

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

– AND –

**IN THE MATTER OF DOUGLAS G. RUDOLPH, PETER A.D. MILL,
CFG*CN Ltd. (also known as CANGLOBE FINANCIAL GROUP
and CANGLOBE INTERNATIONAL CAPITAL INC.
(Collectively the “Respondents”)**

DECISION

- Hearing:** February 11, 2014
- Decision:** February 28, 2014
- Panel:** Sandra MacPherson Duncan, Q.C. - Chair
John A. Morash - Commissioner
Valerie Seager - Commissioner
- Appearances:** Stephanie Atkinson - Director of Enforcement
for the Commission
- Richard A. Bureau - Respondent Douglas G.
Rudolph

DECISION

1. On February 11, 2014, the Nova Scotia Securities Commission (panel of three) (the "Commission") heard a motion brought by the Director of Enforcement to determine whether it was in the public interest to make an Order protecting pre-hearing disclosure by the Director of Enforcement to the named Respondents from unlawful dissemination and use. Specifically, the Order would require each Respondent to keep and treat all documents and all personal information, as defined in the *Freedom of Information and Protection of Privacy Act* (Nova Scotia) ("FOIPOP") in that disclosure confidential, other than for the purposes of the proceedings before the Commission, unless otherwise ordered.

Service of Notice of Hearing of Motion and accompanying documents

2. The only Respondent appearing at the motion was Douglas G. Rudolph with his counsel, Richard A. Bureau. The corporate Respondents were couriered the Notice of Hearing to their last known corporate addresses. These documents were returned as undeliverable.
3. The same documents were sent to the directors and Recognized Agent of the corporations. It appears service was successfully effected upon CFG*CN Ltd as documents were signed for by J.P. Tolley, (John Patrick Tolley being a Director of that company). Similarly, the documents were couriered to Susan Thorne, director of Canglobe International Capital Inc. at her Ontario address as listed in the Federal Corporations Registry and were delivered and signed for by "Thorne" at that address.
4. Part 5 of the Rules of Practice and Procedure of the Commission provides:

5.1 Any notice or document required under the Rules to be served may be served by any means effective to deliver the notice or document or a copy thereof to the person or company being served or to that person's or company's counsel of record and

shall be served no later than ten (10) days after the issuance of the notice or document. The notice or document shall be sufficiently served upon a person or company if it is served in accordance with this Part and is:

- a. personally served upon the person or company;*
- b. sent to the person or company by prepaid mail at the last address of the person or company appearing on the records of the Commission or, if not so appearing, to such address as the Commission may direct; or*
- c. given in such other manner as the Commission may direct.*

A notice or document served in accordance with paragraph b. of this section shall be deemed to be received by the person or company on the fifth day after the day it is mailed.

5. In all the circumstances, the Commission is satisfied that service has been properly effected upon the corporate Respondents in accordance with Part 5 of the Rules of Practice and Procedure.
6. The Commission had previously been advised of the unavailability due to illness of William MacInnes, Q.C., counsel for the Respondent, Peter A.D. Mill. It was determined that the hearing of the motion would proceed as scheduled with an opportunity being afforded to Mr. MacInnes to make representations on behalf of his client in writing at his later convenience. It was subsequently determined that Mr. MacInnes had, in fact, consented to the issuance of the Order proposed by the Director of Enforcement.

Hearing of the Motion

7. The Director of Enforcement seeks the proposed Order of confidentiality attaching to the pre-hearing disclosure because it will contain a significant amount of private information relating to individuals and/or entities who are non-parties to this proceeding. This information would be considered "personal information" as defined by FOIPOP. The Commission must protect the private and confidential information of non-parties as required by FOIPOP and section 29A of the *Securities Act*.

8. The Director of Enforcement submitted the options open to the Commission to protect the non-parties' privacy interests are to:
- a. redact all personal information in the disclosure - both parties agree this is not feasible as it would render the ultimate disclosure meaningless;
 - b. obtain the consent of some thirty witnesses whose personal information are contained in the proposed disclosure- the Commission says would be onerous and time consuming and would unnecessarily delay the process. Upon questioning by the Panel, counsel also agreed that in the absence of consent of the individuals, enforcement staff would still remain duty bound to disclose all relevant information to the parties for the purpose of the proceedings; and
 - c. issue the proposed Order.

9. Mr. Bureau, on behalf of his client, objected to the proposed Order. He agreed that pursuant to Rule 8.1 and 8.2 of the Rules of Practice and Procedure enforcement staff was obliged to produce all material relevant to the proceedings. He objected to the issuance of the proposed Order on the following bases:

- a) The proposed Order would breach natural justice in that it would deny his client a fair opportunity to correct or contradict statements or information made against him in the disclosure.**

This argument appeared to emanate from a belief that the proposed Order would prevent him from interviewing witnesses concerning the disclosure. As the proposed Order would specifically allow the parties to make use of the information, for the purpose of these proceedings, this concern has no merit.

- b) The proposed Order would prevent the parties from using the information in separate civil proceedings.**

The Panel finds this is not a valid basis for rejecting the proposed Order.

Pursuant to Rule 8 of the Rules of Practice and Procedure, by jurisprudence beginning with *R. v. Stinchcombe* [1991] 3 S.C.R. 326 and by the requirement of fairness as a tenet of natural justice,¹ it is common ground that enforcement staff of the Commission have a legal duty to make available for inspection to the parties all documentary evidence relevant to the proceedings in their possession or control. This must be done regardless of privacy concerns.

In Canada it is well established that information provided in a pre-hearing context such as this imposes upon the party receiving the information an implied undertaking of confidentiality. It is not to be used by the other parties except for the purpose of that litigation, unless or until the scope of the undertaking is varied by court order or other judicial order or a situation of immediate and serious danger emerges. See, for example, *Juman v. Doucette* 2008 SCC 8; *Canada (Director of Investigation and Research) v. Southam Inc.*, 1991 CanLII 1 (CT); *Goodman v. Rossi* 1995 CanLII 1888 (ON CA), (1995), 125 D.L.R. (4th) 613 at pp. 623-624 (Ont. C.A.), *Pelletier v. Pelletier*, 2013 ABPC 141 (CanLII); *United Steelworkers Local 1-2693 v. Kimberly-Clark Corporation*, 2008 CanLII 23941 (ON LRB).

In our view, the proposed Order reiterates the duty imposed upon the parties that already exist by virtue of the implied undertaking of confidentiality. In light of the duty imposed upon the Commission under FOIPOP to ensure the privacy interests are protected, it is nevertheless reasonable to impose an Order containing the terms proposed by enforcement staff.

¹ Pre-hearing disclosure is one of the requirements of natural or fundamental justice. An affected party must have adequate opportunity of knowing the case to be met. See Jones and de Villars, *Principles of Administrative Law*, 4th Edition, 2004 at p. 258.

c) Enforcement staff should be obliged to seek consent of witnesses before any such Order is issued

As previously discussed, the legal duty imposed upon enforcement staff to produce relevant information to the parties to the proceeding exists independent of the consent of any non-parties affected by the disclosure. In the Panel's view, in the circumstances there is little point in seeking consent of non-parties.

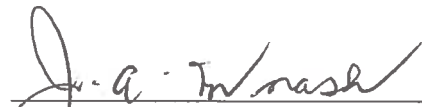
10. For all of the above reasons, the Panel is prepared to issue the requested Order.

DATED at Halifax, Nova Scotia, this ^{28th} day of February, 2014


NOVA SCOTIA SECURITIES COMMISSION



Sandra MacPherson Duncan, Q.C.
Chair



John A. Morash, C.A., C.B.V., F.C.M.A
Commissioner



Valerie Seager, LL.B.
Commissioner