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

Citation: Re Macdonald, 2025 BCSECCOM 467 Date: 20251023

Order under section 161(6)

Joel Richard Stewart Macdonald

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

Introduction

[1] This is an order under sections 161(1) and 161(6)(b) of the *Securities Act*, RSBC 1996, c. 418.

[2] On May 7, 2025, the executive director of the Commission applied (Application) for an order imposing sanctions on Joel Richard Stewart Macdonald (Macdonald) under sections 161(1) and 161(6)(b) of the Act based on the findings and orders of the Federal Court of Australia (FCA) in:

(a) *Australian Securities and Investments Commission v GetSwift Limited*, [2021] FCA 1384 (Liability Decision); and

(b) *Australian Securities and Investments Commission v GetSwift Limited*, [2023] FCA 100 (Penalty Decision).

[3] In his Application, the executive director tendered affidavit evidence and submissions to the Commission. The affidavit evidence establishes that no address in British Columbia was identified for Macdonald. However, three addresses were identified for Macdonald in Florida. Two of those addresses were identified by the executive director based on a CLEAR report obtained from Thompson Reuters, including an address in Miami. That Miami address matched the address provided for Macdonald in a BC Company Summary for GetSwift Technologies Limited (GetSwift Technologies) in which Macdonald is listed as a director and for which other evidence described below indicates Macdonald played a managerial role. We consider this to be evidence that Macdonald was aware that his Miami address was listed as his own. The executive director provided notice of this application to all three Florida addresses.

[4] We find that executive director provided the respondent notice of the application. Although the respondent was provided the opportunity to be heard, he did not participate in the hearing.

Background – substantive issues

[5] On November 10, 2021, the FCA issued the Liability Decision. In it, GetSwift Limited (GetSwift) was described "as an early stage "tech" company". It was incorporated on March 6, 2015, and, from December 7, 2016, was a public company registered under the Australian *Corporations Act 2001* (Cth) (Corporations Act). GetSwift described itself in a 2016 prospectus as being in the business of providing a software as a service platform to manage "last-mile delivery". The FCA stated that the "GetSwift Platform could be used to effect delivery services either through a client's own driver network or

with a contracted service." Its business model was to charge transaction fees for each delivery.

[6] The Australia Securities and Investments Commission (ASIC) alleged that the defendants (GetSwift, Macdonald, Bane Hunter (Hunter), and Brett Eagle) had breached sections of the Corporations Act and *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) by failing to disclose material information in announcements to the Australian Securities Exchange (ASX). In the Liability Decision, the FCA described it as:

> …At the risk of over-generalisation, what follows reveals what might be described as a public-relations-driven approach to corporate disclosure on behalf of those wielding power within the company, motivated by a desire to make regular announcements of successful entry into agreements with a number of national and multinational enterprise clients.

[7] In the February 16, 2023 Penalty Decision, the FCA described GetSwift as "representing the unacceptable face of start-up capitalism":

> GetSwift was a public "early stage technology company" that generated operating losses in every year of its existence. Notwithstanding this, from an issue price of 20 cents in December 2016, within a year, its share price had risen to well over $4, prior to a trading halt announcement. It raised a total of $104,000,000 from investors in two placements. It became a market darling because it adopted an unlawful public-relations-driven approach to corporate disclosure instigated and driven by those wielding power within the company.

[8] Macdonald was a director of GetSwift starting on October 26, 2016, was the managing director of GetSwift between October 26, 2016 and April 25, 2018, and was described as the so-called "President" of GetSwift.

[9] The FCA found that GetSwift engaged in 22 contraventions of section 674(2) of the Corporations Act and 40 contraventions of section 1041H Corporations Act and section 12DA of the ASIC Act. Macdonald was found to have:

(a) knowingly been "involved in 20 of GetSwift's 22 contraventions and thereby contravened s 674(2A) of the *Corporations Act*", the continuous disclosure obligations;

(b) "engaged in 33 contraventions of s 1041H of the *Corporations Act* and s 12DA of the *ASIC Act*" prohibiting misleading and deceptive conduct; and

(c) "failed to exercise his powers and discharge his duties as a director with the degree of care and diligence required and thereby contravened s 180(1) of the *Corporations Act*".

[10] In the Liability Decision, the FCA found that Macdonald approved and authorized a number of GetSwift announcements to the ASX. Those announcements "omitted information of which Mr Macdonald was largely aware, and which I have found was material" and "contained representations that were misleading or deceptive or likely to mislead or deceive investors".

[11] The FCA noted that Hunter "was the more dominant within GetSwift" but that Macdonald, "in almost all instances, approved the ASX announcements and the content of what was to be released to the market". The Liability Decision stated:

> …a reasonable director in the position of Mr Macdonald, acting with due care and diligence, would have foreseen the risk of a contravention of s 1041H of the *Corporations Act* or s 12DA of the *ASIC* Act. They would have appreciated the risk that the relevant Macdonald Omitted Information was important, accurate, complete and qualifying information in respect of each corresponding Macdonald Announcement and that without disclosing that Information, GetSwift would be engaging in misleading and deceptive conduct by painting an incomplete picture.

[12] The FCA concluded:

> I am therefore satisfied that Mr Macdonald well understood the connexion between the ASX announcements, investor expectations and GetSwift's share price. I am also satisfied that, although he was less blatant about it, Mr Macdonald was *ad idem* with Mr Hunter about the importance of imparting good news to the market at opportune times and the significance of marking ASX announcements as price sensitive.

[13] In the Penalty Decision, the FCA noted that neither Hunter nor Macdonald "have shown the slightest degree of remorse or contrition, nor have they made any acknowledgment they behaved improperly".

[14] The FCA disqualified Macdonald from managing corporations for 12 years and imposed a $1,000,000 Australian dollar penalty on him.

Background – re-domiciling to British Columbia

[15] On December 1, 2020, the FCA issued *GetSwift Limited, in the matter of GetSwift Limited (No 2)* [2020] FCA 1733 (Re-domiciling Decision). In it, the FCA noted that GetSwift entered into a scheme implementation deed to re-domicile GetSwift to Canada under the name GetSwift Technologies with the Commission as the principal regulatory body. Hunter and Macdonald were initially on the GetSwift Technologies board. In the Re-domiciling Decision, Macdonald was listed as president, managing director, and executive director of GetSwift Technologies.

[16] In the Penalty Decision, the FCA summarized GetSwift's re-domiciling:

> More remarkably, well after the balloon had gone up, the share price had plummeted, a class action had been started, and at around the same time the evidence concluded in the liability phase of the ASIC regulatory case before me, GetSwift sought to re-domicile to Canada. GetSwift convinced another judge of this Court to allow it to do so, partly on the basis of an undertaking that GetSwift Technologies Limited (GetSwift Technologies) would not take any steps to wind up GetSwift and would indemnify GetSwift in relation to penalties imposed in this case or in relation to an adverse judgment in the class action. ASIC did not pre-emptively make an application to me to restrain the removal of GetSwift from Australia when the highly unusual course was proposed during the pendency of the regulatory proceeding (although it is fair to record it did oppose the scheme approval in the separate proceeding).
>
> The undertaking was not worth the paper it was written on. GetSwift Technologies (as GetSwift's only member) resolved in July 2022 to place

> GetSwift into voluntary liquidation. The absence of any likely return means the class action brought by shareholders (*Webb v GetSwift Limited & Anor*, NSD 580 of 2018) has now settled with no recovery by those who suffered loss by reason of GetSwift's breaches. In approving settlement of the class action on 2 February 2023, Murphy J observed that GetSwift's "own misconduct has now brought it to its knees" and that its actions represented a "scandalous episode of corporate misconduct". One can only agree with his Honour's observations.

[17] On May 19, 2020, GetSwift Technologies was incorporated in British Columbia. In the BC Company Summary, Macdonald was listed as a CEO, president, and a director. Macdonald was also listed as a director in GetSwift Technologies Notice of Articles.

[18] On October 5, 2022, the Commission issued a cease trade order against GetSwift Technologies on the basis that it had "not filed the following periodic disclosure required by the Legislation":

1. annual audited financial statements for the year ended June 30, 2022,
2. annual management's discussion and analysis for the year ended June 30, 2022,
3. annual information form for the year ended June 30, 2022, and
4. certification of annual filings for the year ended June 30, 2022.

Position of the executive director

[19] The executive director is applying for the following orders against Macdonald under 161(1) of the Act:

(a) under section 161(1)(d)(i), Macdonald resign any position he holds as a director or officer of an issuer or registrant;

(b) Macdonald is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if he gives a registered dealer a copy of this decision, he may trade in or purchase securities only through a registered dealer in:

(A) RRSPs, RRIFs, or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or locked-in retirement accounts for his own benefit;

(ii) under section 161(1)(c), from relying on any of the exemptions set out in the Act, the regulations or a decision;

(iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;

(iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

(v) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

(vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of

(A) an issuer, security holder or party to a derivative, or

(B) another person that is reasonably expected to benefit from the promotional activity; and

(vii) under section 161(1)(vi) from engaging in promotional activities on Macdonald's own behalf in respect of circumstances that would reasonably be expected to benefit him.

[20] In his Application, the executive director stated that the Macdonald's "misconduct was aggravated by the repetition of the false or misleading disclosure" and because he "showed no contrition or remorse".

[21] The executive director relied on the following documents for the Application (not including legal authorities):

(a) Liability Decision

(b) Penalty Decision

(c) Re-domiciling Decision

(d) Notice of Articles, GetSwift Technologies

(e) BC Company Summary, GetSwift Technologies

(f) PPRS Search Result, GetSwift Technologies

(g) Press Release, GetSwift Technologies

(h) Cease Trade Order, GetSwift Technologies

Analysis

[22] The Commission is established under the Act to regulate the capital markets in British Columbia. Central to the Commission's mandate under the Act is to protect the investing public from those who would take advantage of them, and to preserve investor confidence in the regulated capital markets.

[23] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies, exchanges, and the courts. The Supreme Court of Canada in *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, stated, at paragraph 54:

> …s. 161(6) obviates the need for inefficient parallel and duplicative proceedings in British Columbia by expressly providing a new basis on which to initiate proceedings. In other words, s. 161(6) achieves the legislative goal of facilitating interprovincial cooperation by providing a triggering "event" *other than the underlying misconduct*. The corollary to this point must be the ability to actually rely on that triggering event -- that is, the other jurisdiction's settlement agreement (or conviction or judicial finding or order, as the case may be) -- in commencing a secondary proceeding. [emphasis in the original]

[24] Under section 161(6)(b), the Commission may, after providing an opportunity to be heard, make an order in respect of a person if the person "has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or derivatives".

[25] In his Application, the executive director cited *Re Arian Resources Corp.,* 2022 BCSECCOM 55, *Re Ruf,* 2020 BCSECCOM 156, and *Re FS Financial Strategies,* 2020 BCSECCOM 121, in support of his position that permanent bans are appropriate.

[26] *Arian* is a sanctions decision after the panel found that two officers of Arian authorized, permitted, or acquiesced in Arian making false and misleading statements, omitting material information from financial statements, and failing to disclose material changes to its business.

[27] The panel found that the matter was "at the high end of the range of seriousness of misconduct relating to the failure to make required disclosure" because the officers kept key information from the investing public that "completely undermined the purpose of the continuous disclosure regime that lies at the heart of securities regulation".

[28] Additionally, the panel found that "deliberate or negligent manner in which the [officers] dealt with Arian's disclosure is an aggravating factor". The panel imposed permanent prohibitions on both officers.

[29] *Ruf* is an order reciprocating a settlement agreement with the Alberta Securities Commission. Ruf was an officer and director of a religious charity and its not-for-profit company. The religious charity operated two funds where investors were promised set rates of interest on their investments. The charity provided promotional materials that were misleading. Due to his position on the board, Ruf was found to have authorized, permitted, or acquiesced in the breach of Alberta's securities laws. Ruf agreed to permanent market prohibitions as part of his settlement agreement. The Commission followed the settlement agreement and also imposed permanent market prohibitions.

[30] *FS* is a liability and sanctions decision. In *FS*, a number of companies, collectively referred to as the FS Group, and three directors and/or officers of the FS Group, raised over $47 million by using unsecured loan agreements and subscription agreements. The respondents did not disclose that the FS Group was not profitable, did not generate enough revenue to cover business expenses, and covered shortfalls by raising more money from investors.

[31] The respondents in *FS* admitted to misrepresentations, illegal distributions, unregistered trading, and breach of an undertaking to provide exemption reports to the Commission and refund all loans to investors who did not qualify for an exemption. The

directors/officers admitted that they permitted or acquiesced the FS Group's contraventions of the Act.

[32] The panel imposed permanent market bans on the two main directors/officers and a ten year ban on the third, who was the general manager of the FS Group and did what the two main directors/officers told him to do.

[33] The three cases relied on by the executive director are similar to GetSwift's misleading and deceptive statements that Macdonald was held responsible for. GetSwift's misrepresentations resulted in even more investments than the three cases cited by the executive director.

[34] We have considered the Application, the circumstances of Macdonald's misconduct, and the factors from *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, and *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.

[35] Macdonald's misconduct was extremely serious. In his Application, the executive director quoted the panel in *Re Michaels,* 2014 BCSECCOM 457, saying that misrepresentation is close to fraud in seriousness:

> Not far behind fraud, in the scale of seriousness of misconduct, stands misrepresentation. Those who operate and profit in the capital markets by misstating material facts (through commission or omission), undermine the confidence of the public in one of the cornerstones of capital markets regulation, the provision of accurate and complete information for investors to make informed investment decisions.

[36] As a result of the Macdonald's misconduct, investors in GetSwift lost much of their investment. The Application summarized the investors' harm after GetSwift had raised approximately $100 million dollars:

> When the share price dropped, your fraud was publicized, and court orders loomed, GetSwift transferred over $80M beyond the reach of Australian regulatory authorities and redomiciled to British Columbia. In violation of an undertaking it had made to the FCA, GetSwift promptly went into voluntary liquidation.

[37] Macdonald was instrumental in GetSwift's misrepresentations to Australian investors and in redomiciling GetSwift's business to British Columbia. His conduct resulted in harm to investors.

[38] We agree with the executive director that it is an aggravating factor that Macdonald abrogated his responsibilities as an officer and director of GetSwift in, as the panel in *Arian* said, a "deliberate or negligent manner". In the Penalty Decision, the FCA stated: "Of real significance in Mr Macdonald's case is his lack of insight or contrition" and that Macdonald showed "no evidence of contrition or remorse".

[39] In the Penalty Decision, the FCA disqualified Macdonald from managing corporations for 12 years. However, we consider Macdonald's misrepresentations, harm to investors, lack of remorse, abrogation of his responsibilities as an officer and director, and role in re-domiciling GetSwift's business, which prevented or interfered with Australian investors or creditors' ability to recoup their losses, as illustrations of why permanent

market bans on Macdonald are appropriate and proportionate to the precedents submitted by the executive director.

[40] In his Application, the executive director seeks a general prohibition on trading securities or derivatives with a carve out that would allow Macdonald to trade in or purchase exchange traded funds or mutual fund securities only through a registered dealer who has a copy of this decision. We find that Macdonald trading in the accounts stated in the order for his sole benefit does not pose a risk to the public and the capital markets so long as he provides a registered dealer with a copy of this order.

Order

[41] We find that it is in the public interest to order that:

(a) under section 161(1)(d)(i), Macdonald resign any position he holds as a director or officer of an issuer or registrant;

(b) Macdonald is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if he gives a registered dealer a copy of this decision, he may trade in or purchase securities only through the registered dealer in RRSPs, RRIFs, or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or locked-in retirement accounts for his own benefit;

(ii) under section 161(1)(c), from relying on any of the exemptions set out in the Act, the regulations or a decision;

(iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;

(iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

(v) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

(vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of

(A) an issuer, security holder or party to a derivative, or

(B) another person that is reasonably expected to benefit from the promotional activity; and

(vii) under section 161(1)(vi) from engaging in promotional activities on Macdonald's own behalf in respect of circumstances that would reasonably be expected to benefit Macdonald.

October 23, 2025

For the Commission

Gordon Johnson
Vice Chair

Douglas Seppala
Commissioner