BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: BLOK Technologies Inc., 2024 BCSECCOM 55 Date: 20240201

BLOK Technologies Inc. and James Joseph Hyland

Panel	Deborah Armour, KC	Commissioner
	Gordon Johnson	Vice Chair
	Jason Milne	Commissioner
Hearing dates	June 5, 6 and 7 and October 6, 2023	
Submissions completed	October 6, 2023	
Date of findings	February 1, 2024	

Appearing

Derek Chapman Audrey Tait	For the Executive Director
H. Roderick Anderson Nicola Virk	For James Joseph Hyland

Findings

I. Introduction

[1] This is the liability portion of a hearing under sections 161, 162 and 174 of the *Securities Act*, 1996, c. 418 (Act).

[2] In a notice of hearing issued July 27, 2022 (2022 BCSECCOM 301), the executive director alleged, among other things, that:

- BLOK Technologies Inc. (BLOK), formerly known as Aida Minerals Corp. (Aida), issued a news release dated June 8, 2018 that contained a misrepresentation. BLOK announced the amount of funds raised in a financing but did not disclose that it had already spent or owed most of the funds and therefore contravened section 50(1)(d) of the *Securities Act,* RSBC 1996, c. 418 (Act); and

- James Joseph Hyland (Hyland) was a vice-president and director of BLOK when it issued the news release and by authorizing, permitting or acquiescing in BLOK's contravention, he contravened the same provision pursuant to section 168.2 of the Act.

[3] The liability hearing took place June 5, 6 and 7, 2023. A Commission investigator testified and was cross-examined by Hyland. Hyland testified and was cross-examined by the executive director.

[4] The liability hearing was followed by written submissions and, on October 6, 2023, by oral submissions.

[5] BLOK did not appear at the hearing.

[6] The notice of hearing named three individual respondents. By the time of the hearing, two of those respondents, Robert Earle Dawson (Dawson) and David Malcolm Alexander (Alexander), had negotiated settlement agreements with the executive director and this proceeding had been discontinued against them.

II. Factual Background

A. Chronology of Events

[7] The corporate respondent is a British Columbia company. It has been a reporting issuer under the Act since December 2015. Its shares traded on the Canadian Securities Exchange (CSE) during the relevant period. In the earlier part of the relevant period, it was named Aida. It subsequently changed its name to BLOK. We refer to the corporate respondent in this decision with the name it had at the time of the events we are referencing.

[8] Aida's September 19, 2017 annual report listed Hyland as the company's CEO, president and vice president.

[9] On October 6, 2017, Aida announced it had entered into a non-binding letter of intent to acquire a blockchain technology numbered company doing business as Greenstream.

[10] On October 23, 2017, Aida issued a news release announcing that Hyland was appointed as vice president of corporate development and that he would be responsible for communications strategy and implementation of new business opportunities.

[11] On November 2, 2017, Aida announced the closing of a private placement for proceeds of $1.6 million. The company stated that it intended to use the proceeds for the Greenstream acquisition, further investment opportunities and general working capital. Hyland was listed as the person to contact for further information.

[12] On November 15, 2017, Aida announced that it had closed the private placement announced November 2, 2017 for gross proceeds of $1,649,936. It stated that it intended to use the proceeds for:

> …1) debt settlement (based on Q2 financial statement current liabilities of $684,833); 2) general and administrative expenses (based on Q2 estimated expenses of $300,000); and 3) working capital. Another $530,000 would go towards the acquisition and the first six months of expenses for Greenstream…

Hyland was listed as the person to contact for further information.

[13] Hyland became a director of Aida on November 28, 2017. He remained a director throughout the relevant period. On December 17, 2017, Aida announced that Hyland was appointed interim president and CEO.

[14] On January 16, 2018, Aida announced that Hyland was appointed a director and chair of its audit committee and that its name was changed to BLOK. The news release stated that BLOK would invest in and develop emerging companies in the blockchain technology sector. Hyland's name was indicated as the person to contact for further information and he signed the news release on behalf of the board of directors.

[15] On January 26, 2018, Hyland signed CSE Form 4 Listing Agreement on behalf of BLOK as CEO. Hyland testified at the hearing that he understood that BLOK had agreed to "make prompt

public disclosure of any material information, whether favourable or unfavourable, in accordance with Exchange Policies." He also understood that BLOK had to immediately disclose entering into significant contracts.

[16] On January 31, 2018, Aida announced that the CSE had conditionally approved the listing of BLOK and the Greenstream transaction. Hyland was listed as the person to contact for further information. He signed the news release as president, CEO and director and was quoted as follows:

> "We are at the right place at the right time," said James Hyland, interim CEO of Aida Minerals. "The timing couldn't be better to bring a blockchain-based supply chain management platform like Greenstream to market with upcoming legalization of cannabis in Canada in July 2018... By bringing the best of the sector's blockchain developers at Greenstream together with emerging technologies, we are poised to lead the change in cannabis supply chain management."

[17] On March 1, 2018, BLOK announced that it had entered into a letter of intent to acquire SimpleBlock Payment Systems, a mobile banking and payment software platform. BLOK intended to issue six million shares and pay USD $215,000 for the acquisition, payable over various milestones. BLOK also acquired an option for certain global rights for USD $1 million. Hyland was listed as the person to contact for further information.

[18] On March 8, 2018, BLOK announced that it had made a strategic investment in FogChain, Inc. BLOK made an initial investment of $100,000 as part of a private placement for subscription receipts of FogChain. Hyland was listed as the person to contact for further information.

[19] On March 13, 2018, BLOK announced a $3 million brokered private placement co-led by Canaccord Genuity and Gravitas Securities. BLOK said it intended to use the proceeds for the development of emerging blockchain technology, investment in strategic opportunities as well as for general working capital purposes. Hyland was listed as the person to contact for further information.

[20] On March 27, 2018, BLOK announced that it intended to use 67% of the net proceeds of that private placement for investment in and development of emerging blockchain technology and 33% for general working capital purposes. Hyland was listed as the person to contact for further information.

[21] On May 1, 2018, BLOK announced that it had decided to amend the private placement and cancel the agency agreement with Canaccord and Gravitas. BLOK said that instead it would move forward with a non-brokered private placement to raise up to $1 million. It said it intended to use the proceeds for the development of emerging blockchain technology, investment in strategic opportunities as well as for general working capital purposes. Hyland was listed as the person to contact for further information.

[22] On May 8, 2018, BLOK issued its audited financial statements for the years ended December 31, 2017 and December 31, 2016. Hyland was one of two directors who approved and authorized the issuance of the financial statements on behalf of the board. The financial statements indicated that, for the year ended December 31, 2017, BLOK had no revenues and spent:

- $87,399 on consulting fees in 2016;
- $44,867 on marketing fees in 2016;

- $291,762 on consulting fees in 2017; and
- $247,944 on marketing fees in 2017.

[23] The financial statements also showed that, during the year ended December 31, 2017, BLOK incurred a net loss of $976,848. BLOK had a deficit of $2,032,326 which was funded primarily by the issuance of equity. As at December 31, 2017, BLOK had never generated revenues or profits. BLOK indicated that those facts indicted a possible material uncertainty that cast significant doubt on the company's ability to continue as a going concern.

[24] On May 8, 2018, BLOK issued its management discussion and analysis (MD&A) for the year ending December 31, 2017. It reported that operating losses were expected to continue into the next fiscal year as it continued to develop its technology solutions and bring them to commercialization. BLOK stated that it expected to seek additional financings to facilitate growth.

[25] On May 17, 2018, BLOK announced the close of the first tranche of the non-brokered placement raising gross proceeds of $545,884. The company stated that it intended to use the net proceeds of the private placement for the advancement of the company's blockchain investment projects that were currently in the pipeline and that it would also evaluate new blockchain opportunities as part of its business model. Hyland was listed as the person to contact for further information.

[26] On May 29, 2018, BLOK issued its interim financial statements for the three months ended March 31, 2018 and 2017. Hyland was one of two directors who approved and authorized the issuance of the financial statements. Those statements indicated that, for the three months ended March 31, 2018, BLOK had no revenues and had spent $164,881 on consulting fees and $210,979 on marketing fees. Those financial statements showed that BLOK had accumulated a deficit of $3,569,803. BLOK again stated that it had never generated revenues or profits.

[27] On May 30, 2018, BLOK issued its MD&A for the three months ended March 31, 2018 and 2017 with information similar to that in its financial statements. It again stated that it expected to seek additional financings to facilitate growth.

[28] In the transcript of an interview of Alexander conducted under oath by Commission staff on June 11, 2019, Alexander testified that he and Dawson met with two people we identify as "G and N" sometime in May 2018. G and N advised Alexander and Dawson that there was a group of investors who would invest significant amounts of money in BLOK. They said that in order to get that investment, BLOK had to enter into consulting agreements. Alexander described it in his interview as essentially a "cheque swap", meaning that BLOK would issue cheques to the consultants in exchange for subscriptions in the private placement. He also described the exchange of consulting agreements for finance monies as "crosses".

[29] Alexander testified that it was Dawson's decision to go ahead with the financing with this group of investors and Dawson was influenced by an expectation that in addition to the amounts that the group would invest initially, they would subsequently bring in $20-30 million.

[30] In his interview, Alexander also testified that he discussed disclosure of the consulting fees with Dawson and Hyland. Because of the significance of that evidence, we reproduce it verbatim:

> Q: Did you review this press release before it was issued?
> A: I did, and there were several discussions about this press release.

Q: Okay. And what were the discussions?
A: Discussions had to do with the disclosure of the consulting fees.
Q: Who did you discuss it with?
A: I discussed it with Robert and James Hyland.
Q: Anyone else?
A: Those were the two people that were in my office that were directly related to it. And I felt that we should, and they thought that it would be suicide if we did. So I -- I got outvoted on that one.

[31] Anthony Jackson became the point of contact for this arrangement. He provided the consulting agreements for his group. Alexander signed all of the consulting agreements on behalf of BLOK.

[32] As of May 31, 2018, BLOK's board passed a resolution to raise $5,000,000 through a non-brokered private placement.

[33] On June 1, 2018 and in response to the deal brought forward by Jackson, BLOK announced that, due to investor demand, it was increasing the previously announced $1 million non-brokered private placement to $5 million. Dawson was quoted as follows:

> We're pleased to have attracted additional investor interest in our company…This financing further enhances our ability to execute the blockchain development projects in hand and explore the many investment opportunities we are identifying in the blockchain sector.

The company said it intended to use the net proceeds for the development of emerging blockchain technology, investment in strategic opportunities as well as for general working capital purposes. Hyland was listed as the person to contact for further information.

[34] Also on June 1, 2018, BLOK entered into agreements with seven consultants pursuant to which it agreed to pay $317,875. It is of note that Alexander testified in his interview that he personally was part of the cheque swap. It was done through his wife's name. In exchange for investing in the private placement, they received consulting fees.

[35] On June 4 and 8, 2018, BLOK issued payments totaling $4,138,187.50 to the fifteen consultants brought to BLOK by Anthony Jackson.

[36] The second tranche of the private placement raised $4,857,500, $4.5 million of which came from six subscribers as follows:

Subscriber name	**Amount**
Detona Capital Corp.	$ 500,000
Keir MacPherson	$ 500,000
Kendl Capital Limited	$ 1,000,000
JCN Capital Corp.	$ 500,000
Hunton Advisory Ltd.	$ 1,000,000
Tavistock Capital Corp.	$ 1,000,000
Total	**$ 4,500,000**

[37] The remainder of the proceeds came from nine other subscribers.

[38] Alexander sent an email on June 7, 2018 at 7:01pm to Dawson and Hyland in which he confirmed the amount raised. Hyland responded by simply saying "Thanks".

[39] On June 8, 2018 at 12:27pm, Dawson emailed Hyland with the subject line “NR” and wrote, “Thanks”. Hyland testified that the final version of the June 8, 2018 news release was attached to that email.

[40] Ten minutes later, Hyland instructed the distribution of the news release which is the subject of these proceedings to follow the close of the market at 1:05pm. That news release is reproduced below in its entirety:

> **BLOK Technologies Announces $4.8M Closing of Over-Subscribed Second and Final Tranche of Non-Brokered Private Placement**
>
> VANCOUVER, British Columbia, June 08, 2018 – BLOK Technologies Inc. (“BLOK Tech” or the “Company”) (CSE:BLK) (FRANKFURT:2AD) is pleased to announce that it has closed the second and final tranche of a Non-Brokered Private Placement (the “Private Placement”) raising gross proceeds of $4,857,500 from the issuance and sale of 24,287,500 Units at a price of $0.20 per Unit. No new insiders were created, nor has any change of control occurred, as a result of this Private Placement.
>
> The Private Placement was over-subscribed and raised a total of $5,403,384 of the proposed $5,000,000 previously announced on June 1, 2018.
>
> Each Unit at a purchase price of $0.20 per Unit, consists of one (1) common share (“Common Share”) of the Company and one (1) transferable share purchase warrant (“Warrant”).
>
> Rob Dawson, President and CEO commented, “BLOK Technologies’ vision is to develop leading-edge, global solutions that employ blockchain technology. In completing this $5.4M financing, we are taking our company to the next level in the execution of its business model. We are very pleased that key investors have joined us on this journey and we look forward to advancing our worldwide investment projects with top-level strategic partners.”
>
> Each Warrant will entitle the holder to acquire one (1) Common Share at an exercise price of $0.50 for a period of 24 months from the closing date of the Private Placement. The Warrants will be subject to an acceleration right (the “Warrant Acceleration Right”) if on any ten (10) consecutive trading days, beginning on the date that is four (4) months and one (1) day following the Closing Date, the daily volume weighted average trading price of the Company’s Common Shares on the Canadian Securities Exchange is greater than $0.75. If the Company exercises its Warrant Acceleration Right, the new expiry date of the Warrants will be the 30th day following the date hereafter referred to as the (“Eligible Acceleration Date”) on which such notice is given by the Company.
>
> These Common Shares and Warrants issued under the second tranche of the Private Placement will be subject to a four month and one day resale restriction expiring October 9, 2018. Completion of the financing is subject to a number of conditions, including, without limitation, receipt of all regulatory approvals, including approval of the Canadian Securities Exchange (“CSE”).
>
> The Company intends to use the net proceeds of the Private Placement for the advancement of the Company’s blockchain investment projects that are currently in the pipeline, evaluating new blockchain opportunities as part of its business model and for working capital purposes.
>
> **About BLOK Technologies Inc.**

BLOK Technologies Inc. is a public company that invests in and develops emerging companies in the blockchain technology sector. The Company's approach is to provide capital, technology and management expertise to the companies it develops. With core technology being developed for the leading cannabis supply chain integrity network, BLOK Tech continues to grow its business into adjacent industries and emerging technologies. The Company systematically identifies early-stage technologies with potential to disrupt and innovate within their industry and invests the necessary resources to ensure the success of their projects.

For additional information regarding BLOK Technologies and other corporate information, please visit the Company's website at BLOCKTECHINC.COM

ON BEHALF OF THE BOARD OF DIRECTORS

"*Robert Dawson*"
President & CEO

For further information, please contact:

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Statements in this news release may be viewed as forward-looking statements. Such statements involve risks and uncertainties that could cause actual results to differ materially from those projected. There are no assurances the company can fulfill such forward-looking statements and the company undertakes no obligation to update such statements. Such forward-looking statements are only predictions; actual events or results may differ materially as a result of risks facing the company, some of which are beyond the company's control.

[41] On June 8, 2018 at 4:30pm, BLOK's controller Hanspaul Pannu emailed Dorin Tan, a paralegal at the law firm acting for BLOK with regard to the private placement, copying Hyland and Dawson, with the subject line "List of Consulting agreements" and wrote:

Hey Dorin,
The following is the list of consultants with signed agreements on file:

- Saman Eskandari
- 1140258 BC Ltd.
- Grant Farkes
- Amber Papou
- Aida Reed
- 1002349 BC Ltd
- Isadora Alonso
- 1113300 BC Ltd.
- Detona Capital Corp.
- Hunton Advisory Ltd.
- JCN Capital Corp.
- Keir Macpherson
- Kendl Capital Limited
- Tavistock Capital Corp.

Thank you.

Cheers,

Hanspaul

[42] Tan replied to that email asking Pannu to provide contact information for companies she had highlighted on the email. They were the last six companies listed in the email above which companies had also subscribed in the second tranche of the private placement in the total amount of $4.5 million.

[43] Pannu forwarded Tan's email to Alexander who in turn sent an email to someone associated with the Jackson group asking for telephone and/or email addresses "as they were missing on the subs". Hyland's name did not show as a cc on that email. At the hearing, counsel for the executive director said there was no evidence as to whether Hyland received that email at that time.

[44] On July 31, 2018, Alexander emailed Hyland and the other BLOK directors with a draft directors' resolution asking them to sign it and return to him as soon as possible. The resolution was back dated to May 1, 2018 and was to approve BLOK entering into the fifteen consulting agreements that Jackson had brought to BLOK and which were listed in a table in the resolution. However, the column showing the dollar amounts for each consulting agreement was cut off.

[45] Hyland responded to Alexander's email on August 1, 2018 advising him it was cut off. The directors including Hyland signed the resolution with the information missing, asking Alexander to "clean up the table".

[46] The first time BLOK made public disclosure of any of the consulting agreements occurred on August 6, 2018 when the company issued a news release advising of its engagement of Link Media, LLC to build the profile of BLOK among existing and potential investors. Link Media was one of the fifteen consultants brought to BLOK by Anthony Jackson. Hyland was listed as the person to contact for further information. It is not known why Link Media was the only one of the consultants mentioned in that news release.

[47] It was not until September 26, 2018 when BLOK filed a Form 9 with the CSE that the company disclosed that the proceeds of the private placement would be used in part to pay consulting fees. In the use of proceeds section it said:

> Development of blockchain technology, investment in potential business opportunities, **payment of consulting fees**, as well as for general working capital purposes. There were two tranches. The first closed on May 14, 2018 and the second on June 8, 2018. **The majority of the second tranche was used for payment of consulting fees.** [emphasis added]

[48] It was not until the issuance of the financial statements on November 26, 2018 for the nine months ended September 30, 2018 and 2017 that BLOK made public disclosure of the total amount committed to the consulting agreements. It said in part:

> On May 1, 2018, the company entered into consulting agreements with third parties totaling $4,337,500. Each one of these contracts was for a period of 12 months for providing financing, investor awareness, deal flow, accounting services, and corporate secretary services.

[49] BLOK made similar disclosure in its MD&A also issued on November 26, 2018 for the nine months ended September 30, 2018 and 2017.

B. Evidence of Hyland

[50] Hyland was on the witness stand for most of a day during the hearing including half a day under cross examination.

[51] Hyland's evidence at the hearing was that he started working in the capital markets in 2004. He received a Bachelor of Commerce from Royal Roads University and a Capital Markets Certificate from Pepperdine University in California.

[52] Hyland testified that the decision to increase the amount of the private placement to $5 million was made by Dawson. Hyland testified he was not party to any discussion relating to that decision.

[53] Hyland testified that the first time he became aware of the amount raised in the private placement was on June 7, 2018 when Alexander sent his email to Dawson and Hyland indicating that $4,857,500 had been raised.

[54] Hyland testified he did not have any discussion with Dawson around his quote in the June 8 news release. He testified that he believed the news release was drafted by Dawson. Dawson sent it to Hyland at 12:27 on June 8.

[55] As noted above, in his interview with Commission staff Alexander said that he had a conversation with Dawson and Hyland where he said that he felt they should be disclosing the consulting agreements in the news release of June 8. His evidence was that he was outvoted so that disclosure was not made.

[56] In both his direct testimony and when under cross examination at the hearing, Hyland repeatedly denied being a part of such a conversation. He testified that he was not aware that BLOK had entered into the consulting agreements at the time. Hyland testified that he played no role in helping obtain or execute any of the consulting agreements.

[57] Hyland testified he did not know about the amount being paid to consultants and did not believe that there was anything that was untrue in the June 8 news release. He testified that had he known that 82% of the amount raised in the financing was being paid to consultants, he would not have allowed the June 8 news release to be disseminated.

[58] With regard to the email from Pannu of June 8, Hyland testified that would have been sent when he was on a plane to Montreal. He did not have access to email during the flight. He spent part of the weekend with his father and part with representatives of Greenstream. In response to questions as to why he did not ask about the consulting agreements to determine whether they required to be disclosed, his response was that he thought the names listed in Pannu's email were with regard to subscription agreements. He agreed he could have made inquiries over the weekend but did not.

[59] Hyland had not heard of the six names at the end of the list in Pannu's email. He testified that to his knowledge, BLOK had never done business with them before. He made no inquiries about them.

[60] Hyland travelled to London, England on June 11, 2018 and then on to Dublin on June 16, 2018 on other business.

[61] Hyland testified that he found out consultants were paid over $4 million when he filed the quarterly financial statements. He said that the board was not happy and raised that with Dawson who said that the group would help them raise $20 million.

[62] Hyland testified that he would often receive news releases drafted by other people in the company and trusted them to be accurate without further investigation. He did not think there was anything wrong with that approach. If the news release related to financial information, it would be drafted by Alexander as CFO. If the news release related to business developments or the company itself, Dawson would provide the information in consultation with Hyland.

[63] Hyland testified that the financial statements were prepared by either Alexander as CFO or by Pannu as Controller. Hyland did not prepare them. When he signed them, he believed them to be correct. The figures for the consulting agreements came from either Alexander or Pannu.

[64] Hyland testified that he did not receive a financial benefit from the private placement that was the subject of the June 8 news release.

[65] He testified that he was not contacted by anyone at the BC Securities Commission to attend for a compelled interview but would have been willing to do so if that were the case.

C. Other Evidence

[66] At the hearing, the investigator testified that he did not see any evidence that indicated Hyland was copied with the consulting agreements or the executed ones until sometime after the end of July 2018.

[67] Dawson was interviewed by two Commission investigators on September 27, 2018. He was not under oath. Contrary to the evidence of Alexander, Dawson said that he was not a party to the initial meeting with G and N and that it was only Alexander who met with them at that time. Dawson said that he did not know how that meeting came about. There is nothing in the notes of the investigator's interview with Dawson which suggest Hyland was party to discussions where the consulting agreements were discussed in advance of the June 8, 2018 news release.

III. Positions of the Parties

A. Position of the Executive Director

[68] The executive director submitted that BLOK was engaged in investor relations activities when it issued the June 8, 2018 news release. While the first, second and third paragraphs of the news release could be excluded from the definition of investor relations activities because BLOK had to disclose the information in those paragraphs to meet its CSE disclosure requirements, the executive director submits that the rest of the paragraphs are promotional in nature including the paragraph that discussed use of funds raised in the private placement. The executive director stated the new release in general was promotional and therefore meets the definition of engaging in investor relations activities.

[69] The executive director further submitted that in light of the circumstances which existed at the time of the issuance of the June 8, 2018 news release, BLOK's disclosure of the intended use of the funds raised was misleading because it did not include the qualification that it had already spent or owed most of the funds on consulting fees. As a result, those funds were not actually available to BLOK to execute its business plan or improve the company's poor financial condition.

[70] By way of its communications leading up to the June 8, 2018 news release, the executive director said that BLOK had created an expectation in the market place that, if it raised a material amount of new capital, a large part would go toward the development of emerging blockchain technology and investment in strategic opportunities. Further, there was nothing in its prior disclosure which suggested investors could expect that BLOK would spend almost $4.45 in consulting fees when it had never spent anything close to that amount. BLOK's failure to disclose that it had already spent or owed most of the proceeds on consulting fees was misleading as it was a significant undisclosed divergence in the use of proceeds from that which was previously disclosed.

[71] The executive director submitted that BLOK knew or ought to have known that the statement about the use of proceeds was false or misleading as it created market expectations through its previous disclosures and financial statements. The omission to state that most of the funds were spent or owed on consulting fees was material as that use of the funds would reasonably be expected to have a significant effect on the market price or value of the securities. The sheer degree of divergence between the actual and expected use of funds was material. Given all of the above, the executive director submitted that BLOK contravened section 50(1)(d) of the Act.

[72] The executive director took the position that Hyland is vicariously liable for the contravention of BLOK and is therefore in contravention of section 168.2 of the Act. He submitted that Hyland knew, or ought to have known, that BLOK had spent or owed most of the funds raised in the private placement on consulting fees and this was a material fact omitted from the June 8, 2018 news release.

[73] We are asked by the executive director to find that Hyland's claim that he did not know about the consulting fees to be not credible. He asks us to infer that Dawson must have told Hyland about those fees.

[74] The executive director relies on the sworn testimony of Alexander in his interview with Commission investigators when he said that he, Dawson and Hyland discussed disclosing the consulting agreements. Alexander's evidence was that told the others that they should make that disclosure but that Dawson and Hyland thought it would be suicide so he was outvoted.

[75] The circumstantial evidence that the executive director relies on to assert that Hyland should not be believed when he says he did not know about the consulting agreements when the June 8, 2018 news release was issued includes:

- Hyland was the one who took steps to disseminate the June 8, 2018 news release. He was the contact person on it and on most other news releases issued by BLOK;
- He was also the contact person on the subject subscription agreement;
- He was a Vice-President of BLOK, a director and chair of its audit committee and sometimes its CEO and President;
- Hyland had a pre-existing relationship with G and N who had brought the financing to BLOK. He also had a relationship with them after June 8, 2018. They became directors of BLOK in October 2018. The executive director says that is not consistent with Hyland having hard feelings about not being advised about the consulting agreements;

- Dawson was very excited about the financing. It is not plausible that Dawson would not have told Hyland about it.

[76] In response to Hyland's argument that he did not have the requisite level of knowledge and ability to influence BLOK's activities in order to have acquiesced in its contravention of the Act, the executive director points to the following additional facts to counter that position:

- He liaised with Alexander to ensure the financials were correct and signed off on them;
- His efforts resulted in a financing of half a million dollars being the first tranche in the subject financing;
- He was one of five people with access to the BLOK drop box which held its financial information, news releases and other documents;
- When he was CEO of BLOK, he signed the CSE listing agreement on behalf of BLOK agreeing to CSE policies;
- In his direct examination he gave evidence that, as chair of the audit committee he did not rubber stamp things;
- Dawson consulted Hyland about news releases.

[77] Alternatively, the executive director submitted that Hyland should be found to have been willfully blind about BLOK spending most of the monies raised on consulting fees. He pointed to the June 8, 2018 email from BLOK's controller with the subject line "List of consulting agreements". Despite having the entire weekend following this email, the executive director points out that Hyland declined to make inquiries or correct the news release. The executive director submitted that Hyland's evidence given at the hearing that he believed that the email related to the subscription agreement was not credible.

B. Position of Hyland

[78] Hyland submitted that his evidence at the hearing establishes that he did not know that any information in the June 8, 2018 was incorrect. His was the only direct evidence on the point. He testified that it was not until late July 2018/early August that he and other members of the board learned that the vast majority of funds raised had been paid out to consultants. At that time, he and the other members of the board let it be known to Dawson that they were not happy with the amounts being paid to consultants.

[79] Hyland referred to his evidence that he did not ask questions in connection with the June 8, 2018 news release because he did not know there was anything inaccurate about it.

[80] He also stated that the evidence from Alexander's interview is inherently unreliable as it is vague, taken out of context and self-serving. Hyland directly denied having been told by Alexander about the consulting agreements. Without having the ability to cross examine Alexander, Hyland says no weight should be given to Alexander's testimony which leaves the credible evidence of Hyland uncontradicted.

[81] Hyland also points to what he calls the failure of the executive director to call Dawson as a witness.

[82] Hyland points out that the executive director failed to confront him during cross examination and therefore should not be able to attack the Hyland's credibility as to do so would be contrary to the rule in *Browne v. Dunn,* (1893) 1893 CanLII 65 (FOREP).

[83] Hyland relies on *1169822 Ontario Limited v. The Toronto-Dominion Bank,* 2018 ONSC 1631 at paragraphs 132-135 for the proposition that willful blindness requires proof of culpable conduct that goes beyond mere negligence or laziness underlying a failure to make inquiries. Willful blindness is instead premised on the existence of an actual suspicion that certain facts exist. Willful blindness requires an element of deliberateness and intention which does not exist in this case.

IV. Applicable Law

A. Standard of Proof

[84] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall*, 2008 SCC 53 (CanLII), the Supreme Court of Canada held, at paragraph 49:

> In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[85] The Court also held at paragraph 46 that the "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test".

[86] The Court went on to say at paragraphs 47 and 48 that the evidence has to be weighed against the:

> …inherent improbability that an event occurred…Inherent improbability will always depend upon the circumstances.
>
> …There can be no rule as to when and to what extent inherent improbability must be taken into account … It will be for the trial judge to decide to what extent, if any, the circumstances suggest that an allegation is inherently improbable and where appropriate, that may be taken into account in the assessment of whether the evidence establishes that it is more likely than not that the event occurred…

[87] The Alberta Court of Appeal in *Walton v. Alberta (Securities Commission),* 2014 ABCA 273, quoted the underlying Alberta Securities Commission decision regarding circumstantial evidence at paragraph 27:

> To summarize, when drawing an inference from circumstantial evidence, we must ensure that the inference is grounded on proved, not hypothetical or assumed, facts and is a reasonable one – one drawn using common sense, human experience and logic having considered the totality of the evidence and any competing inferences…

B. Best Evidence

[88] Part 4.1(a) of BC Policy 15-601 states:

> …Generally, parties should rely on the best evidence, as a panel may give less weight to certain types of evidence. For example, a witness giving evidence at a hearing, allowing for cross-examination, may be given more weight than an interview transcript.

Ultimately, a panel must consider evidence to determine what weight, if any, to give the evidence before them.

[89] In *Re Barker*, 2005 BCSECCOM 146, the panel ranked the types of testimonial evidence available, and how it treats the different categories:

> 98 The best evidence from these sources is that of Scalzo, Harris and Smit. This was testimony in the hearing, which provided us with the opportunity to hear their stories directly, observe their demeanour, and to ask them questions ourselves.
>
> 99 The next best evidence is the transcript of Barker's interview. Although unable to observe his demeanour or ask questions, we were able to assess his evidence with the confidence that comes from sworn testimony with counsel for the witness present.
>
> 100 Third best is evidence consisting of a Commission staff investigator's notes of telephone interviews with other shareholders…

[90] In *Re Corporate Express Inc.*, 2004 BCSECCOM 680, the panel deliberated about the admissibility (but not weight) to be given to transcripts of interviews of potential witnesses. The panel found in multiple circumstances that:

> For the reasons cited by the Executive Director, we agree that these documents are relevant. We therefore admit them as evidence. **However, the best evidence in this area would include *viva voce* testimony from [the witness]. The Executive Director should call him as a witness.** If it turns out that [the witness] is not available to testify, the parties can address in argument the weight we ought to attach to these documents in those circumstances. [emphasis added]

[91] In *Re Hu*, 2011 BCSECCOM 355, the panel admitted the relevant evidence of a witness (Tian) and a statement discovered in her purse as they were relevant to the central issue of whether the respondent knew the password to the witness' account. The panel admitted them, but gave them no weight, as the respondent was unable to cross-examine the witness.

C. Relevant Provisions of the Act

[92] During the relevant period, section 50(1)(d) of the Act stated:

> A person, while engaging in investor relations activities or with the intention of effecting a trade in a security, must not do any of the following:
>
> …
>
> (d) make a statement that the person knows, or ought reasonably to know, is a misrepresentation.

[93] Section 1 of the Act at the relevant time, defined "investor relations activities" to mean:

> any activities or oral or written communications, by or on behalf of an issuer or security holder of the issuer, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer, but does not include
>
> …
>
> (b) activities or communications necessary to comply with the requirements of

(i) this Act or the regulations, or
(ii) the bylaws, rules or other regulatory instruments of a self regulatory body, exchange or quotation and trade reporting system,

…

[94] In *Re Brookmount Explorations Inc.*, 2012 BCSECCOM 250, the executive director alleged that the respondents made misrepresentations contrary to section 50(1)(d) of the Act when it issued news releases that omitted material facts. The panel at paragraph 11 expressly found that the definition of investor relations activities "clearly encompassed the issuance of press releases, especially those with the promotional flavour of the press releases in that case."

[95] The panel in *Re New Point Exploration*, 2023 BCSECCOM 170 agreed with the approach and interpretation adopted in *Brookmount.* At paragraph 123, the panel stated:

> …The general definition references "any activities or oral or written communications, by or on behalf of an issuer…that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer". It may well happen that issuers publish news releases which do not promote the company in some manner, but even relatively neutral and factual news releases tend to describe the underlying business of the issuer in a manner which is calculated to attract investor attention in a positive way. Since the definition connects the concepts of a reasonable expectation that a communication could be expected to promote the purchase or sale of securities with the modifier "any…communications", we conclude that the general definition has a broad reach.

[96] The panel in *New Point* also addressed how to interpret the portion of the definition of investor relations activities which excludes "activities or communications necessary to comply with the requirements of…this Act or its regulations, or…(an) exchange". It noted that the wording of the definition of investor relations activities in the Act creates some ambiguity and that there are two ways to interpret this exclusion: a broad interpretation and a narrow interpretation.

[97] The panel in *New Point* described the broad interpretation and its implications as follows, at paragraph 128:

> The broad interpretation is that if there is a legal obligation on an issuer to issue a news release then the entire news release would be excluded from the definition of investor relations activities with the result that no liability could exist for any false or misleading statement contained in that news release. Under the broad interpretation, once it is found that an issuer had a legal obligation to announce something, the issuer could add extraneous and false statements to the announcement without any risk of liability. Such a broad interpretation of the exclusion would have the perverse effect of shielding companies from liability under section 50(1)(d) for almost all misrepresentations contained in news releases required to be disseminated for compliance reasons including those made to satisfy continuous disclosure obligations and such other regulatory requirements including timely disclosure obligations arising when material new information becomes available. In contrast, discretionary news releases tend to be published by issuers for less important facts. Since less important facts might not be material under the Act and clearly material facts, which must be disclosed, will be excluded from the definition of investor relations activities by the broader interpretation, a finding of liability under section 50(1)(d) would be very rare under such interpretation. The apparently intended prohibition against material misrepresentations would be largely meaningless.

[98] The panel in *New Point described* the narrow interpretation as follows, at paragraphs 129-131:

> [129] The narrow interpretation of this exclusion is that if a company is required to make a communication, only the parts of the communication which are mandatory are excluded from the definition of investor relations activities. This interpretation is consistent with the plain meaning of the words used in the definition, which excludes communications "necessary to comply with … requirements". Additional facts added to a news release are inherently not communicated out of any legal compulsion.
>
> [130] Under this narrow interpretation, companies are afforded the benefit of the exclusion with respect to elements of a communication which an issuer is required to disclose for compliance reasons, but other elements of the communication in the form of included facts or excluded facts, are not excluded from the definition of investor relations activities.
>
> [131] As an example of how the narrow interpretation of the exclusion would apply, if an issuer completes a private placement and must disclose the issuance of shares, the exclusion would apply only to those details of the share issuance which were disclosed by compulsion of law. Any other communication added to the disclosure, including any which was false or misleading or which omitted facts necessary to avoid making the communication misleading, would not be within the scope of the exclusion.

[99] The relevant portion of the section 1 definition of "misrepresentation" is:

> …
>
> (b) an omission to state a material fact that is
>
> …
>
> (ii) necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made.

[100] In *Tietz v. Cryptobloc Technologies Corp.*, 2021 BCSC 2275, the Court held, at paragraph 24, that it is clear that the definition of misrepresentation encompasses "half-truths." An issuer cannot escape liability by only stating facts that are, strictly speaking true, but which become misleading when considered alongside the omitted information. The Court cited *Kerr v. Danier Leather Inc.* (2005), 261 DLR (4th) 400, at paragraphs 112-113 (Ont. CA):

> [113] For example, if an issuer said in a prospectus, truthfully, that it had acquired a patent, but it omitted to say that it was engaged in litigation challenging the validity of the patent, it may well be liable for prospectus misrepresentation. Or, if an issuer had said that over the past ten years its profits had averaged $4 million annually, without also disclosing that its profits were $40 million in the first year and zero in the next nine years, this half-truth would also likely amount to a misrepresentation. In each example, the second statement was necessary to make the first statement - "in the circumstances" - not misleading.

D. Materiality

[101] "Material fact" is defined in section 1 of the Act as follows:

> When used in relation to securities issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the securities.

[102] The test for materiality under section 50(1)(d) is an objective market impact test. In *Re Canaco Resources Inc.*, 2013 BCSECCOM 310, the Commission held, at paragraphs 84 and 92:

> The reasonableness of market impact is assessed from the point of view of the reasonable investor, that is, would a reasonable investor expect that the market price or value of the securities would be affected by the fact or event?
> …
>
> The definitions of material fact and material change measure the impact on the "market price or value" of the issuer's securities. The implication is that "market price" and "value" can be affected differently by a given fact or event.

[103] In *Canaco*, at paragraph 100, the Commission held as follows regarding the analysis of the impact of a fact or event on the market price:

> The analysis of the impact of a fact or event on market price requires the issuer to consider whether the information will change existing investor perception to an extent sufficient to significantly affect market price. The questions the issuer needs to consider are: What is current investor perception of our business and prospects now? Would this information reasonably be expected to change that perception? If so, would the information reasonably be expected to change the perception to an extent sufficient to significantly affect market price?

[104] The court in *Tietz*, at paragraph 26, held:

> Materiality is a highly contextual and fact specific inquiry. Omitted information is material if its inclusion would have "significantly altered the 'total mix' of information available" to the reasonable investor in making the investment decision: *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 at paras. 52, 61 [*Sharbern*]; *Cappelli v. Nobilis Health Corp.*, 2019 ONSC 2266 at paras. 147-149.

E. Liability of Directors and Officers

[105] Section 168.2(1) of the Act states:

> (1) If a person, other than an individual, contravenes a provision of this Act or of the regulations, or fails to comply with a decision, an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply with the decision, as the case may be.

[106] The panel in *Re Donald Bergman and others*, 2021 BCSECCOM 302 at paragraph 38, stated:

> There have been numerous decisions that have considered the meaning of the terms "authorize, permit or acquiesce." In sum, these decisions require that the respondent **have the requisite knowledge of the corporate contraventions** and the ability to influence the actions of the corporate entity through action or inaction. [emphasis added]

[107] The panel in *Bergman*, at paragraph 39, quoted from the decision of *Re Momentas Corp*., 2006 ONSEC 15, which also considered the meaning of "authorized, permitted or acquiesced" at paragraph 118:

> Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of

knowledge of intention found in each of the terms “authorize”, “permit” and “acquiesce” varies significantly. “Acquiesce” means to agree or consent quietly without protest. “Permit” means to allow, consent, tolerate, given permission, particularly in writing. “Authorize” means to give official approval or permission, to give power or authority or to give justification.

F. CSE Policies

[108] Section 1.1 of CSE Policy 5, *Timely Disclosure, Trading Halts and Posting Requirements*, stated at the relevant time:

> 1.1 The Exchange believes that two of the fundamental requirements for a fair and efficient capital market that fosters confidence and protects investors from unfair, improper or fraudulent practices are: (a) high quality and timely continuous disclosure by Listed Issuers, and (b) comprehensive market regulation to ensure that high quality and timely continuous disclosure occurs. All investors must have equal and timely access to material information about a Listed Issuer, both to allow investors to make reasoned and informed investment decisions, and to participate in securities markets on an equal footing with other investors.

[109] Section 2.3 of CSE Policy 5 stated that “Actual or proposed developments that require immediate disclosure include, but are not limited to, the following:

> …
>
> (g) public or private sale of additional securities;
>
> …
>
> (j) entering into or loss of significant contracts.

[110] Section 8.1 of CSE Policy 5 stated the following about the content of news releases:

> 8.1 Announcements of material information should be factual and balanced and unfavourable news must be disclosed just as promptly and completely as favourable news. News releases must contain sufficient detail to enable investors to assess the importance of the information to allow them to make informed investment decisions. Listed Issuers should communicate clearly and accurately the nature of the information, without including unnecessary details, exaggerated reports or editorial commentary.

[111] Section 1.1 of CSE Policy 7, *Significant Transactions and Developments*, stated:

> 1.1 The Exchange defines the term “significant transaction” as any corporate transaction, not involving equity securities, that constitutes material information concerning the Listed Issuer…“significant transaction” includes
>
> …
>
> (d) entering into any oral or written contract for Investor Relations Activities relating to the Listed Issuer by the Listed Issuer or by any other person of which the Listed Issuer has knowledge.

[112] CSE Policy 7 stated in part that Listed Issuers must take the following steps relating to a significant transaction:

> …

1.3 If the significant transaction constitutes material information concerning the Listed Issuer, the Issuer must disseminate a news release pursuant to Policy 5.

G. Statutory Interpretation

[113] In *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario Securities Commission*, [1978] 2 SCR 112, at page 114, the Supreme Court of Canada confirmed that the Act is remedial legislation and should be construed broadly.

[114] In *Re Wong*, 2016 BCSECCOM 208, when considering an issue of statutory interpretation, the panel at paragraph 53 quoted from *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at paragraph 219:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see 65302 British Columbia Ltd. v. Canada, 1999 CanLII 639 (SCC), [1999] 3 S.C.R, 804 at para 50…

V. Analysis and Findings

A. Did BLOK contravene section 50(1)(d)?

[115] In order to establish that BLOK contravened section 50(1)(d) of the Act, the executive director must prove:

a) in issuing the June 8, 2018 news release, BLOK was engaged in investor relations activities;

b) BLOK's failure to state that it would retain only a small portion of the proceeds of the private placement as the vast majority of amounts raised had been spent on or would be spent on consulting agreements, made the news release false or misleading;

c) BLOK knew or ought to have known that omission made the statement false or misleading; and

d) that omission was material.

B. Was BLOK Engaged in Investor Relations Activities?

[116] As noted above, the section 1 general definition of investor relations activities references "any activities or oral or written communications, by or on behalf of any issuer…that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer". There are exclusions to that definition which are not relevant to this case with the exception of that found in subparagraph b of the definition which we address below.

[117] As stated in *New Point* at paragraph 123*,* it may be the case that there are news releases that do not promote the company in some manner, "but even relatively neutral and factual news releases tend to describe the underlying business of the issuer in a manner which is calculated to attract investor attention in a positive way".

[118] There are a number of phrases in the June 8 news release that could reasonably be expected to promote the purchase and sale of the securities of BLOK. Examples include:

- The quote from Dawson, is replete with phrases that could be expected to promote BLOK securities such as:

- "leading-edge, global solutions"
- "taking our company to the next level in the execution of its business model"
- "pleased that key investors have joined us"
- "we look forward to advancing our worldwide investment projects"
- "with top-level strategic partners".

- In the paragraph describing BLOK, there are a number of other promotional phrases such as:
  - "The Company's approach is to provide capital, technology and management expertise to the companies it develops."
  - "BLOK Tech continues to grow its business into adjacent industries and emerging technologies."
  - "The Company systematically identifies early-stage technologies with potential to disrupt and innovate…"

[119] We conclude that the news release was a written communication that could reasonably be expected to promote the purchase or sale of its securities.

[120] We next consider the portion of the definition of "investor relations activities" that excludes "communications necessary to comply with the requirements of … [an] exchange". Given the CSE policies on disclosure noted above, BLOK was required to disclose certain information regarding the financing. Following the approach in *New Point*, we adopt the narrow definition which means that only the parts of the June 8 new release that were required disclosure are excluded from the definition of investor relations activities.

[121] We find that the following paragraphs and parts of paragraphs of the June 8 news release were required disclosure:

- The first paragraph of the June 8 news release describing the closing of the second tranche, the number of units sold and the amounts raised in that tranche;

- The second paragraph insofar as it indicated the total raised in the financing; and

- The paragraph discussing BLOK's intended use of proceeds is necessary disclosure and partly promotional given reference to "blockchain investment projects" and "blockchain opportunities".

[122] The rest of the June 8 news release falls within the definition of investor relations activities. Applying the narrow approach to the exclusion, it follows that BLOK was engaged in investor relations activities in issuing the June 8 news release.

C. Was the news release misleading?

[123] The position that the executive director is advancing is that BLOK's disclosure of the intended use of proceeds was misleading because it was not qualified to say that it had already spent or owed most of the funds on consulting fees and that in the result, those funds were not actually available to BLOK to execute its business plan or improve the company's poor financial condition.

[124] As stated in *New Point* at paragraph 150*,* to determine whether a communication is misleading by omission, we look to the nature and degree of divergence between the pre-existing expectation of investors and the reality which was kept from them.

[125] Following the analysis in *Canaco* and *Tietz,* examination of expectations of investors is highly contextual. We will now look at the context in which the June 8 news release was issued.

[126] BLOK had created an expectation among investors that if it raised significant funds, a large part would go to the development of emerging blockchain technology and investment in strategic opportunities as evidenced by the following excerpts from previous communications to the public in 2018:

- The January 16, 2018 news release stated that BLOK would invest in and develop emerging companies in the blockchain technology. In the quote about the acquisition of Greenstream, Hyland says “By bringing the best of the sector’s blockchain developers at Greenstream together with emerging technologies, we are pointed to lead the change in cannabis supply chain management.”;

- On March 1, 2018, BLOK announced that it had entered into a letter of intent to acquire SimpleBlock Payment Systems. BLOK also acquired an option for global rights for USD $1 million;

- On March 8, 2028, BLOK announced it had made a strategic investment into FogChain Inc.;

- On March 13, 2018, BLOK announced the $3 million financing with Canaccord Genuity and Gravitas Securities. It said it intended to use the proceeds for the development of emerging blockchain technology, investment in strategic opportunities as well as for general working capital purposes;

- BLOK made a similar announcement on March 27, 2018 about the intended use of proceeds;

- In the May 1 news release announcing that BLOK had cancelled the agency agreement with Canaccord and Genuity, the company repeated the same intention with regard to the use of funds;

- When BLOK announced the close of the first tranche of the financing on May 17, it said that it intended to use the net proceeds of the private placement for the company’s blockchain investment projects that were currently in the pipeline and that it would also evaluate new blockchain opportunities; and

- The June 8 new release itself created expectations that the funds raised would be used to further its business model including:

    - “In completing this $5.4M financing, we are taking our company to the next level in the execution of its business model.”

    - “The Company intends to use the net proceeds of the Private Placement for the advancement of the Company’s blockchain investment projects that are currently in the pipeline, evaluating new blockchain opportunities as part of its business model and for working capital purposes.”

- In the paragraph that described BLOK: “BLOK Tech continues to grow its business into adjacent industries and emerging technologies…and invests the necessary resources to ensure the success of their projects.”

[127] BLOK had not created expectations in the market that a significant amount would be spent on consulting fees. No mention was made of consulting agreements in any of the news releases leading up to the June 8 news release. In fact, previous communications relating to amounts spent on consultants and marketing created expectations that BLOK might spend in the few hundreds of thousands, not millions. As the executive director points out, $4.45 million on consulting fees was over thirty-three times the amount BLOK spent on marketing and consulting fees in 2016 and eight and a half times what it spent in 2017.

[128] We conclude that the failure to state that the vast majority of funds raised would be used to pay consultants was misleading as it was a significant undisclosed divergence in the actual use of proceeds from that which was previously disclosed.

[129] The executive director has submitted that BLOK created expectations that it would use some of the funds raised to improve its financial position. We do not see anything in the news releases that lead to that conclusion. It is true that the poor financial position of BLOK might lead a prudent company to use proceeds to improve its financial position but we are not able to conclude that BLOK created those expectations. It is sufficient for the purposes of this decision that we have found that BLOK created expectations that monies raised would be used to further its business model.

D. Ought BLOK Have Known that the News Release was Misleading?

[130] As stated in *New Point,* the evidence that tends to establish the existence of a misleading statement is the same as that which establishes a company ought to have known that a misrepresentation was being made. We can draw inferences from the evidence. BLOK made numerous statements about the intended use of proceeds to meet its business objectives. Clearly BLOK was aware of all of the circumstances that made the June 8 news release misleading.

[131] The final element that the executive director must establish in order to prove a breach of section 50(1)(d) of the Act, is the requirement of materiality. As defined in the Act, a material fact is one which would reasonably be expected to have a significant effect on the market price or value of the securities. This is referred to as the market impact test.

[132] Reasonable expectations is an objective concept. As stated in *New Point* at paragraph 161:

> …The test requires an analysis of what result a respondent should reasonably have expected when the respondent published a misrepresentation into the market. The test avoids making the outcome of the analysis of materiality dependent on what actual impact might be measurable in a market after one specific event (the making of a misrepresentation) when there might have been a number of unrelated factors influencing the market at the same time.

[133] The market impact test is designed to regulate the behaviour of issuers at the time that communications are being published. Materiality would be of limited utility if it could only be assessed after the fact by reference to whether there was an actual impact on the market.

[134] We find that the undisclosed consulting fees were material. We conclude that reasonable investors who had been following communications from BLOK, would have seen BLOK as a

company very much engaged in developing blockchain technology and investing in companies with that technology in various sectors in order to become a profitable enterprise. Reasonable investors would have expected that BLOK might use some of the monies raised to improve its financial position and pay expenses. But those reasonable investors would not have expected that BLOK would retain only about 18% of the monies raised to execute its business model and pay expenses.

[135] We find that BLOK contravened section 50(1)(d) of the Act.

E. Did Hyland Contravene section 50(1)(d)?

[136] Having found that BLOK contravened section 50(1)(d), we now turn to the question of whether Hyland authorized, permitted or acquiesced in BLOK's contravention and therefore contravened the same provision by operation of section 168.2. Specifically, did Hyland authorize, permit or acquiesce in BLOK's failure to disclose that the vast majority of the monies raised in the financing was already spent or owed on consulting fees?

[137] As quoted above from *Brookmount,* "these decisions require that the respondent **have the requisite knowledge of the corporate contraventions** and the ability to influence the actions of the corporate entity through action or inaction. As stated in *Momentas,* the threshold for liability is a low one as merely acquiescing will be enough. "Acquiesce" means "to agree or consent quietly without protest."

[138] Of the three operative words in section 168.2, "authorized, permitted or acquiesced", acquiesced is the lowest threshold. We therefore analyze the evidence to determine whether Hyland acquiesced in the disclosure failure of BLOK. If the executive director is not able to meet that low bar, we need go no further to determine whether Hyland authorized or permitted BLOK to make the omission in the June 8, 2018 news release.

[139] There is a conflict in the evidence as to whether Hyland knew and acquiesced in the contravention by BLOK. The executive director has lead evidence in the form of the interview transcript of Alexander to establish that he did. Hyland has himself testified at the hearing that he did not. This requires us to carefully weigh the conflicting evidence.

[140] Hyland has submitted that the testimony of Alexander to the effect that he raised the issue of disclosure with Dawson and Hyland was "vague, taken out of context and self-serving."

[141] We do not find that evidence to be vague and are not sure what is meant when he says it was taken out of context. It is certainly lacking in details. For example we do not know where the conversation which Alexander referenced took place. We do not even know whether the meeting was in person. We do not know whether it was a lengthy conversation or a short one. The investigators did not follow up with questions such as:

- When you say that you discussed "it" with Dawson and Hyland, what exactly was "it"?
- Are you sure that Hyland was a party to that conversation?
- What exactly did each of Dawson and Hyland say when you said you thought that the consulting fees should be disclosed?

- Had you given Dawson and Hyland all of the details of the arrangement such that they knew the total value of the consulting agreements?

- Did you tell them that most of the monies raised in the financing was already committed to consulting fees?

[142] We are not critical of the investigators. It is clear from a reading of the transcript that the interview was broad ranging and likely in the early days of the investigation but the fact remains that there is no detail on this crucial point.

[143] We agree with Hyland that the evidence of Alexander is self-serving. It appears that through his answers, Alexander is attempting to minimize his role in failing to disclose the consulting fees by shifting the blame for that decision to Dawson and Hyland.

[144] It is noteworthy that the executive director did not call Alexander as a witness. Had he done so and had he continued to give evidence to the effect that Hyland was party to a discussion about the arrangement whereby BLOK would get finance monies in exchange for consulting agreements, Hyland would have had the opportunity to cross examine him on that evidence.

[145] We do not know the reason the executive director refrained from calling Alexander. It is possible that he did not anticipate Hyland's evidence would be that he did not know about the consulting agreements. If that were the case, the executive director could have sought to call Alexander in rebuttal. He did not do so.

[146] It is also noteworthy that the executive director did not call Dawson to give evidence at the hearing even though he asks us to draw an inference that Dawson would have told Hyland about the cheque swap. Again, had the executive director called Dawson and had Dawson given that evidence at the hearing, Hyland would have had the opportunity to cross examine him.

[147] In the notes of the Commission interview of Dawson, there is no mention of Hyland being a party to discussions about the consulting agreements. While the notes of Dawson's interview should be afforded less weight under the best evidence rule than if it had been an interview under oath, there is at least no evidence in those notes that contradicts that given by Hyland.

[148] We also note that, in the cross examination of Hyland, the executive director did not put to him that he knew about the cheque swap arrangement at the time he sent out the June 8 news release. The Commission investigator who gave evidence at the hearing said he saw no evidence to establish that Hyland was copied on any of consulting agreements until after the end of July 2018.

[149] We saw nothing in the manner in which Hyland gave evidence at the hearing which was evasive or otherwise concerning. We were not able to discern any signs of a lack of credibility on his part. Hyland's evidence was consistent throughout his direct and cross examinations.

[150] In all these circumstances, we accept the evidence of Hyland as more convincing than the interview evidence of Alexander. We do so for all of the reasons mentioned above, including the lack of detail in Alexander's transcript about the substance of these critical discussions, which makes the absence of a cross examination of Alexander more concerning than might otherwise be the case. We find on a balance of probabilities that the executive director has failed to

establish that Hyland had actual knowledge of the consulting agreements when the June 8 news release was issued.

[151] The executive director has urged us to find that Hyland knew or ought to have known about the contravention of BLOK. He submits that if we find he ought to have known, liability under section 168.2 follows.

[152] We do not agree with the executive director on this point. The executive director was not able to point to any previous cases where liability was established where the individual authorized, permitted or acquiesced without having actual knowledge of the contravention. We are not aware of any such cases. To the contrary, such an interpretation is contrary to the quote from *Brookmount* about the need for the "requisite knowledge".

[153] Most importantly, to import an "ought to have known" element into section 168.2 which has no such wording extends that section beyond its reasonable boundaries. A plain language reading of the section makes it clear there is no such element included. "Ought to have known" appears in other places in the Act. We conclude that, had the legislature intended to include this element in section 168.2, it would have included those words.

[154] We therefore decline to determine whether Hyland ought to have known. It is quite possible that he should have. One could argue that there was a general failure of good governance at BLOK. Perhaps Hyland as a vice president and chair of the audit committee should have known about the consulting agreements. Perhaps he should have played a greater role in the drafting of news releases given that he was noted as the person to contact. However, those issues are not before us.

[155] The issue is whether Hyland had the requisite knowledge and acquiesced in the contravention by BLOK. On the evidence before us, we find that he did not.

[156] As a further alternative position, the executive director says that if we do not find either actual knowledge on the part of Hyland or that he ought to have known of the contravention, we should nevertheless attach liability by finding that Hyland was willfully blind. The executive director relies on the email chain of June 8 with the subject line "List of Consulting Agreements" with a reference in the body to "sub agreements".

[157] Hyland denied understanding that the email chain related to consulting agreements. His evidence both in direct and in cross was that he thought it was about subscription agreements for the financing.

[158] It may seem implausible that Hyland did not read the email closely enough to realize that the list was of consulting agreements as opposed to subscription agreements. This gives us some pause. It suggests a careless reading at best. However, his was the only direct evidence on this point. Further, if in fact he had not been party to any discussion about consulting agreements, it might be plausible he would not have been looking for any listing of them.

[159] In addition, we know that Hyland was on an airplane when that email was sent and in Montreal for the rest of that weekend, in part, visiting his father. He was therefore to some extent focused on matters not related to BLOK and the financing.

[160] Again, Hyland showed no signs in direct or cross to lead us to conclude he was untruthful in his testimony. We find that the executive director has not established on a balance of probabilities that Hyland was willfully blind.

[161] The executive director cited the Ontario Securities Commission case of *Natural Bee Works Apiaries Inc (Re),* 2019 ONSEC 23 at paragraph 115 in support of applying the principle of willful blindness in the Commission setting. That case does not assist the executive director. It dealt with fraud and a provision in the Ontario legislation which included liability where a person "knew or ought to have known" that a fraud was being perpetuated. The tribunal in that case used the concepts of willful blindness and ought to have known interchangeably. As we found above with regard to "ought to have known", to import a willful blindness element into section 168.2 which has no such wording contorts that section beyond its reasonable boundaries. A plain language reading of the section makes it clear no such element is included.

[162] We find that the executive director has failed to establish that Hyland acquiesced in the contravention of BLOK and therefore has not contravened section 50(1)(d) of Act by operation of section 168.2.

VI. Summary of Conclusions

[163] In conclusion, we find that:

a) BLOK contravened section 50(1)(d) of the Act; and

b) The executive director has failed to establish that Hyland contravened the same section by operation of section 168.2.

VII. Submissions on Sanction

[164] We direct the executive director and BLOK to make their submissions on sanctions as follows:

By February 23, 2024	The executive director delivers submissions to the respondents and the Commission Hearing Office.
By March 8, 2024	BLOK delivers response submissions to the executive director and the Commission Hearing Office. Either party seeking an oral hearing on the issue of sanctions so advises the Commission Hearing Office. The hearing officer will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).
By March 15, 2024	The executive director delivers reply submissions (if any) to BLOK and to the Commission Hearing Office.

February 1, 2024

For the Commission

Deborah Armour, KC
Commissioner

Gordon Johnson
Vice Chair

Jason Milne
Commissioner