



Citation: 2012 BCSECCOM 477

Colin Robert Hugh McCabe and Erwin Thomas Speckert

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

Application

Panel	Brent W. Aitken Don Rowlatt Suzanne K. Wiltshire	Vice Chair Commissioner Commissioner
Date of hearing	November 27, 2012	
Date of ruling	December 17, 2012	
Appearing		
Patricia Taylor	For Erwin Thomas Speckert	
Derek J. Chapman	For the Executive Director	

Ruling

I Introduction

- ¶ 1 On July 31, 2012 the executive director issued a notice of hearing (2012 BCSECCOM 304) under the *Securities Act* RSBC 1996, c. 418 alleging misconduct by Colin Robert Hugh McCabe and Erwin Thomas Speckert.
- ¶ 2 Speckert applied for an order quashing the notice of hearing as against him on the basis that the Commission does not have jurisdiction to hear the allegations. Alternatively, Speckert says that the Commission ought not to exercise jurisdiction. McCabe is not a party to this application.

II Background

- ¶ 3 In the notice of hearing, the executive director alleges that McCabe was involved in the production and publication of tout sheets containing misrepresentations, which tout sheets were used to promote, among other companies, Guinness Exploration Inc., whose shares were quoted on the OTC Bulletin Board in the United States. The executive director alleges that Speckert was involved in the Guinness promotional campaign.



¶ 4 The notice of hearing alleges that Speckert's role involved contacting McCabe, asking him to promote Guinness, and arranging payment to McCabe for doing so.

¶ 5 Items 30 through 32 of paragraph 1 of the notice of hearing describe the misconduct arising from the allegations as follows:

“30. By publishing false or misleading statements in the *Elite Stock Report* tout sheet, McCabe made misrepresentations contrary to section 50(1)(d) of the Act.

31. By making false and misleading statements on July 8, 2010 during the course of a compelled interview, McCabe acted contrary to section 168.1(1)(a) of the Act.

32. By facilitating the secret promotion of securities in or from British Columbia the Respondents harmed the reputation and credibility of the province's securities market and regulatory environment.”

¶ 6 Paragraph 2 of the notice of hearing states, “It is in the public interest that the Commission issue orders under sections 161 and 162 of the Act.”

III The Application

¶ 7 Speckert says that the Commission does not have jurisdiction to hear the allegations in the notice of hearing against him because there is not a real and substantial connection with British Columbia.

¶ 8 Speckert says that even if we find there to be a connection sufficient to establish jurisdiction, the Commission should decline to exercise that jurisdiction, because it would not be in the public interest to do.

¶ 9 The executive director says that the Commission has jurisdiction because the allegations against Speckert have a real and substantial connection to British Columbia and that it is in the public interest that the Commission exercise that jurisdiction.

IV Discussion and Analysis

¶ 10 The legal framework for establishing a real and substantial connection of allegations in a notice of hearing to British Columbia was set forth by this Commission in *Torudag* (2009 BCSECCOM 1; 2009 BCSECCOM 9, paras. 24-30; and 2009 BCSECCOM 145, paras. 36-43, 48, 49). We need not restate it here.



- ¶ 11 Speckert says there is no real and substantial connection to British Columbia. He says he is a resident of Switzerland and carries a Swiss passport.
- ¶ 12 Speckert says the only allegation against him is that he caused Emma Marketing Services Inc. (a British Virgin Islands company of which he is a director) to make payments to McCabe for his services. These payments, he says, were to and from bank accounts in foreign jurisdictions between parties in foreign jurisdictions.
- ¶ 13 Speckert stresses that the notice of hearing does not allege that he has contravened the Act.
- ¶ 14 Speckert also notes that the conduct described in the notice of hearing related to an issuer traded on an exchange outside of British Columbia with no apparent connection to British Columbia.
- ¶ 15 For these reasons, Speckert says, there is no real and substantial connection to British Columbia.
- ¶ 16 We disagree.
- ¶ 17 The allegations against Speckert are not as limited as he suggests. In the three instances described in the notice of hearing, the allegations are not just that Speckert only arranged the payments to McCabe. The allegations are that Speckert initiated the contact with McCabe, identified Guinness as the company that was to be promoted, and arranged payment to McCabe for doing so.
- ¶ 18 As for the payment mechanism, it is true that much of it is alleged to have occurred outside British Columbia. The notice of hearing alleges that in the three instances described, Speckert instructed McCabe to bill Emma Marketing by faxing his invoices to a Swiss number. Speckert then billed another offshore company, which transferred funds to a Swiss account (the “Everest account”) held by a company of which Speckert is the managing director.
- ¶ 19 However, the final step of the transaction – and most important, because it is how McCabe was paid – is alleged to have occurred, in part, in British Columbia. That step was the alleged transfer of funds from the Everest account to McCabe’s account (in the name of a pseudonym) in Surrey, British Columbia.
- ¶ 20 In our opinion, these allegations against Speckert are sufficient to establish a real and substantial connection with British Columbia. They allege that Speckert initiated contact with McCabe, a British Columbia resident, instructed McCabe to promote Guinness



(which McCabe would do from British Columbia), and arranged to pay McCabe by ultimately causing the deposit of funds into a bank account in British Columbia.

- ¶ 21 We find that the Commission has jurisdiction to hear the allegations against Speckert in the notice of hearing. We find that Speckert failed to demonstrate that it is not in the public interest that the Commission exercise that jurisdiction.
- ¶ 22 Speckert argued that the notice of hearing contains no allegations that he contravened any provision of the Act.
- ¶ 23 The law is long settled that the Commission has the jurisdiction to make orders under section 161(1) against those whose conduct it finds is contrary to the public interest, whether or not that conduct contravenes any provision of the Act. This authority stems from the language of section 161(1), which authorizes the Commission to make the orders described in that section if it “considers it in the public interest to do so.”
- ¶ 24 The notice of hearing must be read as a whole:
- Paragraph 1 describes the respondents and the alleged facts of their conduct.
 - Items 30 and 31 of paragraph 1 specify the sections of the Act that McCabe is alleged to have contravened.
 - Item 32 describes McCabe’s and Speckert’s alleged misconduct in terms of the damage they are alleged to have done to our capital markets.
 - Paragraph 2 says it is in the public interest to make orders under sections 161 and 162.
- ¶ 25 So read, the notice of hearing alleges that the respondents’ conduct involves, in the case of McCabe, contraventions of the Act and, in the case of both respondents, conduct alleged to be contrary to the public interest.
- ¶ 26 We find that the notice of hearing alleges misconduct on the part of Speckert that would invoke the Commission’s public interest jurisdiction to make orders under section 161(1).
- ¶ 27 December 17, 2012
- ¶ 28 **For the Commission**

Brent W. Aitken
Vice Chair



Don Rowlett
Commissioner

Suzanne K. Wiltshire
Commissioner