

2003 BCSECCOM 404

Temporary Order and Notice of Hearing

James Nelson McCarney

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

- ¶ 1 A hearing will be held (the Hearing) to give James Nelson McCarney (McCarney) an opportunity to be heard before the British Columbia Securities Commission determines whether it is in the public interest to make the following orders:
1. under section 161(1)(a) of the Act, McCarney comply with or cease contravening the Act;
 2. under section 161(1)(b) of the Act, that McCarney cease trading in any securities or exchange contracts;
 3. under section 161(1)(c) of the *Securities Act*, RSBC 1996, c. 418 that any or all of the exemptions described in any of sections 44 to 47, 74, 75, 98 and 99 of the Act do not apply to McCarney;
 4. under section 161(1)(d) of the Act, that McCarney resign from any position he holds as a director or officer of any issuer;
 5. under section 161(1)(d) of the Act, that McCarney is prohibited from becoming or acting as a director or officer of any issuer;
 6. under section 161(1)(d) of the Act that McCarney be prohibited from engaging in any investor relations activities;
 7. under section 174 of the Act that McCarney pay prescribed fees or charges for the costs of, or related to, the Hearing; and
 8. any other orders as may be appropriate in the circumstances.
- ¶ 2 The Commission will be asked to consider the following facts and allegations in making its determinations:
1. On January 6, 2003, Staff of the Commission obtained an Investigation Order under section 142 of the Act (the Investigation Order) that ordered Staff to investigate 526053 BC Ltd. (526053), McCarney Technologies Inc. (MTI), Autolab LLC (Autolab), IVS Intelligent Vehicle Systems (IVS), McCarney, James Mead, Trevor Park, Cathy Sackville and Brent Edgson. The

2003 BCSECCOM 404

Investigation Order directed Staff to enquire into, inspect and examine any person, company or other entity on any matter that may reasonably relate to:

- (a) directors, officers, agents, related parties and employees of 526053;
- (b) the participation of the Parties in the trading or distribution of securities in British Columbia;
- (c) the operations of the Parties and any related entities; and
- (d) the proceeds obtained from the trading or distribution of securities by the Parties, the whereabouts of those proceeds, and the use that has been made of those proceeds.

during the period from December 1, 1997, forward.

2. McCarney:

- (a) is not registered under the Act;
- (b) was a director and remains an officer of MTI;
- (c) is the sole director and officer of 526053;
- (d) was the sole officer and shareholder of Autolab;
- (e) was an officer and director of IVS during the period October 1992 through to September 1999; and
- (f) is the subject of an outstanding Cease Trade Order (failure to file insider trading reports) issued by the Commission on March 3, 1999.

3. On January 7, 2003, a Demand for Production pursuant to section 144 of the Act was served on McCarney's counsel of record. The following demands remain outstanding:

- (a) a list of the names, amounts and the dates of all the lenders who have exercised any warrants relating to the 526053 loan agreements; and
- (b) a list of all the representatives who participated in the 526053 loan agreements.

2003 BCSECCOM 404

4. On January 14, 2003, another Demand for Production pursuant to section 144 of the Act was served on McCarney's counsel of record. All requests contain in this demand have been answered.
5. On January 28, 2003, another Demand for Production pursuant to Section 144 of the Act was served on McCarney's counsel of record. The following demand remains outstanding:
 - (a) copies of annual financial statements for 526053, covering the period from December 31, 1997 to December 31, 2002.
6. On February 17, 2003, another Demand for Production pursuant to section 144 of the Act was served on McCarney's counsel of record. The following demands remain outstanding:
 - (a) 526053's financial statements prepared prior to 2003, for the period covering December 31, 1997 through December 31, 2002 (the Relevant Period). This should include, but is not limited to:
 - (i) financial statements filed by 526053 to support income tax returns; and
 - (ii) all notes and working papers of the accountant who prepared 526053's financial statements; and
 - (b) a list of all representatives that raised money for 526053 through loan agreements, promissory notes or any other form.
7. On March 19, 2003, another Demand for Production pursuant to section 144 of the Act was served on McCarney's counsel of record. The following demands for records, supporting documentation and explanations relating to 526053 remain outstanding:
 - (a) Journal entry J275 applied to the Loans from Shareholder account on the 526053 General Ledger (the GL) for 1998.
 - (b) The method in which Mr. McCarney's annual salary was determined for the period from January 1997 though to December 31, 2002 (the Relevant Period).

2003 BCSECCOM 404

- (c) The determination of all salaries, consultant fees, and any other forms of remuneration paid directly or indirectly to Mr. McCarney during the Relevant Period by McCarney Technologies Inc. (MTI), 526053, Autolab LLC, and IVS Intelligent Vehicle Systems.
- (d) All advances of funds by 526053 to MTI.
- (e) A complete list of all persons who have loaned money to 526053 in the Relevant Period and have subsequently been repaid.
- (f) Journal entries J262 through to J268 applied to the Loans-Private Placement account in the GL for 1998.
- (g) A list of all term deposits and other investments (including dates, terms, amounts and account numbers) purchased by 526053 during the Relevant Period.
- (h) Cheque #714 payable to D.E. Russel cleared on March 17, 2000 from the 526053 Royal Bank Canadian Account (RBC Canadian Account).
- (i) All payments made to Radar Investments during the Relevant Period.
- (j) The withdrawal of \$1,517,000 on August 22, 2000 from the RBC Canadian Account.
- (k) The transfer of US\$50,028.80 on August 30, 2000 from 526053 Royal Bank US Account (RBC US Account) to Nevis American.
- (l) The withdrawal of \$31,480.11 on September 27, 2000 from the RBC US Account.
- (m) The withdrawal of \$680,000 on October 31, 2000 from the RBC Canadian Account.
- (n) All supporting documentation and records relating to the following cheques made payable to Gayle Legault:

Cheque number	Clearing Date	Bank Account
1426	February 6, 2001	RBC Canadian Account
1427	February 6, 2001	RBC Canadian Account
1428	February 6, 2001	RBC Canadian Account
1429	February 6, 2001	RBC Canadian Account

2003 BCSECCOM 404

- (o) The transfer of US\$200,000 on February 28, 2001 from 526053 HSBC Bank of Canada US Account (HSBC US Account).
 - (p) The transfer of US\$20,027.53 on March 5, 2001 from the RBC US Account.
 - (q) The transfer of \$147,042.50 on May 24, 2001 from the RBC Canadian Account.
 - (r) The transfer of \$18,042.50 on May 24, 2001 from the RBC Canadian Account.
 - (s) Cheque #1528 payable to Dr. E. Tony Stickel cleared on June 1, 2001 from the RBC Canadian Account.
 - (t) Cheque #1577 payable to Bob Cabral cleared on August 13, 2001 from the RBC Canadian Account.
 - (u) The transfer of \$90,507.63 on October 9, 2001 from the RBC Canadian Account.
 - (v) A copy, front and back of cheque #19 for \$100,000 drawn on December 7, 2001 from the 526053 HSBC Bank of Canada, Canadian funds Account.
8. By letter dated March 19, 2003, McCarney was asked to provide a written explanation of the length of time that would be required to respond the various requests contained in the prior Demands for Production. No estimate or explanation was forthcoming from McCarney.
 9. By letter dated June 5, 2003, Commission Staff identified the outstanding requests and again asked McCarney to provide a written explanation as to his delay in responding to the outstanding demands.
 10. As of the date of this Notice of Hearing, McCarney has not satisfied any of the outstanding demands, nor provided a satisfactory response to Commission Staff's request for a written explanation.
 11. There has been a deliberate failure by McCarney to comply with the outstanding demands of Commission Staff referred to above and a deliberate attempt by McCarney to frustrate and delay matters contained in the Investigation Order.

2003 BCSECCOM 404

12. McCarney's deliberate failure to comply with the Demands for Production and continued involvement in 526053 and MTI is contrary to the public interest.

- ¶ 3 The Executive Director considers the length of time to hold a hearing under section 161(1) of the Act could be prejudicial to the public interest.
- ¶ 4 The Executive Director, considering that it would be in the public interest to do so, orders under section 161(2) of the Act (the Temporary Order) that:
1. under section 161(1)(a) of the Act, McCarney comply with or cease contravening the Act;
 2. under section 161(1)(b) of the Act, that McCarney cease trading in, or is prohibited from purchasing any securities or exchange contracts;
 3. under section 161(1)(c) of the Act, that any or all of the exemptions described in sections 44-47, 74, 75, 98 or 99, do not apply to McCarney;
 4. under section 161(1)(d) of the Act, that McCarney resign any position they hold as a director or officer of any issuer, and that he is prohibited from becoming or acting as a director or officer of any issuer; and
 5. under section 161(1)(d) of the Act, that McCarney is prohibited from engaging in any investor relations activities.
- for a period expiring on June 24, 2003.
- ¶ 5 The Hearing will be held at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, BC, on Tuesday, June 24, 2003, at 10:00 am.
- ¶ 6 At the Hearing the staff of the Commission will bring the following applications:
1. that the Temporary Order be extended until the Respondent complies with the outstanding Demands for Production.
- ¶ 7 McCarney may be represented by counsel at the Hearing and make representations and lead evidence. McCarney is requested to advise the Commission of his intention to attend the Hearing by contacting the Commission Secretary, at PO Box 10142, Pacific Centre, 5th Floor, 701 West Georgia Street, Vancouver, BC V7Y 1L2, email: commsec@bcsc.bc.ca.

2003 BCSECCOM 404

¶ 8 Determinations may be made in this matter if McCarney or his counsel do not appear at the Hearing.

¶ 9 June 16, 2003

¶ 10 Stephen J. Wilson
Executive Director