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Citation: Hutchinson (Re), 2020 ONSEC 1
Date: 2020-01-02
File No. 2017-54

IN THE MATTER OF
DONNA HUTCHINSON, CAMERON EDWARD CORNISH,
DAVID PAUL GEORGE SIDDERS and PATRICK JELF CARUSO

REASONS AND DECISION ON SANCTIONS AND COSTS
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	In writing	
Decision:	January 2, 2020	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
Submissions:	Matthew Britton Asli Eke (Student-at-law)	For Staff of the Commission
	No one appearing for Cameron Edward Cornish	
	Proceeding previously concluded as against Donna Hutchinson, David Paul George Sidders and Patrick Jelf Caruso	

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. OVERVIEW

[1] In a merits decision dated October 23, 2019 (the **Merits Decision**),[1] the Ontario Securities Commission (the **Commission**) found that the respondent Cameron Edward Cornish contravened s. 76(1) of the *Securities Act*[2] (the **Act**) by engaging in illegal insider trading in shares of two issuers. The Commission dismissed the remaining allegations made by Staff of the Commission (**Staff**) against Cornish, that he engaged in illegal insider trading in shares of one other issuer, and that he illegally communicated material non-public information with respect to a number of issuers to the respondents David Paul George Sidders and Patrick Jelf Caruso.

[2] The Commission dismissed Staff's allegations against Sidders and Caruso, that they engaged in illegal insider trading. The respondent Donna Hutchinson had previously settled the proceeding against her.[3]

[3] Staff requests that Cornish:

a. be banned from participation in the capital markets for 15 years;

b. pay an administrative penalty of $300,000;

c. disgorge to the Commission $128,000; and

d. pay $47,500 to the Commission for the costs of the investigation and the hearing.

[4] For the reasons that follow, I find that it is in the public interest to make an order on the above terms.

[5] Staff also requests that Cornish be reprimanded. I decline to make that order, as I explain below.

II. CORNISH'S ABSENCE FROM THE PROCEEDING

[6] As set out in paragraphs 23 to 26 of the Merits Decision, Cornish was given proper notice of the proceeding, but he failed to appear at any hearing, including the merits hearing. The proceeding continued in his absence.

[7] Even though Cornish is not entitled to further notice in the proceeding, the Commission stated in the Merits Decision that Cornish could, on or before December 13, 2019, file materials in response to those of Staff regarding sanctions and costs. The Merits Decision also contemplated that that deadline could be altered if ordered by the Commission on written request of Staff or Cornish filed on or before November 1, 2019. No such request was filed.

[8] On November 29, 2019, Staff filed its written submissions, its book of authorities, and an affidavit of Julia Ho sworn November 28, 2019, relating to costs. I have marked that affidavit as Exhibit 1 in this sanctions and costs

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[1] *Hutchinson (Re)*, 2019 ONSEC 36, (2019) 42 OSCB 8543

[2] RSO 1990, c S.5

[3] *Hutchinson (Re)*, (2018) 41 OSCB 3499 (Order), (2018) 41 OSCB 3500 (Settlement Agreement) and 2018 ONSEC 22, (2018) 41 OSCB 3841 (Oral Reasons and Decision)

hearing. Staff has also filed an affidavit of Laura Filice sworn November 28, 2019, in which she advises that on that day she served Cornish with all of Staff's materials. I have marked that affidavit of service as Exhibit 2 in this hearing.

[9] Cornish has neither communicated with the Registrar nor filed any materials.

III. ANALYSIS

[10] This hearing presents two principal issues:

a. Is it in the public interest to order sanctions against Cornish, and if so, what sanctions would be appropriate?

b. Should Cornish be ordered to pay costs regarding the investigation and hearing?

A. Sanctions

1. Legal framework

[11] Subsection 127(1) of the Act lists orders that the Commission may make where the Commission considers it to be in the public interest to do so. The Commission must exercise this jurisdiction in a manner consistent with the purposes of the Act, including the protection of investors from unfair, improper or fraudulent practices, and the fostering of fair and efficient capital markets and confidence in the capital markets.[4]

[12] The Supreme Court of Canada has held that the public interest jurisdiction and the orders listed in s. 127(1) of the Act are protective and preventative and are intended to be exercised to prevent future harm to Ontario's capital markets.[5]

[13] The Commission has identified a non-exhaustive list of factors to be considered with respect to sanctions generally, including the seriousness of the misconduct, the size of the profit made from the illegal conduct, any mitigating factors, and the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence"). Sanctions must be proportionate to the respondent's conduct in the circumstances of the case.[6]

2. Summary of relevant facts

[14] In the Merits Decision, the Commission found that:

a. Cornish is an experienced professional trader who spent over 25 years working at various brokerage and capital management firms;[7]

b. Cornish had a close relationship with Hutchinson, who was a legal assistant at a Toronto-based law firm that worked on mergers and acquisitions;[8]

c. Cornish was having financial trouble and induced Hutchinson to participate in a scheme by which in return for cash payments from Cornish to

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[4] The Act, s 1.1

[5] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

[6] *Bradon Technologies Ltd (Re)*, 2016 ONSEC 19, (2016) 39 OSCB 4907 at para 28; and at para 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 60

[7] Merits Decision at para 10

[8] Merits Decision at paras 6, 12

Hutchinson, Hutchinson provided Cornish with material non-public information regarding publicly traded issuers, which information Hutchinson obtained through her employment;[9]

d. with respect to an acquisition of all the outstanding shares of Quadra FNX Mining Ltd. (**Quadra**) by a client of Hutchinson's firm:

   i. at some point prior to the public announcement of that transaction, Hutchinson told Cornish the names of the parties to the transaction;[10]

   ii. Cornish paid Hutchinson $2,000-$3,000 for the information;[11] and

   iii. prior to the announcement, Cornish traded Quadra shares while in a special relationship with Quadra and while in possession of material non-public information about Quadra, thereby contravening s. 76(1) of the Act;[12] and

e. with respect to an acquisition of all the outstanding shares of Tim Hortons Inc. (**Tim Hortons**) by a client of Hutchinson's firm:

   i. near the beginning of the deal, Hutchinson told Cornish about it, including the identity of the acquiring entity, and she kept him updated about the status of the deal;[13]

   ii. Cornish paid Hutchinson $7,000 for the information;[14]

   iii. over five months leading up the announcement of the transaction, Cornish purchased shares of Tim Hortons, and ultimately made a profit of approximately $128,000;[15] and

   iv. Cornish's trades occurred while he was in a special relationship with Tim Hortons and while he was in possession of material non-public information regarding Tim Hortons, and his trades therefore contravened s. 76(1) of the Act.[16]

3. Purpose of the prohibition against illegal insider trading

[15] The Act's prohibition against illegal insider trading aligns with the two fundamental purposes of the Act referred to in paragraph [11] above; namely, to provide protection to investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.[17]

[16] The prohibition exists for three principal reasons:

a. fairness requires that all investors have equal access to information about an issuer that would likely affect the market value of the issuer's securities;

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[9] Merits Decision at paras 83, 87, 93, 94
[10] Merits Decision at paras 160, 162, 176
[11] Merits Decision at para 167
[12] Merits Decision at paras 182, 431c
[13] Merits Decision at paras 374, 377, 380d, 380f
[14] Merits Decision at para 380h
[15] Merits Decision at para 386
[16] Merits Decision at paras 393, 431c
[17] The Act, s 1.1

b. insider trading may undermine investor confidence in the capital markets; and

c. capital markets operate efficiently on the basis of timely and full disclosure of all material information.[18]

[17] As the Commission has previously held, illegal insider trading "is a cancer that erodes public confidence in the capital markets. It is one of the most serious diseases our capital markets face."[19]

4. The nature of Cornish's misconduct

[18] Cornish's misconduct was serious. It was deliberate and it showed complete disregard for the interests of other investors in the capital markets.

[19] The seriousness of his misconduct was aggravated by:

a. the fact that his only apparent motive was profit;

b. his long experience in the marketplace;

c. his exploiting Hutchinson's position at the law firm for his own benefit;

d. his inducing Hutchinson to breach her obligation of confidentiality to her employer (Hutchinson was a willing participant in the scheme, but I do not consider that to be a mitigating factor for Cornish); and

e. the recurring nature of his illegal trades.

[20] As a result of Cornish's misconduct, he realized a trading profit of at least $128,000.

[21] Cornish chose not to face the allegations against him. He expressed no remorse. While there is no obligation on a respondent to express remorse, and a respondent's failure to express remorse is not an aggravating factor, I note the absence of remorse in this case. Cornish has neither recognized the seriousness of his misconduct nor shown any concern for the harm he has caused.

[22] There are no mitigating factors.

5. Specific sanctions

(a) Market bans

[23] Staff asks that the Commission:

a. prohibit Cornish, for a period of 15 years, from acquiring any securities or from trading in any securities or derivatives;

b. order that any exemptions contained in Ontario securities law not apply to Cornish for 15 years; and

c. require that Cornish resign any positions he holds as a director or officer of an issuer or registrant, and prohibit him for a period of 15 years from becoming or acting as a director or officer of an issuer or registrant, or from becoming or acting as a registrant or promoter.

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[18] *Finkelstein v Ontario Securities Commission*, 2018 ONCA 61 at paras 23, 25
[19] *M.C.J.C. Holdings Inc (Re)*, (2002) 25 OSCB 1133 at 1135

[24] Participation in the capital markets is a privilege, not a right.[20] Staff's requested order would essentially deny that privilege to Cornish for 15 years.

[25] The Commission's role is to deny that privilege where it concludes, based on a respondent's past conduct, that the respondent's continued participation in the capital markets "may well be detrimental to the integrity of [the] capital markets."[21]

[26] Staff cited three authorities in support of its request that Cornish be banned for 15 years.

[27] In *Agueci (Re)*,[22] the Commission imposed:

a. permanent market prohibitions against Wing, an experienced and senior participant in the securities industry who engaged in six breaches of the prohibition against illegal insider trading; and

b. 15-year market prohibitions against Fiorillo, who was also a sophisticated and experienced participant in the capital markets.

[28] In *Anderson (Re)*,[23] a settlement involving a respondent who admitted to two instances of illegal insider trading, the Commission approved permanent market prohibitions.

[29] The Commission's decision in *Azeff (Re)*[24] involved five respondents:

a. Finkelstein, a transactional lawyer, who on three occasions tipped others regarding material non-public information;

b. Azeff, Bobrow and Miller, experienced investment advisors, who used the information to commit illegal insider trades, thereby realizing profits ranging between approximately $10,000 and approximately $50,000; and

c. Cheng, a junior investment advisor, who committed illegal insider trading and thereby realized a profit of $36,410.

[30] The Commission imposed a 10-year market prohibition against each respondent. The length of that ban must be viewed in the context of the significant administrative penalties that were also imposed against them. Those penalties ranged from $200,000 to $750,000 and are set out in detail in paragraph [37] below.

[31] Having reviewed those previous decisions, I find that a time-limited ban against Cornish's participation in the capital markets is necessary. I attach significant weight to the fact that Cornish, an experienced participant in the capital markets, instigated the scheme and sought Hutchinson's co-operation. In my view, the 15-year bans that Staff seeks against Cornish are proportionate to his misconduct, and are reasonable in light of the precedent decisions cited above. I find that it is in the public interest to impose the requested bans.

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[20] *Erikson v Ontario (Securities Commission)*, 2003 CanLII 2451, [2003] OJ No 593 (Div Ct) at paras 55-56

[21] *Mithras Management Ltd (Re),* (1990) 13 OSCB 1600 at 1610-11

[22] 2015 ONSEC 19, (2015) 38 OSCB 5995

[23] (2015) 38 OSCB 4539

[24] 2015 ONSEC 29, (2015) 38 OSCB 7382

(b) Administrative penalty

[32] Staff asks that the Commission require Cornish to pay an administrative penalty of $300,000. Staff submits that such an amount would be appropriate and proportionate due to the seriousness of the breaches.

[33] The Commission has stated in previous decisions that the purpose of administrative penalties is to "deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets."[25] Thus, the Commission intends that administrative penalties will achieve both specific and general deterrence.

[34] The Commission imposed administrative penalties in each of the three cases cited by Staff.

[35] In *Agueci (Re)*,[26] the Commission imposed a $1.5 million administrative penalty against Wing, who realized a profit of $520,916. The Commission imposed an administrative penalty of $350,000 against Fiorillo, which amount was approximately twice the profit he realized.

[36] In *Anderson (Re)*,[27] the Commission approved an administrative penalty of $18,770, an amount equal to the respondent's profits.

[37] In *Azeff (Re)*,[28] the Commission imposed the following administrative penalties:

a. $450,000 against Finkelstein;

b. $750,000 against Azeff, who realized a profit of $49,996;

c. $300,000 against Bobrow, who realized a profit of $10,217;

d. $450,000 against Miller, who realized a profit of $24,485; and

e. $200,000 against Cheng, who realized a profit of $36,410.

[38] Staff's requested penalty of $300,000 against Cornish is approximately 2.35 times the profit that he realized. That ratio is easily within a reasonable range, given the decisions cited above, and given the factors I have mentioned. I consider such a penalty to be appropriate in the circumstances, and necessary for the purposes of specific and general deterrence. I find that it is in the public interest to impose the penalty as requested.

(c) Disgorgement

[39] Finally, with respect to sanctions, Staff asks that Cornish be required to disgorge $128,000, being the profit he earned on the Tim Hortons trades.

[40] Paragraph 10 of s. 127(1) of the Act provides that if "a person or company has not complied with Ontario securities law", the Commission may, if it determines it to be in the public interest to do so, issue "an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance."

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[25] *Limelight Entertainment Inc (Re),* 2008 ONSEC 28, (2008) 31 OSCB 12030 at para 67
[26] 2015 ONSEC 19, (2015) 38 OSCB 5995
[27] (2015) 38 OSCB 4539
[28] 2015 ONSEC 29, (2015) 38 OSCB 7382

[41] The purpose of a disgorgement order is not to provide restitution; rather, it is a remedy that seeks to prevent wrongdoers from benefiting from their breaches of Ontario securities law, and to deter those wrongdoers and others from engaging in similar misconduct.[29]

[42] While the Commission is authorized to order disgorgement of the full amount obtained by respondents, it need not do so. The Commission has identified a non-exhaustive list of factors that it will take into account in determining whether a disgorgement order is appropriate, and if so, in what amount:

a. whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;

c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and on other market participants.[30]

[43] I will now apply each of those factors to the circumstances of this case.

[44] In the Merits Decision, the Commission found that Cornish realized the $128,000 profit as a result of his contravention of s. 76(1) of the Act.

[45] As noted above, Cornish's conduct was serious. It was deliberate, and he induced Hutchinson to participate. It undermined the integrity of the capital markets. It caused harm to other investors in Tim Hortons. While that harm cannot be quantified for particular investors, and while those investors cannot obtain redress, the harm is real, for the reasons set out in paragraph [16] above.

[46] Finally, the need to deter Cornish and others from engaging in similar conduct requires an order that demonstrates unequivocally that such behaviour is unacceptable. It would be inappropriate to permit Cornish to retain any of the profits he realized as a result of his illegal activity.

[47] It is in the public interest to require Cornish to disgorge $128,000.

(d) Conclusion as to sanctions

[48] Each of the sanctions referred to above is appropriate in the circumstances. Taken together, the sanctions are proportionate to Cornish's misconduct and are in the public interest.

(e) Reprimand

[49] Staff also seeks a reprimand, pursuant to paragraph 6 of s. 127(1) of the Act. In my view, such an order is generally unnecessary, and duplicative and not in the public interest, where, as here, there are explicit findings of breaches of Ontario securities law, and the reasons for decision include clear denunciation of that

[29] *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 (***PFAM***) at para 48
[30] *PFAM* at para 56

conduct. In a case such as this one, a reprimand is best seen as a possible alternative to other sanctions set out in s. 127(1). Treating a reprimand as an automatic add-on to significant sanctions can diminish the value of reprimands for cases where they are better suited.

[50] I therefore decline to make that order.

B. Costs

1. Introduction

[51] I turn now to consider Staff's request that Cornish pay costs.

[52] Because Cornish did not comply with Ontario securities law, s. 127.1 of the Act empowers the Commission to order him to pay the costs of the investigation and/or hearings in this matter. Such an order is not a sanction; instead it allows the Commission to recover some of the costs expended in connection with the investigation and hearings.

[53] Costs are discretionary. They are designed to reduce the burden on market participants to pay for investigations and enforcement proceedings.[31]

2. Staff's request

[54] Staff submitted evidence supporting total costs of $475,610.46 relating to the investigation and hearings in this matter. That sum reflects disbursements of $3,666.71, plus the time of the senior litigation counsel and the senior investigator only, based on hourly rates previously adopted by the Commission in making costs orders. That amount therefore excludes time spent by law clerks, students, assistants or other members of Staff.

[55] Staff seeks costs of $47,500, being approximately 10% of the already significantly discounted amount. Staff submits that such a discount reflects the fact that many of the allegations against Cornish and others were dismissed.

[56] In my view, Staff's request is proportionate, fair and in the public interest. As Staff fairly points out, many allegations were dismissed. However, the Commission found that it was Cornish's conduct that gave rise to the scheme and to the proceeding in the first place. As discussed above, Cornish's conduct was serious, and a costs order is warranted.

[57] I will therefore make the requested costs order.

IV. CONCLUSION

[58] For the reasons set out above, I shall issue an order as follows:

a. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the Act, Cornish shall resign any positions he holds as a director or officer of an issuer or a registrant;

b. for a period of 15 years:

i. pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Cornish shall cease;

[31] *PFAM* at para 111

ii. pursuant to paragraph 2.1 of s. 127(1) of the Act, Cornish is prohibited from acquiring securities;

iii. pursuant to paragraph 3 of s. 127(1) of the Act, the exemptions contained in Ontario securities law shall not apply to Cornish;

iv. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the Act, Cornish is prohibited from becoming or acting as a director or officer of any issuer or registrant; and

v. pursuant to paragraph 8.5 of s. 127(1) of the Act, Cornish is prohibited from becoming or acting as a registrant or as a promoter;

c. pursuant to paragraph 9 of s. 127(1) of the Act, Cornish shall pay to the Commission an administrative penalty of $300,000, which amount shall be designated for allocation or use by the Commission in accordance with s. 3.4(2)(b) of the Act;

d. pursuant to paragraph 10 of s. 127(1) of the Act, Cornish shall be required to disgorge to the Commission the sum of $128,000, which amount shall be designated for allocation or use by the Commission in accordance with s. 3.4(2)(b) of the Act; and

e. pursuant to s. 127.1 of the Act, Cornish shall pay costs of $47,500 to the Commission.

Dated at Toronto this 2nd day of January, 2020.

"Timothy Moseley"

Timothy Moseley