

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

Citation: Re Oei, 2022 BCSECCOM 225

Date: 20220610

Paul Se Hui Oei

Panel	Gordon Johnson Deborah Armour, Q.C. James Kershaw	Vice Chair Commissioner Commissioner
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Submissions Completed April 22, 2022

Decision Date June 10, 2022

Appearing Laura L. Bevan Emily Stockley	For the executive director
Paul Se Hui Oei	For himself

Decision

I. Introduction

- [1] This is an application by Paul Se Hui Oei (Applicant) under section 165 of the *Securities Act*, RSBC 1996, c. 418 (Act) for a review of a decision of the executive director to submit notice to the Insurance Corporation of British Columbia (ICBC) under section 163.2(1)(a) of the Act to not issue or renew the Applicant's driver's license.

II. Background

- [2] On December 12, 2017, in a decision cited as *Re Oei*, 2017 BCSECCOM 365, a panel of the Commission found that the Applicant and companies that he controlled committed fraud contrary to section 57(b) of the Act sixty-three times, in the aggregate amount of \$5,003,088. Contrary to what investors had been told, the money invested by them was not used for the purpose for which it was raised. Rather, it was misappropriated by the Applicant and other respondents and used for their own purposes.
- [3] In the sanctions decision (*Re Oei*, 2018 BCSECCOM 231) (Sanctions Decision), the panel said that fraud is the most serious misconduct found in the Act and issued permanent market bans against the Applicant and other respondents. The Commission ordered the Applicant to pay to the Commission \$3,087,977.41 under section 161(1)(g) of the Act (Disgorgement Order) and an administrative penalty of \$4,500,000 under section 162 of the Act.
- [4] In making the Disgorgement Order, the Commission recognized that approximately \$2 million had been repaid to investors by the Applicant and one of his companies. The

amount of the Disgorgement Order was the difference between the amount fraudulently obtained and the amount returned.

- [5] A party other than the Applicant has paid \$69,887.85 on account of the Sanctions Decision. The Applicant has not paid any amounts and is therefore in default of the orders made under sections 161(1)(g) and 162 of the Act.
- [6] A letter dated August 13, 2021 was sent to the Applicant with a notice advising that, on September 27, 2021, the executive director would be advising ICBC that the Applicant was in default of the orders issued pursuant to the Sanctions Decision and that ICBC must not issue or renew the Applicant's driver's license. The notice to the Applicant advised him that he had an opportunity to be heard in relation to the proposed action by providing written submissions to the executive director.
- [7] By email dated September 27, 2021, the Applicant made submissions to the executive director in response to the proposed action. In summary, the Applicant objected to that action because he said he required his driver's license in order to act as an emergency driver for his father-in-law and his daughter. He also advised that he was at the edge of bankruptcy and had no ability to pay the amounts ordered in the Sanctions Decision. He also questioned whether the operative legislative provision had been approved by the Supreme Court of Canada. Written submissions were made by staff of the Commission responding to the Applicant's September 27 email.
- [8] After having considered the submissions of both parties, the executive director sent a notice dated October 29, 2021 to the Applicant wherein he advised that he had decided to direct ICBC not to issue or renew the Applicant's driver's license (Decision). That notice included the following reasons:
 - (a) the Applicant had given no information as to why he was the only one who could provide emergency support to his father-in-law,
 - (b) the Applicant had given no evidence of his inability to pay the amounts outstanding in the Sanctions Decision,
 - (c) court approval was not required before forwarding the notice to ICBC.
- [9] On November 10, 2021, the Applicant advised that he was seeking a review of the Decision.
- [10] The issuance of the notice to ICBC has been stayed until a determination of the review of the Decision has been made.

III. Applicable law

- [11] A person directly affected by a decision of the executive director may seek a hearing and review of that decision pursuant to section 165 of the Act:

Review of decision of executive director
165

...

(3) Except if otherwise expressly provided, any person directly affected by a decision of the executive director may, by a notice in writing sent to the Commission within 30 days after the date on which the executive director sent the notice of the decision to the person, request and be entitled to a hearing and a review of the decision of the executive director.

(4) On a hearing and review, the Commission may confirm or vary the decision under review or make another decision it considers proper.

...

- [12] BC Policy 15-601 - *Hearings* sets out procedures for hearings under the Act. Section 7.10 indicates the steps the Commission can take on a hearing and review application:

7.10 Scope of decisions – The Commission may confirm, vary or revoke the decision under review or make another decision it considers proper, including referring the matter back to the decision maker...

- [13] Section 163.2 of the Act provides a scheme whereby the executive director can ask ICBC to refrain from issuing or renewing drivers' licenses where individuals are in default of certain obligations under the Act. This is the first time that a panel of this Commission has considered those provisions. The relevant provisions read:

Debtor's licences and number plates

163.2 (1) If a person is in default of an order under section 155, 155.1, 157, 161 (1) (g), 162 or 162.04, or is in default of a notice under section 162.01, and the amount owing is \$3 000 or more, the Commission or the executive director may do either or both of the following:

- (a) forward to the Insurance Corporation of British Columbia a notice stating that the person is in default and that action under this section is to be taken in relation to the person's driver's licence;

...

(2) At least 30 days before forwarding a notice to the Insurance Corporation of British Columbia under subsection (1) (a), the Commission or the executive director must, in the manner prescribed by the regulations,

- (a) give the person notice that action under this section will be taken in relation to the person's driver's licence, and
(b) give the person an opportunity to be heard.

...

(4) On receipt of a notice under subsection (1) (a), the Insurance Corporation of British Columbia, for the applicable period under subsection (6), must not issue or renew a driver's licence of the person.

...

(6) Subsections (4) and (5) apply in relation to the person from the date the Insurance Corporation of British Columbia receives the applicable notice under subsection (1) until the earliest of the following:

- (a) the date the Insurance Corporation of British Columbia is advised by the Commission or the executive director that the order
 - (i) has been withdrawn, or
 - (ii) is no longer in arrears;
- (b) the date the Commission or the executive director directs the Insurance Corporation of British Columbia under section 163.3 to disregard that notice.

(7) The Commission or the executive director may, as a condition for acting under subsection (6) (a) (ii), enter into a payment arrangement with the person.

...

- [14] Under section 163.3 of the Act, we would consider varying the Decision if the Applicant established that denying him his driver's license would significantly reduce his ability to pay amounts owing and he also established that he had entered into a payment agreement with the executive director. Although that section is specifically addressed to a situation where a notice to ICBC is already in effect, we find the section provides a sufficient basis upon which to vary or revoke the Decision if the necessary facts are in place. That section reads:

Withdrawing the notice

163.3 (1) The Commission or the executive director must direct the Insurance Corporation of British Columbia to disregard a notice given under section 163.2 if the person referred to in that section satisfies the Commission or the executive director that

...

- (b) the lack of anything referred to in section 163.2 (4) [i.e. his license] or (5) will significantly reduce the person's ability to pay under the order under section 155, 155.1, 157, 161 (1) (g), 162 or 162.04, or under a notice under section 162.01, and the person has entered into an arrangement that is satisfactory to the Commission or the executive director to report the person's financial circumstances from time to time, or
- (c) the person has entered into a payment arrangement under section 163.2 that is satisfactory to the Commission or the executive director.

(2) If the Commission or the executive director refuses to act under subsection (1), the court, on application by the person, may summarily determine whether the refusal was unreasonable and, if the refusal is found to be unreasonable, may order the Commission or the executive director to act under subsection (1).

- [15] The Applicant and the executive director have referred to the Supreme Court of Canada decision in *Alberta (Attorney General) v. Moloney*, 2015 SCC 51. Mr. Moloney had owed money to the Alberta government as the result of a motor vehicle accident for which he was found to be liable. He subsequently went through federal bankruptcy proceedings and was discharged as a bankrupt. Alberta legislation allowed for the suspension of a driver's license to enforce a debt owed to the province even where the debt had been discharged as part of bankruptcy proceedings under the federal legislation, as was the case in *Moloney*. Mr. Moloney successfully challenged the legislation citing

the doctrine of paramountcy. The Supreme Court of Canada found that the Alberta legislation was an impermissible incursion into federal jurisdiction and was therefore unconstitutional.

IV. Positions of the parties

A. Executive director

- [16] The executive director opposes this application. He submits that there is no evidence that suggests the public interest is not served by issuing the notice to ICBC. Further, he submits that all of the relevant statutory provisions in section 163.2 of the Act have been met. The executive director refers to the Sanctions Decision where the original panel, in addressing the offences of the Applicant, said that fraud is the most serious of misconduct under the Act. He submits that it is in the public interest to issue the notice to ICBC under section 163.2 and that this panel should confirm the Decision.
- [17] Inconvenience to the Applicant and his family, submits the executive director, is not sufficient reason to not issue the notice to ICBC. Inconvenience is the expected outcome of the statutory provisions. The purpose of those provisions is to provide to the executive director a mechanism to assist with financial collections. It is in the public interest to give effect to those provisions.
- [18] The executive director notes that the Applicant has not provided any evidence to establish that there would be a significant impact on his ability to earn income if the ICBC notice were issued. The Applicant's submission that he may be prevented from getting a job is pure speculation.
- [19] The Applicant has paid nothing toward the Sanctions Decision and has not proposed to enter into a payment arrangement. The executive director submits that the debt collection mechanism found in section 163.2 is needed to encourage the Applicant to begin paying his debt to the Commission.
- [20] The executive director submits that the *Moloney* case cited by the Applicant found that the subject legislation was unconstitutional based on the doctrine of paramountcy. That doctrine is not applicable to this case.

B. The Applicant

- [21] The Applicant says that he needs a driver's license so that he can act as the designated emergency driver for his father-in-law who is 84 years of age and has health issues. His wife is working full time and thus cannot be the designated emergency driver. The Applicant also says he needs to be the emergency driver for his 11 year old daughter but gives no details around that need.
- [22] The Applicant advises that he is not able to pay anything to the Commission at the moment. He provided T4 slips showing income of \$6,985.58 for 2020 and \$12,448.84 for 2021. He states that he has considered bankruptcy but has not had the necessary funds to commence bankruptcy proceedings.

- [23] He submitted that taking away his driver's license would not help him find a job that required a driver's license or a better job than the one that he currently has. He provided some documents to show that he had applied for a Vehicle Sales Authority license in 2019 for which he says he requires a valid driver's license.
- [24] As part of his adjournment application, the Applicant told us that he was commencing employment in a customer support role for a communications company. He did not advise us that he needed a driver's license for that work.
- [25] The Applicant made a number of oral submissions in support of his position that the notice to ICBC should not be issued. He told us about his professional and volunteering experience prior to the Sanctions Decision which we understand he offered to show that he is an upstanding and contributing member of society.
- [26] He also made reference, on a number of occasions in his oral submissions, to the subject matter of the original hearings, taking issue with some of the findings of the original panel. He challenged the amount ordered in the Sanctions Decision by saying that one of the investors had obtained the money he invested through illegal means and that therefore that amount should be deducted from the amount the Applicant is required to pay. He also suggested that the Commission should seek to obtain some of the outstanding amounts from another party. He advised us that he also lost money as an investor.
- [27] The Applicant advised us that he does not own a car. He said that because of his lack of credibility resulting from the findings that have been made against him by the Commission, no one is going to hire him. He also advised us that he has no assets and suggested that given his inability to pay, the amount of the Sanctions Decision should be lowered.
- [28] The Applicant referred us to the *Moloney* case and said that the Supreme Court of Canada ruled unconstitutional, a similar scheme in Alberta that allowed the government to remove drivers' licenses to enforce payment of debts.

V. Analysis

- [29] We find that the Applicant has properly brought this application under section 165 of the Act. He is a person directly affected by the Decision. Our purpose on this hearing and review is to determine whether the Decision should be confirmed, varied or revoked.
- [30] As noted above, the Applicant has made submissions that challenge the original orders in the Sanctions Decision and seek to reduce those orders because some of the amounts invested were illegally obtained. The Applicant has also submitted that the Commission should look to another party to pay part of the amounts outstanding. We find those submissions to be irrelevant. We do not have the jurisdiction on this hearing and review to determine whether orders issued as part of the Sanctions Decision should be varied.
- [31] We find that the necessary conditions found in section 163.2 of the Act are met to allow the executive director to forward to ICBC a notice stating that the Applicant is in default and that action is to be taken in relation to the Applicant's driver's license. Specifically,

the Applicant is in default of orders under sections 161(1)(g) and 162. The amount owing is \$7,518,089.56 and is significantly greater than the \$3,000 threshold. The executive director has given the Applicant the necessary notice of at least 30 days before the action to be taken and the right to be heard. We also find that the Applicant does not meet the requirements under section 163.3, namely he has not established that the lack of a license will significantly reduce his ability to repay the amounts outstanding under the Sanctions Decision.

- [32] We are not aware of any compelling public interest reasons for us to not give effect to the subject provisions. To the contrary, we find that it is in the public interest to give effect to the scheme in section 163.2. The legislature has seen fit to give those powers to the executive director to aid in collection of amounts outstanding in circumstances such as the ones in the matter before us.
- [33] The Applicant was found to have committed the most serious misconduct under the Act. Significant sums of money were fraudulently misappropriated by the Applicant and others. The Applicant has neither paid any part of the very significant amounts that remain outstanding nor made any proposal for a payment plan. Lastly, we note that the Applicant continues to show no remorse or responsibility for his role in the fraud and misappropriation in this matter and, through his own acts and words, makes clear that he has failed to accept the original findings and decision of the panel. He attempted a number of times through his oral testimony, to depict himself as the victim and to shift the focus to others.
- [34] The Applicant seems to suggest in his submissions that he would have to pay all of the amounts outstanding pursuant to the Sanctions Decision in order to avoid being subject to section 163.2. That is not necessarily the case. Under section 163.2(6) and (7), the executive director has the discretion to enter into a payment arrangement with the Applicant and direct ICBC to disregard the notice requiring that the Applicant's driver's license not be issued or renewed.
- [35] The Applicant has not led any evidence to establish that he needs his driver's license to gain meaningful employment. We agree with the executive director that the Applicant's submission that he needs a driver's license to get better employment to be pure speculation. We were told by the Applicant that he had obtained employment in customer support. He did not submit that he needed to drive for that employment.
- [36] We do not find the Applicant's submissions with regard to his role as an emergency driver for his father-in-law and daughter persuasive. The Applicant acknowledged that his father-in-law might be able to call an ambulance if he were facing a medical emergency but said that if that were not the case, he would have to call the Applicant. The Applicant said he would use his father-in-law's car in that situation.
- [37] We have considered the Applicant's submission carefully. We have no basis to doubt that if the Applicant was called upon to assist his father-in-law the Applicant would have to get himself to his father-in-law's residence and then drive his father-in-law to the hospital. That might take much longer than calling an ambulance to transport his father-

in-law directly to the hospital. We do not understand how it might be that his father-in-law would not be able to dial 911 but would be able to call the Applicant. In any event, we do not find the Applicant's speculation of potentially being required to drive his father-in-law to a hospital instead of using the available services of an ambulance sufficiently compelling to vary the decision of the executive director.

- [38] In our view an applicant's need to be available to provide medical assistance for a family member is a factor to consider. However, in the circumstances present it is not a compelling factor.
- [39] As for providing emergency driver support for his daughter, in the absence of evidence as to a specific need, we are not able to give any credence to that submission.
- [40] Lastly, we do not find *Moloney* to be relevant. While the legislative scheme being challenged in *Moloney* was similar to section 163.2 insofar as it allowed the Alberta government to refrain from issuing or renewing a driver's license to enforce payment of a debt, the challenge to that legislation and the substance of the decision of the Court related to the doctrine of paramountcy as between federal and provincial legislative schemes. The provincial legislation in that instance was found to have violated that doctrine as it purported to allow the Alberta government to suspend a license even where the subject debt had been discharged in federal bankruptcy proceedings. The subject legislation in our case does not contain such a provision, and the issue of conflicting legislation is not before us.

VI. Conclusion

- [41] The application to vary or revoke the decision of the executive director to issue the notice to ICBC is dismissed.

June 10, 2022

For the Commission

Gordon Johnson
Vice Chair

Deborah Armour, Q.C.
Commissioner

James Kershaw
Commissioner