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

- and -

IN THE MATTER OF
HENRI LEMIEUX, carrying on business as FINANCIÈRE HELIOS CAPITAL; AGENCE CRÉDITIS PLUS INC.; ALTIMA ENVIRONNEMENT TECHNOLOGIE INC.; 9218-3524 QUÉBEC INC., carrying on business as ALTIMA ENVIRONNEMENT TECHNOLOGIE; MICHEL ROLLAND; ALEXANDRE ROYER (also known as ANTOINE ROYER); RÉMY PELLETIER; JEFFREY HARRIS, JONATHAN ARCHER and RAYMOND RIVARD (collectively the "Respondents")

Panel: J. Walter Thompson, Q.C., Commission Member

Decision Date: July 14, 2016

Introduction

[1] I refer to the Respondents, but since there are a series of them being used for various transactions, when I speak of the Respondents I may mean some, all, or even one of them. I accept that they are, for the purposes of their collective scheme, linked and involved one with the other.

[2] This decision concerns an application for an Enforcement Order under Section 134(1)(b) and 134(1)(g) of the *Securities Act*, R.S.N.S. 1989, c. 418 as amended (the "Act") against the Respondents.

[3] The matter before me was commenced by a Notice of Application dated April 22, 2016. It stated that an application would be made in writing to a member of the Commission on April 22, 2016 or as soon thereafter as it could be made. It requested that an order be made in the public interest pursuant to sections 134(1)(b) and 134(1)(g) of the Act against the Respondents. Specifically, application has been made to the Commission for the following order:

1. Pursuant to section 134(1)(b) of the Act, that the Respondents cease trading in securities in Nova Scotia permanently;

2. Pursuant to section 134(1)(b) of the Act, that the trading in any securities offered by the Respondents is prohibited in Nova Scotia permanently; and

3. Pursuant to section 134(1)(g) of the Act, that the Respondents are prohibited from becoming or acting as a registrant, investment fund manager or promoter.

Section 134(1A) of the *Securities Act*

[4] Section 134(1A) of the Act provides as follows:

> (1A) The Commission may, after providing an opportunity to be heard, make an order under clauses (a) to (h) of subsection (1) against a person or company if the person or company...
>
> > (c) has been found by a securities commission, self-regulatory organization or other person or body empowered by statute to regulate trading in securities or derivatives or to administer, regulate or enforce securities laws of another province of Canada to have contravened the securities or derivatives laws of that province or territory

[5] To grant the requested order, in addition to the decision of the other authority, the Commission must be satisfied that proper service has been effected upon the Respondents, that the principles of nature justice have been observed, that the Respondents have been given an opportunity to be heard, and that the order be in the public interest.

Service

[6] In an Affidavit of Service of Marlene E. Bucci, sworn on April 22, 2016, she swears that she sent copies of the Notice of Application, submissions of enforcement counsel, all supporting documentation, and a draft Order to the Respondents by regular mail, to their last known addresses.

[7] Part 1 of the General Rules of Practice and Procedure of the Commission

(Rule 15-501) provides for service of documents "by any means effective to deliver the Notice or document or copy thereof to the person or company being served" and further provides that "service shall be sufficiently effected if sent by pre-paid mail at the last address of the person or company appearing on the records of the Commission".

[8] The Affidavit of Service of Marlene E. Bucci satisfies me that the requirements for service on the Respondents under the General Rules of Practice and Procedure with respect to this application have been duly satisfied.

Opportunity To Be Heard

[9] As previously indicated, to make an Order under Section 134(1A), I must be satisfied that the principles of natural justice have been observed. Included in this is the requirement that the Respondents must have been provided an opportunity to be heard. An opportunity to be heard does not require that an oral hearing take place, but rather provides a flexible procedure that satisfies natural justice proportional to the case being advanced against the Respondents. Enforcement counsel has submitted that the application in writing delivered to the Respondents with all supporting documentation and which contemplated an opportunity for the Respondents to be heard in writing provided a procedurally fair process and satisfied the requirement of nature justice. I agree. Specifically, the opportunity given the Respondents to respond in writing by May 30, 2016 to the Notice of Application, submissions, and supporting documentation, provided the Respondents a procedurally fair opportunity to be heard.

Findings of the Bureau de Decision et de Revision de Quebec

[10] On May 26, 2010, the Respondents were found by the Bureau to have violated Quebec securities law. Specifically, in relation to the merits of the allegations made against the Respondents, the Bureau found:

- the Respondents traded in securities in Quebec without being registered to do so and without exemption from registration requirements.

In other words, the Respondents acted as dealers and advisors without appropriate registration.

[11] Throughout the decision, the Bureau also made a large number of general findings against the Respondents which can primarily be summarized as misrepresentation and fraud.

[12] In addition to the findings of misconduct of the Respondents, on May 26, 2010, the Bureau issued the following orders contained in the above-noted decision:

- the Respondents are prohibited from carrying on <u>any activity</u> in respect of securities, directly or indirectly, in any form of investment in Quebec, including acting as a dealer or an advisor; and
- a freeze order prohibiting all Respondents from directly or indirectly disposing of funds, securities or other assets in their possession and control.

[13] The proceedings with respect to the freeze order remain ongoing in Quebec.

[14] The proceedings with respect to the cease trade order and advisor dealer prohibition have concluded. These prohibitions remain in place permanently unless amended or repealed. There has been no such amendment or repeal of these outstanding orders.

The Evidence of Activity in Nova Scotia

[15] I have the affidavit of Lianne Bradshaw, investigator for the Enforcement Branch of the Nova Scotia Securities Commission who attests to the following. The Respondent corporations are located in Quebec and operate through post boxes or business centres.

[16] A classified advertisement appeared in the Halifax *Chronicle Herald* saying:

> Need Money? Have locked-in pension plans? 1-877-903-5707

[17] Ms. Bradshaw says that she responded to the advertisement speaking to a man named Archer who identified himself as a representative of Helios. Mr. Archer advised her that she should fax him a statement from her pension plan and then he would get back to her with how to unlock it. Ms. Bradshaw then spoke to an official at the Autorite des Marches Financiers "AMF" for the Province of Quebec, who advised her of an investment scheme operated by the Respondents. Ms. Bradshaw also learned that two Nova Scotians had sent money pursuant to the scheme. She spoke to one directly and to a senior representative of the other's financial institution. The person to whom she spoke directly advised she had been directed to deal with West Indies Capital and Rexel Energie Inc. I am satisfied Nova Scotians had been advised by the Respondents and investments solicited from them. The AMF issued an order May 26, 2010. The order provided for a freezing of assets, to cease trading and to cease acting as an investment advisor. Ms. Bradshaw says she has been advised that the Respondents have carried on their scheme in spite of the order and expressed a concern that the Respondents may yet solicit business in Nova Scotia.

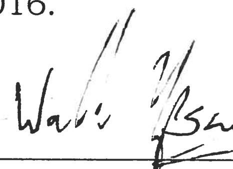
Public Interest

[18] The principal purpose of securities regulation in Nova Scotia, as set out in Section 1(A) of the Act is the protection of investors from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets. In the Commission's prior decision in *Tri Clean Enterprises Inc.* dated October 5, 2010, it was held that the Commission's jurisdiction to make an order under subsection 134(1A) required a finding that to do so was in the public interest and that it included actual or potential violations of Nova Scotia securities laws, or other sufficient reason relevant to Nova Scotia. In the present case the prohibitions and restrictions being sought by the Commission against the Respondents emanate relating to the sale of securities by the Respondent in Nova Scotia. There is more than sufficient reason relevant to Nova Scotia. The requested order serves the broader public interest of protecting Nova Scotia investors and capital markets. It addresses considerations of both specific and general deterrence by ensuring the Respondents do not engage in similar conduct in the future and by discouraging others from similar deleterious conduct. Investors and capital markets in Nova Scotia will benefit from the protection afforded to them from the requested order.

Conclusion

[19] Accordingly, the Commission finds the Respondents have been adequately served, have been provided with an opportunity to be heard and have not responded, and that it is in the public interest that an Order be granted in the terms sought by enforcement counsel.

Dated at Halifax, Nova Scotia, this 14th day of July, 2016.



J. Walter Thompson, Q.C.
Commission Member