2003 BCSECCOM 365

COR#03/083

Decision

Robert Pierre Lamblin, Leonard William Friesen, Canadian Global Financial Group Ltd., Canadian Global Investment Corporation and Private Ventures Investment Limited

Section 161 and Section 171 of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Joyce C. Maykut, Q.C.	Vice Chair
	John K. Graf	Commissioner
	Roy Wares	Commissioner
Date of Hearing	May 12, 2003	
Date of Decision	May 26, 2003	

Appearing

Patricia A.A. Taylor Kristine M. Mactaggart	For Commission staff
Robert Pierre Lamblin	For himself
Leonard William Friesen	For himself

Introduction

¶ 1 We released our findings on January 29, 2002: see Re Bilinski et al. 2002 BCSECCOM 102. On November 8, 2002, following a further hearing on sanctions, at which Leonard Friesen and George Price chose not to appear, we made orders against Lindy Arnot, Leonard Friesen, Donald Gordon-Carmichael, George Price and Columbia Ostrich (VCC) Limited. See: 2002 BCSECCOM 945.

¶ 2 Danny Bilinski and Robert Lamblin could not appear for medical reasons. We decided to reconvene at a later date to hear submissions on sanctions from Bilinski, Lamblin, Canadian Global Financial Group Ltd., Canadian Global Investment Corporation and Private Ventures Investment Limited. Bilinski has since passed away. No one is appearing for the companies.

¶ 3 In addition, Friesen subsequently applied to vary the orders we made against him. After considering his written submissions, we concluded that it was not in the public interest to vary the orders against him. Nonetheless, Friesen seeks to make further oral submissions and has asked the panel to reconsider its decision. We agreed to do so at this hearing.

Background

¶ 4 As we stated in our sanctions decision of November 8, 2002 at paragraph 3:

> This case was primarily about the failure of a mutual fund dealer, Canadian Global Investment, and its sales representatives to fulfil their duties as registrants under the Act. We found that they violated the 'know your client', 'suitability of investment' and 'fair dealing' rules by selling speculative, illiquid and highly risky exempt securities to their clients. Most clients were conservative and risk adverse investors and the investments were unsuitable for them. Few could afford to lose the money they invested – a total of $20 million. Unfortunately most did. Now many are in dire financial straits.

¶ 5 We found the misconduct particularly abusive and egregious because:

- the exempt securities offered to clients were in companies in which the mutual fund dealer's parent, Canadian Global Financial or its principals, held an interest and participated in management. Canadian Global Investment used its mutual fund registration status to access the public for its exempt market business — a business that brought in over 90% of the dealer's revenues — but ignored its duties to clients. Of the $20 million raised, the mutual fund dealer and its salespersons received $2 million in commissions and a further $2 million was paid to Private Ventures Investment and Canadian Global Financial for administrative services.

- Commission staff, in the two years preceding the relevant period, had warned the dealer that it must set up systems and procedures to supervise its exempt market business and to ensure it, and its sales representatives, complied with their 'know your client' and 'suitability of investment' obligations. They ignored these warnings. They failed to establish proper compliance and supervision procedures, to maintain proper books and records and to comply with conflict of interest rules.

¶ 6 This decision should be read in conjunction with our findings and our decision of November 8, 2002. At paragraph 514 of our findings, we summarized our key findings as follows:

1. Bilinski, Lamblin, Friesen and Gordon-Carmichael, as registrants, failed to comply with the 'know your client', 'suitability of investment' and 'fair dealing' rules when they sold their clients speculative, illiquid and highly risky securities of companies under the umbrella of Canadian Global Financial.

2. Bilinski and Lamblin, as registrants, failed to comply with the 'fair dealing' rule because their interests conflicted with their duty to their clients and they, Bilinski and Lamblin, preferred their own interests to those of their clients when they sold them the exempt securities.

3. Canadian Global Investment, as a registrant, failed to:

   (a) establish and apply proper compliance and supervision procedures,

   (b) maintain proper books and records, and

   (c) comply with conflict of interest rules when it sold clients the exempt securities.

   Bilinski, Lamblin and Arnot, as directors and senior management, were responsible for Canadian Global Investment's failure to meet its regulatory duties under the Act and Rules.

4. Bilinski, as Canadian Global Investment's compliance officer, failed to:

   (a) ensure that Canadian Global Investment and its employees complied with the Act and the Rules,

   (b) ensure that new client accounts, including the 'know your client' forms, were approved, and

   (c) supervise transactions of Canadian Global Investment and its employees.

5. Canadian Global Financial distributed its shares and promissory notes to the public without a prospectus or an appropriate exemption, contrary to the Act and Rules. Bilinski, Lamblin and Arnot as directors and senior management were responsible for the failure of Canadian Global Financial to comply with the Act and Rules. Bilinski, Lamblin

and Friesen distributed Canadian Global Financial shares contrary to the Act. Lamblin distributed Canadian Global Financial promissory notes contrary to the Act.

6. Private Ventures Investment distributed promissory notes to the public without a prospectus or an appropriate exemption, contrary to the Act and Rules. Bilinski, Lamblin, Price and Arnot as directors and senior management were responsible for the failure of Private Ventures Investment to comply with the Act and Rules. Bilinski, Lamblin, Friesen and Price distributed Private Ventures Investment promissory notes contrary to the Act.

7. Columbia Ostrich (VCC) distributed securities to the public based on an offering memorandum that contained misrepresentations and did not contain the required directors' certificate attesting to its accuracy. Columbia Ostrich (VCC) distributed securities contrary to the Act, Rules and a Commission order. Bilinski distributed Columbia Ostrich (VCC) securities contrary to the Act. Bilinski as a *de facto* director was responsible for Columbia Ostrich (VCC)'s failure to comply with the Act and Rules.

8. Bilinski, Lamblin, Friesen and Gordon-Carmichael sold the exempt securities contrary to Commission orders.

¶ 7 In our November 2002 decision, after considering our findings and the submissions on sanctions, we determined under sections 161 and 162 of the Act that it was in the public interest to:

1. prohibit Arnot from becoming or acting as a director or officer of any issuer for at least one year,
2. prohibit Price from trading and acting as a director or officer of any issuer for five years and order Price to pay an administrative penalty of $20,000,
3. prohibit Gordon-Carmichael from trading for two years and from becoming a registrant under the Act until he meets certain proficiency requirements, require Gordon-Carmichael to be under strict supervision for one year if he registers under the Act,
4. prohibit Friesen from trading and from becoming a registrant for a minimum of two years and in any case until he meets certain proficiency requirements, and to order Friesen to pay a $20,000 penalty, and
5. cease trade the securities of Columbia Ostrich VCC until it files a prospectus.

¶ 8 In making public interest orders under sections 161 and 162 of the Act, the Commission must consider the protection of investors and the efficiency of, and

public confidence in, capital markets generally. When we considered this broad mandate in making the above orders, we referred to two cases. It is useful to refer to them again.

¶ 9 In *Re Eron Mortgage Corp.* [2000] BCSC Weekly Summary 22, the Commission set out a non-exhaustive list of factors to be considered when making orders under sections 161 and 162 of the Act. Two of the factors concern the issue of general deterrence. One was described as "the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets". The other was described as "the need to deter those who participate in the capital markets from engaging in inappropriate conduct".

¶ 10 In a subsequent decision, *Re Cartaway Resources Corporation* 2002 BCCA 461, the British Columbia Court of Appeal decided that the Commission must not consider general deterrence in fixing the amount of the administrative penalties under section 162 of the Act. Mr. Justice Braidwood writing for the court, and relying on the Supreme Court of Canada decision in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37, ruled that the public interest function of the Commission requires it to consider only specific deterrence in determining an administrative penalty under section 162 of the Act. Madam Justice Ryan dissented on this point and the majority decision is under appeal to the Supreme Court of Canada.

¶ 11 We recognize, as we did in our November 2002 decision in this matter, that we are bound by the *Cartaway* decision to consider only specific deterrence in determining an administrative penalty under section 162 of the Act.

¶ 12 With this in mind, what public interest orders under sections 161 and 162 should we make against the remaining corporate respondents and Friesen and Lamblin?

Decision

Canadian Global Investment

¶ 13 Canadian Global Investment ceased to be registered as a mutual fund dealer on February 15, 2001. It is insolvent. It was one of several companies in the Canadian Global Financial "financial conglomerate". The investments offered to clients of Canadian Global Investment were in companies in which Canadian Global Financial or its principals held a direct or indirect equity interest and participated in their management. We found that Canadian Global Investment, as a registrant, failed to:

1. establish and apply proper compliance and supervision procedures,
2. maintain proper books and records, and

3. comply with conflict of interest rules when it sold clients the exempt securities.

¶ 14 Canadian Global Investment's failure to comply with its duties under the Act resulted in investors purchasing unsuitable securities and losing millions of dollars. We found it particularly abusive for Canadian Global Investment to use its mutual fund registration to access the public to market its exempt securities — a lucrative business fraught with conflicts and where the clients' best interests were ignored. Indeed, we found that the conflicts here were so egregious that disclosure would not ensure compliance with the 'fair dealing' rule.

¶ 15 Conduct of this kind brings the capital markets into disrepute and undermines public confidence in the regulatory system. It is particularly egregious where it is demonstrated that the registrant was previously warned by Commission staff to set up proper systems and procedures to supervise its exempt market business, ignored those warnings but continued to take advantage of its position as a registrant to market its exempt securities.

¶ 16 In these circumstances, we would consider it necessary to cancel the dealer's registration under section 161(1)(f) of the Act to protect the public and integrity of the capital markets. However, Canadian Global Investment is not currently registered under the Act so no order under this section is appropriate.

¶ 17 In the event Canadian Global Investment is carrying on any activities we consider that it is in the public interest to ensure that it cannot participate in the capital markets.

¶ 18 Accordingly we order under section 161(1)(c) of the Act that the exemptions described in sections 44 to 47, 74, 75, 98 and 99 of the Act do not apply to Canadian Global Investment.

Canadian Global Financial and Private Ventures Investment

¶ 19 Canadian Global Financial was the parent company of the Canadian Global "financial conglomerate" though which Private Ventures Investment and several of the related exempt securities companies carried on business. Neither Private Ventures Investment nor Canadian Global Financial is a reporting issuer or a registrant. Both are insolvent.

¶ 20 We found that Canadian Global Financial distributed its shares and promissory notes to the public without a prospectus or an appropriate exemption, contrary to the Act and Rules. In addition, we found that the structure Canadian Global Financial set up to spend investors' subscription funds without having first signed

the purchase agreement was illegal, *prima facie* abusive and contrary to the public interest.

¶ 21 Private Ventures Investment also distributed promissory notes to the public without a prospectus or an appropriate exemption, contrary to the Act and Rules.

¶ 22 Persons who invested in Canadian Global Financial and Private Ventures Investment suffered serious and irreparable harm because of the companies' failure to comply with the Act and to provide proper disclosure documents to persons before they invested.

¶ 23 The Commission, in *Re Specialized Surgical* 2002 BCSECCOM 909, commented on the importance of making proper disclosure to investors. It said:

> In securities regulation we want to strike a balance between protecting investors and facilitating the raising of capital by companies. One important tool in striking that balance is disclosure.
> …
>
> If a company does not comply with regulatory requirements and fails to provide investors with complete and accurate disclosure, it should not be permitted to access our capital markets.

¶ 24 The securities of Canadian Global Financial and Private Ventures Investment have been cease traded since late 1999. Those orders remain in effect. We consider it to be in the public interest for the orders to continue.

¶ 25 Therefore, we order:

1. under section 161(1)(b) of the Act that all persons cease trading, and be prohibited from purchasing, the securities of Canadian Global Financial and Private Ventures Investment; and

2. under section 161(1)(c) of the Act that the exemptions described in sections 44 to 47, 74, 75 , 98 and 99 of the Act do not apply to Canadian Global Financial and Private Ventures Investment.

Lamblin

¶ 26 Lamblin was Bilinski's partner, and a principal shareholder and director of Canadian Global Financial, Private Ventures Investme nt, Canadian Global Investment and several of the related companies. Lamblin was registered under the Act as a mutual fund salesperson, employed by Canadian Global Investment from 1996 until May 5, 2000, when the Commission accepted his surrender of

registration. We withdrew Lamblin's statutory trading exemptions in October 1999. That order is in effect until this decision is rendered.

¶ 27 We found that Lamblin:

1. as a registrant and contrary to sections 14, 48(1) and (2) of the Rules, failed to comply with the 'know your client', 'suitability of investment' and 'fair dealing' rules when he sold his clients speculative, illiquid and highly risky securities of companies under the umbrella of Canadian Global Financial,
2. as a registrant, and contrary to sections 14 of the Rules, failed to comply with the 'fair dealing' rule because his interests conflicted with his duty to his clients and he preferred his own interests to those of his clients when he sold them the exempt securities,
3. with the other directors and senior management, was responsible for Canadian Global Investment's failure to meet its regulatory duties under the Act and Rules,
4. with the other directors and senior management was responsible for the failure of Private Ventures Investment to comply with the Act and Rules,
5. distributed Canadian Global Financial shares and promissory notes contrary to section 61(1) of the Act,
6. distributed Private Ventures Investment promissory notes contrary to section 61(1) the Act, and
7. sold the exempt securities contrary to Commission orders.

¶ 28 Although we found that Lamblin was responsible, with the other directors and officers, for Canadian Global Financial's failure to comply with the Act and Rules by selling shares and promissory notes without an offering memorandum, we also found that the directors took reasonable and prudent steps to engage a senior securities lawyer to help the company with its intended financings. Consequently, they are entitled to rely on the advice they believed they received as a defence to allegations against them as directors and officers responsible for Canadian Global Financial's breach of section 61(1) of the Act relating to the shares issued.

¶ 29 Despite Lamblin's duties as a director and officer of most of the Canadian Global group of companies, including a registrant, Lamblin focused on sales and left the strategic decision making up to Bilinski. Unfortunately, Lamblin's deferential role was pivotal because he sold the largest percentage of the exempt securities.

¶ 30 To put Lamblin's role in context, it is necessary to briefly comment on Bilinski's role. As the founder of the Canadian Global Financial group of companies, Bilinski was principally responsible for developing and directing the group's business and affairs. He acknowledged that he was the man with "the vision" and the man at the helm of the "financial conglomerate". Those he dealt with,

including Lamblin, the other respondents and most investors, also saw him as the driving force behind the companies. He agreed that he made the final decision as to how funds raised were allocated to the investment projects. He also made the final decisions about how the registrant carried on business. We found that Canadian Global Investment failed to comply with its registrant's obligations primarily because Bilinski simply chose to ignore its statutory obligations.

¶ 31 In was in this context that Lamblin deferred and followed.

¶ 32 So like Bilinski, Lamblin ignored his duties as a registrant when it came to selling the exempt securities. Like Bilinski, Lamblin preferred to equate the risk in the exempt securities with their confidence in themselves as men of goodwill and integrity. Despite his belief in their goodwill, Lamblin's profound lack of understanding of his duties as a registrant and director and officer of a registrant and issuer of securities, lies at the heart of the prejudice to the public interest in this case. Lamblin caused clients of Canadian Global Investment to purchase speculative, illiquid and highly risky securities that were entirely unsuitable for them. As a result they lost millions.

¶ 33 Lamblin frankly acknowledges that he did not understand his statutory duties as a registrant and officer and director. It was also very clear to us that he did not understand the fundamental principles of investing. He recognizes that his failure to understand and appreciate the consequences of the conflicts of interest and his duties to his clients led to their losses.

¶ 34 He says the consequent financial devastation visited upon his clients and family has left him with a sense of helplessness and shame. Despite his belief in their good intentions, he says he agonizes over how the Canadian Global group and its principals could have strayed so far off track. He admits he did a terrible job in handling his clients' portfolios by relying on his own investing experience. He acknowledges that his strong belief in the viability and quality of the exempt securities projects distorted his perception of the risks involved. Because he did not feel qualified to give any significant corporate direction, Lamblin concedes that he relied far too heavily on Bilinski to run the companies.

¶ 35 Lamblin says that everything he and his wife saved over the past 35 years, including all the equity in their home and property was invested in the Canadian Global group business and these projects. They lost approximately $350,000. They sold the family home recently for $349,000 and still owed the bank $5,600 on closing.

¶ 36 Lamblin is 58 years old and has been selling flooring products through a company in Mission for the last fourteen months. He says he is still suffering from injuries

suffered in an accident last September that resulted in a crushed ankle and broken leg. He is still supporting his wife and one school age daughter.

¶ 37 He accepts that he may never be able to return to the financial services industry. However, in determining whether an administrative penalty is necessary in the public interest, he asks us to consider the price and penalties that he and his family have already paid as a result of his ignorance, poor judgment and the commission orders. He believes he, and the other respondents, have all paid the maximum penalties for their mistakes. He states he is truly sorry for his conduct.

¶ 38 Despite his present insight, we believe that allowing Lamblin to play any meaningful role in the capital markets would still pose a risk to investors. We are faced with the fact that it was Lamblin's failure to meet his duties under the Act that resulted in serious and irreparable harm to many investors. It is the kind of conduct that seriously undermines public confidence in the capital markets.

¶ 39 Considering Lamblin's conduct, it would be in the public interest to impose the maximum administrative penalty against him. Although we have some submissions about his personal and financial circumstances we do not have sufficiently detailed evidence about his inability to pay an administrative penalty.

¶ 40 Rather than make this order now we are prepared to defer our consideration of the administrative penalty until Lamblin has had a reasonable opportunity to present sufficiently detailed evidence to satisfy us that he has no assets and no ability, with no likely prospect of being able, to pay the penalty. For example, if Lamblin's recent injuries affect his ability to be gainfully employed in the future, we would expect to receive a medical opinion to that effect. If we do not receive any further evidence from Lamblin by June 16, 2003 we will proceed to consider what administrative order is necessary in the public interest.

¶ 41 In light of all of these circumstances, we consider the following order against Lamblin to be necessary to protect the public interest and integrity of the capital markets in British Columbia:

1. under section 161(1)(c) of the Act that the exemptions described in sections 44 to 47, 74, 75 , 98 and 99 of the Act do not apply to Lamblin for 15 years expiring on May 26, 2018 except that Lamblin may rely on section 45(2)(7) of the Act to trade in securities for his own account;

2. under section 161(1)(d)(i) of the Act that Lamblin resign any position he holds as a director or officer of any issuer;

3. under section 161(1)(d)(ii) of the Act that Lamblin is prohibited from becoming or acting as a director or officer of any issuer until the later of:

   (a) 15 years expiring on May 26, 2018; and
   (b) the date Lamblin successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers;

4. under section 161(1)(d)(iii) of the Act that Lamblin be prohibited from engaging in investor relations activities until the later of:

   (a) 15 years expiring on May 26, 2018; and
   (b) the date Lamblin successfully completes the Canadian Securities Course or an equivalent course of study satisfactory to the Executive;

5. under section 161(1)(f) of the Act, that Lamblin is prohibited from becoming a registrant under the Act until the later of:

   (a) 15 years expiring on May 26, 2018; and
   (b) the date Lamblin meets the proficiency requirements for the category of registration applied, including the successful completion of the Canadian Securities Course; and

6. under section 161(1)(f) of the Act that Lamblin is required, from the date of registration, to be under strict supervision for one year.

Friesen

¶ 42 Friesen says that the sanctions made against him are unfair and unreasonable considering his role relative to the other individual respondents and the sanctions they received. Friesen did not attend the November 2002 hearing. He recognizes that he should have been at the sanctions hearing to present his position but felt at the time he could not afford to miss work. In addition to the factors already considered by the Commission, he says that we should consider the following:

1. he successfully completed the mutual funds course in March 1998 with no prior experience in the financial services industry,
2. he immediately became a registered sales person with Canadian Global Investment,
3. he received no formal training from Canadian Global Investment in mutual fund sales or in the importance of complying with the Act,
4. he recognizes that after becoming registered, he should have gone with a company that would have given him proper training,

5. Arnot, who was a director and senior officer of the dealer and other companies selling the exempt securities, was given less severe sanctions with no administrative penalty,
6. Price, who was a director and senior officer of Private Ventures Capital and several companies selling the exempt securities, had much greater responsibility than Friesen but received the same administrative penalty,
7. although the Commission considered it appropriate to deal with Friesen and Gordon-Carmichael together when considering what orders were necessary in the public interest, the differences in their circumstances do not merit the disparity in the sanctions,
8. Gordon-Carmichael had over 40 years experience in the mutual fund industry compared with his two years, yet Gordon-Carmichael was given less severe sanctions with no administrative penalty,
9. he and Gordon-Carmichael were not the only salespersons at Canadian Global Investment who sold the exempt securities but were the only ones named as respondents,
10. all of Gordon-Carmichael's and Friesen's exempt securities sales were approved by Canadian Global Investment's compliance officer,
11. he recognizes, in hindsight, that the exempt securities were unsuitable investments for his clients and that he breached a Commission order,
12. he acknowledges that he simply followed the direction and promotional sales practices of his mentors Bilinski and Lamblin, but that he had no one else to rely upon and was just trying to earn a living for his family,
13. he lost over $100,000 by personally investing in the exempt securities and cannot afford to pay the $20,000 administrative penalty, and
14. he has no prior regulatory misconduct.

¶ 43 In our earlier sanctions decision, we considered it appropriate to deal with Friesen and Gordon-Carmichael together when considering what orders were necessary in the public interest. That has not changed. Paragraphs 26 to 44 of our November 2002 decision, which we do not intend to repeat here, describe the factors we considered.

¶ 44 What has changed is that Friesen now recognizes and acknowledges that the exempt securities were unsuitable investments for his clients and that he breached a Commission order. He also acknowledges that he simply followed the direction and promotional sales practices of his mentors, Bilinski and Lamblin, because as a novice he had no other experience and no one else to rely upon. Furthermore, he says that despite currently working as a truck driver, he still is having difficulty dealing with the financial devastation he suffered as a result of his involvement with the Canadian Financial group of companies. He says he is simply unable to pay the $20,000 penalty.

¶ 45 As we stated when considering Gordon-Carmichael's conduct, we would ordinarily impose an administrative penalty, equivalent, at least in Friesen's case, to the commissions Friesen earned on his exempt securities transactions. For us to vary the administrative penalty under section 162 of the Act against Friesen we would have to be satisfied that Friesen's circumstances now are not substantially different from those of Gordon-Carmichael. We received specific information about Gordon-Carmichael's financial affairs. His age, the fact that he had no assets, was unemployed and receiving small monthly pension convinced us that he had no ability, with no likely prospect to ever, pay the administrative penalty.

¶ 46 We would be prepared to vary the order and waive the $20,000 administrative penalty against Friesen if he is able to produce sufficiently detailed evidence to satisfy us that he has no ability, with no likely prospect of being able, to pay the penalty. This evidence can come before us in an affidavit. If we do not receive any further evidence from Friesen by June 16, 2003 we will proceed to consider what administrative penalty order is necessary in the public interest.

¶ 47 In these circumstances, we believe it is necessary in the public interest to vary the order we made against Friesen under section 161(1) of the Act to ensure that should he become registered, he will be under strict supervision for one year.

¶ 48 Accordingly, under section 171 of the Act we vary the order made on November 8, 2002 to read as follows. We order:

1. under section 161(1)(c) of the Act, that the exemptions described in sections 44-47, 74, 75, 98 or 99 of the Act do not apply to Friesen for two years expiring on November 8, 2004, except that Friesen may rely on section 45(2)(7) of the Act to trade in securities for his own account;

2. under section 161(1)(f) of the Act, that Friesen is prohibited from becoming a registrant under the Act until the later:

   (a) of two years expiring on November 8, 2004; and
   (b) the date Friesen meet the proficiency requirements for the category of registration applied, including the successful completion of the Canadian Securities Course; and

3. under section 161(1)(f) of the Act that Friesen is required, from the date of registration, to be under strict supervision for one year.

¶ 49 We have not awarded costs against these respondents because they were not the ones principally responsible for this hearing.

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¶ 50 May 26, 2003

¶ 51 **For the Commission**

Joyce C. Maykut, Q.C.
Vice Chair

John K. Graf
Commissioner

Roy Wares
Commissioner