

# 2010 BCSECCOM 357

## Solara Technologies Inc. and William Dorn Beattie

### *Securities Act, RSBC 1996, c. 418*

#### Hearing

<b>Panel</b>	Brent W. Aitken	Vice Chair
	Bradley Doney	Commissioner
	Shelley C. Williams	Commissioner

**Hearing Date** June 9, 2010

**Date of Decision** June 23, 2010

#### Appearing

Shawn R. McColm For the Executive Director

Patricia A.A. Taylor For Solara Technologies Inc. and William Dorn Beattie

#### Decision

##### I Introduction

- ¶ 1 This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. Our Findings on liability made on March 26, 2010 (2010 BCSECCOM 163) are part of this decision.
- ¶ 2 Solara Technologies Inc. and William Dorn Beattie raised \$790,000 by distributing Solara securities to 46 investors in 53 trades in purported reliance on exemptions from the Act's registration and prospectus requirements. We found that those exemptions were not available for any of the trades, other than one to Beattie's sister. Solara and Beattie therefore made those trades in contravention of the Act.
- ¶ 3 We found that Solara and Beattie made a misrepresentation in Solara's offering memorandum, which stated that Solara paid no compensation to Beattie. In fact, Solara paid Beattie a salary of \$70,000 per year.
- ¶ 4 We found that Solara and Beattie filed reports with the Commission that were false and misleading because they reported reliance on the offering memorandum exemption for trades made before the date of Solara's offering memorandum. The reports also disclosed false dates of distributions and failed to disclose a finder's fee.

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- ¶ 5 We found that Solara and Beattie contravened a cease trade order, although their conduct did not appear deliberate or reckless, nor was there any evidence that they otherwise failed to respect the order. The executive director did not include this finding as a basis for the orders he seeks.

### **II Analysis**

#### **A Positions of the parties**

- ¶ 6 The executive director seeks orders under section 161(1) of the Act prohibiting Beattie from trading or purchasing securities (except for his own account) for 10 years and, for the same period, prohibiting him from acting as a director or officer of any issuer, from acting in management or consultative capacity in connection with activities in the securities market, and from engaging in investor relations activities. The executive director also seeks an order under section 162 of the Act imposing an administrative penalty against Beattie of \$100,000.
- ¶ 7 The executive director seeks no orders against Solara.
- ¶ 8 Beattie says that the prohibitions should be for no more than five years, and that we ought not to order an administrative penalty.

#### **B Factors to consider**

- ¶ 9 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission discussed the factors relevant to sanction as follows (at page 24):

In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of respondent's conduct,
- the harm suffered by investors as a result of the respondent's conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent's conduct,
- the respondent's past conduct,

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- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

### **C Application of the factors**

#### ***Seriousness of the conduct and damage to markets***

- ¶ 10 Contraventions of sections 34(1) and 61(1) are inherently serious, because they are among the Act's foundation requirements for protecting investors and the integrity of capital markets. Section 34(1) requires that those who trade in securities be registered, so that purchasers of securities are offered only securities that are suitable. Section 61(1) requires that those who wish to distribute securities file a prospectus with the Commission, so that investors and their advisers get the information they need to make an informed investment decision.
- ¶ 11 The legislation provides exemptions from sections 34(1) and 61(1) if the issuer follows specified requirements. Those requirements are designed to protect investors and markets, so an issuer who intends to rely on the exemptions must ensure that they are met.
- ¶ 12 Solara and Beattie raised \$790,000 by distributing securities to 46 investors in 53 trades over a two-year period.
- ¶ 13 In our Findings we noted that Solara appears not to have taken sufficient care to ensure the requirements of the exemptions were met at the time of the trades, did not keep appropriate records and, when called upon to justify the trades, was scrambling to find exemptions after the fact.
- ¶ 14 This is not the standard of conduct we expect from issuers, or their officers or directors, when raising funds from the public.

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- ¶ 15 Beattie says he relied on Gaelle McErvell, who assisted Solara in its capital-raising efforts, but that does not relieve him of his responsibility to ensure that Solara complied with the requirements of the legislation.
- ¶ 16 Solara and Beattie also misrepresented to investors about Beattie’s salary. As we noted in the Findings, Solara is a start-up company with no revenue from operations. Its payment to Beattie of \$70,000 was a significant proportion of its expenses, and could reasonably be expected to affect the market price or value of Solara’s securities.
- ¶ 17 The reports filed by Solara were in fact false and misleading. Although there is no evidence that Solara or Beattie intended to mislead the Commission when filing them, this conduct is, at a minimum, another example of the respondents’ failure to take appropriate steps to ensure the requirements for using the exemptions were met.

### *Harm suffered by investors; enrichment*

- ¶ 18 Solara is now essentially dormant. Without new financing, its prospects of continuing operations are remote. There is no evidence that its investors will recover any of the \$790,000 they invested.
- ¶ 19 Solara paid Beattie a salary of \$70,000 for at least two years. Setting aside the misrepresentation associated with that, a salary at that level does not appear unreasonable for the degree of time and effort Beattie spent on the conduct and management of Solara’s affairs. We would not, in the circumstances, characterize this level of compensation as significant enrichment.

### *Mitigating or aggravating factors; past conduct*

- ¶ 20 There are no mitigating factors to consider.
- ¶ 21 Although Beattie says he accepts “his conduct was in breach of the Act” and “accepted responsibility for the misfiling of documents” because he signed them, he repeats in his submissions on sanction his reliance on McErvell and Solara’s counsel. This is consistent with his evidence at the hearing, where he appeared to consider himself largely blameless for Solara’s contraventions of the Act.
- ¶ 22 Neither Solara nor Beattie has any prior disciplinary history.

### *Risk to investors and markets*

- ¶ 23 Although we did not find that Solara or Beattie knowingly contravened the Act, they were sloppy about ensuring that the exemptions were available. Their carelessness and demonstrated failure to ensure compliance with requirements

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when raising capital suggests the potential for significant risk to our capital markets were they to continue to participate in them unrestricted.

- ¶ 24 In assessing Solara's and Beattie's continued participation in the capital markets, we have considered both their conduct and the impact of any orders on Solara's future prospects (and, by extension, any hope of its investors' ultimately recovering any part of their investment).
- ¶ 25 The orders we are making address these factors.

### *Specific and general deterrence*

- ¶ 26 The orders we are making are intended to deter Solara and Beattie from future misconduct and to demonstrate the consequences of inappropriate conduct to other market participants.

### *Previous orders*

- ¶ 27 The executive director cited *LOM Medical International Inc.* 2004 BCSECCOM 289 and *Corporate Express Inc.* 2006 BCSECCOM 153.
- ¶ 28 These cases are distinguishable because they both had aggravating factors not present in this case. In *LOM*, the respondent engaged in wrongful conduct while under sanction by another Canadian securities regulator for identical conduct. In *Corporate Express*, the respondents' breach of temporary orders was blatant.

### **III. Decision**

- ¶ 29 We are making orders against both Solara and Beattie that restrict their ability to trade. We recognize that Solara is likely to require new financing to carry on its business. The orders therefore allow it and Beattie to engage in conduct necessary to find financing, but not to sell securities. If they identify a prospective means of financing, they can apply under section 171 of the Act for an appropriate variation of our orders.
- ¶ 30 We are making orders prohibiting Beattie's participation in securities markets. However, it appears clear that Solara's future prospects are strongly tied to his continued participation in its management. We noted in our Findings that Solara appeared to operate as a legitimate business. Beattie has always been the face of Solara and the driving force behind its activities, and is the one most knowledgeable of its affairs. We think that any prospect the current Solara shareholders have of recovering their investment could be put at risk were we to bar Beattie from continuing in a management role at Solara. The orders therefore allow Beattie to remain as a director and officer of Solara.

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- ¶ 31 We have imposed an administrative penalty against Beattie. We noted above that *LOM* is distinguishable due to aggravating factors in that case, but absent those factors, the conduct was similar. In that case, the Commission imposed an administrative penalty of \$100,000. In our opinion, an administrative penalty of \$50,000 is appropriate in this case. This reflects both the nature and scope of the illegal distribution, the financial consequences to Solara's investors, the misrepresentation about Beattie's salary, and Beattie's apparent failure to understand that he was ultimately responsible for all those things.
- ¶ 32 Beattie submits that he has no ability to pay, nor is likely ever to have the ability to pay, an administrative penalty. That he has no ability to pay now appears to be true. Although we do not have complete evidence as to his financial circumstances, it appears that his home is subject to court sale proceedings.
- ¶ 33 As for the future, if Beattie stays at the helm at Solara and is able to secure financing and turn Solara into a success, his substantial shareholdings could represent sufficient value for him to pay the penalty. In these circumstances, we would not refrain from ordering an administrative penalty based on his inability to pay.

### **IV Order**

- ¶ 34 Therefore, considering it to be in the public interest, we order:

#### ***Solara***

1. under section 161(1)(b) of the Act, that Solara cease trading securities or exchange contracts;

#### ***Beattie***

2. under section 161(1)(b), that Beattie cease trading, securities and or exchange contracts for a period of 5 years, except that Beattie may trade for his own account through a registrant, if he gives the registrant a copy of this decision;
3. under section 161(1)(d)(i) that Beattie resign any position he holds as a director or officer of any issuer, other than Solara and any issuer all the securities of which are owned beneficially by him or members of his immediate family;
4. under section 161(1)(d)(ii), that Beattie is prohibited for 5 years from acting as a director or officer of any issuer, other than Solara and any issuer all the securities of which are owned beneficially by him or members of his immediate family;

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5. under section 161(1)(d)(iv), that Beattie is prohibited for 5 years from acting in a management or consultative capacity in connection with activities in the securities market;
6. under section 161(1)(d)(v), that Beattie is prohibited for 5 years from engaging in investor relations activities;
7. under section 162, that Beattie pay an administrative penalty of \$50,000; and
8. notwithstanding paragraphs 1, 2, 5 and 6, Solara and Beattie may engage in conduct, including advertisement, solicitation, and negotiation, for the purpose of obtaining financing for Solara's business, provided that they seek an appropriate variation order from this Commission before selling securities.

¶ 35 June 23, 2010

¶ 36 **For the Commission**

Brent W. Aitken  
Vice Chair

Bradley Doney  
Commissioner

Shelley C. Williams  
Commissioner