

2006 BCSECCOM 429

James Terrence Alexander, Anne Christine Eilers and JT Alexander and Associates Holding Corporation

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

Ruling on application for a mis-hearing

- ¶ 1 On June 16, 2006, after 12 days of hearing, at the close of the executive director's reply evidence, counsel for James Terrence Alexander and JT Alexander & Associates Holding Corporation (JTA) asked us to declare a mis-hearing. Anne Christine Eilers supports their application.
- ¶ 2 Alexander and JTA say that counsel for the executive director engaged in improper conduct in his cross-examination of Alexander, and that his improprieties deprived the respondents of a fair hearing. The prejudice caused by this conduct, say the respondents, can only be remedied in this forum by declaring a "mistrial". To do otherwise would constitute a miscarriage of justice.
- ¶ 3 The respondents point to the cumulative prejudicial effect of:
- unfounded allegations that Alexander bribed Gordon Travis and Ian Neilson, and that this alleged bribery caused both Neilson's absence at this hearing and the Crown's inability to "prosecute the full criminal case" against Alexander; and
 - improper cross-examination of Alexander, which crossed the line from aggressive to abusive.
- ¶ 4 Improper conduct by counsel, whether in opening statements, closing argument, or cross-examination, can deprive a party of a fair trial, and thus provide grounds for a mistrial in civil or criminal proceedings. This is more likely in jury trials, but improper conduct by counsel can also cause a mistrial in a trial before a judge alone if it prevents a fair trial: see *R. v. Felderhof* (2003), 68 OR (3d) 481 (CA) at paras 12 and 99. However, *Felderhof* also illustrates that it will be hard to show circumstances, falling short of actual or reasonable apprehension of bias, that would prevent a fair trial.
- ¶ 5 In making our decision on the allegations in the notice of hearing, we must assess impartially the relevance of, and weight to be attached to, the evidence. We are capable of seeing through any inappropriate or inflammatory questions or comments by any party.

2006 BCSECCOM 429

- ¶ 6 We find that the respondents were not deprived of a fair hearing because of the executive director's counsel's cross-examination. We dismiss the respondents' application for a mis-hearing.
- ¶ 7 Finally, the respondents say that counsel for the executive director breached the Law Society of British Columbia's *Professional Conduct Handbook*. We make no findings on that issue. It is not a matter for us.
- ¶ 8 July 17, 2006
- ¶ 9 **For the Commission**

Robin E. Ford
Commissioner

Neil Alexander
Commissioner

John K. Graf
Commissioner