

**ALBERTA SECURITIES COMMISSION**  
**DECISION**

**Citation: Larson, Re, 2010 ABASC 64**

**Date: 20100217**

**Wayne Paul Larson**

<b>Panel:</b>	Glenda Campbell, QC Stephen Murison
<b>Representation:</b>	Tyler Hynnes for Commission Staff
<b>Date of Decision:</b>	17 February 2010

## **I. INTRODUCTION**

[1] Staff ("Staff") of the Alberta Securities Commission (the "Commission") apply, pursuant to section 198(1.1) of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act"), for orders under sections 198(1)(b), (c), (d), (e), (e.1), (e.2) and (e.3) against Wayne Paul Larson ("Larson"). Staff base their application on a 14 October 2009 decision (the "MFDA Decision") of the Mutual Fund Dealers Association of Canada (the "MFDA").

[2] Staff provided affidavit evidence but made no submissions. That evidence satisfies us that Larson had adequate notice of Staff's application. Larson was given an opportunity to be heard but provided no evidence or submissions.

## **II. BACKGROUND**

[3] According to the MFDA Decision, Larson was registered under Alberta securities laws as a mutual fund salesperson employed by a member of the MFDA (the "Member") from about December 2002 until his employment was terminated for cause by the Member in September 2006, and he was at all material times an "Approved Person" as defined in and subject to MFDA By-law No. 1. Staff's evidence is that Larson, who currently resides in Alberta, was the mutual fund salesperson responsible for accounts with the Member of, and acted as financial advisor to, Alberta residents.

[4] In the MFDA Decision, an MFDA panel found that Larson had:

- violated MFDA Rules 1.1.1(a) and 2.1.1 between September 2005 and September 2006 by recommending that clients of the Member "participate" in a particular investment (the "Investment") and by failing, in most instances, to disclose that the Investment was "a non-[Member] product", with numerous clients losing substantial sums they had invested in the Investment;
- engaged in personal financial dealings with clients between September 2005 and September 2006 contrary to MFDA Rules 2.1.4 and 2.1.1; and
- refused to attend and give information at an MFDA interview contrary to section 22.1 of MFDA By-law No. 1.

[5] In consequence, the MFDA panel ordered, among other things, "[a] permanent prohibition of the authority of [Larson] to conduct securities related business in any capacity". The MFDA Decision has not been appealed to the Commission and it appears that the statutory period for any such appeal has expired.

## **III. ANALYSIS AND FINDINGS**

### **A. Statutory Preconditions**

[6] There are two statutory preconditions to the application of section 198(1.1)(c) of the Act.

[7] First, we must be satisfied – and we are – that Larson was given an opportunity to be heard.

[8] Second, Larson must be "subject to an order made by a securities regulatory authority in Canada . . . imposing sanctions, conditions, restrictions or requirements" on him. We are in no doubt, and we find, that Larson is, by virtue of the MFDA Decision, subject to an order that imposes on him securities-related sanctions, conditions, restrictions or requirements. In that regard, we note that, in permanently prohibiting Larson's authority "to conduct securities related business in any capacity" in the MFDA Decision, the MFDA panel exercised its power under section 24.1.1 of MFDA By-law No. 1 to impose on Larson, as an "Approved Person", a "prohibition of the authority of the person to conduct securities related business in any capacity for any period of time". We further note that "securities related business" is defined in section 1 of MFDA By-law No. 1 to mean "any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada, including for greater certainty, securities sold pursuant to exemptions under applicable securities legislation".

[9] Turning to whether the MFDA constitutes a "securities regulatory authority" within the meaning of section 198(1.1)(c) of the Act, we note that this term is not expressly defined for the purposes of the Act generally or of section 198(1.1) specifically.

[10] The term "securities regulatory authority" is defined in, and for the purposes of, sections 211.7 and 211.8 of the Act (dealing with "Interjurisdictional Co-operation") to include certain recognized or authorized self-regulatory organizations. The MFDA is a "self-regulatory organization" – "a person or company that is organized for the purpose of regulating the operations and the standards of practice and business conduct of its members" (section 1(hhh)). The MFDA is also a "recognized self-regulatory organization" within the meaning of section 1(yy), having been recognized as a self-regulatory organization for mutual fund dealers pursuant to section 64 by the Commission (most recently, by Recognition Order dated 14 November 2008); the MFDA has also been recognized by counterparts of the Commission in Canada. That said, because of the limited, specified purposes of the definitions in sections 211.7 and 211.8, they do not govern for the purposes of section 198(1.1).

[11] In the absence of an applicable statutory definition, we are guided by the Supreme Court of Canada's preferred approach to statutory interpretation (see, for example, *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4 at para. 37), namely that set out by Elmer A. Driedger in *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at 87:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[12] Applying this approach, we consider it appropriate to construe the term "securities regulatory authority" in section 198(1.1)(c) of the Act to include the MFDA. Given its plain meaning, this term describes the MFDA: it exercises authority (pursuant to Commission recognition under the Act) to regulate activities involving certain securities. Moreover, when we read this term in its entire context, while paying heed to the scheme and object of the Act, we conclude that the MFDA was intended to be a "securities regulatory authority" for the purposes of section 198(1.1). To that end, we note that the Commission is responsible for the

administration of the Act, which is directed at regulating the Alberta capital market with a view to protecting Alberta investors and the integrity of that capital market. We further note that the Commission's power to reciprocate orders of other "securities regulatory authorities" under section 198(1.1) is directed at the efficient fulfilment of this protective mandate in an environment in which regulatory responsibility is allocated to multiple authorities, whether on the basis of distinct territorial jurisdiction or (as in this case) on the basis of a delegation of specific responsibilities within a territory. This reciprocation power, simply stated, is aimed at enabling the Commission to extend, with efficiency, the protective benefits of an order made by another authority for the protection of Alberta investors and the Alberta capital market as a whole, and we discern no good reason to make distinctions among the multiple authorities with regulatory responsibility for the purposes of section 198(1.1). Indeed, making no such distinctions would best serve the object of efficient administration and enforcement. For these reasons, we find that the MFDA is a "securities regulatory authority" within the meaning of section 198(1.1)(c).

[13] Having so found, we caution that, because the Commission is empowered to hear appeals from MFDA decisions (under section 73 of the Act), it might be disinclined to reciprocate any such decision while the prospect of an appeal remains open. Here – the MFDA Decision not having been appealed and the appeal period having apparently expired – this circumstance does not arise.

[14] In the result, the second statutory precondition to the application of section 198(1.1)(c) of the Act is met in this case.

#### **B. Protection of Alberta Investors and Alberta Capital Market**

[15] The Commission will make reciprocal orders under section 198(1.1) of the Act when it is satisfied not only that the statutory preconditions have been met but also that such orders will serve the public interest (*Re Leemhuis*, 2008 ABASC 585 at para. 12).

[16] The MFDA Decision addresses mutual fund industry misconduct of a serious nature, some of which occurred in Alberta. In the circumstances, we believe that Larson poses a risk of harm to Alberta investors and the Alberta capital market, which warrants our issuance of a reciprocal order or orders in the public interest.

[17] As the Commission commented in *Re Tri-Link Consultants Inc.*, 2009 ABASC 515 at para. 9: "In general, any reciprocal orders made against respondents in the public interest under section 198(1.1) of the Act will mirror the orders being reciprocated, to the extent the Act permits and provided the respondents have been given adequate notice that such orders are being sought." In our view, orders under sections 198(1)(e.1), (e.2) and (e.3) will essentially mirror the "permanent prohibition" imposed by the MFDA panel against Larson and provide appropriate public protection.

#### **IV. ORDERS**

[18] For the reasons given, pursuant to section 198(1.1)(c) of the Act we order in the public interest that:

- under section 198(1)(e.1), Larson is prohibited from advising in securities, permanently;
- under section 198(1)(e.2), Larson is prohibited from becoming or acting as a registrant, investment fund manager or promoter, permanently; and
- under section 198(1)(e.3), Larson is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, permanently.

17 February 2010

**For the Commission:**

"original signed by"  
Glenda Campbell, QC

"original signed by"  
Stephen Murison