

2012 BCSECCOM 50

Patricia McLean

Section 161(1) of the *Securities Act*, RSBC 1996, c. 418

Panel	Brent W. Aitken David J. Smith	Vice Chair Commissioner
Date of decision	May 14, 2010	
Date of reasons for decision	February 17, 2012	

Reasons for decision

- ¶ 1 Patricia McLean agreed with the Ontario Securities Commission to be subject to sanctions approved by the OSC on September 8, 2008 *In the matter of Patricia McLean*.
- ¶ 2 On January 14, 2010, the executive director applied to the Commission under section 161(6) of the *Securities Act*, RSBC 1996, c. 418, for orders sanctioning Patricia McLean under section 161(1) of the Act.
- ¶ 3 Under section 161(6), McLean had an opportunity to be heard. She filed a submission and argued only that the proceeding was time barred under section 159 of the Act. She did not argue that an order would not be in the public interest.
- ¶ 4 We considered the executive director's application and McLean's submission and the public interest. On May 14, 2010, we issued our order, 2010 BCSECCOM 262. It mirrors the sanctions McLean agreed to with the OSC and expires on the same date as the OSC sanctions.
- ¶ 5 McLean appealed our order to the Court of Appeal. She argued again that the proceeding before our Commission was time barred under section 159 of the Act. The Court dismissed that argument.
- ¶ 6 McLean argued also that the Commission ought to have provided reasons.
- ¶ 7 Although we stated in our order that we considered the order to be in the public interest, we did not provide reasons explaining why we considered it to be so. The Court noted, "in fairness to the commission", that McLean had not asserted in her submission that the public interest did not require the order. Moreover, in the OSC

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settlement, she agreed to a form of order that stated that the sanctions were in the public interest.

- ¶ 8 On November 10, 2011, the Court allowed this second ground and remitted the matter to us saying: “A short brief explanation why an order is in the public interest and a brief explanation for the imposed sanctions should suffice in this case.”
- ¶ 9 Here is our brief explanation.
- ¶ 10 Before making an order under section 161(1) of the Act, we must consider the public interest. That requires us to consider the protection of our investors and the integrity of our markets.
- ¶ 11 Securities legislation in Canada is uniform in all material respects. The Commission is therefore interested in the activities of persons found to have contravened securities legislation in other provinces. This is particularly so since it is not unusual for persons involved in the capital markets to conduct business in more than one province.
- ¶ 12 Persons from all provinces, including British Columbia, trade in securities through the facilities of all the principal exchanges in Canada. There are 3 exchanges operating in different areas of securities trading:
- the TMX Exchange in Ontario that trades senior issuers,
 - the Montreal Bourse in Quebec that trades derivatives and
 - the TMX Venture Exchange in BC and Alberta that trades junior issuers.
- These are national exchanges.
- ¶ 13 In *Re Torudag* 2010 BCSECCOM 9, the Commission said this about the Venture Exchange:

“The Exchange is a major component of British Columbia’s capital markets. Hundreds of reporting issuers located in British Columbia trade on the Exchange, and it is the listing destination for many British Columbia start-up companies that are successful in graduating from the private capital markets to become public companies.

The significance of the Exchange to British Columbia’s capital markets is one reason that the Commission, in cooperation with the Alberta Securities Commission, is responsible for its regulatory oversight. The Commission regulates the Exchange through a

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recognition order made under section 24 of the Act and market participants expect the Commission to regulate, both directly and through the Exchange, trading activity on the Exchange. The other securities regulators in the Canadian Securities Administrators rely on the British Columbia and Alberta securities commissions to perform this regulatory function.”

- ¶ 14 A person may live in one province and be a director or officer of an issuer based in another province.
- ¶ 15 It is not unusual for issuers in Canada to raise capital off the exchanges in the private placement market in multiple jurisdictions and for investors in one province to invest in issuers located in another province. For instance, in 2010, BC public and private issuers sold \$11.2 billion of their securities to mostly BC investors and investors in other provinces.
- ¶ 16 The orderly and credible regulation of the securities markets in BC, and throughout Canada, not to mention common sense, argues strongly that persons who are sanctioned in one province and prohibited from participating in the capital markets of that province should not participate in the capital markets of the other provinces. That is why our Legislature passed section 161(6) of the Act. All provinces have a similar provision in their securities legislation.
- ¶ 17 In this case, McLean, while a registrant and an officer and director of a publicly traded issuer:
- authorized incorrect news releases relating to that issuer, and
 - allowed trading accounts to be used for abusive trading practices in the shares of that issuer.
- ¶ 18 McLean agreed her conduct was contrary to the public interest and the OSC considered her misconduct significant. It imposed on her a 5 year trading ban and a ten year ban from acting as an officer and director of any reporting issuer or registrant.
- ¶ 19 Based on her misconduct, we have a reasonable apprehension that she may commit future misconduct harmful to BC investors and detrimental to the integrity of our capital markets. Without orders the same as the OSC orders against her, McLean could trade in BC and with BC investors or could act as an officer or

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director of an issuer in BC. With current technology, McLean does not have to be in BC to conduct these activities.

¶ 20 We considered it in the public interest to issue our order giving McLean the same sanctions as in the OSC order. Our sanctions give the same protection to BC investors and our markets as enjoyed by Ontario investors and their markets.

¶ 21 February 17, 2012

¶ 22 **For the Commission**

Brent W. Aitken
Vice Chair

David J. Smith
Commissioner