which the person knew, or should reasonably have known, the content and medium of dissemination of the document or

public oral statement,

- (j) in the case of a misrepresentation, the role and responsibility of the person in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement, and
  - (k) in the case of a failure to make timely disclosure, the role and responsibility of the person involved in a decision not to disclose the material change.
- (8) A person is not liable in an action under section 140.3 in respect of a failure to make timely disclosure if
- (a) the person proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the commission under section 85 (b),
  - (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis,
  - (c) in the case where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist,
  - (d) the person or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and
  - (e) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.
- (9) A person is not liable in an action under section 140.3 for a misrepresentation in forward-looking information if the person proves that
- (a) the document or public oral statement containing the forward-looking information contained, proximate to that information,
    - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
    - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
  - (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

- (10) The person is deemed to have satisfied the requirements of subsection (9) (a) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement
- (a) made a cautionary statement that the oral statement contains forward-looking information,
  - (b) stated that
    - (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and
    - (ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information, and
  - (c) stated that additional information about
    - (i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and
    - (ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,
- is contained in a readily available document or in a portion of such a document and has identified that document or that portion of the document.
- (11) For the purposes of subsection (10) (c), a document filed or otherwise generally disclosed is deemed to be readily available.
- (12) Subsection (9) does not relieve a person of liability respecting forward-looking information in a financial statement required to be filed or forward-looking information in a document released in connection with an initial public offering.
- (13) A person, other than an expert, is not liable in an action under section 140.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion, if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person proves that
- (a) the person did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert, and
  - (b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.
- (14) An expert is not liable in an action under section 140.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves

that the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

- (15) A person is not liable in an action under section 140.3 in respect of a misrepresentation in a document, other than a document required to be filed, if the person proves that, at the time of release of the document, the person did not know and had no reasonable grounds to believe that the document would be released.
- (16) A person is not liable in an action under section 140.3 for a misrepresentation in a document or a public oral statement, if the person proves that
- (a) the misrepresentation was also contained in a document filed by or on behalf of another person, other than the responsible issuer, with the commission or any other securities regulatory authority or an exchange and was not corrected in another document filed by or on behalf of that other person with the commission or that other securities regulatory authority or exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer,
  - (b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation, and
  - (c) when the document was released or the public oral statement was made, the person did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.
- (17) A person, other than the responsible issuer, is not liable in an action under section 140.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person and if, after the person became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,
- (a) the person promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure, and
  - (b) no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within 2 business days after the notification under paragraph (a), the person, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the commission of the misrepresentation or failure to make timely disclosure.

### Division 3 — Damages

#### Assessment of damages

**140.5** (1) Damages must be assessed in favour of a person that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

- (a) in respect of any of the securities of the responsible issuer that the person subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the difference between the average price paid for those securities (including any commissions) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the results of hedging or other risk limitation transactions;
- (b) in respect of any of the securities of the responsible issuer that the person subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the lesser of
  - (i) an amount equal to the difference between the average price paid for those securities (including any commissions) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the results of hedging or other risk limitation transactions, and
  - (ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities (including any commissions) and,
    - (A) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
    - (B) if there is no published market, the amount that the court considers just;
- (c) in respect of any of the securities of the responsible issuer that the person has not disposed of, assessed damages must equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities (including any commissions) and,
  - (i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market

for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

(ii) if there is no published market, the amount that the court considers just.

(2) Damages must be assessed in favour of a person that disposed of securities after a document was released or a public oral statement was made containing a misrepresentation or after a failure to make timely disclosure as follows:

- (a) in respect of any of the securities of the responsible issuer that the person subsequently acquired on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the results of hedging or other risk limitation transactions;
- (b) in respect of any of the securities of the responsible issuer that the person subsequently acquired after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the lesser of
  - (i) an amount equal to the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions, and
  - (ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,
    - (A) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
    - (B) if there is no published market, the amount that the court considers just;
- (c) in respect of any of the securities of the responsible issuer that the person has not acquired, assessed damages must equal the number

of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,

- (i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
  - (ii) if there is no published market, the amount that the court considers just.
- (3) Despite subsections (1) and (2), assessed damages must not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure.

### Proportionate liability

- 140.6** (1) In an action under section 140.3, the court must determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant must be liable, subject to the limits set out in section 140.7 (1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.
- (2) Despite subsection (1), where, in an action under section 140.3 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.
- (3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2).
- (4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action.

### Limits on damages

- 140.7** (1) Despite section 140.5, the damages payable by a person in an action under section 140.3 is the lesser of
- (a) the aggregate damages assessed against the person in the action,
  - and



- (b) the liability limit for the person less the aggregate of all damages assessed after appeals, if any, against the person in all other actions brought under section 140.3, and under comparable legislation in other provinces in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.
- (2) Subsection (1) does not apply to a person, other than the responsible issuer, if the plaintiff proves that the person authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.

## **Division 4 — Procedural Matters**

### **Leave to proceed**

- 140.8** (1) No action may be commenced under section 140.3 without leave of the court granted upon motion with notice to each defendant.
- (2) The court may grant leave only where it is satisfied that
- (a) the action is being brought in good faith, and
  - (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.
- (3) Upon an application under this section, the plaintiff and each defendant must serve and file with the court one or more affidavits setting forth the material facts upon which each intends to rely.
- (4) If an affidavit is filed with the court, a person who made the affidavit may be examined on it in accordance with the Supreme Court Civil Rules.
- (5) A copy of the application for leave to proceed and any affidavits filed with the court must be sent to the commission when filed.

### **Notice**

- 140.9** A person that has been granted leave to commence an action under section 140.3 must
- (a) promptly issue a news release disclosing that leave has been granted to commence an action under section 140.3,
  - (b) send a written notice to the commission within 7 days, together with a copy of the news release, and
  - (c) send a copy of the notice of civil claim or other originating document to the commission when filed with the court.

### **Restriction on discontinuation, etc., of action**



**140.91** An action under section 140.3 must not be discontinued, abandoned or settled without the approval of the court given on such terms as the court thinks fit, including, without limitation, terms as to costs, and in determining whether to approve the settlement of the action, the court must consider, among other things, whether there are any other actions outstanding under section 140.3 or under comparable legislation in other provinces in respect of the same misrepresentation or failure to make timely disclosure.

### **Power of the commission**

**140.92** The commission may intervene in an action under section 140.3 and in an application for leave under section 140.8.

### **No derogation from other rights**

**140.93** The right of action for damages and the defences to an action under section 140.3 are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in an action brought otherwise than under this Part.

### **Limitation period**

**140.94** No action may be commenced under section 140.3,

- (a) in the case of a misrepresentation in a document, later than the earlier of
  - (i) 3 years after the date on which the document containing the misrepresentation was first released, and
  - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 140.3 or under comparable legislation in the other provinces in respect of the same misrepresentation,
- (b) in the case of a misrepresentation in a public oral statement, later than the earlier of
  - (i) 3 years after the date on which the public oral statement containing the misrepresentation was made, and
  - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 140.3 or under comparable legislation in other provinces in respect of the same misrepresentation, and
- (c) in the case of a failure to make timely disclosure, later than the earlier of
  - (i) 3 years after the date on which the requisite disclosure was required to be made, and
  - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section

140.3 or under comparable legislation in another province in respect of the same failure to make timely disclosure.

## Part 17 — Investigations and Audits

### Provision of information to executive director

**141** (1) The executive director may make an order under subsection (2)

- (a) for the administration of this Act,
- (b) to assist in the administration of the securities or exchange contracts laws of another jurisdiction,
- (c) in respect of matters relating to trading in securities or exchange contracts in British Columbia, or
- (d) in respect of matters in British Columbia relating to trading in securities or exchange contracts in another jurisdiction.

(2) By an order applicable generally or to one or more persons or entities named or otherwise described in the order, the executive director may require any of the following persons to provide information or to produce records or classes of records specified or otherwise described in the order within the time or at the intervals specified in the order:

- (a) [Repealed 2011-29-128.]
- (b) a registrant;
- (c) a person exempted from the requirement to be registered under section 34;
- (d) a reporting issuer;
- (e) a custodian of assets, shares or units of an investment fund;
- (f) a general partner of a person referred to in paragraph (b), (c), (d), (g), (j) or (k);
- (g) a person purporting to distribute securities in reliance on an exemption
  - (i) from section 61, or
  - (ii) in an order issued under section 76;
- (h) a transfer agent or registrar for securities of a reporting issuer;
- (i) a director or officer of a reporting issuer;
- (j) a promoter or control person of a reporting issuer;
- (k) a person engaged in investor relations activities on behalf of a reporting issuer or security holder of a reporting issuer;
- (l) the Canadian Investor Protection Fund;
- (m) a person providing record keeping services to a registrant;

- (n) a person recognized under section 24;
  - (o) a credit rating organization.
- (3) The executive director may require verification by affidavit of information provided or records or classes of records produced pursuant to an order under subsection (2).
- (4) The executive director may require that the information that is provided or the records that are produced under an order made under subsection (2) be delivered in an electronic form or in any other form that facilitates the electronic storage of the information or records.

### Compliance review for SRO or exchange

- 141.1** (1) The executive director may appoint in writing a person to review the business and conduct of a self regulatory body, an exchange, a quotation and trade reporting system, a clearing agency or a credit rating organization for the purpose of determining if the person under review is
- (a) complying, or has complied, with
    - (i) this Act and the regulations,
    - (ii) any decision, or
    - (iii) the charter, as defined in section 1 of the *Financial Institutions Act*, of the person under review, or
  - (b) enforcing or administering its bylaws, rules, other regulatory instruments or policies.
- (2) On production of the appointment, a person conducting a review under this section may
- (a) enter any business premises of a person under review during business hours,
  - (b) examine the records referred to in section 26 (2) (b),
  - (c) examine property, assets or things of a person under review,
  - (d) make copies of the records referred to in section 26 (2) (b), and
  - (e) make inquiries of a person under review or its employees and agents concerning business or conduct that reasonably relates to the review.
- (3) In exercising the power to make copies under subsection (2) (d), the person conducting the review under this section may
- (a) carry out the copying at the business premises of the person under review, or
  - (b) on giving an appropriate receipt, remove records for the purpose of copying them at other premises specified in the receipt.
- (4) Records removed under subsection (3) (b) for copying must be promptly returned to the person from which they were received.

- (5) The executive director may require a person that is the subject of a review under this section to pay prescribed fees or prescribed charges for the costs of the review.

### **Compliance review of registrant or custodian**

- 141.2** (1) The executive director may appoint in writing a person to review the business and conduct of a registrant or custodian of assets of an investment fund, for the purpose of determining if the person under review is complying, or has complied, with
- (a) this Act and the regulations,
  - (b) any decision, or
  - (c) the bylaws, rules, other regulatory instruments or policies of the self regulatory body, exchange, quotation and trade reporting system, or clearing agency, if any, of which or in which the person under review is a member or participant.
- (2) On production of the appointment, a person conducting a review under this section may
- (a) enter any business premises of a person under review during business hours,
  - (b) examine the records of a person under review that are required to be kept under this Act,
  - (c) examine property, assets or things of a person under review,
  - (d) make copies of the records referred to in paragraph (b), and
  - (e) make inquiries of a person under review or its employees and agents concerning business or conduct that reasonably relates to the review.
- (3) In exercising the power to make copies under subsection (2) (d), the person conducting the review under this section may
- (a) carry out the copying at the business premises of the person under review, or
  - (b) on giving an appropriate receipt, remove records for the purpose of copying them at other premises specified in the receipt.
- (4) Records removed under subsection (3) (b) for copying must be promptly returned to the person from which they were received.
- (5) The executive director may require a person that is the subject of a review under this section to pay prescribed fees or prescribed charges for the costs of the review.

### **Compliance review of reporting issuer**

- 141.3** (1) The executive director may review the business and conduct of a reporting issuer for the purpose of determining if the reporting issuer is complying, or has complied, with

- (a) this Act and the regulations,
  - (b) any decision, or
  - (c) the bylaws, rules, other regulatory instruments or policies of the exchange or quotation and trade reporting system, if any, on which the person under review is listed or quoted.
- (2) If the executive director conducts a review under this section, the executive director may
  - (a) require a reporting issuer to provide information or produce records or classes of records, and
  - (b) make inquiries of the reporting issuer or its employees and agents concerning business or conduct that reasonably relates to the review.
- (3) The executive director may require a reporting issuer that is the subject of a review under this section to pay prescribed fees or prescribed charges for the costs of the review.

### **Compliance review of other market participants**

- 141.4** (1) The executive director may appoint in writing a person to review the business and conduct of a person referred to in section 141 (2) (c), (f), (g), (h), (i), (j), (k), (l) or (m) for the purpose of determining if the person under review is complying, or has complied, with
- (a) this Act and the regulations, or
  - (b) any decision.
- (2) On production of the appointment, a person conducting a review under this section may
- (a) enter any business premises of a person under review during business hours,
  - (b) examine the records required to be kept under this Act,
  - (c) make copies of the records referred to in paragraph (b), and
  - (d) make inquiries of a person under review or its employees and agents concerning business or conduct that reasonably relates to the review.
- (3) In exercising the power to make copies under subsection (2) (c), the person conducting the review under this section may
- (a) carry out the copying at the business premises of the person under review, or
  - (b) on giving an appropriate receipt, remove records for the purpose of copying them at other premises specified in the receipt.
- (4) Records removed under subsection (3) (b) for copying must be promptly returned to the person from which they were received.

- (5) The executive director may require a person that is the subject of a review under this section to pay prescribed fees or prescribed charges for the costs of the review.

### **Warrant for private residence**

- 141.5** (1) Despite section 141.1 (2) (a), 141.2 (2) (a) or 141.4 (2) (a), if the business premises is a residence, the person conducting the review may enter the residence only with the consent of the occupant or under the authority granted under subsection (2).
- (2) On application by the commission, the Supreme Court may make an order authorizing a person named in the order to enter into a residence at any reasonable time, for the purpose of carrying out a review under section 141.1, 141.2 or 141.4, if the Court is satisfied by information on oath that
- (a) there are reasonable and probable grounds to believe that records that reasonably relate to a review are present in the residence,
  - (b) entry into the residence is necessary for the purpose of verifying compliance with this Act, the regulations or a decision, and
  - (c) entry was refused by the occupant or there are reasonable grounds to believe that
    - (i) entry will be refused, or
    - (ii) consent to entry cannot be obtained from the occupant.
- (3) An application for an order under subsection (2) must be made in the prescribed manner and, unless the Supreme Court otherwise directs, may be
- (a) made without notice, and
  - (b) heard in the absence of the public.

### **Investigation order by commission**

- 142** (1) The commission may, by order, appoint a person to make an investigation the commission considers expedient
- (a) for the administration of this Act,
  - (b) to assist in the administration of the securities or exchange contracts laws of another jurisdiction,
  - (c) in respect of matters relating to trading in securities or exchange contracts in British Columbia, or
  - (d) in respect of matters in British Columbia relating to trading in securities or exchange contracts in another jurisdiction.
- (2) In its order, the commission must specify the scope of an investigation to be carried out under subsection (1).

### **Power of investigator**

- 143** (1) An investigator appointed under section 142 or 147 may, with respect to the person who is the subject of the investigation, investigate, inquire into, inspect and examine
- (a) the affairs of that person,
  - (b) any records, negotiations, transactions, investigations, investments, loans, borrowings and payments to, by, on behalf of, in relation to or connected with that person,
  - (c) any property, assets or things owned, acquired or disposed of in whole or in part by that person or by a person acting on behalf of or as agent for that person,
  - (d) the assets at any time held by, the liabilities, debts, undertakings and obligations at any time existing and the financial or other conditions at any time prevailing in respect of that person, and
  - (e) the relationship that may at any time exist or have existed between that person and any other person by reason of
    - (i) investments made,
    - (ii) commissions promised, secured or paid,
    - (iii) interests held or acquired,
    - (iv) the lending or borrowing of money, securities or other property,
    - (v) the transfer, negotiation or holding of securities or exchange contracts,
    - (vi) interlocking directorates,
    - (vii) common control,
    - (viii) undue influence or control, or
    - (ix) any other relationship.
- (2) On being satisfied that it is necessary and in the public interest, the commission may, by order, authorize an investigator appointed under section 142
- (a) to enter the business premises of
    - (i) a registrant specified in the order,
    - (ii) a self regulatory body recognized under section 24 (a), or
    - (iii) an exchange recognized under section 24 (b),during business hours for the purpose of carrying out an inspection, examination or analysis of records, property, assets or things that are used in the business of that person and that may reasonably relate to the order made under section 142,
  - (b) to require the production of the records, property, assets or things referred to in paragraph (a) and to inspect, examine or analyze them, and

- (c) on giving a receipt, to remove the records, property, assets or things inspected, examined or analyzed under paragraph (a) or (b) for the purpose of further inspection, examination or analysis.
- (3) On application by the commission and on being satisfied by information on oath that there are reasonable and probable grounds to believe that there may be anything that may reasonably relate to an order made under section 142,
  - (a) in a business premise, or
  - (b) in a building, receptacle or place, other than a room or place actually being used as a residence,the Supreme Court may make an order authorizing a person named in the order
  - (c) to enter into that business premise, building or receptacle at any reasonable time, for the purpose of carrying out an inspection, examination or analysis of records, property, assets or things that may reasonably relate to the order made under section 142,
  - (d) to require the production of the records, property, assets or things referred to in paragraph (c) and to inspect, examine or analyze them, and
  - (e) on giving a receipt, to remove the records, property, assets or things referred to in paragraph (c) for the purpose of further inspection, examination or analysis.
- (4) An application for an order under subsection (3) must be made in the prescribed manner and, unless the Supreme Court otherwise directs, may be
  - (a) made without notice, and
  - (b) heard in the absence of the public.
- (5) Inspection, examination or analysis under this section must be completed as soon as practical and the records, property, assets or things must be returned promptly to the person who produced them.
- (6) On an inspection, examination or analysis under this section, an investigator appointed under section 142 and authorized under subsection (2) of this section, a person named in an order under subsection (3) of this section or a person acting under the direction of either of them may
  - (a) mark the records, property, assets or things for identification, or
  - (b) use or alter the records, property, assets or things to the extent reasonably necessary to facilitate the inspection, examination or analysis,and does not incur any liability because of doing so.

- (7) [Repealed 2007-37-22.]

### Investigator's power to compel evidence



- 144** (1) An investigator appointed under section 142 or 147 has the same power
- (a) to summon and enforce the attendance of witnesses,
  - (b) to compel witnesses to give evidence on oath or in any other manner, and
  - (c) to compel witnesses to produce records and things and classes of records and things
- as the Supreme Court has for the trial of civil actions.
- (2) The failure or refusal of a witness
- (a) to attend,
  - (b) to take an oath,
  - (c) to answer questions, or
  - (d) to produce the records and things or classes of records and things in the custody, possession or control of the witness
- makes the witness, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.
- (3) Section 34 of the *Evidence Act* does not exempt any financial institution, as defined in that section of that Act, or any officer or employee of the institution from the operation of this section.
- (4) A witness giving evidence at an investigation conducted under section 142 or 147 may be represented by counsel.

### **Appointment of expert**

- 145** If an investigation is ordered under section 142, the commission may appoint an expert to examine the affairs, records and properties of the person being investigated.

### **Report to commission**

- 146** A person appointed under section 142 or 145 must provide, at the request of the commission or a member of the commission involved in making the appointment, a complete report of the investigation, examination or analysis made, including any transcript of evidence and material in the person's possession relating to the investigation or examination.

### **Investigation order by minister**

- 147** (1) The minister may, by order, appoint a person to make an investigation the minister considers expedient
- (a) for the administration of this Act,
  - (b) to assist in the administration of the securities or exchange contracts laws of another jurisdiction,

- (c) in respect of matters relating to trading in securities or exchange contracts in British Columbia, or
  - (d) in respect of matters in British Columbia relating to trading in securities or exchange contracts in another jurisdiction.
- (2) In the order, the minister must specify the scope of an investigation to be carried out under subsection (1).

### **Evidence not to be disclosed**

- 148** (1) For the purpose of protecting the integrity of an investigation authorized under section 142, the commission may make an order, that applies for the duration of the investigation, prohibiting a person from disclosing to any person the existence of the investigation, the inquiries made by persons appointed under section 142, or the name of any witness examined or sought to be examined in the course of the investigation.
- (1.1) An order made under subsection (1) does not apply to the disclosure of information between a person and the person's lawyer.
- (2) An order made under subsection (1) applies despite any provision of the *Freedom of Information and Protection of Privacy Act* other than section 44 (1) (b), (2), (2.1) and (3) of that Act.
- (3) [Repealed 2010-4-61.]

### **Report to minister**

- 149** (1) If an investigation has been made under section 142 or 147, then, if requested to do so by the minister, the commission or the investigator, as the case may be, must make a complete report to the minister including, if so requested, the evidence, findings, comments, recommendations and any material in the possession of the commission or investigator relating to the investigation.
- (2) The minister may publish all or part of a report under subsection (1) in any way the minister considers proper.

### **Costs payable by person investigated**

- 150** The commission may require a person whose affairs are investigated under this Part to pay prescribed fees or charges for the costs of the investigation.

### **Order to freeze property**

- 151** (1) The commission may make a direction under subsection (2) if
- (a) it proposes to order an investigation in respect of a person under section 142 or during or after an investigation in respect of a person under section 142 or 147,
  - (b) it or the executive director proposes to make or has made an order under section 161 in respect of a person,

- (c) criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against a person and the commission considers the proceedings to be connected with or to arise out of a security or exchange contract or a matter relating to trading in securities or exchange contracts, or out of any business conducted by the person,
  - (d) a person fails or neglects to comply with financial conditions applicable to the person under this Act, or
  - (e) it proposes to apply or has applied to the Supreme Court for an order under section 157, or the Supreme Court has made an order under section 157.
- (2) In the circumstances described in subsection (1), the commission may direct, in writing,
- (a) a person having on deposit, under control or for safekeeping any funds, securities, exchange contracts or other property of the person referred to in subsection (1), to hold those funds, securities, exchange contracts or other property, and
  - (b) a person referred to in subsection (1)
    - (i) to refrain from withdrawing any funds, securities, exchange contracts or other property from any person having them on deposit, under control or for safekeeping, or
    - (ii) to hold all funds, securities, exchange contracts or other property of clients or others in the person's possession or control in trust for an interim receiver, custodian, trustee, receiver manager, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), the *Company Act*, the *Business Corporations Act*, the *Law and Equity Act*, the *Personal Property Security Act*, the *Winding-up Act* (Canada), the *Supreme Court Act* or this Act.
- (3) In the case of a savings institution, a direction of the commission under subsection (2) applies only to the offices, branches or agencies of the savings institution that are named in the direction.
- (4) A direction of the commission under subsection (2) does not apply to funds, securities, exchange contracts or other property in a clearing agency or to securities in process of transfer by a transfer agent unless the direction expressly so states.
- (5) In any of the circumstances referred to in subsection (1), the commission may, in writing, notify a land title office or gold commissioner that proceedings are being or are about to be taken that may affect land or mining claims belonging to the affected person.
- (6) The commission may, in writing, revoke or modify a notice given under subsection (5) and, if a notice is revoked or modified, the commission must

send a copy of the written revocation or modification to the land title office or gold commissioner, as the case may be.

- (7) A notice sent under subsection (5) or a copy of a written revocation or modification under subsection (6) must be registered or recorded against the lands or claims mentioned in it and has the same effect as the registration or recording of a certificate of pending litigation or a caveat.

### **Appointment of receiver, receiver manager or trustee**

- 152** (1) If any of the circumstances referred to in section 151 (1) exist, the commission may apply to the Supreme Court for the appointment of a receiver, receiver manager or a trustee of all or any part of the property of the person.
- (2) On an application under subsection (1), the court may, by order, appoint a receiver, receiver manager or a trustee of all or any part of the property of the person, if the court is satisfied that the appointment is in the best interests of
- (a) that person's creditors,
  - (b) persons, any of whose property is in the possession or under the control of that person, or
  - (c) the security holders of or subscribers to that person.
- (3) The commission may make an application under this section without notice to any other person and, in that event, the court may make a temporary order under subsection (2) appointing a receiver, receiver manager or a trustee for a period not longer than 15 days.
- (4) A receiver, receiver manager or trustee appointed under this section
- (a) is the receiver, receiver manager or trustee of all or any part of the property belonging to the person or held by the person on behalf of or in trust for any other person, and
  - (b) may, if authorized by the court, wind up or manage the business and affairs of the person and may exercise powers necessary or incidental to the winding up or management.
- (5) On an application under this section, the court may admit as evidence
- (a) any hearsay evidence that the court considers reliable, or
  - (b) any oral or written statement, record or report the court considers relevant.

### **Examination of financial affairs**

- 153** (1) Despite sections 31 and 32, if the commission considers it to be in the public interest, the commission may appoint in writing a person to
- (a) conduct an examination or inspection of the financial affairs and records of

- (i) a self regulatory body or an exchange, as the case may be, which has been recognized by the commission under section 24,
  - (ii) a clearing agency or a quotation and trade reporting system,
  - (iii) a registrant,
  - (iv) a reporting issuer,
  - (v) a custodian of assets of an investment fund,
  - (vi) a custodian of securities issued by an investment fund and held under a custodial agreement or other arrangement with a person engaged in the distribution of those securities, or
  - (vii) a credit rating organization, and
- (b) prepare financial or other statements and reports required by the commission.
- (2) A person appointed under subsection (1) may inquire into, examine or inspect all trades, securities, exchange contracts, cash and records of every description of the person whose financial affairs are being examined or inspected.
- (3) [Repealed 2007-37-26.]
- (4) The commission may require the person whose affairs are examined or inspected under this section to pay prescribed fees or charges for the examination or inspection.

## **Repealed**

**154** [Repealed 2002-32-30.]

## **Part 18 — Enforcement**

### **Offences generally**

**155** (1) A person who does any of the following commits an offence:

- (a) fails to file, provide, deliver or send a record that
  - (i) is required to be filed, provided, delivered or sent under this Act, or
  - (ii) is required to be filed, provided, delivered or sent under this Act within the time required under this Act;
- (b) contravenes any of section 34, 49 to 57, 57.2, 57.3, 57.5, 57.6, 58, 59, 61, 85 (b), 87, 121, 122, 124, 125, 148 or 168.1 (1) of this Act;
- (c) fails to comply with a decision made under this Act;
- (d) contravenes any of the provisions of the regulations that are specified by regulation for the purpose of this paragraph;
- (e) contravenes any of the provisions of the commission rules that are specified by regulation for the purpose of this paragraph.

(2) A person that commits an offence under this Act is liable to a fine of not more than \$3 million, or to imprisonment for not more than 3 years, or both.

(3) [Repealed 1999-20-27.]

(4) If a person, other than an individual, commits an offence under subsection (1), an employee, officer, director or agent of that person who authorizes, permits or acquiesces in the offence commits the same offence whether or not that person is convicted of the offence.

(4.1) If an investment fund commits an offence under subsection (1), the investment fund manager commits the same offence whether or not the investment fund is convicted of the offence.

(5) Despite subsection (2), if a person has contravened section 57, 57.2 or 57.3, the fine to which the person is liable is

(a) not less than any profit made by all persons because of the contravention of section 57, 57.2 or 57.3, and

(b) not more than the greater of

(i) \$3 million, and

(ii) an amount equal to triple any profit made by all persons because of the contravention of section 57, 57.2 or 57.3.

(6) and (7) [Repealed 2007-37-29.]

### **Additional remedies**

**155.1** If the court finds that a person has committed an offence under section 155, the court may make an order that

(a) the person compensate or make restitution to another person, or

(b) the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the offence.

### **Enforcement of court orders**

**155.2** (1) A person to whom the court awards compensation or restitution under section 155.1 (a) may file the order with the Supreme Court.

(2) The commission may file an order made under section 155.1 (a) or (b) with the Supreme Court.

(3) An order filed with the Supreme Court under subsection (1) or (2) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

### **Execution of warrant issued in another province**

**156** (1) If a court of another province issues a warrant for the arrest of a person on a charge of contravening the provisions of an Act or regulations of that province that are similar to the provisions of this Act or the regulations, a British Columbia court within whose territorial jurisdiction that person is or is

suspected to be, may, on satisfactory proof of the handwriting of the person who issued the warrant, make an endorsement on the warrant in the required form.

(2) A warrant endorsed under subsection (1) is sufficient authority to

- (a) the person bringing the warrant,
- (b) all other persons to whom it was originally directed, and
- (c) all peace officers within the territorial jurisdiction of the British Columbia court endorsing the warrant,

to execute the warrant within that jurisdiction, to take the person arrested under the warrant out of, or anywhere in, British Columbia and to re-arrest that person anywhere in British Columbia.

(3) A peace officer

- (a) of British Columbia, or
- (b) of any other province who is passing through British Columbia,

having in the peace officer's custody a person arrested in another province under a warrant endorsed under subsection (1), is entitled to hold, take and re-arrest the person anywhere in British Columbia under the warrant without proof of the warrant or the endorsement.

### Order for compliance

**157** (1) In addition to any other powers it may have, if the commission considers that a person has contravened or is contravening a provision of this Act or of the regulations, or has failed to comply or is not complying with a decision, and the commission considers it in the public interest to do so, the commission may apply to the Supreme Court for one or more of the following:

- (a) an order that
  - (i) the person comply with or cease contravening the provision or decision, and
  - (ii) the directors and officers of the person cause the person to comply with or to cease contravening the provision or decision;
- (b) an order that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;
- (c) an order setting aside a transaction relating to trading in securities or exchange contracts;
- (d) an order that a security or exchange contract be issued or cancelled;
- (e) an order that a security or exchange contract be purchased, disposed of or exchanged;
- (f) an order prohibiting the voting of a security or the exercise of a right attaching to a security or exchange contract;

- (g) an order appointing a director of the person that is the subject of the application;
  - (h) an order that the person repay a holder of a security or an exchange contract money paid by the holder for the security or exchange contract;
  - (i) an order that the person compensate or make restitution to any other person;
  - (j) an order that the person pay general or punitive damages to any other person;
  - (k) an order that the person correct a record;
  - (l) an order that the person rectify any contravention of this Act, or the regulations, to the extent that rectification is possible.
- (2) On an application under subsection (1), the Supreme Court may make the order applied for and any other order the court considers appropriate.
- (3) An order may be made under this section even though a penalty has already been imposed on that person in respect of the same non-compliance or contravention.

## Section 5 of the *Offence Act*

**158** Section 5 of the *Offence Act* does not apply to this Act or the regulations.

## Limitation period

**159** Proceedings under this Act, other than an action referred to in section 140, must not be commenced more than 6 years after the date of the events that give rise to the proceedings.

## Costs of investigation

- 160** (1) A person convicted of an offence against this Act or the regulations is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.
- (2) The executive director may prepare a certificate setting out the costs of the investigation of an offence including the cost of the time spent by the executive director and the staff of the executive director and any fees paid to an expert, investigator or witness.
- (3) The executive director may apply to a master or registrar of a court to review the certificate under the Supreme Court Civil Rules as if the certificate were a bill of costs, and on the review the master or registrar must review the costs and may vary them if the master or registrar considers that they are unreasonable or not related to the investigation.
- (4) The tariff of costs in the Supreme Court Civil Rules does not apply to a certificate reviewed under this section.



- (5) On the review, the master or registrar must take into account any fees already paid by the defendant under sections 13 (3) and 150 in respect of the same investigation.
- (6) After review the certificate may be filed in the court in which the proceedings were heard and may be enforced against the person convicted as if it were an order of the court.

### Enforcement orders

**161** (1) If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:

- (a) that a person comply with or cease contravening, and that the directors and officers of the person cause the person to comply with or cease contravening,
  - (i) a provision of this Act or the regulations,
  - (ii) a decision, whether or not the decision has been filed under section 163, or
  - (iii) a bylaw, rule, or other regulatory instrument or policy or a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a self regulatory body, exchange or quotation and trade reporting system, as the case may be, that has been recognized by the commission under section 24;
- (b) that
  - (i) all persons,
  - (ii) the person or persons named in the order, or
  - (iii) one or more classes of personscease trading in, or be prohibited from purchasing, any securities or exchange contracts, a specified security or exchange contract or a specified class of securities or class of exchange contracts;
- (c) that any or all of the exemptions set out in this Act, the regulations or a decision do not apply to a person;
- (d) that a person
  - (i) resign any position that the person holds as a director or officer of an issuer or registrant,
  - (ii) is prohibited from becoming or acting as a director or officer of any issuer or registrant,
  - (iii) is prohibited from becoming or acting as a registrant or promoter,
  - (iv) is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, or
  - (v) is prohibited from engaging in investor relations activities;

- (e) that a registrant, issuer or person engaged in investor relations activities
    - (i) is prohibited from disseminating to the public, or authorizing the dissemination to the public, of any information or record of any kind that is described in the order,
    - (ii) is required to disseminate to the public, by the method described in the order, any information or record relating to the affairs of the registrant or issuer that the commission or the executive director considers must be disseminated, or
    - (iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public;
  - (f) that a registration or recognition be suspended, cancelled or restricted or that conditions, restrictions or requirements be imposed on a registration or recognition;
  - (g) if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;
  - (h) that a person referred to in subsection (7) submit to a review of its practices and procedures;
  - (i) that a person referred to in subsection (7) make changes to its practices and procedures;
  - (j) that a person be reprimanded.
- (2) If the commission or the executive director considers that the length of time required to hold a hearing under subsection (1), other than under subsection (1) (e) (ii) or (iii), could be prejudicial to the public interest, the commission or the executive director may make a temporary order, without providing an opportunity to be heard, to have effect for not longer than 15 days after the date the temporary order is made.
- (3) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may, without providing an opportunity to be heard, make an order extending a temporary order until a hearing is held and a decision is rendered.
- (4) The commission or the executive director, as the case may be, must send written notice of every order made under this section to any person that is directly affected by the order.
- (5) If notice of a temporary order is sent under subsection (4), the notice must be accompanied by a notice of hearing.

- (6) The commission or the executive director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person
- (a) has been convicted in Canada or elsewhere of an offence
    - (i) arising from a transaction, business or course of conduct related to securities or exchange contracts, or
    - (ii) under the laws of the jurisdiction respecting trading in securities or exchange contracts,
  - (b) has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or exchange contracts,
  - (c) is subject to an order made by a securities regulatory authority, a self regulatory body or an exchange, in Canada or elsewhere, imposing sanctions, conditions, restrictions or requirements on the person, or
  - (d) has agreed with a securities regulatory authority, a self regulatory body or an exchange, in Canada or elsewhere, to be subject to sanctions, conditions, restrictions or requirements.
- (7) An order under subsection (1) (h) or (i) may be made against
- (a) an exchange or a quotation and trade reporting system,
  - (b) a self regulatory body,
  - (c) a clearing agency,
  - (c.1) a credit rating organization,
  - (d) a registrant,
  - (e) a partner, director, officer, insider or control person of a registrant,
  - (f) a person providing record keeping services to a registrant,
  - (g) a person that manages a compensation, contingency or similar fund formed to compensate clients of dealers or advisers,
  - (h) an issuer,
  - (i) a custodian of assets or securities of an investment fund,
  - (j) a transfer agent or registrar for securities of an issuer,
  - (k) a director, officer, insider or control person of an issuer,
  - (l) a general partner of a person referred to in this subsection, or
  - (m) a person that the commission has ordered is exempt from a provision of this Act or the regulations.

### Administrative penalty

**162** If the commission, after a hearing,

- (a) determines that a person has contravened

- (i) a provision of this Act or of the regulations, or
  - (ii) a decision of the commission, the executive director or a designated organization, whether or not the decision has been filed under section 163, and
- (b) considers it to be in the public interest to make the order,
- the commission may order the person to pay the commission an administrative penalty of not more than \$1 million for each contravention.

### **Demand on third party**

- 162.1** (1) If a person owes money to the commission under section 160, 162 or 174 and the commission receives information that a third party is, or is about to become, indebted to the person, the commission may demand of the third party that the money be paid to the commission on account of the person's liability to the commission.
- (2) The third party must pay the money demanded under subsection (1) to the commission as soon as practicable after the later of
- (a) the receipt of the demand, and
  - (b) the date the money is due to be paid to the person named in the demand.
- (3) Money paid to the commission under this section discharges the indebtedness of the third party to the person named in the demand to the extent of the amount of money paid to the commission.
- (4) If, after receipt of a demand under this section, a third party
- (a) fails to pay the money to the commission as required under subsection (2), or
  - (b) makes a payment to the person named in the demand,
- the third party is liable to the commission for the lesser of
- (c) the third party's indebtedness to the person plus the amount of the indebtedness paid by the third party to the person, and
  - (d) the amount owed to the commission by the person, including any interest and penalty.
- (5) If a demand is made on a third party under this section, the commission must, in the same manner and at the same time, notify the person of the demand and give the person the particulars of it.

### **Settlements**

- 162.2** The commission may proceed to make an order under section 161 or 162, without holding a hearing, if the person that is the subject of the order has agreed to waive the right to a hearing.

### **Enforcement of commission orders**

- 163** (1) If the commission has made a decision after a hearing, the commission may file the decision at any time in a Supreme Court registry by filing a copy of the decision certified by the chair of the commission.
- (1.1) Subject to subsection (1.3) and the regulations, if a prescribed self regulatory body has made a decision after a hearing, the self regulatory body may file the decision at any time in a Supreme Court registry by filing a certified copy of the decision.
- (1.2) If, after a hearing and review under section 28, the commission has made a decision in respect of a decision of a self regulatory body referred to in subsection (1.1) of this section, the self regulatory body may file the commission's decision at any time in a Supreme Court registry by filing a certified copy of the decision.
- (1.3) A self regulatory body referred to in subsection (1.1) must not file a decision under that subsection if
- (a) the 30-day period referred to in section 165 (3) has not expired, or
  - (b) the executive director or a person directly affected by the decision has applied to the commission under section 28 (1) for a hearing and review of the decision and the application has not been withdrawn.
- (2) On being filed under subsection (1), (1.1) or (1.2), the decision has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

### **Failure to comply with filing requirements**

- 164** (1) For the reasons set out in subsection (2), the commission or the executive director, without providing an opportunity to be heard, may order that all persons, the person or persons named in the order or one or more specified persons or classes of persons cease trading in a specified security or exchange contract or in a class of security or class of exchange contract.
- (2) The commission or the executive director may make an order under subsection (1) if the issuer of the security, the exchange on which the exchange contract is traded or the person in respect of which the order is made
- (a) fails to file a record required to be filed under this Act, provided that the order is revoked as soon as practicable after the record referred to in the order, completed in accordance with this Act and the regulations, is filed, or
  - (b) files a record required to be filed under this Act which record has not been completed in accordance with this Act or the regulations, provided that the order is revoked as soon as practicable after the record referred to in the order, completed in accordance with this Act and the regulations, is filed.
- (3) The commission or the executive director, as the case may be, must send to any person directly affected by an order made under subsection (1)

- (a) written notice of the order, and
- (b) written notice of a revocation of the order, if any.

## **Part 19 — Reviews and Appeals**

### **Review of decision of executive director**

**165** (1) [Repealed 2007-37-37.]

- (2) The commission may review any decision of the executive director and, if it intends to do so, must, within 30 days of the date of the decision, notify the executive director and any person directly affected by the executive director's decision of its intention.
- (3) Except if otherwise expressly provided, any person directly affected by a decision of the executive director may, by a notice in writing sent to the commission within 30 days after the date on which the executive director sent the notice of the decision to the person, request and be entitled to a hearing and a review of the decision of the executive director.
- (4) On a hearing and review, the commission may confirm or vary the decision under review or make another decision it considers proper.
- (5) The commission may grant a stay of the decision under review until disposition of the hearing and review.
- (6) The executive director is a party to a hearing and review under this section of any decision.
- (7) A designated organization is a party to a hearing and review under this section of its decision.
- (8) A self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency is a party to a hearing and review under this section of its decision.

### **Review of decision of person acting under delegated authority**

**166** (1) Section 165 applies to a decision of a designated organization or a person acting under authority delegated to the person by the commission under section 7.

- (2) A person acting under authority delegated to the person by the commission under section 7 must not sit on a hearing and review by the commission of the person's decision.
- (3) The executive director may request and is entitled to a hearing and a review of a decision of a designated organization and section 165 (2) to (5) applies to that decision.

### **Appeal of commission decision**

**167** (1) A person directly affected by a decision of the commission, other than

- (a) a decision under section 48 or 76,
  - (b) a decision under section 165 in connection with the review of a decision of the executive director under section 48 or 76, or
  - (c) a decision by a person acting under authority delegated by the commission under section 7,
- may appeal to the Court of Appeal with leave of a justice of that court.
- (2) The commission or the Court of Appeal may grant a stay of the decision appealed from until the disposition of the appeal.
  - (3) If an appeal is taken under this section, the Court of Appeal may direct the commission to make a decision or to perform an act that the commission is authorized and empowered to do.
  - (4) Despite an order of the Court of Appeal in a particular matter, the commission may make a further decision on new material or if there is a significant change in the circumstances, and that decision is also subject to this section.
  - (5) The commission is a respondent to an appeal under this section.

## Part 19.1 — Interjurisdictional Cooperation

### Definitions

**167.1** (1) In this Part:

**"British Columbia authority"** means a power or duty referred to in section 167.2 (1) (a) or (b);

**"extraprovincial authority"** means a power or duty of an extraprovincial securities commission under the extraprovincial securities laws under which the extraprovincial securities commission operates;

**"extraprovincial securities commission"** means a securities regulatory authority of a province other than British Columbia;

**"extraprovincial securities laws"** means the laws of a province other than British Columbia respecting trading in securities or exchange contracts.

- (2) A reference to an extraprovincial securities commission includes, unless otherwise provided,
  - (a) its delegate, and
  - (b) any person who in respect of that extraprovincial securities commission exercises a power or performs a duty that is substantially similar to a power or duty exercised or performed by the executive director under this Act.

### Delegation and acceptance of authority

**167.2** (1) If authorized to do so by regulation, the commission

- (a) may delegate a power or duty under this Act to an extraprovincial securities commission,
  - (b) may authorize an extraprovincial securities commission to exercise any power, or perform any duty, of the executive director under this Act, including, but not limited to, a power referred to in section 184 (2) (e), and
  - (c) may accept a delegation of, an authorization to exercise or perform, or any other form of transfer of, an extraprovincial authority.
- (2) Subsection (1) does not apply to a power or duty under Part 2 or 3, this Part or section 184 or 187.

### Subdelegation

- 167.3** (1) Subject to a restriction or condition imposed by an extraprovincial securities commission with respect to a delegation, authorization or transfer referred to in section 167.2 (1) (c), the commission may delegate or subdelegate an extraprovincial authority in the manner and to the extent that the commission or the executive director may, under this Act, delegate or subdelegate, or authorize another person to exercise, a British Columbia authority.
- (2) Subject to a restriction or condition imposed by the commission with respect to a delegation or an authorization under section 167.2 (1) (a) or (b), nothing in this Part prevents the extraprovincial securities commission from delegating or sub-delegating the British Columbia authority in the manner and to the extent that the extraprovincial securities commission may delegate or subdelegate, or authorize another person to exercise, an authority under the extraprovincial securities laws under which it operates.

### Revocation

- 167.4** (1) If an extraprovincial securities commission is exercising or intends to exercise a power provided to it under section 167.2 (1) (a) or (b) to make a decision, the commission may withdraw from the extraprovincial securities commission any matter that is before the extraprovincial securities commission for its decision.
- (2) The commission or the executive director, as the case may be, may decide a matter that the commission has withdrawn under subsection (1).

### Adoption or incorporation of extraprovincial securities laws

- 167.5** (1) Subject to the regulations, the commission may, by order, adopt or incorporate by reference all or any provisions of any extraprovincial securities laws to be applied to
- (a) a person or class of persons whose primary jurisdiction is the extraprovincial jurisdiction, or
  - (b) a trade, intended trade, security or exchange contract involving a person or class of persons referred to in paragraph (a).



- (2) An order made under subsection (1) may adopt or incorporate the extraprovincial securities laws as they are amended from time to time, before or after the making of the order.

### **Exercise of discretion, interprovincial reliance**

- 167.6** (1) Subject to the regulations, if the commission, the executive director or a designated organization is empowered under this Act to make a decision regarding a trade, intended trade, security, exchange contract or person, the commission, executive director or designated organization may make the decision on the basis that the commission, executive director or designated organization, as the case may be, considers that an extraprovincial securities commission has made the same or a substantially similar determination regarding the trade, intended trade, security, exchange contract or person.
- (2) Subject to the regulations, despite any provision of this Act, the commission, executive director or designated organization may make a decision referred to in subsection (1) without giving a person affected by the decision an opportunity to be heard.

### **Review of extraprovincial decision**

- 167.7** If an extraprovincial commission delegates or subdelegates a British Columbia authority, section 165 (3) to (6) applies to a decision made under that authority as if the decision were a decision of the executive director under this Act.

### **Appeal of decision of an extraprovincial securities commission**

- 167.8** (1) Except as provided in section 167.7, section 167 applies to a decision of an extraprovincial securities commission made under a British Columbia authority.
- (2) The extraprovincial securities commission is a respondent to an appeal under this section.

### **Appeal of determination of the commission**

- 167.9** (1) In this section, "**delegated authority**" means any extraprovincial authority that the commission accepts under section 167.2 (1) (c).
- (2) A person directly affected by a determination of the commission under a delegated authority has the same rights under section 167 as if the determination were a decision under this Act.
- (3) Subsection (2) does not apply to a determination
- (a) refusing to exempt a person or class of persons from a requirement of extraprovincial securities laws, or
  - (b) made by a person to whom the commission has delegated or subdelegated the extraprovincial authority under which the determination is made.
- (4) A person that has a right to appeal a determination under this section may, subject to any direction of the Court of Appeal, exercise that right of appeal

whether or not that person may have a right to appeal that determination to a court in another jurisdiction.

- (5) If a determination referred to in subsection (2) is being appealed to a court in another jurisdiction, the Court of Appeal may stay an appeal under this section until the determination of the appeal in the other jurisdiction.

## Part 20 — General Provisions

### Admissibility in evidence of certified statements

**168** A statement concerning

- (a) the registration or non-registration of a person under this Act,
- (b) the filing or non-filing of a record or material required or permitted to be filed under this Act,
- (c) any other matter or information arising out of the registration or non-registration of a person or the filing or non-filing of a record or material, whichever is the case, or
- (d) the date on which the facts on which any proceedings are to be based first came to the knowledge of the commission,

purporting to be certified by the commission, a member of it or the executive director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as it is relevant, for all purposes in any action, proceeding or prosecution.

### False or misleading statements prohibited

**168.1** (1) A person must not

- (a) make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading, or
- (b) make a statement or provide information in any record required to be filed, provided, delivered or sent under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

- (2) A person does not contravene subsection (1) if the person

- (a) did not know, and
- (b) in the exercise of reasonable diligence, could not have known

that the statement or information was false or misleading.

**Contraventions attributable to employees, officers, directors and agents**

- 168.2** (1) If a person, other than an individual, contravenes a provision of this Act or of the regulations, or fails to comply with a decision, an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply with the decision, as the case may be.
- (2) If an investment fund contravenes a provision of this Act or of the regulations, or fails to comply with a decision, the investment fund manager also contravenes the provision or fails to comply with the decision, as the case may be.

**Filing and inspection of records**

- 169** (1) Unless otherwise indicated, records required by this Act or by the regulations to be filed must be filed by depositing them with the commission.
- (2) Subject to the regulations, records required by this Act or by the regulations to be filed may be filed electronically in any form specified by the executive director.
- (3) Subject to subsection (4), all records filed under this Act must be made available for public inspection during normal business hours.
- (4) The commission may hold in confidence all or part of a record required to be filed under this Act if the commission considers that
- (a) a person whose information appears in the record would be unduly prejudiced by disclosure of the information, and
  - (b) the person's privacy interest outweighs the public's interest in having the information disclosed.

**Information collection and sharing**

- 169.1** (1) For the purposes of administering this Act or assisting in the administration of the securities laws of another jurisdiction, the commission may, directly or indirectly, collect information from, and use information collected from,
- (a) an exchange, quotation and trade reporting system or clearing agency,
  - (a.1) a credit rating organization,
  - (b) a self regulatory body,
  - (c) a registrant or issuer, or
  - (d) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority,
- in British Columbia or elsewhere.
- (2) For the purposes of administering this Act or assisting in the administration of the securities laws of another jurisdiction, the commission may disclose information to, or share information with,

- (a) a person recognized under section 24,
  - (b) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority, or
  - (c) a person with whom the commission has entered into an arrangement or agreement that relates to or includes the sharing of information, in British Columbia or elsewhere.
- (3) For the purposes of administering its bylaws, rules or other regulatory instruments or policies, assisting in the administration of the bylaws, rules or other regulatory instruments or policies of another exchange, quotation and trade reporting system, clearing agency or self regulatory body, or assisting in the administration of this Act or the securities laws of another jurisdiction, a person recognized under section 24 may, directly or indirectly, collect information from, and use information collected from,
- (a) an exchange, quotation and trade reporting system or clearing agency,
  - (b) a self regulatory body,
  - (c) a registrant or issuer, or
  - (d) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority, in British Columbia or elsewhere.
- (4) For the purposes of administering its bylaws, rules or other regulatory instruments or policies, assisting in the administration of the bylaws, rules or other regulatory instruments or policies of another exchange, quotation and trade reporting system, clearing agency or self regulatory body, or assisting in the administration of this Act or the securities laws of another jurisdiction, a person recognized under section 24 may disclose information to, or share information with,
- (a) an exchange, quotation and trade reporting system or clearing agency,
  - (b) a self regulatory body, or
  - (c) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority, in British Columbia or elsewhere.
- (5) For the purposes of this section, "**securities laws**" means laws of a jurisdiction respecting the trading of securities or exchange contracts.

### Immunity of commission and others

- 170** (1) No action or other proceeding for damages lies and no application for judicial review under the *Judicial Review Procedure Act* may be instituted against the commission, a member of the commission, an officer, servant or agent of the

commission, a designated organization, a director, officer, servant or agent of a designated organization, an auditor oversight body, a director, officer, servant or agent of an auditor oversight body, an employee appointed to administer this Act or any person proceeding under

- (a) an order, a written or oral direction or the consent of the commission,
- (b) an order of the minister made under this Act, or
- (b.1) a delegation or authorization referred to in section 167.2 (1) (a) or (b),

for any act done in good faith in the

- (c) performance or intended performance of any duty, or
- (d) exercise or the intended exercise of any power,

under this Act, including a duty or power referred to in section 167.2 (1) (c), or for any neglect or default in the performance or exercise in good faith of that duty or power.

- (2) No person has any remedies and no proceedings lie or may be brought against any person for any act done or omission made as a result of compliance with this Act, the regulations or any decision rendered under this Act.

### **Discretion to revoke or vary decision**

- 171** If the commission, the executive director or a designated organization considers that to do so would not be prejudicial to the public interest, the commission, executive director or designated organization, as the case may be, may make an order revoking in whole or in part or varying a decision the commission, the executive director or the designated organization, as the case may be, has made under this Act, another enactment or a former enactment, whether or not the decision has been filed under section 163.

### **Conditions on decisions**

- 172** The commission or the executive director may impose any conditions, restrictions or requirements the commission or executive director considers necessary in respect of any decision made by the commission or executive director.

### **Authority of persons presiding at hearings**

- 173** The person presiding at a hearing required or permitted under this Act
- (a) has the same power that an investigator appointed under section 142 or 147 has under section 144,
  - (b) must receive all relevant evidence submitted by a person to whom notice has been given and may receive relevant evidence submitted by any person, and
  - (c) is not bound by the rules of evidence.

### **Hearing fees and charges**

**174** The person presiding at a hearing required or permitted under this Act may order a person whose affairs are the subject of the hearing to pay prescribed fees or charges for the costs of or related to the hearing that are incurred by or on behalf of the commission or the executive director including, without limiting this,

- (a) costs of matters preliminary to the hearing,
- (b) costs for time spent by the commission or the executive director or the staff of either of them,
- (c) fees paid to an expert or witness, and
- (d) costs of legal services.

### **Extrajurisdictional evidence**

**175** (1) On an application made by the commission, if it appears to the Supreme Court that a person outside British Columbia may have evidence that may be relevant to

- (a) an investigation ordered by the commission under section 142, or
- (b) a hearing required or permitted under this Act,

the Supreme Court may issue a letter of request directed to the judicial authority of the jurisdiction in which the person to be examined is believed to be located.

(2) The letter of request referred to in subsection (1) must

- (a) be signed by the judge hearing the application or another judge of the Supreme Court, and
- (b) be provided to the commission for disposition under subsection (5).

(3) A letter of request issued under subsection (1) may request the judicial authority to which it is directed to

- (a) order the person referred to in the letter of request to be examined under oath in the manner, at the place and by the date referred to in the letter of request,
- (b) order, in the case of an examination for the purposes of a hearing referred to in subsection (1) (b), that a person who is a party to the hearing is entitled to
  - (i) be present or represented by counsel during the examination, and
  - (ii) examine the person referred to in paragraph (a),
- (c) appoint a person as the examiner to conduct the examination,
- (d) order the person to be examined to produce at the examination the records and things or classes of records and things specified in the letter of request,
- (e) direct that the evidence obtained by the examination be recorded and certified in the manner specified by the letter of request, and

- (f) take any further or other action that the Supreme Court considers appropriate.
- (4) The failure of the person entitled under subsection (3) (b) to be present or represented by counsel during the examination or to examine the person referred to in subsection (3) (a) does not prevent the commission from reading in the evidence at the hearing if the examination has otherwise been conducted in accordance with the order made under that subsection.
- (5) The commission must send the letter of request,
- (a) if the examination is to be held in Canada, to the Deputy Attorney General for the Province of British Columbia, or
  - (b) if the examination is to be held outside Canada, to the Under Secretary of State for External Affairs of Canada.
- (6) The letter of request must have attached to it
- (a) any interrogatories to be put to the person to be examined,
  - (b) if known, a list of the names, addresses and telephone numbers of
    - (i) the solicitors or agents of the commission,
    - (ii) the person to be examined, and
    - (iii) if applicable, the person entitled under subsection (3) (b) to be present or represented by counsel during the examination and to examine the person referred to in subsection (3) (a),
  - both in British Columbia and in the other jurisdiction, and
  - (c) a translation of the letter of request and any interrogatories into the appropriate official language of the jurisdiction where the examination is to take place, along with a certificate of the translator, bearing the full name and address of the translator, that the translation is a true and complete translation.
- (7) The commission must file with the Under Secretary of State for External Affairs of Canada or with the Deputy Attorney General for the Province of British Columbia, as the case may be, an undertaking to be responsible for all of the charges and expenses incurred by the Under Secretary or the Deputy Attorney General, as the case may be, in respect of the letter of request and to pay them on receiving notification of the amount.
- (8) This section does not limit any power the commission may have to obtain evidence outside British Columbia by any other means.
- (9) The making of an order by a judicial authority referred to in subsection (1) pursuant to a letter of request issued under that subsection does not determine whether evidence obtained under the order is admissible in evidence in a hearing before the commission.
- (10) Except if otherwise provided by this section, the practice and procedure in connection with appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, are the



same as those that govern similar matters in civil proceedings in the Supreme Court.

### Extrajurisdictional request for evidence

**176** (1) In this section, "**qualifying letter of request**" means a letter of request that

- (a) is issued by a court or tribunal of competent jurisdiction in a jurisdiction other than British Columbia,
- (b) is issued on behalf of the body that is, in the jurisdiction from which the letter is issued, empowered by the laws of that jurisdiction to administer or regulate the trading of securities or exchange contracts in that jurisdiction,
- (c) is issued in relation to
  - (i) a matter under investigation by the body referred to in paragraph (b), or
  - (ii) a matter that is the subject of a hearing before the body referred to in paragraph (b), and
- (d) requests that evidence in relation to a matter referred to in paragraph (c) be obtained from a person believed to be located in British Columbia.

(2) On receipt of a qualifying letter of request, the Supreme Court may make the order it considers appropriate and may, without limitation,

- (a) order that the person referred to in subsection (1) (d) be examined under oath in the manner, at the place and by the date requested by the foreign court or tribunal,
- (b) order, in the case of an examination for the purposes of a hearing referred to in subsection (1) (c) (ii), that a person who is a party to the hearing is entitled to
  - (i) be present or represented by counsel during the examination, and
  - (ii) examine the person referred to in paragraph (a),
- (c) appoint a person as the examiner to conduct the examination,
- (d) order that the person referred to in subsection (1) (d) produce at the examination any records and things or classes of records and things specified in the request,
- (e) direct that the evidence obtained by the examination be recorded and certified in the manner requested, and
- (f) make any further or other order that the Supreme Court considers appropriate.

(3) An order under subsection (2) may be enforced in the same manner as if the order were made in or in respect of a proceeding brought in the Supreme Court and, if the person referred to in subsection (1) (d) fails without lawful



excuse to comply with the order, the person is in contempt of the Supreme Court and is subject to the penalty that the Supreme Court imposes.

- (4) A person ordered to give evidence under subsection (2) has the same rights
- (a) to receive conduct money or any other money that the person would have had if the examination were held in relation to a proceeding in the Supreme Court, and
  - (b) to refuse to answer questions and produce records and things or classes of records and things that the person would have in a proceeding in the Supreme Court.
- (5) The person appointed by the Supreme Court as the examiner has the authority to administer an oath or affirmation to the person to be examined.
- (6) Except if otherwise provided by this section, the practice and procedure in connection with appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, are the same as those that govern similar matters in civil proceedings in the Supreme Court.

### **Committal for contempt**

- 177** On application by the commission to the Supreme Court, a person is liable to be committed for contempt as if the person were in breach of an order or judgment of the Supreme Court, if the person's conduct in, or in relation to, a hearing required or permitted under this Act would be a contempt of the Supreme Court if done in, or in relation to, a hearing of that court.

### **Executive director may refund fee**

**178** If

- (a) an application for registration or renewal or reinstatement of registration is abandoned, or
- (b) a prospectus or similar record is withdrawn,

the executive director may, on application of an affected person, refund the fee or part of the fee paid.

### **Review of fees and charges**

- 179** (1) If a person is ordered to pay prescribed fees or prescribed charges for the costs of, or related to,
- (a) an examination or investigation by a person appointed under section 13,
  - (b) [Repealed 2007-37-39.]
  - (c) a review, investigation, examination or inspection under Part 17, or
  - (d) a hearing required or permitted under this Act,

the person ordered to pay the fees or charges may apply within 30 days after the date of the order to a master or registrar of the Supreme Court to review the order.

- (2) On a review under this section, the master or registrar may vary the total amount of the fees and charges, within the limits, if any, set out in the regulations, after considering all of the circumstances, including
  - (a) the complexity, difficulty or novelty of the issues involved,
  - (b) the skill, specialized knowledge and responsibility required of the person or persons who conducted the examination, review, investigation, inspection or hearing referred to in subsection (1) (a) to (d),
  - (c) the total amount of the fees and charges set out in the order referred to in subsection (1), and
  - (d) the time reasonably expended.
- (3) On application for a review under this section of an order to pay prescribed fees or prescribed charges, the applicant must give notice of the application to the maker of the order that is to be reviewed.
- (4) The Supreme Court Civil Rules relating to taxation of costs apply to a review of the total amount of fees and charges made under this section.

### Notices generally

**180** (1) Unless otherwise provided by this Act, prescribed by the regulations, or ordered by the commission or executive director, a record that under this Act is sent or is required to be sent must be

- (a) personally delivered,
- (b) mailed, or
- (c) transmitted by electronic means

to the person that under this Act is the intended recipient of the record.

- (2) A record sent to a person by means referred to in subsection (1) (b) or (c) must be sent to that person
  - (a) at the latest address known for that person by the sender of the record,
  - (b) at the address for service in British Columbia filed by that person with the commission, or
  - (c) at the address of the person's solicitor if the person, or the solicitor, has advised that the solicitor is acting for the person.
- (3) A record is deemed to have been personally delivered to the commission if the record is deposited at the office of the commission during normal business hours.
- (4) A record is deemed to have been received by the person to whom it was sent

- (a) if mailed by ordinary mail, on the seventh day after mailing, or
  - (b) if mailed by registered mail, on the earlier of the seventh day after mailing or the day its receipt was acknowledged in writing by the person to whom it was sent or by a person accepting it on that person's behalf.
- (5) If, on 2 consecutive occasions, the records sent by an issuer to a security holder in accordance with subsection (2) are returned, the issuer is not required to send any further records to the security holder until the security holder informs the issuer in writing of the security holder's new address.

### Reference to record includes amendment

- 181** Unless the context indicates otherwise, a reference to a specific record includes a reference to any amendment, variation or modification of it that is permitted or required under this Act.

### Required records

- 182** (1) Subject to the further requirements of this Act or the regulations, if this Act or the regulations provide that a record is to be prepared, filed, provided or sent in a required form, the executive director may specify the form, content and other particulars relating to the record including specifying
- (a) the principles to be applied in its preparation, and
  - (b) accompanying records to be filed with it.
- (2) If this Act or the regulations provide that a record is to be prepared, filed, provided or sent in a required form, the executive director may, for different classes of a particular kind of record, specify a different form, content and other particulars relating to the record including specifying
- (a) the principles to be applied in its preparation, and
  - (b) accompanying records to be filed with it.

### Lieutenant Governor in Council regulations

- 183** The Lieutenant Governor in Council may make regulations for the purpose of regulating trading in securities or exchange contracts, or regulating the securities industry or exchange contracts industry, including regulations as follows:
- (1) regulating the listing and trading of securities, and the trading of exchange contracts, on an exchange recognized by the commission under section 24 (b);
  - (2) regulating the trading of securities and exchange contracts other than on an exchange recognized by the commission under section 24 (b);
  - (3) governing conflict of interest for members of the commission, its employees, the executive director, employees in the office of the executive director and persons engaged by the commission or the

executive director to act as advisers or to perform duties under this Act;

- (4) requiring the commission to publish a periodical containing specified information filed with the commission;
  - (5) providing for the referral of a question of policy or interpretation to the commission for a hearing and determination;
  - (5.1) respecting applications and payments under section 15.1, including
    - (i) matters that must be considered by the commission before making a payment under section 15.1 (3), if any, including matters that affect the amount or timing of a payment,
    - (ii) respecting circumstances when no payment of compensation may be made to an applicant or a category of applicants, and
    - (iii) respecting the process for adjudication of an application for compensation;
  - (6) respecting registration under this Act including, but not limited to, prescribing
    - (i) categories for persons for purposes of registration and otherwise,
    - (ii) the duration of registration, and permitting the commission to determine the duration of registration and to determine different periods of duration of registration for different categories of registrants,
    - (iii) the manner of allocating persons to categories, and permitting the executive director to make these allocations,
    - (iv) conditions to be met by persons in the categories, including a condition relating to, or requiring membership in, one or more self regulatory organizations specified in the regulation,
    - (v) standards of conduct to be met by registrants and practices to be carried out by registrants,
    - (vi) requirements that are necessary or advisable for the prevention or regulation of conflicts of interest,
    - (vii) different or additional requirements for different classes of registrants within a registration category, and
    - (viii) circumstances in which
      - (A) a person or class of persons is not required to be registered under section 34, or
      - (B) a person or class of persons is deemed to be registered for the purposes of this Act,
- including the circumstance in which a person or class of persons is registered under the laws of another jurisdiction respecting trading in securities or exchange contracts;

- (7) authorizing the executive director to require an applicant for registration or a registrant to be bonded;
- (8) respecting the suspension, surrender or cancellation of a registration under this Act;
- (9) governing trust arrangements for the holding of securities and funds of a client by a registrant;
- (9.1) respecting any matter necessary or advisable to regulate credit rating organizations, including, but not limited to, rules that refer to a credit rating organization, or a class of credit rating organizations, designated by the commission;
- (10) [Repealed 2006-32-63.]
- (11) respecting the transfer and pledging of securities or the transfer of exchange contracts;
- (12) respecting any matter necessary or advisable to carry out effectively the intent and purpose of Part 9, including, but not limited to,
  - (i) prescribing disclosure requirements in respect of distributions, including the use of particular forms or of particular types of documents,
  - (ii) prescribing procedures for distributions of securities on an expedited basis including modifying or varying the application of this Act as may be necessary for the purpose of permitting expedited distributions to occur,
  - (iii) prescribing circumstances in which a record may be, or is deemed to be, incorporated by reference into any other record,
  - (iv) prescribing procedures respecting the issuance of receipts,
  - (iv.1) prescribing circumstances in which
    - (A) section 61 does not apply to a person or class of persons, or
    - (B) a receipt is deemed to have been issued for the purposes of this Act,including the circumstance in which a receipt has been issued for a preliminary prospectus or prospectus under the laws of another jurisdiction respecting trading in securities or exchange contracts;
  - (v) prescribing periods in which receipts, or classes of receipts, are effective and circumstances in which receipts, or a class of receipts, may be revoked,
  - (vi) prescribing circumstances in which a distribution of securities may occur on a continuous or delayed basis,
  - (vii) prescribing additional requirements that must be satisfied before a receipt may be issued or before a distribution may occur, and

- (viii) establishing, for the purposes of section 162, that a contravention of an undertaking given by an issuer constitutes a contravention of the regulation requiring the undertaking;
- (ix) [Repealed 2006-32-64.]
- (12.1) prescribing circumstances in which a person that purchases a security under a distribution may cancel the purchase, including
  - (i) prescribing the period in which the purchaser may cancel the purchase,
  - (ii) prescribing the principles for determining the amount of the refund if the purchaser cancels the purchase,
  - (iii) specifying the persons responsible for making and administering the payment of the refund and prescribing the period in which the refund must be paid, and
  - (iv) prescribing different circumstances, periods, principles or persons for different classes of securities, issuers or purchasers;
- (13) in relation to disclosure documents,
  - (i) respecting their use in connection with any distribution under an exemption from section 61,
  - (ii) governing their form and content including, without limiting this power, requiring content that has the effect of conferring on each purchaser under the distribution a contractual right of action, a contractual right of withdrawal from an agreement of purchase and sale, or both, and
  - (iii) regulating or prohibiting the use of a class of disclosure documents during a distribution;
- (14) prescribing the circumstances under which a class or classes of trades of securities, acquired under an exemption from section 61 granted under this Act, are deemed to be a distribution;
- (15) respecting the lapse date of a prospectus and the continuation of a distribution under a new prospectus including, without limiting this,
  - (i) prescribing the terms and conditions under which a distribution may be continued after the lapse date,
  - (ii) prescribing the circumstances in which cancellation rights are available to certain purchasers after the lapse date,
  - (iii) authorizing the executive director to order an extension of the prescribed period of time within which a distribution may be continued after the lapse date, and
  - (iv) prescribing the terms and conditions under which a new prospectus may be receipted;
- (16) prescribing terms that must be contained in an escrow or pooling agreement with respect to securities issued for consideration other than cash;

- (17) respecting any matter necessary or advisable to regulate exchange issuers;
- (17.1) respecting any matter necessary or advisable to regulate auditors of reporting issuers;
- (18) prescribing the information required or permitted to be distributed under section 78 (2);
- (19) respecting any matter necessary or advisable to carry out effectively the intent and purpose of Part 12, including, but not limited to,
  - (i) requiring any person or class of persons to comply with Part 12 or any provision of it,
  - (ii) prescribing how a security or class of securities of a reporting issuer, or a related financial instrument or class of related financial instruments of a security of a reporting issuer, must be reported in an insider report filed under section 87,
  - (iii) prescribing standards for determining when a material fact or material change has been generally disclosed;
  - (iv) prescribing procedures for the integration of the disclosure required under Part 9 with that required under Part 12 including modifying or varying the application of this Act as may be necessary for the purpose of permitting integrated disclosure, and
  - (v) prescribing different classes of requirements for different classes of persons;
- (19.1) respecting the governance of an issuer or a class of issuers, including, but not limited to,
  - (i) prescribing the powers, duties and functions of a person responsible for governance, and
  - (ii) specifying transactions, investments or arrangements of an issuer that a person responsible for governance must review or approve;
- (20) respecting any matter necessary or advisable to carry out effectively the intent and purpose of section 136, including, but not limited to,
  - (i) exempting any class of persons, trades, securities or exchange contracts from liability under section 136,
  - (ii) prescribing circumstances and conditions for the purpose of an exemption under subparagraph (i),
  - (iii) prescribing standards for determining when a material fact or material change has been generally disclosed, and
  - (iv) prescribing a method for determining the amount under section 136 (3) (b);
- (21) in relation to any matter necessary or advisable for regulating offers to acquire securities, acquisitions or redemptions of securities,

business combinations or related party transactions, including, but not limited to,

- (i) prescribing requirements or prohibitions relating to the conduct or management of the affairs of an issuer and its directors and officers before, during or after an offer to acquire, acquisition, redemption, business combination or related party transaction,
  - (ii) prohibiting a person from purchasing or trading a security before, during or after an offer to acquire, acquisition, redemption, business combination or related party transaction,
  - (iii) prescribing records required to be filed or delivered to a person, and
  - (iv) prescribing different requirements or prohibitions for different classes of persons;
- (22) respecting any matter necessary or advisable to carry out effectively the intent and purpose of Part 14, including, but not limited to,
- (i) prescribing requirements for the solicitation and voting of proxies, and
  - (ii) prescribing requirements relating to communication with registered holders or beneficial owners of securities and relating to other persons, including depositories and registrants, that hold securities on behalf of beneficial owners;
- (23) respecting any matter necessary or advisable to regulate mutual funds or non-redeemable investment funds and the distribution and trading of the securities of the funds, including, but not limited to,
- (i) prescribing disclosure requirements in respect of funds, including the use of particular forms or of particular types of documents,
  - (ii) prescribing permitted investment policy and investment practices for the funds and prohibiting or restricting certain types of investments or investment practices for the funds,
  - (iii) prescribing requirements governing the custodianship of assets for funds,
  - (iv) prescribing matters requiring approval of the security holders of the funds, the commission or the executive director, and defining for specified types of matters what constitutes approval by the security holders,
  - (v) respecting fees, commissions or compensation payable by a fund, a purchaser of securities of a fund or a holder of securities of a fund relating to
    - (A) sales charges, commissions or sales incentives, and
    - (B) investment advice or administrative or management services provided to the fund,
  - (vi) prescribing procedures relating to



- (A) sales and redemptions of fund securities, and
- (B) payments for sales and redemptions, and
- (vii) designating a mutual fund or a class of mutual funds as a private mutual fund or class of private mutual funds, as the case may be;
- (24) prescribing the principles for determining the market value, market price or closing price of a security or exchange contract, or the net asset value of a security, and authorizing the commission to make that determination;
- (24.1) in relation to any matter necessary or advisable for carrying out effectively the intent and purpose of Part 16.1, including, but not limited to,
  - (i) exempting any class of persons, trades or securities from liability under Part 16.1, and
  - (ii) prescribing or limiting the type of damages payable under Part 16.1;
- (25) prescribing standards in relation to the suitability for certain investors of certain securities and exchange contracts;
- (26) prescribing the practice and procedure for investigations, examinations or inspections under Part 17;
- (27) establishing fees and charges, or limits on fees and charges, for the purpose of Part 17 or of section 13 or 174;
- (27.1) prescribing the principles for determining a person's profit under section 155 (5), including prescribing different principles for different contraventions referred to in that section;
- (28) prescribing classes of decisions made under the regulations or the commission rules that are to be subject to an appeal under Part 19;
- (28.1) for the purpose of section 163 (1.1), prescribing
  - (i) classes of decisions that must not be filed under that subsection, and
  - (ii) conditions, restrictions or requirements in relation to decisions that are permitted to be filed under that subsection;
- (29) prescribing the rules and procedure to be followed in any hearing required or permitted by this Act;
- (30) providing for the collection by a designated organization of fees payable to the commission or executive director and for their remission to the commission or executive director;
- (31) determining what constitutes approval of a person's records for which approval is required under this Act;
- (32) incorporating by reference and adopting laws, codes, standards, bylaws, rules and other regulatory instruments as they are amended

from time to time before or after the making of the regulations;

- (33) governing the providing or distribution of information or records by a person, including the commission and the executive director, or class of persons to any person, including the commission and the executive director, the payment of fees for providing that information or records and including authorizing the executive director to regulate and control the use of advertising and sales literature for securities or exchange contracts;
- (34) respecting the keeping and providing of accounts and records, and the preparation, filing and providing or distributing of financial statements, annual reports and other records by any person or class of persons;
- (35) prescribing the fees payable in connection with the administration of this Act, the regulations or the commission rules or the activities carried out by the commission or the executive director under another enactment or a policy statement;
- (35.1) imposing restrictions or requirements on a registrant, or suspending a registrant, if the registrant does not pay a fee required under this Act;
- (36) recognizing or designating an exchange or a quotation and trade reporting system for any purpose under this Act;
- (36.1) designating one or more persons to perform a function relating to market integration, market transparency or the clearing and settlement of trades;
- (37) authorizing the commission or the executive director to vary the provisions of the regulations, excluding regulations made under paragraph (3), as they apply to any person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts;
- (38) providing that any or all of the exemptions in this Act, the regulations or the commission rules do not apply to a class of persons, trades, securities or exchange contracts, and prescribing circumstances in which or conditions on which the exemption is or the exemptions are disapplied under this paragraph, including, with respect to an exemption in a regulation or a commission rule, a condition that the executive director's consent be obtained before the exemption applies;
- (39) authorizing the commission or the executive director to order that any or all of the exemptions in this Act or the regulations do not apply to a particular person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts;
- (40) exempting a class of persons, trades, securities or exchange contracts from one or more of the provisions of Parts 4, 5, 7, 8, 9, 11, 12, 13,

14 and 15, of the regulations relating to any of those Parts or of the commission rules relating to any of those Parts;

- (41) prescribing circumstances and conditions for the purpose of an exemption under paragraph (40) or otherwise, including circumstances and conditions
  - (i) relating to the laws of another jurisdiction or relating to an exemption from those laws granted by a securities regulatory authority in that jurisdiction, or
  - (ii) that refer to a person or a class of persons designated by the commission;
- (41.1) prescribing circumstances in which a person or a class of persons is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, including the circumstance in which a securities regulatory authority in a jurisdiction other than British Columbia has ordered that
  - (i) a person is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, or
  - (ii) trades or purchases of a particular security or exchange contract cease;
- (42) authorizing the commission or the executive director to order that any or all of the provisions of this Act or the regulations, excluding regulations made under paragraph (3), do not apply to a particular person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts;
- (43) respecting those matters for which this Act provides that regulations or commission rules be made or requirements prescribed;
- (44) respecting the filing of records under this Act;
- (44.1) requiring a person to certify the content of a record required under this Act, including requiring different certificates for different classes of persons;
- (45) respecting
  - (i) the amendment or modification of a record and the effect of that amendment or modification,
  - (ii) the use of codes and symbols for the identification of persons on records,
  - (iii) the use of records, prepared in accordance with similar laws of another jurisdiction, to satisfy the requirements of this Act, the regulations or the commission rules, and
  - (iv) [Repealed 2006-32-63.]
  - (v) the filing of records by electronic means;

- (45.1) authorizing the commission or executive director to disclose personal information in a manner, or to a person, government or governmental authority, or a class of any of those, in British Columbia or elsewhere, not otherwise contemplated by sections 169 (3) and 169.1;
- (45.2) authorizing the commission or executive director to collect personal information indirectly from a person, or a class of persons, in British Columbia or elsewhere, not otherwise contemplated by section 169.1;
- (45.3) authorizing the commission or executive director to enter into an arrangement or agreement with a person, or a class of persons, in British Columbia or elsewhere, regarding or involving the collection, sharing or disclosure of personal information, not otherwise contemplated by section 169.1;
- (45.4) prescribing classes of documents or records to which the commission or executive director must not have access when exercising a power under Part 4 or 17 in relation to an auditor oversight body;
- (46) defining words and expressions used but not defined in this Act, including, without limitation, words and expressions used in Part 16 or 16.1;
- (47) to meet any difficulties that may arise by reason of the repeal of the *Securities Act*, R.S.B.C. 1979, c. 380, and the substitution of this Act;
- (48) for the purpose of section 155 (1) (d), specifying provisions of the regulations, the contravention of any of which constitutes an offence under section 155 (1) (d);
- (49) for the purpose of section 155 (1) (e), specifying provisions of the commission rules, the contravention of any of which constitutes an offence under section 155 (1) (e);
- (50) governing the procedures that are to be followed by the commission in making and repealing commission rules including, but not limited to, prescribing requirements with which the commission must comply before depositing a commission rule with the registrar of regulations;
- (51) prescribing a regulation made by the Lieutenant Governor in Council under this Act to be a commission rule;
- (52) amending or repealing any commission rule.

## Commission rules

**184** (1) Subject to subsections (4) to (7), the commission may make rules for the purpose of regulating trading in securities or exchange contracts, or regulating the securities industry or exchange contracts industry.

(2) Without limiting subsection (1) but subject to subsections (4) to (7), the commission may make rules as follows:

- (a) respecting those matters for which this Act provides that commission rules be made;

- (b) respecting those matters for which this Act provides that requirements be prescribed, except those matters referred to in sections 143 (4) and 183 (28.1), (50) and (51) and subsections (5) to (8) of this section;
- (b.1) respecting those matters for which regulations may be made under sections 26, 34, 51 (3), 56 (2), 63 (2), 65 (2), 81, 85, 87 (2), 98, 99, 118 (3), 130.1, and 169 (2);
- (c) with respect to the same matters with respect to which the Lieutenant Governor in Council may make regulations under section 183 (1), (2), (6) to (25), (27), (27.1), (30), (31), (33), (34), (35), (35.1), (36), (36.1), (38), (40), (41), (41.1), (44), (44.1), (45) and (46) and to the same extent;
- (d) incorporating by reference and adopting laws, codes, standards, bylaws, rules and other regulatory instruments as they are amended from time to time before or after the making of the rules;
- (e) authorizing one or more organizations, on specified terms and conditions, to exercise any of the executive director's powers under Part 5 or to perform any of the executive director's duties under Part 5, including, but not limited to, the power
  - (i) to grant, renew or reinstate registration, to refuse to grant, renew or reinstate registration or to attach terms, conditions or restrictions to any grant, renewal or reinstatement of registration,
  - (ii) to suspend or cancel registration,
  - (iii) to satisfy itself of any matter that is a condition precedent to the exercise of a power it is authorized under this paragraph to exercise,
  - (iv) to require an applicant or registrant to submit to examination under oath, and
  - (v) to require delivery of a bond;
- (f) establishing criteria to be applied and procedures to be followed by a designated organization in making a direction, decision, order or ruling it is authorized under paragraph (e) to make;
- (g) requiring
  - (i) applications for registration or for renewal or reinstatement of registration to be made to a designated organization, or
  - (ii) a record or a notice that is required to be filed or submitted under this Act to be delivered to a designated organization;
- (h) requiring a designated organization
  - (i) to provide the executive director with reports and information respecting any matter that is before the designated organization

- or any decision made by it under an authority given to it under paragraph (e),
- (ii) to notify applicants, registrants or other persons of registrations granted or decisions made by the designated organization under an authority given to it under paragraph (e), and
  - (iii) to keep records, including records of decisions made by the designated organization under an authority given to it under paragraph (e) and to permit public inspection of classes of records specified by the commission;
  - (i) empowering a designated organization to delegate any power or duty conferred on it under paragraph (e) to a committee of the designated organization, and deeming the decisions of the committee to be the decisions of the designated organization;
  - (j) respecting the custody and use of the executive director's seal of office and of any device for affixing a facsimile of the executive director's signature.
- (3) If a designated organization is exercising or intends to exercise a power provided to it under subsection (2) (e) to make a decision, the commission may withdraw from the designated organization any matter that is before the designated organization for its decision, and the executive director may decide the matter.
- (4) Unless the power to do so is expressly provided to the commission under this section, the commission must not make rules under this section with respect to the matters with respect to which the Lieutenant Governor in Council may make regulations under section 183 (3) to (5), (26), (28), (28.1), (29), (32), (37), (39), (42), (43) and (47) to (52).
- (5) The commission must, before making or repealing a rule under this section, obtain the consent of the minister in accordance with the regulations and comply with any other prescribed procedures and requirements.
- (6) Without limiting subsection (5), the commission must not deposit with the registrar of regulations any rule made by the commission under this section unless the commission has complied with the prescribed procedures and requirements.
- (7) Despite subsections (5) and (6), the commission may deposit with the registrar of regulations a rule made by the commission under this section without complying with the prescribed procedures and requirements if
- (a) the commission considers it necessary and in the public interest to deposit the rule without delay, and
  - (b) the minister consents
    - (i) to the making of the rule, and
    - (ii) to the rule being deposited without the commission's compliance with the prescribed procedures and requirements.

- (8) Unless earlier revoked, a rule made under subsection (7) is revoked on the day that is the prescribed number of days following the day on which the rule is deposited with the registrar of regulations.
- (9) The Lieutenant Governor in Council may, by regulation, designate a regulation made under section 183, whether made before or after the coming into force of this section, to be a rule of the commission and the designated regulation is deemed for all purposes to be a rule of the commission made under this section.
- (10) The Lieutenant Governor in Council may, by regulation, repeal or amend any of the rules made by the commission under this section.

### **Regulations Act applies to commission rules**

**185** The *Regulations Act* applies to a commission rule.

### **Regulation prevails over commission rule**

**186** If a commission rule conflicts with a regulation made by the Lieutenant Governor in Council under section 183, the regulation prevails.

### **Administrative powers respecting commission rules**

- 187** (1) The commission may
- (a) vary the provisions of the commission rules as they apply to any person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts,
  - (b) order that any or all of the exemptions in the commission rules do not apply to a person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts,
  - (c) order that any or all of the provisions of the commission rules do not apply to a person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts, and
  - (d) authorize the executive director to exercise a power given to the commission under paragraphs (a) to (c).
- (2) For the purposes of subsection (1) (a) and (c), the commission may include conditions, restrictions or requirements in the order, including conditions, restrictions or requirements relating to
- (a) the laws of another jurisdiction respecting trading in securities or exchange contracts, or
  - (b) an exemption from a requirement under the laws referred to in paragraph (a) granted by a securities regulatory authority in that jurisdiction.

### **Policy statements**

- 188** (1) The commission may issue policy statements, and other instruments the commission considers advisable, to facilitate the exercise of its powers and the performance of its duties under this Act and to interpret this Act, the regulations and the commission rules.
- (2) A policy statement or other instrument referred to in subsection (1) is not a commission rule or a regulation within the meaning of the *Regulations Act*.

---

Copyright (c) Queen's Printer, Victoria, British Columbia, Canada



# EXHIBIT 20



*Securities Act*  
**SECURITIES REGULATION**  
**B.C. Reg. 196/97**

Deposited and effective June 17, 1997  
Last amended June 26, 2018 by B.C. Reg. 135/2018

**Consolidated Regulations of British Columbia**  
*This is an unofficial consolidation.*

Consolidation current to August 27, 2018

B.C. Reg. 196/97 (O.C. M244/97), deposited and effective June 17, 1997, is made under the *Securities Act*, R.S.B.C. 1996, c. 418, s. 183.

This is an unofficial consolidation provided for convenience only. This is not a copy prepared for the purposes of the *Evidence Act*.

This consolidation includes any amendments deposited and in force as of the currency date at the bottom of each page. See the end of this regulation for any amendments deposited but not in force as of the currency date. Any amendments deposited after the currency date are listed in the B.C. Regulations Bulletins. All amendments to this regulation are listed in the *Index of B.C. Regulations*. Regulations Bulletins and the Index are available online at [www.bclaws.ca](http://www.bclaws.ca).

See the User Guide for more information about the *Consolidated Regulations of British Columbia*. The User Guide and the *Consolidated Regulations of British Columbia* are available online at [www.bclaws.ca](http://www.bclaws.ca).

Prepared by:  
Office of Legislative Counsel  
Ministry of Attorney General  
Victoria, B.C.

Consolidation current to August 27, 2018

*Securities Act***SECURITIES REGULATION****B.C. Reg. 196/97***Contents*

<b>PART 1 – INTERPRETATION</b>	
1 Definitions	1
<b>PART 2</b>	
2 – 6 [Repealed]	1
<b>PART 3 – CLAIMS UNDER SECTION 15.1 OF THE ACT</b>	
7.1 Definitions	1
7.2 Notification procedure	1
7.3 Claims application	2
7.4 Adjudication of claims	2
7.5 Opportunity to be heard	3
7.6 Advance payments	3
<b>PART 4 – INVESTIGATIONS AND AUDITS</b>	
8 Application	4
9 Personal service	4
10 Form of summons or demand	4
11 Affidavit	4
12 Application to Supreme Court to enter premises and obtain information	4
<b>PART 5 – DESIGNATION FOR SECTION 155 (1) (G) OF THE ACT</b>	
13 Offence	4
<b>PART 5.1 – PRESCRIBED SELF REGULATORY BODIES</b>	
13.1 Prescribed self regulatory bodies	5
<b>PART 6 – REVIEWS AND APPEALS</b>	
14 Application	5
15 Notice	5
16 Receiving evidence	5
17 Representation by counsel	5
18 Decision	5
19 When hearing public	5
20 Sufficiency of notice	6
21 Referral of question to commission	6
<b>PART 7 – FEES</b>	
22 Fees payable	7
23 [Repealed]	10
24 Fee calculation and filing requirements relating to distributions	10
25 Additional requirement relating to distributions	11
26 Discretionary fee reduction	12
27 Incomplete or incorrect filings	12
28 [Repealed]	12
29 Members of the Mutual Fund Dealers Association	12

Consolidation current to August 27, 2018

Consolidation current to August 27, 2018

*Securities Act*

**SECURITIES REGULATION**

**B.C. Reg. 196/97**

**PART 1 – INTERPRETATION**

**Definitions**

**1** In this regulation:

“**Act**” means the *Securities Act*;

“**MTN Program**” has the meaning ascribed to that term in National Instrument 44-102 *Shelf Distributions*;

“**PREP prospectus**” means a base PREP prospectus or a supplemented PREP prospectus as those terms are defined in National Instrument 44-103 *Post-Receipt Pricing*;

“**Rules**” means the Securities Rules.

[am. B.C. Regs. 388/2000, s. 1; 416/2003, s. 1; 43/2008, s. 2 (a); 225/2009, s. 1.]

**PART 2**

**2** to **6** Repealed. [B.C. Reg. 386/2003, s. 1 (a).]

**PART 3 – CLAIMS UNDER SECTION 15.1 OF THE ACT**

**Definitions**

**7.1** In this Part:

“**eligible applicant**” means a person who

(a) suffered pecuniary loss as a direct result of misconduct that resulted in an order for which the commission gave notice under section 7.2,

(b) did not directly or indirectly engage in the misconduct that resulted in the order, and

(c) has not been denied a claim under section 7.4 (6);

“**order**” means an order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g) of the Act.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

**Notification procedure**

**7.2** (1) If the commission receives money from an order, for the purpose of giving notice under section 15.1 (1) of the Act, the commission must

(a) issue a press release, and

(b) post a notice on the commission's website.

(2) A notice under subsection (1) (b) must be posted until the earlier of

**B.C. Reg. 196/97****SECURITIES ACT  
SECURITIES REGULATION****Part 3 – Claims Under Section 15.1 of the Act**

---

- (a) 3 years from the date that the notice is first posted, and
  - (b) the date on which all money received under the order has been paid out under this Part.
- (3) A press release and a notice under subsection (1) must include the following:
- (a) a description of the misconduct that resulted in the order;
  - (b) the name of each party to the proceeding that resulted in the order;
  - (c) the amount of money received by the commission from the order;
  - (d) a statement that a claim for the money can be made by applying to the commission.
- (4) If, after the commission has posted a notice under subsection (1) (b), the commission receives additional money under the order, the commission must post on its website the total amount of money received under the order.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

**Claims application**

- 7.3** (1) An application for a payment under section 15.1 of the Act must be in the required form.
- (2) If a person has made an application under section 15.1 of the Act and the information provided in the application changes in a material respect so that the information provided is false or misleading, the person must report the change to the commission promptly.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

**Adjudication of claims**

- 7.4** (1) If the commission determines that an applicant is an eligible applicant in respect of an order, the commission may make a payment to the eligible applicant from money received from the order.
- (2) When determining the amount to be paid to an eligible applicant, the commission must consider the following:
- (a) the amount of money received from the order;
  - (b) the loss suffered by the eligible applicant;
  - (c) the losses suffered by all eligible applicants;
  - (d) any other information the commission considers appropriate in the circumstances.
- (3) When determining an applicant's loss for the purposes of this section, the commission must not include any amount claimed by the applicant in respect of a loss of opportunity, including interest on any loss, and must consider the following:

**SECURITIES ACT**  
**SECURITIES REGULATION**

**B.C. Reg. 196/97**

Part 3 – Claims Under Section 15.1 of the Act

- (a) whether the applicant received or is entitled to receive compensation from other sources for the loss arising from the misconduct that resulted in the order;
  - (b) whether the applicant benefitted from the misconduct that resulted in the order;
  - (c) the results of any hedging or other risk limitation transactions made by the applicant.
- (4) The commission may prorate payments among eligible applicants if, having considered the matters under subsection (2), the commission determines that the money the commission received from the order is insufficient to pay the claims of all eligible applicants.
- (5) A prorated payment made to an eligible applicant must be determined in accordance with the following formula:

$$\frac{A \times B}{C}$$

where

- A = the amount of money the commission received under the order,
- B = the loss suffered by the eligible applicant, and
- C = the losses suffered by all eligible applicants.

- (6) The commission may deny an applicant's claim if the applicant
- (a) fails to comply with section 7.3 (2), or
  - (b) makes a statement or provides information to the commission that, in a material respect and at the time and in the light of the circumstances in which it is made, is false or misleading, or omits facts from the statement or information necessary to make that statement or information not false or misleading.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

**Opportunity to be heard**

- 7.5** Except for a decision to prorate payments under section 7.4 (4), the commission must not deny all or part of a claim without giving the applicant an opportunity to be heard.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

**Advance payments**

- 7.6** The commission may make a payment to an eligible applicant, including a partial or installment payment, before the period described in section 15.1 (5) of the Act has expired.

[en. B.C. Reg. 91/2014, Sch. s. 1.]



B.C. Reg. 196/97

SECURITIES ACT  
SECURITIES REGULATIONPart 4 – Investigations and Audits

---

**PART 4 – INVESTIGATIONS AND AUDITS****Application**

- 8 The practices and procedures set out in this Part apply to every investigation and audit conducted under Part 17 of the Act.

**Personal service**

- 9 (1) A summons or demand for production of records and things issued by a person under section 144 of the Act must be served personally on the individual summoned or from whom the records and things are demanded.
- (2) A person summoned under section 144 of the Act must be paid the fees and allowances for the person's attendance before the investigator to which a witness summoned to attend before the Supreme Court is entitled.

**Form of summons or demand**

- 10 (1) A summons to a person to appear before an investigator under section 144 (1) (a) of the Act must be in the required form.
- (2) A demand for production of records and things under section 144 (1) (c) of the Act must be in the required form.

**Affidavit**

- 11 The service of a summons, the payment or tender of fees and allowances to a person summoned, the demand for production of records and things or the service of a notice on a witness may be proved by an affidavit in the required form.

**Application to Supreme Court to enter premises and obtain information**

- 12 An application for an order under section 143 (3) of the Act must be made in accordance with the Supreme Court Civil Rules.

[am. B.C. Reg. 166/2010.]

**PART 5 – DESIGNATION FOR SECTION 155 (1) (g) OF THE ACT****Offence**

- 13 Section 24 of the Securities Rules is specified for the purpose of section 155 (1) (e) of the Act.

[am. B.C. Reg. 232/2006, Sch. s. 2.]

SECURITIES ACT  
SECURITIES REGULATION

B.C. Reg. 196/97

Part 6 – Reviews and Appeals

---

**PART 5.1 – PRESCRIBED SELF REGULATORY BODIES**

**Prescribed self regulatory bodies**

**13.1** For the purposes of section 163 (1.1) of the *Securities Act*, the following self regulatory bodies are prescribed:

- (a) Investment Industry Regulatory Organization of Canada;
- (b) Mutual Fund Dealers Association of Canada.

[en. B.C. Reg. 135/2018, s. (b).]

**PART 6 – REVIEWS AND APPEALS**

**Application**

**14** This Part applies to a hearing required or permitted to be held under the Act or the regulations other than a hearing held under Part 17 of the Act.

**Notice**

**15** In addition to any other person to whom notice is required to be given, notice in writing of the time, place and purpose of a hearing must be given to any person considered by the person presiding to be directly affected by it.

**Receiving evidence**

- 16** (1) All oral evidence received at the hearing may be taken down in writing or preserved as the person presiding directs.
- (2) The oral evidence recorded, the documentary evidence and things received in evidence form the record.

**Representation by counsel**

**17** A person attending a hearing or submitting evidence at a hearing under this Part may be represented by counsel.

**Decision**

- 18** (1) After a hearing, if the decision made at it adversely affects the right of a person to trade in securities, at the request of the person affected, the person presiding must issue written reasons for the decision.
- (2) The person presiding must give notice of every decision and accompanying written reasons as soon as practicable to every person to whom notice of the hearing was given and to every person who is, in the opinion of the person presiding, directly affected by the decision.

**When hearing public**

**19** (1) Subject to subsection (2), every hearing is open to the public.

**B.C. Reg. 196/97****SECURITIES ACT  
SECURITIES REGULATION****Part 6 – Reviews and Appeals**

---

- (2) If the person presiding considers that a public hearing would be unduly prejudicial to a party or a witness and that to do so would not be prejudicial to the public interest, the person presiding may order that the public be excluded for all or part of the hearing.

**Sufficiency of notice**

- 20** Any notice required under this Part is sufficiently given if sent to the required person in accordance with section 180 of the Act or to an address directed by the person presiding.

**Referral of question to commission**

- 21** (1) If the executive director is of the opinion that a material question affecting the public interest or a novel question of policy or interpretation is raised because of
- (a) an application made to the executive director,
  - (b) a record filed with the executive director, or
  - (c) a matter arising out of the exercise or performance by the executive director of an authorized power or duty,
- the executive director may refer the question to the commission for determination.
- (2) If a question is referred under subsection (1), the executive director must
- (a) state the question in writing, setting out the facts on which it is based, and
  - (b) file with the commission the written question together with additional information the executive director considers relevant.
- (3) The commission, without delay, must send the material filed under subsection (2) (b) to the person who made the application or who filed the document out of which the question arose.
- (4) Notice of any hearing to be held by the commission under this section
- (a) must be given to all persons who the commission considers or who, in the opinion of the executive director, are interested parties, and
  - (b) is sufficiently given if posted on a publicly accessible website maintained by the commission.
- (5) The commission must consider and determine a question referred to it under this section by holding a hearing, and may remit any matter to the executive director for a decision in accordance with its determination.

[am. B.C. Reg. 386/2003, s. 1 (b).]

## SECURITIES ACT SECURITIES REGULATION

**B.C. Reg. 196/97**

## Part 7 – Fees

## PART 7 – FEES

**Fees payable**

**22** Unless otherwise prescribed, for a matter described in Column 1 the executive director must be paid the fee prescribed in Column 1 or Column 2:

Item	Column 1	Column 2
1	<p>(1) (a) Subject to paragraphs (b) and (c), for seeking or maintaining registration in any of the following:</p> <ul style="list-style-type: none"> <li>(i) any category of dealer;</li> <li>(ii) any category of adviser;</li> <li>(iii) the category of investment fund manager.</li> </ul> <p>(b) If a person is seeking or maintaining registration in more than one category, only the highest applicable fee under paragraph (a) is payable.</p> <p>(c) If a person is already registered and is seeking registration in one or more additional categories, the fee is the greater of the following:</p> <ul style="list-style-type: none"> <li>(i) the highest fee under paragraph (a) for the categories applied for minus any fees already paid for maintaining registration during the calendar year, and</li> <li>(ii) 0.</li> </ul> <p>(2) For seeking or maintaining registration in one or more of the following categories:</p> <ul style="list-style-type: none"> <li>(a) dealing representative;</li> <li>(b) advising representative;</li> <li>(c) associate advising representative.</li> </ul> <p>(3) A fee for maintaining registration for a calendar year must be paid on or before December 31 of the previous calendar year.</p>	<p>\$2 500</p> <p>\$1 500</p> <p>\$1 200</p> <p>\$250</p>
2 to 7	Repealed. [B.C. Reg. 225/2009, s. 3.]	
8	For each day that the financial statements of a registered dealer, investment fund manager or adviser have not been filed as required under National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> , unless the commission or executive director has exempted in writing the registered dealer, investment fund manager or adviser from the requirement to file financial statements	\$100
9	<p>(a) Subject to paragraphs (b) and (c), for filing a preliminary prospectus, a preliminary base shelf prospectus under National Instrument 44-102 <i>Shelf Distributions</i>, a preliminary base PREP prospectus under National Instrument 44-103 <i>Post-Receipt Pricing</i> or a pro forma prospectus</p> <p>(b) For filing a preliminary or pro forma prospectus for a mutual fund</p> <p>(c) For filing a preliminary exchange offering prospectus</p>	<p>\$2 500</p> <p>\$1 500</p> <p>\$1 500</p>
10	For filing a prospectus, the amount, if any, by which	
	(a) 0.02%, or	

**Last amended June 26, 2018**

7

**Consolidation current to August 27, 2018**

78833-2019-28059

## B.C. Reg. 196/97

SECURITIES ACT  
SECURITIES REGULATION

## Part 7 – Fees

Item	Column 1	Column 2
	(b) in the case of a money market fund, 0.01% of the proceeds realized by the issuer or securityholder from the distribution under the prospectus to purchasers in British Columbia exceeds the aggregate of the fees paid under item 9, which amount must be paid in accordance with sections 24 and 25	
11	For filing an annual information form by an issuer other than a mutual fund	\$1 000
12	For filing an amendment to a preliminary prospectus, prospectus or annual information form	\$250
13	For filing a technical or engineering report with <ul style="list-style-type: none"> <li>(a) a preliminary prospectus, pro forma prospectus, prospectus, annual information form, amendment to a preliminary prospectus or prospectus</li> <li>(b) an application under section 171 of the Act for revocation or variation of a decision in respect of the reactivation of a dormant issuer</li> </ul>	\$500 \$500
14	For filing a notice by an issuer of its intention to offer securities under section 2.1 of National Instrument 45-106 <i>Prospectus and Registration Exemptions</i> of the Act, if the notice includes a rights offering memorandum or circular	\$500
15	For filing an application, other than an application to revoke a cease-trade order in effect for less than 91 days, to the commission or the executive director for a decision under the Act, this regulation, the Rules, another enactment or a policy statement, if no other fee for that filing is prescribed	\$750
16	For filing a report <ul style="list-style-type: none"> <li>(1) (a) Repealed. [B.C. Reg. 225/2009, s. 7.]</li> <li>(b) pursuant to the terms of an order made under section 76 of the Act, or</li> <li>(c) under National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>, the greater of               <ul style="list-style-type: none"> <li>(i) \$100, or</li> <li>(ii) 0.03% or, in the case of a money market fund, 0.01%, of the proceeds realized by the issuer from the distribution of the securities described in the report to purchasers in British Columbia</li> </ul> </li> <li>(2) Repealed. [B.C. Reg. 225/2009, s. 7.]</li> </ul>	
17	For filing an annual financial statement by a reporting issuer, as required under National Instrument 51-102 <i>Continuous Disclosure Obligations</i> or National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> , if the statement is filed <ul style="list-style-type: none"> <li>(a) within the prescribed time period</li> <li>(b) outside the prescribed time period</li> <li>(c) outside the prescribed time period and the commission or the executive director has ordered, in respect of the failure to file, that trading in the securities of the issuer cease</li> </ul>	\$600 \$800 \$1 100
18	For filing an interim financial statement by a reporting issuer, as required under National Instrument 51-102 <i>Continuous Disclosure Obligations</i> or National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> , if the statement is filed <ul style="list-style-type: none"> <li>(a) within the prescribed time period</li> <li>(b) outside the prescribed time period</li> </ul>	No fee \$200

SECURITIES ACT  
SECURITIES REGULATION

B.C. Reg. 196/97

Part 7 – Fees

Item	Column 1	Column 2
	(c) outside the prescribed time period and the commission or the executive director has ordered, in respect of the failure to file, that trading in the securities of the issuer cease	\$500
19	For filing a report required under section 87 of the Act, if the statement is filed (a) within the prescribed time period (b) outside the prescribed time period	No fee \$50
20	For filing a take over bid circular or issuer bid circular	\$750
21	For filing an application under section 171 of the Act for revocation or variation of a decision in respect of the reactivation of a dormant issuer	\$2 500
22	For an on-site search of a paper file	\$6
23	For a copy of a record in the public file of the commission, for each page	\$0.50
24	For the certification of a record (a) for the number of pages, up to and including 10, included in the record (b) for each additional page over 10 included in the record	\$10 \$1
25	The fees and charges for an examination or investigation by a person appointed under section 13 or 153 of the Act are an amount equal to the amount paid by the commission for the examination or investigation, not exceeding fees of \$2 000 for each day of the examination or investigation plus disbursements properly incurred for the examination or investigation	
26	The fees and charges for the costs of or related to a compliance review under section 141.1, 141.2 or 141.3 of the Act are (a) \$100 per hour for each person involved in the compliance review (b) disbursements properly incurred by the commission or the executive director or the staff of either of them	
27	The fees and charges for an investigation by a person appointed under section 142 or 147 of the Act are an amount equal to the amount paid by the commission or the minister for the investigation, not exceeding fees of \$2 000 for each day of the investigation plus disbursements properly incurred for the investigation	
28	The fees and charges for the costs of or related to a hearing are (a) \$2 000 for each day or partial day of hearing (b) \$100 per hour for each person for time spent by the commission or the executive director or the staff of either of them (c) disbursements properly incurred by the commission or the executive director or the staff of either of them (d) fees paid to an expert or witness, to a maximum of \$600 per hour for each person involved (e) disbursements properly incurred by an expert retained by the commission (f) fees paid for legal services, to a maximum of \$400 per hour for each person involved (g) disbursements properly incurred in connection with the provision of legal services to the commission	

## B.C. Reg. 196/97

SECURITIES ACT  
SECURITIES REGULATION

## Part 7 – Fees

Item	Column 1	Column 2
29	For filing an application for a certificate confirming that a reporting issuer is not in default of (a) filing financial statements required by the Act or the regulations (b) paying prescribed fees and charges	 \$100 \$100
30	For filing an application for an approval of a waiver of the appointment of an auditor under section 179 (3) (b) of the <i>Company Act</i>	\$100
31	For filing an application for a consent to the restoration of a company or extraprovincial company to the register under section 262 (4) (c) of the <i>Company Act</i>	\$100

[en. B.C. Reg. 416/2003, s. 2; am. B.C. Regs. 232/2006, Sch. s. 3; 43/2008, s. 2 (b); 225/2009, ss. 2 to 8; 238/2014, App. D, s. 1.]

**23** Repealed. [B.C. Reg. 225/2009, s. 9.]

**Fee calculation and filing requirements relating to distributions**

- 24** For the purposes of the fee payable under item 10 of the table in section 22,
- (a) if the prospectus relates to securities that are not distributed continuously, in circumstances where National Instrument 44-102 *Shelf Distributions* does not apply, the issuer or securityholder must file
    - (i) with the prospectus, an estimate of the proceeds that will be realized from the distribution under the prospectus to purchasers in British Columbia, accompanied by
      - (A) if the executive director so requires, an advance of the prescribed fee based on the estimate of the proceeds, or
      - (B) in any other case, an undertaking to pay the prescribed fee not more than 30 days after the completion of the distribution under the prospectus, and
    - (ii) not more than 30 days after the completion of the distribution under the prospectus, a notice of the proceeds realized from the distribution under the prospectus to purchasers in British Columbia and, subject to section 25, the notice must be accompanied by the prescribed fee,
  - (b) if the prospectus relates to securities that are distributed continuously, in circumstances where National Instrument 44-102 *Shelf Distributions* does not apply, the issuer or securityholder must file a notice of the proceeds realized from the distribution under the prospectus to purchasers in British Columbia, accompanied by the prescribed fee, on the date a new prospectus relating to the securities is filed,
  - (c) if the prospectus relates to securities that are distributed under National Instrument 44-102 *Shelf Distributions* the issuer or securityholder must file
    - (i) with the base shelf prospectus, an undertaking to pay the prescribed fee

SECURITIES ACT  
SECURITIES REGULATION

B.C. Reg. 196/97

Part 7 – Fees

- (A) within 5 business days after the end of each month with respect to the securities sold during that month, for securities distributed continuously in circumstances other than through an MTN Program,
- (B) together with the monthly filing of pricing supplements, for securities distributed continuously through an MTN Program, or
- (C) within 30 days after the completion of the offering of securities for each tranche, for securities distributed on a delayed basis,
- (ii) a notice stating the proceeds realized in British Columbia accompanied by the prescribed fee
  - (A) not more than 5 business days after the end of each month with respect to the securities sold during that month, for securities distributed continuously in circumstances other than through an MTN Program,
  - (B) together with the monthly filing of pricing supplements, for securities distributed continuously through an MTN Program, or
  - (C) within 30 days after the completion of the offering of securities for each tranche, for securities distributed on a delayed basis, and
- (iii) a notice stating the proceeds realized in British Columbia, accompanied by the required fee, if any, within 30 days after the earlier of
  - (A) the completion of all offerings of securities under the base shelf prospectus, and
  - (B) the date that is 25 months after the date of filing the base shelf prospectus, or
- (d) if the prospectus relates to securities that are distributed under National Instrument 44-103 *Post-Receipt Pricing*, the issuer or securityholder must file
  - (i) with the base PREP prospectus, an undertaking to pay the prescribed fee within 30 days after the completion of the distribution under the supplemented PREP prospectus, and
  - (ii) within 30 days after the completion of the distribution under the supplemented PREP prospectus, a notice stating the proceeds realized in British Columbia accompanied by the required fee.

[en. B.C. Reg. 416/2003, s. 3; am. B.C. Regs. 43/2008, s. 2 (c); 225/2009, s. 10.]

**Additional requirement relating to distributions**

- 25** If an advance was paid as required under section 24 (a) (i) (A), the notice filed under section 24 (a) (ii) must be accompanied by



**B.C. Reg. 196/97****SECURITIES ACT  
SECURITIES REGULATION****Part 7 – Fees**

- (a) the amount by which the prescribed fee exceeds the advance, or
- (b) a request for a refund of the amount by which the advance exceeds the prescribed fee.

[en. B.C. Reg. 416/2003, s. 3.]

**Discretionary fee reduction**

- 26** If the commission or the executive director considers it to be in the public interest, the commission or the executive director may order that

- (a) either or both of items 22 and 23 of the table in section 22
  - (i) be varied by reducing the fee payable, or
  - (ii) do not apply

in respect of a person who is a representative of the media or any class of persons who are representatives of the media, or

- (b) any or all of items 25 through 28 of the table in section 22
  - (i) be varied by reducing the fees and charges payable, or
  - (ii) do not apply.

[en. B.C. Reg. 416/2003, s. 3.]

**Incomplete or incorrect filings**

- 27** If a record is filed with the commission, the executive director or a designated organization and the record has not been completed in accordance with the Act or this regulation, the commission, the executive director or the designated organization may return the record to the person by whom it has been filed, and a refund of the fee or any part of it paid upon the filing of the record must not be made unless the commission, the executive director or the designated organization otherwise directs.

[en. B.C. Reg. 416/2003, s. 3.]

- 28** Repealed. [B.C. Reg. 225/2009, s. 11.]

**Members of the Mutual Fund Dealers Association**

- 29** Until January 1, 2010, the fees prescribed for item 1 of the table in section 22 do not apply to a person who is a member of the Mutual Fund Dealers Association of Canada.

[en. B.C. Reg. 416/2003, s. 3.]

Copyright © 2018, Province of British Columbia

# EXHIBIT 21



## Returning Funds to Investors

After a hearing, the Commission under section 161(1)(g) can order respondents to pay to the Commission money they obtained as a result of contravening the Securities Act.

If the Commission receives money under a s. 161(1)(g) order, it must

- issue a press release,
- post a notice on this website that it has collected money, and
- receive and consider applications for payment from the money collected

The Commission has received money pursuant to s. 161(1)(g) orders in the following cases:

Case Name	Date of Notice	BCSECCOM #	Amount Ordered under 161(1)g	Amount Received*	Start Your Claim
<a href="#">Canada Pacific Consulting Inc. and Michael Robert Shantz</a>	March 19, 2015	<a href="#">2012 BCSECCOM 195</a>	\$1,530,004	\$131,781.34	<a href="#">Go</a>
<a href="#">Weiqing Jane Jin</a>	August 6, 2015	<a href="#">2014 BCSECCOM 424</a>	\$4,280	\$4,280.00	<a href="#">Go</a>
<a href="#">Winston King-Loong Kuit</a>	March 21, 2017	<a href="#">2017 BCSECCOM 53</a>	\$147,500	\$82,484.92	<a href="#">Go</a>
<a href="#">Jefferson Franklin Mesidor</a>	November 1, 2017	<a href="#">2014 BCSECCOM 6</a>	\$16,000	\$5,714.51	<a href="#">Go</a>

\*This amount may change if the Commission receives additional money under this order.

The Commission has paid out funds received pursuant to s.161(1)(g) in accordance to s.15.1 and Part 3 of the Securities Regulations in the following cases:

Case Name	BCSECCOM #	Date	Supporting Documents
<a href="#">Keith Henry Alexander</a>	<a href="#">2015 BCSECCOM 305</a>	December 9, 2016	<a href="#">Reasons for Decision</a>
<a href="#">Ayaz Dhanani</a>	<a href="#">2016 BCSECCOM 413</a>	December 7, 2017	<a href="#">Reasons for Decision</a>

The following provides a general description of the claims process. The details of the claims process are set out in [Part 3 of the Securities Regulation](#).

## What to Do If You Lost Money

If you lost money because of the respondents' contraventions in one of the cases listed above, you can make a claim for payment from the money received by filing a [Claim Application Form \(Form 12-901F\)](#) with the Commission. You may also submit your claim online by pressing the appropriate Go button. You must apply within three years from the date the Commission first posted notice that it received money pursuant to a s. 161(1)(g) order.

Only eligible applicants can make a claim for money collected pursuant to a s. 161(1)(g) order. An eligible application is defined as person who:

- suffered pecuniary loss as a direct result of misconduct that resulted in the s. 161(1)(g) order
- did not directly or indirectly engage in the misconduct that resulted in the s. 161(1)(g) order and
- has not been denied a claim under section 7.4 (6) of the Securities Regulation.

## What the Commission Will Do After It Receives Your Application

After the Commission receives your application, it will determine if you are an eligible applicant. If it determines you are an eligible applicant, it will then decide whether to pay you from money collected pursuant to the s. 161(1)(g) order. In making its decision, the Commission will consider:

- the amount of money the Commission received from the s. 161(1)(g) order

- (b) the loss you suffered
- (c) the losses suffered by all eligible applicants
- (d) any other information the Commission considers appropriate in the circumstances.

When calculating your loss, the Commission will consider the following factors:

- (a) whether you received or are entitled to receive compensation from other sources for the loss arising from the misconduct that resulted in the order
- (b) whether you benefited from the misconduct that resulted in the order
- (c) the results of any hedging or other risk limitation transactions you made.

You are not entitled to lost interest or opportunity costs.

If there is not enough money to cover all the eligible claims, the Commission may prorate payment among eligible applicants.

Before paying eligible applicants, the Commission may wait three years after the Commission first posted notice that it received money pursuant to a s.161(1)(g) order. This is the time period set out in the Securities Act.

The commission will not deny your claim without giving you an opportunity to be heard. It can decide to prorate payments without giving you an opportunity to be heard.

For more information about whether you are eligible to make a claim and how the Commission will process your claim, please see:

- [Section 15.1 of the Securities Act](#)
- [Part 3 of the Securities Regulations](#)

# EXHIBIT 22

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Citation: *United States (Securities and Exchange  
Commission) v. Peever*,  
2013 BCSC 1090

Date: 20130620  
Docket: S118023  
Registry: Vancouver

Between:

**United States Securities and Exchange Commission**

Plaintiff

And

**William Todd Peever and Phillip James Curtis**

Defendants

Before: The Honourable Mr. Justice Rogers

**Reasons for Judgment**

Counsel for the Plaintiff:

M.J. Schalke

Counsel for the Defendant, W.T. Peever:

T.C. Louman-Gardiner

Counsel for the Defendant, P.J. Curtis:

P.A. Hildebrand  
G.D. Phillips

Place and Date of Trial/Hearing:

Vancouver, B.C.  
June 6, 2013

Place and Date of Judgment:

Vancouver, B.C.  
June 20, 2013

2013 BCSC 1090 (CanLII)

**Introduction**

[1] The plaintiff seeks a summary trial determination of this proceeding. The plaintiff seeks an order to enforce a judgment of a court in the U.S.A. The judgment comes from a non-reciprocating state. The plaintiff's application therefore falls to be decided by the common law principles that regulate the enforcement of foreign judgments.

[2] The defendants raise two arguments against enforcement in B.C. One argument centers on whether the foreign judgment is penal or public in nature, thus rendering it unsuitable for enforcement here. The other argument is that the judgment was obtained by fraud.

[3] For the reasons that follow, I have concluded that neither of the defendants' arguments can be given effect. In the result, I find that the U.S. judgment is enforceable in this jurisdiction.

**The Facts**

[4] On August 16, 2011, a judge of the United States District Court for the Southern District of New York granted judgment in favour of the plaintiff and against the defendants. The judgment rendered the defendants jointly and severally liable to the plaintiff in the amount of USD \$2,894,537.48 together with pre-judgment interest in the amount of USD \$1,611,998.18. The interest portion of the judgment covered the period from June 18, 2003 to August 16, 2011. It is that judgment that the plaintiff seeks to enforce in B.C.

[5] The plaintiff is a federal agency of the U.S.A. Its mandate is to enforce U.S. security laws. In December 2007 the plaintiff commenced a civil proceeding (i.e.: not a criminal prosecution) against the defendants. The plaintiff alleged that the defendants had participated in an illegal manipulation of stock prices of one or more corporations in the U.S.A., and the plaintiff sought a variety of relief against the defendants. The relief included injunctions to prevent further wrongdoing, penalties for transgressing securities laws, and disgorgement of profits.

[6] The defendants were served with the civil process. They responded to the case against them. The defendants consented to the injunctive relief and to a liability judgment against them. They did not consent to the terms of any monetary award.

[7] The plaintiff brought forward its case for a monetary award against the defendants. The defendants were given notice of the nature and extent of the plaintiff's monetary claim and of the evidence upon which the plaintiff's claims were based, but the defendants elected to not respond or to defend their interests.

[8] The monetary relief that the plaintiff claimed included, among other things, an order that the defendants disgorge all of the profit they had realized from the illegal scheme for which they had admitted liability. That profit was to be net of the cost to the defendants of acquiring the shares which they had used to manipulate prices. The plaintiff gave the defendants notice of the accounting process it had employed to arrive at the amount of disgorgement it sought. The plaintiff's civil complaint (roughly analogous to B.C.'s notice of civil claim) alleged that the defendants' cost of shares was on the order of \$400,000. However, the accounting on which the plaintiff relied when the claim was quantified indicated that proof could be found for costs of only approximately \$200,000. In the result, the plaintiff gave credit to the defendants for costs of about \$200,000 rather than the \$400,000 alleged in the complaint.

[9] Mr. Peever filed an affidavit in the present proceeding. In that affidavit, Mr. Peever asserted that the shares cost just over \$400,000 and that the plaintiff committed a fraud on the court when it sought judgment based on a deduction of only \$200,000. Mr. Peever, one of the individuals who, presumably, bought the shares in issue, did not substantiate his assertion with any documentary evidence. Neither did Mr. Peever give any evidence that would identify any errors in the plaintiff's accounting.

[10] The plaintiff's monetary claim was considered by the U.S. District Court and, as noted above, that court rendered judgment against the defendants in the amounts described.



[11] I find that the U.S. judgment is the product of a court having jurisdiction to rule on the issues before it and, the defendants not having appealed it, it is a final judgment.

[12] The U.S. judgment characterizes the award against the defendants as disgorgement. The judgment authorizes but does not require the plaintiff to appoint an administrator to distribute the disgorged award to victims of the defendants' illegal activity. According to the evidence of the plaintiff's counsel Mr. Williams, it is the plaintiff's policy to exercise the option to appoint an official whose task will be to distribute disgorged funds to investors who have been harmed by the defendants' illegal stock practices. Mr. Williams does not depose that the plaintiff will, in fact, follow that policy in this particular case. If the plaintiff does not implement that policy, one may infer that money that the plaintiff may collect from the defendants will go into U.S. Federal Government's general revenue.

[13] The defendants' U.S. based solicitor Mr. Einhorn submitted what the defendants purported to be an expert opinion as to the nature of a disgorgement award. Mr. Einhorn deposed that in the U.S., the case law that has developed around the issue of disgorgement shows that disgorgement is not intended to provide a remedy to victims, but is rather a form of punishment levied against the wrongdoer.

### **Discussion**

[14] I will deal with the fraud issue first. In my view, Mr. Peever's bare assertion of dishonesty by the plaintiff, when it is made by an admitted fraudster like Mr. Peever, when it is unsupported by any documentation and in the face of his having ample prior opportunity to examine and refute the plaintiff's calculations, deserves no weight at all. Mr. Peever's complaint that the plaintiff obtained the U.S. judgment by fraud is not persuasive, does not raise a triable issue, and is no reason to dismiss the proceeding or to order that it proceed to a conventional trial.

[15] The second issue in this case concerns the purpose to which the funds collected from the defendants will be put. According to Canadian jurisprudence, a

foreign judgment will not be enforced in Canada if that judgment is penal or public in nature: N. Rafferty et al., *Private International Law in Common Law Canada*, 2nd ed. (Toronto: Emond Montgomery Publications Limited, 2003) at 354.

[16] The defendants argue that if the money collected from them is not distributed to their victims, then the judgment must be considered penal or public in nature. The defendants say that if the plaintiff, i.e.: the U.S. Federal Government, keeps the money, then in that case the judgment cannot be said to be truly civil in nature - after all, the U.S. government did not suffer by the defendants' fraud. The defendants argue that if the money collected from them is to go into general government revenue, then the purpose of the judgment is either penal because its effect is to punish the defendants for breaking the law by levying a fine against them, or public in nature because its effect is to warn other securities traders of the consequences of breaking securities laws.

[17] In support of their position, the defendants rely on numerous decisions of courts in foreign jurisdictions. Those cases include: *Evans and Associates v. Citibank Ltd. and Ors*, [2003] NSWSC 204; *Terry and Durettebradshaw PLC v. Butterfield Bank (Guernsey) Limited*, Guernsey Law Reports 2005-06 GLR 327; *Government of the Islamic Republic of Iran v. The Barakat Galleries Limited*, [2007] EWCA Civ 1374 (C.A.). In those decisions, the courts were satisfied that the purpose of the foreign judgment was to recompense persons or parties harmed in the foreign jurisdiction, most usually by way of distributing the spoils of the judgment to persons harmed by the defendant's malfeasance. As such, the foreign judgments were found to have provided a remedy as between private parties who were embroiled in essentially private disputes over money paid and money recovered. In other words, the foreign judgments were found to be truly civil in nature because they were obtained for the benefit of private parties as opposed to the benefit of the state.

[18] The defendants acknowledge that there are, in B.C., two trial court decisions which do permit enforcement of a foreign judgment substantially similar to the

judgment in issue here. Those decisions are: *United States of America v. Shull*, [1999] B.C.J. No. 1823 (S.C.) and *United States (Securities and Exchange Commission) v. Cosby*, 2000 BCSC 338. The defendants correctly say that a case should be decided on the evidence before the court. They say that in neither *Shull* nor in *Cosby* can one find a thorough examination of the evidence relating to the quality of the foreign judgment in issue as a penal or a public measure.

[19] While the defendants do not go so far as to say that *Shull* and *Cosby* were wrongly decided, they do say that those cases are of limited value owing to their lack of a nuanced analysis of the purpose to which the foreign plaintiff would put money it collected on the judgment.

[20] Turning to the case against them, the defendants argue that the evidence before this court does not go far enough and is not clear enough to establish the proposition that the purpose of the plaintiff's judgment is not penal or public. In the result, they say, the court should decline to enforce it.

[21] The plaintiff's response is simple: once the plaintiff has shown that the foreign court had jurisdiction and that its judgment is final, the burden of proof shifts to the defendants to establish on the balance of probabilities that the judgment is penal or public in nature. This is an accurate description of the law.

[22] The plaintiff points out that the defendants themselves have not adduced any evidence concerning the use to which the plaintiff will put the proceeds of judgment. The plaintiff says that the affidavits the defendants and their attorney have filed in support of their position are neither here nor there on that topic.

[23] As to the affidavits filed by the plaintiff's counsel Mr. Williams, the plaintiff points out that Mr. Williams deposes that the plaintiff has the capacity to distribute the proceeds of the judgment to harmed investors and, further, that it is the plaintiff's policy to do so. The plaintiff goes on to say that the judgment itself contains a provision authorizing the plaintiff to appoint an administrator to distribute the funds in that way.

[24] The plaintiff's counsel candidly acknowledged that nothing in the judgment or the evidence unambiguously establishes the proposition that the proceeds of the judgment will, in fact, be distributed to the defendants' victims.

[25] On the whole of the evidence, though, the plaintiff argues that it is more likely than not that the proceeds of the judgment will be given out to the defendants' victims. The plaintiff argues that the defendants have not, therefore, discharged the burden of proof lying on them to demonstrate that the judgment, if enforced here, would achieve a penal or a public law purpose.

[26] I find that I am persuaded by the plaintiff's argument. I agree that the plaintiff has established the baseline prerequisites for enforcement of its judgment in B.C. Those prerequisites are that the foreign court had jurisdiction to deal with the case before it and that its decision is final. I agree that once those prerequisites exist, the onus shifts to the defendants to show that the judgment should not be enforced here because to do so would be to accomplish a foreign penal or public law purpose. The burden on the defendants is to establish that proposition on the balance of probabilities.

[27] Here, those prerequisites exist. The plaintiff's judgment is therefore *prima facie* enforceable. The question then becomes: Have the defendants demonstrated that it is more likely than not that if the judgment is enforced in B.C., its enforcement will serve a penal or a public law purpose in the originating state?

[28] The evidence on this final issue is not as clear as one might like. However, on the whole of the evidence, and in particular Mr. Williams' evidence that the plaintiff's policy is to distribute the proceeds of judgment to injured investors, and given that the judgment describes a mechanism that the plaintiff may employ to achieve that distribution, I find that the defendants have not shown that it is more likely than not that the plaintiff will simply keep the proceeds of judgment to itself. I find, therefore, that the defendants have not discharged their burden of proof of showing that enforcement of the judgment in B.C. would be to serve a foreign penal or public law purpose.

[29] The plaintiff is entitled to the order that it seeks. The parties may be at liberty to apply to the court for directions concerning currency conversion or interest calculation.

[30] The plaintiff is entitled to its costs on Scale B.

“P.J. Rogers J.”  
The Honourable Mr. Justice Rogers

# EXHIBIT 23

NOT FILED

Jay D. Adkisson, SBN 12546  
RISER ADKISSON LLP  
2505 Anthem Village Drive, Suite E599  
Henderson, NV 89052  
Ph: 702-953-9617  
Fax: 877-698-0678  
E-Mail: jay@risad.com

Counsel for Defendant,  
Michael Patrick Lathigee

STATE OF NEVADA  
EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY  
Hon. Adriana Escobar, District Judge

BRITISH COLUMBIA SECURITIES  
COMMISSION,

Plaintiff,

— vs. —

MICHAEL PATRICK LATHIGEE,

Defendant.

Case No. A-18-771407-C {Dept. 14}

**DEFENDANT LATHIGEE'S  
INITIAL DISCLOSURES  
(NRCPC 16.1(a))**

Defendant, Michael Patrick Lathigee ("Lathigee"), hereby makes his Initial Disclosures, pursuant to NRCPC 16.1(a)(1), and reserves the right to amend and update these disclosures as further information becomes available and as discovery herein proceeds, as follows:

**Persons With Discoverable Information (NRCPC 16.1(a)(1)(A))**

1. Michael Patrick Lathigee, c/o Jay D. Adkisson, Riser Adkisson LLP, 6671 S. Las Vegas Blvd., Suite 210, Las Vegas, NV 89119, Ph: 702-953-9617, all relevant matters known to him about the underlying proceeding before the BCSC.
2. Earle Douglas Pasquill, 4027 W. 27th, Vancouver, BC, V5R 1R6, Ph: 604-328-5029, all relevant matters known to him about the underlying proceeding before the BCSC.
3. H. Roderick Anderson, Harper Grey LLP, 650 W. Georgia St., Suite 3200, Vancouver, BC V6B 4P7, Ph: 604-895-2849, all relevant matters known to him about the underlying proceeding before the BCSC.

4. Owais Ahmed, Harper Grey LLP, 650 W. Georgia St., Suite 3200, Vancouver, BC V6B 4P7, Ph: 604-895-2833, all relevant matters known to him about the underlying proceeding before the BCSC.
5. Graham Woods, address unknown, Ph: 604 228 2075, all relevant matters known to him about the underlying proceeding before the BCSC.
6. Bill Baker, address unknown but believed to be Gibsons Islands, BC, Ph: 877-318-8826, all relevant matters known to him about the underlying proceeding before the BCSC.
7. Derek Chapman, contact information and his discoverable information known to plaintiff.
8. Brent W. Aitken, contact information and his discoverable information known to plaintiff.
9. Audrey T. Ho, contact information and his discoverable information known to plaintiff.
10. Judith Downes, contact information and his discoverable information known to plaintiff.

#### **Discoverable Documents and Things (NRCP 16.1(a)(1)(B))**

- Filings of record in the underlying proceeding before the BCSC, which documents presumably are also within the possession and control of the plaintiff. These records are also available, at least in part, for inspection and copying at the offices of H. Roderick Anderson and Owais Ahmed, Harper Grey LLP, 650 W. Georgia St., Suite 3200, Vancouver, BC V6B 4P7, Ph: 604-895-2833.

#### **Computation of Damages (NRCP 16.1(a)(1)(C))**

- No damages claimed by defendant.

#### **Insurance Agreement (NRCP 16.1(a)(1)(D))**

- None.

//

DATED this 22nd day of May, 2018, by:

/s/ Jay D. Adkisson

Jay D. Adkisson  
Counsel for Defendant  
Michael Patrick Lathigee



## CERTIFICATE OF SERVICE

The following signature certifies that on this 22nd day of May, 2018, a full, true, and correct copy of the above and foregoing document was deposited in the U.S. Mail, with correct first-class postage affixed thereto, and address to counsel for the Plaintiff, British Columbia Securities Commission, to wit:

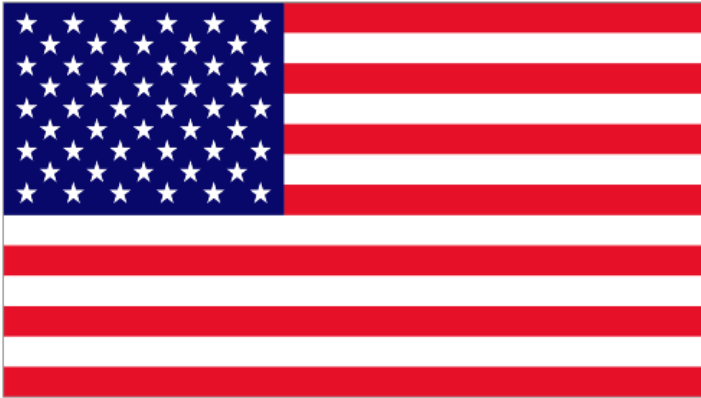
Kurt R. Bonds, SBN 6228  
Matthew M. Pruitt, SBN 12474  
ALVERSON TAYLOR *et al.*  
6602 Grand Montecito Parkway, Suite 200  
Las Vegas, NV 89149

/s/ Jay D. Adkisson

Jay D. Adkisson

# EXHIBIT 24

# MEMORANDUM OF UNDERSTANDING



**The United States  
Securities and Exchange Commission**



**British Columbia Securities Commission**

**Manitoba Securities Commission**

**New Brunswick Financial and Consumer  
Services Commission**

**Nova Scotia Securities Commission**

**Ontario Securities Commission**

**Commission des Valeurs Mobilières  
du Québec**

**Financial and Consumer Affairs  
Authority of Saskatchewan**

MEMORANDUM OF UNDERSTANDING

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

- AND -

ONTARIO SECURITIES COMMISSION

COMMISSION DES VALEURS MOBILIERES DU QUEBEC

BRITISH COLUMBIA SECURITIES COMMISSION

JANUARY 7, 1988

### MEMORANDUM OF UNDERSTANDING

The United States Securities and Exchange Commission, the Ontario Securities Commission, the Commission des valeurs mobilières du Québec and the British Columbia Securities Commission, recognizing the increasing international activity in securities markets and the corresponding need for mutual cooperation in matters relating to the administration and enforcement of United States and Canadian securities laws, have reached the following understanding with respect to requests for assistance as set out herein made between the United States Securities and Exchange Commission and a Canadian securities regulatory authority:

#### Article 1: Definitions

1. For the purposes of this Memorandum of Understanding:

(a) "Authority" means:

- (i) the Securities and Exchange Commission of the United States; or
- (ii) the Ontario Securities Commission, the Commission des Valeurs Mobilières du Québec, the British Columbia Securities Commission or any other Canadian securities regulatory

- 2 -

authority which becomes a party to this Memorandum of Understanding in the manner set out in Article 12.

(b) "requested Authority" means:

(i) where the requesting Authority is the United States Securities and Exchange Commission, the Canadian securities regulatory authority to which the request under this Memorandum of Understanding is made; or

(ii) where the requesting Authority is a Canadian securities regulatory authority, the United States Securities and Exchange Commission.

(c) "requesting Authority" means an Authority making a request under this Memorandum of Understanding.

(d) "person" means a natural person, unincorporated association, partnership, body corporate, government, political subdivision, agency, or instrumentality of a government.

(e) "issuer" means a person who issues or proposes to issue any security.

- 3 -

- (f) "investment businesses" means investment advisers, investment advisory services, investment companies, other collective investment undertakings, investment banks, brokers, dealers, and equivalent entities.
- (g) "securities processing businesses" means clearing corporations or securities transfer agents.
- (h) "laws or regulations" means the laws, regulations and regulatory policies applicable in the jurisdictions of the Authorities concerning securities regulation including, without limitation:
  - (i) insider trading;
  - (ii) misrepresentation or the use of fraudulent, deceptive, or manipulative practices in connection with the offer, purchase or sale of any security;
  - (iii) the duties of persons to comply with periodic reporting requirements or requirements relating to changes in corporate control;
  - (iv) the duties of persons, issuers or investment businesses to make full and fair disclosure of information relevant to investors;

- 4 -

- (v) the duties of investment businesses and securities processing businesses pertaining to both their financial, operational or other requirements and their duties of fair dealing in the offer and sale of securities and the execution of transactions; and
- (vi) the financial and other qualifications of those engaged in, or in control of, issuers, investment businesses or securities processing businesses.

#### Article 2: Scope of Assistance

1. The Authorities will provide the fullest mutual assistance, as contemplated by this Memorandum of Understanding. Such assistance will be provided to facilitate the performance of securities market oversight functions and the conduct of investigations, litigation or prosecution in cases where information located within the jurisdiction of the requested Authority is needed to determine whether, or prove that, the laws or regulations of the requesting Authority may have been violated.



- 5 -

2. Assistance available under this Memorandum of Understanding includes but is not limited to:

- (a) providing access to information in the files of the requested Authority;
- (b) taking the evidence of persons; and
- (c) obtaining documents from persons.

3. The Authorities recognize that they may not in all circumstances possess the legal authority to provide the assistance contemplated in this Memorandum of Understanding. Subject to such limitations of legal authority, the Authorities will use all reasonable efforts to obtain the necessary authorization to provide the assistance described in this Memorandum of Understanding.

#### Article-3: General Principles

1. This Memorandum of Understanding sets forth a statement of intent of the Authorities regarding the exchange of information between the Authorities.

2. The execution of this Memorandum of Understanding does not prohibit any Authority from taking measures other than as provided herein to obtain information, evidence or documents located in the jurisdiction of another Authority or in the possession or under the control of a national of another Authority necessary to ensure compliance with or enforce the laws or regulations of its jurisdiction, provided that such Authority:

- 6 -

- (i) utilizes moderation and restraint in taking such additional measures;
- (ii) where the information is located within the territory of the other Authority, makes a request to the other Authority pursuant to this Memorandum, or otherwise, prior to taking such other measures;
- (iii) notifies the other Authority before using measures not contemplated by this Memorandum of Understanding; and
- (iv) consults, if so requested, concerning how such measures may affect the interests of the other Authority and its government.

Notwithstanding these restrictions:

- (a) a requesting Authority may communicate with any person in the jurisdiction of the requested Authority who voluntarily agrees to provide the information or documents requested; and
- (b) requests for information which is available from any public source in the jurisdiction of the requested Authority may be communicated on an informal basis without compliance with the terms of this Memorandum of Understanding.

- 7 -

3. The provisions of this Memorandum of Understanding will not give rise to a right, directly or indirectly, on the part of any person, other than the Authorities, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.

4. Assistance under this Memorandum of Understanding may be denied by the requested Authority on grounds of public interest.

Article 4: Requests for Assistance

1. Requests for assistance must be made in writing and addressed to the requested Authority's contact officer listed in Appendix A.

2. The request for assistance will specify the following:

- (a) a general description of the documents, information and testimony of persons sought by the requesting Authority;
- (b) a general description of both the matter which is the subject of the request and the purpose for which the information is sought;
- (c) the persons believed by the requesting Authority to possess the information sought, or the places where such information may be obtained, if the requesting Authority is knowledgeable thereof;

- 8 -

- (d) the legal provisions pertaining to the matter which is the subject of the request; and
- (e) the desired time period for the reply.

3. Requests for assistance may be denied where the request is not in accordance with the provisions set forth in this Memorandum of Understanding.

4. In the event of urgency, requests for assistance and replies to such requests will be effected by summary procedures or by means of communication other than the exchange of letters, provided that all such communications are confirmed in the manner prescribed in this Article.

#### Article 5: Execution of Requests

1. In making a request for assistance the Requesting Authority may designate the persons whose testimony it wishes to be taken.

2. The testimony of persons involved, directly or indirectly, in the activities underlying the request or holding information which may assist in carrying out the request will be taken, and the production of other evidence will be required, by the requested Authority or any other party or parties that it designates.

- 9 -

3. The testimony of persons will be taken in the same manner and to the same extent as in investigations or other proceedings in the jurisdiction of the requested Authority. Notwithstanding any other provision of this Memorandum of Understanding, any person giving testimony as a result of a request made under this Memorandum of Understanding will be entitled to all of the rights and protections of the laws of the jurisdiction of the requested Authority. Assertions regarding other rights and privileges arising exclusively pursuant to the law of the jurisdiction of the requesting Authority shall be preserved for consideration by the courts in the jurisdiction of the requesting Authority.

4. Access to information held in the files of the requested Authority will be provided upon request of the requesting Authority.

5. When requested by the requesting Authority, testimony will be taken under oath and a transcript will be made. In addition, a representative of the requesting Authority may be present at the taking of testimony and, subject to approval by the requested Authority and to paragraph 6, may prescribe specific questions to be asked of any witness or otherwise participate in the examination of any witness.

- 10 -

6. Subject to the following conditions, a requested Authority may grant a request made by the requesting Authority that a person or persons designated by the requesting Authority be permitted to conduct the interrogation of any person:

- (a) the requesting Authority must specify the reasons for this request.
- (b) the request may be granted or denied by the requested Authority in its discretion. The requested Authority may impose such conditions on the participation of the requesting Authority as it deems appropriate.
- (c) if the request is granted and the laws of the jurisdiction of the requesting Authority require the opportunity for counsel to the witness or any party to the proceeding, his counsel, or both, to pose questions to the witness, such participation will be permitted; and

- 11 -

- (d) if the request is denied, the Authorities agree to consult pursuant to Article 8 concerning the reasons for the denial and the circumstances under which the request might be granted.

**Article 6: Permissible Use of Information**

1. The requesting Authority may use the information furnished solely:

- (a) for the purposes stated in the request with respect to ensuring compliance with or enforcement of the laws and regulations of the requesting Authority including the legal provisions specified in the request and related provisions; and
- (b) for purposes within the general framework of the use stated in the request including conducting a civil or administrative enforcement proceeding, assisting in a criminal prosecution, assisting in a self-regulatory enforcement proceeding, or conducting any investigation related thereto for any general charge applicable to the violation of the provisions specified in the request.

- 12 -

2. The requesting Authority will not use the information furnished for any purpose other than those stated in paragraph 1 of this article, unless it has first informed the requested Authority of its intention and the requested Authority has not objected to such intended use of the information. If the requested Authority opposes such use, the information may be used only under the conditions imposed by the requested Authority. If use of the information is opposed by the requested Authority, the Authorities agree to consult pursuant to Article 8 concerning the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

Article 7: Confidentiality of Requests

1. Each Authority will keep requests made under this Memorandum of Understanding, the contents of such requests, information gathered in response to requests, and any other matters arising during the operation of this Memorandum of Understanding, including consultations between the Authorities, confidential, to the extent permitted by law, except for disclosures which are absolutely necessary to carry out the request, provided that such confidentiality may be waived by the mutual agreement of the requesting Authority and the requested Authority.



- 13 -

2. The Authorities will keep confidential, to the extent permitted by law, any information provided pursuant to this Memorandum of Understanding subject to the terms of this paragraph, unless it is disclosed in furtherance of the purpose for which it was requested under Article 6.

3. Except as contemplated by Article 6, the requesting Authority will not offer the information to, and shall use its best efforts to ensure that it is not obtained by, any other person. Unless otherwise agreed, if such information is obtained by any other person, the requesting Authority will use its best efforts to ensure that such information will not be used by that person in any way that involves disclosure to any other person.

4. The requesting Authority will notify the requested Authority of any legally enforceable demand for information prior to complying with the demand and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.

5. As soon as the requesting Authority has terminated the matter for which assistance has been requested under this Memorandum of Understanding, it will return to the requested Authority, to the extent permitted by law, all documents and copies thereof not already disclosed in proceedings referred to in Article 6 and other material

- 14 -

disclosing the contents of such documents, other than material which is generated as part of the deliberative or internal analytical process of the requesting Authority.

6. Any document or any other material provided by an Authority in response to a request under this Memorandum of Understanding and any other material disclosing its content, other than material which is generated as part of the deliberative or internal analytical process of the requesting Authority, will not become the property of the requesting Authority, and must be redelivered to the requested Authority without delay on demand to the extent permitted by the law of the requesting Authority; provided that such demand may be made only if the requested Authority has reason to believe that the information has been or is likely to be disclosed or used otherwise than as contemplated by Article 6 above.

Article 8: Disputes and Consultations

1. In any case of dispute over the meaning of any term used in this Memorandum of Understanding, the parties will define the terms herein in accordance with the relevant laws of the jurisdiction of the requesting Authority.
2. The Authorities will engage in consultations with respect to this Memorandum of Understanding with a view to improving its operation and resolving any matters which may arise. In particular, the Authorities will consult upon request in the event of:

- 15 -

- (a) a refusal by one Authority to comply with a request for information on the grounds set forth in paragraph 4 of Article 3; or
- (b) a change in market or business conditions, or in the legislation governing the matters set forth in paragraph 1(h) of Article 1, or any other difficulty which makes it necessary or appropriate to amend or extend this Memorandum of Understanding in order to achieve its purposes.

3. The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Memorandum of Understanding.

4. Any of the conditions of this Memorandum of Understanding may be amended, relaxed or waived by mutual agreement.

Article 9: Unsolicited Assistance

1. To the extent permitted by the laws and regulations of its jurisdiction, each Authority will use reasonable efforts to provide the other Authority with any information it discovers which gives rise to a suspicion of a breach, or anticipated breach, of the laws or regulations of the other Authority.

- 16 -

Article 10: Costs of Investigation

1. If it appears that responding to a request for assistance under this Memorandum of Understanding will involve substantial costs being incurred by the requested Authority, the requested Authority and the requesting Authority will establish a cost sharing arrangement before continuing to respond to such request for assistance.

Article 11: International Law

1. The execution of this Memorandum of Understanding will not prejudice the respective positions of the Authorities and their governments concerning the principles of international law applicable to procedures for obtaining information located in another jurisdiction as contemplated in Article 3.

2. The Authorities acknowledge that when the treaty between the governments of Canada and the United States of America on Mutual Legal Assistance in Criminal Matters is duly implemented and ratified it, in addition to this Memorandum of Understanding, will constitute a framework of principles and procedures for investigating and obtaining information concerning certain kinds of securities law offences.

- 17 -

Article 12: Execution

1. This Memorandum of Understanding will be effective from the date of its execution by the United States Securities and Exchange Commission, the Ontario Securities Commission, the Commission des valeurs mobilières du Québec and the British Columbia Securities Commission.
2. Any Canadian securities regulatory authority may become a party to this Memorandum of Understanding by executing a counterpart thereof together with the Securities and Exchange Commission and providing notice of such execution to the other Canadian securities regulatory authorities which are parties to this Memorandum of Understanding.

Article 13: Termination

1. This Memorandum of Understanding may be terminated as to any Authority by that Authority giving 30 days notice to the other Authorities that this Memorandum of Understanding is no longer in effect as to the terminating Authority's area of competence. If any Authority gives such notice, this Memorandum of Understanding will continue to have effect with respect to all requests for assistance which are

- 18 -

made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested.

DATED this 7th day of January, 1988

United States Securities  
and Exchange Commission

by David S. Ruder  
D. S. Ruder  
Chairman

Ontario Securities  
Commission

by S. M. Beck  
S. M. Beck, Q.C.  
Chairman

British Columbia  
Securities Commission

by D. M. Hyndman  
D. M. Hyndman  
Chairman

Commission des valeurs  
mobilières du Québec

by P. Guy  
P. Guy  
President

## ADDENDUM

Pursuant to this Addendum, in accordance with Article 12, paragraph 2, the New Brunswick Financial and Consumer Services Commission, the Nova Scotia Securities Commission, the Manitoba Securities Commission, and the Financial and Consumer Affairs Authority of Saskatchewan hereby become parties to this MOU.



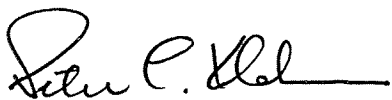
---

Mary Jo White

Chair

For the United States Securities and Exchange Commission

Date: 9/29/15



---

Peter Klohn

Chair

For the New Brunswick Financial Consumer and Services Commission

Date: 10/6/15.



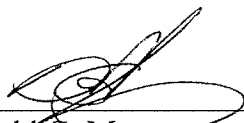
---

Paul Radford, Q.C.

Vice-chair and Acting Chair

For the Nova Scotia Securities Commission

Date: 10/8/15



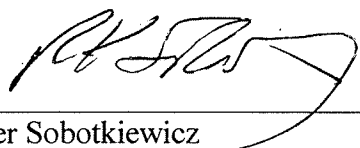
---

Donald G. Murray

Chair and CEO

For the Manitoba Securities Commission

Date:



---

Roger Sobotkiewicz

Acting Chairperson

For the Financial and Consumer Affairs Authority of Saskatchewan

Date: 10/13/15

- 19 -

APPENDIX ACONTACT OFFICERS

United States Securities and Exchange Commission  
450 5th Street N.W.  
Washington, D.C.  
U. S. A. 20549

Tel: (202) 272-2900

Attention: Director, Division of Enforcement

Ontario Securities Commission  
Suite 1800, 20 Queen Street West  
Toronto, Ontario  
M5H 3S8  
Canada

Tel: (416) 597-0681

Attention: Deputy Director, Enforcement and Market  
Regulation Branch

Commission des valeurs mobilières du Québec  
Tour de la Bourse  
C.P. 246, 17th Floor  
Montreal, Quebec  
H4Z 1G3  
Canada

Tel: (514) 873-5326

Attention: Directeur des affaires juridiques

British Columbia Securities Commission  
Suite 1100, 865 Hornby Street  
Vancouver, B.C.  
V6Z 2H4

Tel: (604) 660-4800

Attention: Manager, Compliance Branch



**Appendix A (continued)****CONTACT OFFICERS**

**United States Securities and Exchange Commission**  
100 F Street, NE  
Washington, DC 20549-1004  
U.S.A.

**Attention:** Director, Office of International Affairs

**Tel:** (202) 551-6690

**Fax:** (202) 772-9280

---

**Manitoba Securities Commission**  
500-400 St. Mary Avenue  
Winnipeg, MB  
R3C 4K5 Canada

**Attention:** Director

**Tel:** (204) 945-2561

**Fax:** (204) 945-0330

---

**New Brunswick Financial and Consumer Services Commission**  
85 Charlotte Street, Suite 300  
Saint John, NB, Canada  
E2L 2J2

**Attention:** Director of Enforcement

**Tel:** 1 (866) 933-2222

**Fax:** (506) 658-3059

---

**Appendix A (continued)****Nova Scotia Securities Commission**

Suite 600, Duke Tower  
5251 Duke Street  
Halifax, NS  
B3J 1P3 Canada

**Attention:** Director of Enforcement

**Tel:** (902) 424-7768

**Fax:** (902) 424-4625

---

**Financial and Consumer Affairs Authority of Saskatchewan**

Suite 601  
1919 Saskatchewan Drive  
Regina, SK  
S4P 4H2 Canada

**Attention:** Deputy Director, Enforcement, Securities Division

**Tel:** (306) 787-5850

**Fax:** (306) 787-5899

# EXHIBIT 25

United States (Securities & Exchange Commission) v. Shull, 1999 CarswellBC 1772

1999 CarswellBC 1772, [1999] B.C.J. No. 1823, 43 W.C.B. (2d) 247

1999 CarswellBC 1772  
British Columbia Supreme Court [In Chambers]  
United States (Securities & Exchange Commission) v. Shull  
1999 CarswellBC 1772, [1999] B.C.J. No. 1823, 43 W.C.B. (2d) 247

**Curtis Pfunder, Receiver of the United States Securities and Exchange  
Commission v. Shull et al Disgorgement Fund, Plaintiff and Robert L. Shull,  
Leonard E. Fiessel and Colleen A. Fiessel, Defendants**

Baker J.

Judgment: August 5, 1999  
Heard: December 11, 1998  
Docket: Vancouver A980249

Counsel: *Malcolm N. Ruby*, for Plaintiff.  
*Robert S. Anderson*, for Defendant, Robert Shull.  
*D. Geoffrey G. Cowper, Q.C.* and *Erin Ryder*, Articled Student, for Defendants, Fiessel and Fiessel.

Subject: Criminal; Civil Practice and Procedure

**Headnote**

Practice --- Disposition without trial — Stay or dismissal of action — Grounds — Another proceeding pending — Criminal proceeding

United States Securities and Exchange Commission filed civil action against defendants alleging violations of Securities Act and Exchange Act — Defendants allegedly acquired shares of Canadian corporation and paid kickbacks to stock brokers in United States to sell shares at inflated prices — Default judgments were granted against two defendants — Receiver was appointed to bring action in Canada for recovery of funds — Both defendants were indicted in United States on criminal charges — Order for extradition had not yet been sought — Defendants applied for stay of action pending determination of extradition proceedings to be brought by United States and determination of criminal proceedings in United States — Alternatively, defendants applied for adjournment of plaintiff's summary trial application until further disclosure and until representative of plaintiff was cross-examined — Application dismissed — Right to fair trial in United States would not be prejudiced if plaintiff proceeded with action — Plaintiff did not intend to compel defendants to testify — Section 5(1) of Canada Evidence Act abolished common law right of witness to refuse to answer question on ground that answer might tend to incriminate — No grounds for cross-examination of plaintiff's representative or adjournment to permit cross-examination — Plaintiff agreed to respond to interrogatories and respond to further requests for production of documents — Canada Evidence Act, R.S.C. 1970, c. E-10, s. 5(1) — Securities Act, 1933 — Securities Exchange Act of 1934, 48 Stat. 881; 15 U.S.C.

**Table of Authorities**

**Cases considered by *Baker J.*:**

*National Financial Services Corp. v. Wolverton Securities Ltd.*, 46 B.C.L.R. (3d) 275, [1998] 7 W.W.R. 664, 19 C.P.C. (4th) 239 (B.C. S.C.) — considered

*Stickney v. Trusz* (1973), 2 O.R. (2d) 469, 25 C.R.N.S. 257, 16 C.C.C. (2d) 25, 45 D.L.R. (3d) 275 (Ont. H.C.) — applied

*Stickney v. Trusz* (1974), 28 C.R.N.S. 125, 3 O.R. (2d) 538, 17 C.C.C. (2d) 478, 46 D.L.R. (3d) 80 (Ont. C.A.) —

**United States (Securities & Exchange Commission) v. Shull, 1999 CarswellBC 1772**

1999 CarswellBC 1772, [1999] B.C.J. No. 1823, 43 W.C.B. (2d) 247

applied

*Summa Corp. v. Meier* (1981), 30 B.C.L.R. 69, 127 D.L.R. (3d) 238 (B.C. C.A.) — applied

**Statutes considered:**

*Canada Evidence Act*, R.S.C. 1970, c. E-10

Generally — referred to

s. 5(1) — referred to

*Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Generally — referred to

s. 7 — referred to

*Securities Act, 1933*

Generally — referred to

*Securities Exchange Act of 1934*, 48 Stat. 881; 15 U.S.C.

Generally — referred to

APPLICATION by defendants for stay of action pending determination of extradition proceedings to be brought by United States and determination of criminal proceedings in United States, or in alternative, application for adjournment of plaintiff's summary trial application until further disclosure and until representative of plaintiff was cross-examined.

**Baker J.:**

1 The defendant Robert Shull seeks a stay of this action pending the determination of extradition proceedings to be brought by the United States of America, and final determination of criminal proceedings in the United States, on the ground that his right against self incrimination under the Fifth Amendment to the Constitution of the United States will be violated if this action proceeds.

2 Alternatively, in the event that this court is bound by the decision in *National Financial Services Corp. v. Wolverson Securities Ltd.*, unreported, Henderson, J., S.C.B.C. Vancouver Registry No. C975452, February 8, 1998, [reported (1998), 46 B.C.L.R. (3d) 275 (B.C. S.C.)] the defendant seeks a stay until an appeal from that decision to the British Columbia Court of Appeal has been decided.

3 In the further alternative, the defendant seeks an adjournment of the plaintiff's summary trial application until the plaintiff has made further disclosure of documents, and until the defendant has conducted cross-examination of Kate Poverman, a representative of the plaintiff, on her affidavit sworn July 16, 1998. The Fiessel defendants support the applications of the defendant Shull.

4 The stay application was scheduled to be heard at the same time as the plaintiff's summary trial application for judgment against all of the defendants, but the time reserved for the hearing was inadequate, and the parties agreed to adjourn the summary trial. The plaintiff also agreed to respond to interrogatories.

**Facts**

5 The uncontroverted affidavit of Ms. Poverman, who is a Senior Enforcement Counsel for the United States Securities and Exchange Commission ("the Commission"), sets out the background of this action.

**United States (Securities & Exchange Commission) v. Shull, 1999 CarswellBC 1772**

---

1999 CarswellBC 1772, [1999] B.C.J. No. 1823, 43 W.C.B. (2d) 247

---

6 The Commission is an independent regulatory agency of the United States of America. Its role is to administer U.S. federal securities laws, which provide the Commission with a variety of investigative, enforcement and regulatory powers. Two primary sources of the Commission's jurisdiction are the *Securities Act* of 1933 and the *Securities Exchange Act* of 1934. U.S. courts have determined that these laws are remedial legislation.

7 Criminal proceedings brought under these *Acts* are prosecuted by the Department of Justice, heard before federal district courts, and require proof beyond a reasonable doubt. Civil and administrative proceedings are brought by the Commission, heard before federal district courts in the case of civil proceedings, or before administrative law judges in the case of administrative proceedings, and require proof on the balance of probabilities.

8 In civil proceedings, the Commission may seek an order requiring defendants to disgorge profits obtained in the course of engaging in acts or practises that violate the federal securities laws. The court may order the defendants to pay funds, together with interest, into court. Disgorged funds may then be distributed to creditors, investors and others pursuant to a plan of distribution approved by the court and administered by a Receiver appointed by the court.

9 Between 1992 and 1994, the Commission investigated transactions involving the sale in the United States of shares of a Canadian corporation, Fairmont Resources Inc. During the investigation, Mr. Shull and the Fiessels agreed to be examined under oath concerning their knowledge of and involvement in the affairs of Fairmont Resources Inc. Ms. Poverman's affidavit contains excerpts from the transcript of an examination of Robert Shull in Boston, Massachusetts on January 14, 1994; excerpts from the transcript of an examination of Leonard Fiessel in Las Vegas, Nevada on February 28, 1994, and excerpts from the transcript of an examination of Colleen Fiessel in Las Vegas, Nevada on March 4, 1994.

10 On August 31, 1994, the Commission filed a civil action in the District Court of the District of Massachusetts against the three defendants in this action, and six others, alleging that they had participated in a fraudulent scheme to manipulate Fairmont Resources Inc. stock. Specifically, the Commission alleged that Shull and the Fiessels acquired shares of Fairmont cheaply at a time when the corporation was inactive and then paid kickbacks to stock brokers in the United States, who promoted and sold over one million shares of the stock. The scheme created the appearance of an active market for the stock enabling the defendants to sell their stock at inflated prices, realizing over \$1 million U.S. in profit. The Commission alleged violations of the *Securities Act* and the *Exchange Act* involving misrepresentations and omissions of material facts, and sales of stock without the filing of a registration statement.

11 Mr. Shull and the Fiessels were personally served in British Columbia with the U.S. Summons and Complaint. On April 26, 1996, the District Court issued a Notice of Default to the defendants Fiessel for failure to defend, and on August 21, 1996, granted judgments by default against both of the Fiessels. The Court ordered Leonard Fiessel to disgorge \$560,611.92 and ordered Colleen Fiessel to disgorge \$139,602.11.

12 Robert Shull initially entered an appearance and filed an answer denying the allegations against him. However, on June 28, 1996, through his attorney, he filed a consent to the entry of judgment against him, which was formally entered on August 21, 1996. He consented to an order that he disgorge \$667,770.46. He waived any right to appeal from the judgment, and agreed that the District Court retained jurisdiction for the purpose of enforcing the judgment.

13 No appeal has been brought by any of these defendants against these judgments in the United States. Ms. Poverman deposed that the judgments are considered final under U.S. law.

14 On April 14, 1997, the District Court appointed the plaintiff, Curtis Pfunder, as Receiver, and on November 21, 1997 authorized him to bring action in Canada to attempt to recover the funds ordered to be disgorged by these defendants. The British Columbia action was commenced by Writ of Summons and Statement of Claim on January 26, 1998.

15 On April 8, 1998, the United States Attorney for the District of Massachusetts indicted Robert Shull and Leonard Fiessel on criminal charges. Ms. Poverman deposed that the United States is currently in the process of seeking extradition of these two defendants to the United States, although counsel for Mr. Shull stated at the hearing of this application that no warrant of apprehension had been issued and that the defendants did not know if extradition proceedings had actually been commenced. No order for the extradition of any of the defendants had been sought or obtained at the time of hearing. The

**United States (Securities & Exchange Commission) v. Shull, 1999 CarswellBC 1772**

1999 CarswellBC 1772, [1999] B.C.J. No. 1823, 43 W.C.B. (2d) 247

defendant Colleen Fiessel is not a defendant in U.S. criminal proceedings.

16 Plaintiff's counsel informed the court that he does not intend to conduct examinations for discovery of the defendants and does not seek to compel them to testify. He submits that it will not be necessary for the defendants to testify on their own behalf. The defendants filed no affidavits and their counsel did not assert that it would be necessary for them to testify about matters relating to the substance of the criminal charges. Counsel for the Fiessels told the court that if the action is not stayed, his clients would want to give evidence of facts relevant to the issue of jurisdiction of the District Court. Counsel for Mr. Shull stated that his client might also want to give evidence about jurisdictional issues. It is difficult to see what jurisdictional issues Mr. Shull could raise, however, given the admissions made by him in the consent judgment in the District Court.

**The Law, Analysis, and Decision**

17 In *Stickney v. Trusz* (1973), 2 O.R. (2d) 469 (Ont. H.C.), the court held that civil proceedings will only be stayed on the ground that related criminal proceedings are pending where the right of an accused to a fair trial may otherwise be prejudiced. He held that the fact that an accused may be compelled in the civil proceedings to incriminate himself, subject only to the protection of the *Canada Evidence Act*, is not sufficient reason for the granting of a stay. [This decision was upheld by the Ontario Divisional Court and the Court of Appeal, see \(1974\), 3 O.R. \(2d\) 538 \(Ont. C.A.\).](#)

18 In *Summa Corp. v. Meier* (1981), 127 D.L.R. (3d) 238 (B.C. C.A.), the British Columbia Court of Appeal refused to stay an examination in aid of execution of a defendant on a foreign judgment on which judgment had been granted in British Columbia. The defendant seeking the stay was facing criminal prosecution in the United States for first degree murder and income tax evasion. Matters concerning the defendant's financial circumstances were directly relevant to the murder charge, because tracing of the proceeds of an insurance policy was a key part of the prosecution's case.

19 The Court of Appeal held, nevertheless, that the common law right of a witness to refuse to answer a question on the ground that his answer might tend to incriminate him was abolished by s. 5(1) of the *Canada Evidence Act*.

20 These decisions continue to be binding upon me, unless the law has been altered by the *Canadian Charter of Rights and Freedoms*. In a recent decision in *National Financial Services Corp. v. Wolverton Securities Ltd.*, unreported, Vancouver Registry C975452, February 6, 1998 [reported (1998), 46 B.C.L.R. (3d) 275 (B.C. S.C.)] Justice Henderson concluded that these authorities are still the law in British Columbia. National Financial Services Corporation alleged that the defendants had conspired to defraud the public by manipulating the market price of publicly traded shares of H & R Enterprises Inc. The stock was traded over the counter on the National Association of Securities Dealers OTC Bulletin Board in the United States. The plaintiff had also commenced an action in Florida, and the defendants were under active investigation by the United States Justice Department and the RCM Police. A grand jury had been struck in New York for the purpose of investigating the alleged scheme.

21 The applicants for the stay argued that evidence obtained from them in the British Columbia action by means of examination for discovery and production of documents would be admissible in evidence in a criminal prosecution in the United States, and that the defendants would be left with no practical way to exercise their right against self-incrimination in the United States.

22 Justice Henderson refused the stay. He held that no constitutional right enshrined in the *Canadian Charter* was threatened, and that the request for the stay was premised on the notion that a Canadian court should do everything in its power to make up for a presumed deficiency in American law. Applying the earlier authorities, he concluded that the fact that a civil defendant in Canada is charged with a criminal offence in the United States, and may therefore incriminate himself at an examination for discovery, is not a special circumstance justifying a stay of proceedings.

23 The decision is currently under appeal. On April 30, 1998, Justice Rowles granted leave to appeal and a ordered a stay of Justice Henderson's order pending the appeal. She stated that the issue of whether the earlier authorities relied upon by Justice Henderson are still good law in light of section 7 of the *Charter* and decisions of the Supreme Court of Canada on subsequent immunity, is a matter of general importance of sufficient merit to be considered on appeal. A status report from the Court of Appeal Registry on August 3, 1999 indicated that the appeal had not been scheduled for hearing.

**United States (Securities & Exchange Commission) v. Shull, 1999 CarswellBC 1772**

---

1999 CarswellBC 1772, [1999] B.C.J. No. 1823, 43 W.C.B. (2d) 247

---

24 Counsel for the defendants contend that the facts in this case can be distinguished from the facts in *National Financial Services Corp. v. Wolverson Securities Ltd.*. Alternatively, they argue that this action ought to be stayed pending the hearing of the appeal.

25 I do not agree with either of these submissions. Justice Henderson's decision is in conformity with earlier decisions of the Court of Appeal which are binding upon me. He has given careful consideration to the possible relevance of the *Charter of Rights and Freedoms*. His decision represents the current state of the law in British Columbia, and is binding upon me unless and until it is reversed on appeal.

26 I also do not agree that the decision can be distinguished on its facts. It is true that in that case no criminal charges had been commenced in the United States when the application for a stay was brought and Justice Henderson weighed that factor in determining whether the applicants had established significant prejudice. This was only one of the factors weighed by Justice Henderson, however, and I disagree that it was a determinative factor. As well, in the earlier authorities followed by Justice Henderson, charges more serious than those faced by the applicants in this matter were pending and the stay was, nevertheless, refused.

27 The other distinguishing facts support the refusal of a stay in this proceeding. In the *National Financial Services* case, the plaintiff intended to examine the defendants for discovery. Here the plaintiff does not seek to compel the defendants to testify, at discovery, or at trial. Mr. Shull and the Fiessels have already voluntarily testified in the United States during the investigatory stage of the Commission's activities, about the very matters that will be in issue in the criminal proceedings. Counsel for the plaintiff informed the court that before testifying each defendant was cautioned and waived his or her right against self-incrimination. Counsel for the defendants took no issue with this assertion.

28 As well, in this proceeding, the plaintiff is seeking only to enforce judgments obtained in the District Court. Counsel for the defendants stated that the issues on which the defendants intend to testify are jurisdictional. It is unlikely that the defendants, in order to defend this proceeding, will be compelled to give evidence about substantive issues which could incriminate them. It must also be remembered that Colleen Fiessel is not the subject of criminal charges in the United States.

29 While this action in British Columbia does arise out of the same transactions which have led to the criminal charges in the United States, I do not agree with the submission of Mr. Shull's counsel that the circumstances are "exceptional" or "extraordinary" because Ms. Poverman has participated in both civil and criminal investigations in the United States. I am also satisfied that the disgorgement order is neither a penal sanction nor a taxation measure. The fact that the plan of the Receiver for distribution of any funds which may be recovered from these or other defendants provides for the payment of some taxes does not convert this action into a proceeding for the enforcement of a taxing statute.

30 The defendants have failed to establish that their right to a fair trial in the United States will be prejudiced if the plaintiff is permitted to proceed with the action to enforce the U.S. District Court disgorgement orders. They have failed to show extraordinary or special circumstances justifying the imposition of a stay. The application for a stay is dismissed. The application to adjourn the plaintiff's summary trial application until the disposition of the appeal in *National Financial Services Corp. v. Wolverson Securities Ltd.* is also dismissed.

31 Counsel for the plaintiff advised the court that the plaintiff had agreed to respond to interrogatories, and would provide additional documents, subject to judicial rulings on any disputed requests for production, before resetting the summary trial. Based on the evidence and submissions before me, no ground was established for an order for the cross-examination of Ms. Poverman on her affidavit, or for an adjournment of the summary trial to permit such cross-examination to occur. Ms. Poverman's affidavit is uncontroverted. The questions raised by counsel for the defendants about her role in the investigations - criminal, civil and administrative - are, in my view, irrelevant to the issues before the court in this action. The application to cross-examine Ms. Poverman is dismissed, but the defendants have leave to reapply if new evidence or information casting doubt on the accuracy of Ms. Poverman's affidavit is disclosed by the answers to interrogatories or further document production.

32 The plaintiff is entitled to costs of this application, in any event of the cause.

*Application dismissed.*



**United States (Securities & Exchange Commission) v. Shull, 1999 CarswellBC 1772**

---

1999 CarswellBC 1772, [1999] B.C.J. No. 1823, 43 W.C.B. (2d) 247

---

**End of Document**

Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

# EXHIBIT 26

Citation: United States Securities and  
Exchange Commission v. Date: 20000329  
Robert H. Cosby AND Global Docket No.: C992041  
Action Investments Limited Registry: Vancouver  
2000 BCSC 0338

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

PLAINTIFF/RESPONDENT

AND:

**ROBERT H. COSBY and GLOBAL ACTION INVESTMENTS LIMITED**

DEFENDANTS/APPLICANTS

**REASONS FOR JUDGMENT**

**OF THE**

**HONOURABLE MR. JUSTICE WARREN**

Counsel for the Plaintiff/Respondent:

M.N. Ruby  
J.G. Howard

Counsel for the Defendant/Applicant,  
Global Action Investments Limited:

G.G. Plottel

Place and Date of Hearing:

Vancouver, B.C.  
May 27 & 28, 1999

Written submissions: August 6, October 5, November 1, 8, 19,

22 and December 13, 1999

2000 BCSC 338 (CanLII)

**United States Security and Exchange Commission v.  
Robert H. Cosby and Global Action Investments Limited**      **Page: 2**

---

[1]            This is an application by the defendant, Global Action Investments Ltd., ("Global") under Rule 34 of the **Rules of Court** to have determined a point of law arising from the pleadings in this action. The plaintiff, the United States Securities and Exchange Commission ("SEC"), had obtained a final default judgment in the United States District Court for the Southern District of New York against the defendant, Robert H. Cosby ("Cosby") in the amount of \$779,971 (U.S.) based upon an original complaint that Cosby had engaged in fraudulent schemes to raise capital for a Nevada corporation. Cosby left the United States prior to the hearing and default judgment followed. Some time later Cosby was detained at Vancouver International Airport upon his arrival on a flight from Hong Kong. He was refused entry to Canada and returned to Hong Kong, but only after the R.C.M.P. had seized over \$100,000 (U.S.) in various currencies that Cosby was carrying with him. That money is claimed by the plaintiff under its judgment and, as well, by Global which bases its claim upon a written direction from Cosby that the seized funds should be paid over to Global.

[2]            The plaintiff says that the seized funds are traceable to Cosby's fraudulent conduct and should be used in satisfaction of the judgment of the U.S. District Court.

[3]            Global defends the claim asserting ownership of the funds. Global is seeking an order that the funds be disbursed

2000 BCSC 338 (CanLII)

to it. More importantly, for the purposes of this application, Global says that the default judgment of the U.S. District Court is unenforceable in this Court because it is a foreign penal judgment.

[4] The narrow issue therefore to be determined is whether the foreign default judgment against Cosby is a foreign penal judgment and unenforceable in this jurisdiction. The parties agree that the determination of this issue will either substantially dispose of the entire action or provide a distinct ground for defence.

#### **Submissions of the Applicant/Defendant, Global**

[5] Global relies heavily on the decision in *Huntington v. Attrill*, [1893] A.C. 150 (P.C.) in support of its submission that a foreign penal claim is unenforceable and since the claim of the plaintiff is based upon an unenforceable judgment, the British Columbia proceeding is groundless.

[6] Defendant's counsel argues that the statutory and regulatory provisions make it clear that the monetary elements of the default judgment are in the nature of a penalty imposed by the state and enforceable by the state and, accordingly, the default judgment is penal in nature. Further, because the focus of the *Securities Act* and the *Exchange Act* is clearly to regulate securities transactions by providing **in part** for

**United States Security and Exchange Commission v.  
Robert H. Cosby and Global Action Investments Limited** Page: 4

---

punitive sanctions for breaches thereby protecting the "national public interest", the enforcement of the protective interests clearly distinguishes the proceedings in the United States from a private action designed to reimburse an individual from losses he has suffered. Because the judgment refers to "disgorgement of ill-gotten gains" and not to any "losses suffered by an investor", the monetary penalties clearly relate to the alleged profit and not to any damages suffered by any investor. Thus, the default judgment must be punitive and not compensatory or remedial.

[7] A number of authorities were referred to by Global's counsel including J.G. Castel, **Canadian Conflict of Laws**, 3d ed. (Toronto: Butterworths, 1994) at pp. 161-162; L. Collins, gen. ed., **Dicey and Morris on the Conflict of Laws**, 11th ed. (London: Stevens, 1987); **A.G. New Zealand v. Ortiz**, [1982] 3 All E.R. 432 (C.A.); **United States v. Harden**, (1962), 36 D.L.R.(2d) 602 (B.C.C.A.), affirmed (1963), 44 W.W.R. 630 (S.C.C.); **Old North State Brewing Co. v. Newlands Services Inc.** (1998), 58 B.C.L.R. (3d) 144; **Schemmer v. Property Resources Ltd.**, [1974] 3 All E.R. 451 (Ch.D.); **McIntyre Porcupine Mines Ltd. v. Hammond** (1975), 119 D.L.R. (3d) 139 (Ont. H.C.). In supplemental submissions Global also relies upon the decision of the Supreme Court of Canada in **Prudential Exchange Company Ltd. v. Edwards**, [1939] S.C.R. 135.

[8] In *Ortiz, supra*, at page 466 Ackner L.J. stated:

The question whether a foreign law is penal must be decided by the English court. It must determine for itself, in the first place, the substance of the right sought to be enforced; and in the second place whether its enforcement would, either directly or indirectly, involve the execution of the penal law of another state. The rule has its foundation in the well-recognised principle that crimes, including in that term all breaches of public law, punishable by pecuniary mulct, or otherwise, at the instance of the state government, or someone representing the public, are local in this sense, that they are only cognisable and punishable in the country where they were committed. Accordingly, no proceeding, even in the shape of a civil suit, which has for its object the enforcement by the state, whether directly or indirectly, of punishment imposed for such breaches by the *lex fori*, ought to be admitted in the courts of any other country...

... The right which it is sought to enforce may be a right which arises under legislation which is essentially designed to regulate commercial activities such as company legislation which may well contain a penal provision. I agree with the learned judge that it cannot be right simply to categorise the statute sought to be enforced as a whole. The court must pay regard to the particular provision of the foreign law which it is sought to enforce.

Ackner L.J. went on to say that he did not find it necessary to consider whether there was a third category of foreign laws which the courts would not enforce - public law - being impressed with the reasoning of the trial judge that there was "no such vague general residual category".

#### *Submissions of the Respondent/Plaintiff*

[9] The plaintiff opposes the application arguing that the funds are traceable to the acts of Cosby, that it seeks to enforce only the "disgorgement" aspect of the U.S. District

Court judgment, and that any funds received will be turned over to a receiver to be distributed amongst the former shareholders or investors of the Nevada corporation. Accordingly, as it is only the disgorgement aspect of the foreign judgment that the plaintiff seeks to enforce, the judgment is not a foreign penal claim and it is enforceable or actionable in this jurisdiction.

[10] The plaintiff also argues that the trend in Canadian courts is to enforce foreign judgments as a matter of comity (*Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, as applied in *Moses v. Shore Boat Builders Ltd.* (1993), 106 D.L.R. (4th) 654 (B.C.C.A.)), including judgments with an underlying public purpose in favour of a foreign sovereign, particularly where the judgment is restitutionary in nature: see *United States of America v. Ivey* (1995), 26 O.R. (3d) 533 (Gen. Div.), affirmed (1996), 30 O.R. (3d) 370 (C.A.). Accordingly, this foreign judgment is enforceable in this Court.

[11] Finally, the plaintiff argues that British Columbia courts ought not to extend the penal law exception as argued by the applicant in the circumstances of the case at bar for to do so would be to condone or even encourage commercial activity which is legally or morally reprehensible.

#### *The Evidence*

[12] The application proceeded against the evidentiary



background found in three affidavits of Alexander M. Vasilescu, a Senior Trial Counsel of the SEC in the United States. In sum, his evidence is that the SEC is strictly a civil agency quite separate from the U.S. Department of Justice. Unlike the Department of Justice which is pursuing a criminal action against Cosby, the SEC has already obtained a civil judgment against Cosby in an action entitled *SEC v. Softpoint Inc., Robert H. Cosby, Ronald G. Stoecklein, Remington Publications, Inc., and John W. Lane*, 95 Civ. 2951 (SS). In his affidavit sworn November 16, 1999, he deposes that the SEC is seeking "to enforce only the disgorgement aspect of the civil judgment, which is not based upon, and does not even mention, a criminal proceeding or criminal forfeiture."

[13] Global introduced an affidavit of Janet Clark sworn after this application was first heard in May 1999. The plaintiff opposed the introduction into evidence of this affidavit arguing that I ought not to exercise my discretion in admitting the affidavit because the affidavit did not fulfill one of the usual requirements favouring an exercise of discretion, namely, demonstrating that the evidence would have an important influence on my decision.

[14] The typical factors the court considers includes whether the evidence could have been uncovered with reasonable diligence and presented in the usual manner during the hearing; whether the evidence would likely have had an important bearing

*United States Security and Exchange Commission v.  
Robert H. Cosby and Global Action Investments Limited* Page: 8

---

on the decision; and whether the evidence is presumably reliable: see *B.C. Gas Utility Ltd. v. Alpha Manufacturing Inc.*, (2 February 1999), Vancouver C952794 (B.C.S.C.); *Gold v. Gold* (26 March 1992), Vancouver A873445 (B.C.S.C.); *Hornak v. Paterson* (1965), 53 D.L.R. (2d) 566 (B.C.S.C.); and *Clayton v. British American Securities Ltd.*, [1935] 1 D.L.R. 432 (B.C.C.A.).

[15] The evidence in the Clark affidavit sworn September 10, 1999 shows that Cosby was indicted in the State of Nevada in July 1999 and arrested later that month in Hong Kong. I consider this evidence to be relevant and potentially capable of having an important bearing on my considerations, and therefore admissible. I also consider that the affidavit of Vasilescu sworn November 16, 1999 to be equally admissible.

2000 BCSC 338 (CanLII)

United States Security and Exchange Commission v.  
Robert H. Cosby and Global Action Investments Limited Page: 9

---

*Is the SEC Directly or Indirectly Enforcing the Criminal  
Statutes Under Which Cosby is Indicted?*

[16] Global argues that Cosby's indictment in Nevada (and his later arrest in Hong Kong in extradition proceedings flowing from the indictment) shows a substantial connection between the facts upon which the indictment is based and the proceedings at bar. The indictment seeks to forfeit the very same funds that the plaintiff seeks in the action at bar. Further, Global argues that because the criminal forfeitures provisions of U.S. Code, Title 21, s. 853, provide that any funds subject to forfeiture vests in the United States, the SEC will be obliged to deliver the funds to the U.S. Attorney General. Thus, the SEC is either directly or indirectly enforcing a penal criminal statute: the plaintiff is doing the bidding of the United States Attorney General and the result of an enforcement order in this Court would be to enforce a foreign penal judgment.

[17] In the supplemental affidavit sworn November 16, 1999 responding to some of Global's submissions, Vasilescu states that where there are parallel actions, the Department of Justice generally defers to the SEC or other civil bodies and does not seek to recover monies from the SEC which have previously been recovered in civil proceedings and which have been designated by the civil courts for restitution to victims of fraud. This evidence goes directly to Global's submission that under the U.S. Code referred to in the indictment against Cosby, the funds automatically vest in the United States and as a result the SEC

2000 BCSC 338 (CanLII)

*United States Security and Exchange Commission v.  
Robert H. Cosby and Global Action Investments Limited* Page: 10

---

would be obliged to hand over to the United States Attorney General the funds it seeks in the action at bar. Vasilescu goes further in his affidavit and deposes that he has spoken with the Assistant United States Attorney overseeing the criminal proceeding against Cosby and he has been "specifically informed ... that the U.S. Justice Department does not object to, and will not interfere with, the Commission's efforts to retrieve ill-gotten gains from Cosby and Global Action in the B.C. proceeding for purposes of distribution to defrauded investors in accordance with the civil disgorgement judgement...". This information is supported by a letter from the Assistant United States Attorney which includes the statement, "[W]e fully endorse your efforts to enforce the SEC judgment through the Canadian courts." Vasilescu also advised that the SEC would undertake to submit to the U.S. District Court for the Southern District of New York an order directing that any monies recovered in this action be deposited with the clerk of the U.S. District Court for the Southern District of New York and that a distribution agent be appointed with directions to distribute the funds recovered from Cosby to defrauded investors.

[18] This evidence, in my view, effectively answers Global's argument that the SEC is, if not directly, then indirectly enforcing the criminal penal statutes that are the basis of the criminal proceedings against Cosby.

*Is the Judgment Sought to be Enforced Based on a Foreign Penal Law?*

2000 BCSC 338 (CanLII)

[19] The sole question then to be answered is whether the judgment which the SEC has obtained in the United States and which it seeks to enforce in British Columbia is a penal judgment. If I conclude that it is, then I am satisfied that the courts of this province have no jurisdiction to entertain an action for the enforcement, either directly or indirectly, of a penal law of a foreign country. In *Huntington, supra*, at p. 155 Lord Watson said:

[The Courts of Ontario] had to construe and apply an international rule, which is a matter of law entirely within the cognizance of the foreign Court whose jurisdiction is invoked. Judicial decisions in the State where the cause of action arose are not precedents which must be followed, although the reasoning upon which they are founded must always receive careful consideration, and may be conclusive. The Court appealed to must determine for itself, in the first place, the substance of the right sought to be enforced; and, in the second place, whether its enforcement would, either directly or indirectly, involve the execution of the penal law of another State.

...

The rule has its foundation in the well recognised principle that crimes, including in that term, all breaches of public law punishable by pecuniary mulct or otherwise, at the instance of the State Government, or of some one representing the public, are local in this sense, that they are only cognizable and punishable in the country where they were committed. Accordingly no proceeding, even in the shape of a civil suit, which has for its object the enforcement by the State, whether directly or indirectly, of punishment imposed for such breaches by the *lex fori*, ought to be admitted in the Courts of any other country. [emphasis added]

[20] This very question was before Baker J. in *United States of America (Securities Exchange Commission) v. Shull*

*United States Security and Exchange Commission v.  
Robert H. Cosby and Global Action Investments Limited* Page: 12

---

(5 August 1999), Vancouver A980249 (B.C.S.C.). In that case, the plaintiff was seeking to enforce a judgment obtained in the United States District Court for the District of Massachusetts which arose out of an action by the plaintiff against Shull and others alleging that Shull had participated in a fraudulent scheme to manipulate stock. The plaintiff alleged violations of both the Securities Act of 1933 and the Securities Exchange Act of 1934. Initially Shull defended the action but then consented to judgement and to disgorgement in the amount of \$667,770.46. Shull then waived the right to appeal and agreed that the U.S. District Court retained jurisdiction to enforce the judgment. In an application for a stay of proceedings in a summary trial process in British Columbia Shull argued, inter alia, that because there were criminal proceedings pending in the U.S. his right against self incrimination there would be violated if the motion were to proceed. He also submitted that there should be an adjournment to permit further discovery.

[21] Baker J., in the course of dismissing the applications, dealt with an ancillary ground raised by Shull: that the motions should succeed because the civil disgorgement order was based on an unenforceable foreign penal or revenue law. The plaintiff here says that this is the identical point raised by Global on this application. At para. 29 Baker J. wrote:

While the action in British Columbia does arise out of the same transactions which have led to the criminal charges in the United States, I do not agree with the submission of Mr. Shull's counsel that the

circumstances are "exceptional" or "extraordinary" because [a witness for the plaintiff] has participated in both civil and criminal investigations in the United States. I am also satisfied that the disgorgement order is neither a penal sanction nor a taxation measure. The fact that the plan of the Receiver for distribution of any funds which may be recovered from these or other defendants provides for the payment of some taxes does not convert this action into a proceeding for the enforcement of a taxing statute. [emphasis added]

[22] Plaintiff's counsel argues that Shull, supra, deals with precisely the same point of law and precisely the same fact pattern. Conceding that the finding concerning "penal" law may not have been essential for Baker J.'s decision to refuse the stay, plaintiff's counsel argues that nevertheless the finding is not obiter because the finding with respect to foreign "penal" law exception was directed at an independent submission by Shull's counsel. Accordingly, and relying upon the principle, or well known rule, in Re Hansard Spruce Mills Limited (1954), 13 W.W.R. (N.S.) 285 (B.C.S.C.), the plaintiff argues that I am obliged to follow the decision of Baker J. unless there have been subsequent decisions affecting its validity; some binding authority or statute was not considered; or it was a nisi prius judgment made during the heat of the trial and not fully considered.

[23] It is significant, in my view, that the courts of the United States have held that the purpose of the securities laws is to protect investors and the American courts accordingly treat these laws as remedial [Affidavit of A.M. Vasilescu sworn

*United States Security and Exchange Commission v. Robert H. Cosby and Global Action Investments Limited* Page: 14

---

May 19, 1999, par. 7: *Tcherepnin v. Knight*, 389 U.S. 332 at 336 (1967); *SEC v. Capital Gains Research Bureau*, 375 U.S. 180 at 195 (1963); *Affiliated Ute Citizens v. United States*, 406 U.S. 128 at 151 (1972)].

#### *Decision*

[24] In *Huntington*, *supra*, Lord Watson observed that the court should determine the substance of the right sought to be enforced and then consider whether the enforcement would, either directly or indirectly, involve the execution of the penal law of a foreign state.

[25] I conclude that the default judgment of the United States Court is not a foreign penal judgment and that the plaintiff is able to take steps to enforce it in British Columbia. The fact that there are contemporaneous criminal proceedings involving Cosby and arising out of the same delict does not convert the civil judgment into a penal order. The civil proceedings brought by SEC are distinct from the criminal proceedings initiated by the U.S. Attorney General and the criminal proceedings do not prevent the plaintiff from pursuing its enforcement remedies in British Columbia on the civil judgment: see *Raulin v. Fisher*, [1911] 2 K.B. 93; *U.S.S.E.C. v. Shull*, *supra*; *London Life Insurance Co. v. Zavitz* (1992), 65 B.C.L.R. (2d) 140 (C.A.).



*United States Security and Exchange Commission v.  
Robert H. Cosby and Global Action Investments Limited* Page: 15

---

[26] Neither, in my view, does it ineluctably result in a conclusion that the judgment is the result of a breach of a public law punishable by public mulct. The judgment of the U.S. District Court for the Southern District of New York required Cosby to disgorge or give up all of the "ill-gotten gains." It also imposed "civil penalties" pursuant to the Securities Act of 1933 in an amount to be determined. The order imposing civil penalties, which the plaintiff does not seek to enforce in the proceeding at bar, would not be enforceable in British Columbia. The disgorgement order is.

"T.P. Warren, J."  
The Honourable Mr. Justice Warren

# EXHIBIT 27

Citation: 2014 BCSECCOM 263

**Streamline Properties Inc., 0772835 B.C. Ltd., Local 1661 Building Inc.,  
Almaval Building Inc., Jeffrey Karl Wiegel and Michael Jerome Knight**

***Securities Act, RSBC 1996, c. 418***

### **Hearing**

<b>Panel</b>	Nigel P. Cave Audrey T. Ho George C. Glover, Jr. Don Rowlatt	Vice Chair Commissioner Commissioner Commissioner
<b>Date of hearing</b>	May 12 and 13 and July 3, 2014	
<b>Submissions Completed</b>	August 22, 2014	
<b>Date of Findings</b>	September 3, 2014	
<b>Appearing</b>		
Jennifer Whately	For the Executive Director	
Jeffrey Karl Wiegel	For himself	
Michael Jerome Knight	For himself	
Unrepresented	Streamline Properties Inc., 0772835 B.C. Ltd., Local 1661 Building Inc. and Almaval Building Inc.	

### **Findings**

#### **I Introduction**

- ¶ 1 This is the liability portion of a hearing pursuant to sections 161, 162 and 174 of the *Securities Act*, RSBC, 1996, c.418.
- ¶ 2 On September 13, 2012 the executive director issued a temporary order and notice of hearing alleging that:
- between October 2006 and August 2010, the respondents distributed securities of 0772835 B.C. Ltd. (835 Ltd.), Local 1661 Building Inc. and Almaval Building Inc.

- without being registered under the Act and without having filed a prospectus, in breach of sections 34 and 61 of the Act;
- Michael Jerome Knight and Jeffrey Karl Wiegel perpetrated a fraud;
  - between October 2006 and April 5, 2007, Knight breached an April 5, 2004 order of the executive director which prohibited him from engaging in acts in furtherance of a trade or in investor relations activities for a period of three years.
- ¶ 3 During the hearing, the executive director called three witnesses, a Commission investigator and two investors (one solely an investor in 835 Ltd. and one an investor in both 835 Ltd. and in Almaval (Mr. B)), and tendered documentary evidence. Wiegel himself gave testimony and tendered documentary evidence. Knight attended the hearing but did not testify or enter any other evidence in the proceedings. The corporate respondents were given notice of the proceedings but did not attend.

## **II Background**

### **A Facts**

- ¶ 4 Streamline Properties Inc. was the umbrella development company under which the respondents marketed their real estate development projects. Separate companies were formed to develop each of these projects:
- 835 Ltd. to develop “The Brook” in North Vancouver;
  - Local 1661 to develop “The Local” in Vancouver; and
  - Almaval to develop a property or properties on West Broadway in Vancouver.
- ¶ 5 Wiegel is a resident of British Columbia and was a director and officer of each of the corporate respondents.
- ¶ 6 Knight is a resident of British Columbia and was the general manager of Streamline.
- ¶ 7 Neither Wiegel nor Knight was registered in any capacity under the Act at any time relevant to these proceedings. Knight was previously registered under the Act as a mutual fund salesperson between 1992 and 1995.
- ¶ 8 On April 5, 2004, the executive director issued an order prohibiting Knight from engaging in acts in furtherance of a trade or in investor relations activities for a period ending on April 5, 2007. This order resulted from a settlement agreement between Knight and the executive director in which Knight acknowledged contraventions of sections 34 and 61 of the Act, among other things.
- ¶ 9 None of the corporate respondents has ever filed a prospectus.
- ¶ 10 Between October 2006 and August 2010, one or more of the respondents:
- raised \$2,085,000 from 32 investors for 835 Ltd.;

- raised \$1,940,000 from 21 investors for Local 1661;
- raised \$100,000 from two investors, ostensibly for 835 Ltd., but structured as a loan to Almaval through a promissory note issued by Almaval.

¶ 11 Testimony from the investors and from Wiegel established that Knight was primarily responsible for dealing with investors and day to day operations of the property developments. Despite having no previous experience with real estate development and being something akin to a figurehead, Wiegel was actively involved with investors and the projects.

**(a) Streamline**

¶ 12 Although Streamline was generally acknowledged to be the umbrella development company for the three projects, its role, if any, in the raising of money from investors was not made clear during the hearing. Certain of the promotional materials provided to investors included the Streamline corporate name, without explanation of its role. None of the legal investment documents includes any reference to Streamline. Wiegel and Knight had Streamline email addresses, but it was not clear that when they were acting, they were acting on behalf of Streamline versus one of the other corporate respondents. Owing to this lack of clarity, we have made no findings against Streamline in these proceedings.

**(b) 835 Ltd.**

¶ 13 The general nature of the investments in 835 Ltd. is clear. The investors were told that their investments took the form of a shareholder loan and share ownership in 835 Ltd. An investment also entitled the investor to be allocated a unit in the development, with the investor having the right to decide between purchasing the unit upon completion at a predetermined price or an entitlement to the profits from the sale of that unit above the predetermined price by the respondents. What is less clear is how, in each investor's case, these investments were manifested. All investors signed a Founders Agreement (a commercial agreement/quasi shareholders' agreement among the investors), some investors received shareholder loan receipts or promissory notes and some received share certificates in 835 Ltd. The Founders Agreement for 835 Ltd. referred to the investments as shareholder loans and to the investors as shareholders.

¶ 14 Wiegel admits to his contraventions of sections 34 and 61 of the Act with respect to the sales of securities in 835 Ltd. He had previously made such admissions in a proceeding under the *Offence Act* in the Provincial Court of British Columbia. In that proceeding, Wiegel pled guilty to a breach of section 61 of the Act and received a suspended sentence and two years probation.

¶ 15 The Brook was ultimately completed but all of the investors in 835 Ltd. lost their money.

**(c) Local 1661**

- ¶ 16 The investments in Local 1661 were even less well documented than those in 835 Ltd.
- ¶ 17 Investors in Local 1661 did not enter into subscription agreements but did sign a Founders Agreement. The Founders Agreement for Local 1661 was almost identical to that used in connection with 835 Ltd. Again, that agreement refers to the investments as shareholder loans and to the signatories as shareholders. At least two of the investors received documents which evidenced a loan, in one case a shareholder loan receipt and in another a promissory note. Notwithstanding the absence of subscription agreements and other documentation (e.g. other loan documents or share certificates), we find that the Local 1661 investments were structured in substantially the same manner as those in 835 Ltd.
- ¶ 18 As discussed below, Wiegel argues that the investments in Local 1661 were not securities as defined under the Act; however, he admits, if we find that such investments were securities under the Act, he contravened sections 34 and 61 in respect of those investments.
- ¶ 19 The Local was the subject of foreclosure proceedings prior to completion and all of the investors in Local 1661 lost all of their money.

**(d) Almaval**

- ¶ 20 By December of 2008, The Brook development had run into financial difficulties and Streamline was looking for additional sources of funds. Knight approached two existing investors in 835 Ltd. (one of whom was Mr. B) about making an additional \$100,000 short term investment in The Brook development. The two investors agreed to provide the funds on the understanding that the loan would be repaid in three months and if the loan was not repaid on maturity then the loan would become secured by a mortgage at that time.
- ¶ 21 Although this \$100,000 loan was intended for further development of The Brook, Knight and the two investors ultimately agreed upon a promissory note from Almaval containing the terms described above. The terms in the note include a promise by Almaval that its failure to pay the note by April 15, 2009 would result in Almaval granting the investors a mortgage over a property at 3701 West Broadway, Vancouver.
- ¶ 22 The promissory note contains a signature purporting to be that of Wiegel. However, Wiegel claims that Knight forged his signature on this document. This evidence was not rebutted by any evidence entered in the proceedings. Mr. B gave evidence at the hearing. He indicated that, at the time of this investment, he only had dealings with Knight.
- ¶ 23 The promissory note was not repaid on April 15, 2009 as required by its terms. Almaval did not grant mortgage security over 3701 West Broadway upon default, as Almaval did

not own that property. Almaval had entered into an agreement to purchase that property but did not complete that transaction prior to the default on the promissory note.

- ¶ 24 Mr. B stated that he was not advised at the time of the investment that Almaval did not own the property. Wiegel suggests that we should not rely upon the evidence of Mr. B due to inconsistencies in his testimony. However, Mr. B, in re-direct examination, was unequivocal that he and the other Almaval investor were not advised at the time of their investment that Almaval did not own the property. The respondents did not enter any evidence to rebut that given by Mr. B on this issue.
- ¶ 25 Wiegel ultimately repaid part of the promissory note personally. In addition, the Almaval investors commenced legal proceedings against Almaval and were able to recover (some years later) the remaining amounts outstanding from the sale of other assets of Almaval.

### **III Analysis and findings**

#### **A Illegal distributions of securities and trading without registration**

- ¶ 26 Wiegel and Knight offered only two initial submissions on these allegations. Firstly, Wiegel suggested that the investments in Local 1661 were not securities for the purposes of the Act. As noted above, Wiegel admitted that, if we determine that the investments in Local 1661 were securities, he contravened sections 34 and 61 in respect of issuance of those securities to investors. Secondly, Wiegel and Knight argued that the executive director failed to properly investigate the circumstances of each of the investors. They argue that had the executive director done so, he would have determined that a number of the investments would have qualified for exemptions under the Act. Wiegel and Knight initially pointed to no specific investments that would potentially be exempt or under what specific exemptions. However, in follow-up submissions, Wiegel suggested that certain investors did qualify for exemptions as discussed below. Wiegel and Knight entered no evidence in the proceedings on this point.
- ¶ 27 Having admitted to his contraventions of sections 34 and 61 with respect to the investments in 835 Ltd., Wiegel's first submission must, logically, rest upon there being some distinction in the nature of the investments between those made in 835 Ltd. and those made in Local 1661. However, we have found that the investments in Local 1661 were structured similarly to those in 835 Ltd.
- ¶ 28 In addition, Wiegel's submission also fails upon legal analysis. The definition of "security" under the Act includes:
- “ . . . (d) a bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate . . . ”

...

(1) an investment contract, . . .”

¶ 29 The investments in Local 1661 were predominately structured as shareholder loans and purchases of shares which would be caught by subsection (d) of the definition of “security”. More broadly, the test for what constitutes an “investment contract” in subsection (1) of the definition of “security”, as set out by the Supreme Court of Canada in *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, [1978] 2 SCR 112 at pages 128-129, includes:

- a) an investment of money;
- b) in a common enterprise between the investor and those seeking the investment; and
- c) profits derived from the efforts of others.

Clearly, the investments in Local 1661 satisfy each part of the three part test for an “investment contract”. Investments in Local 1661 were investments in “securities” under the Act.

¶ 30 Turning to the respondents’ second submission; generally, the onus of proving that exemptions from the prospectus and registration requirements were available to the respondents for the investments lies with the respondents (*Solara*, 2010 BCSECCOM 163). The respondents tendered no evidence to suggest that any of the investments or investors satisfied the requirements for any exemptions under the Act.

¶ 31 However, the executive director tendered into evidence summaries of interviews and emails with a number of the investors in 835 Ltd. and Local 1661. Those interviews included questions about the investors’ relationships with one or more of the respondents and about their potential qualifications as accredited investors as defined under securities laws. Certain of those investors provided responses which suggest that their investments could qualify for one or more of the exemptions available under National Instrument 45-106 *Prospectus and Registration Exemptions*. Wiegel’s follow up submissions suggested that certain investors would qualify for exemptions.

¶ 32 Counsel for the executive director provided thoughtful and thorough submissions on this issue. She argued that the respondents’ lack of supporting paperwork and disregard for securities laws should result in our finding contraventions of sections 34 and 61 even if, factually, exemptions for any specific investments were available. We do not accept that as the law. Decisions of this Commission in *Photo Violation Technologies Corp. and others*, 2013 BCSECCOM 276 and *Aviawest Resorts Inc. and others*, 2013 BCSECCOM 319 are examples where this Commission found exemptions from the requirements of the Act, even though the respondents did not turn their minds to compliance with securities laws at the time of the investments or keep adequate paperwork.



¶ 33 Here the executive director's own evidence with respect to:

- (a) one investor in 835 Ltd. whose investments totalled \$150,000; and
- (b) two investors in Local 1661 whose investments totalled \$250,000,

suggested, on the balance of probabilities, that there were exemptions from sections 34 and 61 of the Act regarding these investments. As a result, we do not find that the burden of proof with respect to contraventions of sections 34 and 61 has been met with respect to these three distributions.

¶ 34 We wish to emphasize that in reaching this decision we are not changing the onus of establishing the availability of an exemption under the Act. Although the respondents did not submit the evidence in question, the evidence was still before the panel, and it was required to consider it. Having done so, and considering the executive director's helpful submissions, we find that exemptions were available for these three distributions.

¶ 35 Based upon the evidence, we find that:

1. each of Wiegel and Knight contravened sections 34 and 61 with respect to the distributions of \$1,935,000 of securities of 835 Ltd. and \$1,690,000 of securities of Local 1661; and
2. Knight contravened sections 34 and 61 with respect to the distributions of \$100,000 of securities in Almaval; and
3. each of 835 Ltd., Local 1661 and Almaval contravened sections 34 and 61 with respect to, and only with respect to, the distributions of its own securities (in the amounts set out above).

¶ 36 Section 168.2(1) of the Act states that if a corporate respondent contravenes a provision of the Act, an individual who is a director or officer of the company also contravenes the same provision of the Act, if the individual "authorizes, permits, or acquiesces in the contravention". Wiegel was a director of all of the corporate respondents. Knight was an officer (as a general manager) of Streamline, and performed similar functions as those of a director or officer for the other corporate respondents. The evidence is clear that they directed the affairs of the corporate respondents. Therefore, we also find that Wiegel and Knight authorized, permitted and acquiesced in the corporate respondents' contraventions of sections 34 and 61 and therefore they also contravened sections 34 and 61 under section 168.2(1).

## **B Fraud**

¶ 37 Section 57(b) of the Act states that "A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows,

or reasonably should know, that the conduct perpetrates a fraud on any person”.

### 1. **Applicable law**

- ¶ 38 In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal stated the following regarding fraud under the Act (at page 29):

“Fraud is a serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.”

- ¶ 39 The *Anderson* decision cited the elements of fraud from *R. v. Theroux*, [1993] 2 SCR 5 (at page 20):

“... the actus reus of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist of actual loss or the placing of the victim’s pecuniary interests at risk.

Correspondingly, the mens rea of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim’s pecuniary interest are put at risk).”

### **A. Prohibited act and deprivation**

- ¶ 40 In *R. v. Cuerrier* [1998] 2 SCR 371, the Supreme Court of Canada stated (at para. 116) that the element of dishonesty in fraud “can include non-disclosure of important facts”. Here, the fact that Almaval did not own the property at 3701 West Broadway at the time it promised to provide a mortgage on that property if the promissory note was not repaid when due was clearly an important fact. Having only an agreement to purchase the property would clearly be an important fact. It was clear from the evidence of Mr. B and from the terms of the promissory note itself that the ability to get mortgage security in the event of a failure to repay the loan on maturity was a material part of this investment. We find that the failure to disclose to the Almaval investors that Almaval did not own the property was dishonesty amounting to deceit.

- ¶ 41 We also find the evidence establishes deprivation. The investors advanced funds to Almaval based, in part, upon the deceit. In *R. v. Abramson* [1983] B.C.J. No. 1305, the British Columbia Court of Appeal confirmed that the payment of money as part of an investment upon deceit was sufficient to establish deprivation, regardless of any subsequent repayment.

**B. Respondents' subjective knowledge of the prohibited acts and deprivation**

- ¶ 42 Wiegel and Knight will be addressed separately on this issue.

**a) Knight**

- ¶ 43 The evidence establishes that Knight was the person with whom the two investors negotiated the terms of the loan with Almaval. Almaval was an entity established by Streamline and Streamline, in turn, was run on a day to day basis by Knight. Knight knew that Almaval did not own the property at 3701 West Broadway. We find that Knight had subjective knowledge of the prohibited act, being the failure to tell the investors that Almaval did not own the property.
- ¶ 44 Knight essentially argued that because Almaval had an unconditional agreement to purchase the property at 3701 West Broadway at the time the investors made the loan, he did not have the subjective belief that the prohibited act would lead to deprivation. We do not accept this. Owning a property and having an unconditional agreement to purchase are not one and the same thing. There are risks to completion on even an unconditional agreement to purchase, as was borne out in this case. The predominant risk is obviously the need to come up with the purchase price. Streamline and its related ventures were clearly in financial difficulty at the time of the investment. After all, they were seeking short term financing to complete The Brook. We find that Knight had the subjective knowledge that the failure to disclose to the investors that Almaval did not own the property could, as a consequence, cause actual deprivation and put the investors' pecuniary interests at risk.

**b) Wiegel**

- ¶ 45 With respect to Wiegel, this issue is far more complicated. Wiegel's evidence was that while he had knowledge of the fact that a loan was being negotiated to provide short term funding for The Brook, he was not involved in its specifics. He claims he did not know the terms of the loan, did not deal with the Almaval investors and did not engage in deceit. While the promissory note purports to be signed by him, he claims that Knight forged his signature.
- ¶ 46 The executive director urged us not to believe this element of Wiegel's evidence. The executive director argued that Wiegel's evidence regarding the forgery arose late in these proceedings and would have been raised earlier in the investigation if true. The executive director also argued that Wiegel's subsequent conduct suggested that he had accepted

responsibility for the promissory note (i.e. his personally repaying part of the loan) from which we should infer that he was aware of the deceit at the time of its making.

- ¶ 47 Knight did not challenge Wiegel's evidence with respect to the fact that Knight placed Wiegel's signature on the promissory note. In oral submissions the executive director also admitted that he had not introduced any evidence that confirmed (or even suggested) that Wiegel had subjective knowledge of the deceit at the time it was made, other than his subsequent actions. Wiegel's later actions do not necessarily equate to his having knowledge of the deceit at the time it was made. He may have had other motivations for his subsequent actions. We do not find that the executive director has satisfied the burden of proof in establishing Wiegel's subjective knowledge of the deceit.
- ¶ 48 The executive director also submitted that Wiegel should be responsible for the fraud as a result of his having been a director of Almaval. The argument is that Almaval contravened section 57 of the Act and under section 168.2 of the Act, if Wiegel "authorized, permitted or acquiesced" in the contraventions of section 57 by Almaval, then he too would be liable.
- ¶ 49 The problem with this argument is that neither the notice of hearing nor in any submissions to the panel did the executive director allege that Almaval contravened section 57. Nor does the notice of hearing allege that Wiegel contravened section 57 by virtue of section 168.2(1) of the Act. This submission must fail as a result. A respondent cannot be found liable for a contravention of the Act which is not alleged in the notice of hearing.
- ¶ 50 In summary, we find that Knight committed fraud in contravention of section 57 of the Act. We do not find that the executive director has satisfied the burden of proof to establish that Wiegel committed fraud.

### **C Breach of Order**

- ¶ 51 Based upon the evidence and consistent with our findings that Knight breached sections 34 and 61 in respect of the trades in securities of 835 Ltd and Local 1661, we find that Knight contravened the April 5, 2004 order prohibiting him from conducting acts in furtherance of a trade and from engaging in investor relations activities.

### **D Public interest order**

- ¶ 52 In the executive director's written submissions, although this was not argued in oral submissions, the executive director suggested that it was within this panel's jurisdiction to consider, in addition to any specific contraventions of the Act, if the conduct of the respondents in their totality amounted to conduct that was contrary to the public interest.

- ¶ 53 While there is much to be concerned about regarding the respondents' conduct as it relates to the public interest, this submission must also fail due to a deficiency in the notice of hearing.
- ¶ 54 In addition to the specific allegations of contraventions of the Act set out above, the notice of hearing contains this sentence: "It is in the public interest that the Commission issue orders under sections 161 and 162 of the Securities Act". This language does not give guidance to the panel or the respondents about what conduct, whether specific or in totality, the executive director alleges as the basis for this order. In order for a panel to make orders in the public interest, the notice of hearing must give the panel and the respondent(s) sufficient detail of the allegations in order to know the specific misconduct that must be proven to establish those allegations. The language relied upon in the notice of hearing is deficient in this regard. Until this request appeared in the executive director's written submissions, the panel was not aware that an order in the public interest was being requested by the executive director above and beyond the allegations of specific contraventions of the Act. If the panel did not know this, neither could the respondents.

#### **IV Summary of findings**

- ¶ 55 We have found that:
- all of the respondents, other than Streamline, contravened sections 34 and 61;
  - Knight perpetrated a fraud, contrary to section 57(b); and
  - Knight contravened an order of the executive director of April 5, 2004.

#### **V Submissions on Sanctions**

- ¶ 56 We direct the parties to make their submissions on sanctions as follows:

**By September 17** The executive director delivers submissions to the respondents and the secretary of the Commission

**By October 1** The respondents deliver response submissions to the executive director and to the secretary of the Commission

Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission

**By October 8**      The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission

¶ 57   September 3, 2014

¶ 58   **For the Commission**

Nigel P. Cave  
Vice Chair

Audrey T. Ho  
Commissioner

George C. Glover, Jr.  
Commissioner

Don Rowlatt  
Commissioner

# EXHIBIT 28

NOT FILED

Jay D. Adkisson, SBN 12546  
2505 Anthem Village Drive, Suite E599  
Henderson, NV 89052  
Ph: 702-953-9617  
Fax: 877-698-0678  
E-Mail: jay@jayad.com

Counsel for Defendant,  
Michael Patrick Lathigee

STATE OF NEVADA  
EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY  
Hon. Adriana Escobar, District Judge

BRITISH COLUMBIA SECURITIES  
COMMISSION,

Plaintiff,

— vs. —

MICHAEL PATRICK LATHIGEE,

Defendant.

Case No. A-18-771407-C {Dept. 14}

**DEFENDANT LATHIGEE'S  
RESPONSES TO PLAINTIFF BCSC'S  
FIRST SET OF REQUESTS FOR  
ADMISSIONS**

Defendant, Michael Patrick Lathigee ("Lathigee"), here by responds to Plaintiff British Columbia Securities Commission's First Set of Requests for Admissions:

**Objections Common To All Responses**

NRCP 36 does not provide for binding instructions from one party to another, and so any instructions will be ignored.

Requests for Admissions below are denied to the extent that they are not explicitly and expressly admitted to the extent set out below, *i.e.*, there is no response given, or to be interpreted as have been given, by implication.



### Responses to Particular Requests

REQUEST FOR ADMISSION NO. 1: Admit that the judgment against you in favor of the BCSC, which is sought to be recognized in this case, is final, conclusive and enforceable under the laws of Canada.

RESPONSE: Admitted.

//

REQUEST FOR ADMISSION NO. 2: Admit that the judgment sought to be recognized in this case was entered on April 1, 2015, and that the time for appeal has expired and no appeal is pending.

RESPONSE: Admitted as to everything except to the following, which is denied: (1) The request is vague as to "entered" (i.e., what court and where) and thus is denied, and (2) for that same reason the date of April 1, 2015, is denied.

//

REQUEST FOR ADMISSION NO. 3: Admit that no payments have been made on the judgment.

RESPONSE: Admitted.

//

REQUEST FOR ADMISSION NO. 4: Admit that the judgment is not for taxes or domestic relations.

RESPONSE: Admitted.

//

REQUEST FOR ADMISSION NO. 5: Admit that the judgment is not a fine or penalty.

RESPONSE: Denied; *see Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed., 1123 (1892), as adopted in Nevada by *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev. 533, 267 P.3d 48 (2011), as applied to disgorgement judgments by *Koresh v. SEC*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1635, 198 L.Ed.2d 86 (2017). *See also* Response to Request for Admission No. 8, which Response is hereby incorporated by reference.

Moreover, the opinion of the BCSC's own expert, Mr. Johnson, repeatedly makes clear that the purpose of the British Columbia law under which disgorgement is authorized

1 is to deprive the defendant of wrongful profits and deter future violations, and thereby force  
2 compliance with British Columbia' security laws:

3 "The British Columbia Court of Appeal expresses the purpose of the Section  
4 161(1)(g) remedy most clearly at paragraph 111 of the *Poonian* decision. There the  
5 Court makes it clear that the purpose is not to punish or to compensate. The purpose  
6 of the remedy is to deter non-compliance by removing the prospect of receiving  
7 and retaining moneys from non-compliance." *Johnson Opinion*, at pp. 2-3.

8 "Disgorgement is a specific tool, and the Commission must not, in the name  
9 of public interest, use that tool in such a way as to extend it beyond its specific,  
10 permissible purpose. Its purpose is to prevent wrongdoers from retaining amounts  
11 obtained from their wrongdoing." *Johnson Opinion*, at pg. 3.

12 "The 'disgorgement' remedy has the purpose of removing the incentive for  
13 non-compliance." *Johnson Opinion*, at pg. 4.

14 //

15 REQUEST FOR ADMISSION NO. 6: Admit that if the BCSC receives any money pursuant to  
16 the judgment, it must give notice, and certain persons may submit an application to have such  
17 funds distributed to them.

18 RESPONSE: Denied, other than as follows: Pursuant to section 15(3) of the Securities Act,  
19 any money received by the Securities Commission pursuant to section 161(1)(g) of the  
20 Securities Act may only be expended for the purposes of educating securities market  
21 participants and members of the public about investing, financial markets or the operation  
22 or regulation of securities markets. Pursuant to section 15.1 of the Securities Act, the  
23 Securities Commission must notify the public in accordance with its regulations if the  
24 Securities Commission receives money from an order made under section 161(g) of the  
25 Securities Act. In the seminal decision establishing how disgorgement is to be dealt with  
26 in British Columbia, the British Columbia Court of Appeal made it clear, that although any  
27 monies collected from an order under 161(1)(g) may be subject to a claim by those persons  
28 who have suffered loss as a result of the wrongdoer's actions, the analysis of section 15

and section 161(g) are separate (see paragraph 71 of Poonian v. British Columbia Securities Commission, 2017 BCCA 207 (CanLII), <http://canlii.ca/t/h41bz>)

//

REQUEST FOR ADMISSION NO. 7: Admit that it is the BCSC's policy that payment be made to claimants on collected funds, as long as their applications are proper and not fraudulent.

RESPONSE: Denied, other than as follows: Pursuant to British Columbia Regulation 196/97, a person who suffered a pecuniary loss as a direct result of misconduct that resulted in a section 161(1)(g) order may make an application under section 15.1 of the Securities Act using the required form. If the Securities Commission determines that the applicant is an eligible applicant, the Securities Commission may make a payment to the eligible application from money received from the section 161(1)(g) order. When determining the amount to be paid to an eligible applicant, the Securities Commission must consider: (a) The amount of money received; (b) The loss suffered by an eligible applicants; (c) Losses suffered by all eligible applicants; (d) Whether the eligible applicant received or is entitled to receive compensation from other sources for the loss arising from the misconduct that resulted in the section 161(1)(g) order; (e) Whether the eligible applicant benefitted from the misconduct that resulted in the section 161(1)(g) order; (f) The results of any hedging or other risk limitation transactions made by the applicant; and (g) Any other information the Securities Commission considers appropriate. The Securities Commission may deny an applicant's claim if the applicant: (a) Fails to report changes in information provided in the application that renders the information provided false or misleading; or (b) Makes a statement or provides information that in a material respect is false or misleading or omits facts necessary to make the statement or information not false or misleading.

//

REQUEST FOR ADMISSION NO. 8: Admit that Canada's disgorgement orders pursuant to the Canada Securities Act [RSBC 1996] Chapter 418, Part 18, § 161(1)(g) are not fine or penalties.

RESPONSE: Denied. An order made by a panel of the Securities Commission pursuant to section 161(1)(g) of the Securities Act is a penalty. In this respect, the purpose of a section

1 161(1)(g) order is to assist in enforcement of the Securities Act. In this respect, the  
2 objective of a section 161(1)(g) order is to deter a Respondent from committing similar  
3 acts in the future. The purpose is not punishment or compensation. Deterrence is achieved  
4 by deterring others from committing those acts by removing the incentive to contravene  
5 the BC Securities Act by ensuring the person does not retain the “benefit” of their  
6 wrongdoing. *See also* *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed., 1123  
7 (1892), as adopted in Nevada by *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127  
8 Nev. 533, 267 P.3d 48 (2011), as applied to disgorgement judgments by *Koresh v. SEC*,  
9 \_\_\_\_ U.S. \_\_\_\_, 137 S.Ct. 1635, 198 L.Ed.2d 86 (2017). *See also* Response to Request for  
10 Admission No. 5 which is incorporated herein by reference.

11 //

12 REQUEST FOR ADMISSION NO. 9: Admit at least one purpose of Canada's disgorgement orders  
13 pursuant to the Canada Securities Act [RSBC 1996] Chapter 418, Part 18, § 161(1)(g) is to repay  
14 individuals harmed by securities misconduct or fraud.

15 RESPONSE: Denied. The purpose of Section 161(1)(g) of the BC Securities Act is not to  
16 compensate the public or victims of the contravention. The Court of Appeal made it clear  
17 in the seminal decision in *Poonian* (see above) that to the extent compensation is an  
18 objective in the Securities Act, it is achieved through section 15 of the Securities Act in the  
19 same way that if criminal prosecution is an objective, it can be achieved through other  
20 statutory provisions in the Securities Act. In other words, while Section 161(1)(g) has been  
21 called a disgorgement provision, its purpose is not compensation, its purpose is to impose  
22 a penalty on a respondent who is deemed to have breached the Securities Act. *See also*  
23 Response to Request for Admission No. 5 which is incorporated herein by reference.

24 //

25 REQUEST FOR ADMISSION NO. 10: Admit that the BCSC issued fines and penalties against  
26 you separate and apart from the judgment sought to be recognized in this case.

27 RESPONSE: Denied. The totality of the judgment against defendant Lathigee were in the  
28 nature of fines and/or penalties, including the disgorgement portion of the judgment. *See*

Response to Request for Admission Nos. 5 through 9 which are incorporated herein by reference.

//

REQUEST FOR ADMISSION NO. 11: Admit that you received due process of the proceedings against you which resulted in the judgment.

RESPONSE: Defendant hereby withdraws his lack of due process claim other than as may be affected by defendant's defense that the Disgorgement Judgment is a penalty per *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed., 1123 (1892), as adopted in Nevada by *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev. 533, 267 P.3d 48 (2011), as applied to disgorgement judgments by *Koresh v. SEC*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1635, 198 L.Ed.2d 86 (2017). *See also* Responses to Requests No. 5 through 9 which are incorporated herein by reference.

//

REQUEST FOR ADMISSION NO. 12: Admit that you were represented by counsel in the proceedings against you which resulted in the judgment.

RESPONSE: Admitted.

//

REQUEST FOR ADMISSION NO. 13: Admit that multiple hearing [sic] were held in the proceedings against you which resulted in the judgment.

RESPONSE: Admitted.

//

REQUEST FOR ADMISSION NO. 14: Admit that you received notice of the proceedings against you which resulted in the judgment.

RESPONSE: Admitted.

//

REQUEST FOR ADMISSION NO. 15: Admit that the documents produced so far by Plaintiff in this case are true and accurate copies of what they purport to be.

RESPONSE: Denied, as a facially ridiculous, oppressive, and burdensome blanket request. Defendant would of course be willing to entertain such requests on a document-by-document basis in the normal course.

//

13

Responded to this 12th day of October, 2018, by:

/s/ Jay D. Adkisson

Jay D. Adkisson  
Counsel for Defendant  
Michael Patrick Lathigee

I declare under penalty of perjury that the foregoing responses are true and correct.

Michael Patrick Lathigee ( Date )

#### CERTIFICATE OF SERVICE

13

The following signature certifies that on this October 12, 2018, a full, true, and correct copy of the above and foregoing document was deposited in the U.S. Mail, with correct first-class postage affixed thereto, and address to counsel for the Plaintiff, British Columbia Securities Commission, to wit:

Kurt R. Bonds, SBN 6228  
Matthew M. Pruitt, SBN 12474  
ALVERSON TAYLOR *et al.*  
6602 Grand Montecito Parkway, Suite 200  
Las Vegas, NV 89149  
Ph: 702-384-7000

/s/ Jay D. Adkisson

Jay D. Adkisson

1 RESPONSE: Denied, as a facially ridiculous, oppressive, and burdensome blanket request.  
2 Defendant would of course be willing to entertain such requests on a document-by-  
3 document basis in the normal course.

4 //


13

5 Responded to this 12th day of October, 2018, by:

6  
7  
8 /s/ Jay D. Adkisson

9 Jay D. Adkisson  
10 Counsel for Defendant  
11 Michael Patrick Lathigee

12 I declare under penalty of perjury that the foregoing responses are true and correct.

13  
14   
15 Michael Patrick Lathigee (Date)

16 CERTIFICATE OF SERVICE

13

17 The following signature certifies that on this October 12, 2018, a full, true, and correct copy of the  
18 above and foregoing document was deposited in the U.S. Mail, with correct first-class postage  
19 affixed thereto, and address to counsel for the Plaintiff, British Columbia Securities Commission,  
20 to wit:

21 Kurt R. Bonds, SBN 6228  
22 Matthew M. Pruitt, SBN 12474  
23 ALVERSON TAYLOR *et al.*  
24 6602 Grand Montecito Parkway, Suite 200  
25 Las Vegas, NV 89149  
26 Ph: 702-384-7000

27 /s/ Jay D. Adkisson

28 Jay D. Adkisson

DEFENDANT LATHIGEE'S RESPONSES TO PLAINTIFF  
BCSC'S FIRST SET OF REQUESTS FOR ADMISSIONS

British Columbia Securities Commission v. Lathigee, et al., Case No. A-18-771407-C (Dept. 14)

Page 7

# EXHIBIT 29



NOT FILED

Jay D. Adkisson, SBN 12546  
2505 Anthem Village Drive, Suite E599  
Henderson, NV 89052  
Ph: 702-953-9617  
Fax: 877-698-0678  
E-Mail: jay@jayad.com

Counsel for Defendant,  
Michael Patrick Lathigee

STATE OF NEVADA  
EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY  
Hon. Adriana Escobar, District Judge

BRITISH COLUMBIA SECURITIES  
COMMISSION,

Plaintiff,

— vs. —

MICHAEL PATRICK LATHIGEE,

Defendant.

Case No. A-18-771407-C {Dept. 14}

**DEFENDANT LATHIGEE'S  
RESPONSES TO PLAINTIFF BCSC'S  
FIRST SET OF INTERROGATORIES**

DATE/TIME:

Defendant, Michael Patrick Lathigee ("Lathigee"), hereby responds to Plaintiff British Columbia Securities Commission's First Set of Interrogatories to Defendant.

**Objections Common To All Interrogatories**

NRCP 33 does not provide for binding instructions from one party to another, and so any instructions will be ignored.

Requests for Admissions below are denied to the extent that they are not explicitly and expressly admitted to the extent set out below, *i.e.*, there is no response given, or to be interpreted as have been given, by implication.

**Responses to Particular Interrogatories**

INTERROGATORY NO. 1: Using bates numbers, or a similar system of identification, identify which materials you disclose in response to Plaintiff's First Set of Requests for Production are responsive to which request. In other words, list the bates numbers responsive to each request for production, for each request for production.

RESPONSE: This Interrogatory appears to be a misplaced instruction, and not a question, and so therefor will be ignored in its entirety.

//

INTERROGATORY NO. 2: Identify and describe any and all facts which you allege prove that the proceedings against you which resulted in the Judgment were "inherently biased."

RESPONSE: Defendant hereby withdraws this claim.

//

INTERROGATORY NO. 3: Identify and describe any and all facts which you allege prove that the Judgment was rendered in circumstances that raise doubts about the integrity of the BCSC with respect to the Judgment.

RESPONSE: Defendant hereby withdraws this claim.

//

INTERROGATORY NO. 4: Identify and describe any and all facts which you allege prove that the specific proceeding of the BCSC leading to the Judgment was not compatible with Nevada and United States requirements of due process of law.

RESPONSE: Defendant hereby withdraws his lack of due process claim other than as may be affected by defendant's defense that the Disgorgement Judgment is a penalty per *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed., 1123 (1892), as adopted in Nevada by *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev. 533, 267 P.3d 48 (2011), as applied to disgorgement judgments by *Koresh v. SEC*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1635, 198 L.Ed.2d 86 (2017).

//

INTERROGATORY NO. 5: Identify and describe any and all facts which you allege prove that the Judgment is a fine and/or penalty.

RESPONSE: While it is practical impossible to identify *every* fact that supports the instant defendant's contention that the Disgorgement Judgment is a penalty, defendant will place primary emphasis on statements supporting the rule of *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed., 1123 (1892), as adopted in Nevada by *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev. 533, 267 P.3d 48 (2011), as applied to disgorgement judgments by *Koresh v. SEC*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1635, 198 L.Ed.2d 86 (2017), as found in the following documents:

1. Disgorgement Judgment, 2015 BCSECCOM 78 (March 16, 2015);
2. Opinion in *Poonian v. BCSC*, 2017 BCCA 207 (2017);
3. Opinion in *R. v. Samji*, 2017 BCCA 415 (CanLII) (2017);
4. Expert Opinion of Mr. Gordon R. Johnson, August 13, 2018; and
5. Declaration of Mr. Patrick J. Sullivan, July 9, 2018, and documents relied upon by Mr. Sullivan as stated on page 4 of his Opinion.

//

INTERROGATORY NO. 6: Identify and describe any and all facts which you allege prove that the BCSC delayed this action such that witnesses and documents may not be found.

RESPONSE: Defendant hereby withdraws this claim.

//

INTERROGATORY NO. 7: Identify and describe any and all facts which you allege prove that Lathigee never personally received any money.

RESPONSE: Testimony of Lathigee to be given at trial to this effect.

//

INTERROGATORY NO. 8: Identify each and every investment company or investment club with which you have been involved with since April 1, 2015, including, without limitation, as an officer, member, shareholder, board member, investor, and/or promoter, and identify and describe your affiliation with each.

RESPONSE: Defendant objects to this Interrogatory in its entirety, *per Cain v. Price*, \_\_\_ Nev. \_\_\_, 415 P.3d 25 (2018) ("Discovery is proper for any matter that is not privileged and is relevant to the subject matter of the action before the court. NRCP 26(b)(1). However, due to privacy concerns and the potential for abuse and harassment, a defendant's personal financial information can not be had for the mere asking." *Id.*, at 31 (internal quotation marks and citation omitted)); *Schlatter v. Eight Judicial District Court*, 93 Nev. 189, 561 P.d 1342 (1977) ("Our discovery rules provide no basis for such an invasion into a litigant's private affairs merely because redress is sought for personal injury. Respondent court therefore exceeded its jurisdiction by ordering disclosure of information neither relevant to the tendered issues nor leading to discovery of admissible evidence." *Id.*, 93 Nev. at 192, 561 P.2d at 1345); *Washoe County Bd. of School Trustees v. Pirhala*, 84 Nev. 1, 435 P.2d 756 (1968) ("[W]e do not to open a Pandora's box where discovery might be permitted of all the defendant's asset prior to securing a judgment against him." *Id.*, at 84 Nev. at 6, 435 P.2d at 759.

//

Responded to this 13th day of October, 2018, by:

/s/ Jay D. Adkisson  
Jay D. Adkisson  
Counsel for Defendant  
Michael Patrick Lathigee

I declare under penalty of perjury that the foregoing responses are true and correct.

Michael Patrick Lathigee ( Date )

1 RESPONSE: Defendant objects to this Interrogatory in its entirety, *per Cain v. Price*, \_\_\_\_  
2 Nev. \_\_\_\_, 415 P.3d 25 (2018) ("Discovery is proper for any matter that is not privileged  
3 and is relevant to the subject matter of the action before the court. NRCp 26(b)(1).  
4 However, due to privacy concerns and the potential for abuse and harassment, a  
5 defendant's personal financial information can not be had for the mere asking." *Id.*, at 31  
6 (internal quotation marks and citation omitted)); *Schlatter v. Eight Judicial District Court*,  
7 93 Nev. 189, 561 P.2d 1342 (1977) ("Our discovery rules provide no basis for such an  
8 invasion into a litigant's private affairs merely because redress is sought for personal  
9 injury. Respondent court therefore exceeded its jurisdiction by ordering disclosure of  
10 information neither relevant to the tendered issues nor leading to discovery of admissible  
11 evidence." *Id.*, 93 Nev. at 192, 561 P.2d at 1345); *Washoe County Bd. of School Trustees*  
12 *v. Pirhala*, 84 Nev. 1, 435 P.2d 756 (1968) ("[W]e do not to open a Pandora's box where  
13 discovery might be permitted of all the defendant's asset prior to securing a judgment  
14 against him." *Id.*, at 84 Nev. at 6, 435 P.2d at 759.

15 //

16 13

17 Responded to this 12th day of October, 2018, by:

18 \_\_\_\_\_  
19 /s/ Jay D. Adkisson  
20 Jay D. Adkisson  
21 Counsel for Defendant  
22 Michael Patrick Lathigee

23 I declare under penalty of perjury that the foregoing responses are true and correct.

24 \_\_\_\_\_  
25 Michael Patrick Lathigee (Date)  
26  
27  
28

DEFENDANT LATHIGEE'S RESPONSES TO PLAINTIFF  
BCSC'S FIRST SET OF INTERROGATORIES

British Columbia Securities Commission v. Lathigee, et al., Case No. A-18-771407-C (Dept. 14)

Page 4

## CERTIFICATE OF SERVICE

The following signature certifies that on this 13th day of October, 2018, a full, true, and correct copy of the above and foregoing document was deposited in the U.S. Mail, with correct first-class postage affixed thereto, and address to counsel for the Plaintiff, British Columbia Securities Commission, to wit:

Kurt R. Bonds, SBN 6228  
Matthew M. Pruitt, SBN 12474  
ALVERSON TAYLOR *et al.*  
6602 Grand Montecito Parkway, Suite 200  
Las Vegas, NV 89149  
Ph: 702-384-7000

/s/ Jay D. Adkisson  
Jay D. Adkisson