

2004 BCSECCOM 274

Notice of Hearing

**526053 B.C. Ltd., James Nelson McCarney, Trevor William Park,
Brent Gordon Edgson, Del Michel Albert Delisle and Mark Stephen Heeres**

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

- ¶ 1 A hearing (the Hearing) will be held to give 526053 B.C. Ltd. (526053), James Nelson McCarney (McCarney), Trevor William Park (Park), Brent Gordon Edgson (Edgson), Del Michel Albert Delisle (Delisle) and Mark Stephen Heeres (Heeres) (collectively, the Respondents) an opportunity to be heard before the British Columbia Securities Commission considers whether it is in the public interest to make the following orders:
1. under section 161(1)(a) of the *Securities Act*, RSBC 1996, c. 418 (the Act), the Respondents comply with or cease contravening the Act;
 2. under section 161(1)(b) of the Act, that the Respondents cease trading in, or be 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 to 47, 74, 75, 98 or 99 of the Act do not apply to the Respondents;
 4. under section 161(1)(d) of the Act, that McCarney, Park, Edgson, Delisle and Heeres resign any position they may each hold as a director or officer of any issuer, and that they each be prohibited from becoming or acting as a director or officer of any issuer;
 5. under section 161(1)(d) of the Act, that the Respondents be prohibited from engaging in investor relations activities;
 6. under section 162 of the Act, that the Respondents each pay an administrative penalty;
 7. under section 174 of the Act, that the Respondents each 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:

2004 BCSECCOM 274

The Respondents

1. 526053 is a company incorporated under the laws of British Columbia and is not a reporting issuer.
2. 526053's registered and records office is located at 2900 - 595 Burrard Street, Vancouver, British Columbia.
3. McCarney:
 - (a) is the sole director and officer of 526053;
 - (b) is a resident of British Columbia;
 - (c) is the subject of an outstanding Cease Trade Order (for failure to file insider reports) issued by the Commission on March 3, 1999; and
 - (d) is not registered under the Act.
4. Park is a resident of British Columbia, a representative of 526053, and is not registered under the Act.
5. Edgson is a resident of Alberta, a representative of 526053, and is not registered under the Act.
6. Delisle:
 - (a) is a resident of British Columbia;
 - (b) is a representative of 526053;
 - (c) is subject to a settlement agreement with, and order by, the Executive Director of the Commission dated July 17, 2001; and
 - (d) is not registered under the Act.
7. Heeres is a resident of British Columbia, a representative of 526053, and is not registered under the Act.

Other Parties

8. McCarney Technologies Inc. (MTI) is a company incorporated under the laws of British Columbia and is a reporting issuer. MTI has its office located at 100-21320 Gordon Way, Richmond, British Columbia.

2004 BCSECCOM 274

9. McCarney was a director of MTI from August 28, 1987 to December 19, 2002, and an officer of MTI from February 3, 1992 to December 19, 2002.
10. Autolab LLC (Autolab) is a California limited corporation formed in 1997 and is a wholly owned subsidiary of 526053. Autolab is not a reporting issuer in British Columbia.
11. McCarney was the sole officer of Autolab. 526053 was the sole shareholder of Autolab.
12. IVS Intelligent Vehicle Systems Inc. (IVS) is a reporting issuer incorporated in British Columbia. IVS was listed on the TSX Venture Exchange on October 15, 1992.
13. McCarney was an officer and director of IVS from October 1992 through to May 28, 1998 and June 30, 1999, respectively.

Facts

14. Between May 10, 1998 and December 31, 2002 (the Relevant Period), the Respondents solicited funds in 526053 from residents of seven provinces, including British Columbia and Saskatchewan, as well as the United States, Germany, England, Costa Rica, Belize, Bahamas and Turks and Caicos Islands (the Investors).
15. The funds solicited from the Investors were used to purchase loan agreements from 526053 (the Loan Agreements).
16. Particulars of the Loan Agreements are as follows:
 - (a) the Investors invested funds with 526053 for the development of Autolab's business and to acquire a public company in the United States (Pubco);
 - (b) upon maturity, the Investors were to be repaid with shares in Pubco;
 - (c) the shares referred to in the Loan Agreements were assigned a value from Cdn. \$1.00 to US \$5.00 per share and included an attached warrant to purchase additional shares; and
 - (d) the term of the Loan Agreements was one year plus thirty days or until Pubco was acquired.
17. 526053 did not acquire Pubco.

2004 BCSECCOM 274

526053/McCarney

18. McCarney is the sole director and officer of 526053.
19. In 1999 and 2000, 526053's office was located at McCarney's personal residence.
20. The proceeds from the distribution and sale of the Loan Agreements were deposited into one of 526053's two bank accounts, which were held with HSBC Bank of Canada (HSBC) and the Royal Bank of Canada (Royal Bank). Both of 526053's bank accounts were located in Vancouver, British Columbia.
21. McCarney was the sole person authorized to sign documents and conduct business with HSBC on 526053's behalf. McCarney was the primary signatory for 526053's Royal Bank account; the secondary signatory was McCarney's personal administrative assistant.
22. The acts and omissions of 526053 set out in this Notice of Hearing are the acts and omissions of McCarney, pursuant to section 168.2 of the Act.

The Distribution

23. During the Relevant Period, the Respondents distributed and sold the Loan Agreements to approximately 1,435 investors, for total proceeds of approximately \$26,637,512, with approximately \$4,500,000 raised in British Columbia from 253 British Columbia residents.

Loan Agreement Addendums

24. On September 30, 2002, Park distributed an e-mail to approximately 750 of the Investors, offering the Investors an opportunity to exercise warrants referred to in the Loan Agreements by subscribing to the Loan Agreement Addendums (the LAA).
25. On October 1, 2002, Park distributed a second e-mail to approximately 750 of the Investors, stating that:
 - (a) the US \$5.00 warrants, at this one time, could be exercised at US \$3.00;
 - (b) the warrants could be exercised 13 months after the shares started trading; and
 - (c) the Investors could choose to exercise warrants before October 25, 2002, and they would receive shares that were free trading.

2004 BCSECCOM 274

26. On October 21, 2002, McCarney and Park organized and participated in conference calls designed to induce the Investors to purchase the LAA. The Investors were told that Pubco would be posted for trading on December 24 or 26, 2002.
27. 526053 raised approximately \$1,055,897 from distributing and selling the LAA to 159 investors in British Columbia and other jurisdictions.
28. McCarney authorized all 159 LAA on behalf of 526053. 526053, McCarney and Park solicited, distributed and accepted the LAA from the Investors, even though there were no underlying securities for the Investors to receive upon the exercise of the alleged warrants because Pubco had not been acquired.
29. The solicitation and distribution of the LAA to the Investors was a fraudulent act organized and directed by McCarney and Park on behalf of 526053.
30. McCarney and Park knew that distributing and selling the LAA could, and in fact did, deprive the Investors of their investments because Pubco had not been acquired.

Commissions Received by 526053 Representatives

31. During the Relevant Period, Edgson, Delisle and Heeres were paid a commission of approximately 10% of the total value of the Loan Agreements distributed and sold by them.
32. Edgson, Delisle and Heeres generally received their commissions from 526053 via cheques signed by McCarney or his personal administrative assistant.

Edgson

33. During the Relevant Period, Edgson distributed and sold the Loan Agreements, raising approximately Cdn. \$3,400,000 and an additional US \$2,700,000 from the Investors.
34. In British Columbia, Edgson distributed and sold the Loan Agreements to 46 residents, raising Cdn. \$520,136 and an additional US \$600,640.
35. Edgson received commissions from 526053 for selling the Loan Agreements.

Delisle

36. During the Relevant Period, Delisle distributed and sold the Loan Agreements raising approximately Cdn. \$177,000 from 12 British Columbia residents.

2004 BCSECCOM 274

37. Delisle received Cdn. \$50,320 in commissions from 526053 for selling the Loan Agreements.

Heeres

38. During the Relevant Period, Heeres distributed and sold the Loan Agreements to:

- (a) four residents of British Columbia, raising approximately Cdn. \$52,000 (not including Heeres' own family members);
- (b) two residents of the United States, raising approximately US \$336,000; and
- (c) six residents of Germany, raising approximately US \$914,500.

39. Heeres received Cdn. \$80,000 in commissions from 526053 for selling the Loan Agreements.

Saskatchewan Scheme

40. Between December 1, 1997 and February 2000, 526053 sold the Loan Agreements to 147 residents of Saskatchewan.

41. In the fall of 1999, the Saskatchewan Securities Commission (the SSC) directed 526053 and McCarney to provide a refund to all Saskatchewan investors. The SSC also directed 526053 and McCarney not to raise any further funds from Saskatchewan residents.

42. On August 20, 2000, 526053 and McCarney transferred \$1,517,000 to a Saskatchewan lawyer's trust account. This money was used to refund 147 Saskatchewan investors, in compliance with the SSC's direction.

43. Between September 27, 2000 and December 20, 2000, of the \$1,517,000 refunded to the 147 Saskatchewan investors, approximately 123 of those same investors reinvested \$1,346,500 with 526053 (the Saskatchewan Investors).

44. Park, on behalf of 526053, represented to the Saskatchewan Investors that they could reinvest in 526053 if they used an out-of-province address. McCarney knew, or ought to have known, of this representation by Park.

45. The Saskatchewan Investors listed their residences under extra-provincial addresses, including Manitoba, Alberta and British Columbia (the Saskatchewan Scheme).

2004 BCSECCOM 274

46. The Saskatchewan Scheme was intended to circumvent the SSC's direction and the laws of Saskatchewan.
47. McCarney and Park failed to act honestly and in good faith, and acted contrary to the public interest, by implementing and carrying out the Saskatchewan Scheme.

The MTI Transaction

48. On November 22, 1999, an investor of IVS (the IVS Investor) commenced a lawsuit in the Supreme Court of British Columbia against McCarney, MTI, IVS and Comp-U-Tune Inc. (the IVS Litigation).
49. In the fall of 2000, the IVS Litigation was settled on the basis that McCarney would provide 690,000 shares of MTI to the IVS Investor.
50. To facilitate the settlement, McCarney approached the board of directors of MTI and, on September 26, 2000, the board of directors approved the issuance of 690,000 units at \$1.00 per unit. Park, and not the IVS Investor, was identified as the principal purchaser of these shares.
51. The board of directors of MTI accepted Park's subscription based on the terms disclosed in the subscription agreement dated October 31, 2000 (the Subscription Agreement). The Subscription Agreement was signed by Park, acting on McCarney's instructions.
52. Funds from 526053, and not from Park, were used to pay MTI for the 690,000 units. The 690,000 units were delivered to the IVS Investor, and not to Park.
53. McCarney and Park did not disclose to the Investors that they were using the Investors' funds to settle the IVS Litigation. This was a material fact that McCarney and Park omitted to disclose to the Investors.
54. Acting on McCarney's instructions, Park completed a false Form 20 (IP), dated November 8, 2000, and filed it with the Commission, as required by the Act. McCarney and Park knew that the Form 20 (IP) was false when they filed it with the Commission.

Breaches of the Act

¶ 3 During the Relevant Period, the Respondents breached the Act as follows:

1. 526053:
 - (a) traded in the Loan Agreements and the LAA to the Investors in British Columbia without being registered in accordance with the requirements

2004 BCSECCOM 274

of the Act, and without an exemption from the registration requirements of the Act, contrary to section 34(1)(a) of the Act; and

- (b) distributed the Loan Agreements and the LAA to the Investors without filing a prospectus and without any exemption from the prospectus requirements, contrary to section 61(1) of the Act.

2. McCarney:

- (a) pursuant to section 168.2 of the Act, authorized, permitted or acquiesced in the contravention of sections 34(1)(a) and 61(1) of the Act by 526053;
- (b) traded in the Loan Agreements and the LAA to the Investors in British Columbia without being registered in accordance with the requirements of the Act, and without an exemption from the registration requirements of the Act, contrary to section 34(1)(a) of the Act;
- (c) distributed the Loan Agreements and the LAA to the Investors without filing a prospectus and without any exemption from the prospectus requirements, contrary to section 61(1) of the Act;
- (d) made misrepresentations and omitted to disclose material facts to the Investors by not disclosing to the Investors that the Investors' funds were used to settle the IVS Litigation, contrary to section 50(1)(d) of the Act; and
- (e) committed a fraud by the distribution and sale of the LAA to residents of British Columbia and elsewhere, contrary to section 57.1(b) of the Act.

3. Park:

- (a) traded in the Loan Agreements and the LAA to the Investors in British Columbia without being registered in accordance with the requirements of the Act, and without an exemption from the registration requirements of the Act, contrary to section 34(1)(a) of the Act;
- (b) distributed the Loan Agreements and the LAA to the Investors without filing a prospectus and without any exemption from the prospectus requirements, contrary to section 61(1) of the Act;
- (c) made misrepresentations and omitted to disclose material facts to the Investors by not disclosing to the Investors that Investors' funds were used to settle the IVS Litigation, contrary to section 50(1)(d) of the Act;

2004 BCSECCOM 274

- (d) committed a fraud by the distribution and sale of the LAA to residents of British Columbia and elsewhere, contrary to section 57.1(b) of the Act; and
- (e) filed a false document with the Commission, contrary to section 168.1(b) of the Act.

4. Edgson, Delisle and Heeres each:

- (a) traded in the Loan Agreements to the Investors in British Columbia without being registered in accordance with the requirements of the Act, and without an exemption from the registration requirements of the Act, contrary to section 34(1)(a) of the Act; and
- (b) distributed the Loan Agreements to the Investors without filing a prospectus and without any exemption from the prospectus requirements, contrary to section 61(1) of the Act.

Public Interest

- ¶ 4 The Respondents acted contrary to the public interest by engaging in the conduct set out above. In addition, McCarney acted contrary to the public interest by failing to exercise the care, diligence and skill of a reasonably prudent person, contrary to sections 118 and 135 of the *Company Act*, RSBC 1996, c. 62.
- ¶ 5 The Hearing will be held at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, BC, on Wednesday, May, 26, 2004, at 10:30 am.
- ¶ 6 The Respondents may be represented by counsel at the Hearing and may make representations and lead evidence. The Respondents are requested to advise the Commission of their intention to attend by contacting the Commission Secretary at PO Box 10142, Pacific Centre, 5th Floor, 701 West Georgia Street, Vancouver, BC, V7Y 1L2, telephone: (604) 899-6500; e-mail: commsec@bcsc.bc.ca.
- ¶ 7 Determinations may be made in this matter if the Respondents or their counsel do not appear at the Hearing.
- ¶ 8 May 10, 2004

- ¶ 9 Stephen J. Wilson
Executive Director