

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

Citation: Re HRG Healthcare, 2015 BCSECCOM 326

Date: 20150821

**HRG Healthcare Resource Group Inc.,
Alexander Downie and Daniel G. Mohan**

Panel	Nigel P. Cave Audrey T. Ho Don Rowlatt	Vice Chair Commissioner Commissioner
Hearing Dates	January 22, 23, 26, 27, 2015 March 30, 2015 and June 12, 2015	
Submissions Completed	June 12, 2015	
Date of Findings	August 21, 2015	
Appearing		
Olubode Fagbamiye	For the Executive Director	
Alexander Downie	For himself	
Daniel G. Mohan	For himself	

Findings

I Introduction

- [1] This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- [2] In an amended notice of hearing issued January 12, 2015 (2015 BCSECCOM 13), the executive director alleges that:
- a) HRG Healthcare Resource Group Inc., Alexander Downie and Daniel G. Mohan distributed securities without having filed a prospectus, contrary to section 61 of the Act;
 - b) HRG provided false or misleading information to the Commission, contrary to section 168.1(1)(b);

- c) Downie and Mohan authorized, permitted or acquiesced in HRG's contraventions of sections 61 and 168.1(1)(b), contrary to section 168.2; and
 - d) the respondents engaged in conduct that is contrary to the public interest.
- [3] During the hearing, the executive director called five witnesses (one Commission investigator and four investors) and tendered documentary evidence.
- [4] The respondent Downie attended the hearing, testified and tendered documentary evidence.
- [5] The respondent Mohan did not attend the hearing but tendered written submissions. Mohan's written submissions contain a number of purported facts which were not supported by any evidence. Following the filing of his written submissions, Mohan was given a further opportunity to submit evidence in support of the statements made in his submissions. Although Mohan filed two further statements, neither of them contain documentary evidence nor did Mohan testify, call any witnesses or provide any affidavits. Therefore, we have given the factual assertions in Mohan's submissions, which are not supported by other evidence in these proceedings, no weight.
- [6] After the date of the oral submissions in this matter, Mohan filed further written submissions. Notwithstanding the timing of their delivery, we accepted these submissions and provided the executive director and Downie with an opportunity to respond. Mohan's submissions along with our findings in response to them, are as follows:
- a) Mohan reiterates that we should accept the factual assertions in his previous written submissions as evidence. We have addressed this issue in our findings, above, and dismiss it;
 - b) Mohan expresses concerns that a portion of the hearing was held in-camera. This submission was factually inaccurate; no portion of the hearing was held in-camera;
 - c) Mohan expresses further concerns that there were other directors and officers of HRG who were not named in the notice of hearing. Whether another individual should or should not have allegations brought against them is not relevant to the issue of liability in respect of Mohan; and
 - d) Finally, Mohan suggests that the hearing process was unfair due to an imbalance of financial resources between the executive director and individual respondents, and a lack of access to prior Commission decisions. This suggestion is unfounded. The hearing has been conducted fairly and in accordance with the fundamental principles of administrative law. Furthermore, prior Commission decisions are publically available through the Commission website.

II Background

- [7] HRG is an Alberta corporation. It has never filed a prospectus under the Act.
- [8] Downie is a resident of British Columbia and was a director and founder of HRG.

- [9] Mohan is a resident of British Columbia and was a director and the Chief Executive Officer of HRG.
- [10] There was some dispute among the parties as to the time period that Mohan was a director and officer of HRG. Mohan became a director of HRG in March 2010. Mohan, in his written submissions, says that he was terminated as the Chief Executive Officer and resigned as a director in February or March of 2011. In this case, there was evidence, outside of his submissions, to corroborate Mohan's assertion. Banking records indicate that Mohan ceased being paid by HRG at the end of March 2011. The transcript of an interview of another officer of HRG indicated that Mohan was terminated by HRG in February of 2011. Mohan continued to sign subscription agreements with investors up to the end of March 2011 but then this conduct ceased. We find that Mohan was a director and officer of HRG between March 2010 and the end of March 2011.
- [11] HRG was in the business of developing and commercializing a web-based, bedside medical records and entertainment system for patients in hospitals.
- [12] HRG did develop this system to the point of installing it at a hospital on Vancouver Island, British Columbia. However, during operation of the system at this hospital, it became apparent that the software associated with the system required substantial improvements. HRG ran out of money before it was able to further develop the system. Investors in HRG have now lost all of their money.
- [13] From April 2010 to March 2012, HRG sold common shares for proceeds exceeding \$5.6 million to a total of 149 investors.
- [14] The executive director alleges that the respondents distributed HRG securities to 123 of these investors, for total proceeds of \$4.45 million, in contravention of section 61 of the Act.
- [15] HRG filed 13 Exempt Distribution Reports (EDRs) with the Commission in support of its capital raising activities. Downie signed 11 of the EDRs and Mohan signed two of the EDRs. Of the 13 EDRs filed by HRG, three were filed before March 31, 2011 and the other ten were filed after that date.
- [16] The EDRs describe the prospectus exemptions that HRG purported to rely upon to distribute its common shares to investors. The EDRs cover distributions of HRG shares to 67 investors. The executive director alleges that the exemption, claimed by HRG in an EDR, was not available for 31 of the investors listed in the EDRs.
- [17] In addition, HRG paid at least \$330,000 in bonuses to certain directors, officers and finders in connection with the introduction of investors to HRG. The EDRs do not list these payments in connection with any of the distributions described in the EDRs.

- [18] HRG had investors sign subscription agreements as part of their investment for HRG common shares. A number of those subscription agreements were filed as evidence in the hearing. Many of the subscription agreements were incomplete and, most importantly, were missing the portion of the subscription agreement that was to be completed by the investor indicating which prospectus exemption they qualified for. There were complete subscription agreements filed for approximately 20 investors.
- [19] A Commission investigator also contacted a number of the HRG investors. In certain cases, those communications confirmed the availability of the prospectus exemption that HRG relied upon to issue its shares. In others, investors indicated that they did not qualify for the exemption that HRG purported to rely upon to issue its shares nor for any other exemption.
- [20] Certain of the subscription agreements (and associated share certificates) were signed by Downie and others were signed by Mohan. The evidence indicates that both Downie and Mohan (as well as other HRG personnel) participated in meetings with potential investors; however, there was limited evidence as to which investors each of the individual respondents met with prior to the investor's investment in HRG.
- [21] Mohan received bonuses for introducing investors to HRG. Downie did not. HRG paid commissions to three other directors or finders in connection with its share issuances.

III Law

a) Standard of Proof

- [22] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall* 2008 SCC 53, the Supreme Court of Canada held:

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.

- [23] The Court also held (at paragraph 46) that the evidence must be “sufficiently clear, convincing and cogent” to satisfy the balance of probabilities test.
- [24] This is the standard that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

b) Prospectus requirements

- [25] The relevant provisions of the Act are as follows:
- a) Section 1(1) defines “trade” to include “(a) a disposition of a security for valuable consideration” and “(f) any act, advertisement, solicitation, conduct or negotiation

- directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)”.
- b) Section 1(1) defines “security” to include “(a) a document, instrument or writing commonly known as a security” and “(b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person”.
 - c) Section 61(1) says “Unless exempted under this Act, a person must not distribute a security unless...a preliminary prospectus and a prospectus respecting the security have been filed with the executive director” and the executive director has issued receipts for them.
 - d) Section 1(1) defines “distribution” as “a trade in a security of an issuer that has not been previously issued”.
- [26] The respondents purport to rely on what are referred to as the “accredited investor” and the “family”, “close personal friend” and/or “close business associate” prospectus exemptions for the HRG distributions.
- [27] *National Instrument 45-106 – Prospectus and Registration Exemptions* (NI 45-106) sets out a series of specific prospectus exemptions. Subsection 2.3 removes the prospectus requirement where the purchaser purchases as principal and is an “accredited investor”. An accredited investor is a defined term, and for an individual, that individual must satisfy one of a number of income or assets tests.
- [28] Subsection 2.5 of NI 45-106 removes the prospectus requirement if the investor is a family member, close personal friend or close business associate of a director, executive officer or control person of the issuer. Subsection 2.5(2) sets out that no commission or finder’s fee may be paid in connection with a distribution relying on this prospectus exemption. Although commissions were paid by HRG, the executive director did not argue that the payment of commissions invalidates the availability of this exemption.
- [29] Sections 2.7 and 2.8 of the companion policy to NI 45-106 sets out guidelines regarding the meaning of “close personal friend” and “close business associate”. These guidelines say that the relationship with the director, executive officer or control person must, at the time of the trade, be of a nature that the investor can assess the person’s capabilities and trustworthiness. For an investor to be a “close personal friend”, the investor must know the person well enough and for a sufficient period of time to be in a position to make that assessment. For an investor to be a “close business associate”, the investor must have had sufficient prior business dealings with the person to make that assessment. The Commission acknowledged these guidelines as appropriate in *Solara Technologies Inc. and William Dorn Beattie* 2010 BCSECCOM 163.

[30] Section 1.10 of the companion policy to NI 45-106 states that the person distributing securities is responsible for determining, given the facts available, whether an exemption is available.

[31] In *Solara*, the Commission confirmed that it is the responsibility of a person trading in securities to ensure that the trade complies with the Act. The Commission also said that a person relying on an exemption has the onus of proving that the exemption is available. The Commission said:

37 The determination of whether an exemption applies is a mixed question of law and fact. Many exemptions are not available unless certain facts exist, often known only to the investor. To rely on those facts to ensure the exemption is available, the issuer must have a reasonable belief the facts are true.

38 To form that reasonable belief, the issuer must have evidence. For example, if the issuer wishes to rely on the friends exemption, it will need representations from the investor about the nature of the relationship.

c) Liability under 168.2(1)

[32] Section 168.2(1) of the Act states that if a corporate respondent contravenes a provision of the Act, an individual who is an employee, officer, director or agent of the company also contravenes the same provision of the Act, if the individual “authorizes, permits, or acquiesces in the contravention”.

d) Breach of section 168.1(1)(b)

[33] Section 168.1(1)(b) of the Act states a person must not

Make a statement or provide information in any record required to be filed, provided, delivered or sent under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

[34] In *Re Nuttall* 2011 BCSECCOM 521, at paragraph 44, the Commission said the following regarding materiality in section 168.1(1)(a), which we consider applicable also to section 168.1(1)(b):

The materiality threshold in section 168.1(1)(a) measures the degree to which the information given is false or misleading – how far it departs from the truth – not its relevance to the investigation.

IV Positions of the Parties

a) Breaches of section 61

- [35] The executive director has alleged that each of the respondents directly breached section 61. There is no dispute that HRG sold its shares to investors, that the shares were securities, that the sales of shares were distributions under the Act, and that no prospectus was ever filed in connection with the distributions. The only issue is whether exemptions from the prospectus requirements were available for these distributions.
- [36] The executive director's original submission was that each of the respondents directly breached section 61 with respect to the full amount of the alleged illegal distributions (i.e. 123 investors for a total of \$4.45 million). However, during oral submissions, the executive director conceded that Mohan could not be held liable for contraventions of section 61 (or pursuant to section 168.2, for the contraventions of HRG) that occurred after he left HRG. The executive director says that this would reduce the allegations of breaches of section 61 against Mohan to 91 investors for total proceeds \$3.79 million.
- [37] The executive director submits that the respondents failed to take due care in ensuring that investors were eligible for a prospectus exemption. He says that they did not properly investigate the investor's financial status in relation to the accredited investor exemption and they did not properly identify the relationship and the nature of the relationship of the investor with a director or officer of HRG in relation to the family, close friends and close business associates exemption. Finally, the executive director submits that the respondents bear the onus of establishing the facts in support of applicable prospectus exemptions and that the respondents' failure to file completed subscription agreements for the vast majority of the HRG investors or to tender any further evidence during the hearing means that the respondents have failed to satisfy this onus.
- [38] Downie, in the content of questions he asked during cross-examination of the executive director witnesses and during his oral submissions, made several statements as to the nature of the relationship between him and several of the HRG investors. Neither the contents of a question asked by a respondent in cross-examination, nor statements made by a respondent during his oral submissions that are unsupported by the evidence, are, evidence of the facts that underlie those questions or submissions. We have not given any weight to the contents of those questions or those submissions.
- [39] Downie further states that HRG records were lost when its office premises were foreclosed. Downie did not submit any evidence of this. Even if this is true, Downie did not call nor provide affidavit evidence from any investor witnesses nor did he provide evidence from HRG's former corporate counsel.
- [40] Mohan provided written submissions to the panel. In those submissions, he says that he was entitled to rely upon others to ensure compliance with the Act, including legal counsel and his fellow directors and officers. In those submissions, he also made a number of statements about the nature of his relationship to several of the HRG investors.

As noted above, those statements are not evidence, were unsupported by any other evidence in the record and, accordingly, we have not given those statements any weight except for the admissions of conduct contrary to the Act, which we did take into consideration to support our findings.

b) Section 168.2 liability for HRG's breaches of section 61

[41] The executive director submits that, should we find that HRG contravened section 61, then Downie and Mohan should be held liable for HRG's contraventions of section 61 pursuant to section 168.2. He submits this on the basis that Downie was the founder of HRG and one of its directors throughout the period that HRG illegally distributed securities and that Mohan was a director and senior officer of HRG between March 2010 and March 2011. He says that both Downie and Mohan executed subscription agreements relating to investments, participated in investor meetings and had signing authority over HRG's bank account(s).

c) Contraventions of section 168.1(1)(b)

[42] The executive director submitted in writing that all of the respondents directly contravened section 168.1(1)(b) when HRG filed EDRs, signed by Downie or Mohan, as applicable, that contained false information.

[43] However, the amended notice of hearing contains only the allegation that HRG contravened section 168.1(1). On this basis, at the oral hearing, the executive director conceded that only HRG could be found liable for a contravention of this section.

[44] The executive director submits that the false information that was filed by HRG was a combination of prospectus exemptions listed in the EDRs that were not actually available to the applicable investor and a failure to list any bonuses paid to directors, officers or finders of HRG in connections with the distributions listed in the EDRs.

d) Section 168.2 liability for HRG's contraventions of section 168.1(1)(b)

[45] The executive director submits that, should we find that HRG contravened section 168.1(1)(b), Downie should be held liable under section 168.2 in respect of the 13 EDRs that were filed by HRG and that Mohan should be held liable under section 168.2 in respect of the three EDRs that were filed by HRG while he was an officer and director of the company.

[46] Both Downie and Mohan submitted that they received legal advice that a bonus, of the type paid by HRG to directors and officers in connection with capital raising, did not need to be disclosed on EDRs. They did not provide any evidence to support this submission.

e) Conduct contrary to the public interest

[47] The executive director alleges that the following conduct of the respondents is conduct contrary to the public interest:

- a) they deprived investors of the protection of full disclosure where no prospectus exemption was available;
- b) they provided false or misleading information in the EDRs filed with the Commission; and
- c) they failed to disclose commissions paid to finders in the EDRs when required to do so.

V Analysis and Findings

a) Breaches of section 61

- [48] The executive director submits that HRG and Downie breached section 61 with respect to distributions of HRG shares to 123 investors for a total of \$4.45 million. He further submits that Mohan breached section 61 with respect to distributions of HRG shares to 91 investors for a total of \$3.79 million.
- [49] However, the executive director has not tendered evidence that proves, on the balance of probabilities, that Downie has engaged in acts in furtherance of a trade with respect to all of the distributions to 123 investors that the executive director says were illegal. Nor has the executive director proven that Mohan similarly engaged in acts in furtherance of a trade with respect to all 91 distributions that the executive director says were illegal.
- [50] As set out in *Re SPYru Inc.*, 2015 BCSECCOM 277, the executive director must first prove, on a balance of probabilities, that a respondent has engaged in acts in furtherance of a trade in respect to each of the individual distributions that he alleges contravene section 61. Having done this, then the onus shifts to the respondent to prove, on a balance of probabilities, that an exemption from the prospectus requirement was available for those distributions that that respondent was involved in.
- [51] Mohan's argument, that he was entitled to rely upon others to ensure compliance with the Act, is not a defense to allegations of contraventions of section 61 of the Act. When a person is engaged in acts in furtherance of a trade which is an illegal distribution, that person is responsible under the Act for that misconduct, regardless of whether someone else could have, or should have, identified that that conduct contravened section 61.
- [52] In this case, the executive director has proven that HRG issued shares to the 123 investors for a total of \$4.45 million. HRG obviously traded in securities with respect to those distributions.
- [53] The evidence of the conduct of Downie and Mohan with respect to particular distributions of HRG securities includes:
- a) the oral testimony from four investor witnesses,
 - b) admissions made by Mohan in his written submissions. In those submissions, he says that he was responsible for introducing 11 investors to HRG that invested approximately \$750,000, and
 - c) copies of subscription agreements signed by one of Downie or Mohan.

[54] Given all of the above, we find that the evidence establishes that:

- a) HRG distributed securities to 123 investors for a total of \$4.45 million that the executive director has alleged were illegal;
- b) Downie engaged in acts in furtherance of a trade with respect to the distribution of HRG securities to 23 investors for a total of \$793,500 that the executive director has alleged were illegal; and
- c) Mohan engaged in acts in furtherance of a trade with respect to the distribution of HRG securities to 39 investors for a total of \$1,862,350 that the executive director has alleged were illegal.

[55] Having established the quantum of the distributions attributable to the respondents, we must then consider the evidence in support of prospectus exemptions. It consists of materials tendered by the executive director including:

- a) notes of interviews with investors conducted by Commission staff;
- b) questionnaires sent by the Commission to investors which were answered and returned to the Commission; and
- c) the HRG subscription agreements (only approximately 20 of which were complete).

Where the executive director was able to interview an investor or received a returned investor questionnaire, the executive director confirmed, or not, the existence of a prospectus exemption. In all cases where the executive director was not able to contact the investor, he has alleged that an exemption was not available for that distribution.

[56] We have before us 15 subscription agreements completed and executed by 15 of the 123 investors for a total of \$449,000, in which those investors confirmed the facts in support of a prospectus exemption.

[57] One of these 15 investors testified at the hearing that the information in support of an exemption stated in his subscription agreement was not correct. This investor invested a total of \$3,000 in HRG. We find that the distribution to this investor contravened section 61 of the Act.

[58] Of the remaining 14 subscription agreements, there is no evidence before us to demonstrate that any of them contains information that was incorrect. The Commission did not interview these 14 investors nor did they receive returned questionnaires from any of them. We have reviewed these 14 subscription agreements and they contain the appropriate types of representations and warranties of facts to support applicable prospectus exemptions. In this case, these completed agreements satisfy the evidentiary onus on the respondents and therefore, we find that these 14 distributions for \$446,000 were exempt from the prospectus requirement.

[59] Of these 14 investors, Downie carried out acts in furtherance of a trade to one investor for a total of \$100,000 and Mohan carried out acts in furtherance of a trade to five of these investors for a total of \$152,500.

[60] Therefore we find that the executive director has proven that:

- a) HRG contravened section 61 with respect to distributions to 109 investors for a total of \$4.009 million;
- b) Downie contravened section 61 with respect to distributions to 22 investors for a total of \$693,500; and
- c) Mohan contravened section 61 with respect to distributions to 34 investors for a total of \$1,709,850.

b) Section 168.2 liability for HRG's breaches of section 61

[61] The executive director submits that Downie and Mohan should be held liable under section 168.2 for HRG's contraventions of section 61. The executive director conceded that Mohan's liability should be limited to the illegal distributions by HRG that occurred between March 2010 and March 2011 (the time during which Mohan was a director and senior officer of HRG). Of the illegal distributions, distributions to 86 investors for a total of \$3.48 million occurred during that time period.

[62] Under section 168.2, an officer or director of a corporate entity may be liable for the contraventions of the corporation if that director or officer "authorizes, permits or acquiesces" to the misconduct. There have been many decisions which have considered the meaning of the terms "authorizes, permits or acquiesces". In sum, those decisions require that the respondent have the requisite knowledge of the corporate contraventions and ability to have influence over the actions of the corporate entity (through action or inaction).

[63] In this case, both Downie and Mohan had the requisite level of knowledge and ability to influence the activities of HRG in order to have authorized, permitted or acquiesced to the contraventions of section 61 by HRG. Downie was the founder of HRG. Mohan was the Chief Executive Officer of HRG. Both were directors of the company. Both were actively involved in the capital raising activities of the corporation, including, soliciting potential investors, meeting with potential investors, executing subscription agreements and driving the commercial activities which created the need for capital raising and the manner in which invested funds were spent. We find Downie liable under section 168.2 with respect to HRG's contraventions of section 61 in respect of 109 investors for \$4.009 million. We find Mohan liable under section 168.2 with respect to HRG's contravention of section 61 in respect of 86 investors for \$3.48 million.

c) Breach of section 168.1(1)(b)

[64] The executive director submits that HRG filed 13 EDRs that contained false or misleading information, in contravention of section 168.1(1)(b). There is no dispute that

EDRs are reports that are required to be filed under the Act, which is an element of establishing a contravention of section 168.1(1)(b).

- [65] Although there is evidence that bonuses were paid to certain directors, officers and finders of HRG in connection with the issuances of HRG securities, there is no listing of the specific investors on whose investments the bonuses were paid. These cash bonuses were clearly commissions of the type that are required to be disclosed on an EDR. The bonus was calculated as a percentage of the amount raised from an investor and paid in connection with the completion of subscriptions. The only way in which these bonuses differ from a commission is their name.
- [66] The respondents submit that they received legal advice to the effect that HRG was not required to disclose the bonuses paid by HRG as they were not commissions for the purposes of the required disclosure. First, the respondents did not provide any evidence in support of this submission, nor the factual basis given to the lawyer who supposedly provided this advice. Second, even if they did receive this advice, we find that these bonuses were required to be disclosed in the EDRs and the receipt of incorrect advice can only go to the question of sanction and not liability.
- [67] The onus is on the executive director to prove that information on a filed EDR is false or misleading. If the executive director is unable to show that an undisclosed commission was paid on a specific distribution listed on an EDR, then he has not met the necessary evidentiary threshold to prove that the EDRs contain false or misleading information with respect to the bonuses paid by HRG.
- [68] In this case, the executive director has provided, through interviews with investors or completed investor questionnaires, evidence that 10 EDRs contained descriptions of prospectus exemptions that were not available to the listed investor. This is false and misleading in a material respect and therefore a contravention of section 168.1(1)(b). We find that HRG contravened section 168.1(1)(b) in respect of each of these 10 EDRs.
- d) Liability under section 168.2 for HRG's contraventions of section 168.1(1)(b)**
- [69] The executive director alleged that Downie and Mohan should be liable under section 168.2 for HRG's contraventions of section 168.1(1)(b) for all EDRs that were filed by HRG while they were directors of the company.
- [70] In this case, we have found that Downie and Mohan are liable under section 168.2 for HRG's contraventions of section 61. They were the directing minds of HRG and were both directly and generally involved in the illegal distributions. As the signatory of an EDR a director or senior officer of the issuer has both the knowledge of the filing of an EDR and the influence over its contents necessary for liability under section 168.2. Further, Downie and Mohan should be generally liable for ensuring that the reports that they personally signed were accurate and described available prospectus exemptions.

[71] In this case, there is no evidence that any director other than the signatory of the EDR was aware of the specific contents of or even the filing of a particular EDR in respect of particular trades. As noted in *SPYru*, general awareness of distributions, even potential illegal distributions, is not sufficient knowledge of the corporate misconduct to hold a respondent liable under section 168.2 for an EDR that he did not sign.

[72] Of the ten EDRs that the executive director has proven contain false information, Downie signed eight of these reports and Mohan signed two of them.

[73] Therefore, we find that Downie is liable under section 168.2 for HRG's contraventions of section 168.1(1)(b) in respect of the eight EDRs that he signed and Mohan is liable under section 168.2 in respect of HRG's contraventions of section 168.1(1)(b) in respect of the two EDRs that he signed.

e) Conduct contrary to the public interest

[74] The conduct that the executive director alleges to be contrary to the public interest in this case is identical to the conduct that the executive director alleges as contraventions of specific provisions of the Act. As we have found that the respondents' conduct, in the manner described above, does contravene certain provisions of the Act it is unnecessary for us to make further orders in the public interest. We dismiss the allegations that the respondents conduct is contrary to the public interest.

VI Summary of findings

[75] We have found that:

- a) with respect to contraventions of section 61,
 - (i) HRG breached section 61 with respect to distributions to 109 investors totaling \$4,009,000;
 - (ii) Downie breached section 61 with respect to distributions to 22 investors totaling \$693,500;
 - (iii) Mahon breached section 61 with respect to distributions to 34 investors totaling \$1,709,850;
- b) Downie, as a director of HRG, is liable under section 168.2(1) for the contraventions of section 61 by HRG with respect to its distributions to 109 investors totaling \$4,009,000;
- c) Mohan, as a director of HRG, is liable under section 168.2(1) for the contraventions of section 61 by HRG with respect to its distributions to 86 investors totaling \$3,481,000;
- d) HRG is liable under section 168.1(1)(b) in respect of 10 EDRs filed by HRG;
- e) Downie, as a director of HRG, is liable under section 168.2(1) for the contraventions of section 168.1(1)(b) by HRG in respect of eight EDRs filed by HRG; and

f) Mohan, as a director of HRG, is liable under section 168.2(1) for the contraventions of section 168.1(1)(b) by HRG in respect of two EDRs filed by HRG.

VII Submissions on Sanctions

[76] We direct the parties to make their submissions on sanction as follows:

By September 11, 2015 The executive director delivers submissions to the respondents and to the secretary to the Commission.

By September 25, 2015 The respondents deliver response submissions to each other, the executive director and to the secretary to the Commission.

Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission. The secretary to the Commission will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

By October 2, 2015 The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission.

August 21, 2015

For the Commission

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

Don Rowlatt
Commissioner