

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

Citation: Re Cerisse, 2017 BCSECCOM 27

Date: 20170131

**Christine Maria Cerisse,
Laurence Frederick Austin, also known as Lawrence Frederick Austin, and
Thomas John Sadler**

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|------------------------------|--|--|
| Panel | Nigel P. Cave Judith Downes Don Rowlatt | Vice Chair Commissioner Commissioner |
| Hearing Dates | April 11, 12, 13 and 15, 2016 August 23, 2016 | |
| Submissions Completed | November 8, 2016 | |
| Date of Findings | January 31, 2017 | |
| Appearing | | |
| Derek Chapman | For the Executive Director | |
| H. Roderick Anderson | For Christine Maria Cerisse | |
| Laurence Frederick Austin | For Himself | |
| Thomas John Sadler | 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 a notice of hearing issued August 24, 2015 (2015 BCSECCOM 327), the executive director alleged that:

- a) by causing Solanex Management Inc. to issue false or misleading news releases, the respondents, while engaging in investor relations activities or with the intention of effecting a trade in a security, made statements that they knew, or ought reasonably to know, were misrepresentations, contrary to section 50(1)(d) of the Act;
- b) the respondents authorized, permitted or acquiesced in Solanex issuing false or misleading news releases, contrary to section 50(1)(d) of the Act, and therefore,

under section 168.2 of the Act, the respondents also contravened section 50(1)(d) of the Act;

- c) the respondents engaged in illegal distributions of the common shares of Solanex, contrary to section 61 of the Act;
 - d) the respondents, directly or indirectly, engaged in or participated in conduct relating to Solanex's shares that they knew, or reasonably should have known, resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Solanex's shares, contrary to section 57(a) of the Act; and
 - e) Cerisse made false or misleading statements, contrary to section 168.1(1)(a) of the Act.
- [3] During the hearing, the executive director withdrew his allegations that the respondents authorized, permitted or acquiesced in Solanex issuing false or misleading news releases, contrary to section 50(1)(d) of the Act and, therefore, that the respondents, by operation of section 168.2, were also liable for Solanex's contraventions of section 50(1)(d).
- [4] In his written submissions, the executive director acknowledged that the evidence at the hearing did not support an allegation that Cerisse and Austin, directly, made misrepresentations contrary to section 50(1)(d) of the Act. As a consequence, the only remaining allegation of a contravention of section 50(1)(d) is against Sadler.
- [5] During the hearing, the executive director called two witnesses, a Commission investigator and an investor ("MH"), tendered documentary evidence and made written and oral submissions. Cerisse and Sadler tendered documentary evidence. Cerisse made written and oral submissions. Sadler tendered written submissions. Austin did not attend the hearing but tendered written submissions.
- [6] We note that in Sadler's written submissions there were a number of factual assertions not otherwise supported by evidence during the hearing. Although we have carefully considered all of the submissions made by Sadler, we did not give any weight to the factual assertions made therein that were not otherwise supported by the evidence tendered during the proceedings.

II. Background

The Respondents

- [7] Cerisse is a resident of West Vancouver, British Columbia.
- [8] During his compelled interview with Commission staff under oath on April 21, 2015, Austin said that he is a resident of West Vancouver, British Columbia. In his written submissions, Austin, without any evidence in support of this, maintains that he is a United States citizen. Austin and Cerisse are married.
- [9] Sadler is a resident of Burnaby, British Columbia.

- [10] Although Cerisse was formerly registered under the Act, she was not a registrant during the period relevant for the notice of hearing. Neither Austin nor Sadler have been registered in any capacity under the Act.
- [11] During the period relevant to the notice of hearing, Cerisse performed administrative services for public companies, including assisting in the preparation of securities regulatory filings on their behalf. Austin had a history of forming companies on behalf of third parties who were interested in privacy.
- Solanex*
- [12] Solanex is a Nevada corporation that was incorporated on October 12, 2000. Cerisse was the original director of Solanex.
- [13] Solanex has never filed a prospectus under the Act.
- [14] Austin and Sadler had long time mutual acquaintances, RC and CH. RC is deceased. At some point shortly after its incorporation, CH had become a director of Solanex.
- [15] Considerable evidence was tendered during the hearing as to the history of ownership of the Solanex shares prior to January 2009.
- [16] Included in this evidence was the testimony of MH, a registered shareholder of Solanex since 2000. MH testified that she was not aware of her ownership of the Solanex shares and that while she may have signed documents in connection with a transaction in which she acquired legal title to the shares, she was not aware of having paid for, or otherwise exchanged consideration for, the shares. MH did indicate that Cerisse owed her a debt and that it was possible that the Solanex shares were issued to her as partial payment of that debt.
- [17] At its incorporation, Solanex acquired a license to something referred to in various materials as the thermal destructor technology from CH.
- [18] The public filings of Solanex suggest that MH and others also received their shares of Solanex in exchange for the transfer of their interest in this technology to Solanex. MH testified that she never owned any interest in this technology. CH, in an interview with Commission staff not under oath (which limits the weight that we put on this evidence, but it was not contradicted by any other evidence in the hearing) denied that MH or any of the others who received shares in this transaction ever had any interest in the thermal destructor technology.
- [19] Austin, in a compelled interview with Commission staff under oath, said that most of the original Solanex shareholders were either relatives of Cerisse or acquaintances of either Cerisse or Austin.

- [20] In 2006, Solanex's securities regulatory filings suggest that it acquired further licensing rights to the thermal destructor technology and to a related technology referred to as the steam injection system.
- [21] The thermal destructor technology and the related steam injection system appear never to have been commercialized by Solanex in any manner. We make this finding from the financial statements of Solanex from fiscal 2009, which indicate a history of zero revenues and negligible total assets.
- [22] The totality of the evidence described above raises considerable doubt as to who some of the beneficial owners of the shares of Solanex were as at January 2009.
- [23] On July 14, 2009, CH resigned as a director of Solanex and the licensing arrangements for the thermal destructor (and related steam injection system) technology were cancelled.

Escrow Agreement

- [24] On January 8, 2009, Cerisse and Sadler exchanged e-mails about Sadler acting on behalf of a group of unnamed investors who wished to acquire an unnamed OTC shell company from Cerisse for a purchase price of between \$350,000 and \$450,000. In this e-mail, Cerisse described a company which later was revealed to be Solanex. She described the company as having approximately 15.46 million shares outstanding, of which approximately 8.43 million were free trading, and having over 50 shareholders.
- [25] On February 9, 2009, Cerisse emailed Sadler to indicate that the shell she had described in her January 8, 2009 e-mail was, in fact, for sale.
- [26] On February 18, 2009, Sadler emailed Cerisse that his group of buyers would like to buy the shell, but that they did not currently have the purchase price.
- [27] On February 23, 2009, Sadler further confirmed his buying group's interest in the shell and Cerisse, in response, provided Sadler with the name of the shell.
- [28] On March 3, 2009, an escrow agreement was entered into between RBT Group Inc., as a sellers' representative, and Sadler, as a buyers' representative. The escrow agreement concerned the purchase and sale of nearly all of the Solanex shares but does not further specify who the buyers and sellers were.
- [29] Cerisse and Austin were officers of RBT at the date of escrow agreement.
- [30] Sadler, in a compelled interview under oath with Commission staff, said that it was RC who was trying to acquire the shares of Solanex via the terms of the escrow agreement.
- [31] The escrow agreement provided that:

- a) RBT was in possession of approximately 8.43 million free trading shares of Solanex and approximately 6.88 million restricted common shares of Solanex (this represented all but 150,000 shares of Solanex) and that these would be delivered to a lawyer in Vancouver who would act as escrow agent for the transaction;
- b) RBT would provide to Sadler a one year option to purchase 50,000 of the restricted shares for \$0.50 per share;
- c) Solanex would carry out a private placement of 5 million shares at US \$0.30 per share;
- d) payment for the Solanex shares would be US \$400,000 with a non-refundable deposit of US \$50,000 – the deposit was to be payable on the “Commencement Date” of the Agreement (which was to be the date that the Solanex shares and certain other documents were placed into escrow) and the “Closing Date” was to be 45 days after the Commencement Date (with the possibility of a one-time extension of the Closing Date for 30 days);
- e) there would be some form of share loan as evidenced by the following verbatim extract from the terms of the escrow agreement:

At the close of the agreement, the Buyer’s Agent herein instructs the Escrow Agent to take a Promissory Note from Corpsense Consulting Ltd. for the payment of Three Hundred Thousand US Dollars (\$300,000) in consideration of a loan of 1,000,000 free trading shares in the Escrow Agent’s possession, prior to the delivery of the balance of the shares described in Article 1, to the Buyers. The term of the loan is for six months.

[32] Corpsense Consulting Ltd. is a company in which RC was the sole director and officer.

[33] It is difficult to make commercial sense of the escrow agreement due to incomprehensible drafting, inconsistent use of terms, reference to obligations on parties that are not signatories to the agreement and other difficulties. This is particularly true of the reference to the share loan arrangements set out above. Neither the wording of the agreement itself nor the evidence in the hearing made clear what the parties intended as a result of this provision.

[34] All of the Solanex shares that were required to be deposited with the escrow agent under the escrow agreement were so deposited by March 5, 2009.

[35] On April 8, 2009, Cerisse sent an e-mail to Sadler indicating a concern that the \$50,000 non-refundable deposit had not been paid. This would be consistent with a finding that the “Commencement Date” under the agreement was March 5, 2009. Therefore, the original “Closing Date” under the agreement would have been April 19, 2009.

Transfers of Solanex shares from escrow

- [36] For reasons that are not clear from the evidence, on April 17, 2009, 500,000 Solanex shares were released from escrow and transferred to Corpsense.
- [37] On June 9, 2009, Sadler e-mailed the escrow agent to instruct him to release from escrow and register a further 750,000 of the Solanex shares in the name of Corpsense.
- [38] On June 11, 2009, Austin authorized the escrow agent to transfer certain of the Solanex shares.
- [39] On June 22, 2009, the escrow agent authorized Solanex's transfer agent to register 250,000 of the Solanex shares in the name of a US company that we will hereinafter refer to as "Q", and 495,500 in the name of an individual.
- [40] Q is an entity in the United States that issues newsletters, writes a blog and runs message boards about emerging public companies. On July 16, 2009, Q announced that Solanex was a company "to watch" and it then commenced to include information about Solanex in certain of its newsletters (as discussed in further detail below).
- [41] On July 7, 2009, Cerisse e-mailed Sadler expressing further concern that transfers of the Solanex shares had occurred prior to payment of the \$50,000 deposit.
- [42] On August 26, 2009, Sadler e-mailed the escrow agent requesting that a further 750,000 Solanex shares be transferred into the name of Corpsense. This transfer was completed.
- [43] On September 9, 2009, Sadler e-mailed the escrow agent requesting a further transfer of approximately 738,000 Solanex shares into the name of 0824712 B.C. Ltd. The sole director of this company was an individual, JR. This transfer was completed.

Solanex business and marketing

- [44] On April 4, 2009, Cerisse confirmed to Sadler that Solanex's annual US securities filing had been made.
- [45] Sadler prepared a draft of an investor presentation for Solanex's business plans. The investor presentation is dated April 17, 2009. That plan called for Solanex to acquire interests in various environmental or "green" technologies.
- [46] On May 17, 2009, Sadler e-mailed RC setting out a plan for completing certain business transactions and related news releases. The e-mail sets out that Solanex would acquire a number of rights to technologies and that there would be new directors appointed to the Solanex board. There were dates stipulated for the appointment of new directors and for the acquisitions to close.

- [47] On June 24, 2009, Sadler sent a draft of a Solanex press release to Cerisse. The contents of the draft press release announced CH's resignation from the board and the appointment of a new interim CEO, DE.
- [48] On July 14, 2009, Solanex held a special shareholders meeting. The minutes of the meeting suggest that DE was appointed as an interim CEO. The minutes also indicate that Sadler attended the meeting as a representative of owners of 78% of the outstanding Solanex shares. There is nothing further in the minutes to indicate who the beneficial shareholders of the Solanex shares were as of the date of the meeting. The appointment of DE was announced by Solanex in a press release to the public dated July 15, 2009.
- [49] Between late June 2009 and early August 2009, Cerisse, Austin and Sadler exchanged a number of e-mails relating to the establishment of a website for Solanex. This process appears to have been completed in early to mid-August 2009.
- [50] On July 29, 2009, Sadler sent a draft Solanex press release to RC. The press release disclosed that Solanex had entered into a letter of intent to acquire its first interest in green technology and had appointed a new director. On August 8, 2009, Sadler sent a draft of this press release to Q. This press release was ultimately issued by Solanex to the public on August 10, 2009.
- [51] On August 12, 2009, Cerisse sent to Sadler a draft of Solanex's quarterly US securities filing. She highlighted to him that the company was in danger of missing its regulatory filing deadline and that a failure to file the financials would have an impact on the ability of the Solanex shares to trade.
- [52] On August 14, 2009, Cerisse e-mailed Sadler asking for further information in order to complete the quarterly US securities regulatory filing.
- [53] On August 24, 2009, Sadler sent a draft Solanex press release to Q. The draft press release contains disclosure of Solanex entering into a memorandum of understanding with respect to the second acquisition of rights to a green technology. This press release was issued by Solanex to the public on August 25, 2009.
- [54] On August 31, 2009, Sadler e-mailed a draft Solanex press release to RC and Q with respect to the appointment of an additional director to the Solanex board. This press release was issued by Solanex to the public on September 4, 2009.
- [55] On September 9, 2009, Sadler e-mailed a draft Solanex press release to RC. This press release provided a correction of some information relating to the new board member (correcting information from the August 31, 2009 press release) and an update on the second acquisition of technology. This press release was issued by Solanex to the public on September 10, 2009.

- [56] On September 14, 2009, Sadler e-mailed RC a draft Solanex press release. This press release described a third acquisition of rights to green technology. This press release was issued by Solanex to the public on September 16, 2009.
- [57] On September 15, 2009, a company controlled by RC acquired rights to the technology referred to in the draft Solanex press release of September 14, 2009. RC's company also acquired a right to sublicense this technology to Solanex. On September 16, 2009, Sadler sent a draft of a memorandum of understanding to RC outlining the terms under which Solanex would acquire the technology described in the Solanex press release of the same date. Further correspondence between Sadler and RC on September 20, 2009, suggests that Solanex had not signed the memorandum of understanding by that date.
- [58] In each of the press releases issued by Solanex on August 10, September 4, September 10 and September 16, under a heading "About Solanex Management Inc." at the bottom of the release, there is a description of Solanex's business which includes reference to its ownership of the steam injection system.
- [59] On November 14, 2009, Cerisse e-mailed Sadler a draft of the quarterly US securities regulatory filing.
- Q**
- [60] As noted above, Solanex was first mentioned by Q in their newsletter on July 16, 2009. In that initial publication, it mentioned Solanex's business as being the thermal destructor and the steam injection system.
- [61] Solanex appeared in Q materials on July 28, July 31, August 4, August 24, August 25, August 31, September 1, September 4, September 10, September 16 and September 21, 2009. Those materials varyingly refer to Solanex's business as the thermal destructor and steam injection technologies and also to Solanex's various press releases over this time.
- [62] Q received a total of 500,000 Solanex shares (250,000 directly from the escrow agreement and 250,000 from Corpsense). Trading records show that Q sold those Solanex shares for a total of US \$107,373.
- [63] Emails from Sadler to Cerisse suggest that Q promised that their promotional program would result in a substantial volume of Solanex shares being traded. In a July 14, 2009 email from Sadler to Cerisse, Sadler set out that "they still say they will do approx. 2 million shares over the first 2 weeks of trading". The "they" is not clear from this e-mail.
- [64] However, in a July 31, 2009 e-mail to Cerisse, Sadler sets out that "we have finally been approved to be taken on as a client and the company is Q. We have been announced to the public this week and they are now taking us forward. They have the next phase re: the Waste to Energy technology and projects. They have confirmed that their efforts will begin upon that release and the volume that we have discussed will begin on that day". From this, we infer that the "they" in the July 14, 2009 e-mail is Q.

- [65] How Q was going to generate this volume of trading activity is not clear from the evidence.
- [66] Q ultimately stopped promoting Solanex when Q became aware of an e-mail spam promotional campaign that referenced Solanex. E-mails from Q suggest that they were neither responsible for this spam campaign nor aware of who was responsible for it.

Sale of Solanex shares in the market

- [67] As noted above, a total of two million Solanex shares were transferred out of escrow to Corpsense. On July 21, 2009, Corpsense transferred 250,000 Solanex shares to Q.
- [68] In April 2009, RC opened a brokerage account in Canada on behalf of Corpsense and in July 2009, RC opened a brokerage account in the US on behalf of Corpsense.
- [69] The two million Solanex shares released from the escrow agreement and registered in the name of Corpsense were deposited into these two brokerage accounts. Trading records from these two accounts show that by September 10, 2009, all of the Solanex shares in the two accounts (net of those shares transferred to Q) had been sold for proceeds of approximately \$506,000.
- [70] In addition, as noted above, approximately 738,000 shares were released from escrow and registered in the name of 0824712 B.C. Ltd. These shares were deposited into a brokerage account. Trading records from this account show that by November 4, 2009 all of the Solanex shares in this account had been sold for proceeds of approximately \$284,000.
- [71] Records from a bank account of 0824712 B.C. Ltd. indicate that this company made four payments to Corpsense between September 25, 2009 and November 3, 2009 totaling in aggregate approximately \$113,000.
- [72] Corpsense banking records indicate that it made payments, during the relevant period, of US \$102,000 to companies controlled by Cerisse and Austin.

Solanex shares trading data

- [73] In the summer of 2009, Solanex was close to a dormant public company from a trading perspective. In April 2009, 10,000 Solanex shares traded on one trading day. In May and June 2009, no Solanex shares were traded at all. In July 2009, a total of 42,160 Solanex shares were traded over four trading days. Finally, in August 2009, prior to August 24, 2009, a total of 22,500 Solanex shares were traded over two trading days. All of these trades took place at prices between eight cents and 20 cents.
- [74] On August 24, 2009 approximately 440,000 Solanex shares were traded on that day at prices between 15 and 20 cents. Similarly, approximately 396,000 and 499,000 Solanex shares were traded in the next two trading days at prices ranging from 21 to 33 cents.

[75] Substantial volumes of Solanex shares continued to trade during the remainder of August and throughout September. For example, on September 10, 2009, approximately 971,000 Solanex shares were traded at prices ranging from 40 to 70 cents. In fact, substantial volumes of Solanex shares continued to trade until November 4, 2009. During that period, the Solanex shares reached a high of 75 cents.

[76] As of August 24, 2009, Corpsense and Q together held approximately 62% of the outstanding Solanex shares that were not then held under the escrow agreement.

Cerisse interview with Commission staff

[77] Cerisse attended a compelled interview under oath with Commission staff in October 2013.

[78] During this interview, which was conducted over two days and which covered a wide range of topics, Cerisse was asked about:

- a) who RBT Group Inc. was (the company that had signed the escrow agreement);
- b) whether she controlled the Solanex shares that were deposited under the escrow agreement;
- c) how MH acquired her Solanex shares;
- d) who two companies that were registered shareholders of Solanex were; and
- e) why certain companies had received funds from Corpsense.

[79] A transcript of Cerisse's interview was entered as evidence in the hearing. We have extracted and reproduce below, in our discussion of this allegation, the excerpts of the interview that relate to the above questions.

III. Positions of the Parties

[80] The executive director's position is that:

Contraventions of section 61

- a) Cerisse and Austin were "control persons" of Solanex who were required to comply with the requirements of section 61 of the Act when they sold Solanex shares under the escrow agreement;
- b) that Sadler became a "control person" of Solanex when he signed the escrow agreement on March 3, 2009;
- c) that these "control persons" sold or transferred:

- i. two million shares of Solanex to Corpsense,
- ii. 250,000 shares of Solanex to Q,
- iii. approximately 738,000 to 0824712 B.C. Ltd.

and that, of these shares, the ones acquired by Corpsense and 0824712 B.C. Ltd. were sold into the market – all of which was in contravention of section 61 of the Act;

Misrepresentations

- a) Solanex issued four press releases (August 10, September 4, September 10 and September 16, 2009) that contained misrepresentations;
- b) all four press releases contain a general section about Solanex's business which includes in it a description of the thermal destructor and/or steam injection system technology;
- c) Solanex no longer had any interest in these technologies by the date of these press releases, thereby making these statements misrepresentations;
- d) the September 16, 2009 press release describes a memorandum of understanding having been signed by Solanex;
- e) Solanex had not signed that memorandum of understanding by September 20, 2009 thereby making the reference to a signed agreement in the September 16, 2009 press release a misrepresentation; and
- f) Sadler was responsible for preparing drafts of these press releases and for forwarding them on to news wire services, and in so doing, Sadler made misrepresentations contrary to section 50(1)(d) of the Act;

Market Manipulation

Cerisse

- a) the following conduct of Cerisse was contrary to section 57(a) of the Act:
 - i. selling Solanex shares to Sadler's buying group;
 - ii. facilitating the transfer of Solanex shares to Corpsense out of the escrow agreement;
 - iii. assisting in updating Solanex's website;
 - iv. facilitating the deposit of Solanex shares that were being transferred to Q into a brokerage account;
 - v. maintaining Solanex's securities regulatory filings throughout the summer and fall of 2009; and
 - vi. receiving funds from Corpsense.

Austin

- b) the following conduct of Austin was contrary to section 57(a) of the Act:
- i. authorizing the escrow agent to release Solanex shares from the escrow agreement;
 - ii. assisting in updating the Solanex website;
 - iii. facilitating the transfer of Solanex shares to Q; and
 - iv. receiving funds from Corpsense.

Sadler

- c) the following conduct of Sadler was contrary to section 57(a) of the Act:
- i. arranging for the acquisition of Solanex shares through the escrow agreement;
 - ii. instruction of the escrow and transfer agent on the transfer and registration of Solanex shares to Corpsense, Q and 0824712 B.C. Ltd.;
 - iii. appointing nominee directors of Solanex;
 - iv. preparing and issuing Solanex press releases that contain misrepresentations;
 - v. assisting in updating Solanex website;
 - vi. assisting in keeping Solanex securities regulatory filings up to date through the summer and fall of 2009;
 - vii. facilitating the deposit of Solanex shares into a brokerage account for the benefit of Q;
 - viii. assisting in finding Q;
 - ix. providing instructions for payouts from Corpsense accounts to companies controlled by Cerisse and Austin; and
 - x. facilitated potential financing of Solanex's business deal announced by Solanex.

Cerisse's statements contrary to section 168.1(1)(a)

- a) that Cerisse made statements to Commission staff in her compelled interview in October 2013 that were false or misleading.

[81] Cerisse's position is that:

- a) allegations of her having contravened section 61 of the Act are barred by the limitation period set out in Section 159 of the Act (i.e. that the impugned conduct occurred more than six years prior to the date of the notice of hearing, which, in this case, was issued on August 24, 2015);
- b) all seven of the items alleged by the executive director to contravene section 57(a) of the Act, individually and collectively, fall short of direct or indirect participation in a market manipulation;

- c) there was no evidence that Cerisse orchestrated any trades of Solanex shares that resulted in a substantial increase in the price of Solanex shares, developed a pool of prospective purchasers of Solanex shares, had beneficial ownership over any trading accounts held by nominees or did anything to disguise trading activity in Solanex shares; and
- d) with respect to her having made false or misleading statements during her interview in October 2013, her answers were either objectively not false or that several of the questions were vague and open to a number of possible answers.

[82] Austin's position is that:

- a) the Commission does not have any jurisdiction over him as he is a United States citizen;
- b) he was not involved in the delivery of Solanex shares to Sadler or RC, that he merely represented the beneficial owners of the Solanex shares delivered into the escrow agreement and therefore he was not a control person of Solanex; and
- c) he had no involvement in the drafting or issuance of Solanex press releases or other promotional activity or the trading activity of the Solanex shares by RC, 0824712 B.C. Ltd. or Q and therefore did not contravene section 57(a) of the Act.

[83] Sadler's position is that:

- a) the reference to there being a "Sadler's buying group" is inaccurate as there is no evidence in the proceeding that Sadler ever owned or sold any Solanex shares;
- b) he merely acted as a "go between" and conduit of information and documents in relation to a transaction that was fundamentally between Cerisse and Austin on one side and RC and his associates on the other;
- c) with respect to the Solanex news releases, all he did was prepare drafts of these documents which were then authorized for release by Solanex directors and or management;
- d) the references in the Solanex press releases to the thermal destructor and steam injection system, even if not then owned by Solanex, could not be said to be material as it was obvious from Solanex's financial statements that this technology had no value and was not commercialized; and
- e) the descriptions of the business activities carried out by Solanex to acquire green technologies were all true.

IV. Analysis and Findings

A. Applicable Law

Standard of Proof

[84] 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.

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

[86] 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.

Section 61

[87] Section 61 of the Act prohibits a person from “distributing” a security without having filed and obtained a receipt for a prospectus from the Commission.

[88] The Act defines a “distribution” to include “a trade in a previously issued security of an issuer from the holdings of a control person.”

[89] The Act defines a “trade” to include “a disposition of a security for valuable consideration...”

[90] The Act defines a “control person” to mean

- a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or
- b) each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,

and, if a person or combination of persons holds more than 20% of the voting rights attached to all outstanding securities of an issuer, the person or combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer.

Section 50(1)(d)

- [91] Section 50(1)(d) of the Act sets out that a person “while engaging in investor relations activities or with the intention of effecting a trade in a security, must not ... make a statement that the person knows, or ought reasonably to know, is a misrepresentation”.
- [92] The Act defines “investor relations activities” to mean “any activities or oral or written communications, by or on behalf of an issuer or security holder of the issuer, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer.”
- [93] The Act defines “misrepresentation” to include “an untrue statement of a material fact” and “an omission to state a material fact that is ... necessary to prevent a statement that is made from being false or misleading...”
- [94] The Act defines “material fact” as “a fact that would reasonably be expected to have a significant effect on the market price or value” of an issuer’s securities.

Section 57(a)

- [95] Section 57(a) of the Act states that a person “must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract.”

Section 168.1(1)(a)

- [96] Section 168.1(1)(a) states a person must not:

Make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed 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.

- [97] In *Re Nuttall* 2011 BCSECCOM 521, at paragraph 44, the Commission said the following regarding materiality:

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.

B. Analysis

Misrepresentation

- [98] The only remaining allegation of misrepresentation in this case is that Sadler, by drafting Solanex press releases (that the executive director alleges contain misrepresentations) and forwarding those press releases to Q and news wire services, contravened section 50(1)(d).

- [99] The analysis of any allegation of misrepresentation is detailed in that there are a number of elements to the allegation, including whether the respondent was engaged in “investor relations” activities, whether the published material contained an untrue statement or an omission and whether that untrue statement or omission was in respect of a material fact. All of these issues are present in this case; however, this allegation founders on a more basic issue – whether Sadler can be said to have **made** any of the statements that the executive director alleges to be misrepresentations.
- [100] The executive director cites the decision of this Commission in *Re McCabe*, 2014 BCSECCOM 269 as affirmed by the Court of Appeal in *McCabe v. British Columbia (Securities Commission)*, 2015 BCCA 176 in support of the proposition that individuals can be held liable for corporate misrepresentations even if section 168.2 of the Act is not alleged.
- [101] However, the circumstances in *McCabe* are very different to those before us. The respondent in *McCabe* published a tout sheet in which he wrote “research reports” about public companies and published that material under his own name. Although the operations of the tout sheet were owned by a corporate vehicle, the panel found that it was clear that the respondent had personally written the material that they found to contain misrepresentations and to have published that material under his own name.
- [102] In the case before us, the press releases that the executive director alleges contain misrepresentations were clearly Solanex press releases. There is no reference to Sadler in those press releases or any statements that could be said to be attributable to Sadler. These were clearly the statements of Solanex and not of Sadler. This is exactly the situation that section 168.2 of the Act was intended to address. A director or officer of Solanex, that authorized, permitted or acquiesced to the statements being made, could be held liable under section 168.2 of the Act for misrepresentations if a corporation’s statements are found to be misrepresentations. In this case, Solanex, the maker of the statements is not even a respondent nor was Sadler a director or officer of Solanex at the relevant time.
- [103] We find that the mere drafting of press releases combined with attending to the mechanics of dissemination of those releases cannot be said to constitute a respondent “**making**” a statement for the purposes of section 50(1)(d).
- [104] We dismiss the allegation of a contravention of section 50(1)(d) against Sadler.

Illegal Distributions

- [105] The executive director alleges that all of the respondents engaged in illegal distributions contrary to section 61 of the Act.
- [106] In particular, the executive director says that each of Austin, Cerisse and Sadler were “control persons” under the Act and that when they came to engage in trades of the

previously issued Solanex shares, they were required to do so under a prospectus or an exemption from that requirement.

- [107] There is no dispute among the parties that there was no prospectus filed in respect of the trades in Solanex shares during 2009. Nor is there any suggestion that an exemption from that requirement was applicable to any of the trades in the Solanex shares during 2009.
- [108] Cerisse submits that this allegation is statute barred by the limitation period set out in section 159 of the Act which requires that this allegation be brought within six years “after the date of the events that give rise to the proceedings”.
- [109] Austin and Sadler dispute that they were “control persons” of Solanex within the meaning of the Act during the relevant time period.
- [110] Austin disputes that we have jurisdiction over him as he is a US citizen. This assertion is not valid. Austin was a resident of British Columbia during the relevant period. The actions that are alleged to have contravened the Act were carried out by Austin within the Province. Citizenship is not relevant to our jurisdiction. We have the jurisdiction to make orders against Austin, if we find that he has contravened the Act.

Control persons

- [111] The definition of a “control person” under the Act is each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a person or combination of persons holds more than 20% of the voting rights attached to all outstanding securities of an issuer, the person or combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer.
- [112] Cerisse’s written submission included an admission that, prior to March 5, 2009, she and Austin were control persons of Solanex.
- [113] Austin’s written submissions, without expressly addressing the factual and legal context of the Act’s definition of “control person”, dispute that admission as he says that in respect of his actions relating to Solanex, he was acting on behalf of CH and other offshore beneficial owners of the Solanex shares.
- [114] The totality of the evidence does not support Austin’s claims in this respect. The evidence from CH and MH raises considerable doubt that the registered shareholders of the Solanex shares were, in fact, the beneficial owners of the Solanex shares. In all of Cerisse’s communications with Sadler, leading up to the entering into of the escrow agreement, there is no suggestion that there are beneficial shareholders that need to be consulted or that need to consent to the sale transaction that is being structured. Cerisse communicated, expressly or implicitly, on more than one occasion that she and Austin

had control of over 99% of the Solanex shares. We do not know, as between Cerisse and Austin, how beneficial ownership or control of the Solanex shares was split between them but we find that, by virtue of an agreement or understanding, that Cerisse and Austin were “control persons” of Solanex prior to March 5, 2009.

- [115] The executive director submits that when the escrow agreement was signed on March 5, 2009, Sadler became a control person of Solanex. He says that that agreement amounted to an agreement to allow Sadler, in combination with others, to vote more than 20% of the Solanex shares. He further points to the minutes of the Solanex shareholder meeting of July 14, 2009 at which Sadler purported to vote 78% of the Solanex shares in favour of the appointment of DE as interim CEO as evidence of this voting control.
- [116] We do not agree with the executive director’s submissions with respect to Sadler. It is clear in all of Sadler’s communications with Cerisse leading to the execution of the escrow agreement, the terms of the escrow agreement itself and the minutes of the July 14, 2009 Solanex shareholder meeting, that Sadler was acting as a representative of the buyers of the Solanex shares. There is no evidence that Sadler ever acquired beneficial ownership of or the right to vote, for and on his own behalf, any shares of Solanex. We do not find that Sadler ever became a control person of Solanex. As a consequence, we dismiss the allegations of contraventions of section 61 against Sadler.

Limitation period

- [117] Having found that, prior to March 5, 2009, Cerisse and Austin were control persons of Solanex, the question becomes whether they disposed of any previously issued Solanex shares for valuable consideration within the limitation period imposed by section 159 of the Act.
- [118] The executive director takes the view that the dispositions of Solanex shares, that are contrary to section 61 of the Act, commenced on August 24, 2009 (i.e. the day that Corpsense and Q commenced selling Solanex shares into the market) which is the day before the expiry of the limitation period and that that trading carried on in the days that followed, which are within the limitation period.
- [119] Cerisse submits that the dispositions of the Solanex shares from the control of Cerisse and Austin occurred shortly after the escrow agreement was entered into and at the latest by June 2009 which is the last time that Cerisse or Austin authorized the escrow agent to release any Solanex shares from the escrow agreement.
- [120] The executive director’s position is hard to conceptualize. The sale of Solanex shares into the market that commenced on August 24, 2009 were not sales by Cerisse or Austin. The evidence is clear that these were sales by RC and Q and then later by 0824712 B.C. Ltd. The executive director’s submissions seem to ignore the fact that, looking at the totality of what happened, there were two very clear steps to the transactions that took place. Cerisse and Austin first agreed to sell the Solanex shares to a group of buyers represented by Sadler and then that group of buyers in turn sold those shares into the market. There is no way to look at the sales by Corpsense, Q and 0824712 B.C. Ltd. as

sales by Cerisse and Austin, even if the proceeds from some of these sales were subsequently sent to Cerisse and Austin in satisfaction for amounts owing under the escrow agreement, without viewing all of these parties as acting together as part of some collective action or conspiracy. The evidence does not support this. In fact, the evidence suggests that there were clearly sellers (Cerisse and Austin) and buyers (RC and others) and that this was not some collective effort.

[121] Considering the totality of the transactions that took place, there is no question that Cerisse and Austin did dispose of Solanex shares to the buyers under the escrow agreement for valuable consideration at some point on or after March 5, 2009. The question is when did those transactions take place?

[122] Answering this question requires us to try and interpret the escrow agreement. It is impossible to do so relying solely on the terms of the escrow agreement itself. Frankly, it is a nearly senseless document. Further, nothing that actually transpired after its execution accords in any way with the terms of the agreement. For example:

- a \$50,000 non-refundable deposit was to be paid on the “Commencement Date” – this did not occur;
- a private placement of 5,000,000 Solanex shares at \$0.30 was to take place – this did not occur;
- 1,000,000 of the shares from the private placement were to be released by the escrow agent (how or why shares from the private placement would be in escrow in the first place is not made clear) and \$100,000 was to be paid by the Buyer’s agent to the Sellers – this did not occur;
- the “Closing Date” was to be 45 days after the Commencement Date at which time the remainder of the purchase price (i.e. \$350,000 after the deposit) was to be paid to the Sellers. If the \$350,000 was not paid on the Closing Date then the Closing Date was to be extended by 30 days and the purchase price increased by \$25,000. If the remainder of the purchase price was not paid at the extended Closing Date, then the agreement was to terminate by the escrow agent returning the Solanex shares to the Sellers – none of this occurred; and
- at the “close of the agreement” (the escrow agreement does not use the term Closing Date here), the escrow agent was to take a promissory note from Corpsense for \$350,000 in consideration of the loan to Corpsense of 1,000,000 free trading Solanex shares, which loan was to have a term to maturity of six months – there is no explanation of how this concept can in any way reconcile with the purchase and sale transaction set out elsewhere in the agreement and there is no evidence that any of this occurred.

[123] Given the escrow agreement itself is indecipherable, we must look to extrinsic evidence both before and after execution of the agreement to try and give meaning to the agreement and determine when there was a disposition of Solanex shares for valuable consideration from Cerisse and Austin.

- [124] It is clear from the e-mails between Cerisse and Sadler that pre-date the signing of the agreement that the basic purchase and sale transaction was a disposition of 99% of the Solanex shares for a total of \$400,000. The purchase price was to be paid by a \$50,000 non-refundable deposit and the remainder at some later date. All of this accords with the early sections of the escrow agreement itself.
- [125] From e-mails between Cerisse and Sadler that occurred after the execution of the escrow agreement, we can discern that the Commencement Date (that triggered the necessity of payment of the \$50,000 deposit) was on or around the date that all the Solanex shares were delivered to the escrow agent under the escrow agreement, being March 5, 2009. This can be seen by Cerisse's e-mail to Sadler of April 8, 2009 expressing concern about the buyers' failure to pay the deposit.
- [126] This would have made the original Closing Date April 19, 2009. However, we can also discern from e-mails between Sadler and Cerisse made prior to the date of the escrow agreement that there was a general understanding among all the parties that the buyers of the Solanex shares did not have the purchase price contemplated by the above description of the basic business transaction. We can only interpret the parties actions subsequent to the execution of the escrow agreement and the reference to a lending transaction within the escrow agreement itself, that the parties had some unwritten understanding that Solanex shares would be transferred to the buyers on their simple promise to pay in the future. We do not know the exact terms of that arrangement, but it is clear that Solanex shares were transferred to the buyers, or at the buyers' direction, and that subsequently companies controlled by Cerisse and Austin received over \$100,000 therefrom.
- [127] Transfers or sales of shares for a promissory note or a future promise to pay are still dispositions of securities for valuable consideration. We therefore find that Cerisse and Austin disposed of Solanex shares for valuable consideration. The only remaining aspect is when did this occur?
- [128] There is evidence that the consent or authorization of Cerisse or Austin was required to transfer Solanex shares up to the middle of June 2009. This would suggest that prior to this time period Cerisse and Austin retained ownership and/or control of the Solanex shares in the escrow agreement. However, thereafter, only instructions from Sadler, as the buyers' representative, appear to have been required to release the Solanex shares from escrow and to get those shares reregistered in the names of the buyers. This does not accord in any way with Cerisse and Austin retaining ownership and/or control of the Solanex shares in escrow after this date. We infer from this that at some point in June or July 2009 the Solanex shares in the escrow account were transferred to the buyers along with a promise to pay the purchase price at a subsequent date to the sellers. This disposition of the Solanex shares from Cerisse and Austin that occurred between March 5, 2009 and June or July of 2009, for valuable consideration, was likely in contravention of section 61 of the Act. It was clearly the sale of Solanex shares from a control person or persons without a prospectus, or an exemption from the requirement to do so. However, this conduct occurred outside of the limitation period and is therefore statute barred.

[129] This finding that the disposition of the Solanex shares occurred no later than June or July of 2009, is confirmed by minutes of the Solanex shareholders meeting from July 14, 2009. Those minutes suggest that 78% of the outstanding shares were owned by buyers of the Solanex shares as represented by Sadler.

[130] We note that this understanding of the business transaction might make the sales by the buyers of the Solanex shares into the market on August 24, 2009 and thereafter (and within the limitation period) sales from new control persons (i.e. the buyers); however, these are not allegations that are before us in this case.

[131] Therefore, we dismiss the allegations of contraventions of section 61 against Cerisse and Austin as being statute barred pursuant to section 159 of the Act.

Market Manipulations

[132] Section 57(a) of the Act states that a person “must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract.”

[133] The executive director’s allegations of contraventions of section 57(a) of the Act are unusual in that, with respect to each of the respondents, there is no suggestion that they actually engaged in trading of securities of the kind normally associated with contraventions of section 57(a). Rather, the theory of the executive director’s case is the respondents, in effect, aided and abetted others in the pursuit of trading and promotional activities that could constitute contraventions of section 57(a) of the Act.

Was there a market manipulation

[134] There is no legitimate explanation for the explosion of trading activity that took place in the Solanex shares commencing on August 24, 2009. The company had no assets, no revenue and had merely announced having entered into a non-binding agreement with respect to the acquisition of rights to certain technology.

[135] Further, there is evidence that as of August 24, 2009 Corpsense and Q had a clear dominance in the supply side of the market for Solanex shares. This dominance, the clear promotional efforts of Q and the fact that a spam e-mail campaign concerning Solanex was conducted in this time period, create a *prima facie* case for a market manipulation known as a “pump and dump” which would be contrary to section 57(a) of the Act.

[136] We need go no further, in this particular case, than finding a *prima facie* basis for a market manipulation as the allegation fails for other reasons detailed below. We note that we had little information on the spam promotion presented during the hearing, other than its existence, and we have insufficient evidence to make a finding about who the individuals were who directly created the market manipulation.

Did the respondents engage in or participate in conduct relating to securities

[137] Under section 57(a), the first step in the analysis is to determine whether the respondents' conduct, directly or indirectly, relates to securities. The following conduct is what the executive director says each of the respondents engaged in that forms the basis of their contravention of section 57(a). This conduct must "directly or indirectly, relate to securities" for the purpose of this analysis:

Cerisse

- a) selling Solanex shares to Sadler's buying group; facilitating the transfer of Solanex shares to Corpsense out of the escrow agreement; assisting in updating Solanex's website;
- b) facilitating the deposit of Solanex shares that were being transferred to Q into a brokerage account;
- c) maintaining Solanex's securities regulatory filings throughout the summer and fall of 2009; and
- d) receiving funds from Corpsense.

Austin

- a) authorizing the escrow agent to release Solanex shares from the escrow agreement;
- b) assisting in updating the Solanex website;
- c) facilitating the transfer of Solanex shares to Q; and
- d) receiving funds from Corpsense.

Sadler

- a) arranging for the acquisition of Solanex shares through the escrow agreement;
- b) instructing of the escrow and transfer agent on the transfer and registration of Solanex shares to Corpsense, Q and 0824712 B.C. Ltd.;
- c) appointing nominee directors of Solanex;
- d) preparing and issuing Solanex press releases that contain misrepresentations;
- e) assisting in updating the Solanex website;
- f) assisting in keeping Solanex securities regulatory filings up to date through the summer and fall of 2009;
- g) facilitating the deposit of Solanex shares into a brokerage account for the benefit of Q;
- h) assisting in finding Q;
- i) providing instructions for payouts from Corpsense accounts to companies controlled by Cerisse and Austin; and
- j) facilitating potential financing of Solanex's business deal announced by Solanex.

[138] There can be no question that the identified conduct, outlined above, relates either directly or indirectly to Solanex securities.

Did the respondents' conduct contribute to the market manipulation

- [139] In order to find the respondents liable for a breach of section 57(a) of the Act, their conduct, described above, must have resulted in, or contributed to, either a misleading appearance of trading activity, or an artificial price, of Solanex securities.
- [140] The executive director's allegations under section 57(a) of the Act against all three of the respondents require us to consider when a person might "... **indirectly**, engage in or participate in conduct relating to securities ..." where that conduct "... results in or **contributes to** a misleading appearance of trading activity in, or an artificial price for a security..." We have emphasized the concepts of indirect participation in and contributions to a market manipulation as, at most, that is what the respondents are alleged to have done with respect to the Solanex shares. It is clear from the wording of the section that someone could be found to have contravened the section without having been directly involved in improper trading or improper promotional activity. The question is how broadly to interpret the concepts of "indirectly" and "contributed to".
- [141] The concept of "indirect" participation clearly would cover circumstances where a respondent was conducting improper trading activity through the use of nominee accounts or some other indirect manner of executing trades. It is less clear that this concept of indirect participation should apply where the alleged misconduct is tangential to the improper trading activity and/or improper promotional efforts.
- [142] There is a spectrum of conduct that is tangential to the core trading and promotional efforts associated with a market manipulation. Where various conduct fits within this spectrum will be highly factual and context specific. Generally, where the conduct is further removed from the actual improper trading or specific improper promotional activities, it will be more difficult to establish that that conduct "results in" or "contributes to" a misleading appearance of trading activity or an artificial price for a security. Examples of conduct on this end of the spectrum would include efforts to establish a general business website for an issuer, maintenance of an issuer's securities regulatory filings, instructing escrow agents or transfer agents and the mere assisting in the opening of brokerage accounts on behalf of others.
- [143] Considering first Cerisse and Austin, there is no evidence that either of them played any role in the promotional side of Solanex on or after August 24, 2009 or that they played any role in arranging for buyers of Solanex shares on the market.
- [144] The essential allegation is that by agreeing to sell their Solanex shares to the buyers, they knew or ought to have known that the buyers were going to use the Solanex shares to engage in a market manipulation. The secondary allegation is that by providing instructions to the escrow agent, aiding in reregistering and depositing securities and keeping Solanex's securities regulatory filings up to date, they were creating the environment for the market manipulation to occur.
- [145] The conduct of Cerisse and Austin that is alleged to have contravened section 57(a) of the Act all fits within the end of the spectrum of conduct that is too tangential to the improper

promotional and trading activity that actually constituted the market manipulation of Solanex shares to find that they contravened section 57(a) themselves. As to the first allegation, it is not enough to have been the vendor of the shares of Solanex to the buyers in this case. The market manipulation occurred at the end of August 2009. Cerisse and Austin agreed to sell their shares in March 2009. There is no evidence that Cerisse or Austin were aware of Q, an e-mail spam campaign or any possibility of improper trading activity prior to entering into the escrow agreement. As to the secondary allegation, we do not have sufficient evidence to find that this conduct directly or indirectly resulted in or contributed to a misleading appearance of trading activity or an artificial price for the Solanex shares.

- [146] We therefore dismiss the allegations of section 57(a) against Cerisse and Austin.
- [147] In the case of Sadler, his involvement was on the buyers' side of the transaction and he was acting as the buyers' representative in multiple capacities. He did have a role in suggesting a schedule of press releases and business acquisitions to RC. He did have a role in those acquisitions. He did prepare drafts of Solanex press releases. He did have some role, although to what extent is not clear, in selecting Q. He had some knowledge that there was a promotional plan that was to result in a significant volume of Solanex shares being traded. He also performed a number of the tasks that Cerisse and Austin performed (i.e. instructing the escrow agent, aiding in reregistering and depositing securities and keeping Solanex's securities regulatory filings up to date) albeit on the buyers' side not the sellers' side.
- [148] There is much not to like in Sadler's actions. However, the evidence of his conduct stops short of any direct participation in any of the trading activity that created "a misleading appearance of trading activity in, or an artificial price for, a security". Further, his conduct stops short of ever having made any of the statements, directly or indirectly, that were made in advance of the promotional efforts for the Solanex stock. All of those statements were made by Solanex or other third parties.
- [149] He clearly did have a role providing services to Solanex and the buyers of the Solanex shares. He also had a role in devising a timeline of events (i.e. board appointments and technology acquisitions) for Solanex to conduct and announce to the market. He had a role in negotiating those acquisitions. Importantly, however, there is no suggestion that the board appointments or the technology acquisitions did not occur or that the technology was fictional. The content of the press releases of Solanex relating to board appointments and acquisitions that Sadler drafted for approval by RC and Solanex itself are not in issue from an accuracy perspective (other than the timing of execution of one of the acquisition agreements).
- [150] What is in question is what promotional and trading activities followed these announcements. We know Q was involved in that process and we know of an e-mail spam campaign. If there were improper promotional efforts related to Solanex, they were to be found somewhere in those activities. However, there is no evidence that Sadler directed or otherwise assisted in the promotional activities of Q or the e-mail spam. That

he had a role in drafting some of the press releases that were used in the Q material is not sufficient to contravene section 57(a) of the Act. More importantly, it is not evident that it was the press releases themselves that contributed to the unusual trading activity (versus the Q promotional efforts or the e-mail spam campaign). As outlined above, other than evidence of the existence of a spam campaign, we have very sparse evidence relating to it, and the individuals responsible for it.

- [151] The evidence is not clear as to what, exactly, “contributed to” or “resulted in” the huge volume of trading in Solanex shares and the rapid and unjustified increase in Solanex share price. We infer that it was some combination of market dominance of the public float by RC and Q, Q’s promotional efforts and an email spam campaign. However, as it relates to the respondent Sadler, there is no evidence he was connected to the email spam campaign in any way. Further, Sadler’s connection to any market dominance in the public float was, at best, administrative in nature. Finally, Sadler’s relationship to Q was in the form of drafting press releases, the content of which was not substantially impugned.
- [152] In short, we do not see that Sadler’s actions relating to the market manipulation conduct of others, is sufficient to find him liable under section 57(a). His conduct is certainly farther along the spectrum of tangential activities than Cerisse and Austin but, based on the evidence before us, is still short of conduct that indirectly resulted in or contributed to a misleading appearance of trading activity or an artificial price for the Solanex shares.
- [153] Therefore, we dismiss the allegations of contraventions of section 57(a) against Sadler.

False or misleading statements to investigators

- [154] The executive director alleges that Cerisse made false or misleading statements to investigators during her compelled interview with Commission staff in October 2013. In particular, there are five questions or issues that were raised during her interview to which the executive director alleges Cerisse gave untrue responses.
- [155] Cerisse says that her answers to the five questions were either objectively true or the questions were raised in a manner in which a number of different answers were possible. She says that the interview was conducted a significant period of time following the relevant time period for the questions and that answers which were in the nature of “I don’t know” or “I don’t remember” are understandable in this context.
- [156] There is no dispute by the parties that Cerisse’s interviewers during her October 2013 interview were “persons appointed under this Act” for the purposes of section 168.1(1)(a) of the Act.

RBT

- [157] With respect to RBT, this is the impugned exchange during the interview:

Q Who is RBT Group Inc.?

A RBT Group Inc. is, I think, one of the investors in the company.

Q How much shares do they own of Solanex?

A Oh, I don't know. I didn't think very much. I don't remember.

Q Who operated RBT Group Inc.?

A I thought it was just an investor. But - - yeah.

Q What is the name of the person who runs RBT Group Inc.?

A I don't remember. It was just - - in this particular case all that RBT Group Inc. was there was because Tom asked for a name on the agreement, like, in terms of kind of representing the investors and - - shareholders, investors, you know, until he could actually take over and do his merger.

[158] There are really two separate questions that were asked – “Who is RBT Group Inc.?” and “What is the name of the person who runs RBT Group Inc.?”

[159] The answer given to the first question was “I think, one of the investors in the company.” We do not have evidence that determines, on a balance of probabilities, that this answer is false or misleading. As noted above, there is considerable uncertainty as to who the beneficial owners of the Solanex shares were as of January 2009. We have found that Cerisse and Austin controlled those shares, but control does not necessarily equate to ownership. Therefore, we cannot determine that this answer was false or misleading.

[160] The answer to the second question was “I don't remember.” Cerisse was an officer of RBT during 2006 through 2008 and Austin was an officer of RBT during 2008 and 2009. We do not find it credible that Cerisse did not remember that she and Austin were officers of RBT. It was the vehicle chosen by Cerisse and Austin as their signatory to the escrow agreement. We find that Cerisse's response to this question was false or misleading. We find that Cerisse contravened section 168.1(1)(a) with respect to this answer to Commission investigators in her October 13, 2009 interview.

Control of Solanex shares

[161] With respect to the control of the Solanex shares, this is the impugned exchange during the interview:

Q Okay. So just to be clear, you never had 15 - - as the seller's agent, which you were - -

A Yes.

Q - - you never had 15 million shares of Solanex?

A That I controlled? No, of course not.

[162] Cerisse was asked whether she controlled 15 million Solanex shares at the time of entering into the escrow agreement – although the question is less than clear, Cerisse herself framed the question that she was answering. She answered that question

definitively and in the negative. The answer to that question was clearly yes in that we have found that she and Austin controlled 99% of the Solanex shares in January 2009. She made this admission in her own submissions on another issue to the panel. Her answer was the opposite of the truth. We find that Cerisse contravened section 168.1(1)(a) with respect to this answer to Commission investigators in her October 13, 2009 interview.

MH's ownership of Solanex shares

[163] With respect to MH's ownership of Solanex shares, this is the impugned exchange during the interview:

Q Who is MH?

A She is one of the original investors or subscribers involved with the - - I think they invested originally and had some of the technology or something like that. That's all my recollection is.

Q Did you collect this form from MH?

A I don't remember who did, so I don't remember.

Q It says that the purchase price as \$200. Did you deposit that \$200 into the Solanex Management bank account?

A I don't know. I don't know. Did they have a bank account then?
I don't know.

[164] MH's testified that she did not have any ownership interest in the technology that was acquired by Solanex in 2001. Whether Cerisse knew that in October 2013 has not been established, on a balance of probabilities, by the executive director.

[165] MH, in a conversation with a Commission investigator, admitted that Cerisse owed her money and that Solanex shares could have been issued to her in partial payment of that debt. Given this and that Cerisse's answers to the questions regarding payment were "I don't know" or "I don't remember" in reference to events that occurred over ten years prior to the interview, we do not find that these answers were false or misleading.

Gateways

[166] With respect to providing information to Commission investigators about the ownership of Gateways International Inc., this is the impugned exchange during the interview:

Q Who are Gateways International Inc.?

A A shareholder.

Q Do you know Gateways International Inc.?

A Well, I've seen all - - the company; right?

Q How do you know the company?

A Well, I know JL (*redaction of full name*); right?

Q Who is JL?

A He is a Korean that travelled back and forth from Korea to here. And he was in like - - I thought he was, like, in import/export or something like that. That was my impression. The business - - he had a business in Korea.

Q And he is the owner of Gateway's International Inc.?

A I don't know who is the owner.

[167] Prior to this exchange in the interview, Cerisse was shown an agreement dated from 2004 which showed JL as signing on behalf of Gateways.

[168] However, in March of 2009, Cerisse sent an e-mail to Sadler indicating that "Gateways International is one of our companies ..." Later, in June 2009, Solanex shares registered in the name of Gateways were transferred to CorpSense and an individual. Cerisse executed the stock power of attorney for this transfer as signing authority for the company and an accompanying authorization document shows Cerisse as the corporate secretary of Gateway.

[169] In response to being asked if JL is the owner of Gateway, Cerisse responded that she did not know. The evidence demonstrates that Cerisse was an officer of the company – it is not credible that Cerisse would be the corporate secretary of a private company and have signing authority for that company without knowing who owned the company. The answer that Cerisse gave to this question was, in a material respect, false and misleading and constituted a contravention of section 168.1(1)(a) of the Act.

Sierra Group

[170] With respect to providing information to Commission investigators about Sierra Group Inc., this is the impugned exchange during the interview:

Q Okay. So we'll go back to Page 1. Who is Sierra Group Inc.?

A I believe it represented an investor.

Q Why do you believe that?

A No, just from my memory.

Q Do you remember what investor Sierra Group Inc. represented?

A No, I don't. Just from memory

[171] The executive director produced records filed with the SEC for another public company which indicate that, as of 2001, Cerisse was the managing director of Sierra Group. Further, in a Solanex regulatory filing there is a reference to Sierra Group providing

services to Solanex in 2002 and 2003 with an address for Sierra Group being a mailbox address used by Cerisse.

[172] There is clearly a connection between Sierra Group and Cerisse. However, the sequence of questions that the executive director points to is not clear. The answers are also not clear. What does “represented an investor” mean? Given this lack of clarity we do not find that there is evidence to support an allegation that the answer given by Cerisse was false or misleading.

Pickwick, Pegasus and Clinica Natural

[173] With respect to providing information to Commission investigators about why Pickwick, Pegasus and Clinica Natural received funds from Corpsense, this is the impugned exchange during the interview:

Q Why did Pegasus Investment Limited receive money from Corpsense?

A Pegasus was one of the shareholders just like Pickwick was one of the shareholders; right? So I don't - - like, again, I don't think - - I don't think the objective was that they were going to give individual money to whatever, 50 or 100 shareholders. Maybe they were giving it to one person or a different company. They were paying three or four different people. But Pegasus was a shareholder. Pickwick was a shareholder.

...

Q Why did Clinica Natural receive money from Corpsense?

A I don't - - specifically I don't know. Like, I don't know if that was part of the money going to split amongst different shareholders who provide services or what, but I don't know.

...

Q Okay. Corpsense received shares of Solanex and sold them and transferred some money to a group of companies. One of them is Pickwick Company. Why did Pickwick receive money from Corpsense?

A There was - - well, Pickwick was a shareholder. There was loans from Pickwick, as I recall. I think it was loans. So that's my impression.

[174] In each case, Cerisse was asked about why payments were made to these three companies from Corpsense. The answers provided are equivocal and unhelpful. However, Cerisse does not deny that payments were made by Corpsense. In a general sense, we know that Corpsense paid those amounts pursuant to the terms of the escrow agreement. Why those entities were chosen, among all the entities that transferred shares to Corpsense, by the parties to receive payments is not clear from the evidence. The payments are not directly

understandable in the context of a price per share for the Solanex shares and the number of shares transferred by those entities. Cerisse's answers are less than definitive. All of which is troubling and unhelpful, but lacks the clarity and specificity of untruthfulness for us to find that the answers given by Cerisse to these questions were false or misleading.

Conclusion

[175] We find that the Cerisse contravened section 168.1(1)(a) in her answers to three questions during her interview with Commission staff in October 2013.

[176] All of the other allegations against each of Cerisse, Austin and Sadler are dismissed.

[177] We direct the executive director and Cerisse to make their submissions on sanction as follows:

By February 24, 2017 The executive director delivers submissions to Cerisse and to the secretary to the Commission.

By March 10, 2017 Cerisse delivers her response submissions to 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 March 17, 2017 The executive director delivers reply submissions (if any) to Cerisse and to the secretary to the Commission.

January 31, 2017

For the Commission

Nigel P. Cave
Vice Chair

Judith Downes
Commissioner

Don Rowlett
Commissioner