



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF
MICHAEL ROBERT SHANTZ and
CANADA PACIFIC CONSULTING INC.**

**REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*)**

Decision: June 7, 2013

Panel: James D. Carnwath, Q.C. - Commissioner and Chair of the Panel

Counsel: Donna E. Campbell - For Staff of the Commission

- No one appeared for the Respondents

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I. OVERVIEW

[1] This was a hearing conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “*Act*”) to consider whether it is in the public interest to make an order imposing sanctions against Michael Robert Shantz (“**Shantz**”) and Canada Pacific Consulting Inc. (“**Canada Pacific**”) (collectively, the “**Respondents**”).

[2] A Notice of Hearing in this matter was issued by the Commission on March 22, 2013 in relation to a Statement of Allegations filed by Staff of the Commission (“**Staff**”) on March 21, 2013.

[3] On April 12, 2013, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (“*Rules of Procedure*”), and subsection 5.1(2) of the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S. 22, as amended (the “*SPPA*”). The Respondents did not appear at the application hearing, despite being served with the Notice of Hearing, Statement of Allegations and disclosure as evidenced by the Affidavit of Service of Lee Crann, sworn April 2, 2013.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties (*Michael Robert Shantz and Canada Pacific Consulting Inc.* (2013), 36 O.S.C.B. 4223 (the “**April 12 Order**”).

[5] Staff filed the Affidavit of Service of Lee Crann, sworn April 29, 2013, confirming service of the April 12 Order on Shantz, personally and in his capacity as sole director and officer of Canada Pacific.

[6] Staff provided written submissions, a hearing brief and a brief of authorities. The Respondents did not file any responding materials. I am satisfied that the Respondents were served with notice of this hearing. Pursuant to Rule 7.1 of the Commission’s *Rules of Procedure* and subsection 7(2) of the *SPPA*, I may proceed in the absence of the Respondents.

[7] Staff relies on paragraph 4 of subsection 127(10) of the *Act*, which permits the Commission to make an order under subsection 127(1) of the *Act* in respect of a person or company who is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.

[8] These are my reasons and decision for sanctions imposed pursuant to subsections 127(1) and 127(10) of the *Act*.

[9] On March 13, 2012, a panel of the British Columbia Securities Commission (the “**BCSC**”) made findings on the liability of the Respondents (*Re Canada Pacific Consulting Inc. and Michael Robert Shantz*, 2012 BCSECCOM 86 (the “**BCSC Findings**”). Shantz appeared on

his own behalf and on behalf of Canada Pacific, but he did not cross-examine the witness, enter evidence or make any submissions.

[10] In the BCSC Findings, the panel found that:

- (a) Canada Pacific engaged in unregistered trading contrary to subsection 34(1) of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418 (the “*BC Act*”);
- (b) Shantz as sole director and officer of Canada Pacific, contravened subsection 34(1) by operation of subsection 168.2(1) of the *BC Act*; and
- (c) the Respondents perpetrated a fraud contrary to section 57 of the *BC Act*.

(BCSC Findings, above at paras. 37, 39 and 49)

[11] The Respondents are subject to an order made by the BCSC dated May 22, 2012 that imposes sanctions, conditions, restrictions or requirements on them within the meaning of paragraph 4 of subsection 127(10) of the *Act (Re Canadian Pacific Consulting Inc. and Michael Robert Shantz, 2012 BCSECCOM 195 (the “BCSC Order”))*.

[12] In imposing sanctions, I rely on the BCSC Order. It is not appropriate in exercising my jurisdiction to revisit or question the BCSC Findings or the BCSC Order.

II. SANCTIONS OF THE BRITISH COLUMBIA SECURITIES COMMISSION

The BCSC Order

[13] The BCSC Order imposed the following sanctions, conditions, restrictions or requirements:

- (a) upon Shantz:
 - i. pursuant to subsection 161(1)(b) of the *BC Act*, that Shantz cease trading in, and is prohibited from purchasing, securities and exchange contracts, permanently;
 - ii. pursuant to subsections 161(1)(d)(i) and (ii) of the *BC Act*, that Shantz resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;
 - iii. pursuant to subsection 161(1)(d)(iii) of the *BC Act*, that Shantz is permanently prohibited from becoming or acting as a registrant or promoter;

- iv. pursuant to subsection 161(1)(d)(iv) of the *BC Act*, that Shantz is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
 - v. pursuant to subsection 161(1)(d)(v) of the *BC Act*, that Shantz is permanently prohibited from engaging in investor relations activities;
 - vi. pursuant to subsection 161(1)(g) of the *BC Act*, that Shantz pay to the BCSC any amount obtained, or payment or loss avoided, directly or indirectly as a result of the Respondents' contraventions of the *BC Act*, which the BCSC panel found to be not less than \$1,530,004; and
 - vii. pursuant to section 162 of the *BC Act*, that Shantz pay an administrative penalty of \$630,000;
- (b) upon Canada Pacific:
- i. pursuant to subsection 161(1)(b) of the *BC Act*, that all persons permanently cease trading in, and are prohibited from purchasing, securities of Canada Pacific;
 - ii. pursuant to subsection 161(1)(b) of the *BC Act*, that Canada Pacific cease trading in, and is prohibited from purchasing, securities and exchange contracts, permanently; and
 - iii. pursuant to section 161(1)(g) of the *BC Act*, that Canada Pacific pay to the BCSC any amount obtained, or payment or loss avoided, directly or indirectly as a result of the Respondents' contraventions of the *BC Act*, which the BCSC panel found to be not less than \$1,530,004;
- (c) Maximum disgorgement:
- i. that the aggregate amount paid to the BCSC under the disgorgement orders not exceed the greater of \$1,530,004 and the actual amount obtained, or payment or loss avoided, directly or indirectly as a result of the Respondents' contraventions of the *BC Act*.

(BCSC Order, above at para. 21; *Re Canada Pacific Consulting Inc. et al*, 2012 BCSECCOM 227)

III. ANALYSIS

A. Inter-jurisdictional Enforcement

[14] Subsection 127(10) of the *Act* provides in part as follows:

127 (10) Inter-jurisdictional enforcement – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

[...]

4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company. [...]

[15] The BCSC Order makes the Respondents subject to an order of the BCSC that imposes sanctions, conditions, restrictions or requirements on them, within the meaning of paragraph 4 of subsection 127(10) of the *Act*.

[16] Based on the BCSC Order, the Commission may make one or more orders under subsection 127(1) of the *Act*, if in its opinion it is in the public interest to do so.

[17] In *Re Euston Capital Corp.* (2009), 32 O.S.C.B. 6313 (“*Euston Capital*”), the Commission concluded that subsection 127(10) of the *Act* can be the grounds for an order in the public interest under subsection 127(1) of the *Act*, based on a decision and order made in another jurisdiction:

... we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario’s capital markets.

(*Euston Capital*, above at para. 46)

[18] I therefore find that I have the authority to make a public interest order under subsections 127(1) and 127(10) of the *Act*, based on the BCSC Findings and the BCSC Order.

B. Submissions of the Parties

Staff’s Submissions

[19] To adequately protect Ontario’s capital markets, Staff seeks to impose sanctions that are consistent with the sanctions imposed pursuant to the BCSC Order.

[20] Staff requests the following sanctions against the Respondents:

- (a) against Shantz that:
 - i. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Shantz shall cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Shantz shall cease permanently;
 - iii. pursuant to paragraph 7 of subsection 127(1) of the *Act*, Shantz shall resign any positions that he holds as a director or officer of an issuer;
 - iv. pursuant to paragraph 8 of subsection 127(1) of the *Act*, Shantz shall be prohibited permanently from becoming or acting as an officer or director of an issuer;
 - v. pursuant to paragraph 8.1 of subsection 127(1) of the *Act*, Shantz shall resign any positions that he holds as a director or officer of a registrant;
 - vi. pursuant to paragraph 8.2 of subsection 127(1) of the *Act*, Shantz shall be prohibited permanently from becoming or acting as director or officer of a registrant; and
 - vii. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, Shantz shall be prohibited permanently from becoming or acting as a registrant or as a promoter.
- (b) against Canada Pacific that:
 - i. pursuant to paragraph 2 of subsection 127(1) of the *Act*, all trading in securities of Canada Pacific shall cease permanently; and
 - ii. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Canada Pacific shall cease permanently.

Respondents' Submissions

[21] The Respondents did not appear and did not make any submissions in this proceeding.

C. Should an Order for Sanctions be Imposed?

[22] When exercising the public interest jurisdiction under section 127 of the *Act*, I must consider the purposes of the *Act*. Those purposes, set out in section 1.1 of the *Act*, are:

- (a) to provide protection to investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

[23] In pursuing these purposes, I must have regard for the fundamental principles described in section 2.1 of the *Act*. That section provides that one of the primary means for achieving the purposes of the *Act* is to restrict fraudulent and unfair market practices and procedures.

[24] I find that it is necessary to protect Ontario investors and the integrity of Ontario's capital markets to order sanctions against the Respondents in the public interest.

D. The Appropriate Sanctions

[25] In determining the nature and duration of the appropriate sanctions, I must consider all of the relevant facts and circumstances before me, including:

- (a) the seriousness of the conduct and the breaches of the *BC Act*;
- (b) the level of a respondent's activity in the marketplace;
- (c) whether or not the sanctions imposed may serve to deter not only the Respondents but any like-minded people from engaging in similar abuses of the Ontario capital markets;
- (d) the effect any sanctions may have on the ability of the Respondents to participate without check in the capital markets; and
- (e) any mitigating factors.

(Re Belteco Holdings Inc. (1998), 21 O.S.C.B. 7743 at 7746; Re M.C.J.C. Holdings Inc. (2002), 25 O.S.C.B. 1133)

[26] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondents:

- (a) the Respondents were found by a panel of the BCSC to have breached British Columbia securities law;
- (b) the terms of the BC Order; and

- (c) the conduct for which the Respondents were sanctioned in the BCSC Order would constitute contraventions of Ontario securities law if they had occurred in Ontario, including contraventions of subsections 25(1) and 126.1(b) of the *Act*.

[27] In my view, there are no mitigating factors or circumstances.

[28] I find that the BCSC Order imposed significant sanctions on the Respondents and that the Commission should exercise its discretion to impose sanctions consistent with those imposed by the BCSC Order.

[29] I find that the sanctions imposed by the BCSC Order are appropriate to the misconduct by the Respondents, and serve as both specific and general deterrence. I further find that a protective order imposing market conduct restrictions on the Respondents that are substantially similar to those imposed by the BCSC Order are required to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondents.

[30] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the *Act*.

IV. CONCLUSION

[31] Accordingly, I find it is in the public interest to issue the following orders:

- (a) against Shantz that:
- i. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Shantz shall cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Shantz shall cease permanently;
 - iii. pursuant to paragraph 7 of subsection 127(1) of the *Act*, Shantz shall resign any positions that he holds as a director or officer of an issuer;
 - iv. pursuant to paragraph 8 of subsection 127(1) of the *Act*, Shantz shall be prohibited permanently from becoming or acting as director or officer of an issuer;
 - v. pursuant to paragraph 8.1 of subsection 127(1) of the *Act*, Shantz shall resign any positions that he holds as a director or officer of a registrant;

- vi. pursuant to paragraph 8.2 of subsection 127(1) of the *Act*, Shantz shall be prohibited permanently from becoming or acting as a director or officer of a registrant; and
 - vii. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, Shantz shall be prohibited permanently from becoming or acting as a registrant or as a promoter;
- (b) against Canada Pacific that:
- i. pursuant to paragraph 2 of subsection 127(1) of the *Act*, all trading in securities of Canada Pacific shall cease permanently; and
 - ii. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Canada Pacific shall cease permanently.

Dated at Toronto this 7th day of June, 2013.

 "James D. Carnwath"
James D. Carnwath, Q.C.