

# 2003 BCSECCOM 852

COR#03/175

## Decision

**Kevin Boyle, Brian Boyle, Jason Boyle**

**And**

**741426 Alberta Ltd., Boyle International Inc., Boyle Can Holdings Inc., and  
542121 British Columbia Ltd.**

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

## Hearing

<b>Panel</b>	Joyce C. Maykut, Q.C.	Vice Chair
	Marc A. Foreman	Commissioner
	Robert J. Milbourne	Commissioner

**Date of Hearing**                      October 8, 2003

**Date of Decision**                      December 5, 2003

## Appearing

Kristine M. Mactaggart    For Commission staff

## Introduction

¶ 1 This is a hearing under section 161(1) of the *Securities Act* against Kevin Boyle, Brian Boyle, and Jason Boyle and 741426 Alberta Ltd., Boyle International Inc., Boyle Can Holdings Inc. and 542121 British Columbia Ltd. In a notice of hearing dated January 14, 2003, Commission staff are seeking orders in the public interest that:

1. under section 161(1)(c) of the of the Act, that any or all of the exemptions described in sections 44 to 47, 74, 75, 98 or 99 of the Act do not apply to the respondents;
2. under section 161(1)(b) of the Act, that the respondents cease trading in any securities or exchange contracts;
3. under section 161(1)(b) of the Act, that the respondents be prohibited from purchasing any securities or exchange contracts;

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4. under section 161(1)(d) of the Act, that the individual respondents resign any position they hold as a director or officer of an issuer;
  5. under section 161(1)(d) of the Act, that the individual respondents are prohibited from becoming or acting as a director or officer of any issuer;
  6. under section 161(1)(d) of the Act that the respondents are prohibited from engaging in investor relations activities;
  7. under section 174 of the Act, that the respondents pay the prescribed fees or charges of or related to the hearing; and
  8. any other others that may be appropriate in the circumstances.
- ¶ 2 In summary, the notice of hearing alleges that the Boyles and the corporate respondents were involved in unregistered trading, an illegal distribution of securities and making prohibited representations for the purpose of effecting a trade in Alberta. Because of this conduct, the Boyles were convicted and sentenced by the Alberta Provincial Court to a period of incarceration under the Alberta securities legislation. The Boyles did not appear for their sentencing and warrants for their arrest are outstanding in Alberta and British Columbia. The notice also alleges that the Boyles' raised investment funds from residents of British Columbia and as a consequence they are a threat to the investing public in British Columbia.
- ¶ 3 None of the respondents attended the hearing. We determined that each of the respondents received notice of the hearing in accordance with section 180 of the Act. We found that staff also notified each of the respondents of their intention to proceed with submissions on liability and sanction at the same time. We agreed that this was appropriate in the circumstances and these reasons include our findings and decision on sanction.

### **Background**

#### **Activities in Alberta**

- ¶ 4 On February 19, 1998, the Alberta Securities Commission issued a temporary cease trade order against the Boyles, Boyle International Inc., 738675 Alberta Ltd., 738682 Alberta Ltd. and 542121 British Columbia Ltd. The order was based on allegations that in 1997, the Boyles and the corporate respondents were involved in unregistered trading, an illegal distribution of securities and making prohibited representations for the purpose of effecting a trade contrary to the *Alberta Securities Act*, S.A. 1981, c.S-6.1. The ASC extended the order until after

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a hearing was held and a decision was given or the order was varied or revoked. The ASC has not held a hearing and the ASC temporary order remains in effect.

- ¶ 5 In the fall of 1998, each of the Boyles was charged in Alberta Provincial Court with 13 breaches of the Alberta Securities Act. The charges arose out of the same facts and concerns that precipitated the ASC temporary order.
- ¶ 6 On August 31, 2001, following a lengthy trial in the Alberta Provincial Court, at which each of the Boyles attended and was represented by counsel, A.H. Lefever, P.C.J. found each of the Boyles guilty of:
1. trading in a security without being registered contrary to section 54(1) of the Alberta Securities Act;
  2. trading in a security without filing a preliminary prospectus and a prospectus contrary to section 81(1) of the Alberta Securities Act; and
  3. failing to file a report of a trade contrary to section 108 of the Alberta Securities Act
  4. making representations that the security would be listed on an exchange with the intention of effecting a trade in a security contrary to section 70(3)(b)(i) of the Alberta Securities Act.
- ¶ 7 In extensive reasons for judgment, Lefever P.C.J. described how the Boyles' convictions related to their activities in several companies they controlled including, Boyle International Inc., BCSI Canada Holdings Inc., 738675 Alberta Ltd., 738682 Alberta Ltd., 741426 Alberta Ltd and 542121 British Columbia Ltd. See *R v. Boyle*, [2001] ABPC 152. Lefever P.C.J. also found that each of the Boyles, if not a director, was a de facto director of each of these companies.
- ¶ 8 Each of the Boyles failed to appear at the subsequent sentencing hearing and the Alberta Provincial Court issued warrants for their arrest. On October 23, 2001, execution of the warrants in British Columbia was authorized under section 156 of the *Securities Act*.
- ¶ 9 On August 29, 2002, Lefever P.C.J. sentenced the Boyles, in their absence. See *R v. Boyle*, [2002] ABPC 136. In his reasons, Lefever P.C.J., made the following observations about the Boyles. They are framed in response to a series of sentencing points used in similar cases involving regulatory prosecutions. They also include references to findings in Lefever PCJ's 2001 judgment. See *R v. Boyle (2002)*, above at paras. 34-40 and *R v. Boyle (2001)*, above at paras. 139-142:

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1. Was there an element of fraud in the offence?

The Boyles never possessed any product to sell. They had the right (upon payment of a large sum of money they did not personally possess) to acquire an unproven technology that was a long distance from a marketable product.

Kevin and Brian had been the subject of an Order under the *Competition Act* which Order had been the subject of extensive discussion between the Boyles' lawyer and the Crown before it was filed in the Court of Queen's Bench of Alberta on February 12 1998. This Order was in respect of another commercial operation which involved the raising of funds from investors and which ordered the commercial operation to cease its activities. Kevin sought to deflect onto the shoulders of unnamed former employees all responsibility for the acts which were the genesis of this Order.

The “guarantee” of share value and the signed guarantees given by the Boyles were to the unsuspecting investor an apparent guarantee of return of capital thereby negating the risk. They were worthless.

By March, 1997, Kevin and Brian were made aware of impermissible pooling in the Sagriff Trade. The actions of Kevin and to a lesser extent Brian in March - April 1997 in advising the Krahn Group about how to circumvent the pooling restrictions of the Act was clearly advice given with the knowledge that what the Krahn Group was proposing was contrary to the Act but with the intention of assisting the Krahn Group in circumventing the Act.

The “float shares” proposed to David and Evans in June 1997 was made when there were no float shares of any corporation going on the Nasdaq. There was no substance to the “float share” investment opportunity even if it had been on-side the Act. I also have accepted that Kevin was aware that the funds being acquired for the float shares were in fact pooled funds.

2. In respect to the method of operation was there planning, deliberation, or continuation over a period of time?

The evidence established that the Boyles began this venture in the early part of 1997 with the Hobal Trade, and continued the venture throughout the whole of 1997 ending in either late 1997 or early

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1998 with the Towns Trade. The operation contemplated Brian or Jason finding investors, bringing them to Kevin, and having Kevin make the pitch. The Krahn Group illustrated the hand-off approach better than almost any other example. Once Brian got the Krahn Group into the office, the sales and closure of the investment was done by Kevin. This same pattern appeared to exist for everyone with the exception of Whalen, who dealt with Jason alone. There was nothing haphazard or casual about the operation. It was slick and catered to the weakness of the investors in circumstances that the Act is designed to prevent.

The evidence satisfied me that within the Boyle brothers, Kevin was the most involved and implicated. He dealt with investors, made representations upon which investors relied, and generally was the most persuasive of the Boyles in getting investors to part with their money.

While Brian was not as implicated as Kevin, he was equally the person who was the “brains” behind the Boyle operation. He located the business “opportunity”, and was the person who was responsible for running the operation. While he was not on the front line with most investors asking for money, his activities enabled Kevin to do so. Given the closeness with which Kevin and Brian operated the Boyle companies, I am prepared to infer that Brian had knowledge of Kevin's activities.

Jason was least implicated in the operation. Without being pejorative, with the exception of the Shane Yawrenko Trade and the Whalen Trade, he was more of a front man who relied wholly upon his brothers to do the right thing. On one perspective, this might be seen as an excuse militating towards a lower sentence. That would in my view be error, for it would simply institutionalize the rogue to hide behind a dupe and thereby avoid responsibility while when discovered, asking for the dupe to be excused due to misplaced reliance or stupidity.

3. Was there a breach of trust or elements of breach of trust in the offence?

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All of the investors were independent, and there is no evidence of the abuse of any recognized legal relationship. Having said that however, there is evidence that the Boyles preyed upon friends and close acquaintances in a number of instances. These relationships were ones in which the investor might well have placed more trust in the Boyles than the investor would have placed in a stranger offering a comparable investment opportunity.

I have concluded that there is an element of breach of trust in many of the separate investment transactions that informed the various Counts.

#### 4. Were the convicts involved with others or acting alone?

There is no evidence that the Boyles were acting with others in this operation nor was there any credible evidence that the Boyles were themselves the victims of others. While there was some evidence of a transaction in which the Boyles lost money due to the actions of two others, I found that evidence to be suspect. Additionally, while there was introduced some Exhibits which suggested that the Boyles were acquiring technology from third parties, and that the Boyles had to pay money to these third parties to acquire the technology, there is no evidence that any of the money obtained by the Boyles was paid for this purpose or that the Boyles were misled as to the nature of the technology. In respect of the witnesses that testified, they dealt with the Boyles alone and not with anyone else.

To these factors I would add any other relevant factors such as an early guilty plea, remorse, or restitution.

In this case there was no guilty plea, but rather a finding of guilt after a lengthy trial.

There has been no evidence of any remorse. Rather, during Kevin and Brian's evidence, both sought to foist off onto others culpability for their respective misdeeds. Suggestions of envy due to the Boyles'

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lifestyle and the cars that Kevin and Brian drove were put forward as blinding the eyes of others. Gratuitous insults of some of the investors were given in evidence. This conduct is not the essence of remorse.

There has been no restitution much less any effort at restitution save a \$300 payment to Towns in 1998. Many of the investors are pursuing the Boyles through civil actions in the courts of Alberta. There have been a number of Orders from the Court of Queen's Bench of Alberta which have been flouted by Kevin and Brian, resulting in findings of civil contempt against them and the issuance of warrants for their arrest.

I can think of no mitigating circumstances which apply in sentencing the Boyles.

In summary, it is my view that Kevin is the most implicated, followed by Brian who is less implicated but nonetheless was deeply implicated. Jason was implicated but to a much lesser degree.

¶ 10 Based on these conclusions Lefever PCJ sentenced:

1. Kevin Boyle to be incarcerated for 30 months and prohibited him from trading any securities, withdrew his trading exemptions under the Alberta Securities Act and prohibited him from becoming or acting as a director or officer of any issuer for 25 years;
2. Brian Boyle to be incarcerated for 26 months and prohibited him from trading any securities, withdrew his trading exemptions under the Alberta Securities Act and prohibited him from becoming or acting as a director or officer of any issuer for 25 years; and
3. Jason Boyle to be incarcerated for 6 months and prohibited him from trading any securities, withdrew his trading exemptions under the Alberta Securities Act and prohibited him from becoming or acting as a director or officer of any issuer for 15 years.

¶ 11 In addition to the prosecution in Alberta Provincial Court, several investors who had dealt with the Boyles and invested money with them, or their companies including, 741426 Alberta Ltd., and Boyle International Inc., initiated civil proceedings in the Alberta Court of Queen's Bench. Lefever P.C.J., refers to these civil proceedings above in his reasons for sentencing the Boyles.

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¶ 12 The Boyles settled 17 actions, reducing the \$1.5 million in claims to judgments of \$900,000 payable over five years at 1,7000 a month. However, the Boyles failed to comply with the terms of the settlement and the investors pursued civil contempt proceedings. The Alberta Court of Queen's Bench subsequently found each of the Boyles in civil contempt and sentenced Kevin and Jason to periods of incarceration. See *Turkowski v. 738675 Alberta Ltd.*, 1999 ABQB 730 and [2001] A.J No. 830

¶ 13 Several of the investors who initiated civil actions in Alberta were residents of British Columbia.

### **Activities in British Columbia**

¶ 14 For the most part, the Boyles dealt with British Columbia investors in the same way as they dealt with Alberta investors. Several British Columbia investors, who invested funds in 741426 Alberta Ltd and Boyle International Inc. provided statements to staff about their dealings with the Boyles.

¶ 15 The statements confirm that in 1997 and 1998, Kevin Boyle made various representations to investors in Prince George and the lower mainland to induce them to invest in 741426 Alberta Ltd or Boyle International Inc. Several were friends and acquaintances that brought in other investors. Although it appears that Jason and Brian Boyle did not deal directly with British Columbia investors, Lefever PCJ determined that they were de facto directors of these companies.

¶ 16 In most cases investors believed they were purchasing shares in 741426 Alberta Ltd or Boyle International Inc. Kevin Boyle routinely represented that shares of 741426 Alberta Ltd. and Boyle International Inc. would be listed on NASDAQ and that shares of 741426 Alberta Ltd. would have a future value of not less than \$5 per share once listed. Other investors were told that they would earn a 30% return on their investment.

¶ 17 On at least one occasion, Kevin Boyle caused Boyle Can Holdings Inc., a company he controlled to transfer Boyle International Inc. shares it held to an investor to facilitate a subsequent investment. Although Boyle Can Holdings Inc. was incorporated in Florida its principal address was on Howe Street in Vancouver, British Columbia and was used like many other of the Boyle companies as a vehicle to facilitate their investment activities in this province.

¶ 18 741426 Alberta Ltd., Boyle Can Holdings and Boyle International Inc. are not reporting issuers under the Act. They traded securities without filing a preliminary prospectus and a prospectus and they and the Boyles are not registered under the Act in any capacity. Each of 741426 Alberta Ltd., Boyle Can Holdings and Boyle International Inc has now been struck from the corporate registry or dissolved.



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- ¶ 19 British Columbia residents invested approximately CDN\$219,000 in 741426 Alberta Ltd. and US\$110,000 in Boyle International Inc.
- ¶ 20 The Boyles represented to some investors that they lived in British Columbia, and in fact, had a residential address in Vancouver. Their present whereabouts is unknown.

### **Findings and decision**

- ¶ 21 The Alberta Provincial Court made a number of findings that bear directly on the issue of whether the Boyles' continued participation in the capital markets of British Columbia is prejudicial to the public interest. We accept the findings of the Alberta Court.
- ¶ 22 Commission staff argue that the conduct previously demonstrated by the Boyles in Alberta, as reflected by their convictions under the Alberta Securities Act, the civil settlements with investors, the civil contempt proceedings, together with the evidence of the British Columbia investors, demonstrates that the Boyles' illegal and abusive securities trading activities constitutes a threat to the investing public in British Columbia.
- ¶ 23 We agree with staff that no breach of the Act is required to make orders under section 161(1) of the Act. The Commission has in other cases, made orders under what is now section 161(1) of the Act based on conduct contrary to the *Securities Act* of another province. See *Re Toodoggone Gold Inc.*, [1991] 29 BCSC Weekly Summary 24, *Re Woods*, [1997] 8 BCSC Weekly Summary 22, *Re Holoboff et al.*, [1993] 29 BCSC Weekly Summary 7.
- ¶ 24 The *Securities Act* is a regulatory statute with a public interest mandate. Its overarching purpose is to ensure investor protection, capital market efficiency and public confidence in the system. Persons who contravene the Act and engage in abusive trading activity damage the integrity of the securities market and undermine public confidence in the system. On the basis of the evidence of their past conduct in Alberta we find that the Boyles represent a threat to investors in this province and that they cannot be trusted to comply with securities laws.
- ¶ 25 Therefore, considering it to be in the public interest, we make the following permanent orders:
1. under section 161(1)(b) of the Act that each of the respondents cease trading in, and is prohibited from purchasing, any securities or exchange contracts; and

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2. under section 161(1)(d) of the Act, that each of Kevin, Brian and Jason Boyle

(a) be prohibited from becoming or acting as a director or officer of any issuer, and

(b) be prohibited from engaging in investor relations activities.

¶ 26 Considering the unsatisfied judgments of the investors, we will not issue an order for costs.

¶ 27 December 5, 2003

¶ 28 **For the Commission**

Joyce C. Maykut, Q.C.  
Vice Chair

Marc A. Foreman  
Commissioner

Robert J. Milbourne  
Commissioner