

ALBERTA SECURITIES COMMISSION

RULING

Citation: Arbour Energy Inc., Re, 2009 ABASC 428

Date: 20090825

**Arbour Energy Inc., Dennis Morice, Heinz Weis, Arthur Wigmore, Milowe Brost,
The Institute For Financial Learning, Group of Companies Inc.,
Merendon Mining Corporation Ltd. and Gary Sorenson**

Panel:

Glenda A. Campbell, QC
Neil W. Murphy
Karen A. Prentice, QC

Appearing:

Don Young and Deanna Steblyk
for Commission Staff

John James
for Arbour Energy Inc. and Dennis Morice

David de Vlieger and Katrina Edgerton-McGhan
for Heinz Weis

Patrick Sullivan
for Arthur Wigmore

Glenn Solomon and Darren Reed
for Merendon Mining Corporation Ltd.
and Gary Sorenson

Peter Barber and David Lynass
for the Attorney General of Canada

Date of Ruling:

25 August 2009

I. BACKGROUND

[1] This is our ruling relating to statements (the "Martyn Statements") made by Dwayne Martyn ("Martyn") to the Royal Canadian Mounted Police (the "RCMP") on 25 June 2008 and 17 September 2008. The issue for our consideration was whether information in the Martyn Statements is relevant to any of the issues that will be determined in a hearing into the merits of the allegations of Staff ("Staff") of the Alberta Securities Commission (the "Commission") set out in a notice of hearing (the "Notice of Hearing") most recently amended on 27 May 2009.

[2] The Notice of Hearing sets out Staff's allegations and seeks various sanctions against Arbour Energy Inc. ("Arbour"), Dennis Morice ("Morice"), Heinz Weis ("Weis"), Arthur Wigmore ("Wigmore"), Milowe Brost ("Brost"), The Institute For Financial Learning, Group of Companies Inc. ("IFFL"), Merendon Mining Corporation Ltd. ("Merendon") and Gary Sorenson ("Sorenson") (collectively, the "Respondents").

[3] In the course of the hearing of this matter (the "Hearing"), we made a ruling dated 28 July 2009 (*Re Arbour Energy Inc.*, 2009 ABASC 366 – the "28 July Ruling"). There, we addressed an application by the Attorney General of Canada (the "AG Canada") to quash a 22 June 2009 notice to attend (the "Notice to Attend") issued by the Commission to Sgt. Scott Fuller ("Sgt. Fuller") of the RCMP. For reasons that are set out in the 28 July Ruling, we quashed production of the majority of documents sought to be provided by Sgt. Fuller by the Notice to Attend, but did order Sgt. Fuller to provide us with the Martyn Statements by 7 August 2009 for our inspection. Through counsel for AG Canada, we received those materials by the deadline. We were provided with two copies of the Martyn Statements – one unaltered and one redacted.

[4] We stated in the 28 July Ruling (at para. 126):

If we find that the Martyn Statements are irrelevant, that is determinative of the matter and [clause (c) of the Notice to Attend] will be quashed. If, however, we determine that there is information in the Martyn Statements relevant to the allegations in the Notice of Hearing or to Arbour and Morice's theory of defence (again, within the narrower scope set out above, not the broader scope argued by Arbour and Morice), we must then determine the issues of public interest privilege and waiver argued by the parties on the basis of that complete information. In that event, the parties can advise whether further submissions are necessary.

[5] The "narrower scope" of Arbour and Morice's theory of defence, referred to in the above quotation, is (at we stated in the 28 July Ruling at para. 61):

. . . Arbour and Morice stressed that the Arbour investors intended all along to invest in [Strategic Gold Depository] (not Arbour) to achieve promised extraordinarily high returns; consequently, those investors were not misled by information in the Arbour [offering memoranda] regarding the use of proceeds from the sale of the Arbour securities, and there was no fraud.

[6] It is in the context of the allegations in the Notice of Hearing and the narrower scope of Arbour and Morice's defence that we assessed the potential relevance of information in the Martyn Statements.

II. DISCUSSION

[7] The Martyn Statements are transcribed interviews conducted by the RCMP of Martyn on 25 June 2008 and 17 September 2008, as noted.

[8] After reviewing the Martyn Statements, we asked the Commission's Registrar (the "Registrar") on 12 August 2009 to communicate the following to the parties and to counsel for AG Canada (we also summarized the background of this matter in that communication, but do not repeat that portion here):

Having reviewed the Martyn Statements, we conclude that nothing in those statements is relevant to the narrower defence theory posited by [Arbour and Morice] as outlined in our 28 July Ruling or to the allegations in the Notice of Hearing as most recently amended 27 May 2009, with the following exceptions:

June Statement

- from line 302 on page 11 beginning with the word "So" to the end of line 305 on page 12;
- from the beginning of line 380 on page 14 to the end of line 395 on page 15;
- from line 766 on page 29 beginning with the word "I" to the end of line 767 on page 29;
- from the beginning of line 1297 on page 50 to the end of line 1305 on page 51; and

September Statement

- from line 274 on page 11 beginning with the word "First" to the end of line 278 on page 11.

This information is not clearly irrelevant, but rather is marginally relevant to the allegations in the Notice of Hearing and is thus producible. We now seek clarification as to whether the RCMP is asserting claims of privilege or privacy over this very limited information. If so, does the RCMP or any party to the Hearing wish to make further submissions in that regard?

[9] We then set out dates for the RCMP or any party to make further written or oral submissions, if so desired. The deadlines for written submissions were 18 and 21 August 2009. We made provision for oral submissions, if any, on 26 August 2009.

[10] On 14 August 2009, we received by facsimile a 13 August 2009 letter from counsel for AG Canada. It stated:

The RCMP does not object to production of any of the extracts from [the Martyn Statements] identified by the Panel in its e-mail dated August 12, 2009.

Please find enclosed a copy of these extracts and the cover page from each [of the Martyn Statements]. Please advise whether the [Commission] will be producing these extracts to the parties or if you wish us to do so. While the RCMP does not wish to make any written or oral submissions on the production that has been ordered, the right to reply either in writing or orally to any submissions that may be made by the other parties is requested.

[11] We communicated to counsel for AG Canada through the Registrar that he was to produce those extracts to the parties, and we received confirmation they were so provided.

[12] The information thus produced corresponded to the passages we identified in our 12 August 2009 communication, as follows ("Chodyka" was the interviewing officer):

[June: lines 302-05]

MARTYN: . . . So you look, what I finally realized okay you got IFFL here, you got Gary SORENSON there, you've got Arbour Energy there, you've got Strategic Metals there. But it all seemed that the money, all this money goes to Gary SORENSON.

[June: lines 380-95]

CHODYKA: With this whole thing that you saw. What do you think that was going on?

MARTYN: About this whole, what the IFFL, the Capital, the Arbour?

CHODYKA: Yeah.

MARTYN: I believe that, when I look at Milowe's history, he was a mutual funds salesman. And I think he timed the market a couple of times, where put clients into some offshore mutual funds and they enjoyed spectacular gains. And I believe he felt that he could duplicate that himself. Which on its own that's not a bad thing. Mutual funds are all over the place. But the fact is 3% of are [sic] GDP is done. Here the other 97% is out in the rest of the world. I think he may have started it with good intentions. And whatever thing he did with Gary SORENSON, to go buy gold reserves and brilliant idea. But it's only brilliant if you actually buy the reserves and develop the land and pay your investors back. And I never saw any of that. I never saw any money coming back from a sustainable cash flow operation.

[June: lines 766-67]

MARTYN: . . . I think a brother-in-law put some money in Arbour is what happened.

[June: lines 1297-1305]

CHODYKA: Okay. Did you hear about a person by the name of Art WIGMORE, Arthur WIGMORE?

MARTYN: Yes.

CHODYKA: And how do you know that, him?

MARTYN: I met Art through Strategic Metals and at Arbour.

CHODYKA: 'kay. And how do you, what kind of person is he? Or who is he?

MARTYN: Older gentleman, late 60's.

CHODYKA: And what's his affiliation to the companies you were involved with?

MARTYN: He was a Director at Arbour I believe.

[September 274-78]

CHODYKA: . . . First of all Art WIGMORE. How . . .

MARTYN: Well . . .

CHODYKA: . . . do you know him?

MARTYN: . . . actually I knew Art more from him being a Director of Arbor [sic] Energy.

[13] The deadline for written submissions has passed. Those involved have not requested the opportunity to make oral submissions. In any event, the production made by AG Canada to all of the parties in the Hearing would seem to make any such submissions moot.

III. CONCLUSION

[14] Accordingly, this aspect of the proceeding is now concluded.

25 August 2009

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Neil W. Murphy

"original signed by"
Karen A. Prentice, QC