



Ontario
Securities
Commission

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Citation: Bennett (Re), 2018 ONSEC 30
Date: June 13, 2018
File No. 2018-24

**IN THE MATTER OF
WAYNE LODERICK BENNETT**

**REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: In Writing

Decision: June 13, 2018

Panel: Robert P. Hutchison Commissioner

Appearances: Christina Galbraith For Staff of the Commission
No submission was made by or on
behalf of Wayne Loderick Bennett

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REASONS AND DECISION

I. INTRODUCTION

- [1] On July 21, 2017, Wayne Loderick Bennett (the **Respondent**) and staff of the Alberta Securities Commission (the **ASC**) entered into an Agreed Statement of Facts and Admissions (the **Agreed Statement**). In the Agreed Statement, the Respondent admitted to breaches of the Alberta *Securities Act*, RSA 2000 c S-4 (the **Alberta Act**).¹
- [2] In August 2017, the ASC held a hearing to consider whether the Respondent was liable for the conduct described in the Agreed Statement and, if so, what sanctions were appropriate. In a decision made on November 22, 2017 (the **ASC Decision**), the ASC panel held that the Respondent engaged in an illegal distribution of securities contrary to section 110 of the Alberta Act, and made misrepresentations and prohibited statements to investors contrary to subsection 92(4.1) and paragraph 92(3)(b) of the Alberta Act. The ASC panel imposed a requirement to resign as a director or officer of any issuer, registrant and other specified market participants and organizations, permanent market-access bans, a \$50,000 administrative penalty, and \$30,000 in costs.²
- [3] In light of the findings and sanctions of the ASC, staff of the Ontario Securities Commission (**Staff** of the **Commission**) requests that a protective order be issued in the public interest pursuant to subsection 127(1) and pursuant to the inter-jurisdictional enforcement provisions in subsection 127(10) of the Ontario *Securities Act*, RSO 1990, s S.5 (the **Act**).

II. SERVICE AND PARTICIPATION

- [4] Staff brought this proceeding under the expedited procedure provided in Rule 11(3) of the Commission's *Rules of Procedure*.³
- [5] The Respondent was served with the Notice of Hearing issued on May 2, 2018, the Statement of Allegations dated May 1, 2018 and Staff's written submissions, hearing brief and brief of authorities.
- [6] Although he was served, the Respondent did not respond or make any submissions in this proceeding.
- [7] The Commission may proceed in the absence of a party where that party has been given notice of the hearing.⁴

III. ASC FINDINGS AND SANCTIONS

A. General Background

- [8] The Respondent was the founder, president, sole director and guiding mind of Environmental Sentry Services Inc., also known as Environmental Sentry Services, Inc. (**ESSI**) until he resigned his positions in early 2016.⁵

¹ *Bennett (Re)*, 2017 ABASC 177 at para 2.

² *Bennett (Re)*, 2017 ABASC 177 at paras 4, 36.

³ *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988 (the **Rules of Procedure**).

⁴ *Statutory Powers Procedure Act*, RSO 1990 c S.22, s 7(2); *Rules of Procedure*, r 21(3).

⁵ *Bennett (Re)*, 2017 ABASC 177 at para 6.

[9] ESSI was a federally incorporated Canadian corporation in the business of manufacturing and distributing hydrocarbon remediation products that aid in the recovery of petroleum spills.⁶

B. Breach of Section 110 of the Alberta Act

[10] The ASC panel found that, between September 8, 2010 and September 8, 2016 (the **Material Time**), the Respondent directly and indirectly raised approximately \$3.8 million for ESSI by distributing common shares and debentures of ESSI to at least 100 investors in Alberta and Ontario.⁷ The Respondent was not registered with the ASC in any capacity and ESSI had never filed a prospectus or offering memorandum with the ASC during the Material Time.⁸

[11] The capital raised for ESSI was purportedly raised in reliance on exemptions under sections 2.3 and 2.5 of National Instrument 45-106 – *Prospectus and Registration Exemptions* (now known as National Instrument 45-106 – *Prospectus Exemptions*). However, the ASC panel found that many investors did not qualify for these exemptions.⁹

[12] The Respondent admitted to illegally distributing ESSI securities without a prospectus and without any apparent attempt to ensure that these prospectus exemptions were available.¹⁰ Accordingly, the ASC panel held that the Respondent engaged in an illegal distribution of securities contrary to section 110 of the Alberta Act.¹¹

C. Breach of Subsection 92(4.1) of the Alberta Act

[13] The Respondent admitted to representing in ESSI promotional materials that ESSI held various patents and patents pending for its products, when in fact it did not.¹² The ASC panel found that the Respondent's representations were either untrue or misleading¹³ and that these representations were material and would reasonably have been expected to have a significant effect on the market price or value of ESSI securities.¹⁴

[14] As a result, the ASC panel held that the Respondent made misleading statements to investors contrary to section 92(4.1) of the Alberta Act.¹⁵

D. Breach of Paragraph 92(3)(b) of the Alberta Act

[15] The Respondent also admitted to telling prospective investors that ESSI would be going public and would be listed on the Toronto Stock Exchange. However, neither he nor ESSI had received permission from the ASC or approval from any exchange to list ESSI securities.¹⁶

⁶ *Bennett (Re)*, 2017 ABASC 177 at para 7.

⁷ *Bennett (Re)*, 2017 ABASC 177 at paras 8, 51.

⁸ *Bennett (Re)*, 2017 ABASC 177 at paras 8, 53.

⁹ *Bennett (Re)*, 2017 ABASC 177 at paras 9, 10 and 22.

¹⁰ *Bennett (Re)*, 2017 ABASC 177 at para 22.

¹¹ *Bennett (Re)*, 2017 ABASC 177 at para 23.

¹² *Bennett (Re)*, 2017 ABASC 177 at paras 12, 15.

¹³ *Bennett (Re)*, 2017 ABASC 177 at paras 27-28.

¹⁴ *Bennett (Re)*, 2017 ABASC 177 at para 29, 52.

¹⁵ *Bennett (Re)*, 2017 ABASC 177 at para 30.

¹⁶ *Bennett (Re)*, 2017 ABASC 177 at paras 16, 34 and 52.

[16] Accordingly, the ASC panel held that the Respondent made prohibited statements to investors in respect of ESSI securities contrary to section 92(3)(b) of the Alberta Act.¹⁷

E. ASC Sanctions

[17] The ASC panel imposed sanctions to the following effect:

- a. pursuant to subparagraph 198(1)(d) of the Alberta Act, the Respondent was required to resign all positions he held as a director or officer (or both) of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;
- b. pursuant to paragraphs 198(1)(b) and (c) of the Alberta Act, the Respondent was permanently prohibited from trading in or purchasing securities or derivatives, and was prohibited from relying on all of the exemptions contained in Alberta securities laws, except that he was not precluded from trading in or purchasing securities or derivatives through a registrant (who has first been given a copy of the ASC Decision and the Agreed Statement) in one registered retirement savings plan, one registered retirement income fund, one tax-free savings account (as defined in the Income Tax Act (Canada)) and one locked-in retirement account, each for the benefit of one or more of the Respondent and his spouse;
- c. pursuant to paragraphs 198(1)(c.1), (e.1), (e.2) and (e.3) of the Alberta Act, the Respondent was permanently prohibited from engaging in investor relations activities, from advising in securities or derivatives, from becoming or acting as a registrant, investment fund manager or promoter, and from acting in a management or consultative capacity in connection with activities in the securities market;
- d. pursuant to paragraph 198(1)(e) of the Alberta Act, the Respondent was permanently prohibited from becoming or acting as a director or officer (or both) of any issuer (or other person or company that is authorized to issue securities), registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;
- e. pursuant to section 199 of the Alberta Act, the Respondent was required to pay an administrative penalty of \$50,000; and
- f. pursuant to section 202 of the Alberta Act, the Respondent was required to pay \$30,000 in costs.¹⁸

IV. ANALYSIS AND DECISION

[18] Staff seek an order pursuant to subsections 127(10) and (1) of the Act imposing trading and market-access bans that substantially mirror those imposed by the ASC.

¹⁷ *Bennett (Re)*, 2017 ABASC 177 at para 34.

¹⁸ *Bennett (Re)*, 2017 ABASC 177 at para 76.

- [19] The issues for this Panel to consider are:
- a. whether one or more of the circumstances under subsection 127(10) of the Act apply to the Respondent; and, if so,
 - b. whether the Commission should exercise its public interest jurisdiction to make an order pursuant to subsection 127(1) of the Act.

A. Subsection 127(10) of the Act

- [20] Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, it provides a basis for an order under subsection 127(1). This provision facilitates the cross-jurisdictional enforcement of decisions by allowing the Commission to issue protective, preventive and prospective orders to ensure that misconduct that has taken place in another jurisdiction will not be repeated in Ontario's capital markets.
- [21] Paragraph 127(10)(4) provides for inter-jurisdictional enforcement where a person or company is subject to an order made by a securities regulatory authority that imposes sanctions, conditions or requirements on the person or company.
- [22] The Respondent is subject to an order made by the ASC that imposes sanctions, conditions, restrictions or requirements upon him. Accordingly, the threshold set out in paragraph 4 of subsection 127(10) is met.

B. Subsection 127(1) of the Act

- [23] Because the threshold has been met under paragraph 4 of subsection 127(10) of the Act, the Panel must also determine what sanctions, if any, should be ordered against the Respondent pursuant to subsection 127(1).
- [24] Subsection 127(1) empowers the Commission to make orders where it is in the public interest to do so. The Commission is not required to make an order similar to that made by the originating jurisdiction. Rather, the Panel must first satisfy itself that an order for sanctions is necessary to protect the public interest in Ontario and then consider what the appropriate sanctions should be.
- [25] Orders made under subsection 127(1) of the Act are "protective and preventive"¹⁹ and are made to restrain potential conduct which could be detrimental to the public interest in fair and efficient capital markets.²⁰
- [26] The Commission must make its own determination of what is in the public interest. It is also important that the Commission be aware of and responsive to an interconnected, inter-provincial securities industry. The threshold for reciprocity is low. A low threshold is supported by the principle found in section 2.1 of the Act, which provides that "[t]he integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes."
- [27] While an Ontario connection is not a pre-condition to exercising the Commission's jurisdiction to make an order under subsections 127(10) and (1),

¹⁹ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 42.

²⁰ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 43.

it is a factor that may be considered.²¹ The Respondent's conduct involved making illegal distributions of securities investors in both Alberta and Ontario during the Material Time.²² These illegal distributions would have also constituted a breach of the Act in Ontario. This conduct, combined with the misrepresentations and prohibited statements made to investors, would clearly be contrary to the public interest and would attract the same or similar sanctions in Ontario.

- [28] Accordingly, an order for sanctions is necessary to protect the public interest in Ontario.
- [29] In determining the nature and scope of sanctions to be ordered, the Commission can consider a number of factors, including the seriousness of the misconduct and the need to deter a respondent, and other like-minded persons, from engaging in similar abuses of the capital markets in the future.²³
- [30] Although ASC staff only requested 12-year market-access bans against the Respondent,²⁴ the ASC panel found that in light of the seriousness of the Respondent's misconduct, the harm done to investors, and the Respondent's little or no regard for Alberta securities laws, the public interest required permanent market-access bans.²⁵
- [31] During the Material Time, the Respondent illegally raised almost \$4 million from investors in Alberta and Ontario, and there is no indication of a potential recovery of their investments. The Respondent knowingly made false or misleading statements to prospective investors, which led investors to make ill-informed investment decisions without the ability to properly assess the risks involved.²⁶ While the ASC panel acknowledged that the Respondent accepted responsibility for his misconduct, the panel determined that his cooperation fell short of the kind expected from a respondent who has fully accepted responsibility for contravening Alberta securities laws.²⁷
- [32] These findings support the making of an interjurisdictional order in substantially the form requested by Staff, which includes permanent market-access bans. In this way, the Ontario markets will be protected from this Respondent, and the Respondent and like-minded persons will be deterred from engaging in similar abuses in the future.

V. CONCLUSION

- [33] For the reasons provided above, the following Order will issue:
- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by the Respondent cease permanently, except that this order does not preclude the Respondent from trading in securities or derivatives through a registrant (who has first been given copies of the ASC Decision, the Agreed Statement, and a copy of the

²¹ *Biller (Re)* (2005), 28 OSCB 10131, 2005 ONSEC 15 at paras 32-35.

²² *Bennett (Re)*, 2017 ABASC 177 at paras 8, 51.

²³ *Belteco Holdings Inc (Re)* (1998), 21 OSCB 7743 at paras 23-25; *MCJC Holdings* (2002), 25 OSCB 1133 at paras 25-26.

²⁴ *Bennett (Re)*, 2017 ABASC 177 at para 39.

²⁵ *Bennett (Re)*, 2017 ABASC 177 at para 67.

²⁶ *Bennett (Re)*, 2017 ABASC 177 at paras 51-52.

²⁷ *Bennett (Re)*, 2017 ABASC 177 at para 64.

order in this proceeding), in one registered retirement savings plan, one registered retirement income fund, one tax-free savings account (as defined in the Income Tax Act (Canada)) and one locked-in retirement account, each for the benefit of one or more of the Respondent and his spouse;

- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondent cease permanently, except that this order does not preclude the Respondent from purchasing securities through a registrant (who has first been given copies of the ASC Decision, the Agreed Statement, and a copy of the order in this proceeding), in one registered retirement savings plan, one registered retirement income fund, one tax-free savings account (as defined in the Income Tax Act (Canada)) and one locked-in retirement account, each for the benefit of one or more of the Respondent and his spouse;
- c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondent permanently;
- d. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, the Respondent resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
- e. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, the Respondent be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and
- f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, the Respondent be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter.

Dated at Toronto this 13th day of June, 2018.

"Robert P. Hutchison"

Robert P. Hutchison