



Ontario  
Securities  
Commission

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de l'Ontario

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

**- AND -**

**IN THE MATTER OF PATRICK MYLES LOUGH, LYNDIA DAWN DAVIDSON and  
WAYNE THOMAS ARNOLD BARNES**

**REASONS AND DECISION  
(Subsections 127(1) and 127(10) of the Act)**

**Decision:** November 27, 2014

**Panel:** James E. A. Turner - Vice-Chair of the Commission

**Counsel:** Keir Wilmut - For Staff of the Commission

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## REASONS FOR DECISION

### I. OVERVIEW

[1] This was a hearing (the “**Hearing**”) conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) to consider whether it is in the public interest to make an order imposing market conduct restrictions against Patrick Myles Lough (“**Lough**”), Lynda Dawn Davidson (“**Davidson**”) and Wayne Thomas Arnold Barnes (“**Barnes**”) (collectively, the “**Respondents**”).

[2] A Notice of Hearing in this matter was issued by the Commission on July 25, 2014 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on the same date. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondents.

[3] On August 18, 2014, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondents were duly served with that application but did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities. The Respondents did not appear and did not file any responding materials.

#### *Facts*

[6] On January 31, 2014, the Respondents entered into a settlement agreement with the Alberta Securities Commission (the “**ASC**”) (the “**Settlement Agreement**”).

[7] Pursuant to the Settlement Agreement, the Respondents agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements under the Alberta *Securities Act*, R.S.A. 2000, c.S-4 (the “**ASA**”).

[8] The conduct for which the Respondents were sanctioned occurred between January 2011 and September 2011 (the “**Material Time**”).

[9] During the Material Time, the Respondents raised approximately \$2.9 million from 23 investors in connection with a proposed real estate development near Pigeon Lake, Alberta without filing a prospectus or relying on an available prospectus exemption as required under Alberta securities laws. In the Settlement Agreement, the Respondents admitted to illegal distributions of Mountain Shores Land Ventures Ltd. (“**MSLV**”) shares and to making false or misleading statements to potential investors.

[10] MSLV was also a respondent in the ASC proceedings and a party to the Settlement Agreement. Pursuant to the Settlement Agreement, MSLV undertook to correct misinformation previously provided to investors and to offer investors an optional refund of their investment, and agreed that any future capital raising activity of MSLV in Alberta would be conducted under the advice and guidance of a lawyer with knowledge of Alberta securities laws and exempt financing.

[11] These are my reasons for the market conduct restrictions I impose on the Respondents pursuant to subsections 127(1) of the Act in reliance on subsection 127(10)5 of the Act.

## II. AGREED STATEMENT OF FACTS

[12] In the Settlement Agreement, the Respondents admitted the following facts (the “**Agreed Facts**”):

- (a) MSLV is a private corporation incorporated in July 2008 in British Columbia, and extra-provincially registered in Alberta on March 3, 2011;
- (b) Lough is a resident of Boswell, British Columbia. At the Material Time, Lough was the primary executive officer, a director and the majority owner of MSLV;
- (c) Davidson is a resident of Saskatoon, Saskatchewan, and Lough’s sister. At the Material Time, Davidson was an officer, director and owner of MSLV;
- (d) Barnes is a resident of Kimberley, British Columbia. At the Material Time, Barnes was the Director of Sales & Marketing of MSLV;
- (e) in late 2010, MSLV negotiated the purchase of property near Pigeon Lake, Alberta, known as the Dorchester Ranch RV and Golf Resort (“**Dorchester Resort**”), intending to develop some of the land surrounding the existing golf course into permanent RV lots;
- (f) in January 2011, to acquire the Dorchester Resort, MSLV entered into agreements to purchase two pieces of land for \$5 million;
- (g) between February and September 2011, the Respondents distributed securities of MSLV, raising approximately \$2.9 million from 23 investors, including 18 investors in Alberta;
- (h) no prospectus, offering memorandum or exempt distribution reports were filed under the ASA in respect of the distribution of securities of MSLV;
- (i) the distributions of securities of MSLV were purportedly made in reliance on the “accredited investor” and “family, friends, and business associates” exemptions contained in National Instrument 45-106, but a number of investors did not meet the relevant exemption criteria;

(j) Barnes failed to take adequate steps to ensure that he and the other salespersons understood the criteria applicable to the exemptions relied upon, and failed to take adequate steps to ensure that investors understood and met the criteria at the time of their investment. Lough and Davidson, as the only directors and officers of MSLV, failed to adequately oversee Barnes and the investment program;

(k) in soliciting investors in MSLV, the Respondents made statements to potential investors that they knew or ought reasonably to have known were materially misleading or untrue;

(l) in describing the project and anticipated profits, the Respondents failed to disclose to investors that there was a risk, which ultimately materialized, that the municipal authority responsible for providing development approvals would require, as a condition of approval, that MSLV either pave approximately 3 miles of roadway (in addition to the development's internal roadways), at an approximate cost of \$3 million, or to post security equal to 120% of the paving cost;

(m) the Respondents also represented that investors would "have their initial investment returned," before any net profit would be paid;

(n) MSLV and Barnes breached section 110 of the ASA by distributing securities without having filed a prospectus and without an applicable prospectus exemption, and Lough and Davidson permitted such illegal distributions;

(o) MSLV, Lough, Davidson and Barnes breached section 92(4.1) of the ASA by making statements that each knew or reasonably ought to have known were materially misleading or untrue (including by factual omission) and would reasonably be expected to have a significant effect on the market price or value of a security; and

(p) the Respondents' conduct was contrary to the public interest.

### ***The Terms of Settlement***

[13] Pursuant to the Settlement Agreement, the Respondents each agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements under the ASA. Those terms are:

(a) Lough:

(i) Lough pay to the ASC, on execution of the Settlement Agreement, the amount of \$40,000 in settlement of all allegations against him, and an additional \$5,000 in respect of investigation costs; and;

(ii) for a period of 4 years from the date of the Settlement Agreement:

1. Lough refrain from trading in or purchasing securities or exchange contracts, except for (a) trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a

registered education savings plan, for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Resort development project;

2. Lough refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws, except in respect of securities of MSLV; and
3. Lough refrain from becoming or acting as either a director or an officer of any issuer, registrant, or investment fund manager, and to immediately resign any such positions he holds, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project;

(b) Davidson:

(i) Davidson pay to the ASC, on execution of the Settlement Agreement, the amount of \$30,000 in settlement of all allegations against her, and an additional \$5,000 in respect of investigation costs; and

(ii) for a period of 3 years from the date of the Settlement Agreement:

1. Davidson refrain from trading in or purchasing securities or exchange contracts, except for (a) trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan, for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Resort development project;
2. Davidson refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws, except in respect of securities of MSLV; and
3. Davidson refrain from becoming or acting as either a director or an officer of any issuer, registrant, or investment fund manager, and to immediately resign any such positions she holds, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project;

(c) Barnes:

(i) Barnes pay to the ASC, on execution of the Settlement Agreement, the amount of \$30,000 in settlement of all allegations against him, and an additional \$5,000 in respect of investigation costs; and

(ii) for a period of 4 years from the date of the Settlement Agreement:

1. Barnes refrain from trading in or purchasing securities or exchange contracts, except for trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan, for the benefit of one or more of himself, his spouse and his children; and
2. Barnes refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws.

[14] The Respondents also acknowledged and agreed that the Settlement Agreement “may be referred to ... in securities regulatory proceedings in other jurisdictions.”

### III. ANALYSIS

#### A. Subsection 127(10) of the Act

[15] Subsection 127(10) of the Act provides as follows:

**127 (10) Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

...

5. The person or company has agreed with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements.

[16] Based on the Settlement Agreement and the terms of settlement, it is apparent that the Respondents agreed with the ASC to be made subject to sanctions, conditions, restrictions or requirements, within the meaning of paragraph 5 of subsection 127(10) of the Act. Accordingly, the Commission is entitled to make one or more orders under subsections 127(1) or 127(5) of the Act, if in its opinion it is in the public interest to do so. (See *Re Euston Capital Corp.* (2009), 32 OSCB 6313.)

[17] I therefore find that I have the authority to make a public interest order against the Respondents under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act.

[18] I must determine whether, based on the Settlement Agreement, imposing the market conduct restrictions proposed by Staff would be in the public interest. An important consideration is that the Respondents’ conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest if the conduct had occurred in Ontario (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16 (“*JV Raleigh*”)).

## B. Submissions of Staff

[19] In order to protect Ontario investors and capital markets, Staff submits that it is in the public interest for the Commission to impose market conduct restrictions on the Respondents consistent with the sanctions agreed to in the Settlement Agreement.

[20] Staff requests the following sanctions against Lough:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Lough cease until January 31, 2018, except for (a) trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan (such accounts or plans are referred to as a “**Personal Account or Plan**”) for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lough cease until January 31, 2018, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Lough until January 31, 2018;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Lough resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project; and

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Lough be prohibited until January 31, 2018 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project.

[21] Staff requests the following sanctions against Davidson:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan, and (b) trades or acts in furtherance of trades in securities of

MSLV, made solely for the purpose of completing the Dorchester Resort development project;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities laws do not apply to Davidson until January 31, 2017;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Davidson resign any positions that she holds as director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project; and

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Davidson be prohibited until January 31, 2017 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project.

[22] Staff requests the following sanctions against Barnes:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children; and

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Barnes until January 31, 2018.

[23] Staff submits that I am entitled to issue an order imposing those market conduct restrictions based solely on the evidence before me, which consists of the Settlement Agreement and the Agreed Facts.

#### **D. Should an Order be Issued?**

[24] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

(a) to protect investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[25] In pursuing these purposes, I must have regard for the fundamental principles described in section 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[26] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that “participation in the capital markets is a privilege and not a right” (*Erikson v. Ontario (Securities Commission)*), [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[27] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

... the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person’s future conduct might reasonably be expected to be; we are not prescient, after all.

[28] While the Commission must make its own determination of what is in the public interest, it is important that the Commission recognize the increasingly complex and cross-jurisdictional nature of securities markets (*JV Raleigh, supra*, at paras. 21-26, and *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras. 22-27).

[29] In imposing the market conduct restrictions in this matter, I am relying on the Settlement Agreement and the Agreed Facts. In doing so, it is not appropriate for me to revisit or second-guess the terms of settlement.

[30] I find that it is necessary and appropriate to protect Ontario investors and the integrity of Ontario’s capital markets to impose market conduct restrictions against the Respondents in the public interest.

### **E. The Appropriate Restrictions**

[31] In determining the nature and duration of the appropriate market conduct restrictions, I must consider all of the relevant facts and circumstances before me, including:

- (a) the seriousness of the Respondents’ conduct and breaches of the ASA;
- (b) the harm to investors;
- (c) whether or not the restrictions imposed may serve to deter the Respondents or others from engaging in similar abuses of Ontario investors and Ontario capital markets; and
- (d) the effect any Ontario restrictions may have on the ability of the Respondents to participate without check in Ontario capital markets.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 (“*Belteco*”) at paras. 25 and 26.)

[32] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondents:

- (a) the Respondents admitted to breaching Alberta securities law;
- (b) the conduct for which the Respondents were sanctioned would constitute a contravention of Ontario securities law if the conduct had occurred in Ontario, specifically a contravention of subsections 53(1) and 126.2(1) of the Act.

[33] As mitigating factors, the Settlement Agreement notes that the Respondents have no previous regulatory history in Alberta and co-operated with ASC Staff in their investigation. Further, the Respondents promptly and voluntarily stopped selling further securities when alerted to the ASC’s concerns.

[34] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the market conduct restrictions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco, supra*, at para. 26).

[35] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 (“*McLean*”) the British Columbia Court of Appeal held that when reciprocating an order originally made in Ontario, the British Columbia Securities Commission has a duty to provide reasons, however brief, for the sanctions it was imposing and why they were in the public interest (*McLean, supra*, at paras. 28-29).

[36] In *Lines v. British Columbia (Securities Commission)*, (2012) BCCA 316 (“*Lines*”), the British Columbia Court of Appeal interpreted *McLean* as holding that the Commission “must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction” (*Lines, supra*, at para. 31).

[37] The Commission held in *Re Elliott* (2009), 23 OSCB 6931 at para. 24 (“*Elliott*”) that “subsection 127(10) ... allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest”.

[38] While the Commission may rely on the findings of the other jurisdiction, it must satisfy itself that an order is necessary to protect the public interest in Ontario:

The applicability of subsection 127(10) to the BCSC Order and the Settlement Agreement does not automatically lead to the conclusion that this Panel must make an order similar to that made by the BCSC against Elliott. Rather, we must first consider whether or not sanctions are necessary to protect the public interest,

before exercising any powers granted to us under subsections 127(1) and (5), and second, if necessary, consider what the appropriate sanctions should be.

*(Elliott, supra at para. 27)*

[39] In matters such as this, the Commission has relied on the findings made in other jurisdictions and has not required that the misconduct be directly connected to Ontario or Ontario capital markets (*Weeres, Re* (2013), 36 OSCB 3608 and *Shantz (Re)* (2013), 36 OSCB 5993).

[40] Staff submits that the market conduct restrictions imposed in the Settlement Agreement are appropriate to the misconduct of the Respondents and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on the Respondents substantially similar to the those imposed under the Settlement Agreement, are necessary and appropriate to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondents or others.

[41] The Respondents admitted to breaching Alberta securities laws by distributing securities without a prospectus and by making statements to investors that they knew or reasonably ought to have known were materially misleading or untrue. The Respondents further admitted that their conduct was contrary to the public interest.

[42] In distributing MSLV securities, the Respondents relied upon the “accredited investor” and “family, friends, and business associates” exemptions contained in National Instrument 45-106, but a number of investors failed to meet the relevant exemption criteria. As noted in the Settlement Agreement:

Barnes failed to take adequate steps to ensure that he and the other salespersons understood the criteria of the exemptions relied upon, and failed to take adequate steps to ensure that investors understood and met the criteria at the time of their investment. Lough and Davidson, as the only directors and officers of MSLV, failed to adequately oversee Barnes and the investment program.

*(Lough, supra at paras. 13-14)*

[43] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following market conduct restrictions on the Respondents:

(a) Against Lough:

- (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Lough cease until January 31, 2018, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

- (ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lough cease until January 31, 2018, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;
  - (iii) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities laws do not apply to Lough until January 31, 2018;
  - (iv) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Lough resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project; and
  - (v) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Lough be prohibited until January 31, 2018 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project;
- (b) Against Davidson:
- (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;
  - (ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;
  - (iii) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Davidson until January 31, 2017;
  - (iv) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Davidson resign any positions that she holds as director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project; and

- (v) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Davidson be prohibited until January 31, 2017 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project;
- (c) Against Barnes:
  - (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children;
  - (ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children; and
  - (iii) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Barnes until January 31, 2018.

#### **IV. CONCLUSION**

[44] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” to these reasons.

**DATED** at Toronto this 27<sup>th</sup> day of November, 2014.

*“James E. A. Turner”*

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James E. A. Turner

**Schedule “A”**



Ontario  
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**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**-AND -**

**IN THE MATTER OF PATRICK MYLES LOUGH, LYNDA DAWN DAVIDSON and  
WAYNE THOMAS ARNOLD BARNES**

**ORDER  
(Subsections 127(1) and 127(10))**

**WHEREAS** on July 25, 2014, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing in this matter pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) in respect of Patrick Myles Lough (“Lough”), Lynda Dawn Davidson (“Davidson”) and Wayne Thomas Arnold Barnes (“Barnes”) (collectively, the “Respondents”);

**AND WHEREAS** on the same date, Staff of the Commission (“Staff”) filed a Statement of Allegations in this matter;

**AND WHEREAS** on January 31, 2014, the Respondents entered into a settlement agreement (the “Settlement Agreement”) with the Alberta Securities Commission (the “ASC”);

**AND WHEREAS** the Respondents are subject to sanctions, conditions, restrictions or requirements pursuant to the Settlement Agreement, within the meaning of paragraph 5 of subsection 127(10) of the Act;

**AND WHEREAS** on August 18, 2014, the Commission granted Staff’s application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission’s *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

**AND WHEREAS** Staff filed written submissions, a hearing brief and a brief of authorities;

**AND WHEREAS** the Respondents did not appear and did not file any materials;

**AND WHEREAS** based on my reasons dated the date of this Order, I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

**IT IS HEREBY ORDERED THAT:**

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Lough cease until January 31, 2018, except for (a) trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan (such an account or plan is referred to as a “Personal Account or Plan”) for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Resort development project referred to in the Settlement Agreement (the “Dorchester Project”);
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lough cease until January 31, 2018, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Project;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Lough until January 31, 2018;
- (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Lough resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Project;
- (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Lough be prohibited until January 31, 2018 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Project;
- (f) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Project;

- (g) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Project;
- (h) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Davidson until January 31, 2017;
- (i) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Davidson resign any positions that she holds as director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Project;
- (j) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Davidson be prohibited until January 31, 2017 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Project;
- (k) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children;
- (l) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children; and
- (m) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Barnes until January 31, 2018.

**DATED** at Toronto this 27<sup>th</sup> day of November, 2014.

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James E. A. Turner