ALBERTA SECURITIES COMMISSION

DECISION

Citation: 526053 B.C. Ltd., Re, 2006 ABASC 1795 **Date: 20061116**

Docket: E/00308

526053 B.C. Ltd., James Nelson McCarney, Trevor William Park, Brent Gordon Edgson, Terry Leong and William Douglas Henderson

Panel:	Stephen R. Murison, Vice-Chair James A. Millard, QC, Member
Appearing:	Samir Sabharwal Matthew Epp for Commission Staff
	John Blair for James McCarney and 526053 B.C. Ltd.
	Edward Halt, QC for Terry Leong and William Henderson
	Michael J. Donaldson for Brent Edgson
Date of Hearing:	12 October 2006
Date of Decision:	16 November 2006

I. INTRODUCTION

[1] The decision which follows concludes a two-part hearing relating to a distribution of securities contrary to Alberta securities laws and contrary to the public interest.

[2] As discussed below, we find it to be in the public interest to order sanctions against the respondents 526053 B.C. Ltd. ("526"), James Nelson McCarney ("McCarney"), Brent Gordon Edgson ("Edgson"), Terry Leong ("Leong") and William Douglas Henderson ("Henderson") (collectively, the "Respondents").

[3] To summarize, we are ordering that:

- 526 must cease trading securities and is denied the use of exemptions under the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act"), in each case for 20 years;

- McCarney must cease trading securities (except for permitted trading for his own account), is denied the use of exemptions under the Act, and is barred from serving as an officer or director of any issuer (with specific exceptions), in each case for 20 years, and he must pay an administrative penalty of $75 000;

- Edgson must cease trading securities (except for permitted trading for his own account) and is denied the use of exemptions under the Act, in each case for 10 years, and he must pay an administrative penalty of $25 000;

- Henderson must cease trading securities (except for permitted trading for his own account) and is denied the use of exemptions under the Act, in each case for 10 years, and he must pay an administrative penalty of $25 000; and

- Leong must cease trading securities (except for permitted trading for his own account) and is denied the use of exemptions under the Act, in each case for 10 years, and he must pay an administrative penalty of $35 000.

[4] In addition, we are ordering that each Respondent pay a portion of the costs of the investigation and hearing, as follows: 526 – $5000; McCarney – $30 000; Edgson – $20 000; Henderson – $10 000 and Leong – $15 000.

II. BACKGROUND

[5] This proceeding originated in a notice of hearing issued on 3 February 2005 by staff ("Staff") of the Alberta Securities Commission (the "Commission") against the Respondents and another individual, Trevor William Park ("Park"). Following a hearing into the merits of Staff's allegations, held in February and March 2006 (the "Merits

Hearing"), we issued our decision and reasons on 29 May 2006 – *Re 526053 B.C. Ltd.*, 2006 ABASC 1408 (the "Merits Decision"). Park was not part of the Merits Hearing or the present proceeding; he and Staff reached an agreement as to facts and, following a separate hearing, a different panel of Commission members issued its decision sanctioning Park on 20 January 2006 – *Re Park*, 2006 ABASC 1056 (the "Park Decision").

[6] The facts of the present case were set out in the Merits Decision; we do not repeat them all here. This decision should be read in the light of the Merits Decision.

[7] Stated briefly, 526 – a company based in British Columbia – served as a funding vehicle for two other companies involved in developing a communication system for commercial vehicles. McCarney, a resident of British Columbia, was the co-founder, senior officer and sole shareholder of 526.

[8] 526 raised over $26 million from some 1400 investors in Canada and other countries, including almost 300 Alberta investors who invested between $7 and $8.5 million pursuant to loan agreements with 526. The loan agreements were purportedly to be repaid in shares and share purchase warrants of a public company yet to be identified and acquired.

[9] That acquisition was never made and investors in the loan agreements never obtained securities in it.

[10] The evidence persuaded us that McCarney was the guiding mind behind 526 and its fund-raising. Edgson, Leong and Henderson, all Alberta residents, acted as representatives of 526 in its fund-raising efforts. For that, each was entitled to commissions on the money he raised. Edgson and Leong were paid such commissions (directly or through separate companies). Henderson elected to take his commissions in shares of the proposed public company which, in common with the other investors, he never received. McCarney was the principal presenter for 526 at several meetings for existing and prospective investors.

[11] Edgson had no prior experience in the capital market. Henderson was, for a period many years ago, registered under the Act as a securities salesperson. Leong was an insurance representative licensed in accordance with Alberta insurance laws. None of the Respondents was registered under the Act during the fund-raising period.

[12] No prospectus was filed in connection with the fund-raising for 526. The Respondents did not claim to have relied on prospectus and registration exemptions under the Act.

[13] We found in the Merits Decision that:

- each Respondent contravened the registration and prospectus requirements of the Act and, as such, participated in illegal trades and distributions;

- McCarney contravened section 92(3) of the Act by making a prohibited representation that investors would end up with securities listed on an exchange; and

- each Respondent acted contrary to the public interest.

[14] Given those findings, it remained to be determined whether it is in the public interest to make any orders against any of the Respondents. This hearing was held for that purpose on 12 October 2006. We received submissions on this issue from all parties.

[15] Our decision and reasons on the issue of sanction follow.

III. THE LAW

[16] Staff seek sanctions against the Respondents under sections 198 and 199 of the Act, as well as orders under section 202 of the Act that the Respondents pay a portion of the costs of the investigation and hearing.

[17] Orders under sections 198 and 199 of the Act are prospective and protective, not punitive or retrospective. The objective is to protect investors and the capital market from future harm. Achieving this objective may require deterrence from future market misconduct, whether by respondents themselves (specific deterrence) or by others (general deterrence). See *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 55; *Re Dobler*, 2004 ABASC 1178 at para. 14; and *Re Podorieszach*, 2004 ABASC 567 at para. 17.

[18] The Commission in *Re Lamoureux*, [2001] A.S.C.D. No. 613 (at para. 11) (appeal dismissed – *Lamoureux v. Alberta (Securities Commission)*, 2002 ABCA 253) enumerated a number of factors potentially relevant to assessing whether or what sanctions are appropriate in a particular case. Such factors may include:

- a respondent's capital market background and experience;
- whether a respondent recognizes the seriousness of the contraventions;
- the harm suffered by particular investors or the capital market;
- the extent to which a respondent benefited from misconduct;
- risks that might accompany a respondent's continued participation in the capital market; and
- previous decisions based on similar circumstances.

IV. POSITIONS OF THE PARTIES

A. Staff Position

[19] Staff submitted that the activities of the Respondents warranted "meaningful" administrative penalties and restrictions on market access to reflect the seriousness of the contraventions of Alberta securities laws and to provide both specific and general deterrence. They submitted that the appropriate sanctions in this case would be:

- against 526, cease-trade and denial-of-exemptions orders for 20 years and a $50 000 administrative penalty;
- against McCarney, cease-trade and denial-of-exemptions orders and a ban on serving as a director or officer of any issuer for 20 years and a $200 000 administrative penalty;
- against Edgson, cease-trade and denial-of-exemptions orders for 10 years and a $150 000 administrative penalty;
- against Henderson, cease-trade and denial-of-exemptions orders for 10 years and a $80 000 administrative penalty; and
- against Leong, cease-trade and denial-of-exemptions orders for 10 years and a $200 000 administrative penalty.

[20] In addition, Staff submitted that their total costs to investigate and litigate the matter amounted to $148 708, and argued that we ought to order the Respondents to pay, in the aggregate, $105 000 towards those costs, allocated as follows: for 526 – $10 000; McCarney – $30 000; Edgson – $25 000; Henderson – $10 000; and Leong – $30 000.

B. Position of the Respondents

1. 526 and McCarney

[21] 526 and McCarney made joint submissions. They did not take issue with Staff's request for cease-trade and denial-of-exemptions orders for both, and a director-and-officer ban for McCarney, all for 20 years, except that McCarney requested that he be allowed to continue to act as a director and officer of two private companies, 550258 B.C. Ltd. and 550255 B.C. Ltd. (the "BC Private Companies"). 526 and McCarney did, however, take strong exception to Staff's request relating to an administrative penalty and an order for costs.

[22] Their position was that what Staff sought by way of monetary sanctions against them would be "punitive, excessive and inappropriate" given, first, that they had already made a substantial payment to the British Columbia Securities Commission (the

"BCSC") in connection with the same activity and, second, the sanctions imposed in Alberta and British Columbia against Park.

(a) Sanctions Elsewhere

[23] In addition to other sanctions against McCarney and 526, the BCSC obtained a $100 000 monetary payment from McCarney.

[24] 526 and McCarney contended that "[t]here was essentially one offence but it occurred in multiple jurisdictions" and the BCSC decision already dealt with the fact that the "offending activities . . . occurred in multiple jurisdictions". Moreover, they submitted, the prospect of potential multiple administrative penalties in different jurisdictions "would discourage settlements":

> Respondents have finite resources. It is in the public interest for them to marshal those resources in order to effect a reasonable and effective settlement with securities regulators.

(b) Sanctions Against Park

[25] McCarney contended that the amount sought by Staff "would be out of proportion . . . considering [the] respective activities and roles" of Park and himself and the administrative penalties imposed against Park. Without conceding that any administrative penalty was warranted in this case, McCarney argued that if one were to be ordered against him, it should be less than what he had paid the BCSC.

[26] The BCSC, McCarney noted, "determined that Park's activities would warrant an administrative penalty of $75 000" but accepted a smaller amount because of Park's apparently straitened financial circumstances. This Commission, in the Park Decision, sanctioned Park with an administrative penalty of $50 000 and 15-year cease-trade, denial-of-exemptions and director-and-officer bans. 526 and McCarney noted that this $50 000 Alberta administrative penalty was two-thirds of what the BCSC "considered appropriate" against Park.

[27] McCarney also contended that "It would not be in the public interest for two regulators to impose radically different sanctions for the same actions". As the quantum of administrative penalty that the BCSC thought appropriate for Park was 75% of the $100 000 that McCarney paid to the BCSC, McCarney noted that the same proportion applied to the Alberta administrative penalty ordered against Park would result in an administrative penalty against McCarney of $66 000, not the $200 000 sought by Staff.

(c) Other Factors

[28] More generally, McCarney urged that we take into account that he had: "cooperated fully" with the investigative process; conducted himself with a view to settlement; acknowledged significant misconduct from the outset; and taken

responsibility for and recognized the seriousness of his misconduct. In addition, he submitted that: he was not experienced in capital markets; he had not previously been sanctioned; and he believed in the technology and the investment opportunity he helped promote. He noted that there was no evidence that he gained personally. He pointed to the decision of this Commission in *Re InstaDial Technologies Corp.*, 2005 ABASC 965, in which an administrative penalty of only $25 000 was imposed on the president of a company found to be involved in an illegal distribution.

[29] On the question of costs, 526 and McCarney submitted that they should not be ordered to contribute more than an aggregate of $10 000.

[30] In sum, 526 and McCarney argued that the added deterrent value of an administrative penalty in Alberta would be "very small" given their assent to the Alberta market access restrictions sought by Staff and McCarney's substantial payment to the BCSC.

2. Edgson

[31] Edgson submitted that the sanctions sought by Staff were disproportionate to Edgson's role and his contraventions of the Act.

[32] He noted the panel's description of him in the Merits Decision as "naïve and unsophisticated", "not so different from the investor witnesses we heard from" and "for several years a believer in 526 and in what he was told by McCarney . . . and Park" and the comment that "It seems that he did separate himself from the continuing contraventions before they came to an end".

[33] Edgson, like McCarney, contended that the sanctions against the Respondents "should be measured against the sanctions given to Park". Edgson distinguished his role from that of Park who, in Edgson's submission, was "the right-hand man of mastermind . . . McCarney, . . . was not an investor, knew the investments he was selling were worthless, and deliberately lied to investors about the soundness of their investments". As compared to his fellow Respondents, Edgson argued that "in terms of culpability, [he] should be at or near the bottom of the scale as compared to the other Respondents".

[34] Edgson contested the value of an administrative penalty as an instrument of general deterrence, submitting that truck drivers such as himself "do not read the Commission's Weekly Summary". As to specific deterrence, he submitted that the objective has already been served by: his own losses in 526; his payment of $40 000 to the BCSC pursuant to a settlement agreement; and his "pain and humiliation" at having recommended a worthless investment to family and friends. The administrative penalty sought by Staff, he said, would reduce him and his family "to utter destitution". He urged, however, that we not give attention to the terms of his settlement agreement with the BCSC because such agreements "are not significant factors in arriving at an

appropriate sanction" and because he entered into the agreement ill-advisedly without benefit of legal counsel. Edgson was not represented by counsel at the Merits Hearing. He was represented in this proceeding and made his submissions through counsel.

[35] More generally, Edgson submitted that: he acknowledged the seriousness of his conduct; he had repaid a substantial part of his commissions; he had not previously participated in the capital market; he had not previously been sanctioned by the Commission; he acted with no intention to defraud but with "an honest and well-meaning intention to sell what appeared to him to be a good investment"; he lost his own money; he attempted to help investors get their money back; he had advised investors not to participate in a purported warrant conversion; and he made admissions at the Merits Hearing.

[36] Edgson also cited other decisions of the Commission in support of his contentions: that the amount of administrative penalty sought by Staff was excessive; that it would be inappropriate to tie the amount of such penalty by mathematical formula to his commissions; and that sanctions ordered in other decisions indicated that a lesser sanction was appropriate here.

[37] In Edgson's submission, the appropriate sanction against him in this case would be:

- a cease-trade and denial-of-exemptions order – not applicable to trading for his own personal account – for a maximum of five years, to end earlier if he successfully completes a securities educational course;

- a director-and-officer ban for the same duration, but not restricting him from serving in those positions with companies owned within his immediate family;

- a $5000 administrative penalty; and

- a payment of $5000 towards costs of the investigation and hearing.

3. Henderson

[38] Henderson submitted that his relative role in the 526 distributions should result in sanctions "of a significantly different character and magnitude than those imposed on Park and McCarney", and that it would be appropriate to order against him:

- a cease-trade and denial-of-exemptions order for two years but not to preclude him dealing for his own personal account;

- a $5000 administrative penalty; and

- payment of costs of $5000.

[39] In support of his position, Henderson noted that: he entered into evidence a joint agreed statement of facts; he sincerely believed in 526 as demonstrated by investments in 526 loans of approximately $440 000 by him and close family members and their companies; despite having been promised commissions, he "never received any remuneration in any form"; his involvement "was well-meant"; along with other investors he "lost the entirety of his investment"; and he has never been sanctioned by the Commission.

4. Leong

[40] Leong's submission was to some extent similar to Henderson's. He submitted that: he cooperated throughout the investigation; he was the only Respondent "to testify and open himself up to cross-examination" during the Merits Hearing; he lent and lost $78 000 of his own money to 526; he had endeavoured to improve the documentation provided by 526 to investors; "he only approached a select group of his clients . . . who could tolerate the risks associated with this type of transaction"; (quoting from the Merits Decision) " . . . he seems to have been a more diligent and cautious participant and to have given more attention to legalities"; of the approximately $1.7 million which Leong was involved in raising for 526, approximately $750 000 was invested in a manner that qualified for prospectus and registration exemptions and, by implication, was not illegal; he believed in 526; and he has never been sanctioned by the Commission.

[41] Leong submitted that appropriate sanctions against him would be:

- a cease-trade and denial-of-exemptions order for five years but not to preclude him dealing for his own personal account;

- a $20 000 administrative penalty; and

- an order to pay costs of $10 000.

V. ANALYSIS

A. Deterrence Needed

[42] The contraventions of the Respondents were serious. Investors in this illegal distribution were deprived of the information contained in a prospectus. They did not deal with a registrant who knew their investment objectives and risk tolerances and could assess whether the investment was suitable for them. The Respondents did not claim to have acted in compliance with prospectus and registration exemptions under the Act. In short, investors were enticed into handing over money – sometimes rather large sums –

without benefit of the fundamental protections mandated by Alberta securities laws. That money now appears to have been lost. The harm to the investors is clear.

[43] There is a broader risk to the capital market as a whole. The Respondents' participation in the Alberta capital market in disregard of securities laws, to the detriment of the 526 investors, places in jeopardy confidence in the fair and efficient operation of the capital market. That in turn could dissuade investors, generally, from future market participation and thus impair opportunities for economic capital-raising by legitimate issuers who play by the rules. These ramifications of the Respondents' conduct are hard to quantify but, in our view, are potentially at least as serious as the quantifiable harm suffered by the 526 investors.

[44] We therefore conclude that recurrences of the Respondents' misconduct must be deterred, clearly and convincingly. This requires both general and specific deterrence.

B. Appropriate Sanctions

1. 526 and McCarney

[45] There seemed to be an implicit suggestion that sanctions against McCarney amount to sanctions against 526. Their joint submissions made little distinction between one another. To some extent this was reasonable given McCarney's role as that company's key principal and its guiding mind. However, we believe that the appropriate degree of protection and deterrence in this case warrants dealing with 526 and McCarney separately and on the basis of their respective roles and circumstances.

(a) Multiple Sanctions Not Precluded

[46] As a preliminary matter, we considered – and rejected – the contention of 526 and McCarney that they ought not to face the prospect of what they suggested would be multiple or duplicative monetary sanctions in Alberta.

[47] The illegal distribution at the centre of this case might indeed be viewed as a single broad enterprise that took place in multiple jurisdictions. The misconduct and the harm similarly occurred in multiple jurisdictions. As noted, McCarney made a sizeable payment to the BCSC in relation to that misconduct.

[48] However, the fact is that 526 and McCarney were happy enough to receive multiple investments from multiple investors in multiple jurisdictions. Having done that illegally, it is not unreasonable that 526 and McCarney should face the prospect of multiple sanctions.

(b) 526

[49] Significant sanctions are, in our view, appropriate against 526. We consider that steps must be taken to prevent for a lengthy period its return to the Alberta capital

market. We therefore conclude that the 20-year cease-trade and denial-of exemptions orders sought by Staff are appropriate and in the public interest.

[50] Were there any indication that 526 remained a viable entity with financial resources, we might be inclined to conclude that meaningful sanctions against it must include an explicit monetary element.

[51] However, the evidence suggests that 526 is no longer active or viable. Financial sanctions might constitute no more than a token gesture or, more importantly, a further impediment to any recovery by the Alberta investors who were harmed in the illegal distribution. We therefore conclude that an administrative penalty against 526 is not necessary in the public interest.

(c) McCarney

[52] We consider McCarney to bear the primary responsibility for the harm done to investors in this case. We believe that he must be dissuaded from repeating his misconduct. We further believe that the sanctions against him must send a clear message to those who might otherwise be tempted in future to lead or promote similar fund-raising efforts in contravention of Alberta securities laws.

[53] The appropriate message of specific and general deterrence must, in our view, involve both significant market access restrictions and a significant direct monetary cost.

[54] We therefore conclude that it is in the public interest to order that McCarney cease trading in any securities, that he be denied the use of any exemptions under Alberta securities laws, and that he resign from and not act in any capacity as officer or director of any issuer, in each case for 20 years. We do not, however, discern any serious potential for harm to Alberta investors by his continued involvement with the BC Private Companies, and we therefore consider it consistent with the public interest to exclude those entities from the director-and-officer ban on the same conditions as in British Columbia. Similarly, we do not believe that an exception allowing limited trading – as principal through a registrant – would jeopardize the public interest.

[55] Concerning a direct monetary penalty, we rejected above his contention that his payment to the BCSC precluded an administrative penalty here. We also noted that the sanctions against him are determined separately from those against 526; accordingly, we do not consider our conclusion above concerning the appropriate administrative penalty against 526 to be relevant to the sanctions against McCarney.

[56] We gave careful consideration to his submissions concerning an administrative penalty in light of both his payment to the BCSC and this Commission's Park Decision.

[57] As a general principle we do not accept that sanctions in one jurisdiction, even for the same misconduct, are necessarily a factor or a helpful guide in determining the sanction appropriate in Alberta against the same person or company. Too many circumstances can differ for a conclusion to be reliably drawn simply from one aspect of a decision in another jurisdiction.

[58] In our deliberations, we instead began with the protective purpose of a sanctioning order, and considered whether anything in McCarney's BCSC payment would reasonably affect our assessment of appropriate sanction here. In the specific circumstances of this case, we concluded that there is a link. In respect of specific deterrence, there was some merit in McCarney's position that he has paid a price – albeit in British Columbia – for the wrong he did in multiple jurisdictions including Alberta. We think it reasonable to believe that the BCSC payment will go some way to deterring him from repeating his errors in Alberta. As to general deterrence, we think it logical that others would consider the aggregate effect of the sanctions imposed on McCarney in all jurisdictions that were affected by the 526 distribution.

[59] We therefore believe it appropriate to take note of McCarney's $100 000 payment to the BCSC in assessing whether an administrative penalty should be ordered against him here or the amount of such a penalty.

[60] Sanctioning decisions in one proceeding are seldom of significant assistance in determining the outcome of a separate proceeding against different respondents. We do not consider the circumstances or McCarney's own role and responsibility in this case to be sufficiently similar to the facts of other cases for decisions such as *InstaDial* to serve as a helpful guide here. There are differences even with the Park Decision.

[61] We note that Park and Staff reached an agreement on the facts there before the present proceeding reached the hearing stage. That agreement certainly facilitated earlier resolution of the allegations against Park – a result that is generally, in and of itself, in the public interest. McCarney's admissions in this proceeding were made later in the proceeding. In general, his conduct in the Merits Hearing neither obviated the need for nor abbreviated that hearing. In short, we do not think that a direct comparison to the proceedings that resulted in the Park Decision is warranted.

[62] However, there is no dispute that the findings and sanctions in the Park Decision pertained to the same distribution and substantially the same allegations and events as in this case. For these reasons, we believe that the administrative penalty ordered against Park in the Park Decision has some relevance to our determination here.

[63] But for these considerations, we would have concluded that the appropriate measure of general and specific deterrence would include an administrative penalty against McCarney of a magnitude approaching the $200 000 sought by Staff (we found

unpersuasive McCarney's more general submissions on the question of appropriate administrative penalty). However, the circumstances of his BCSC payment and the Park Decision lead us to the view that the public interest will be protected by a considerably smaller administrative penalty than Staff sought against McCarney.

[64] We conclude that it is in the public interest to order McCarney to pay an administrative penalty of $75 000.

2. Edgson

[65] Edgson, in our view, understated his role and responsibility for the misconduct involved in the 526 distribution, and the potential for him creating future harm in the Alberta capital market without adequate specific and general deterrence of any repetition of such conduct.

[66] However limited his background in the investment field and sincere his professed belief at the time in the securities he was trading, Edgson contravened the law on a not insignificant scale and caused considerable harm. In so doing, he earned a not inconsiderable amount of commissions. Although he did step away from the distribution earlier than others and make some effort at straightening things out or assisting aggrieved investors, these actions did not erase what had occurred before.

[67] We rejected his contention that personal embarrassment and financial loss alone amounted to, or obviated the need for, sanction, including direct monetary sanction. We were not persuaded by his suggestions that a direct monetary sanction would serve as neither a useful specific deterrent nor a general deterrent, or that the deterrent effect of Commission sanctions is limited to readers of Commission publications. Edgson proposed that limited market access restrictions be imposed on him but also that they be lifted if he completes some sort of educational course. While that proposition seemed to indicate that Edgson might be inclined to re-enter the capital market, in our view the terms of the orders he proposed would be inadequate as either a specific or general deterrent. Moreover, we think a significant financial cost an essential part of the message that we wish to send both to Edgson himself and to others who might contemplate emulating Edgson.

[68] For these reasons we conclude that significant market access restrictions and an administrative penalty are called for.

[69] We consider the five-year cease-trade and denial-of-exemptions order Edgson suggested inadequate in the circumstances. In our view, a period of 10 years better reflects what happened in this case and the need for meaningful deterrence. However, we do not believe that Edgson's suggested "carve-outs" to permit limited trading for his own personal account through a registrant would put Alberta investors or the capital market at risk.

[70] Because no director-and-officer ban was sought against Edgson, we need not address his submission on that point.

[71] As to the quantum of administrative penalty, while we believe it must be substantial to serve the intended purpose, we also believe that the Park Decision must be taken into account (for the reasons discussed above in relation to McCarney). There was no dispute that Park's role in the 526 distribution was much greater than Edgson's. In all the circumstances, we believe that an administrative penalty materially smaller than Park's would serve the public interest.

[72] For these reasons, we consider it to be in the public interest to order that Edgson:

- cease trading in any securities and be denied the use of any exemptions under Alberta securities laws, in each case for 10 years; and

- pay an administrative penalty of $25 000.

3. Henderson

[73] Although Henderson's circumstances differed from Edgson, our ultimate conclusions were in many respects similar.

[74] His background, in our view, gave him more familiarity with the capital markets than Edgson and this tended toward a greater sanction against Henderson. On the other hand, he did not actually benefit from his activity by receiving any commissions (although he expected to); this factor tended to suggest a lesser sanction.

[75] Overall, we consider that Henderson's role, the need for both specific and general deterrence, and the nature and extent of sanctions appropriate for Henderson were equivalent to the conclusions we arrived at for Edgson.

[76] We thus determined that it is in the public interest to order that Henderson:

- cease trading in any securities and be denied the use of any exemptions under Alberta securities laws, in each case for 10 years; and

- pay an administrative penalty of $25 000.

4. Leong

[77] The circumstances of Leong's involvement in the 526 distribution were in some senses unique. In general, however, our considerations of overall sanctioning objectives and the factors relevant to Leong led us to conclusions similar to those in respect of Edgson and Henderson.

[78] Key differences were the scale of Leong's selling efforts (the amount of money he raised for 526 and his manner of going about it, including recruiting his own untrained agents) and his relative sophistication as a seller of other financial products. His selective treatment of his clients – having repaid one, by means not wholly clear, but not others – was also a concern.

[79] On balance, we considered that market access restrictions comparable to those against Edgson and Henderson were appropriate, but that a larger direct monetary sanction (albeit one still less than ordered against Park) was a necessary element of appropriate deterrence.

[80] For these reasons, we concluded that it is in the public interest to order that Leong:

- cease trading in any securities and be denied the use of any exemptions under Alberta securities laws, in each case for 10 years; and

- pay an administrative penalty of $35 000.

VI. COSTS

[81] In addition to the sanctions discussed above, Staff sought orders under section 202 of the Act that the Respondents pay, in the aggregate, $105 000 toward the costs of the investigation and hearing, allocated as noted earlier.

[82] Costs are not an element of sanction. That is, an order for payment of costs is not primarily designed to protect investors or the capital market. Nor should an order for payment of costs be seen as coercive; costs orders neither alter the fact that Staff bear the burden of proving their case, nor deprive respondents of the right to contest allegations against them.

[83] The purpose of an order for costs is more modest – to shift to a respondent an appropriate portion of the financial burden of enforcing Alberta securities laws. Given this different purpose, the factors relevant to assessing costs orders are not the same as for sanctioning. As this Commission stated in *Podorieszach* (at para. 54):

> . . . An order for costs or the quantum of costs awarded is not dictated by the severity of misconduct. Such awards relate more to procedural efficiency. As the Commission said in *Re Del Bianco* (2003) ABSECCOM ENF - #968904 v5 (at para. 24):
>
> > The purpose of awarding costs under section 202 is . . . , among other things, to provide the Commission with the ability to exert some influence over the conduct of proceedings and encourage efficient administration of the Act.

[84] The Respondents objected to Staff's requested orders for payment of substantial portions of the investigation and hearing costs. In general, the Respondents' position was that they had contributed more than Staff acknowledged toward the efficient resolution of these proceedings.

[85] We believe that the Respondents exaggerated their contributions. To varying extents, they did offer admissions or reach agreements with Staff on certain of the matters at issue. To the extent that was done, we agree that it contributed to the resolution of these proceedings, and thereby served the public interest. Nor did those admissions deprive the Respondents of their ability to respond to the allegations; they mounted sometimes vigorous defences notwithstanding their admissions. However, we believe that each Respondent could have taken similar steps sooner and done more to achieve an early resolution of the proceedings without impairing their rights. Some of the Respondents acted in a manner more conducive to an efficient resolution of these proceedings than others. That, in our view, is properly reflected in orders to pay costs.

[86] We consider that Henderson, who reached a comparatively extensive agreement on facts with Staff quite early in the Merits Hearing, made the greatest contribution to the effective resolution of the proceedings. Indeed, given that cooperation, much of the Merits Hearing was not necessary for the conclusions we reached in his case. We believe that Henderson should pay the least amount of costs of all the Respondents.

[87] Leong, too, made comparatively extensive admissions relatively early in the Merits Hearing and these, too, facilitated the resolution of his case.

[88] Edgson also made some admissions but they were, in our view, less clear and less helpful than those of Henderson and Leong.

[89] McCarney, by contrast, in our view contributed little to the efficient resolution of these proceedings. Although he did make some admissions, they were in our view limited and not always helpful. On the issue of his role and responsibility in connection with some rather clear misconduct, we consider that the position he took necessitated the greatest portion of the Merits Hearing. This, we believe, is appropriately recognized in an order to pay costs.

[90] Finally, 526 largely spoke through McCarney in these proceedings, and to some extent it must share his responsibility for the relative efficiency or otherwise with which matters could be resolved. That alone might justify a comparable order to pay costs against 526. However, as noted above in connection with administrative penalties, we are concerned that a significant direct financial order against 526 might serve primarily as a barrier to any prospect of recovery by its aggrieved investors. That leads us to reduce – but not eliminate – the amount of a costs order that we might otherwise consider appropriate against 526.

[91] For these reasons, we consider that each Respondent should pay a portion of the costs. We therefore find it appropriate to order under section 202 of the Act that the Respondents each pay a portion of the costs of the investigation and hearing, totalling $80 000, allocated as follows:

- 526 – $5000;
- McCarney – $30 000;
- Edgson – $20 000;
- Henderson – $10 000; and
- Leong – $15 000.

VII. CONCLUSION

[92] For the reasons given, we order as follows:

- in respect of 526:
    - under paragraphs 198(1)(b) and (c) of the Act, that it cease trading in any securities and none of the exemptions contained in Alberta securities laws apply to it, in each case for 20 years; and
    - under section 202 of the Act, that it pay $5000 toward the costs of the investigation and hearing;
- in respect of McCarney:
    - under paragraphs 198(1)(b) and (c) of the Act, that he cease trading in any securities and none of the exemptions contained in Alberta securities laws apply to him, in each case for 20 years, except that this order does not preclude him from trading in securities as principal in one account held with a registered investment dealer to whom he has first provided a copy of this decision;
    - under paragraphs 198(1)(d) and (e) of the Act, that he resign any position that he holds as a director or officer of any issuer and that for 20 years he is prohibited from becoming or acting as a director or officer of any issuer, except that this order does not preclude him from serving as an officer or director (or both) of the BC Private Companies for as long as their securities remain wholly owned by him and their activities remain restricted to acting as his personal holding and engineering business corporations;

- under section 199 of the Act, that he pay an administrative penalty of $75 000; and

- under section 202 of the Act, that he pay $30 000 toward the costs of the investigation and hearing;

- in respect of Edgson:

  - under paragraphs 198(1)(b) and (c) of the Act, that he cease trading in any securities and none of the exemptions contained in Alberta securities laws apply to him, in each case for 10 years, except that this order does not preclude him from trading in securities as principal in one account held with a registered investment dealer to whom he has first provided a copy of this decision;

  - under section 199 of the Act, that he pay an administrative penalty of $25 000; and

  - under section 202 of the Act, that he pay $20 000 toward the costs of the investigation and hearing;

- in respect of Henderson:

  - under paragraphs 198(1)(b) and (c) of the Act, that he cease trading in any securities and none of the exemptions contained in Alberta securities laws apply to him, in each case for 10 years, except that this order does not preclude him from trading in securities as principal in one account held with a registered investment dealer to whom he has first provided a copy of this decision;

  - under section 199 of the Act, that he pay an administrative penalty of $25 000; and

  - under section 202 of the Act, that he pay $10 000 toward the costs of the investigation and hearing; and

- in respect of Leong:

    - under paragraphs 198(1)(b) and (c) of the Act, that he cease trading in any securities and none of the exemptions contained in Alberta securities laws apply to him, in each case for 10 years, except that this order does not preclude him from trading in securities as principal in one account held with a registered investment dealer to whom he has first provided a copy of this decision;

    - under section 199 of the Act, that he pay an administrative penalty of $35 000; and

    - under section 202 of the Act, that he pay $15 000 toward the costs of the investigation and hearing.

[93] This proceeding is now concluded.

16 November 2006

For the Commission:

"Original Signed By"
Stephen R. Murison, Vice-Chair

"Original Signed By"
James A. Millard, QC, Member