

2012 BCSECCOM 440

**Mark Aaron McLeary, Timothy John McLeary,
Robert Hainey, Jerry Williams and Erik John Benson**

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

Panel	Bradley Doney Don Rowlatt Suzanne K. Wiltshire	Commissioner Commissioner Commissioner
Date of hearing	November 22, 2012	
Date of Ruling	November 27, 2012	
Appearing		
Derek J. Chapman	For the Executive Director	
H. Roderick Anderson	For Mark Aaron McLeary	

Ruling

Application

¶ 1 On November 21, 2012, counsel for Mark McLeary applied for an order:

That by 5:00 p.m., Friday, November 30, 2012 the executive director file with the Commission and provide to the respondents, a document that:

- (a) specifies each document in the executive director's possession or control relating to the investigation that the executive director has not disclosed, or after the date of this order does not disclose, to the respondents, and
- (b) describes each document in sufficient detail so that the grounds upon which the executive director has not disclosed it may be assessed.

¶ 2 McLeary did not file any material and did not tender any evidence in support of his application. The respondent Erik Benson supports the application; none of the other respondents responded to the application.

Background

¶ 3 The hearing of the allegations in the further amended notice of hearing started on May 30, 2012. We heard evidence from a staff investigator until June 8, 2012, at which time we adjourned the hearing to December 10, 2012.

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- ¶ 4 During the hearing, we made two rulings for disclosure.
- ¶ 5 On June 4, 2012, we ordered that the executive director disclose to Mark McLeary, Timothy McLeary and Erik Benson, written records of any communication between the executive director and Malkeet Bains, relating to the settlement between Bains and the executive director, that are not subject to solicitor-client privilege.
- ¶ 6 As part of his settlement, Bains undertook to testify at the hearing and he is scheduled to testify when the hearing resumes. Based on that, we were satisfied that the records sought could be relevant.
- ¶ 7 On June 6, 2012, we ordered that the executive director disclose to the respondents all relevant notes made by commission staff in the course of the investigation, and to describe any notes for which privilege is claimed.
- ¶ 8 Based on the evidence we heard from the staff investigator, we were satisfied that there may have been undisclosed notes that would be relevant.

Position of the Parties

- ¶ 9 McLeary seeks an order that he says is virtually identical to that which was granted in *Canaco Resources Inc.* [2012 BCSECCOM 418].
- ¶ 10 The executive director opposes the application. He states that he has disclosed all relevant information as required by BC Policy 15-601.

Discussion and Analysis

- ¶ 11 Section 2.6 of BC Policy 15-601 states that in an enforcement hearing, the executive director must disclose to each respondent all relevant information that is not privileged.
- ¶ 12 McLeary did not produce any evidence on the application and therefore provided us with no basis for making a disclosure order. He has not shown that the executive director has failed to comply with his obligation to disclose all relevant information that is not privileged.
- ¶ 13 As noted above, counsel for the executive director states that he has disclosed all relevant information.

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¶ 14 Accordingly, we dismiss the application.

¶ 15 November 27, 2012

¶ 16 **For the Commission**

Bradley Doney
Commissioner

Don Rowlatt
Commissioner

Suzanne K. Wiltshire
Commissioner