

2006 BCSECCOM 32

Foresight Capital Corporation, Gilbert Kenneth Wong, and Jill Ellen MacGregor Bock aka Jill Ellen MacGregor

Sections 161 and 162 of the *Securities Act*, RSBC 1996, c. 418

Ruling

- ¶ 1 On January 12, 2006, Mr. Wong and Ms. MacGregor-Bock applied in writing to the panel to ask for:
- the opportunity to recall the Executive Director’s witnesses for further cross-examination and to call new witnesses or, in the alternative,
 - a three-week extension to prepare for their oral submissions to fully address “these new issues”.
- ¶ 2 They say that the oral submissions of the Executive Director made on January 9, 2006 and the supplemental submissions:
- undated but received by us on January 10 (client information and particulars of the allegations),
 - dated January 11 (relating to evidence arising from the third examination), and
 - dated January 12 (regarding section 133 of the Rules),
- contain new allegations and/or new particulars. Mr. Muir for the Executive Director disagrees.
- ¶ 3 The Executive Director provided the supplemental submissions on our request. We asked that the Executive Director make the evidence match more specific in certain areas, that she provide submissions on the extent to which (in her view) we could properly take into account the third examination report, and that she provide the legislative history of section 133 of the Rules. We asked for more clarity in the evidence match in part because we were concerned that vague assertions like “moderate net worth” would make it more difficult for the respondents to reply to the Executive Director’s submissions.
- ¶ 4 We are of the view that the Executive Director’s submissions contain no new allegations going beyond the further amended notice of hearing of November 28, 2005 and no new particulars.
- ¶ 5 With respect to the allegations that Ms. MacGregor-Bock breached section 48 of the Rules, the supplemental submissions set out more specifically than in the written submissions of January 6, 2006 the evidence which, in the Executive Director’s opinion, supports the allegations. For example, the supplemental

2006 BCSECCOM 32

submissions go beyond the vague assertion that the net worth of a particular witness was “moderate” to say that in the Executive Director’s view, it was \$175,000, made up of investments and land.

- ¶ 6 With respect to the allegations against Foresight, similarly, the submissions do no more than provide additional details of the alleged breaches and a more thorough evidence match. This is not to introduce new allegations against Foresight.
- ¶ 7 We are also of the view that the Executive Director has introduced no new particulars through the oral or supplemental submissions. The Executive Director has made clearer the evidence which in her view supports the allegations and the conclusions that she wishes us to draw from the evidence, but in doing so has referred only to the evidence already before us in exhibits or transcripts.
- ¶ 8 Mr. Wong and Ms. MacGregor-Bock say that certain of the evidence relied on by the Executive Director should have been set out in the particulars provided to them in December 2004. We do not agree. Respondents must be given sufficient information broadly to understand the allegations against them. The particulars must be sufficient to allow them fairly to respond to the allegations. In addition to the particulars, the Executive Director must give to the respondents the evidence on which she intends to rely in the hearing, as well as all other relevant evidence in accordance with the Commission’s decisions.
- ¶ 9 Mr. Wong and Ms. MacGregor-Bock provide the example of the reliance of the Executive Director in the supplemental submissions on the description of risks in the Offering Memoranda. This is, in our view, perfectly acceptable. The Offering Memoranda were provided to the respondents as part of the disclosure to them in December 2004. We have not seen the letter of particulars from the Executive Director to the respondents, but whether or not it mentioned the product risks disclosed in the Offering Memoranda or elsewhere, clearly the risks of the exempt products in question would be relevant to any assessment of compliance with section 48 of the Rules. There would have been no unfairness to the respondents in not specifically referring to the risks described in the Offering Memoranda in the letter of particulars and there is no unfairness now.
- ¶ 10 Mr. Wong and Ms. MacGregor-Bock say that they do not have the ability to assess the submissions pertaining to the third examination. Although the submissions are toward the more legalistic end of the spectrum, they are relatively short and straightforward. Conditions were imposed on Foresight’s registration after, and on the basis of, the third examination report. The Executive Director says that we may nevertheless properly make findings on the basis of the evidence in the report under sections 161 or 162 of the Act. The nub of the Executive Director’s argument is that, although the conditions were imposed as a

2006 BCSECCOM 32

result of Foresight's apparent non-compliance (as set out in the Report), they were imposed to protect the public while Foresight took appropriate action to bring itself into compliance. They were imposed to help Foresight bring itself back into compliance. The conditions were not enforcement measures to sanction past misconduct.

- ¶ 11 We have already ruled that the respondents should have more time to prepare any additional submissions to respond to those of the Executive Director. On January 9, 2006, we directed that the respondents will have two weeks from the date of the Executive Director's oral reply submissions to provide us with any further submissions in writing. The Executive Director will then have a further week to reply to those submissions.
- ¶ 12 It follows that we reject the respondents' application. The respondents should be ready to make their oral submissions on Monday, January 16 at 10 am.
- ¶ 13 January 13, 2006

Robin E. Ford
Commissioner

Marc A. Foreman
Commissioner

Robert J. Milbourne
Commissioner