IN THE MATTER OF THE SECURITIES ACT,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED

-AND-

IN THE MATTER OF

TIMOTHY ADAMS, LOWELL WEIR, and CAROL MCLAUGHLIN-WEIR
(collectively the "Respondents")

HEARD BEFORE: Mr. J. Walter Thompson, Q.C., Chair
Mr. John A. Morash, C.A.

LOCATION: Halifax, Nova Scotia

DATES HEARD: July 19, 2011, September 7 and September 26, 2011
Final submissions received December 19, 2011

COUNSEL:

FOR STAFF: Ms. Stephanie Atkinson

FOR THE RESPONDENTS: Mr. Dale Dunlop and Mr. Sean MacDonald

Introduction

1. The Director of Enforcement (the "Director") for the Nova Scotia Securities Commission (the "Commission") alleges that Timothy Adams, Lowell Weir and Carol McLaughlin-Weir (the "Respondents") failed to file certain documents regarding their status as "insiders" of a publicly traded corporation and reporting issuer, The Helical Corporation, contrary to the provisions of the Nova Scotia *Securities Act*, R.S.N.S 1989, c. 418 (the *"Securities Act")*. Mr. Kevin Redden, Director, Corporate Finance, for the Nova Scotia Securities Commission swore to the following in an affidavit which is in evidence before us:

> 2. ...The Helical Corporation Inc. ("Helical") became a reporting issuer in Nova Scotia on February 4, 1998 under its previous business name, Castle Capital Inc. ("Castle").

3. On August 10, 1998, Castle filed a Press Release with the Commission announcing a change of its name to Enervision Incorporated ("Enervision") effective August 12, 1998. On September 29, 2004, Enervision filed a change of name with the Commission to Helical.

4. At all material times hereto, Helical's principal regulator was Nova Scotia.

5. ...no report of becoming an insider was filed with the Commission at any time by the Respondents, Timothy Adams ("Adams") and Carol McLaughlin-Weir ("McLaughlin-Weir"), in relation to Helical.

6. ...no reports of insider trades were filed with the Commission at any time by the Respondents, Adams and McLaughlin-Weir, in relation to trading in the securities of Helical.

7. ...no report of becoming an insider was filed with the Commission by the Respondent, Lowell Weir ("Weir"), until March 13, 2008, when he made such filing through the System for Electronic Disclosure by Insiders ("SEDI").

8. ...no reports of insider trades were filed with the Commission by the Respondent, Weir, until March 13, 2008, when he made such filings through SEDI . . .

2. Section 113 of the *Securities Act*, in force for the times under consideration, provides that insiders of a reporting issuer are required to file a Report of Becoming an Insider and Reports of Insider Trades within ten days of the end of the month of such event. The mechanisms for filings are provided for through what is known as a "National Instrument" agreed upon by participating jurisdictions. The applicable regulation for the filings in this case is National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI) ("NI 55-102") . Once a National Instrument is adopted by a province in accordance with its own legislation, the National Instrument becomes a rule or regulation in that province. Nova Scotia implemented and adopted this Rule pursuant to sections 150 and 150A of the *Securities Act* on October 1, 2003. Thus NI 55-102 is, in effect, a Nova Scotia regulation which must be complied with.

3. Mr. Redden's evidence is not contradicted or contested by the Respondents, nor do the Respondents challenge the requirement to file insider reports under NI 55-102 or the SEDI system. Rather, they challenge the allegation that Mr. Adams and Ms. McLaughlin-Weir are insiders and the jurisdiction and propriety of the Commission generally to make findings and sanction them and the third respondent Lowell Weir.

Timothy Adams

4. The Director alleges that Mr. Adams was a "senior officer" or "officer" of Helical from November 1, 2004 to December 31, 2005; that as such he was an "insider" within the definition of that term in the *Securities Act*; that he failed to notify the Commission of his appointment contrary to section 113(1) of the *Securities Act*, and that he traded in the common shares without reporting his insider trades contrary to section 113(2).

5. The sections of the *Securities Act* allegedly transgressed provide:

> 113 (1) A person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall, within ten days after the end of the month in which he becomes an insider, file a report as of the day on which he became an insider disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as may be required by the regulations.
>
> (2) A person or company who has filed or is required to file a report pursuant to this Section or any predecessor thereof and whose direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer changes from that shown or required to be shown in the report or in the latest report filed by him pursuant to this Section or any predecessor thereof shall, within ten days following the end of the month in which the change takes place, file a report of his direct or indirect beneficial ownership of or his control or direction over securities of the reporting issuer at the end of the month and the change or changes therein that occurred during that month giving such details of each transaction as may be required by the regulations.

6. The Nova Scotia legislature repealed the above stated section 113 by *Stats. N.S.* 2006, c. 46, s.41, replacing it with the following:

> An insider of a reporting issuer shall file reports and make disclosure in accordance with the regulations.

The new provision came into force April 30, 2010.

7. The former section 113, however, covers the time periods in issue and remains the law for the purposes of these proceedings against Mr. Adams, Ms. McLaughlin-Weir and Mr. Weir by virtue of section 23 of the *Interpretation Act,* R.S.N.S. 1989, c. 235.

8. More generally, Staff allege that Mr. Adams acted in a manner contrary to the public interest and undermined investor confidence in the fairness, integrity and efficiency of the capital markets.

9. As stated above, Mr. Kevin Redden, the Director of Corporate Finance, for the Nova Scotia Securities Commission testified by affidavit that Mr. Adams did not file any reports of becoming an insider with the Commission, nor did he file reports of his trades in the securities of Helical within the time specified. Mr. Adams does not dispute that he made trades, but he denies that he may properly be regarded as an "insider".

10. Mr. Adams began work for Helical on November 1, 2004. Helical appointed him Vice-President on December 1, 2004 and he remained in that office until his resignation on December 31, 2005. Mr. Abel Lazarus of the Commission testified and presented various documents which link Mr. Adams to Helical Corporation as Vice-President. Mr. Adams is referred to as Helical's Vice-President of Development, particularly in a Helical press release dated April 22nd, 2005, and in a management information circular and correspondence with the TSX Venture Exchange referring to the time of Mr. Adams' employment, but dated after he had left it. Helical provided him with a Helical business card which stated his position to be Vice-President Business Development. His wife, in opening a brokerage account, referred to him as VP Business Development for Helical Corporation. Mr. Adams did not testify, but he did not contest in his correspondence with the Commission, nor did his counsel at the hearing contest, that he had been publicly described as and knew himself to be the Vice-President of Business Development. What he does say is that the title Helical gave him was simply for marketing purposes and that he was never, in substance, a vice-president, nor an "insider". He says that Helical hired him as a

consultant and that he was provided with the business card with the title of Vice-President of Business Development in order to assist him with his business development efforts.

11. The definitions of "insider" and "officer" in the *Securities Act* have changed in a rather complicated way. The *Securities Act* defined the word "insider" at the time of Mr. Adams' tenure from November, 2004 through December, 2005 as follows:

> 2. (r) "insider" or "insider of a reporting issuer" means
>
> > (i) every director or <u>senior</u> officer of a reporting issuer, (emphasis added)
> >
> > (ii) every director or senior officer of a company that is itself an insider or subsidiary of a reporting issuer, ...

12. The *Securities Act* then defined a "senior officer" as follows:

> 2. (ar) "senior officer" means
>
> > (i) the chairman or a vice-chairman of the board of directors, the president, <u>a vice-president</u>, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and.... (emphasis added)

13. The legislature amended the *Securities Act* by Stats. N.S., 2006, c. 49, section 1(g) to delete the use of the word "senior" in the definition of "insider" and by s. 1(m) to replace the definition of "senior officer" with a definition of "officer". The amendment of the definition "officer" was not actually proclaimed until March 17, 2008 and the amendment of the definition of "insider" was not actually proclaimed until April 30, 2010. Thus, the earlier definitions were the ones in effect during the tenures of Mr. Adams, Ms. McLaughlin-Weir and Mr. Weir. The amended provisions say:

> 2(1) (r) "insider" means
>
> (i) a director or officer of an issuer, ...

> 2(1)(ac) "officer", with respect to an issuer or registrant, means
>
> (i) a chair or vice-chair of the board of directors, a chief executive officer, chief operating officer, chief financial officer, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer and general manager, (emphasis added)
>
> (ii) an individual who is designated as an officer under a by-law or similar authority of the issuer or registrant, and
>
> (iii) an individual who performs functions for a person or company similar to those normally performed by an individual referred to in subclause (i) or (ii);

14. Mr. Adams was the only vice-president of Helical. He is, as vice-president, an "insider" under both the former and the latter provisions of the *Securities Act.* That is an end to the argument. Mr. Adams was, by definition, an insider.

15. We acknowledge that Mr. Abel Lazarus did say in his testimony that a vice-president may not always be an "insider". With respect, to the extent that Mr. Lazarus offered a legal opinion, we disagree.

16. Mr. Adams says he was a simply a consultant to Helical and that his title as vice-president was mostly a marketing tool and that he carried few, or even no, executive responsibilities. That in our view can make no difference. The substance of Mr. Adams' role as an insider may well be relevant to a consideration of the appropriate penalty for failing to treat himself as such for the purpose of the disclosure of trades, but not to a determination of whether he is one or not. In other words, what he might do as a vice-president is not relevant to a determination of whether he is a "senior officer", or an "officer", or not. Being named a vice-president, and knowing it, is enough.

17. In any event Mr. Adams, by his own correspondence acknowledges an important role with Helical consistent with his being a vice-president. We are satisfied that he negotiated agreements, sought and secured financing, managed financing, obtained loans and negotiated the

acquisition of property. Mr. Adams played a significant role in the ongoing affairs of Helical.

18. We are therefore satisfied that Timothy Adams is an insider who failed to file a report of his status as such, and then failed to file reports of his trades in the securities of Helical Corporation contrary to sections 113 (1) and (2) respectively of the *Securities Act*. We are also satisfied that in doing so, Mr. Adams acted in a manner contrary to the public interest and undermined investor confidence in the fairness, integrity and efficiency of the capital markets.

Carol McLaughlin-Weir

19. The Director alleges that Ms. McLaughlin-Weir was the "Chief Financial Officer" of Helical during the period February 4, 1998 - September 20, 2006 and as such was an "insider". The Director alleges she failed to file her report of becoming an insider as required by section 113(1) of the *Securities Act*. The Director alleges she also traded in the securities of Helical without filing reports of her insider trades with the Commission as required by section 113(2) of the *Securities Act*. More generally, the Director alleges that she acted in a manner contrary to the public interest and undermined investor confidence in the fairness, integrity and efficiency of the capital markets.

20. Ms. McLaughlin-Weir does not deny she was the Chief Financial Officer of Helical during the time alleged, nor does she deny that she failed to file a report of her becoming the CFO or of her trades in the securities of Helical. What she does say, like Mr. Adams, is that her role as CFO of Helical was one of form rather than substance and so she should not be considered an insider.

21. Ms. McLaughlin-Weir is a chartered accountant. She is married to the principal of Helical and co-respondent, Lowell Weir. She says she became the CFO in order for Helical to comply as efficiently as possible with the new regulatory requirements to have a CFO who was not also the Chief Executive Officer. She says that although she became CFO to ensure the financial statements were properly prepared and to sign certifications as a chartered accountant to that effect, she was not a director, did not attend board meetings, did not present financial statements to the Board, or to annual meetings, and generally did not fulfill the other responsibilities associated with being a CFO. Therefore, she argues, she was not a "senior officer" of Helical and not an "insider".

22. In our view, under either definition, one cannot be a CFO without being

a "senior officer" or "officer". A CFO, in our view is a "senior officer" by virtue of performing functions "similar to those normally performed by an individual occupying" the listed offices. A CFO is an "officer" by specific inclusion in the later definition. If there were any doubt about it, the later definition should apply retrospectively in any event by virtue of the Supreme Court of Canada's opinion in *Brousseau v. Alberta Securities Commission,* [1989] S.C.J. No. 15. In *Brousseau,* the Supreme Court affirmed that each statute must be interpreted on its own. If the intent of the statute is to punish or penalize then a presumption arises that the legislature did not intend for the law to have a retroactive effect. If, however, the intent of the statute is to protect the public, then the presumption does not apply and the law may have retroactive effect.

23. The purpose of the amendment to the definitions of "insider" and "senior officer", in our view, is to better protect the public through a clearer and more up to date definition of "officer". The definition of "officer" now specifically includes a "Chief Financial Officer" and thus certainly Ms. McLaughlin-Weir. It is to be applied retroactively.

24. Furthermore, while being a vice-president like Mr. Adams may indeed be mere puffery, officially certifying the financial statements of a corporation for the regulators, is a substantial role. One cannot, in our view, parse the position so that some CFO's are senior officers or officers, but others may avoid being so called. No legal authority for such an exercise has been presented to us. From a policy point of view, it would be unwise to do so.

25. Ms. McLaughlin-Weir would, in our view, as CFO, have had special access to significant inside information not available to other investors when she prepared to certify Helical's statements. The purpose of the legislation is to disclose the trades of those having such information in order to protect the integrity of financial markets. Ms. McLaughlin-Weir's work as CFO for Helical falls into the category of activity the legislation is designed to control.

26. Ms. McLaughlin-Weir filed quarterly certificates on behalf of Helical dated November 26, 2004; February 28, 2005; May 26, 2005; October 28, 2005; November 10, 2005; March 1, 2006; and May 29, 2006. The form of these certificates became somewhat more comprehensive over time. In the May 29, 2006 form, Ms. McLaughlin-Weir said:

FORM 52-109F2
CERTIFICATION OF INTERIM FILINGS

I, Carol McLaughlin-Weir, Chief Financial Officer of The Helical Corporation Inc., certify that:

1. I have reviewed the interim filings (as this term is defined in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings)* of ***The Helical Corporation Inc.***, (the issuer) for the interim period ending ***March 31, 2006;***

2. Based on my knowledge, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings;

3. Based on my knowledge, the interim financial statements together with the other financial information included in the interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuers, as of the date and for the periods presented in the interim filings;

4. The issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal control over financial reporting for the issuer, and we have:

(a) designed such disclosure controls and procedures, or caused them to be designed under our supervision, to provide reasonable assurance that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the interim filings are being prepared; and

(b) designed such internal control over

> financial reporting, or caused it to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP; and
>
> 5. I have caused the issuer to disclose in the interim MD&A any change in the issuer's internal control over financial reporting that occurred during the issuer's most recent interim period that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.
>
> Date: May 29, 2006
>
> **"Carol McLaughlin-Weir"**
> Carol McLaughlin-Weir, CA
> Chief Financial Officer

27. These certificates manifest, in our view, the important functions of a CFO. Ms. McLaughlin-Weir has signed the above certification in her capacity as Chief Financial Officer, as well as in her professional capacity as a Chartered Accountant. Further, upon reviewing the details of the items she has certified, as set out above, it is clear that she had a detailed knowledge and understanding of many of the financial affairs of Helical. This knowledge and understanding that would not, necessarily, be available to the public or other investors. As such, she clearly meets the definition of "insider".

28. Ms. McLaughlin-Weir states that she was CFO for one purpose only - to provide the periodic certifications similar to what is set out above. This does not matter. So long as she falls within the definition, which as CFO she clearly does, she is considered to be an insider. Further, even if there were some doubt on this point, upon reviewing her limited range of responsibilities, it is clear that she possesses significant financial information about Helical, which places her in the category of "insider". The current section names the Chief Financial Officer specifically and so, in our view, by definition Ms. McLaughlin-Weir is an insider under it as well.

29. In conclusion we are satisfied that Carol McLaughlin-Weir is an insider

who failed to file a report of her status as such and then failed to file reports of her trades in the securities of Helical Corporation contrary to sections 113 (1) and (2) respectively of the *Securities Act* and that it is in the public interest that an order be made against her.

<u>Lowell Weir</u>

30. The Director alleges that Lowell Weir was the President of Helical from October 18, 1996 until September 15, 2006. He became the interim CFO on September 15, 2006 and interim CEO on February 15, 2007. Staff allege that he failed to file his report of becoming an insider with the Commission within the time determined by the legislation contrary to section 113(1) of the *Securities Act* and failed to file reports of his insider trades as required by section 113(2).

31. Mr. Weir does not deny that he was an "insider" nor does he deny that he traded in the shares of Helical and failed to file reports. Rather he says that the regime for reporting insider trades implemented by the Canadian Securities Administrators provides that penalties for a failure to file reports as an insider are to be levied by the Ontario Securities Commission and not the Nova Scotia Securities Commission. Thus, he argues, that since he has had to pay late filing fees for the disclosure of his insider trades to the Ontario Securities Commission, the Nova Scotia Securities Commission either cannot or should not discipline for a late filing of an insider trade contrary to the Nova Scotia *Securities Act*.

32. Mr. Weir's argument has two facets. One is the argument that Nova Scotia is without jurisdiction to sanction for a failure to file insider reports. The other is that Ontario having assessed late fees to Mr. Weir, and Mr. Weir having paid them, Nova Scotia may no longer sanction for a contravention of the provision of its own *Securities Act* for failing to file the insider reports, ie. section 113 (1) and 113 (2). He says that the late fees constitute a penalty for the violation of securities laws and so the matter has been decided and resolved already, it is <u>res judicata.</u> The first argument is also proffered on behalf of Mr. Adams and Ms. McLaughlin-Weir.

33. With respect to both arguments generally, however, we are satisfied that fees imposed for late filings of documents are quite different from sanctions imposed for violations of the *Securities Act*. The former is for the proper operation and maintenance of the System for Electronic Disclosure by Insiders (SEDI) and an attempt by the Ontario Securities Commission to encourage prompt filings. Such fees are common in regulatory law. One thinks, for example, of the increased fee one faces if

one does not renew the registration of a corporation on time under section 12(4) of the *Corporations Registration Act*, R.S.N.S. 1989, c. 101. The latter is a penalty imposed for a violation of the *Securities Act*. We do not understand late filing fees in such a context to be exclusive of other penalties or proceedings which may be invoked.

Jurisdiction

34. Nova Scotia, as stated above, has adopted the System for Electronic Disclosure by Insiders system under NI 55-102 and made it Nova Scotia law. No authority has been presented to us to support the proposition that Nova Scotia in adopting NI 55-102 ceded or delegated, intentionally or accidentally, the power to penalize insiders for late filing or for not filing at all. There are a multitude of instruments created in this multi-jurisdictional nation to facilitate the regulation of financial markets. The SEDI scheme is but one of them. No one supposes, to our knowledge, that there is any shift in jurisdiction. No jurisdictional challenge, to our knowledge, has ever been issued to it.

35. The fees assessed for the late filing of insider statements emanate from Ontario law under an Ontario Securities Commission Rule. Specifically, there is no provision for late fees in the Nova Scotia Rules implementing the SEDI regime.

36. The regulation of securities is still a provincial responsibility. *Reference Re Securities Act*, 2011 SCC 66. Each of Ontario and Nova Scotia has sole jurisdiction in their respective geographical area. Nova Scotia retains its jurisdiction to sanction for violations in Nova Scotia of its own *Securities Act* regardless of what Ontario may do. The late filing fees are imposed by the Ontario Securities Commission under Ontario law and may have to be paid by Nova Scotians. The province of Ontario and the Ontario Securities Commission cannot usurp or oust that Nova Scotia jurisdiction and certainly not by the application of this late filing fee.

37. Mr. Adams, Ms. McLaughlin-Weir, and Mr. Weir have, we find, violated a specific provision of the *Securities Act*. Section 113, for the purposes of these proceedings, constituted the offence of failing to file reports of insider trading. Nova Scotia has unquestioned jurisdiction to pass such legislation. It stands regardless of fees which the Ontario Securities Commission may require to be paid if one is late in filing insider disclosure.

Res Judicata

38. There is a well established legal principle that one cannot be made subject to a legal process twice or penalized twice for the same default. The principle has been phrased for this argument as follows; the same matter, once judged with finality, is not subject to relitigation. In the legal vernacular, this is called res judicata. Mr. Weir argues that he, having been sanctioned, by the OSC already through the payment of late fees, cannot now be sanctioned again for violating the *Securities Act* by not filing the declaration of his insider trades on time.

39. This argument cannot, however, apply to Mr. Adams or Ms. McLaughlin-Weir because they never did file insider reports, nor have they been made subject to late filing fees. Furthermore, in our view, it does not matter for the purposes of this argument that the fees happen to be assessed by the OSC. The same argument might be made if Nova Scotia had assessed a late filing fee. Thinking of the argument entirely within the Nova Scotia context does, we think, make it plain that there is nothing untoward in the application of the late fees.

40. We reiterate that in our view the proceedings are different. One is a fee assessed to encourage prompt filing. The other is an administrative penalty for a violation of the *Securities Act.* The issues are not the same.

41. The assessment of a late filing fee does not create a res judicata and thereby void a prosecution for failing to make timely disclosure of insider trades. There was no litigation at all in Ontario. There was no issue to be adjudicated. No thing was decided. There was no court involved. The assessment of a fee for the late filing of an insider trade does not act as a decision on whether the Nova Scotia *Securities Act* has been violated.

42. The point of the disclosure rules is to require a public filing of trades by those who have inside knowledge of a company's fortunes so that all those concerned with financial markets may know of them. Late filing fees present little hazard to someone who might take advantage of insider trading. A fee of $50.00 per filing to a maximum of $1,000.00 is a paltry sum to have to pay later if one is then able, without fear of other sanction, to sit on disclosure in order to take better advantage of the information gained as an insider. The result would be to defeat the purpose of the requirement to file under the Nova Scotia *Securities Act* and would be absurd.

The Public Interest and Penalty

43. Section 135 of the *Securities Act* provides that:

> 135 Where the Commission, after a hearing,
>
> (a) determines that
>
> (i) a person or company has contravened or failed to comply with any provision of Nova Scotia securities laws, or
>
> (ii) a director or officer of a person or company or a person other than an individual authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Nova Scotia securities laws by the person or company;
>
> and
>
> (b) considers it to be in the public interest to make the order,
>
> the Commission may order the person or company to pay an administrative penalty of not more than one million dollars for each contravention or failure to comply. 2006, c. 46, s. 48.

44. The Respondents submit that we should not be satisfied that it is in the public interest to make an order assessing administrative penalties against them for a failure to file their insider reports. The Respondents argue that this proceeding against them was only commenced when the limitation period was about to expire after years of delay by the Director of Enforcement; that Helical Corporation was, in effect, defunct as of February, 2007 when the TSX Venture Exchange halted trading in the shares of Helical and no trades were ever made after; and that none of the Respondents profited from their trades. They say the proceedings were pointless and a waste of scarce resources. They argue that the Director has discriminated against them for reasons related to other matters involving them and that the process is abusive. They suggest a bombshell lies embargoed in the Supreme Court files of litigation involving Mr. and Mrs. Weir and a third party financial institution, and that once revealed, a direct connection between the failure of Helical Corporation, the actions of this financial institution, collusion between

the Director and this financial institution and the charges against Helical and Mr. and Mrs. Weir will be shown.

45. In our opinion, however, this is an ordinary proceeding for a failure to file insider reports with little remarkable in it except perhaps the vehemence with which it has been contested. We do not see, at bottom, much merit in the Respondents' arguments. The three Respondents are insiders, they traded in securities, they did not disclose, they violated the *Securities Act*. It is in the public interest to make an order against them to deter them in future and others from ignoring the insider disclosure provisions of the *Act*.

46. We find no reason to suppose that the Respondents have been treated by the Director in these proceedings in an exceptional way or that the public interest is not served by finding them responsible for violating the *Securities Act*. If there were any doubt about it, the fact is that the defaults were blatant and systemic. We take notice that Helical as a corporation itself, and senior officers other than the Respondents, although an issuer and insiders respectively, failed to comply with requirements to file and have been the subject of previous adverse orders of this Commission. The order of the Commission in the matter of The Helical Corporation dated July 19, 2011 recites a litany of such failures. It is difficult to understand how a responsible Director of Enforcement could ignore them.

47. The Respondents have presented no authority in support of the proposition that even if there were some prosecutorial unfairness or misfeasance, this tribunal should invoke the public interest under section 135(b) to find a penalty is not justified. In search of a standard, we find *R. v. Regan* [2002] S.C.R. 297 speaking of the proper standard in considering an abuse of process argument in the administrative context:

> 52 Finally, this Court's most recent consideration of the concept of abuse of process arose in the administrative context. In *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000 SCC 44, it was held that a 30-month delay in processing a sexual harassment complaint through the British Columbia human rights system was not an abuse of process causing unfairness to the alleged harasser. For the majority, Bastarache J. came to this decision on the basis that abuse of process has a necessary causal element: the abuse "must have caused actual prejudice of such magnitude that the public's sense of

decency and fairness is affected" (para. 133). In Blencoe's case, it was held that the humiliation, job loss and clinical depression which he suffered did not flow primarily from the delay, but from the complaint itself, and the publicity surrounding it (*Blencoe*, at para. 133; see also *United States of America v. Cobb*, [2001] 1 S.C.R. 587, 2001 SCC 19).

48. In *Blencoe* itself the Supreme Court of Canada said at paragraph 120:

> 120 In order to find an abuse of process, the court must be satisfied that, "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (Brown and Evans, *supra*, at p. 9-68). According to L'Heureux-Dubé J. in *Power*, *supra*, at p. 616, "abuse of process" has been characterized in the jurisprudence as a process tainted to such a degree that it amounts to one of the clearest of cases. In my opinion, this would apply equally to abuse of process in administrative proceedings. For there to be abuse of process, the proceedings must, in the words of L'Heureux-Dubé J., be "unfair to the point that they are contrary to the interests of justice" (p. 616). "Cases of this nature will be extremely rare" (*Power*, *supra*, at p. 616). In the administrative context, there may be abuse of process where conduct is equally oppressive.

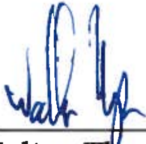
49. We accept this as a standard in this case for the purposes of assessing the public interest jurisdiction under our *Securities Act* and within the context of administrative law in general. We find no abuse of process in this case.

50. We are satisfied, as stated above, that Mr. Adams and Ms. McLaughlin-Weir violated the *Securities Act* and that it is in the public interest to make an order. We are further satisfied that Mr. Weir failed to file a report of status as an insider at all. We are satisfied he made trades in the shares of Helical as an insider from September 3, 2004 through February 2, 2007. We are satisfied that he did not file a report of these trades until March 13, 2008. He thereby violated the *Securities Act*. We are satisfied that it is in the public interest to make an order.

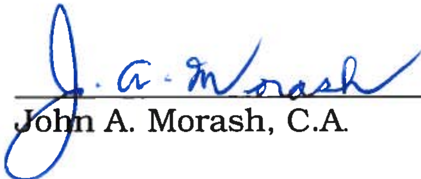
Administrative Penalties and Costs

51. Counsel for the Director made a submission on penalty in her written argument at the conclusion of the hearing. Counsel for the Respondents has challenged the Director on the issue of costs. We ask counsel for the Director and for the Respondents to convene an appropriate date for a hearing on the appropriate penalty and whether costs should also be assessed to the Respondents.

Dated at Halifax, Nova Scotia this 23 day of March, 2012



J. Walter Thompson, Q.C.



John A. Morash, C.A.