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

Citation: Re Onstad, 2025 BCSECCOM 227 Date: 20250520

Michael Duane Onstad and LOC Consultants Inc.

Panel	Deborah Armour, KC	Commissioner
	Judith Downes	Commissioner
	Warren Funt	Commissioner
Hearing date	November 13, 2024	
Submissions completed	February 4, 2025	
Decision date	May 20, 2025	
Appearing		
Matthew Smith	For the Executive Director	

Findings and Decision

I. Introduction

[1] These are the liability and sanctions portions of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 (Act).

[2] In a notice of hearing issued on April 24, 2024 (2024 BCSECCOM 152), the executive director alleged that, from June 2018 through April 2021 (Relevant Period):

a) Michael Duane Onstad (Onstad) and LOC Consultants Inc. (LOC) (collectively the Respondents) solicited and referred investors to two registered dealer firms to purchase flow-through shares and earned commissions on the resulting transactions;

b) The Respondents were not registered in any capacity and therefore contravened section 34(a) of the Act; and

c) In addition to contravening section 34(a) of the Act by his own personal actions, Onstad as the directing mind of LOC, also authorized, permitted and/or acquiesced in the contraventions of section 34(a) and, by operation of section 168.2 of the Act, contravened the same provisions as LOC.

[3] The liability hearing took place on November 13, 2024.

[4] The executive director made written submissions and, on February 4, 2025, made oral submissions on liability and sanctions.

[5] Onstad and LOC did not participate in these proceedings.

II. Factual Background

[6] We find that the evidence has established the following facts.

[7] LOC was incorporated in British Columbia on November 28, 2014. At that time, Onstad was the only director of LOC. The incorporation application showed his mailing address to be in Surrey, British Columbia.

[8] A British Columbia companies search on May 21, 2021 showed that Michael Gordon Onstad, the son of the respondent Onstad, had been added as a director of LOC. All allegations and findings in these proceedings relate to the father, Michael Duane Onstad. All references to "Onstad" are to Michael Duane Onstad.

[9] The companies' search provided an address in Surrey, BC for the registered and records office of LOC. It also indicated that Onstad was residing in Vancouver, BC at that time.

[10] On October 28, 2014, Onstad entered into a referral agreement with a dealer firm (Dealer #1). Pursuant to that agreement, Onstad agreed to refer investing prospects to Dealer #1 and Dealer #1 agreed to pay Onstad referral fees equal to 50% of the fees it received. Dealer #1 also agreed to provide information about the agreement to prospective investors including the nature of the agreement, Onstad's identity, the amount of the referral fees and any potential conflicts of interest. That agreement does not relate to the events in question however we reference it to put in context future events including the interview of Onstad referenced below.

[11] Commission staff sent a letter dated June 16, 2014 to Onstad referencing communications they had had with him regarding his promotion of investment opportunities. That letter confirmed that Onstad was relying on an exemption from the need to be registered known as the Northwest Exemption. The letter also referred to the requirement to file an information report with the Commission and confirmed that Onstad had said he would do so shortly.

[12] On October 19, 2016, Onstad attended a compelled interview with Commission staff regarding alleged unregistered activities unrelated to this matter. During the interview, Onstad referred to LOC as his company. Commission staff asked Onstad whether he had received the June 16, 2014 letter. While Onstad said that he had not received the letter, he acknowledged the conversation with Commission staff that was referenced in the letter. As of the date of the interview at the latest, Onstad was apprised of the letter and advised of the requirement to file documentation to rely on a registration exemption.

[13] In December 2016, LOC entered into a referral agreement with a firm registered as an investment dealer with the regulatory body now known as the Canadian Investment Regulatory Organization (Dealer #2). That agreement was signed by Onstad as President of LOC. Pursuant to that agreement, LOC agreed to refer parties interested in participating in direct flow-through transactions to Dealer #2. Dealer #2 agreed to pay to LOC, referral fees pursuant to a schedule purportedly attached to that referral agreement. That schedule was not attached to the version of the agreement or otherwise entered into evidence at the hearing.

[14] On July 11, 2018, LOC entered into a referral agreement with Dealer #1 pursuant to which LOC agreed to refer prospective investors to Dealer #1 and Dealer #1 agreed to pay to LOC 50% of the fees it received. Dealer #1 agreed to provide the same information to investors that it had agreed to provide in the October 28, 2014 agreement with Onstad. That agreement was signed by Onstad on behalf of LOC.

[15] There were more than 20 forms entered into evidence entitled "Seller's Acknowledgement" addressed to Dealer #2 and signed by the various investors. Each of those forms included an acknowledgement that Dealer #2 had entered into a referral agreement with Onstad/LOC for the purposes of the subject transaction and listed the fee that would be paid for that referral. We do not know whether the investors with Dealer #1 had executed similar documentation but we do know that Dealer #1 had agreed to provide that information to its investors.

[16] There were four separate email chains that evidenced communications between Onstad and potential investors:

a) In June 2018, Onstad had communications with investor K which indicated that Onstad had sent information regarding flow-through transactions to K and confirmed that K wished to invest $100,000 in the upcoming transaction. That email chain also showed that Onstad sent K's confirmation of interest to Dealer #2;

b) In September 2018, Onstad had communications with investor O which confirmed that O was interested in investing $200,000 and his partner $400,000 in an upcoming transaction. That email chain was then forwarded to a representative of Dealer #2;

c) Between September and November 2018, Onstad had communications with investor S regarding a transaction with Dealer #2. At one point, Onstad says "I will need to confirm your participation and the total amounts soon as we are selling out quickly". S confirmed he and his colleagues would invest a total of $250,000; and

d) In May 2019, Onstad had communications with investor P attaching information relating to a potential investment. Onstad told P that the transaction would produce an after tax net rate of return of 24%. He asked P to let him know if he would like to commit as soon as possible as the transaction was selling out quickly and it was not a large offering. That email chain ultimately evidenced a referral of P as an investor to Dealer #2 for an investment of $200,000.

[17] Commission staff sent a letter dated September 5, 2019 to Onstad relating to referrals to Dealer #1. That letter referenced the June 16, 2014 letter sent by the Commission to Onstad and indicated that his referrals required registration but that the Northwest Exemption was available if he filed an information report under BC Instrument 32-513. That letter was sent by registered mail and delivered to Onstad's email address. Onstad responded by email more than a year later on December 16, 2020 and said "I referred some clients this year to [Dealer #1]. What are the details you require specifically?"

[18] Commission staff responded to Onstad's December 16, 2020 email by saying:

> You are required to file a report under BC Instrument 32-513 when you refer investors to [Dealer #1].
>
> Please confirm that you have read the attached letter and filed the 32-513 report with the British Columbia Securities Commission.

[19] On February 25, 2021, a Commission investigator sent an order to the Respondents to provide information. There was some back and forth and eventually Onstad responded by email on March 19, 2021 asking for a one week extension saying that he was waiting for information from his accountant. In that email, he said that the only business he had conducted was as a referrer for the Dealers.

[20] We do not know whether Onstad provided the information sought in the order but we do know that he did provide some information for the investigation. Another Commission investigator gave evidence at the liability hearing. She testified that she had reviewed materials the Respondents had provided.

[21] The investigator who testified referred to section 168 certificates files by the Commission that showed that neither Onstad nor LOC were registered in any capacity under the Act. She testified that neither Onstad nor LOC filed the information report pursuant to BC Instrument 32-513 or any other documentation in order to become registered or to claim a registration exemption.

[22] The investigator referred to a table (Referral Table) that she had prepared which, for each referral transaction, recorded:

a) the name of the investor;

b) the province in which the investor resided;

c) the name of the issuer in which the investor invested;

d) the exempt distribution date or date of prospectus;

e) the date of the relevant subscription document;

f) the number of shares subscribed;

g) the amount paid for the shares;

h) the dealer firm to which the Respondents referred the investor;

i) the invoice number for referral fees billed to Dealers #1 and #2 (collectively the Dealers); and

j) the record which indicated the payments made by the Dealers.

[23] The Referral Table drew the information it recorded from documents provided by the Respondents and Dealers as well as Commission documents.

[24] The Referral Table indicated that, during the relevant period, the Respondents referred 33 investors to the Dealers. Nine of those investors resided in British Columbia. The remainder resided in other Canadian provinces.

[25] The investors participated in 45 flow-through transactions with a total value of $7,624,769.58 invested. Fees totaling $239,738.55 were paid for those referrals.

[26] There were a number of invoices entered into evidence. Each of those invoices indicated that wire payments should be made to LOC. There was documentation entered into evidence relating to some wire payments. While we do not have documentation for all wire payments, those we do have indicate the beneficiary as "LOC Consultantas [sic] Inc."

III. Liability – Applicable Law

A. Standard and burden of proof

[27] 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.

[28] 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".

[29] The liability decision in *Re Liu,* 2018 BCSECCOM 372 confirmed that this is the standard the Commission applies to allegations.

B. Relevant provisions

[30] At the beginning of the Relevant Period, section 34(a) of the Act provided that:

> **34** A person must not
> (a) trade in a security or exchange contract
> ...
> unless the person is registered in accordance with the regulations and in the category prescribed for the purpose of the activity.

[31] As of March 27, 2020, that subsection was renumbered and amended as follows:

> **34** (1) A person must not
> (a) trade in a security or derivative
> ...
> unless the person is registered in accordance with the regulations and in the category prescribed for the purpose of the activity.

[32] The differences in those versions of section 34 are irrelevant for the purposes of this decision.

[33] Section 1(1) of the Act defines, in part, “security” as:

> **"security"** includes
>
> a document, instrument or writing commonly known as a security,
> ...
>
> whether or not any of the above relate to an issuer, but does not include a security, or a security within a class of securities, described in an order made under section 3.1, or a prescribed security or a security within a prescribed class of securities

[34] Section 1(1) of the Act defines “trade” to include:

> (a) a disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or a transfer, pledge, mortgage or other encumbrance of a security for the purpose of giving collateral for a debt or other obligation,
> ...
>
> (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e.2)

[35] National Instrument 31-103 includes further detail on the circumstances under which persons are required to be registered to trade in securities. The Companion Policy to NI 31-103 (CP 31-103) contains interpretations of the National Instrument by the Canadian Securities Administrators. Section 8.4(1) in effect during the Relevant Period set out the following exemption from the requirement in section 34(a) that a person must be registered to trade in securities:

> 8.4(1) In British Columbia…, a person…is exempt from the dealer registration requirement if the person…
> (a) is not engaged in the business of trading in securities…as principal or agent, and
> (b) does not hold himself, herself or itself out as engaging in the business of trading in securities…as a principal or agent.

[36] This meant that a person was always required to be registered if they were trading in securities unless they were not in the business of trading in securities. The following from CP 31-103 were factors that regulators considered relevant to the determination of whether a person was trading for a business purpose:

a) engaging in activities similar to a registrant – including whether the person is acting as an intermediary between the buyer and seller of securities;

b) directly or indirectly carrying on the activity with repetition, regularity or continuity – including the frequency of transactions (but the activity does not have to be the

sole or even the primary endeavor of the person) and whether the activity is carried out with a view to making a profit, the person's various sources of income and amount of time allocated to the activity;

c) being compensated for the activity – receiving or expecting to be compensated for carrying on the activity indicates a business purpose; and

d) directly or indirectly soliciting – contacting potential investors to solicit securities transactions suggests a business purpose.

[37] Companion policies do not have the force of law. Their function is to inform market participants of the regulators' interpretation of certain aspects of securities law. We find the statements of policy in CP 31-103, outlined above, to be appropriate to the interpretation of some of the factors to be considered in determining whether a person was required to be registered under the Act.

[38] During part of the Relevant Period, there was an exemption from the requirement to be registered under the Act found in BC Instrument 32-513. This was the Northwest Exemption referred to by Commission staff in their September 5, 2019 letter to Onstad.

[39] The Northwest Exemption provided that a person was not required to be registered under section 34(a) of the Act in connection with trades in securities that are exempt from the prospectus requirements under the:

a) accredited investor exemption;

b) family, friends and close business associates exemption;

c) offering memorandum exemption; and

d) minimum investment amount exemption,

if:

a) the person was not registered under the provincial or territorial legislation and was not formerly registered;

b) the person was not registered under the securities legislation of a foreign jurisdiction and was not formerly registered;

c) prior to the trade, the person did not advise, recommend or otherwise provide suitability advice to the purchaser;

d) at or before the time of purchase, the person obtained a risk acknowledgment (in the prescribed form) from the purchaser;

e) the person did not hold or have access to the purchaser's assets;

f) the person did not provide financial services to the purchaser other than the prospectus exempt purchase of securities; and

g) the person has filed with the Commission a form notifying the Commission of the person's reliance upon the Northwest Exemption in connection with a particular trade or trades.

[40] Section 168.2(1) of the Acts states:

> **168.2** (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.

IV. Position of the Executive Director on Liability

[41] The executive director submits that Commission jurisdiction over the Respondents is established. As it relates to LOC, the company was incorporated in British Columbia on November 28, 2014. A company search conducted on May 21, 2021 indicated that the company continued to be incorporated in the province. The executive director urges the Commission to infer that LOC operated in British Columbia continuously between those two dates.

[42] During the hearing, the executive director conceded that the evidence did not establish that Onstad personally breached section 34. The executive director does take the position that Onstad is liable pursuant to section 168.2 as the sole directing mind of LOC as it was through his actions that LOC conducted their unregistered business. Onstad communicated with potential investors and he signed the referral agreements. The executive director submits that Onstad's residency is not relevant for the operation of section 168.2.

[43] The executive director spent some time in oral submissions explaining the respective roles of the Respondent Onstad and that of his son who has the same first and last name. The executive director submits that liability attaches to Onstad the Respondent and not the son.

[44] The executive director relies on the Commission decision in *Re Zhong,* 2015 BCSECCOM 165. At paragraphs 49-50, the Commission panel summarized the test for unregistered trading in the following three steps:

a) The product at issue is a "security" as defined under the Act;

b) The respondent traded in the security; and

c) The respondent did not have an exemption from the registration requirement.

[45] The executive director also relies on the Commission liability decision in *Liu* which considered acts constituting trades and acts in furtherance of trades. The executive director says that *Liu* emphasized that the definition of a "trade" and "acts in furtherance" of a trade are purposively broad and include direct and indirect conduct.

[46] The executive director notes that *Liu* relied on *Re Rezwealth Financial Services Inc.,* 2013 ONSEC 28, which decision set out a non-exhaustive list of examples of acts in furtherance of trades. Relevant to this case, that list included:

a) distributing promotional materials concerning potential investments; and

b) preparing and distributing materials describing investment programs.

[47] The executive director submits that the flow-through shares the investors invested in were securities. They were shares in Canadian resource companies and were distributed by prospectus or by exempt distribution and therefore the first branch of the *Zhong* test is met.

[48] The executive director submits that the following activities of the Respondents were acts in furtherance of trades:

a) The referrals were connected to actual trades in securities;

b) The Respondents distributed promotional materials;

c) They prepared and disseminated materials describing flow-through investment programs;

d) They met with investors to solicit interest in investing;

e) They received compensation that was tied to specific trades; and

f) Investors were referred to the Dealers.

[49] The executive director points to the interview that was conducted by the Commission on October 19, 2016. In that interview, Onstad described the process in which he engaged at the time in referring potential investors to Dealer #1. Even though that interview did not deal with the matters in issue in this notice of hearing and predated the commencement of the Relevant Period, the executive director urges us to infer that Onstad carried out his referral activities in the same manner during the Relevant Period.

[50] The executive director submits that neither of the potential exemptions applies to the Respondents. They are not able to take advantage of the exemption described in National Instrument 31-103 because they were engaged in the business of trading in securities. As for the Northwest Exemption, the executive director says the evidence establishes that the Respondents never filed the necessary information reports with the Commission.

V. Analysis and Findings on Liability

A. Jurisdiction of the Commission

[51] As a preliminary matter, we consider whether the Commission has jurisdiction over the Respondents and the allegations in the notice of hearing. Jurisdiction can be founded in

a number of ways. Two of those relevant to our consideration are residency of the Respondents and residency of the investors.

[52] The Referral Table indicates that nine of the 33 investors who invested in flow-through shares as a result of referrals to the Dealers, resided in British Columbia. That is sufficient to give rise to the jurisdiction of the Commission although, without further indicia of jurisdiction relating to the remaining investors, might result in lower sanctions than would otherwise apply to 33 investors.

[53] As it relates to LOC, we have sufficient evidence to establish British Columbia residence. In addition to the incorporation documentation showing LOC in the province as of November 28, 2014 and the 2021 BC companies search showing the same, there are a number of wire transfers from the Dealers showing a BC address. We find that LOC was located in British Columbia throughout the Relevant Period and therefore jurisdiction over LOC is established.

[54] As it relates to Onstad, the corporate search of the BC Registries also shows his residence as in British Columbia in 2014 and 2021. The executive director has taken the position that Onstad would not have to be a resident of British Columbia for liability to attach pursuant to section 168.2. We do not find it necessary to determine this issue, as in the absence of any evidence to the contrary, we find that Onstad resided in British Columbia throughout the Relevant Period, establishing Commission jurisdiction over him.

B. Liability pursuant to section 34 of the Act

[55] Following the test outlined in *Zhong*, the executive director must show that:

a) The flow-through shares were securities;

b) The Respondents traded in those securities as “trade” is defined in the Act; and

c) The Respondents did not have exemptions from registration.

[56] Looking at the first requirement of the *Zhong* test, the flow-through shares the investors invested in were shares in Canadian resource corporations and were distributed either by prospectus or by exempt distribution. We find that they were securities as defined in the Act.

[57] We next consider the second requirement in *Zhong*, namely whether the subject transactions were trades. The purchase and sale of flow-through shares by the investors from the Dealers clearly constituted disposition of securities for valuable consideration and therefore the Dealers were conducting trades as defined in section 1(1)(a) of the Act. We need to consider the conduct of the Respondents to determine whether its actions also constituted trades.

[58] The broad definition of “trade” in the Act includes, at section 1(1)(f), “acts in furtherance of trades”. In determining whether the specific acts of the Respondents were acts in furtherance of trades, we look at *Liu* where the Commission considered a number of cases in Canada including the following passage from *Rezwealth*:

> [213] . . . The Commission has established that trading is a broad concept which includes any sale or disposition of a security for valuable consideration, **including any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition.**
>
> [214] The Commission has found that a variety of activities constitute acts in furtherance of trades. . . examples of activities that have been considered acts in furtherance of trades by the Commission include, but are not limited to:
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> a. providing potential investors with subscription agreements to execute;
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> b. distributing promotional materials concerning potential investments;
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> c. issuing and signing share certificates;
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> d. preparing and disseminating materials describing investment programs;
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> e. preparing and disseminating forms of agreements for signature by investors;
>
> f. conducting information sessions with groups of investors; and
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> g. meeting with individual investors. (*Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 ("*Momentas*") at para.80). [emphasis added]

[59] The executive director has urged us to accept the transcript of Onstad's interview with the Commission on October 19, 2016 as evidence in these proceedings of Onstad's conduct relating to acts in furtherance of trading in 2018, even though he acknowledges that the interview predated the Relevant Period and does not deal with the facts in issue in this case. The executive director says that the referral process Onstad described his interview is the same as that utilized by the Respondents in the case before us as is evident from the email with investor P.

[60] We are not able to reach the conclusion that the executive director urges as that email is brief and does not provide much insight into the referral activities. At most it allows us to make the conclusion that Onstad was soliciting investor P's participation and makes reference to some materials having been provided without us knowing what those materials were.

[61] Having considered the submissions of the executive director and reviewed the supporting evidence, we find that we are not able to rely on the 2016 transcript as supporting evidence of Onstad's conduct in 2018.

[62] In fact, there is very little evidence in the record as to the steps the Respondents took in making the referrals. It is unfortunate that we do not have more than four brief emails to evidence steps taken by the Respondents. However, we are able to find the following:

a) The Respondents disseminated information concerning specific transactions to investors K and P;

b) The email with P constituted a solicitation given that it pointed out the benefits of the transaction and urged him to commit as soon as possible as the transaction was “selling out quickly and is not a large offering”;

c) The email with S also constituted a solicitation given that it also urged S to commit quickly;

d) LOC entered into referral agreements with the Dealers;

e) Substantial compensation was paid by the Dealers to LOC for the referrals; and

f) Onstad himself acknowledged that he was making referrals to Dealer #1 in his email of December 16, 2020.

[63] The *Liu* case is also helpful as it specifically considered referral activity. That decision referred to the Alberta Securities Commission decision in *Re Hampton Court Resources Inc.,* 2006 ABASC 1345 which in turn noted the remarks of the Ontario Securities Commission in *Re Costello* (2003), 26 O.S.C.B.1617 at paragraph 47:

> There is no bright line separating acts, solicitations, and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.

[64] The Commission in *Liu* concluded that not all referrals would constitute acts in furtherance of trades. At paragraph 88, they listed non-exhaustive factors that could be considered to determine whether acts were in furtherance of trades. Two of those factors relevant to this case are:

a) whether there was material (relative to the amount invested in securities) compensation paid for the referral; and

b) whether that compensation was tied to specific trades in securities.

[65] Applying those factors to this case, the referral agreement between LOC and Dealer #1 provided that LOC would receive 50% of the fees Dealer #1 received. While we do not know what compensation the referral agreement with Dealer #2 provided given the missing schedule, we do know that LOC received a total of $239,738.55 for referring 33 investors for a total of 45 transactions. We find that the compensation that LOC received for the referrals to be material.

[66] We know from the emails and the documentation provided by the Dealers that the referrals were very specifically tied, and therefore had a sufficient proximate connection, to actual trades.

[67] The following is a summary of the reasons for which we find that the conduct of the Respondents constituted acts in furtherance of trades and fall within the definition of “trade” found in section 1(1)(f) of the Act:

a) The Respondents provided information concerning specific transactions to at least four potential investors;

b) Two of the emails with investors constituted solicitations;

c) LOC was paid material compensation for the referrals; and

d) The referrals were specifically tied to trades conducted by the Dealers.

[68] As evidenced by the invoices and wire payment documentation, the referral payments made by the Dealers were made to LOC, not Onstad. Further, the referral agreements were between LOC and the Dealers. Onstad was not a party to those agreements. We agree with the executive director and find that the evidence does not establish liability against Onstad personally pursuant to section 34 of the Act.

[69] We now consider the last factor of the *Zhong* test, namely whether LOC had an exemption from the registration requirements.

[70] The Commission investigator testified and the section 168 certificates show, that neither Onstad nor LOC filed the information report pursuant to BC Instrument 32-513 or any other documentation in order to become registered or to claim a registration exemption. There is no evidence to the contrary.

[71] We conclude that LOC took no steps to register under the Act or to avail itself of the exemption in BC Instrument 32-513. We find that LOC traded in securities without registration, contrary to section 34 of the Act.

C. Liability of Onstad pursuant to section 168.2 of the Act

[72] Liability under section 168.2 will be established where the executive director proves that:

a) A corporate respondent has contravened the Act; and

b) An individual who is an employee, director or agent of the corporate respondent authorizes, permits or acquiesces in the contravention.

[73] We have found that LOC contravened section 34 of the Act. The question remains as to whether Onstad authorized, permitted or acquiesced in that contravention.

[74] There have been many decisions which have considered the meaning of the terms “authorizes, permits or acquiesces”. As stated in *Spangenberg (Re)*, 2016 BCSECCOM 72 at paragraph 84, “those decisions require that the respondent has the requisite knowledge of the corporate entity’s contraventions and the ability to have influence over the actions of the corporate entity (through action or inaction)”.

[75] Onstad was a director of LOC throughout the Relevant Period and eventually became its President. The subject referral agreements were signed by Onstad on behalf of LOC. The few emails we have to investors were sent from Onstad’s email account. In short,

the actions of LOC were conducted through Onstad. Those actions showed that Onstad had knowledge of LOC's contraventions and the ability to influence the actions of LOC.

[76] We find that Onstad authorized, permitted or acquiesced in the contravention of section 34 by LOC and therefore also contravened that section by operation of section 168.2 of the Act.

VI. Sanctions – Applicable Law

[77] Section 161(1) orders are protective and preventative in nature and prospective in orientation. This means that, when it crafts its orders, the Commission aims to protect investors, promote the fairness and efficiency of the capital markets, and preserve public confidence in those markets.

[78] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 at page 24, the Commission provided a non-exhaustive list of factors relevant to making orders under sections 161 and 162 of the Act:

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
>
> - the seriousness of the respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
> - orders made by the Commission in similar circumstances in the past.

VII. Position of the Executive Director on Sanctions

[79] The executive director submits that a breach of section 34 of the Act is serious. He points to the failure of the Respondents to take the necessary steps to become registered or to file the report necessary to take advantage of the Northwest Exemption notwithstanding "repeated cautions from Commission staff".

[80] The executive director submits there are no mitigating circumstances and the disregard for regulatory obligations is aggravating. The executive director submits the Respondents are "ungovernable" because they neglected to file the necessary

information and failed to show up for the liability hearing. This conduct, says the executive director, is aggravating.

[81] The executive director says that the Respondents' actions show a blatant disregard for their regulatory obligations and demonstrate an ongoing risk to investors and the capital markets. The executive director submits that the only way to address this risk is to impose broad, permanent market prohibitions and meaningful financial penalties.

[82] The executive director refers to the sanctions decision in *Re Liu,* 2019 BCSECCOM 239 (the *Liu* Sanctions Decision) and says that while the amounts invested were similar to those invested in this case, there is a need for specific deterrence in this case given the failure of the Respondents to adhere to their regulatory obligations. In *Liu*, the respondents complied with an undertaking they gave to the Commission and attempted to comply with certain sales practices.

[83] In the *Liu* Sanctions Decision, the Commission imposed an administrative penalty of $40,000. Given the Respondents' "steadfast refusal to engage in the regulatory system", the executive director submits that each of the Respondents should be ordered to pay an administrative penalty of $50,000.

[84] In addition to permanent market bans and the administrative penalty, the executive director seeks a disgorgement order pursuant to section 161(1)(g) of the Act whereby LOC pays to the Commission $239,738.55 being the amount it made from the referrals. In doing so, the executive director urges us to follow the majority decision in the *Liu* Sanctions Decision. The executive director concedes that a disgorgement order is not appropriate as against Onstad as there is no evidence that he personally received compensation for the referrals.

VIII. Analysis on Sanctions

A. Application of the *Eron Mortgage* factors

Seriousness of the conduct

[85] The Commission has repeatedly said that the obligation to be registered under section 34 is a cornerstone of the Act. This is because those who deal with investors must have certain proficiencies and provide important investor protections.

[86] While registration cases are serious, as the executive director notes, they are generally less so than fraud or misrepresentation cases. Further, this case is not as serious as other registration breaches where there were no registrants interfacing with clients and therefore a lack of investor protections. In this case, the Respondents referred the investors to two registrants. There is no suggestion that those registrants failed to provide the necessary protections to the investors.

[87] While the breach in this case involved trading without registration, the conduct could have been brought into compliance with the Act if the Respondents had filed the necessary documentation in order to take the benefit of the Northwest Exemption.

[88] While the breach was not particularly egregious, the amounts involved were significant. The investors invested a total of $7,624,769.58. Referral fees of $239,738.55 were paid to LOC.

Harm to investors and damage to the capital markets

[89] There is no evidence that any investors were harmed by the Respondents' conduct.

[90] While there is no evidence that the actions of the Respondents had, for example, an impact on the market price of the issuers, their failure to take the appropriate steps jeopardizes the integrity of the capital markets.

Enrichment of the Respondents

[91] LOC was enriched, however we note that if it had properly taken advantage of the available exemption, it could have received the referral fees. We discuss this at greater length in the section below relating to section 161(1)(g).

Mitigating or aggravating factors

[92] We are not aware of any mitigating circumstances.

[93] The executive director submits that there were two sets of circumstances in this case that were aggravating:

a) the Respondents' failure to attend the hearings; and

b) the Respondents' failure to take the necessary registration steps even though they were repeatedly told to do so by the Commission.

[94] The executive director in oral submissions cited *College of Nurses v. Goldar*, 2019 CanLII 73941 for the proposition that the failure of a respondent to attend a hearing is an aggravating circumstance. We do not find that case helpful. All it said was that, because the member did not participate, the panel had no mitigating circumstances to consider and therefore they were not able to assess the potential to be rehabilitated. We do not read that case as saying non-attendance was found to be an aggravating circumstance.

[95] In any event, there is no evidence as to why the Respondents did not attend the hearing. We note also that the Respondents did cooperate to some extent in the investigation given the evidence of the Commission investigator at the hearing that they provided materials to the Commission. We are unable to conclude that the non-attendance at the hearing is an aggravating circumstance.

[96] While we were not able find the 2016 interview relevant to establish how the Respondents carried out their referral business during the Relevant Period, we do find the interview relevant insofar as Commission staff apprised Onstad of the need to seek registration or an exemption when carrying out referral activity. And while we do not know whether Onstad received the June 16, 2014 caution letter from the Commission at or about that time, we do know that it was brought to his attention in the 2016 interview.

[97] We also know that Onstad received the September 5, 2019 Commission letter at least by December 16, 2020 when he responded by email. That letter and the Commission email of December 16, 2020 informed the Respondents of the need to file documentation to take advantage of the registration exemption. They failed to do so.

[98] We find that the failure to file the documentation after being told to do so by the Commission to be aggravating circumstances.

Past misconduct

[99] Neither of the Respondents has a history of securities-related misconduct.

Risk posed by the Respondents' continuing participation in our capital markets

[100] Given that the misconduct in this case is the Respondents' breach of the registration requirements, that must be a factor in our consideration.

[101] The conduct of LOC was carried out by Onstad. He was the controlling mind of LOC and the person responsible for the misconduct. That must be a factor in our consideration of his fitness to be a director or officer of a corporation.

Specific and general deterrence

[102] Specific deterrence is an important consideration in this case given the apparent disregard by the Respondents to take steps to file the necessary documentation.

[103] The sanctions we impose must also be sufficient to deter others from similar conduct. They must also be proportionate to the misconduct.

Prior decisions

[104] The executive director in his submissions, has drawn extensively from the *Liu* Sanctions Decision. While there are differences between the circumstances in *Liu* and this case, there are also many similarities. *Liu* is relevant to our consideration of appropriate sanctions.

[105] The respondent Liu made referrals with respect to 48 trades totaling $1.7 million and was enriched by approximately $120,000. The respondent CPFS made referrals with respect to 54 trades totaling $1.7 million but was not enriched. NuWealth made referrals with respect to 160 trades for approximately $4.8 million and was enriched more than $300,000.

[106] A significant difference in *Liu* is that the investors referred by those respondents lost considerable sums of money. Another difference is that, in a number of cases, the referral was to an unregistered entity therefore depriving investors of the protections that come with dealing with registrants. A further difference is that those respondents had been registrants and many of the investors went to them seeking advice and assistance with one aspect of their financial lives and were diverted to another, unrelated and separately regulated financial product. All of these differences make the *Liu* case more serious than our case.

[107] The *Liu* case is less serious than this one in one important respect. Liu personally gave undertakings to the Commission which he abided by and also attempted to comply with certain sales practices. The Respondents in our case, when faced with relatively few and simple steps to take to benefit from a registration exemption, failed to do so. They indicated a higher disregard for regulatory requirements and therefore a greater need for regulatory response.

[108] The Commission in the *Liu* Sanctions Decision:

a) imposed market prohibitions on Liu and NuWealth for a duration of two years and against CPFS for one year;

b) imposed $40,000 in administrative penalties against each of Liu and NuWealth and $20,000 against CPFS; and

c) the majority imposed section 161(1)(g) disgorgement orders against Liu and NuWealth for the full amount of their enrichment. The Vice-Chair would not have made any disgorgement orders.

IX. Appropriate Sanctions

A. Administrative penalties

[109] Section 162 of the Act provides the following:

> (1) If the commission, after a hearing,
>
> (a) determines that a person has contravened,
>
> (i) … a provision of this Act…
>
> (b) considers it to be in the public interest to make the order,
>
> the commission may order the person to pay the commission an administrative penalty of not more than $1 million for each contravention.

[110] The misconduct here is less serious than others under the Act and amounts to the failure to take administrative steps to gain an exemption. The Respondents do not have a history of securities related offences. There is no evidence of harm to investors. In all cases, investors were referred to registrants when making their purchases and thus benefitted from investor protections.

[111] While the facts in this case are less serious than *Liu* in a number of respects, we conclude that failure of the Respondents to take the necessary steps to gain exemptions in the face of being told to do so by Commission staff, on balance, makes this case somewhat more serious than *Liu* and warrants correspondingly higher administrative penalties.

[112] Having considered all of the factors, we find it appropriate to make orders under section 162 that each of the Respondents pay administrative penalties of $50,000.

B. Market prohibitions

[113] We do not agree with the executive director that permanent market bans are warranted. We also do not agree with the executive director that the failures of the Respondents indicate that they are ungovernable. Far more significant and numerous examples of refusal to abide by regulatory requirements would have to exist before we could reach a conclusion of ungovernability. While the failure of the Respondents to take steps to gain a registration exemption after having been told to do so is an aggravating factor, this case still remains less serious than those where permanent bans have been ordered.

[114] Again, in comparing the circumstances in this case with those in *Liu*, we conclude that longer prohibitions are warranted. We find it appropriate to impose broad market

prohibitions on each of the Respondents for a duration of four years allowing Onstad to trade and purchase securities or exchange contracts through a registered dealer.

C. Section 161(1)(g) orders

[115] Section 161(1)(g) states that the Commission, after a hearing, may order:

> […] if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.

[116] The British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207, adopted a two-step approach from *Re SPYru Inc.*, 2015 BCSECCOM 452 at paragraphs 131 and 132, when considering section 161(1)(g) orders:

> [131] The first step is to determine whether a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act. This determination is necessary in order to determine if an order can be made, at all, under section 161(1)(g).
>
> [132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence.

[117] The Court of Appeal in *Poonian* at paragraph 143 outlined several principles to apply in interpreting section 161(1)(g). We reproduce those relevant to our consideration below:

> 1. The purpose of s. 161(1)(g) is to deter persons from contravening the Act by removing the incentive to contravene, i.e., by ensuring the person does not retain the "benefit" of their wrongdoing.
>
> 2. The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention. Those objectives may be achieved through other mechanisms in the Act, such as the claims process set up under Part 3 of the Securities Regulation or the s.157 compliance proceedings in the Act.

[118] Applying the first step in the *Poonian* analysis, the onus is on the executive director to establish that a respondent has obtained an amount, and that the amount was obtained as a result of a contravention of the Act. In this matter, the executive director initially submitted that it was not possible to delineate what amount of the referral fees remained with LOC as opposed to Onstad, and that in these circumstances, it would be appropriate to make a joint and several order against both entities for the full $239,738.55. Ultimately, the executive director withdrew the submission seeking a 161(1)(g) order against Onstad, and instead submitted that it was appropriate that an order only be made against LOC.

[119] Applying step one of the *Poonian* test to LOC, LOC received referral fees of $239,738.55. LOC received the referral fees as a result of their conduct contrary to the

Act. Registration under the Act is required to trade in securities, unless there is an exemption available. Before making referrals such as those at issue, a person involved in the capital markets of British Columbia should ensure that they are in compliance with the Act. LOC engaged in unregistered activity obtaining referral fees directly as a result of that conduct. Given the foregoing, we find that we have the jurisdiction to make a section 161(1)(g) order for the referral fees under step one of the *Poonian* test.

[120] Having found that we have the jurisdiction under section 161(1)(g), we must now consider whether it is in the public interest to issue an order, as outlined in step two of the *Poonian* test. In making that determination we note the following facts:

a) The referral fees and the fact that LOC was acting as a referral agent were disclosed to some if not all of the investors;

b) The investors were referred to registrants to complete their purchases of securities and therefore received the necessary investor protections. There is no suggestion of wrongdoing on the part of the Dealers;

c) It appears all of the investors were accredited;

d) There is no evidence that the investors did not receive what they contracted to purchase, or that they lost money;

e) We were advised by the executive director that LOC qualified for a registration exemption but simply failed to file the necessary documentation.

[121] This matter is significantly different than cases involving fraud or misrepresentation where respondents directly obtained funds from investors through their misconduct. In this case LOC obtained the referral fees because of their conduct contrary to the Act, but the fees could have been paid without breaching the Act as an exemption was available if the Respondents had properly filed the necessary records.

[122] One of the purposes of section 161(1)(g) is to ensure that a respondent does not maintain any benefit from their wrongdoing. Given the facts as enumerated above, we do not consider it in the public interest in this matter to make an order under this section.

[123] We are also compelled by the principles that section 161(1)(g) orders are not to be punitive and that such orders are to be proportionate. Issuing a disgorgement order in this case where the contravention was trading without registration, where an exemption was available if the proper documentation was filed, would be disproportionate and punitive. We are able to achieve the important goals of specific and general deterrence through the imposition of administrative penalties and market prohibitions.

X. Orders

[124] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

Michael Duane Onstad

1. under section 161(1)(d)(i) of the Act, Michael Duane Onstad resign any position he holds as a director or officer of any issuer or registrant;

2. Michael Duane Onstad is prohibited for four years:

    a) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that he may trade and purchase securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, if he gives the registered dealer a copy of this decision;

    b) under section 161(1)(c), from relying on any exemptions set out in this Act, the regulations or a decision;

    c) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;

    d) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

    e) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

    f) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of

        (A) an issuer, security holder or party to a derivative, or
        (B) another person that is reasonably expected to benefit from the promotional activity;

    g) under section 161(1)(d)(vi), from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected to benefit him; and

3. Michael Duane Onstad pay to the Commission, an administrative penalty of $50,000 under section 162 of the Act.

LOC Consultants Inc.

4. LOC Consultants Inc. is prohibited for four years:

    a) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives;

    b) under section 161(1)(c), from relying on any exemptions set out in this Act, the regulations or a decision;

    c) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

d) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

e) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of

(A) an issuer, security holder or party to a derivative, or
(B) another person that is reasonably expected to benefit from the promotional activity;

f) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on its own behalf in respect of circumstances that would reasonably be expected to benefit it; and

5. LOC Consultants Inc. pay to the Commission an administrative penalty of $50,000 under section 162 of the Act.

May 20, 2025

For the Commission

Deborah Armour, KC
Commissioner

Judith Downes
Commissioner

Warren Funt
Commissioner

The orders made against the Respondents in this matter may automatically take effect against them in other Canadian jurisdictions, without further notice to them.