Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Gregory Hryniw and Walter Hryniw

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

AND

THE SETTLEMENT AGREEMENTS WITH
GREGORY HRYNIW AND WALTER HRYNIW

REASONS FOR THE DECISIONS OF THE
ONTARIO SECURITIES COMMISSION

Hearing:	**Thursday, June 16, 2005**		
Panel:	**Paul M. Moore, Q.C.**	**-**	**Vice-Chair (Chair of the Panel)**
	David L. Knight	**-**	**Commissioner**
Counsel:	**Kate Wootton**	**-**	**For Staff of the**
	Colin McCann		**Ontario Securities Commission**
	Gregory Hryniw	**-**	**self-represented (via teleconference)**
	Walter Hryniw	**-**	**Self-represented (via teleconference)**

The following statement has been prepared for purposes of publication in the Ontario Securities Commission Bulletin (the "Bulletin") and is based on the transcript of the hearing, including oral reasons delivered at the hearing on the settlement agreement between staff of the Commission and Gregory Hryniw, and another settlement agreement between staff of the Commission and Walter Hryniw (the "Settlement Agreements"), in the matter of Gregory Hryniw and Walter Hryniw. The transcript has been edited, supplemented and approved by the chair of the panel for the purpose of providing a public record of the decisions. This extract should be read together with the Settlement Agreements and the orders signed by the panel.

The hearing was conducted *in camera* until the oral decisions and reasons were delivered by Vice-Chair Moore.

From the Transcript:

Vice-Chair Moore:

[1] This is a hearing under section 127 of the *Securities Act,* R.S.O 1990, c. S.5 as amended (the "Act"), for the Ontario Securities Commission to consider whether it is in the public interest to approve the proposed Settlement Agreements between staff and Gregory Hryniw, and between staff and Walter Hryniw, and to make orders approving the sanctions agreed to by staff and the respondents in relation to the respondents' conduct of providing false and misleading statements to staff.

[2] As mentioned by counsel, this is not an insider trading case, because staff is not proceeding against the respondents in respect of insider trading allegations set out in paragraphs 5 to 9 of the amended statement of allegations.

Facts

[3] Golden Hope Mines Limited ("Golden Hope") is a reporting issuer in the Province of Ontario. The shares of Golden Hope were, at the material time, listed and posted for trading on the Canadian Dealing Network.

[4] Gregory Hryniw is a resident in the City of Montréal in the Province of Québec. At the material time, Gregory Hryniw was a 27 year old geologist and was a director of Golden Hope.

[5] Walter Hryniw is Gregory Hryniw's father and is a resident of the City of Montréal in the Province of Québec.

[6] In or around May 8, 1998, staff commenced an investigation with respect to trades that were made in shares of Golden Hope immediately prior to a favourable public announcement on June 3, 1997 concerning Golden Hope's participation in a private placement.

[7] In particular, staff was investigating the purchase of 585,000 Golden Hope shares through an account held at The Bank of N.T. Butterfield & Sons Limited ("Butterfield Bank") in Hamilton, Bermuda (the "Bermuda Account").

[8] During the course of staff's investigation of this matter, the respondents were contacted by staff during the summer of 2002 and asked whether they had traded any Golden Hope shares, either in the Bermuda Account or through a nominee account during June and/or July, 1997. Walter Hryniw responded by letter dated August 20, 2002, and advised that he had not. Gregory Hryniw advised that to his knowledge they did not, and that he had not heard of the Butterfield Bank.

[9] Pursuant to an application to the Attorney General of Bermuda by staff, staff obtained documentation from the Butterfield Bank which revealed that the Bermuda Account was in the names of Walter Hryniw and Gregory Hryniw, and which confirmed the trading in Golden Hope shares in the Bermuda Account in June, 1997. The documentation included copies of the passports of both Gregory Hryniw and Walter Hryniw, account statements, security transaction forms and a custody agreement signed by Gregory Hryniw.

[10] The respondents admit that the representations made to staff were false and misleading.

Action Contrary to the Public Interest

[11] The respondents' conduct, as described above, constituted a contravention of section 122 of the Act and was contrary to the public interest.

Sanctions

[12] The Settlement Agreements contain a representation by Walter Hryniw that he was the only person that opened, operated and traded in the Bermuda Account.

[13] Both respondents further represent that they do not currently hold any positions as an officer or director of any issuer.

[14] The proposed sanctions are included in Part VI of the Settlement Agreements and are set out in the draft orders, attached to the Settlement Agreements as Schedule A, as follows:

a) each respondent will cease trading in securities for a period of three years effective from the date of the orders of the Commission approving the Settlement Agreements;

b) the exemptions contained in Ontario securities law do not apply to the respondents for a period of three years effective from the date of the orders of the Commission approving the Settlement Agreements;

c) the respondents will not act as an officer or director of any issuer for a period of three years effective form the date of the orders of the Commission approving the Settlement Agreements;

d) the respondents will be reprimanded by the Commission;

e) the respondents agree to attend the hearing by telephone on June 16, 2005 or such other date as may be agreed to by the parties; and

f) the respondents will each make a total payment of $2,500.00 to the Commission in respect of a portion of the Commission's costs with respect to this, such payment to be payable in the amounts of $500.00 each upon approval of the Settlement Agreements, and $500.00 each, per month, payable on July 31, 2005, August 31, 2005, September 30, 2005 and October 31, 2005.

Appropriate Factors for Sanctioning

[15] We have weighed the proposed sanctions with the factors outlined in *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at pp. 7743-7746, and *Re M.C.J.C. Holdings and Michael Cowpland* (2002), 25 O.S.C.B 1133, at p. 1136.

[16] We have also kept in mind the prophylactic purpose of sanctions that will deter conduct by others that is likely to be prejudicial to the public interest.

Acceptability of Agreed Sanctions

[17] We have considered the sanctions and believe they fall within acceptable parameters as outlined in *Re Sohan Singh Koonar* (2002), 25 O.S.C.B. 2691, at p. 2692.

[18] As I previously mentioned, the sanctions proposed in the Settlement Agreements are in the public interest. The respondents have admitted that they provided false and misleading information to staff and that such conduct constitutes a breach of section 122 of the Act and is contrary to the public interest.

[19] Accordingly, they have accepted sanctions which include a temporary prohibition from trading in the capital markets and a temporary prohibition from acting as an officer or director of any issuer.

[20] They have also agreed to pay a portion of the Commission's costs in relation to the investigation of the misleading allegations, in recognition that not all of the costs should be borne by the Commission or subsidized by other participants in the capital markets.

[21] The respondents provided false and misleading statements to staff during the course of an investigation. In regard to Gregory Hryniw, he failed to take the appropriate degree of care in his dealings with the regulator and breached the Act's requirements of responsible conduct by market participants.

[22] The type of conduct in these two matters demonstrates a complete disregard for the authority of the Commission, for compliance with Ontario securities law, and the obligation to provide full and accurate information to the Commission and its staff.

[23] The Commission and its staff perform a crucial role in maintaining the integrity of our capital markets. The respondents' conduct undermines the ability of staff to fulfill that statutory mandate.

[24] The conduct established a serious threat of future misconduct and also constitutes a threat to the integrity of the capital markets.

[25] The proposed Settlement Agreements and sanctions recognize the threat of future misconduct by the respondents and also the threat to the integrity of the capital markets, by temporarily removing the respondents from those capital markets, and temporarily preventing them from acting as an officer or director of any issuers.

[26] The proposed sanctions will send a clear message to the respondents and to all other participants in the capital markets that conduct of this nature will not be tolerated and will be treated very seriously by the Commission.

Electronic Hearing via Telephone Conference

[27] A pre-hearing application was brought to allow this hearing to be held as an electronic hearing via telephone conference. This was a joint application by staff of the Commission and the respondents pursuant to Rule 4.2 of the Ontario Securities Commission *Rules of Practice* (the "Rules").

[28] As a result, the respondents have been on the phone by telephone while the staff and others are here in the hearing room.

[29] Additional relevant facts, besides those relating to the matter itself, are that the respondents have advised that they do not have the financial resources to pay for the costs associated with attending the settlement hearings in Ontario. In addition, the former counsel representing them has withdrawn because they were unpaid, and as a result, the respondents are now unrepresented by counsel.

[30] We had no difficulty in granting the request for the electronic hearing, except for the fact that one of the sanctions requested by staff and agreed to in the Settlement Agreements is a reprimand.

[31] Section 1(i) of the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA"), defines an electronic hearing as a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another. Section 5.2 of the SPPA has further provisions.

[32] We are satisfied that since no live evidence was required in this hearing and since it was really a narrow hearing to determine whether the Settlement Agreements were in the public interest, and the hearings are not contested, that this would be an appropriate case for an electronic hearing.

[33] The practice guidelines of Rule 4 of the Rules set out the factors to consider in determining whether to hold an electronic hearing. I won't mention all of the factors, but the important factor in our case is the suitability of the electronic technology for the subject matter of the hearing.

[34] As I mentioned, the one concern we had is the fact that the sanctions called for include a reprimand.

[35] The Commission has power, pursuant to section 127.1(6) of the Act, to make an order that a person or company be reprimanded if, in its opinion, it is in the public interest to do so. A reprimand is a statutory sanction which will be reflected in a final order made against a person or company, and will, therefore, have a permanent effect upon the respondent's disciplinary history with the Commission.

[36] The reprimand power is used as a sanction primarily where the Commission determines that the penalties of suspension, restriction or termination of registration are too severe in the circumstance of the case. The reprimand power is also an effective sanction against directors, officers and others for activity considered below the standard expected by the Commission in the capital markets.

[37] There is no legal authority directly on point, although there are some precedents of whether it is appropriate for a reprimand to be administered without the respondents physically present.

[38] Our practice in the past has been to insist that a respondent appear before us to receive, in open hearing room, a reprimand from the Commission. We do not have the authority to require the presence of a respondent in a contested hearing. However, we have made it a practice that we would not favourably consider a settlement agreement providing for a reprimand without the respondent physically present.

[39] This has not been an ironclad practice. There have been instances in the past where the facts at hand made it advisable not to insist upon the presence of the respondent. We considered that the facts of this case justify us in departing from our preferred course of action.

[40] The respondents are out of province. The respondents are impecunious, as evidenced by the fact that they have not been able to pay their counsel. And the subject matter at hand is such that we feel it is appropriate, although not preferable, to proceed with this hearing with the respondents available by telephone.

[41] Accordingly, we had weighed the disadvantages against the considerations: the out-of-province residency, the poverty of the respondents, the lack of financial resources and the costs associated with attending the hearing in Ontario. And we weigh that against the delay that would be associated with adjourning the hearing to allow the respondents sufficient time to gather the resources to pay for their costs in connection with attending the meeting. We've also taken comfort from the fact that the final orders will be in writing and will be posted in the Bulletin.

[42] Therefore, we recognize that the Commission can administer its reprimand in writing as part of its reasons and also through an order. Taking all of that into consideration, we agreed with the parties and advised them, prior to the commencement of this hearing, that an electronic hearing would be permissible.

[43] That is the conclusion of our reasons. Now, because of technological difficulties, one of the two respondents, Gregory Hryniw, was disconnected from the hearing after we had announced our decision, but before I completed giving the reasons and before I administered the reprimand. We have just been advised by counsel for staff that Gregory Hryniw has called in to the switchboard, but hasn't been able to get through to the hearing room because of ID numbers.

[44] It is appropriate, in the circumstances, for me to conclude this matter by saying to Walter Hryniw, and have it conveyed to Gregory Hryniw, that, you have admitted that your conduct has been reprehensible, that it is not in the public interest, and we're satisfied that you will learn from your lesson. You are hereby reprimanded, and this will be repeated in the written orders.

Approved by the Chair of the Panel on June 16, 2005.

"Paul M. Moore"
Vice-Chair