Citation: 2013 BCSECCOM 448

Thalbinder Singh Poonian, Shailu Sharon Poonian, Robert Joseph Leyk, Manjit Singh Sihota and Perminder Sihota

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

Panel	Suzanne K. Wiltshire	Commissioner
	George C. Glover, Jr.	Commissioner
	Audrey T. Ho	Commissioner
Hearing Date	October 16, 2013	
Date of Decision	October 16, 2013	
Date of Reasons	October 17, 2013	
Appearing		
C. Paige Leggat Anjalika Rogers	For the Executive Director	
Jeremy West	For Thalbinder Singh Poonian and Shailu Sharon Poonian	
Sean K. Boyle Andrew Crabtree	For Manjit Singh Sihota and Perminder Sihota	

Reasons for Ruling

¶ 1 These are our reasons dismissing the applications by Thalbinder Singh Poonian and Shailu Sharon Poonian (the Poonians) and Mangit Singh Sihota and Perminder Sihota (the Sihotas) to adjourn the hearing of the allegations against them set out in the notice of hearing referred to in paragraph 2 below.

¶ 2 On August 2, 2012, the executive director issued a notice of hearing and temporary order under section 161(2) of the Securities Act, RSBC 1996, c. 418 (2012 BCSECCOM 306) against the Poonians, the Sihotas and Robert Joseph Leyk (the respondents). The hearing of the allegations is scheduled to start October 28, 2013.

¶ 3 In the notice of hearing, the executive director alleges that the respondents contravened the *Securities Act* by manipulating the shares of a company that was listed on the TSX Venture Exchange.

¶ 4 In the temporary order, the executive director prohibited the respondents from: trading in and purchasing securities, with exceptions; conducting investor relations activities; and acting as directors or officers of any issuer, with exceptions.

¶ 5 On February 1, 2013, a Commission panel heard the executive director's application to extend the temporary order and reserved its decision. On February 8, the Commission panel gave its decision and extended the temporary order, as previously varied, until a hearing is held and a decision is rendered.

¶ 6 Sometime before March 25, Perminder Sihota filed in the Court of Appeal, notice of an application for leave to appeal the panel's decision to extend the temporary order.

¶ 7 On July 12, the Commission panel issued its reasons for extending the temporary order (2013 BCSECCOM 131).

¶ 8 On August 13, the Sihotas and on September 18, the Poonians, gave notice to the executive director of an application for a permanent stay of the proceedings. The applications were based on *ex parte* communications between the Commission's director of enforcement and the Commission's general counsel about the issuance and timing of reasons for extending the temporary order. The applicants argued that the *ex parte* communications give rise to a reasonable apprehension of bias with respect to the hearing of the allegations.

¶ 9 We heard the stay applications on September 30 and dismissed them on October 11 (2013 BCSECCOM 436).

¶ 10 On October 3, the Poonians gave notice of an application to adjourn the hearing. On October 10, the Sihotas provided similar notice.

¶ 11 We heard the adjournment applications on October 16. At that time, the applicants had not filed a notice of leave to appeal our decision dismissing the stay applications.

¶ 12 The basis for both adjournment applications was that the applicants intend to seek leave to appeal the panel's decision on the stay applications and the respondents will suffer prejudice if the adjournment is not granted. In particular, the applicants argued that they will incur unrecoverable costs to prepare for and attend the hearing.

¶ 13 They argued that if the hearing is adjourned, the public interest will be protected by the temporary order in place against all the respondents, and that there is no prejudice to the executive director.

¶ 14 In addition, counsel suggested in oral argument that since some document disclosure is ongoing, it may be helpful to all parties to have a short adjournment.

¶ 15 The executive director opposed the applications. Counsel argued that it is in the public interest that the hearing of the allegations move forward as scheduled.

¶ 16 With respect to disclosure, counsel for the executive director noted that the bulk of disclosure was made a year ago. In accordance with the executive director's ongoing disclosure obligation, in early October counsel disclosed one additional document and informed the respondents that 40 other documents obtained by the executive director in the course of the investigation were not disclosed as they were not relevant.

¶ 17 We dismissed the applications on October 16, with reasons to follow. These are our reasons.

Analysis

Applicable law

¶ 18 In *Bennett (Re)* 1992 LNBCSC 64, at page 10, the Commission panel cited the following from the Supreme Court of Canada in *Prassad v. Canada (Minister of Employment & Immigration),* (1989), 57 D.L.R. (4th) 663:

> As a general rule, these (administrative) tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice. Adjournment of their proceedings is very much in their discretion.

¶ 19 The panel in *Bennett (Re)* stated, at page 11:

> As a general rule, it is in the public interest to proceed with hearings expeditiously. One of the reasons legislatures pass legislation creating administrative tribunals is because there is an expectation those tribunals will be able to make decisions more expeditiously than the courts and therefore with respect to securities regulation as an example, the public interest will be better served. In our view, failure to hold hearings expeditiously can be prejudicial to the public interest, notwithstanding that there are temporary orders.

¶ 20 The law in *Prassad* and *Bennett (Re)* is reflected in the Commission's policy BC Policy 15-601. Section 2.1 of the policy states the following:

> 2.1 Procedures – The Commission conducts hearings less formally than the courts. The Act and Regulation prescribe very few procedures the Commission must follow in hearings. Consequently, except for these, the Commission is the master of its own procedures. In deciding procedural matters, the Commission considers the rules of natural justice set by the courts and the public interest in having matters heard fully and decided promptly.

¶ 21 Similarly, section 6.4 of BC Policy 15-601 states the following:

> 6.4 Adjournments – The Commission expects parties to meet scheduled hearing start dates. If a party applies for an adjournment, the Commission considers the circumstances, the fairness to all parties and the public interest in having matters heard and decided promptly.

Application of the law to the facts

¶ 22 The applicants argue that if they are required to proceed with the hearing, they will incur unrecoverable costs in preparing for and attending the hearing. They did not argue, however, and there is no evidence showing, that the applicants would be denied a fair hearing because of this ground.

¶ 23 As for on-going disclosure, the applicants did not provide any evidence or argument about how that might undermine their ability to have a fair hearing.

¶ 24 Balanced against these two factors raised by the applicants is the public interest in having matters heard and decided promptly. The notice of hearing alleges serious misconduct by the respondents.

¶ 25 As noted by the Commission panel in *Bennett (Re)*, it can be prejudicial to the public interest to delay a hearing, even though a temporary order is in place. While the temporary order serves to limit the risk of harm, it does not resolve the allegations in the notice of hearing. Such orders are meant to be temporary, and it is in the public interest to have the allegations heard and decided. The allegations were issued on August 2, 2012 and there was no evidence or argument on the adjournment applications that the parties are not ready to proceed with the hearing.

¶ 26 We concluded that it is in the public interest for the hearing to proceed on October 28 and we dismissed the adjournment applications.

¶ 27 October 17, 2013

For the Commission

Suzanne K. Wiltshire
Commission

George C. Glover, Jr.
Commissioner

Audrey T. Ho
Commissioner