ALBERTA SECURITIES COMMISSION

DECISION

Citation: Anderson, Re, 2009 ABASC 126 **Date: 20090324**

Benhard Andrew Anderson

Panel:	Stephen R. Murison Beverley A. Brennan, FCA Roderick J. McKay, FCA
Appearing:	Tom McCartney for Commission Staff Benhard Andrew Anderson on his own behalf
Date of Hearing:	9 March 2009
Date of Decision:	24 March 2009

I. INTRODUCTION

[1] This decision concludes a two-part hearing concerning certain public disclosure by High Plains Energy Inc. ("High Plains"). The first phase of the hearing ended with our finding that Benhard Andrew Anderson ("Anderson") was principally responsible for the issuance of news releases in the second half of 2005 and early 2006 that materially overstated High Plains' oil and gas production, contrary to Alberta securities laws and the public interest.

[2] In consequence, for the reasons given below, Anderson is barred from acting as a director or officer of any reporting issuer for seven years, and he must pay an administrative penalty of $100 000. He must also pay $20 000 of the costs of the investigation and hearing.

II. BACKGROUND

[3] In an amended notice of hearing dated 30 January 2009, staff ("Staff") of the Alberta Securities Commission (the "Commission") alleged breaches of Alberta securities laws and conduct contrary to the public interest by nine individual respondents – High Plains management and directors – in relation to certain news release disclosure by High Plains. The first phase of the hearing, into the merits of the allegations, was held on 17 February 2009. On or before that date, Staff withdrew the allegations against one respondent; entered into settlement agreements with all other respondents but Anderson; and withdrew or modified particulars of certain of the allegations against Anderson. Staff's stated intention was to call seven witnesses, including experts, and it was anticipated that the merits phase of the hearing would continue for several days. However, during the first day Anderson voluntarily gave testimony, including important admissions, under oath.

[4] Our decision and reasons on the merits of Staff's allegations against Anderson followed on 26 February 2009 (the "Merits Decision", cited as *Re Anderson*, 2009 ABASC 87). This decision should be read in light of the Merits Decision.

[5] We summarize here some of our observations and findings in the Merits Decision.

[6] High Plains was an Alberta company engaged in oil and gas production. It was, during the relevant period in 2005 and 2006, a reporting issuer in Alberta and had shares listed on the TSX Venture Exchange.

[7] Anderson, a Calgary resident with "a great deal of experience" in oil and gas operations and production, was at the time a director, a shareholder and the president and chief operating officer of High Plains – the most senior member of its management.

[8] In news releases issued on 28 July 2005, 29 September 2005, 14 and 28 November 2005, 5 December 2005 and 3 January 2006 (collectively, the "Six Releases") High Plains publicly disclosed oil and gas production rates that exceeded the reality, by significant percentages. In so doing, High Plains conveyed a picture of a company enjoying continued success and growth. Toward the end of that period it raised over $8.5 million in a private placement of shares, at prices 33% and more above transaction prices earlier in 2005.

[9] Anderson admitted that he had caused or permitted High Plains to make statements about its production in the Six Releases that (in the words of section 92(4.1) of the *Securities Act*,

R.S.A. 2000, c. S-4 (the "Act")) he ought to have known were "misleading or untrue" and "would reasonably be expected to have a significant effect on the market price or value" of High Plains shares. Anderson also admitted that, in so doing, he acted contrary to the public interest.

[10] We found – consistent with Anderson's admissions – that the oil and gas production disclosure in the Six Releases was materially misleading and untrue and would reasonably have been expected to have a significant effect on the market price or value of High Plains shares, "securities" within the meaning of the Act. We further found that, although others among High Plains management and directors also had a role in the disclosure process and thus shared a measure of responsibility, Anderson bore the principal responsibility for the issuance of the Six Releases and thus contravened section 92(4.1) of the Act. We also found his conduct to have been contrary to the public interest.

[11] It remained to be determined whether – and, if so, what – sanctions or costs should be ordered against Anderson. The hearing resumed for that purpose on 9 March 2009. We received written submissions on sanctions and costs from Staff prior to the hearing's resumption and oral submissions during the second phase of the hearing from Staff and from Anderson, who attended unrepresented by counsel.

[12] Our decision and reasons on the issues of sanctions and costs follow.

III. SANCTIONS

A. Positions of the Parties

[13] Staff, contending that Anderson "showed a wanton and reckless disregard for his duty to make accurate disclosure", "failed to demonstrate the soundness of judgement, care and skill required and expected of a senior officer and leader of a reporting issuer" and exhibited a "continued cavalier attitude . . . towards Alberta securities laws", sought a 12-year director-and-officer ban and a $120 000 administrative penalty against Anderson.

[14] Anderson submitted that the orders sought against him would be "extreme" relative to the terms on which Staff settled with others among High Plains management and directors. He stated that there had been no wanton or malicious intent to misrepresent; rather, he said, he had carelessly and erroneously trusted those he had hired to do their jobs. Nonetheless, he acknowledged that mistakes had been made and that he, as the president and "leader" of High Plains, was responsible for those mistakes.

B. Sanctioning Principles and Factors

[15] In administering Alberta securities laws the Commission is empowered, under sections 198 and 199 of the Act, to impose sanctions it considers to be in the public interest. This sanctioning authority is to be exercised prospectively – to protect and prevent, not to punish or remedy (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). For these purposes, deterrence – both specific (directed at dissuading a particular respondent from engaging in the same or similar misconduct) and general (directed at discouraging like-minded others from engaging in similar misconduct) – is an important consideration (*Re Cartaway Resources Corp*., 2004 SCC 26 at paras. 52-62; and *Re Podorieszach*, 2004 ABASC 567 at para. 17).

[16] A number of factors may be relevant to determining what, if any, sanctions to order in the public interest against a particular respondent. We are guided in this determination by the factors enumerated by the Commission in *Re Lamoureux*, [2002] A.S.C.D. No. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253), which include, as set out in *Re Workum and Hennig*, 2008 ABASC 719 at para. 43:

- the seriousness of the findings against the respondent and the respondent's recognition of that seriousness;
- characteristics of the respondent, including capital market experience and activity and any prior sanctions;
- any benefits received by the respondent and any harm to which investors or the capital market generally were exposed by the misconduct found;
- the risk to investors and the capital market if the respondent were to continue to operate unimpeded in the capital market or if others were to emulate the respondent's conduct;
- decisions or outcomes in other matters; and
- any mitigating considerations.

C. Consideration of Sanctioning Principles and Factors

1. Seriousness of Misconduct and Recognition of Seriousness

[17] Responsibility for ensuring the accuracy of a public company's disclosure rests with the company's management and directors. The importance of that responsibility cannot be overstated. As we noted in the Merits Decision at para. 43:

> Truthful public disclosure of material information by reporting issuers is important – indeed, essential – to the fair and efficient operation of the Alberta capital market. The dissemination of misleading or untrue information that would reasonably be expected to affect significantly the price of publicly traded securities is inconsistent with a fair and efficient capital market. It puts actual and prospective investors at risk, because investment decisions may be made on the basis of flawed information. Foreseeable consequences can include losses to investors, of both money and confidence. A loss of investor confidence can, in turn, impair the ability of responsible businesses to raise capital economically.

[18] Anderson, the most senior manager of High Plains, failed to fulfil that responsibility in relation to the Six Releases. While we are inclined to accept Anderson's submission that this was not an instance of "wanton" misconduct or, as Staff also characterized it, "cavalier" misconduct, it was serious misconduct nonetheless. Anderson was the senior officer of the company; he was principally responsible for the final content of the Six Releases; he knew, before some of the Six Releases were issued, that two other officers had significant differences of opinion about the production numbers being disclosed; he was responsible for getting to the bottom of these differences and his background in oil and gas operations and production would have facilitated that task; yet he persisted in preferring and supporting the materially overstated production numbers in information provided to his fellow High Plains directors and the Alberta capital market generally. The seriousness of Anderson's misconduct, in itself, argues for significant sanction.

[19] Anderson acknowledged the importance of accurate news release disclosure, and he did not dispute the seriousness of the mistakes made. However, in making his submissions, Anderson also seemed to ascribe the inaccurate production disclosure to misplaced trust in a subordinate or subordinates – revealing, in our view, an incomplete understanding or recognition of his role in the disclosure process and where he failed. We consider that his partial recognition

of the seriousness of his misconduct, while not obviating the need for significant sanction, does argue for some moderation in the degree of significant sanction required.

2. Characteristics (Capital Market Experience and Activity)

[20] In mid-2005 Anderson was not a novice at public company management or directorship. He said that he had previously served, for about two years, as a director and the "only employee" and "only management" of a "JCP" (junior capital pool company) and, again for about two years, as a director and the president and chief executive officer of another, presumably larger, company that had securities trading on both the TSX Exchange and the American NASDAQ. He further said that he had experience with news release disclosure at both companies. Thus, inexperience – whether with the duties of a director or officer or with news release disclosure – could not, in our view, account for his lapses at High Plains.

[21] Given Anderson's roles and associated responsibilities at High Plains, the evidence of his action (and inaction) relating to the Six Releases – for example, his persistence in preferring the production numbers of High Plains' vice-president responsible for operations (Stevenson) over the markedly less favourable numbers of the company's chief financial officer (Ghazar), without making efforts to get to the bottom of their differences of opinion; his failure to insist on resolving the production data uncertainties before completing the December 2005 private placement; and his persistence in supporting materially overstated production numbers in information provided to his fellow directors in late January 2006 – is troubling. Considered in the best possible light, Anderson was, in our view, at the very least insufficiently diligent. Moreover, during the sanction phase of the hearing (as noted) Anderson seemed to ascribe the problem to his misplaced trust in a subordinate (Stevenson, presumably) or subordinates. We consider that, in his handling of the Six Releases, Anderson demonstrated an altogether unsatisfactory approach to his duties as the senior officer and a director of a public company, and a seriously inadequate regard for Alberta investors and our capital market.

[22] These considerations call for significant sanction, and in particular persuade us that Anderson is not at present fit to hold the position of director or officer of a reporting issuer. Further, in our view, these considerations are not moderated in effect by the apparent absence of any prior sanctions against Anderson.

3. Harm to Investors or the Capital Market and Benefits to Anderson

[23] We noted above (and in the Merits Decision) the importance of truthful public disclosure by public companies, and described the harm to investors, investor confidence and the capital market generally that can foreseeably follow from misleading disclosure.

[24] Staff observed that, after the issuance of the fifth of the Six Releases (dated 5 December 2005), there was a noticeable but ultimately unsustained rise in the trading price of High Plains shares. Staff then argued that it could fairly be inferred that all investors who purchased High Plains shares on the TSX Venture Exchange between 5 December 2005 and 30 January 2006 were misled by the Six Releases, or certain of them, and likely suffered both financial harm and a loss of confidence in the integrity of the Alberta capital market, and further that investors who purchased shares in the December 2005 private placement likely suffered similarly.

[25] The evidence does not support such a far-reaching conclusion, and indeed common sense suggests that, if some investors were harmed by buying at an inflated price, any sellers at the same price likely benefited. That said, we note (as we found in the Merits Decision) that the materially misleading Six Releases presented a picture of a growing and successful company, and we are in no doubt that this picture could be expected – and in our view was intended – to be taken into account by existing and prospective investors in assessing the prospects of the company and the pricing of its shares. There is also no reason to doubt that the production misinformation played some part – albeit unquantified – in the rise in the High Plains share price from April 2005 to early 2006. Investors who, on the basis of this misinformation, bought or declined to sell High Plains shares during this period may indeed have suffered directly when the share price subsequently dropped. That we cannot identify those investors or quantify their losses does not belie their existence.

[26] In any event, Anderson's misconduct certainly exposed High Plains investors to the risk of direct financial loss, and put at risk, more generally, investor confidence and market efficiency. This argues for significant sanction.

[27] There was no evidence as to whether or to what extent Anderson himself benefited from the materially misleading Six Releases. He was during the relevant period a High Plains shareholder, so it is reasonable to deduce that, like other shareholders, he would for a time have seen the value of his holding rise. Apart from Anderson's shareholding, the apparent success of High Plains, as conveyed through the Six Releases, could not but benefit its "leader" (Anderson) – reputationally, at least, and perhaps also financially. We do not doubt that Anderson would have expected such an outcome. In short, we conclude that Anderson at least had reason to expect that he would benefit from the inaccurate production disclosure. This, too, argues for significant sanction.

4. Need for Deterrence

[28] As is often the case, some of the sanctioning factors can and do interact. The seriousness of the misconduct here, the harm to which it exposed the Alberta capital market and its participants, and Anderson's expectation, if not enjoyment, of associated benefits all speak to the compelling need to deter similar misconduct in future.

[29] The circumstances give us no comfort that, absent significant sanction, something similar would not recur were Anderson to hold a position of authority with another public company. Substantial specific deterrence is warranted.

[30] We also consider it imperative that any sanction, or combination of sanctions, ordered in this case suffices to send a message to others that failures, like Anderson's, in performing the duties of a director or officer of a public company will have serious, direct and unwelcome consequences. Such general deterrence will also serve as a useful inducement to others to properly and effectively fulfil their disclosure responsibilities.

5. Other Decisions

[31] We find in the decisions cited by Staff (*Re Nano World Projects Corp.*, 2005 BCSECCOM 441 and 2005 BCSECCOM 648; *Re Naxos Resources Ltd.*, 1999 LNABASC 113 and 1999 LNABASC 213; and *Re Cartaway Resources Corp.*, 2000 LNABASC 375 and 2001

LNABASC 89) little guidance as to the sanction appropriate here; their facts and findings are simply not sufficiently consistent with those before us.

[32] The settlement agreements entered into between Staff and seven of the original respondents in this matter are relevant, in that they deal with the same factual background and the same, or similar, allegations. As Anderson noted, the sanctions (or equivalent) to which the settling respondents agreed are considerably less extensive than Staff sought against him. This, however, does not by itself demonstrate (as Anderson suggested) that the sanctions sought by Staff against him are "extreme".

[33] As the Commission has noted in other decisions, settlements are the product of negotiations between parties, and settlement outcomes can reflect a variety of considerations unknown to a hearing panel. (Among such considerations may be the effect that a settlement can have on the timely, efficient resolution of a matter without the need for a hearing – an effect that may with perfect propriety be recognized and rewarded through relatively favourable terms of settlement.) Settlement outcomes are thus not necessarily a helpful guide to determining the appropriate outcome of a hearing.

[34] That said, we agree with Staff's suggestion that, in the circumstances of this case, the outcomes reflected in the settlement agreements in evidence establish a lower limit to the range of sanctions appropriate for Anderson. That is because, as we found in the Merits Decision, Anderson was the individual principally responsible for the final content and issuance of the materially misleading Six Releases.

6. Mitigating Factors

[35] The evidence discloses no actions by Anderson that could, in our view, be regarded as mitigating any harm resulting from his misconduct. To the contrary, the repetition and continuation of inaccurate production disclosure during the relevant period, for which Anderson was principally responsible, is an aggravating factor. Even if the High Plains news release of 8 March 2006, which purportedly (but inadequately) corrected the earlier misinformation, had some mitigating effect, it was issued only after production disclosure was effectively taken out of Anderson's hands.

[36] Anderson did ultimately – on the first and only day of the merits phase of the hearing – admit the key facts and acknowledge his misconduct. This was no small matter. However, we consider that these admissions and acknowledgement do not mitigate any harm done and mitigate only slightly the seriousness of his misconduct.

[37] In short, we discern no mitigating factors that diminish the need for significant sanction.

D. Nature and Extent of Appropriate Sanctions

[38] For the reasons given, we conclude that significant sanctions against Anderson – providing real protection and substantial specific and general deterrence – are in the public interest. The sanctions should, we believe, remove Anderson from positions of authority with a public company and include a direct monetary element. We thus agree with Staff that it is in the public interest that Anderson be barred from serving as a director or officer of any reporting issuer and that he pay an administrative penalty.

[39] Given Anderson's roles with High Plains, his principal responsibility for the Six Releases, and our belief that a position of authority with a reporting issuer is not currently appropriate for him, we consider that the director-and-officer ban against him should be of significant duration – certainly longer than the corresponding officer bans to which Ghazar and Stevenson agreed (three years and four years, respectively). However, we are satisfied that the necessary deterrence can be achieved with a director-and-officer ban of lesser duration than that sought by Staff, if coupled with a substantial administrative penalty, as discussed below. We conclude that a director-and-officer ban of seven years is appropriate in the public interest.

[40] As to an administrative penalty, we consider that Anderson's contraventions, which continued over time and in the face of active capital-raising by High Plains (the sizeable December 2005 private placement), evinced a seriously inadequate regard for truthful public-company disclosure and thus demand a substantial administrative penalty – considerably greater than the settlement amounts to which Ghazar and Stevenson agreed ($40 000 and $50 000, respectively). In our view, an administrative penalty of less than $100 000 would fall short of the necessary specific and general deterrence. However, when coupled with the director-and-officer ban discussed, we conclude that an administrative penalty in that amount would suffice in the public interest.

IV. COSTS

A. Positions of the Parties

[41] Staff asked that Anderson be ordered to pay $50 000 towards the costs of the investigation and hearing. Anderson submitted that this (like the sanctions sought by Staff) would be "extreme" relative to the terms of the settlement agreements in evidence.

[42] Staff tendered a "bill of costs" showing $212 118.01 of incurred costs – not disputed – divided generally into two categories: "Investigation Costs" of $85 902.04 and "Hearing Costs" of $126 215.97, further subdivided into several of the categories contemplated in sections 191.1 and 191.2, respectively, of the *Alberta Securities Commission Rules (General)* (the "Rules"). ("Hearing Costs" thus included witness costs, costs of lawyers and experts, and disbursements and incidental costs.)

[43] Each of the original respondents who settled with Staff also agreed to make payments "towards investigation costs" ($5000 from each of the five High Plains non-management directors; $7500 from each of Ghazar and Stevenson) – in each case, a fraction of what Staff sought from Anderson.

[44] Given the opportunity to elaborate on the reasons for their position on costs, Staff emphasized two factors: that Anderson's "degree of culpability" was "much higher" than that of the settling respondents; and that only Anderson had made no movement towards a resolution before the hearing.

B. Nature and Purpose of Costs Orders

[45] Costs orders are not sanctions. They constitute a mechanism for the recovery, from a respondent found to have engaged in misconduct, of certain costs that would otherwise be borne indirectly by other, innocent market participants on whose fees the Commission relies. Some

such recovery is generally appropriate. Our primary focus in considering costs orders is the efficient resolution of enforcement proceedings (*Workum and Hennig* at paras. 192-93, 252). So, in addressing the issue of costs, the capital market misconduct in question (which is addressed by sanctions) is less relevant than the extent of a respondent's contribution to the efficient conduct and ultimate resolution of the proceeding.

[46] We consider this to be a case in which Anderson – like each of the settling respondents – should pay a portion of the costs incurred. As to the appropriate quantum, though, we are not persuaded by Staff's submissions. In particular, given the focus just stated, Anderson's culpability for High Plains' inaccurate production disclosure is not a compelling factor.

C. Allocation of Costs Notionally Recoverable

[47] Not all of the costs incurred in the investigation and hearing can be attributed to Anderson alone. While the hearing ultimately proceeded only in respect of allegations against Anderson, the investigation culminated in a notice of hearing (subsequently amended) against nine respondents, seven of whom settled the allegations against them without a hearing; we do not know when Staff determined not to proceed with the allegations against the remaining respondent (Schindel) but we learned of that only after the hearing began. For these reasons, it is appropriate to consider the costs carefully with a view to assessing the portion fairly allocable to Anderson, and only then to determine what portion of that allocated amount he should pay.

[48] As part of our analysis, we distinguish among costs of investigation, hearing preparation and the actual hearing. In the absence of any evidence that the investigation focused on one or more of the nine original respondents, we consider it reasonable to assume that investigation costs were incurred equally in respect of each of them. Inasmuch as there remained only one respondent at the hearing – Anderson – we consider that all costs of the actual hearing are allocable to him.

[49] We think it reasonable to infer that hearing preparation continued until the hearing began and, quite likely, intensified as the hearing neared. While seven of the original respondents ultimately settled the allegations against them without a hearing, these settlements occurred late in the process: five of them signed their settlement agreements between 2 and 6 February 2009, two weeks or less before the 17 February hearing; another signed on 12 February; and the last signed on 13 February, the last business day before the hearing. Work on these settlements presumably accounted for some of Staff's legal time. As mentioned, we do not know when Staff determined to withdraw the allegations against Schindel but, given that he was named as a respondent in the amended notice of hearing and we were not notified that the allegations were withdrawn until the hearing had begun, it is difficult to conclude that none of the hearing preparation related to him. Given the difficulty, from the limited information available, in allocating with any precision hearing preparation costs among the respondents – but recognizing that, as the hearing neared and other respondents dropped away from the hearing process, hearing preparation would have become proportionately more focused on the allegations against Anderson – we consider it reasonable to allocate only one-fifth of the hearing preparation costs to him.

[50] To summarize, we consider that costs are allocable to Anderson as follows: (i) one-ninth of the investigation costs; (ii) one-fifth of the hearing preparation costs; and (iii) all of the costs

of the actual hearing. Thus, where a costs item cannot reliably be placed within the third (or second) category, placing that item in an earlier category works to Anderson's favour. That is the approach followed here.

[51] Turning to the itemized costs, we begin with an adjustment necessitated by section 191.2(e) of the Rules, on which Staff relied in respect of $36 827.22 in hearing-related disbursements and incidental costs. This section limits recoverable costs of administering a hearing to $2500 "for each day or partial day of hearing". The hearing here consumed less than one full day for each of the merits and sanction phases. The costs in question were obviously tallied before the sanction phase of the hearing; it is unclear whether they pertain to both phases of the hearing or to the merits phase only. In the former case, the recoverable costs would be limited to $5000; in the latter, $2500. We resolve the ambiguity in favour of Anderson, and therefore ascribe the lower amount to the hearing itself. Excluding, as unrecoverable, $34 327.22 of disbursements and incidental costs reduces the "Hearing Costs" from the $126 215.97 shown in the bill of costs to $91 888.75.

[52] Concerning the allocation of costs as between "Investigation Costs" and "Hearing Costs", Staff included under the former category an unspecified portion of Staff investigators' time spent in preparing for and attending the hearing. Two investigators did testify in the merits phase of the hearing, but their appearances were quite brief; at the prescribed and claimed $50 hourly rate, the costs involved would be immaterial in the present context. For that reason, and because (as explained) doing so would not prejudice Anderson, we make no adjustment on this ground to the claimed investigation or hearing attendance costs. For the same reasons, and because we have no information as to what portion of the investigators' time was spent in hearing preparation, we make no reallocation of these costs to hearing preparation.

[53] The proportions of hearing-related legal costs incurred in hearing preparation and the actual hearing, respectively, were not stated. We do, however, know the duration of the merits phase of the hearing. We therefore ascribe to the actual hearing four hours for each of the two Staff counsel (at their respective hourly rates specified in the bill of costs, a total of $2300); the remainder ($47 780) we consider costs of hearing preparation. The modest $90 in witness costs we ascribe to hearing preparation. We treat the $39 218.75 cost of experts, none having appeared at the hearing, as hearing preparation costs. Thus, the adjusted total of $91 888.75 in "Hearing Costs" is allocated between hearing preparation – $87 088.75 – and the hearing itself – $4800.

[54] Accordingly, the aggregate costs notionally recoverable (rounded down for simplicity) can be categorized as follows: investigation – $85 900; hearing preparation – $87 000; and the hearing itself – $4800. Applying the relevant allocation to each category (one-ninth, one-fifth and all, respectively), we consider that the notionally recoverable costs fairly attributable to Anderson total some $31 700.

D. Costs Payable by Anderson

[55] The costs recovered from the settling respondents were, in each case, considerably less than the total attributed to Anderson, immediately above. However, as noted, settlement outcomes can reflect considerations unknown to a hearing panel; thus, they are not necessarily helpful in determining what portion of his allocation Anderson should pay.

[56] Further, contributions to the efficient resolution of an enforcement proceeding are highly relevant to the question of costs. A settlement can obviously reduce – sometimes significantly – the complexity, duration and costs of a proceeding. However late the settlements here, they unquestionably simplified and shortened the hearing ultimately held. There is, thus, good reason for Anderson to pay more – considerably more – of the total costs than those who settled.

[57] That said, Anderson's conduct during the hearing did substantially contribute to a prompt and efficient resolution. His important admissions and concise oral submissions considerably abbreviated what had been expected to be a multi-day hearing. This warrants recognition.

[58] In the circumstances, we consider it appropriate that Anderson pay $20 000 of the costs of the investigation and hearing.

V. ORDERS (SANCTIONS AND COSTS)

[59] For the reasons given, we order in the public interest that:

- under sections 198(1)(d) and (e) of the Act, Anderson resign all positions he holds as a director or officer of any reporting issuer and he is prohibited for seven years from the date of this decision from becoming or acting as a director or officer (or both) of any reporting issuer; and

- under section 199, he pay an administrative penalty of $100 000.

[60] We also order under section 202 of the Act that Anderson pay $20 000 of the costs of the investigation and hearing.

VI. PROCEEDING CONCLUDED

[61] This proceeding is now concluded.

24 March 2009

For the Commission:

"original signed by"
Stephen R. Murison

"original signed by"
Beverley A. Brennan, FCA

"original signed by"
Roderick J. McKay, FCA