



British Columbia Securities Commission

Citation: 2013 BCSECCOM 405

Notice of Hearing

**Roberta Merlin McIntosh
(aka Bert McIntosh, Roberta Sims,
Roberta Butcher, and Roberta Mayer)**

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

- ¶ 1 The British Columbia Securities Commission (Commission) will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions and apply for orders against the Respondent under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

Background

1. Roberta Merlin McIntosh (McIntosh) is a B.C. resident.
2. McIntosh is a former registrant who resigned in 2003.
3. McIntosh is a former insurance licensee who was suspended for five years in 2012 because, between 2003 and 2007, she recommended high-risk illiquid securities unsuitable for her clients. Her clients, including widows and retirees, lost their entire principal investments.

McIntosh, while unregistered, advised an investor to buy specific securities

4. McIntosh met the investor in April 2011. The investor, forty-eight years old, was unable to work as the result of an automobile accident. She was reliant on disability payments and investment income. The investor had recently received a lump sum settlement. McIntosh said she would be the investor's financial adviser.
5. On April 19, 2011, McIntosh sent the investor a letter, outlining her plan for investing the settlement funds. In her letter, McIntosh advised the investor to buy certain exempt market securities, amongst other investments. McIntosh was not registered with the Securities Commission in any capacity when she did this.
6. The investor followed McIntosh's advice, purchasing US\$111,190 and CDN\$40,000 of exempt market securities.
7. McIntosh received referral fees totalling \$11,732.84.



McIntosh misrepresented the securities as a prudent investment

8. The offering memoranda for the exempt market securities describe them as “highly speculative” and “a risky investment”.
9. McIntosh did not disclose this to the investor, and never provided her the offering memoranda. Instead, McIntosh described the securities as a “prudent” investment with “superior rates of return”.

McIntosh recommended securities that were unsuitable for her client

10. At the time she advised the purchase of exempt market securities, McIntosh was aware the investor was unable to work and reliant on the investment income from her lump sum settlement.
11. The offering memoranda for these securities state that an investor should purchase them “only if it is able to bear the risk of the entire loss of its investment.” In addition, these securities “should not constitute a significant portion of a Subscriber’s portfolio.”
12. The offering memoranda also state the securities will not produce any significant income for at least 4-6 years.
13. McIntosh advised the investor to allocate over one-third of her investment to these high-risk illiquid securities, which she did.

McIntosh offered to forge the investor’s signature

14. McIntosh later advised the investor to transfer money from one investment fund to another, which would require a signature authorizing the transfer.
15. Instead of mailing the transfer document to the investor and the investor mailing it back, McIntosh offered to forge the investor’s signature. McIntosh stated this was not legal, but she had done it in the past for other clients. Shortly thereafter, the investor stopped doing business with McIntosh.

Misconduct

16. By advising her client to purchase specific securities, without being registered as an adviser, McIntosh contravened section 34 of the Act.
17. By describing certain exempt market securities as a prudent investment, when she knew or ought to have known they were a highly speculative and risky investment, McIntosh contravened section 50(1)(d) of the Act.



18. By advising her client to purchase securities that were unsuitable for her, McIntosh contravened section 13.3 of National Instrument 31-103.
19. McIntosh's conduct described in this Notice of Hearing is contrary to the public interest.

Orders Sought

20. It is in the public interest that the Commission issue orders under sections 161 and 162 of the Act.

Hearing Process

- ¶ 2 The Respondent or her counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **Tuesday, January 21, 2014 at 9:00 a.m.** if they wish to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 3 At the Hearing, the Respondent may be represented by counsel, make submissions and tender evidence. The Respondent is requested to advise the Commission of her intention to attend the Hearing by informing the Secretary to the Commission at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcsc.bc.ca.
- ¶ 4 If the Respondent or her counsel do not appear at the Hearing, the Executive Director will apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondent may be made in her absence.
- ¶ 5 December 20, 2013.

Paul C. Bourque

- ¶ 6 Paul C. Bourque, Q.C.
Executive Director