2002 BCSECCOM 945

COR#02/128

Decision

Danny Francis Bilinski, Robert Pierre Lamblin, Leonard William Friesen, Donald Brian Gordon-Carmichael George Price, Lindy Arnot, Canadian Global Financial Group Ltd., Canadian Global Investment Corporation, Global Canadian Financial Group Ltd., Global Canadian Investment Corporation, Private Ventures Investment Limited and Columbia Ostrich (VCC) Limited

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

Hearing

Panel	Joyce C. Maykut, Q.C.	Vice Chair
	John K. Graf	Commissioner
	Roy Wares	Commissioner
Dates of Hearing	October 17 and 25, 2002	
Date of Decision	November 8, 2002	

Appearing

Patricia A.A. Taylor	For Commission staff
Lindy Arnot	For herself
Donald Gordon-Carmichael	For himself
Marcel Parent	For Columbia Ostrich (VCC)

Introduction

¶ 1 We released our findings on January 29, 2002: see *Re Bilinski et al.* 2002 BCSECCOM 102. On October 17 and 25, 2002, we reconvened to hear submissions respecting the orders we should make against Lindy Arnot, Leonard Friesen, Donald Gordon-Carmichael, George Price and Columbia Ostrich (VCC) Limited. Leonard Friesen and George Price chose not to appear.

¶ 2 Danny Bilinski and Robert Lamblin could not appear for medical reasons. We will reconvene at a later date to hear submissions on sanctions from Bilinski, Lamblin, Canadian Global Financial Group Ltd., Canadian Global Investment Corporation and Private Ventures Investment Limited.

¶ 3 This case was primarily about the failure of a mutual fund dealer, Canadian Global Investment, and its sales representatives to fulfil their duties as registrants under the Act. We found that they violated the 'know your client', 'suitability of investment' and 'fair dealing' rules by selling speculative, illiquid and highly risky exempt securities to their clients. Most clients were conservative and risk adverse investors and the investments were unsuitable for them. Few could afford to lose the money they invested – a total of $20 million. Unfortunately most did. Now many are in dire financial straits.

¶ 4 We found the misconduct particularly abusive and egregious because:

- the exempt securities offered to clients were in companies in which the mutual fund dealer's parent, Canadian Global Financial or its principals, held an interest and participated in management. Canadian Global Investment used its mutual fund registration status to access the public for its exempt market business — a business that brought in over 90% of the dealer's revenues — but ignored its duties to clients. Of the $20 million raised, the mutual fund dealer and its salespersons received $2 million in commissions and a further $2 million was paid to Private Ventures Investment and Canadian Global Financial for administrative services.

- Commission staff, in the two years preceding the relevant period, had warned the dealer that it must set up systems and procedures to supervise its exempt market business and to ensure it, and its sales representatives, complied with their 'know your client' and 'suitability of investment' obligations. They ignored these warnings. They failed to establish proper compliance and supervision procedures, to maintain proper books and records and to comply with conflict of interest rules.

¶ 5 Our decision should be read in conjunction with our findings. At paragraph 514 we summarized our key findings as follows:

1. Bilinski, Lamblin, Friesen and Gordon-Carmichael, as registrants, failed to comply with the 'know your client', 'suitability of investment' and 'fair dealing' rules when they sold their clients speculative, illiquid and highly risky securities of companies under the umbrella of Canadian Global Financial.

2. Bilinski and Lamblin, as registrants, failed to comply with the 'fair dealing' rule because their interests conflicted with their duty to their clients and they, Bilinski and Lamblin, preferred their own interests to those of their clients when they sold them the exempt securities.

3. Canadian Global Investment, as a registrant, failed to:

   (a) establish and apply proper compliance and supervision procedures

   (b) maintain proper books and records

   (c) comply with conflict of interest rules when it sold clients the exempt securities

   Bilinski, Lamblin and Arnot, as directors and senior management, were responsible for Canadian Global Investment's failure to meet its regulatory duties under the Act and Rules.

4. Bilinski, as Canadian Global Investment's compliance officer, failed to:

   (a) ensure that Canadian Global Investment and its employees complied with the Act and the Rules,

   (b) ensure that new client accounts, including the 'know your client' forms, were approved, and

   (c) supervise transactions of Canadian Global Investment and its employees.

5. Canadian Global Financial distributed its shares and promissory notes to the public without a prospectus or an appropriate exemption, contrary to the Act and Rules. Bilinski, Lamblin and Arnot as directors and senior management were responsible for the failure of Canadian Global Financial to comply with the Act and Rules. Bilinski, Lamblin and Friesen distributed Canadian Global Financial shares contrary to the Act. Lamblin distributed Canadian Global Financial promissory notes contrary to the Act.

6. Private Ventures Investment distributed promissory notes to the public without a prospectus or an appropriate exemption, contrary to the Act

and Rules. Bilinski, Lamblin, Price and Arnot as directors and senior management were responsible for the failure of Private Ventures Investment to comply with the Act and Rules. Bilinski, Lamblin, Friesen and Price distributed Private Ventures Investment promissory notes contrary to the Act.

7. Columbia Ostrich (VCC) distributed securities to the public based on an offering memorandum that contained misrepresentations and did not contain the required directors' certificate attesting to its accuracy. Columbia Ostrich (VCC) distributed securities contrary to the Act, Rules and a Commission order. Bilinski distributed Columbia Ostrich (VCC) securities contrary to the Act. Bilinski as a *de facto* director was responsible for Columbia Ostrich (VCC)'s failure to comply with the Act and Rules.

8. Bilinski, Lamblin, Friesen and Gordon-Carmichael sold the exempt securities contrary to Commission orders.

¶ 6 In *Re Eron Mortgage Corp.*, [2000] BCSC Weekly Summary 22, the Commission set out a non-exhaustive list of factors to be considered when making orders under sections 161 and 162 of the Act. They include:

- 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.

¶ 7 The British Columbia Court of Appeal, in the more recent case of *Re Cartaway Resources Corporation* 2002 BCCA 461, ruled that the Commission erred in considering general deterrence in fixing the amount of the administrative penalties

imposed against the respondents. Mr. Justice Braidwood writing for the court, with Madam Justice Ryan dissenting on this point, ruled that the public interest function of the Commission requires it to address only specific deterrence in determining an administrative penalty under s. 162 of the Act.

¶ 8 With these cases in mind, we must consider what regulatory orders should be made in the public interest against these respondents.

Lindy Arnot

¶ 9 Arnot was an officer and director of Canadian Global Financial, Private Ventures Investment and Canadian Global Investment. She was also a shareholder of Canadian Global Financial. Although she was a director and officer of these companies, in reality she was the office manager for the Canadian Global Financial group. Bilinski was the undisputed directing mind of the Canadian Global Financial group of companies. Arnot was expected to, and did, follow his direction and that of the other directors and senior officers who played a role in managing and directing the business and affairs of these companies. It is clear that Arnot did not fully appreciate her duties and responsibilities as an officer and director.

¶ 10 We found that Arnot as a director and senior officer of Canadian Global Financial was responsible, with Bilinski and Lamblin, for its failure to comply with the Act and Rules by selling shares and promissory notes without an offering memorandum. We also found that Arnot, with her fellow directors, took reasonable and prudent steps to engage a senior securities lawyer to help Canadian Global Financial with its intended financings. Consequently, they are entitled to rely on the advice they believed they received as a defence to allegations against them as directors and officers responsible for Canadian Global Financial's breach of section 61(1) of the Act relating to the shares issued.

¶ 11 However, this defence is not available regarding the issuance of the promissory notes by Canadian Global Financial and Private Ventures Investment where no legal advice was sought or given. Unfortunately, as with the other investors in this case, most of those who invested in promissory notes lost their investment. Nonetheless, it is appropriate to take into account when considering Arnot's culpability and role, her belief that Bilinski, Price and others in senior management positions were seeking legal advice on all aspects of the of the Canadian Global Financial Group's financings.

¶ 12 We found that Arnot was responsible, as a director with Bilinski and Lamblin, for Canadian Global Investment's failure to meet its duties as a registrant under the Act and Rules. As with the other findings against her, we have taken into account Bilinski's dominant role in directing the affairs of Canadian Global Investment. It

was at Bilinski's direction, that Canadian Global Investment ignored its duty to ensure its exempt market business complied with the 'know your client' and 'suitability' rules.

¶ 13 To Arnot's credit, she has no prior regulatory misconduct and she cooperated with the staff's investigation. Arnot did not sell any of the exempt securities even though she was registered as a mutual fund salesperson. She has been subject to a temporary trading ban for approximately three years. She is by all accounts very conscientious and trusting. She struck us as a person who accepts, and takes, personal responsibility seriously. She subsequently acknowledged her responsibilities even though others were the principal decision makers in these matters.

¶ 14 She testified that she and her family have suffered a great deal of financial and emotional duress because of these proceedings. She has held true to her earlier testimony that she is a responsible citizen who intended to help the investors in any way she could. She worked on behalf of investors for a year without any remuneration. Over the last few years, she has been available to them and to RRSP trustees, especially during tax season, to search for documents needed to sort out their personal finances. This was done on her own personal time out of a continuing sense of obligation to the investors.

¶ 15 Arnot is presently employed with a securities dealer as an administrative assistant. Her employer wants her to be registered under the Act. In our view, Arnot's conduct in this matter is not a basis for refusing her application for registration.

¶ 16 In determining what orders are necessary in the public interest, it is appropriate to take into account the role Arnot actually played concerning the direction and affairs of these companies. Although named as a director and officer, in our view she acted as an employee taking direction from Bilinski. The significant harm suffered by the clients of Canadian Global Investment who invested in the high-risk exempt securities was not caused by Arnot's failure to discharge her duties as a director and officer. We agree with Commission staff that nominee directors or directors of convenience must be held accountable for harm caused to investors or the integrity of the markets because of their failure to discharge their duties. However, we are of the view that Arnot is not the typical nominee director we see who is in a position to direct the affairs of the company, but does nothing.

¶ 17 We consider the following order to be sufficient to protect the public interest and integrity of the capital markets in British Columbia:

1. under section 161(1)(d) of the Act, that Arnot is prohibited from becoming or acting as a director or officer of any issuer until the later of:

(a) the date she successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors or officers, and

(b) one year expiring on November 8, 2003.

George Price

¶ 18 Price was a director and officer of Private Ventures Capital, Private Ventures Investment and several of the companies selling exempt securities. Private Ventures Investments raised $1.7 million by the issuance of promissory notes. Nearly all of the money was raised by Bilinski and Lamblin. Price signed the notes.

¶ 19 We found that Price, as a director and senior officer of Private Ventures Investment, was responsible for the company's contravention of the Act and Rules when it distributed the notes. In addition, we found that Price personally sold a Private Ventures Investment promissory note without being registered under the Act.

¶ 20 In our view, Price played a pivotal role in Private Ventures Investment's decision to issue promissory notes without an offering memorandum. Unlike Arnot, he was in a position to, and did in fact, influence and direct the affairs of Private Ventures Investment.

¶ 21 Price was convinced that certain patented technology had great promise and was worth pursuing as an investment project. Money was needed urgently to secure the patent rights. He decided that it was necessary to get the money first and worry about regulatory requirements later. He convinced others that this approach was permissible as long as an offering memorandum for the subsidiary holding the patent rights followed shortly thereafter. No offering memorandum was prepared although $1.5 million of the $1.7 million was raised on the representation that it was going to acquire and develop this technology.

¶ 22 Rather than lose the investment opportunity, Price led Private Ventures Investment to cut corners to the serious prejudice of the promissory note holders. He chose not to pursue legal advice about the correctness of his approach despite being told by counsel that a promissory note was a security. In our view, he turned a blind eye to his responsibilities as a director and officer to ensure Private Ventures Investment met its regulatory requirements. As a consequence, investors who purchased these promissory notes were severely prejudiced.

¶ 23 Price is a certified general accountant and at one time had been qualified as a chartered accountant. The Canadian Global Financial group held him out to be an experienced auditor, business educator, entrepreneur and business leader. With this background, Price ought to have known better.

¶ 24 Price has no history of regulatory misconduct.

¶ 25 In light of all these circumstances, we consider it in the public interest to order:

2. under section 161(1)(c) of the Act, that the exemptions described in sections 44-47, 74, 75, 98 or 99 of the Act do not apply to Price for five years expiring on November 8, 2007, except that Price may trade in securities he currently holds solely through a registered dealer under section 45(2)(7) of the Act;

3. under section 161(1)(d) of the Act, that Price resign any position he holds as a director or officer, and is prohibited from becoming or acting as a director or officer of any issuer until the later of:

   (a) the date he successfully complete a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors or officers, and

   (b) five years expiring on November 8, 2007; and

4. under section 162 of the Act, that Price pay an administrative penalty of $20,000.

Gordon-Carmichael and Leonard Friesen

¶ 26 Although there are some important differences between Gordon-Carmichael's and Friesen's circumstances, which we refer to, we feel it is appropriate to deal with them together when considering what orders are necessary in the public interest.

¶ 27 We found that Gordon-Carmichael and Friesen, as registrants, failed to comply with the 'know your client', 'suitability of investment' and 'fair dealing' rules when they sold speculative, illiquid and highly risky exempt securities to their clients. We also found that they both sold exempt securities contrary to Commission orders.

¶ 28 We also found that Friesen distributed Canadian Global Financial shares and Private Ventures Investment promissory notes contrary to the Act.

¶ 29 As a result of Gordon-Carmichael's and Friesen's misconduct, clients were financially devastated.

¶ 30 Gordon-Carmichael's and Friesen's continuing belief that the investments were suitable for their clients reveal to us that neither properly understand the 'know your client' and 'suitability' rules or the meaning of a diversified portfolio. Even though they may have believed the exempt securities involved sound business proposals they could not ignore two material facts as disclosed in the offering memoranda. The securities offered were speculative and illiquid. This made them highly risky. As a consequence, none of their risk-adverse clients ought to have invested in these securities at all, never mind to the degree that they did. Each of the investors we described had invested over 40% of their net worth in these high-risk securities.

¶ 31 Although Gordon-Carmichael and Friesen must take responsibility for their failure to meet their duties as registered salespersons, we must not consider their misconduct in isolation. Both were entitled to receive competent guidance and effective supervision from the mutual fund dealer's trading director and compliance officers. They did not receive any.

¶ 32 Gordon-Carmichael sought out advice from the compliance officer on each of the clients we described. Doug Wilson signed off on each of those transactions. Furthermore, Wilson and Bilinski encouraged Gordon-Carmichael's breach of the Commission's order rather than stop it. With his years of experience in the industry, Gordon-Carmichael knew or ought to have recognized the nature and consequences of his conduct. Gordon-Carmichael frankly acknowledged that Edwards' Christmas "gift" was the sales commission for the prohibited transaction.

¶ 33 Friesen was not as forthright. He simply followed the direction and promotional sales practices of Bilinski and Lamblin. This extended to his sale of exempt securities in face of a Commission order. He was incapable of acknowledging at any time that any of the exempt securities he recommended to his clients were unsuitable investments or that he had done anything wrong, including breaching the Commission order.

¶ 34 Gordon-Carmichael's and Friesens' breach of the Commission orders is prejudicial to the public interest and undermines the integrity of our capital markets.

¶ 35 In considering Gordon-Carmichael and Friesen's contribution to the overall prejudice suffered by investors in this case, we have also taken into account the following:

- each sold a small portion of the exempt securities compared to Bilinski and Lamblin.
- neither was involved in the management of the issuers whose securities they sold.
- neither was involved in the management of the mutual fund dealer or its parent company Canadian Global Financial.

¶ 36 Gordon-Carmichael was a registered salesperson with Canadian Global Investment from 1997 to mid-2000. Except for a period from 1994 to 1997, Gordon-Carmichael has been a mutual fund salesperson since 1958. Despite the settlement entered into with the Executive Director in 1991, in which he agreed he acted as an adviser without registration, Gordon-Carmichael does not have a history of regulatory misconduct that diminishes his long career as a registered mutual fund salesperson.

¶ 37 Gordon-Carmichael stated that because of the stigma attached to these proceedings, he was unable to get employment in the industry following his termination by Wilson from Canadian Global Investment. He has effectively been prohibited from pursuing his profession for three years. These proceedings have been financially and emotionally very hard on him. He said that as a result of this case, he lost his home, his wife and his career. He exists on the good graces of friends and a pension of approximately $1,200 a month. He is 68 years old and is pessimistic about returning to the industry.

¶ 38 In light of all of these circumstances, we consider the following order against Gordon-Carmichael to be necessary to protect the public interest and integrity of the capital markets in British Columbia:

5. under section 161(1)(c) of the Act, that the exemptions described in sections 44-47, 74, 75, 98 or 99 of the Act do not apply to Gordon-Carmichael for two years expiring on November 8, 2004;

   (a) except that Gordon-Carmichael may trade in securities he currently holds solely through a registered dealer under section 45(2)(7) of the Act, and

   (b) except that, upon registration, Gordon-Carmichael is permitted to use the advising exemption under section 44(2)(e) of the Act to buy and sell mutual funds where a prospectus is used; and

6. under section 161(1)(f) of the Act, that Gordon-Carmichael:

a. is prohibited from becoming a registrant under the Act until he meets the proficiency requirements for the category of registration applied, including the successful completion of the Canadian Securities Course, and

b. is required, from the date of registration, to be under strict supervision for one year.

¶ 39 In light of the serious harm caused to investors by Gordon-Carmichael's conduct, we would ordinarily impose an administrative penalty, equivalent, at least to the commissions he earned on these transactions. However, we are of the view it is not appropriate to do so considering his age, limited financial resources, lack of employment and realistic prospects of obtaining employment.

¶ 40 As far as Friesen is concerned, we also took into account that he had just become registered as a mutual fund salesperson when he joined Canadian Global Investment in 1998. Friesen had been in the dairy business for 24 years and had no prior experience in the securities industry or financial services sector. He has no prior regulatory misconduct.

¶ 41 Friesen said he experienced a major business and financial set back when the Canadian Global Investment representatives were restricted in selling exempt securities. His expectation of a long and successful career in the financial services industry ended prematurely. Like other investors, Friesen lost the money he invested in the exempt securities and he and his family had to struggle through some serious financial difficulties.

¶ 42 In light of all of these circumstances, we consider the following order against Friesen to be necessary to protect the public interest and integrity of the capital markets in British Columbia:

7. under section 161(1)(c) of the Act, that the exemptions described in sections 44-47, 74, 75, 98 or 99 of the Act do not apply to Friesen for two years expiring on November 8, 2004, except that Friesen may trade in securities he currently holds solely through a registered dealer under section 45(2)(7) of the Act;

8. under section 161(1)(f) of the Act, that Friesen is prohibited from becoming a registrant under the Act until the later of:

   (a) meeting the proficiency requirements for the category of registration applied, including the successful completion of the Canadian Securities Course, and

(b) two years expiring on November 8, 2004; and

9. under section 162 of the Act, that Friesen pay an administrative penalty of $20,000.

¶ 43 Commission staff recommended that we also impose orders prohibiting each of these individual respondents from engaging in any investor relations activities under 161(1)(d) of the Act. Their misconduct did not relate to investor relations activities. Sometimes it is necessary to issue these orders along with orders banning respondents from trading and acting as directors and officers even though their misconduct may not directly involve investor relation activities. We do so where it is necessary to effectively ban them from participating in the capital markets. We do not believe such orders are necessary for these respondents.

¶ 44 We have not awarded costs against these respondents because they were not the ones principally responsible for this hearing.

Columbia Ostrich VCC

¶ 45 We found that Columbia Ostrich (VCC) distributed securities to the public based on an offering memorandum that contained misrepresentations about its business and affairs contrary to section 133 of the Rules and contrary to section 61(1) of the Act. In addition, the offering memorandum did not contain the required directors' certificate attesting to its accuracy. Persons who invested in Columbia Ostrich (VCC) suffered serious and irreparable harm because of Columbia Ostrich (VCC)'s misleading offering memorandum.

¶ 46 As this Commission stated in the recent decision of *Re Specialized Surgical* 2002 BCSECCOM 909*:*

> In securities regulation we want to strike a balance between protecting investors and facilitating the raising of capital by companies. One important tool in striking that balance is disclosure. By providing investors with offering memorandums that failed to disclose important information about its affairs, Specialized Surgical upset that balance and put the investors at a disadvantage.
>
> If a company does not comply with regulatory requirements and fails to provide investors with complete and accurate disclosure, it should not be permitted to access our capital markets.

¶ 47 On January 12, 2000, we cease traded the securities of Columbia Ostrich (VCC). That order remains in effect. We consider it to be in the public interest for that

order to continue. Therefore, we order under section 161(1)(b) of the Act that all persons cease trading and be prohibited from purchasing the securities of Columbia Ostrich VCC until it files and obtains a receipt for a prospectus.

¶ 48 November 8, 2002

¶ 49 **For the Commission**

Joyce C. Maykut, Q.C.
Vice Chair

John K. Graf
Commissioner

Roy Wares
Commissioner