IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, C. S.5, AS AMENDED

- AND -

IN THE MATTER OF
FRANCIS JASON BILLER

Hearing:	September 29, 2005		
Panel:	Robert L. Shirriff, Q.C.	-	Commissioner (Chair of the Panel)
	Robert W. Davis, FCA	-	Commissioner
	Carol S. Perry	-	Commissioner
Counsel:	Pamela Foy	-	On behalf of Staff of the Ontario Securities Commission
Agent:	Michael J. Whitney	-	On behalf of Francis Jason Biller

DECISION AND REASONS

INTRODUCTION

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to section 127 of the *Securities Act,* R.S.O. 1990, c. S. 5 as amended (the "Act") to consider whether it was in the public interest to make an order against the respondent, Francis Jason Biller ("Biller").

[2] Staff of the Commission ("Staff") submitted that Biller had engaged in conduct contrary to the public interest. Staff further submitted that this conduct was fraudulent in nature and contributed to financial losses of approximately $170 million to Canadian investors and thus raised a reasonable apprehension of future harm to the capital markets. Accordingly, Staff sought an order:

a. that Biller cease trading in securities permanently;

b. that any exemptions contained in Ontario securities law do not apply to Biller permanently;

c. that Biller be required to resign all positions that he holds as a director or officer of an issuer;

d. that Biller be prohibited from becoming or acting as an officer or director of an issuer permanently;

e. that Biller pay a portion of the costs of the investigation and of this proceeding; and

f. such other order as the Commission may deem appropriate.

[3] Staff submitted that the order sought was necessary to maintain the integrity of the capital markets, to protect investors and to ensure public confidence in the capital markets.

[4] Following the hearing held on September 29, 2005, we made an order on October 12, 2005 against Biller. These are our reasons for that order.

BACKGROUND

[5] Biller was a former principal of Eron Mortgage Corporation ("Eron") and its related entities. He obtained registration as a mortgage broker under the *Mortgage Brokers Act,* R.S.B.C. 1996, c. 313 (the "Mortgage Brokers Act") in June 1994 and was promoted to vice president of Eron sometime in 1995. At no time was Biller registered with the British Columbia Securities Commission (the "B. C. Securities Commission") in any capacity.

[6] Eron was registered as a mortgage broker under the *Mortgage Brokers Act*. The other Eron entities were not registered in any capacity nor were they reporting issuers in either British Columbia or Ontario.

[7] Eron's principal business was as a broker of syndicated mortgages for the financing of real estate developments projects. Eron would broker these mortgages by sponsoring a particular real estate development project and finding investors who would lend money to the developer of the project. Eron raised funds from a large number of investors by way of separate mortgages, on the premise that each investor would receive a registered interest in a mortgage on the project through a trust arrangement. In addition, Eron issued promissory notes to investors as a means of raising capital for its various real estate projects.

[8] Eron failed to investigate and evaluate adequately the real estate projects it sponsored before funding them, and failed to manage the capital advances to the projects. Some projects were either over-valued or over-funded with the result that they could not generate sufficient funds to pay back their investors.

[9] Eron through Biller and his team solicited investments in mortgages and notes. They employed a variety of marketing techniques including seminars, television and print advertisements, promotional materials, "cold calls" and individual meetings in order to persuade potential investors to invest in various Eron projects.

[10] Biller and Brian Slobogian (the founder of Eron) solicited investors publicly. They appeared in television advertisements and made presentations at investor seminars.

[11] The representations to investors emphasized high rates of return and low risk. Biller, through his marketing efforts made material and fraudulent misrepresentations with respect to the nature of the Eron investments, the level of risk associated with them and the manner in which the investors' funds were being invested. For example, investors were told that the loan-to-value ratio of the mortgage would never exceed seventy-five percent of the market value of the land, thus providing an equity cushion of twenty-five percent to protect their investments.

[12] By the fall of 1997, Eron had raised over $240 million from investors through the brokering of mortgages and the sale of promissory notes for 83 different projects. On October 3, 1997, the Registrar of Mortgage Brokers suspended Eron's mortgage broker registration and all operations were terminated. Following the close of Eron's business, the court-appointed receiver, Price Waterhouse Coopers, estimated the financial losses to investors would exceed $170 million.

[13] From 1993 to 1997, Biller earned over $6.3 million in commissions through his involvement with Eron. Together with the income from his own Eron investments, it is estimated that Biller's total earnings from Eron were close to $7 million.

HISTORY OF PROCEEDINGS AGAINST BILLER

A. B. C. Securities Commission

[14] As a result of Biller's conduct, proceedings were initiated against him by the B. C. Securities Commission.

[15] On November 26, 1999, after a 31 day hearing, the B. C. Securities Commission found that all of the respondents including Biller:

> a. traded and distributed without being registered and without filing a prospectus, contrary to section 34 and 61 of the Securities Act, R.S.B.C. 1996, c. 418 (the "*British Columbia Securities Act*");
>
> b. made misrepresentations, contrary to subsection 50(1)(d) of the *British Columbia Securities Act*;
>
> c. perpetrated a fraud on persons in British Columbia, contrary to subsection 57(b) of the *British Columbia Securities Act*;
>
> d. acted contrary to the public interest.

[16] At page 2 of its reasons dated February 16, 2000, the B. C. Securities Commission summarized the Eron matter as follows:

> [M]assive fraud and misplaced trust. Investors were seriously misled about the nature of their investments, the level of risk associated with the investments and how their money was being invested and spent. Eron encouraged investors, many of whom were unsophisticated, to trust Eron and they did so. As is apparent from our Findings, this trust was abused by the respondents, who acted dishonestly, contrary to the public interest and contrary to fundamental provisions of the Act. As a result of the respondents' actions, the investors' financial losses will exceed $170 million. The loss of the investors' health, their happiness and the security they expected to enjoy in their retirement years is incalculable.

[17] Further, the B. C. Securities Commission stated at page 6 that:

> Nevertheless, we also found that Biller failed in discharging his duties to the Eron investors. His failure to do so contributed significantly to the harm done to them.

> …[B]iller's conduct contributed significantly to the investor's losses and to the damage to the integrity of the capital markets. In addition, Biller enjoyed substantial enrichment during the relevant period. We found his earnings from Eron to be between $6 million and $7 million.

[18] Accordingly, the B. C. Securities Commission issued an order imposing a 10 year trading ban on Biller, and prohibited him from acting as a director or officer of any issuer or from engaging in investor relations activities for a period of 10 years.

[19] Biller was also ordered to pay an administrative penalty of $100,000 and costs in the amount of $69,841.73. To date, Biller has failed to pay either the administrative penalty or the costs ordered by the B. C. Securities Commission.

B. Criminal Charges and Guilty Pleas

[20] Biller and Brian Slobogian were also charged pursuant to the *Criminal Code of Canada*, R.S. 1985, c. C-46 (the "Criminal Code") in connection with their conduct at Eron.

[21] In March 2005, Brian Slobogian pled guilty in the B.C. Supreme Court to five of the fourteen counts with which he was charged and received concurrent sentences for a total sentence of six years' imprisonment (see *R. v. Slobogian*, [2005] B.C.J. No. 632 (B.C.S.C)).

[22] In April 2005, Biller pled guilty in the British Columbia Supreme Court to four counts of securities-related fraud contrary to section 380(1) of the *Criminal Code* and one count of misappropriation of funds contrary to section 334(a) of the *Criminal Code* in connection with his involvement in five Eron projects.

[23] The amount of capital raised in respect of the Eron projects at issue in the criminal proceedings represented approximately $30 million of the overall $240 million raised by Eron. Of the $30 million raised for these projects, the court noted that approximately $25 million of investors' loans remained unrecovered by them.

[24] As mentioned above, Biller earned $6.3 million in commissions through his involvement in Eron. Of this, approximately $666,000 was earned by way of commissions in connection with the projects at issue in the criminal proceedings. In addition, Biller earned an unknown amount as a share of the "profits" in connection with each of the projects.

[25] In her sentencing reasons, Madam Justice Boyd noted the magnitude of the losses to investors and the scale of the fraud. She stated at paras. 43-44:

> While I have found that Biller is not directly responsible for the entirety of these losses, it must be acknowledged that he played a central role in the marketing of the projects and the raising of the funds.
>
> The many victim impact statements which have been filed recount in detail the terrible losses the many investors have suffered -- including financial ruin, emotional trauma, family strife, divorce and ill health. There is no category of individual who was not affected here. The victims included the young and the old, the sophisticated as well as the unsophisticated, those with some measure of wealth and those with little other than some meagre life savings. Some investors had no savings and borrowed in order to invest in the Eron projects. Some victims have suffered financial ruin. Others have recovered, but have abandoned any thoughts of an early retirement or a comfortable retirement, or dreams of home ownership, or travel or an ability to provide any kind of inheritance to their family. For many the emotional toll is ever present some eight years later.

[26] Further, when discussing sentencing principles, Madam Justice Boyd wrote at paras. 56-57:

> While it is clear that I have found Biller's overall level of culpability to be substantially less than that of his senior and mentor-Slobogian -- I reject the notion that he escapes the label of rogue. While he perhaps did not set out to deliberately fleece the public, he clearly decided at some point that the public was not entitled to full and proper disclosure. His guilty pleas reflect his admission that he omitted to provide the new and old investors with crucial information concerning their investments. As I have already found, even as an unsophisticated mortgage broker, Biller would well know that the investors would thus be unable to assess the risk involved and make a proper investment decision. His actions or omissions are particularly egregious in the case of Shuswap Falls, where he assumed the further role of bare trustee of the property, well aware of the terms of the Declaration of Trust in the investors' favour.
>
> Thus while I recognize that Biller's role was a subsidiary one in this overall fraud scheme, his contribution may still not be ignored. His knowing participation in repeated omissions to disclose salient information is totally unacceptable, criminal behaviour and in my view both the sentencing principles of general and specific deterrence as well as denunciation of the unlawful conduct are engaged here.

[27] In rejecting Biller’s request for a conditional sentence, Madam Justice Boyd stated that at para. 84:

> Next, given that the concept of general deterrence is encompassed in the concept of ensuring the offender poses no risk to the safety of the community, I am concerned that the levying of a conditional sentence upon Biller would send a dangerous message to other like minded individuals -- either mortgage brokers or those in the security industry generally -- namely that Biller's omissions of disclosure of material information to investors carried no terrible consequences in terms of a criminal sanction. To adopt Hill J's words there would be a consequent "dilution of any deterrent effect" to be attached to the sentence. In this sense I am not satisfied that the statutory conditions of s. 742.1(b) would be met by imposing a conditional sentence.

[28] Accordingly, in September 2005 Biller received a concurrent sentence of three years on the first count of fraud; 18 months on the second count of fraud; and two years less a day on the remaining two fraud counts and one count of theft. He is currently incarcerated in a federal penitentiary in British Columbia.

PRELIMINARY ISSUES

A. Respondent's Representation and Attendance at the Hearing

[29] If an oral hearing is held, a party is entitled to notice of it and to be present at all times while evidence and submissions are being presented in order to obtain full disclosure of the case the party has to meet. In this case, Biller consented to having the hearing take place before the Commission while serving his sentence at the penitentiary and to being represented at the hearing by an agent duly appointed by him.

[30] Biller authorized Michael Whitney to act as his agent for the purposes of the hearing. The agency appointment was filed with the Commission on October 11, 2005 and was reviewed and accepted by the panel.

B. Commission's Jurisdiction

[31] In this case, Biller's illegal activities which led to the decision by the B. C. Securities Commission and the Supreme Court of British Columbia took place in British Columbia.

[32] A transactional nexus to Ontario is not a necessary pre-condition to the Commission's public interest jurisdiction. Rather a connection to Ontario is only one of a number of factors to be considered in the exercise of its discretion under section 127 of the Act.

[33] In *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 (“Asbestos”), the Supreme Court of Canada had to decide whether the Commission had to be satisfied that a sufficient Ontario nexus or connection to Ontario had been established as a pre-requisite to exercising its jurisdiction. At paragraph 51, the Supreme Court stated:

> I agree with Laskin J.A. that "the Commission did not set up any jurisdictional preconditions to the exercise of its discretion" (p. 273). *In my view, the erection of such a jurisdictional barrier by the OSC is inconsistent with its having fought in the earlier proceedings for the recognition of its jurisdiction to hear this matter.* Furthermore, in its reasons in the present case, the OSC clearly rejected the idea that the transactional connection factor could act as a jurisdictional barrier to the exercise of its public interest discretion. At para. 63, the OSC quoted the decision of McKinlay J.A. in the earlier proceedings rejecting a transactional connection with Ontario as an implied precondition to the exercise of its s. 127 jurisdiction. The OSC then continued, at para. 64:
>
> > . . . we regard this statement as a refusal to impose a "sufficient Ontario connection" as a jurisdictional requirement which must be satisfied in any clause 127(1)3 proceedings before the Commission's discretion arises, thus leaving it to the Commission to make the necessary discretionary determination unencumbered by any a priori requirement imposed by the court as a matter of interpretation of the statutory provision. (Emphasis added)

[34] Further, at paragraph 52, the Supreme Court of Canada stated:

> Moreover, at para. 68 of its reasons, rather than raising "transactional connection" as a jurisdictional barrier, the OSC identified the transactional connection with Ontario as one of several relevant factors to be considered in determining whether to exercise its public interest discretion, including, *inter alia* , the motive behind the structure of the transaction at issue:
>
> > Were the transactions before us "clearly abusive of investors and of the capital markets", to quote *Canadian Tire*? Were they "clearly designed to avoid the animating principles behind [the take-over bid] legislation and rules", to quote the same decision? Were they "clearly abusive of the integrity of the capital markets, which have every right to expect that market participants . . . will adhere to both the letter and the spirit of the rules that are intended to guarantee equal treatment of offerees in the course of a take-over bid, no matter by whom the bid is made" and is the result "manifestly unfair to the public minority shareholders -- who lose the opportunity to tender their shares -- at a substantial premium", to quote H.E.R.O.? And finally, does "the transaction in question

> [have] a sufficient Ontario connection or 'nexus' to warrant intervention to protect the integrity of the capital markets in the province", to quote that decision?

[35] Accordingly, an Ontario connection is not a pre-condition to the exercise of the Commission's jurisdiction. It is however, a factor considered in *Asbestos* and can be considered by the Commission in this case in exercising its discretion.

[36] Biller's conduct in Eron was so egregious and the losses to investors so significant that investor confidence in the Ontario capital markets would be damaged if this panel could not consider and, if it thought to be in the public interest to do so, make an order against Biller under section 127 of the Act.

PARTIES' SUBMISSIONS

A. Staff

[37] Staff sought its proposed orders against Biller on the grounds that his criminally fraudulent conduct raised a reasonable apprehension of future harm to the capital markets. Staff submitted that there was evidence to establish that following the service of his sentence, Biller intended to return to Ontario to promote the operations of an organization called Extreme Poker Ltd.

[38] Staff submitted that an order permanently removing Biller from the Ontario capital markets was required in order to maintain the integrity of the capital markets, to ensure investor confidence in the capital markets and to protect investors in Ontario.

[39] Staff submitted that any caution exercised by the Commission in making an order against Biller should be exercised in favour of investor protection and promotion of confidence in the integrity of the capital markets.

[40] A permanent order removing Biller from the capital markets would send a message to like-minded individuals that involvement in securities-related conduct of the nature and magnitude of Eron would result in severe sanctions, thereby maintaining the integrity of the capital markets and ensuring investor confidence in the system.

[41] Staff further submitted that anything less than the removal of Biller on a permanent basis would bring into question the integrity and reputation of the capital markets in general.

B. The Respondent

[42] The agent for Biller did not challenge the jurisdiction of the Commission. At the hearing, Mr. Whitney commented:

> With respect to general jurisdiction of a Securities Commission, it's admittedly wide and it can have some interprovincial impact to it. I would say there is a connection to Ontario and it wouldn't have mattered even if there hadn't been one, but what's the proper course to take?
>
> (Transcript dated September 29, 2005 at p. 73)

[43] Further, Mr. Whitney did not challenge whether there should be sanctions ordered by this Commission. He only challenged the severity of the sanctions sought by Staff:

> But why would this tribunal want to put itself in a position where it would differ from their brother out in BC who where [sic] within the jurisdiction where it all took place, they had all the facts and circumstances before them …
>
> The question is do we augment the BC decision by going beyond the ten year band? Is there something in the hearsay evidence that's been proffered here today where it becomes our responsibility to attribute some weight to it in order to protect the public interest? If that's the case, then that would involve imposing an additional penalty in addition to the one that's from BC which is a ten year trading ban.
>
> He is now 35 years old. He is going to be 45 years old before he even considers becoming licensed or even acting in any way, shape or form within the capital markets and no one is going to want him. He is on every radar screen that counts in this country now and probably already down to the SEC…
>
> …
>
> So whatever you see fit to do here today. I would invite you not to go so far as a permanent ban. This is a young fellow. I mean, if he was - if he was my client and he was a 58-year-old-broker and getting along in the - and making mistakes due to whatever happens to you once you get that old, and I'm already older than that, but if that was happening to you, then, you, then, you know, a permanent ban for someone like that would probably be a favour. For a young man like this, it might be unduly discouraging.
>
> Those are my submissions.
>
> (Transcript dated September 29, 2005 at pp. 76-80)

THE EVIDENCE

[44] The Commission heard evidence that following his sentence, Biller intended to return to Ontario to promote an operation called Extreme Poker Ltd. Further, as confirmed by Biller's agent, Biller could be released from the penitentiary after serving less than a third of his sentence, meaning a possible release in 6 months.

[45] In January 2003, Biller requested a variation to the conditions of his bail imposed by the British Columbia Supreme Court which restricted his residence to the province of British Columbia pending the outcome of the criminal proceedings. Biller cited action taken by the B.C. Securities Commission as the source of his inability to obtain employment in British Columbia and requested that he be permitted to move to Ontario where he had been offered employment.

[46] Peter Leask, a lawyer who represented Biller during these proceedings, indicated the following as the basis for his request to vary Biller's bail conditions:

> Mr. Biller was employed here in Vancouver in a way that he believed was in conformity to certain orders from the Securities Commission to which he is subject. The staff of the Securities Commission took a different view and, in effect, closed down his employer's business as part of an investigation of Mr. Biller. Result, he's out of a job.
>
> …
>
> People who are familiar with Mr. Biller's skills and would normally wish to employ him are reluctant to do so in Vancouver. *However, he's got a job offer in Toronto, and he would like to take that up*. His present bail restricts him to the Province of British Columbia. (Emphasis added)
>
> (*R. v. Slobogian et al.*, April 10, 2003, Proceedings in Chambers).

[47] Further, it has been established that both Biller and his employer intended to have Biller return to Ontario following the service of his sentence to continue to promote Extreme Poker Ltd. Biller's employer was anxious for him to do so (see *R. v. Biller*, [2005], B.C.J. No 1941 (B.C.S.C.). The British Columbia Supreme Court states at para. 60:

> He has worked in Toronto for a company which is attempting to promote the development and promotion of Canadian television programming which features the game of poker. His employer is apparently keen for him to continue to work with the company in this endeavour.

[48] Further, hearsay evidence was introduced in the form of two newspaper articles. In one article written by David Baines, a reporter of the Vancouver Sun, Mr. Baines wrote that Biller was employed in Ontario by and was promoting Extreme Poker Ltd., a non-reporting issuer in the United States whose securities trade on the Pink Sheets under the symbol "EXTP" (see "Eron Player Switches to Poker", Vancouver Sun, August 7, 2004).

[49] We admitted this evidence pursuant to section 15 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22 (the "SPPA") and gave it weight as it was supported by the evidence given in the proceedings in Chambers and before the British Columbia Supreme Court described in paragraphs [44], [45] and [46].

[50] In addition to this evidence, Staff attempted to file in evidence a transcript made from a recording of an alleged telephone conversation between Mr. Baines and Biller, in which he alleged that Biller was confirming his intention to come to Toronto to work for Extreme Poker Ltd.

[51] At the hearing, Michelle Hammer, an investigator at the Commission testified that she contacted Mr. Baines in August 2004, after having read his article, that Mr. Baines told her that he had a copy of the tape, and that she requested and received a copy of the tape, which she had transcribed by a court reporting agency: Atchison & Denman Court Reporting Services Limited. Ms. Hammer admitted that she never had an opportunity to compare the voice on the tape by talking directly to Biller.

[52] We admitted the transcript and invited Staff to provide us with evidence of the authenticity and integrity of the tape which had been transcribed. However, Staff declined to produce such evidence either by way of an affidavit or by testimony. Accordingly, we disregarded this transcript entirely in arriving at our decision.

THE LAW

[53] The purposes of the Act set out at section 1.1 are to ensure investor protection, foster fair and efficient capital markets and public confidence in them (see *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] S.C.J. No. 58; *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] S.C.J. No. 5; *Committee for the equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132).

[54] The Commission has a wide discretion under section 127 of the Act. As stated by the Supreme Court of Canada in *Asbestos* at para. 45:

> In summary, pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so.

[55] The public interest purpose of regulatory enforcement orders under section 127 of the Act is neither remedial nor punitive, but protective and prospective in nature. This purpose is to prevent likely future harm to investors and the integrity of the capital markets. As expressed by the Commission in *Re Mithras Management Ltd*. (1990), 13 O.S.C.B. 1600 at page 4:

> ...the role of this Commission is to protect the public interest by removing from the capital market -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. And in so doing, we may well conclude that a person's past conduct has been so abusive of the capital markets as to warrant our apprehension and intervention, even if no particular breach of the Act has been made out.

[56] The Commission's expression of its public interest jurisdiction was endorsed by the Supreme Court of Canada in the following terms in *Asbestos* at para. 43:

> Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.

[57] As stated in *Re Trend Capital Services Inc.* (1992), 15 O.S.C.B. 1711, in determining whether it is in the public interests to impose sanctions, the Commission should have regard to:

> a. whether or not, assuming the respondent's conduct is objectionable, there is a reasonable likelihood it will be repeated; and
>
> b. whether or not the conduct, if objectionable, is such as to bring into question the integrity and reputation of the capital market in general.

APPROPRIATE SANCTIONS

[58] Since the B. C. Securities Commission issued its decision in 1999, additional facts have come to light that we should take into account.

[59] In coming to its decision, the B. C. Securities Commission found that Biller did not have actual knowledge of all of the wrongdoing at Eron. Biller's guilty plea in the criminal proceedings negates in part that submission. The B. C. Securities Commission also found that once the problems at Eron came to light, Biller did not make efforts to see that he and his family and friends were paid out ahead of other investors. Yet, it was subsequently established in the criminal proceedings, that on September 19, 1997, Biller transferred $1,005,699 from Eron accounts controlled by Biller and his then wife, Michelle Biller, to the bank account of a numbered company controlled by Michelle Biller, which had been opened the day of the transfer. This eradicates to some extent the mitigating circumstances accepted by the B. C. Securities Commission.

[60] Biller pled guilty to and was convicted of securities-related fraud and theft. A respondent's past criminal conduct may be an important indicator of the need for protective and preventive sanctions. Permanent bans have been ordered as a result of a criminal conviction. In *Re Banks* (2003), 26 O.S.C.B. 3377, the Commission stated at paras. 125-127:

> Orders under section 127 are "preventive in nature and prospective in orientation": *Asbestos* at para. 45. In addition, participation in our markets "is a privilege and not a right": *Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Ont. Div. Ct.) at para. 56 (QL).
>
> Banks pleaded guilty to intentionally engaging in a scheme constituting a systematic ongoing course of conduct with intent to defraud. This was criminal conduct and it was securities-related. This conduct arose in Banks' capacity as a director and officer of an issuer. Together with his conduct in connection with the Roll Program, the criminal conduct demonstrated to us that Banks should be restricted from acting as a director or officer of any issuer, and be prevented from participating in our capital markets.
>
> In addition, Banks' admission of criminal guilt in a securities-related matter calls for a vigorous package of preventive sanctions. If we do not restrain Banks properly, confidence in our markets would be weakened.

[61] We also accepted the unchallenged evidence presented by Staff regarding the likelihood of Biller coming to Ontario following his release from penitentiary, which may occur as early as the spring of 2006. In particular, we relied on the evidence arising out of the proceedings in Chambers in April 2003 and the sentencing reasons given in September 2005, and the two newspaper articles which are consistent with that evidence.

[62] In his position as officer of Eron, Biller engaged in fraudulent conduct resulting in very shocking financial losses to investors. We also considered that the nature of Biller's conduct raised a reasonable apprehension of future harm from him to our capital markets.

[63] Where impugned conduct involves actions undertaken as a director or officer of an issuer, sanctions removing a respondent from these roles are appropriate (See for example: *Re Foreign Capital Corp.* (2005), 28 O.S.C.B. 4221; *Re First Federal Capital (Canada) Corp*. (2004)), 27 O.S.C.B. 1603; *Re Banks* (2003) stated above).

COSTS

[64] With respect to costs, Staff requested minimal or *de minimus* costs for the proceeding and none for the investigation as there was little investigation by Staff. The Respondent is an undischarged bankrupt and has not paid the administrative penalty or the costs awarded by the B. C. Securities Commission. Mr. Whitney was told by the Respondent's counsel in the criminal proceedings that the Respondent is "out of money". Staff acknowledged that the Respondent "may not have the funds". In the circumstances, we made no order as to costs.

CONCLUSION

[65] Based on Biller's conduct, the effects on investors and the capital markets and our apprehension of future harm from him to investors and the capital markets, we concluded that it was in the public interest to make our order of October 12, 2005 pursuant to section 127 of the Act.

Dated at Toronto this 8th day of December, 2005

"Robert L. Shirriff"

Robert L. Shirriff

"Robert W. Davis"

Robert W. Davis

"Carol S. Perry"

Carol S. Perry