**ALBERTA SECURITIES COMMISSION**

**DECISION**

**Citation: Locate Technologies Inc., Re, 2012 ABASC 237** **Date: 20120605**

**Locate Technologies Inc., 706166 Alberta Co. and Lorne Drever**

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| **Panel:** | Stephen Murison<br>Daniel McKinley, FCA<br>Fred Snell, FCA |
| **Appearing:** | Robert Stack<br>for Commission Staff<br><br>Paul Moreau<br>for the Respondents |
| **Submissions Completed:** | 8 May 2012 |
| **Date of Decision:** | 5 June 2012 |

## I. INTRODUCTION

[1] Locate Technologies Inc. (**Locate**), 706166 Alberta Ltd. (**706**) and Lorne Drever (**Drever**) were alleged by staff (**Staff**) of the Alberta Securities Commission (the **Commission**) to have contravened both the *Securities Act*, R.S.A. 2000, c. S-4 (the **Act**) and a prior Commission decision, and to have acted contrary to the public interest, in connection with certain sales of shares in Locate.

[2] On 30 March 2012, before this matter came to a hearing, Locate, 706 and Drever (together, the **Respondents**), with legal representation, executed a Statement of Admissions with Staff; this document was entered into evidence. All parties then agreed that this matter should proceed directly to the determination of appropriate sanctions and costs orders, based on the Statement of Admissions. Written submissions on that topic were made to this hearing panel by Staff, but not by the Respondents (the latter having apparently declined to further instruct their shared counsel). We assessed and drew conclusions from the Respondents' admissions of fact and law, taking into account the Act, the Commission decision allegedly breached, other relevant elements of Alberta securities laws, and the submissions before us.

[3] This decision sets out and explains our findings as to the Respondents' misconduct and the orders we issue in consequence.

## II. THE RESPONDENTS

[4] Drever resided (and apparently still resides) in Edmonton Alberta. He has never had any formal training in securities law.

[5] Locate was a body corporate formed under Alberta law, purportedly engaged in the production and sale of wireless technology. Its operations and management were in Edmonton; Drever, its president and sole director, managed its affairs.

[6] 706 was also a body corporate formed under Alberta law. Drever was its sole director and sole shareholder, and managed its affairs from Edmonton. 706 was the largest shareholder of Locate, owning more than 20% of its voting common shares (**Locate Shares**), and was, as such, a "control person" of Locate as that term is defined in section 1(l) of the Act.

[7] None of the Respondents was ever registered under section 75 of the Act to deal or trade in securities. No preliminary or final prospectus has ever been filed with the Commission, or receipted, in connection with any distribution of Locate Shares.

## III. THE MISCONDUCT

### A. Earlier New Brunswick and Alberta Misconduct and Orders

[8] Prior to this proceeding, the Respondents came to the attention of the New Brunswick Securities Commission (the **NBSC**). Against the backdrop of concerns about securities-related activities that, among other things, may have breached certain undertakings and court orders, the NBSC issued two orders barring the Respondents (among others) from all trading in securities and from using exemptions under New Brunswick securities laws. The orders also barred all trading (by anyone) in securities of Locate or of another Alberta company, Tubtron Controls Corp. (**Tubtron**). The first of these NBSC orders was issued in October 2007 for six months;

the second, issued on 10 April 2008, extended the first order indefinitely – that is, until a further order or final determination in the matter.

[9] In the spring of 2008 Staff in Alberta sought orders from this Commission (under section 198(1.1) of the Act) reciprocating, here, the effect of the NBSC orders. A Commission hearing panel on 18 April 2008 found such orders (to which the Respondents consented) to be in the public interest. Its decision (the **First Alberta Decision**, cited as *Re Locate*, 2008 ABASC 231) barred, "unless and until otherwise ordered by this Commission", all trading in and purchasing of securities of Locate (and of Tubtron); all trading in and purchasing of any securities by the Respondents (and Tubtron); and the Respondents' (and Tubtron's) use of any exemptions under Alberta securities laws.

[10] The Respondents and Tubtron entered into a settlement agreement with NBSC staff. Dated 15 August 2008, the agreement is in the public domain and posted on the NBSC website. In the agreement, 706 admitted to repeated acts in furtherance of securities trading without the requisite registration, while Locate and Drever admitted to repeated breaches of New Brunswick securities laws and court orders. The breaches involved selling Locate securities without the requisite New Brunswick registration or prospectus; they continued over the course of years, despite repeated assurances from Drever that he would cease improper activity. Approving that settlement agreement, the NBSC (among other things) permanently banned Drever from trading in any securities, and permanently banned Locate and 706 from using any exemptions under New Brunswick securities laws or issuing any securities to New Brunswick residents.

[11] A Commission hearing panel here was asked to reciprocate those New Brunswick orders also. That panel, finding "serious, repeated capital market misconduct" on the part of the Respondents (and Tubtron) in both New Brunswick and Alberta, concluded that such orders were appropriate to protect Alberta investors and the Alberta capital market. In its November 2008 decision (the **Second Alberta Decision**, cited as *Re Locate Technologies Inc.*, 208 ABASC 622) that panel permanently banned Locate and 706 (and Tubtron) from any trading that would involve their issuing securities or using exemptions under Alberta securities laws, and all trading in securities by Drever.

## B. Activity in 2010

### 1. Sales to Alberta Investors

[12] A Locate agent sold – traded (under the Act) – Locate Shares to one Alberta investor in April 2010 and again some time later, and to another Alberta investor in June and July 2010. All steps in relation to these trades took place in Alberta. Drever admitted to having authorized, permitted or acquiesced in these trades.

[13] It is clear from the Statement of Admissions (which declared that Locate received money from both these investors but never provided share certificates) that the Locate Shares so traded were meant to be issued to the investors. Moreover, as sales of securities not previously issued, the trades also constituted a "distribution" (or distributions) as defined in section 1(p) of the Act. As such, absent an available exemption, the prospectus requirements under section 110 applied. There was no prospectus. Locate made no effort to determine whether either of these investors "fit" under a prospectus exemption; neither of them did.

[14] In making these trades, Locate's agent told the two Alberta investors that Locate Shares would soon be listed on an exchange in the United States and would thereafter increase substantially in value; Locate admitted that these were its representations. With a view to soliciting further investment from them, Drever made similar statements to these two investors. As acknowledged in the Statement of Admissions, these were statements prohibited by sections 92(3)(a) and (b) of the Act: an undertaking as to the future value or price of a security, and a listing representation made without requisite permission or listing approval. We also find (although this was not expressly admitted) that by having authorized, permitted or acquiesced in the sales to these Alberta investors, and in soliciting further investment from them, Drever personally acted in furtherance of trades in securities. Therefore (under section 1(jjj)(vi) of the Act) we further find that Drever himself engaged in trades and distributions.

[15] It follows, and we find, that in connection with these trades to Alberta investors:

- Locate and Drever both contravened sections 92(3)(a) and (b);
- Locate (caused, authorized or permitted by Drever) contravened section 110 of the Act (the only reason we make no similar finding against Drever himself is that it seems not to have been alleged in the amended notice of hearing);
- Locate contravened its permanent trading ban and denial of exemptions under the Second Alberta Decision, and thereby also its duty under section 93.1 of the Act to "comply with decisions of the Commission"; and
- Drever contravened his permanent trading ban under the Second Alberta Decision and thereby also section 93.1 of the Act.

### 2. United States Distribution

[16] Also in 2010, work proceeded on distributions of Locate Shares in the United States – a primary offering by Locate itself (an offering of Locate Shares to be issued), and a secondary offering of existing Locate Shares by shareholders including 706. To this end, at Drever's direction and authorization, Locate filed with the US Securities and Exchange Commission (the **SEC**) draft prospectuses as part of registration statements. No corresponding prospectuses were filed in Alberta. The second draft US prospectus mentioned the cease-trade orders under the First and Second Alberta Decisions and stated that the latter decision "constrained" Locate from issuing any shares.

[17] As was admitted, this activity involved a trade from Alberta, all steps by the Respondents in relation to which were subject to Alberta securities laws. It also involved distributions – the primary offering by Locate and (given the definitions in sections 1(p) and (jjj) of the Act) the secondary offering by 706, as a trade from the holdings of a "control person". This triggered the prospectus requirement under section 110 of the Act, a requirement not satisfied merely by the SEC filings.

[18] Locate, 706 and Drever admitted some contraventions in this regard – acts by Locate and 706 "in furtherance of" an illegal distribution contrary to section 110 of the Act, and acts contrary to Locate's cease-trade ban under the Second Alberta Decision (although the wording in the Statement of Admissions was not entirely precise), with Drever having authorized, permitted

or acquiesced in such contraventions by Locate and 706. We find rather more. The "acts in furtherance" by Locate and 706 themselves constituted trades and, therefore, by extension, were also distributions by Locate and 706. In the absence of compliance with the prospectus requirement or any available prospectus exemption, we further find in connection with this US activity that Locate and 706 contravened section 110 of the Act. In doing so, Locate also contravened its permanent trading ban under the Second Alberta Decision, and thus also contravened section 93.1 of the Act.

[19] As to Drever, we find that his having (as he admitted) "directed and authorized" the illegal US-focused distributions, and his having authorized, permitted or acquiesced in the contraventions by Locate and 706, constituted acts in furtherance of the trades and distributions. As such (under the definitions cited), these were trades and distributions by Drever personally. It follows, and we find in connection with this US activity, that Drever contravened his permanent trading ban under the Second Alberta Decision – and thus, also, section 93.1 of the Act. We make no finding that he contravened section 110 of the Act, but only because this seems not to have been alleged in the amended notice of hearing.

[20] Each of these contraventions went to quite basic elements or principles of our securities regulatory system. The underlying purposes of the Act are to protect investors and foster efficiency and confidence in the capital market. In part these purposes are assisted by furnishing prospective investors with reliable material information on which to base informed investment decisions. That is entirely inconsistent with what occurred here – the contraventions of the prospectus requirements (by all three Respondents) and the making of prohibited representations (by Locate and Drever). We therefore find those aspects of each Respondents' conduct also to be contrary to the public interest.

[21] We make the same finding in respect of Locate's and Drever's breaches of the Second Alberta Decision. Commission hearing panel orders are issued in the public interest. It is difficult to conceive of circumstances in which the flouting of a Commission order explicitly directed at oneself could be other than contrary to the public interest. If any such case exists, this is not it. Moreover, confidence in the capital market may turn to a considerable extent on a sense that rules are enforced and violators excluded from the market. Breaches of protective orders can undermine such confidence and the public interest.

## IV. APPROPRIATE ORDERS

### A. Orders Sought by Staff

[22] As noted, the Respondents made no submissions on the issue of what, if any, orders would be appropriate in this case.

[23] Staff seek permanent securities-trading bans against all Respondents; permanent denial-of-exemptions orders against Locate and 706; a permanent director-and-officer ban against Drever; a $300 000 administrative penalty, payable by the Respondents jointly and severally; and an order that the Respondents pay investigation and hearing costs totalling $27 613.24.

[24] Staff characterized the Respondents' misconduct – taking into account their history, notably in New Brunswick – as "very serious" and "cavalier or flagrant", and assert that the

Respondents "pose a substantial risk to investors and the integrity and reputation of the Alberta capital markets". They point to Drever's having admitted – in his settlement agreement with NBSC staff – to having made untrue and misleading statements to NBSC staff – as indicative that he "cannot be trusted to be an officer or director of any issuer".

## B. Sanctions and Costs Orders Generally

[25] The Commission is empowered to order both sanctions (which can include one or more of a variety of market-access bans under section 198 of the Act, as well as monetary administrative penalties under section 199) when it considers it to be in the public interest to do so, and (under section 202) the payment of investigation and hearing costs.

[26] The differing purposes and principles of sanctions and costs orders have been frequently explained, as this Commission did quite recently in *Re Marcotte*, 2011 ABASC 287 (at paras. 18-20):

> Sanctions are intended to protect investors and the capital market from future harm. Given this focus, the Commission's sanctioning authority under sections 198 and 199 of the Act is to be exercised prospectively (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission*), 2001 SCC 37 at paras. 39-45).
>
> In determining whether, or what, protective sanctions are appropriate in a particular case, the need for both specific deterrence (directed at a particular respondent) and general deterrence (directed at others) is an important consideration (see *Re Cartaway Resources Corp*., 2004 SCC 26 at paras. 52-62; and *Re Podorieszach*, 2004 ABASC 567 at para. 17). Numerous other factors may also be relevant; several were enumerated by this Commission in *Re Lamoureux*, [2002] A.S.C.D. No. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253) and restated in *Re Workum and Hennig*, 2008 ABASC 719 at para. 43 (affirmed 2010 ABCA 405):
>
> - 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.
>
> A costs order is not a sanction, but rather a means of recovering, from a respondent found to have engaged in capital-market misconduct, certain investigation and hearing costs that would otherwise be borne indirectly by law-abiding market participants whose fees fund the Commission's operations. It is generally appropriate that a respondent pay at least some portion of the relevant costs. Determination of the appropriate portion may involve assessing parties' contributions to the efficient conduct and ultimate resolution of the proceeding.

## C. Sanctioning Principles and Factors Applied to the Misconduct Here

*Seriousness of Misconduct; Threat Posed*

[27] The misconduct of the Respondents was serious indeed.

[28] Each Respondent engaged in the distribution of Locate Shares in contravention of the prospectus requirements of Alberta securities laws. These laws were applicable, irrespective of where intended buyers might reside, given that each Respondent was based in Alberta and that the corporate Respondents, and their actions, were managed from this province. Moreover, as was admitted, two buyers (in a distribution for which we found Locate and Drever, but not 706, culpable) were also in Alberta.

[29] The prospectus requirement – one we consider to be well known – is a fundamental element of our securities regulatory regime. Its contravention deprives investors of an essential protection to which they are entitled. As discussed, this is inconsistent with fundamental elements and purposes of our securities regulatory regime. Moreover, where those responsible for such contravention are (like the Respondents) based in Alberta, they put at risk the reputation of our securities regulatory system and confidence in our capital market. The breaches of the prospectus requirement – which made the distributions illegal – were very serious.

[30] Locate and Drever's prohibited representations – enticing promises made without the necessary underpinnings, and thereby potentially and dangerously misleading – were likewise profoundly inconsistent with the notion of providing prospective investors with reliable material information to assist in making informed investment decisions. This aspect of Locate's and Drever's misconduct was very serious.

[31] Securities regulatory enforcement powers are not invoked lightly. The Commission (like its counterparts in other provinces, the NBSC among them) imposes trading and other market-access bans only when persuaded that such significant protective measures are necessary to protect the investing public and the capital market. The orders imposed against each Respondent by this Commission in the Second Alberta Decision – permanent bans – were significant. As explained in that decision, they were prompted by a sorry history of repeated capital market misconduct spanning two provinces, including breaches of securities laws, undertakings and even court orders. The underlying message delivered by the Second Alberta Decision to each of Locate, 706 and Drever was clear: they had demonstrated themselves to be such a serious, persistent and permanent threat that they could never again enjoy access to the Alberta capital market in the capacities specified in the Second Alberta Decision. Nor could the scope of those orders – for example, the order barring Drever from trading in any securities, ever again – reasonably have been misunderstood.

[32] In our view, Locate's and Drever's clear breaches of the Second Alberta Decision went beyond "cavalier or flagrant" misconduct (as Staff put it) – though they were surely that. They indicate sheer defiance of the law and securities regulatory authority. We discern on the part of Locate and Drever a profound contempt for our securities regulatory system and the basic investor-protection and market-confidence objectives. This was most serious misconduct indeed.

[33] This factor argues for rigorous and permanent protective sanctions – against Locate and Drever above all, but also against 706, whose own misconduct was itself very serious and which is under the direction of Drever.

*Respondents' Characteristics*

[34] The Statement of Admissions discussed some of Drever's background, noting that he holds an MBA and stating: "He has never had any formal training in securities law". It was unclear what precisely we were to make of this information; it does not assist Drever or the corporate Respondents.

[35] First, adherence to securities laws is not a responsibility limited only to specialists in the field. Access to investors in our capital market is a privilege, and all who seek to avail themselves of that privilege are duty-bound to understand the rules and abide by them. Second, the contraventions here were hardly matters of obscure technicality – the use of a prospectus is widely understood, not least by Drever and the corporate Respondents (as evident by the mentioned preparation and filing of draft US prospectuses). Even without evidence as to what Drever learned when obtaining his MBA, we think it reasonable to assume that it involved at least an overview of principles of corporate finance, capital-raising and the relevant legal environment. Moreover, the prohibited representations made are illegal precisely because, by their nature, they risk misleading investors into making ill-informed investments. Thus, at root, the prohibitions reflect the principle that people whose money is sought are to be treated fairly, not misled. No special course of training should be needed to convey that principle.

[36] The Respondents' collective history, of breaches of securities laws, undertakings and orders spanning two provinces, is damning. It persuades us that none of the Respondents can be trusted in the Alberta capital market.

[37] This factor argues for significant, permanent sanctions against each Respondent.

*Recognition of Misconduct*

[38] Nothing before us persuades us that any of the Respondents recognizes the seriousness of their misconduct.

[39] We considered whether the very execution of the Statement of Admissions, or any of its contents, might constitute such a demonstration. We found none. The factual admissions simply acknowledged objectively-provable conduct and circumstances. The admissions of contraventions reflected obvious conclusions, readily derivable by applying the Act or the Second Commission Decision to the facts. Even then, we found that the Statement of Admissions did not enunciate, clearly or, in some cases, at all, some of the contraventions that we found based on the admitted facts. We found no admission that the contraventions were contrary to the public interest, nor any admissions as to the seriousness of what was admitted.

[40] Drever chose not to present himself in person in this hearing and not to speak or testify for himself or the corporate Respondents; he did not even put his legal counsel in a position to make submissions on the issues discussed here.

[41] We find that the Respondents fail to recognize the seriousness of their misconduct, certainly in any way that would moderate our concerns about the nature of that misconduct or their attitude to our securities regulatory system and its basic objectives. This factor argues for rigorous protective sanctions against each of them.

*Benefits and Harm*

[42] There was limited evidence as to actual benefits derived by the Respondents from their misconduct, or direct harm suffered by identifiable investors.

[43] That said, we are in no doubt that the Respondents intended to benefit from selling Locate Shares – Locate by bringing in cash from sales of new shares; 706 by cashing in on Locate Shares it already owned; and Drever indirectly from the benefits derived by both companies (he being the individual in charge of both, the sole shareholder of 706 and, through it, a significant indirect investor in Locate).

[44] Moreover, some cash was generated: as mentioned, two Alberta investors paid Locate for Locate Shares.

[45] As to harm done, we discussed above the broad threats posed by the Respondent's misconduct to prospective investors and the reputation of and confidence in our regulatory system and capital market. Whether quantifiable harm was done to identifiable investors is less clear. That said, the mentioned two Alberta investors (who were on the receiving end of prohibited representations but did not receive a prospectus) were denied essential protections to which they were entitled when they invested. And, as noted, the evidence is that they did not even receive the Locate Shares they paid for.

[46] In short: the Respondents all meant to benefit financially from their misconduct; Locate actually received some investor money; and the Alberta capital market and regulatory system were exposed to risk, as were two identifiable Alberta investors. This factor argues for sanctions against each Respondent.

*Risk of Unimpeded Future Capital Market Access*

[47] The nature of the Respondents' misconduct, their failure to recognize its seriousness, the harm to which it exposed investors and our capital market, the intended (and some actual) financial benefit to the Respondents, and their history of repeated capital market misconduct, combine to persuade us that each of the Respondents poses a grave and persistent threat, unless tightly constrained by rigorous and permanent sanctions.

*Mitigation*

[48] We find nothing that mitigates the Respondents' misconduct, in the sense of reversing or diminishing the harm done or threats posed by any of them. In particular, we find nothing in the nature of mitigation either in Drever's educational background (discussed above) or the Respondents having entered into the Statement of Admissions (a topic to which we return below, in our consideration of costs). We note also that not every allegation in the amended notice of hearing was acknowledged in the Statement of Admissions or further pursued by Staff; in the circumstances, that does not amount to mitigation of the misconduct that was found.

[49] This factor therefore does not alter or moderate our conclusions on the other factors discussed.

*Outcomes of Other Proceedings*

[50] The factual backgrounds of other proceedings cited by Staff are distinguishable from the present case. As a result, we derive little guidance from them – beyond noting that serious misconduct tends to attract significant sanction, and breaches of prior enforcement orders are addressed with vigour.

*Specific and General Deterrence*

[51] Our analysis thus far has focused on the conduct, behaviour and characteristics of the Respondents themselves. That has led us to conclude that there is a very compelling need for specific deterrence, so as to minimize the prospect of them repeating their misconduct.

[52] At the same time, we find also a clear need for general deterrence. The outcome of this proceeding must help others, observing this case and potentially tempted to emulate the Respondents in their breaches of fundamental aspects of Alberta securities laws – or other Commission decisions – to resist any such temptation.

*Conclusion on Sanctioning Factors and Specific and General Deterrence*

[53] Taken as a whole, our application of the relevant sanctioning factors to the circumstances of this case lead us to conclude that rigorous sanctions, with permanent reach, are necessary against each Respondent, both to deter them from repeating their misconduct and to deter others from copying it.

**D. Nature and Extent of Appropriate Sanctions**

[54] To deliver the necessary protective effect, the package of sanctions appropriate in this case must include permanent market-access bans against each Respondent that would preclude, legally, a repetition of the misconduct found here. From the array of possible bans contemplated in section 198 of the Act, we are satisfied that those urged by Staff in their submissions – cease-trade and denial-of exemption orders against the corporate respondents, and cease-trade and director-and-officer bans against Drever, all of which were mentioned in the amended notice of hearing by which this proceeding was launched – are pertinent and relevant to the misconduct found and threats to be addressed here. These types of ban were among those mentioned in the notice of hearing (as amended) that launched this proceeding, such that the Respondents had clear warning of what they might face.

[55] We see no basis for narrowing the scope of any such bans, for example by any "carve-outs". Indeed, given that cease-trading and denial-of-exemptions orders can interact usefully with one another, we think a case could have been made for coupling such order for Drever, as Staff urged be done for the corporate Respondents. However, that not having been argued in Staff's submissions and Respondents' counsel having been left with inadequate instructions, and our being satisfied in all the circumstances that the absence of a denial-of-exemptions order against Drever would not be fatal, we are not inclined here to add to the sanctions sought by Staff.

[56] Having found the threat posed by the Respondents to be permanent, we agree that the market-access bans should likewise be permanent. This will serve as an important measure of both specific and general deterrence.

[57] In short, we find the market-access bans sought by Staff against each Respondent to be appropriate and in the public interest.

[58] They are not, however, by themselves sufficient to deliver the necessary protective effect. After all, each Respondent was already subject to permanent market-access bans (albeit not identical with those just discussed), but breached them anyway. From this we do not conclude that there is no point sanctioning the Respondents. Rather, we conclude that the appropriate package of sanctions must include something that sends a message to the Respondents that will catch their attention and linger in their individual and collective memories more clearly than another set of bans. Given that the Respondents have sought to benefit financially from activity in the capital market, we think that something with a direct monetary element is necessary. Such is an administrative penalty.

[59] To be effective, the amount of the administrative penalty must be substantial. This case does not present any obvious basis for an arithmetically elegant computation of quantum. The key here, we believe, is that the amount be sufficiently large to be noticed, and to cause enough financial discomfort that the Respondents are likely to remember it and avoid similar future actions. For purposes of general deterrence, the quantum must deliver a similar message to observers.

[60] In our view, the amount of administrative penalty sought by Staff – $300 000, for all Respondents together – would be sufficient to serve the stated purposes, particularly when coupled with the significant and permanent market-access bans discussed. In all the circumstances, we do not consider that a lower amount would suffice. Indeed, it might be argued that a greater amount, or separate administrative penalties for each Respondent, or both, would even more effectively serve the intended purposes. We are, however, mindful that (as mentioned) this is not the forum for punishment, but protection.

[61] We are, in short, satisfied that a package of sanctions that includes an administrative penalty of $300 000, payable by the Respondents jointly and severally, is in the public interest.

**E. Costs**

[62] Staff tendered a summary of investigation and hearing costs together with some supporting documentation. From this, we are satisfied that costs of $27 613.24 were incurred and are potentially recoverable under section 202 of the Act. Staff, as mentioned, seek an order for full recovery.

[63] Conduct by a Respondent that contributes to the efficient resolution of a proceeding (without, of course, depriving anyone of the right to answer and defend the case against them) is not infrequently recognized by this Commission as grounds for moderating a costs order. Measures that reduce the areas in dispute and thereby diminish the length or complexity of a hearing may fall in that category. The execution and tendering of a document in the nature of the Statement of Admissions might fall in that category.

[64] Staff's urging of an order for full recovery of costs implies their disagreement with such a proposition in this case – or, perhaps, a view that any positive effect of the Statement of Admissions was outweighed by other factors. Without the benefit of Staff's thinking on the topic (their written submission did not address this point), and without anything at all in the way of a submission from the Respondents, we are driven to apply the Commission's broad approach to this issue, as previously alluded to.

[65] We find that the Statement of Admissions contributed, substantially, to the efficiency of the hearing process (although not the investigation that preceded it). With its introduction, the burden on Staff to prove in a contested hearing, via documentary evidence or witness testimony or both, each and every fact admitted, was obviated and the hearing process was thereby abbreviated. In the absence of some compelling contrary consideration, we think this should be acknowledged in our orders here – not least, as a signal to other parties to proceedings who might find themselves weighing the merits of making a similar contribution to efficiency.

[66] That said, we do not wish to exaggerate the Respondents' overall contribution to efficiency. As noted, what was admitted appears to us to have been objectively provable, and fairly easily, or to reflect fairly obvious applications of law to admitted fact. The Respondents' failure to instruct their counsel (the instance mentioned was not the only one in the course of the proceeding) was, at best, unhelpful – the sort of thing more likely to impede than to enhance efficiency.

[67] In the circumstances, we consider it appropriate to reduce the investigation and hearing costs recoverable to $20 000.

[68] Staff made no submission as to how any costs ordered against the Respondents ought to be allocated among them. Given their interrelationship, we consider that the same approach as adopted for the administrative penalty – joint and several responsibility for the total – would be appropriate.

## V. CONCLUSION

[69] For the reasons given, we make the following orders:

*Market-Access Bans*

[70] Against Locate, we order:

- under section 198(1)(b) of the Act that it must cease trading any securities, permanently; and
- under section 198(1)(c), that all of the exemptions contained in Alberta securities laws do not apply to it, permanently.

[71] Against 706 , we order:

- under section 198(1)(b) of the Act, that it must cease trading any securities, permanently; and

- under section 198(1)(c), that all of the exemptions contained in Alberta securities laws do not apply to it, permanently.

[72] Against Drever, we order:

- under section 198(1)(b) of the Act that he must cease trading any securities, permanently; and
- under sections 198(1)(d) and (e), he must resign any position that he currently holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, permanently.

*Administrative Penalty*

[73] Under section 199 of the Act, we order that Locate, 706 and Drever, jointly and severally, must pay an administrative penalty of $300 000.

*Costs*

[74] Under section 202 of the Act, we order that Locate, 706 and Drever, jointly and severally, must pay $20 000 of the costs of the investigation and hearing.

[75] This proceeding is concluded.

5 June 2012

**For the Commission:**

"original signed by"
Stephen Murison

"original signed by"
Daniel McKinley, FCA

"original signed by"
Fred Snell, FCA