

# 2009 BCSECCOM 170

## Robert Waxman

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

### Decision

#### Background

- ¶ 1 This is an application by Robert Waxman under section 171 of the *Securities Act*, RSBC 1996, c. 418 to revoke or vary orders we made under sections 161(6)(c) and 161(1) on January 21, 2009 (see 2009 BCSECCOM 50).
- ¶ 2 Under the orders, Waxman is prohibited from trading securities, from acting as a director or officer, from acting in various capacities in the securities industry, and from engaging in investor relations activities. The order prohibiting trading expires in January 2018; the remaining orders expire in January 2028.
- ¶ 3 The orders are based on Ontario Securities Commission orders against Waxman under a settlement of allegations in an OSC notice of hearing dated August 20, 2000. The OSC orders are dated January 8, 2008. The orders we made expire at the same time as the OSC orders.
- ¶ 4 Waxman was one of a group of respondents named in the OSC notice of hearing. The other respondents entered into settlement agreements with the OSC in November 2005 and March 2006.
- ¶ 5 Waxman asks us to revoke the order prohibiting him from trading and to revoke the remaining orders or to vary them by shortening the expiry date.

#### Analysis

- ¶ 6 Waxman's grounds for his application are:
- (a) there were no allegations of improper trading in the OSC notice of hearing
  - (b) the OSC proceedings were delayed for reasons outside his control; had they proceeded in the same time frame as the other respondents, the OSC orders would have been made before section 161(6)(c) came into force.
- ¶ 7 For the reasons below, Waxman's grounds are misplaced as the basis for an application to revoke or vary orders made under section 161(6)(c).
- ¶ 8 Section 161(6)(c) says:

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(6) The commission . . . may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person

. . .

(c) is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person . . .

- ¶ 9 Before section 161(6)(c) came into force, the Commission could, and did, make orders after a hearing under section 161(1), relying in part on the findings of another securities regulator, and on that regulator's having made orders. (See, for example, *Seto* 2006 BCSECCOM 569).
- ¶ 10 Section 161(6)(c) enables the Commission to make orders against a person under section 161(1) in the public interest without a hearing, based solely on another jurisdiction's orders, so long as the person is given the opportunity to be heard.
- ¶ 11 Section 161(6)(c) was enacted to address the limited effect of single-jurisdiction enforcement orders. A person whose misconduct leads to orders in one jurisdiction can do in another jurisdiction whatever activity was prohibited in the sanctioning jurisdiction. The effect is that investors and markets outside the sanctioning jurisdiction do not have the protection of the orders. Under section 161(6)(c) the Commission can protect British Columbia investors and markets by making orders for market misconduct that correspond to those made in another jurisdiction. There are similar provisions in the securities legislation of other Canadian jurisdictions.
- ¶ 12 Because the intent of section 161(6)(c) is to facilitate cross-border enforcement of orders, the Commission, in making orders under that section, relies solely on the fact that the other jurisdiction has made orders. It does not make any independent findings of fact or law, nor does it exercise any independent judgment as to the appropriateness of the orders made by the other jurisdiction. It reviews the orders made by the sanctioning jurisdiction and imposes corresponding orders.
- ¶ 13 This is consistent with the structure of securities regulation in Canada, under which securities regulators, exchanges, and self-regulatory organizations cooperate and rely on each other to regulate trading in securities in the public interest (see *Pezim v British Columbia (Superintendent of Brokers)* [1994] 2 SCR 557). Orders made under section 161(6)(c) ensure that investors and markets in

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British Columbia enjoy the preventative and protective effect of the orders made in the sanctioning jurisdiction.

¶ 14 It follows that the Commission will generally not revoke or vary an order made under section 161(6)(c) unless the orders in the sanctioning jurisdiction change under the review and appeal provisions of that jurisdiction. When that occurs, an application under section 171 would be appropriate to have the British Columbia section 161(6)(c) orders revoked or varied to conform with the changes made in the sanctioning jurisdiction.

¶ 15 Section 171 says:

**171** If the commission . . . considers that to do so would not be prejudicial to the public interest, the commission . . . may make an order revoking in whole or in part or varying a decision the commission . . . has made under this Act . . . .

¶ 16 We consider that it would be prejudicial to the public interest to revoke or vary the orders against Waxman.

### **Decision**

¶ 17 We dismiss the application.

¶ 18 March 27, 2009

¶ 19 For the Commission

Brent W. Aitken  
Vice Chair

David J. Smith  
Commissioner