



British Columbia  
Securities Commission

REPLY TO:

**Deborah W. Flood**

T: 604-899-6623 / F: 604-899-6633

Email: [dflood@bcsc.bc.ca](mailto:dflood@bcsc.bc.ca)

**By Regular Mail**

February 16, 2021

Dear Mr. Gozdek:

**Richard Francis Gozdek  
Reciprocal Order Application**

I am writing this letter on behalf of the Executive Director of the British Columbia Securities Commission (the Executive Director).

This letter notifies you and the British Columbia Securities Commission (the Commission) that the Executive Director is applying for orders against you under sections 161(6)(b) and 161(1) of the *Securities Act*, RSBC 1996, c. 418 (the Act). The Executive Director is not seeking a financial penalty.

The Executive Director is making this application based on your criminal conviction for breaching an order of the Executive Director.

**CRIMINAL CONVICTION**

1. On December 11, 2019, you pled guilty, partway through trial, to breaching an order of the Executive Director contrary to section 155(1)(c) of the Act.

**Probation Order**

2. On December 23, 2019, the Honourable Judge Gunnell, of the Provincial Court of British Columbia sentenced you to the following:
  - (a) Restitution order in the amount of \$10,000
  - (b) Fine in the amount of \$5,000, payable by December 21, 2020
  - (c) 1 year probation
3. The reasons for your sentence are set out in *R. v. Gozdek*, Abbotsford Registry, File No. 89121-1 (Reasons for Sentence).



***Prior Order***

4. On June 18, 2013, you entered into a settlement agreement with the Executive Director admitting you had traded and distributed securities without being registered and without having filed a prospectus, contrary to sections 34 and 61 of the Act (Settlement Agreement and Undertaking).<sup>1</sup>
5. Your contraventions of sections 34 and 61 arose from your role as a sales associate for a company. You raised \$550,778 from investors, without a prospectus and without being registered.
6. The terms of the Settlement Agreement included an undertaking to pay \$65,062.30 to the Commission, and your consent to the Executive Director issuing an order including provisions under section 161(1) of the Act.
7. The Executive Director made an order against you dated June 18, 2013 (Order). The Order included the following terms:
  - i. under section 161(1)(a) of the Act, you comply fully with the Act, the Securities Rules, and any applicable regulations;
  - ii. under section 161(1)(b) of the Act, you cease trading, and are prohibited from purchasing securities or exchange contracts except that you may trade securities through one account in your own name with a person who is registered to trade securities under the Act;
  - iii. under section 161(1)(d)(i) and (ii), you resign any position you hold as, and you are prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
  - iv. under section 161(1)(d)(iii), you are prohibited from becoming or acting as a registrant, investment fund manager or promoter;
  - v. under section 161(1)(d)(iv), you are prohibited from acting in a management or consultative capacity in connection with activities in the securities markets; and
  - vi. under section 161(1)(d)(v), you are prohibited from engaging in investor relations activities.<sup>2</sup>
8. The Order remained in force until the later of 5 years from June 18, 2013 and the date that the amount in the undertaking is paid. You paid the undertaking on June 15, 2017 and the terms of the Order expired on June 18, 2018.

---

<sup>1</sup> [\*Gozdek \(Re\)\*](#), 2013 BCSECCOM 224

<sup>2</sup> [\*Gozdek \(Re\)\*](#), 2013 BCSECCOM 223



**Summary of Findings**

9. Between January 1, 2015 and January 31, 2015, at or near Abbotsford, Surrey, and Vancouver, British Columbia, you breached the Order by trading in securities (Probation Order).

10. The following findings are contained in the Reasons for Sentence:

- (a) You were contacted by SC. During a conversation with SC, you suggested to her that she might be able to make some money by investing money in Worldwide Marihuana Inc.

Reasons for Sentence, paras. 2-3

- (b) You sent SC emails which persuaded her to get her husband to cash in money from an RSP. SC used that money to invest \$10,000. SC did not receive her money back, nor did she receive any return on her investment whatsoever.

Reasons for Sentence, paras. 3-5

- (c) A joint submission for a fine and probation was made to the court. It was made on the basis that you would return SC's investment of \$10,000.

Reasons for Sentence, para. 7

- (d) You asserted that you did not understand the extent of the settlement agreement, or that the Order prohibited you from involvement in trading.

Reasons for Sentence, para.8

**THIS APPLICATION**

10. With this letter, the Executive Director is applying to the Commission for orders against you under section 161 of the Act. I have enclosed a copy of section 161 of the Act for your reference.
11. In making orders under section 161 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities.
12. Orders under section 161(1) of the Act are protective, preventative, and intended to be exercised to prevent future harm.

*[Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)](#)*,  
[2001] 2 SCR 132, 2001 SCC 37 (CanLII), paras. 36, 39,  
and 56



13. In [\*Re Eron Mortgage Corporation\*](#), [2000] 7 BCSC Weekly Summary 22, and in subsequent decisions, the Commission identified factors to consider when determining orders under section 161(1).
14. The following factors from *Re Eron* are relevant in this proceeding:
  - (a) the seriousness of the respondent's conduct,
  - (b) the harm suffered by investors as a result of the respondent's conduct,
  - (c) the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct;
  - (d) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
  - (e) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
  - (f) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
  - (g) orders made by the Commission in similar circumstances in the past.

[\*Re Eron Mortgage Corporation\*](#), [2000] 7 BCSC Weekly Summary 22

### **Application of the Factors**

#### ***Seriousness of the Conduct***

15. Orders made following enforcement proceedings are an integral part of the Commission's regulatory function. If those who are subject to these orders can simply ignore them with impunity then the enforcement role of the Commission would be greatly impaired.

[\*Malone \(Re\)\*](#), 2016 BCSECCOM 257, para. 7

16. The circumstances and misconduct that led to the Order is, in part, similar to the misconduct that led to the breach of the Order.
17. You contravened the Order less than two years after you consented to it. Your conduct overall shows a pattern of behavior where securities laws are not treated seriously or are ignored.

#### ***Harm suffered by investors***

18. SC suffered financial loss for almost four years prior to an order of restitution from the Court. It is unclear from the Reasons for Sentence whether SC received repayment of her investment.
19. Repayment of investor's funds is not a mitigating factor for the purpose of sanctions.



[Re Davis](#), 2016 BCSECCOM 375, para. 22

***Damage done to the integrity of the B.C. capital market***

20. If those who are subject to Commission orders could breach them with impunity, the enforcement function of the Commission would be rendered ineffective. This would cause significant damage to the markets of British Columbia, for they would be perceived as essentially unregulated.

[Corporate Express Inc. \(Re\)](#), 2005 BCSECCOM 583, para. 22

21. Investors lose confidence in the markets and become hesitant to invest if they cannot trust those who sell securities to do so in compliance with securities regulations, and to inform them of all the facts would reasonably be expected to have a significant effect on the value of their investments before they invest.

[Wireless Wizard Technologies Inc. \(Re\)](#), 2015 BCSECCOM 443, at para. 11

22. You failed to advise SC that you were subject to the Order. Your conduct clearly damaged the reputation and integrity of our capital markets.

***Risk to investors and the capital markets***

23. You represent a significant risk to our capital markets. You were previously sanctioned for misconduct in our capital markets, but despite this sanction you carried on conduct in breach of the regulatory restrictions imposed on you.

***Participation in our capital markets***

24. The breach of the Order demonstrates your unwillingness to comply with the directives of a regulator in a highly regulated industry. Those who breach such orders must be viewed as a significant risk to our capital markets.

***Fitness to be a registrant or a director or officer***

25. Core requirements to fitness as a director or officer of a public issuer are honesty, integrity, and an ability to act in the best interest of shareholders.

[Re Mountainside Gold Inc.](#), 2019 BCSECCOM 123, para. 20

26. Participants who engage in the securities industry do so voluntarily and for their own profit. In exchange for the privilege of participating, individuals and companies must comply with securities laws. Compliance is paramount, ensuring the protection of the public and the integrity of the capital markets.



27. You have been sanctioned twice; first by the Executive Director, and now criminally for your misconduct. This raises concern about your fitness to be an officer or director of an issuer.
28. Your conduct falls far short of that expected of all participants in our capital markets.

***Deterrence***

29. Fostering adherence to, and the vitality of orders is of significant public interest. As a consequence, a penalty which focuses on general deterrence is warranted for breach of a prior order of the Executive Director.

[Streamline Properties Inc. \(Re\)](#), 2014 BCSECCOM 263, para. 67

30. The orders the Executive Director is seeking are intended to demonstrate the consequences of your conduct, to deter you from future misconduct, and to deter others. Lengthy market bans are proportionate to your misconduct and are necessary to ensure that you and others will be deterred from engaging in similar misconduct in the future.

***Previous orders***

31. We refer to two decisions below for guidance on the appropriate sanction in which the Commission ordered seven year market bans and administrative penalties for the same contravention, and/or a similar amount of quantum.
  - [Malone \(Re\)](#), 2016 BCSECCOM 334, and
    - The respondent was subject to an order prohibiting him from acting as director or officer of any issuer and from engaging in investor relations activities until the later of three years and the completion of a course of study satisfactory to the executive director. The order arose from the respondent publishing misleading claims in an executive summary and offering memoranda. Notwithstanding the order, the respondent acted as a *de facto* director and officer of an issuer. The respondent also engaged in investor relations activities in contravention of the order, specifically, soliciting one investor, to purchase securities of an issuer in the amount of \$5,000.
  - [Re Jardine](#), 2016 BCSECCOM 82
    - The respondent was subject to an order prohibiting him from acting as a director or officer of an issuer. The order arose from misconduct involving misleading statements by an issuer. Notwithstanding the order, the respondent formed a new company, in which friends of the respondent were appointed as nominee



directors. The respondent then acted as the *de facto* controlling mind of the newly formed issuer in contravention of the original order.

32. Your misconduct is generally comparable to the decisions above. In terms of investor harm, your misconduct is most similar to *Malone (Re)*, as in that case one investor was harmed. In terms of the amount of investment funds solicited, your misconduct is more serious than *Malone (Re)* as your misconduct involved twice the investment funds. However, this factor can be balanced out by Malone's multiple breaches of the commission order (acting as a *de facto* director as well as conducting investor relations activities). Balancing the factors evident in *Malone (Re)* and in your case, the seven year market prohibition in *Malone (Re)* is an appropriate sanction for your misconduct.

***The Davis Consideration***

33. In the Court of Appeal decision in [\*Davis v. British Columbia \(Securities Commission\)\*](#), 2018 BCCA 149, the Court identified that it is incumbent upon a tribunal to consider a respondent's individual circumstances when determining whether measures short of a permanent ban would protect the investing public where a person's livelihood is at stake.
34. The Executive Director is unaware of any individual circumstances that would support orders short of a lengthy market ban.

**ORDERS SOUGHT**

35. Although there is no limitation on the Commission from imposing a capital market sanction that is similar or different to the decisions cited above, the Commission needs to consider what is reasonable based on the evidence known to it, as well as what is in the public interest.
36. In seeking orders under 161(1) of the Act, the Executive Director has taken the following factors into consideration when applying for orders in this proceeding:
- (a) the circumstances of your misconduct;
  - (b) the factors from *Eron* and *Davis*;
  - (c) the sanctions ordered in previous cases cited above; and
  - (d) the public interest.
37. Taking the factors at paragraph 36 into consideration, the Executive Director is seeking the following orders pursuant to section 161(1) of the Act:
- (a) under section 161(1)(d)(i), you resign any position you hold as a director or officer of an issuer or registrant;



(b) you are prohibited, for a period of seven (7) years from the date of this order:

- (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives;
- (ii) under section 161(1)(c), from relying on any of the exemptions set out in this 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 the person's own behalf in respect of circumstances that would reasonably be expected to benefit the person.

38. The Executive Director is not seeking any monetary sanctions against you.

#### **SUPPORTING MATERIALS**

39. In making this application, the Executive Director relies on the following, copies of which are enclosed, and are available by clicking on the following hyperlinks

- (a) Probation Order
- (b) [\*Gozdek \(Re\)\*](#), 2013 BCSECCOM 224 (Settlement Agreement and Undertaking)
- (c) [\*Gozdek \(Re\)\*](#), 2013 BCSECCOM 223 (Order)
- (d) *R. v. Gozdek* (Reasons for Sentence)
- (e) [\*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)\*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (f) [\*Re Eron Mortgage Corporation\*](#), [2000] 7 BCSC Weekly Summary 22
- (g) [\*Malone \(Re\)\*](#), 2016 BCSECCOM 257





- (h) [\*Re Davis\*](#), 2016 BCSECCOM 375
- (i) [\*Corporate Express Inc. \(Re\)\*](#), 2005 BCSECCOM 583
- (j) [\*Wireless Wizard Technologies Inc. \(Re\)\*](#), 2015 BCSECCOM 443
- (k) [\*Re Mountainside Gold Inc.\*](#), 2019 BCSECCOM 123
- (l) [\*Streamline Properties Inc. \(Re\)\*](#), 2014 BCSECCOM 263
- (m) [\*Re Jardine\*](#), 2016 BCSECCOM 82
- (n) [\*Davis v. British Columbia \(Securities Commission\)\*](#), 2018 BCCA 149

#### **YOUR RESPONSE**

40. You are entitled to respond to this application. To do so, you must deliver any response in writing, together with any supporting materials, to the Commission Hearing Office by **Thursday, March 25, 2021**.

41. The contact information for the Commission Hearing Office is:

Commission Hearing Office  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
12<sup>th</sup> Floor, 701 West Georgia Street  
Vancouver, BC V7Y 1L2  
E-mail: [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca)  
Telephone: 604-899-6500

42. If you do not respond within the time set out above, the Commission will decide this application and may make orders against you without further notice.

43. The Commission will send you a copy of its decision.

44. **If you have any questions regarding this application, please contact Ms. Deborah Flood, at 604-899-6623, or [dflood@bcsc.bc.ca](mailto:dflood@bcsc.bc.ca)**

Yours truly,

Douglas B. Muir  
Director, Enforcement

DWF/crc  
Enclosures

cc: Hearing Office (by email to [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca))