

# 2003 BCSECCOM 187

COR#03/037

## Ruling

**Fairtide Capital Corp., Bayshore Management Corp., Gibraltar Consulting Corp., Pacific Capital Markets Inc., Wet Coast Capital Corp., Brek Energy Corporation, GlobeTrac Inc., Communicate.com Inc., Francis Jason Dean Biller, David Matthew Jeffs, Leigh Jeffs, Richard Jeffs, John Da Costa, Gordon Wiltse, Travis Brian Arnold, Rylie David Ableman, Richard Edwards Cartledge, Stephen Gerald Diakow, Raymond Christopher Dove, Aaron Leslie Evans, Peter James Forward, William Friesen, Altaf Goolab, Andrew David Greig, Jeffrey Mitchell Seabrook, Adrian Ting Lee, Jason Douglas Lintunen, Anne McFadden, Johnny Cameron Pan, Matthew Mitchell Phillips, Jon Stanbrough, David Wallace Strong, Daniel Ross Warburton, Raymond Wong**

**Section 161 of the *Securities Act*, RSBC 1996, c. 418**

## Application

<b>Panel</b>	Joyce C. Maykut, Q.C. Neil Alexander Marc A. Foreman	Vice Chair Commissioner Commissioner
<b>Date of Application</b>	March 4, 2003	
<b>Date of Ruling</b>	March 11, 2003	
<b>Appearing</b>		
Joseph A. Bernardo Sean K. Boyle	For Commission staff	
Mark Jette	For Fairtide Capital Corp., Bayshore Management Corp., Gibraltar Consulting Corp., Wet Coast Capital Corp., Globetrac Inc., Leigh Jeffs, Richard Jeffs, Gordon Wiltse	
Anton Kietaibl	For Brek Energy Corporation, Pacific Capital Markets Inc., Communicate.com Inc., David Matthew Jeffs, Johnny Cameron Pan	
Peter Leask, Q.C.	For Francis Jason (Frank) Biller	

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Robert W. Cooper

For Rylie David Ableman, Richard Edwards Cartledge, Raymond Christopher Dove, Aaron Leslie Evans, Peter James Forward, Altaf Goolab, Andrew David Greig, Jeffrey Mitchell Seabrook, Adrian Ting Lee, Jason Douglas Lintunen, Matthew Mitchell Phillips, Jon Stanbrough, David Wallace Strong, Daniel Ross Warburton, Raymond Wong

H. Roderick Anderson

For Stephen Gerald Diakow, William Friesen, John Da Costa, Anne McFadden

### **Introduction**

- ¶ 1 The respondents have applied for early disclosure of documents and for an early date for the final hearing in this matter. Commission staff oppose their application.

### **Background**

- ¶ 2 Following the execution of a search warrant on November 7, 2002, the Executive Director issued temporary orders under section 161(2) of the Act on November 13, 2002, prohibiting some respondents from engaging in investor relations activities. On December 11, 2002, we extended the temporary orders until a hearing is held and a decision rendered. Although not expressly stated, we extended the temporary orders on the basis that the investigation would proceed and the hearing would be held expeditiously.
- ¶ 3 In our decision of December 11 we stated that it is in the public interest not to proceed with the hearing until Commission staff conclude their investigation. Staff represented that they had just begun the investigation and a parallel criminal investigation complicated the process. At that time, we adjourned the matter until February 10, 2003, to allow staff to report on their investigation.
- ¶ 4 On February 10, 2003, Commission staff indicated that they intended to file a comprehensive affidavit responding to the respondents' proposed application to revoke the temporary orders and to report on the status of the investigation. At that time, we stated that because of the existence of temporary orders, the criminal investigation must not interfere with the expeditious investigation of matters that would be the subject of an administrative hearing.
- ¶ 5 The respondents chose not to proceed with their application to revoke the temporary orders and on February 20 and March 4, 2003, we considered their applications for early disclosure and for an early date for the hearing.

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¶ 6 Commission staff argued that to set hearing dates in a case of this complexity without the investigation being completed is simply premature. Nonetheless, staff put forward March 2004 as the absolute earliest possible date they could proceed with a hearing with disclosure being made by December 2003.

¶ 7 The respondents argued that the prejudicial effect on them of the temporary orders and a published notice of hearing obliges Commission staff to proceed with a much earlier hearing date and to begin disclosure immediately according to the standard set in *Re Cartaway Resources Corporation et al.* [1999] BCSC Weekly Summary 22 and BC Policy 15-601.

### **Decision**

¶ 8 We recognize that the power to intrude upon, and disrupt, persons' lives and businesses by issuing temporary orders before a hearing is a significant and extraordinary one. When temporary orders have been extended until a hearing is held and a decision rendered, every effort must be made by Commission staff to proceed with the investigation so that the hearing can be held expeditiously.

¶ 9 While we appreciate the investigation is not complete and that the matters under investigation may be complicated, we feel it is necessary to try to hear this matter before March 2004 as the temporary orders have already been in place for four months.

¶ 10 Considering everyone's calendars, we order that the hearing in this matter commence at 10 am on September 2, 2003 and, with the exception of September 4, continue through to September 19, 2003. In these circumstances, we order Commission staff to make disclosure to the respondents according to the standard set in *Cartaway* by May 30, 2003.

¶ 11 Although we have not ordered Commission staff to make disclosure before May 30, 2003, we would hope that staff would make every effort to begin disclosing documents and information to the respondents as soon as they possibly can. If any party has concerns about these directions being met as the deadlines approach, an application can be made to the Commission for further directions.

¶ 12 March 11, 2003

Joyce C. Maykut, Q.C.  
Vice Chair

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Neil Alexander  
Commissioner

Marc A. Foreman  
Commissioner