



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

IN THE MATTER OF BARRY LANDEN

**REASONS FOR DECISION
(Subsections 127(1) and 127(10) of the Act)**

Hearing: February 22, 2010

Decision: October 12, 2010

Panel: James E. A. Turner - Vice-Chair and Chair of the Panel
Paulette L. Kennedy - Commissioner

Counsel: Hugh Craig - For Staff of the Commission

Robert Isles - For Barry Landen

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REASONS FOR DECISION

I. OVERVIEW

A. BACKGROUND

[1] This was a hearing before the Ontario Securities Commission (the “**Commission**”) held on February 22, 2010 pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) to consider whether it is in the public interest to make an order imposing certain sanctions against Mr. Barry Landen (“**Landen**”).

[2] A Notice of Hearing in this matter was issued by the Commission on October 7, 2009 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on October 6, 2009.

[3] On November 4, 2008, Madame Justice Shamai of the Ontario Court of Justice released a decision convicting Landen of insider trading contrary to subsections 76(1) and 122(1)(c) of the Act (*R. v. Landen*, 2008 ONCJ 561, CarswellOnt 6531) (the “**Criminal Judgement**”). In a subsequent decision, Shamai J. sentenced Landen to 45 days imprisonment and imposed a fine of \$200,000 for his breaches of the Act (*R. v. Landen*, 2009 ONCJ 261, CarswellOnt 3288) (the “**Sentencing Decision**”).

[4] Based on Shamai J.’s findings in the Criminal Judgement, Staff alleges that Landen breached subsection 76(1) of the Act and acted contrary to the public interest and seeks sanctions against Landen permanently barring him from participating in Ontario’s capital markets.

[5] Staff relies on subsection 127(10) of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) in respect of a person or company who has been convicted of an offence arising from a transaction, business or course of conduct relating to securities (subsection 127(10)1) or under a law respecting the buying or selling of securities (subsection 127(10)2).

B. BARRY LANDEN

[6] At the time of the conduct giving rise to the Criminal Judgement, Landen was Vice-President, Corporate Affairs of Agnico-Eagle Mines Limited (“**Agnico-Eagle**”), a Canadian gold mining company that is publicly traded on the Toronto Stock Exchange (the “**TSX**”) and the New York Stock Exchange (the “**NYSE**”).

[7] Landen was a trustee for Jakmin Investments Limited (“**Jakmin**”), a corporation that held the common shares of Agnico-Eagle owned by the estate of the founder of Agnico-Eagle. Landen was the sole person with trading authority over Jakmin’s interest in Agnico-Eagle.

[8] At the time of the hearing Landen was 57 years old.

C. THE EVENTS OF OCTOBER 2003

[9] Staff alleges that Landen, as a member of Agnico-Eagle senior management, became aware on October 9, 2003 that Agnico-Eagle's largest asset, the LaRonde Mine, was experiencing a reconciliation problem in its gold production in the third quarter of 2003. Staff alleges that in early October 2003, Landen was also aware that Agnico-Eagle might be required to lower its long-term gold production forecast.

[10] In four trades made on October 10, 2003 and October 24, 2003, Landen caused Jakmin to sell all of its 32,237 common shares of Agnico-Eagle.

[11] Agnico-Eagle's third quarter results were released publicly on October 29, 2003. The news release issued on that day announced a net loss for the third quarter, a reduction in the annual forecast of gold production and a reduction in the forecast for gold production for 2004.

[12] The next day, October 30, 2003, the price of Agnico-Eagle common shares fell by 22% (Criminal Judgement, *supra* at para. 10).

[13] Shamai J. concluded that the loss avoided by the trades was \$115,000 (Sentencing Decision, *supra* at para. 61).

II. ANALYSIS

A. THE CRIMINAL JUDGEMENT AND THE SENTENCING DECISION

[14] On October 1, 2003, Landen was present at a meeting of a group of Agnico-Eagle senior management and advisors, called to respond to a hostile take-over bid. At that meeting, Sean Boyd, the chief executive officer of Agnico-Eagle, discussed "possibly lowering the bar" for Agnico-Eagle's long-term gold projection. Shamai J. summarized that discussion and her conclusions in the Criminal Judgement as follows:

Mr. Boyd described his wish to "rebuild production targets" for the upcoming quarter and the following year in the strategy part of the meeting.

...

It does not appear that the reduction of 2004 production guideline was at that point more than a possibility. However, the significance of it was considerable. In fact when interviewed by the OSC in November 2004, Mr. Boyd described the critical factor in the impact which the October 2003 quarterly report had on the market as the perception that LaRonde was a 300,000 ounces mines, not a 400,000 ounces mine, in terms of annual production. ... The impact which a reduction in production might would [*sic*], by all measures, be significant. ... In the context of a company whose credibility was suffering, to the knowledge of management, because of repeated production forecasts which could not be met, and which was about to announce a significant shortfall in quarterly

production, based even on preliminary numbers, the possibility was real. In measuring magnitude and probability separately then “discounting the potential magnitude by the probability of non-occurrence”, the “unspecified minimum threshold of materiality” is met. I must conclude that Mr. Boyd’s reference to “lowering the bar” at the October 1, 2006 meeting amounted to a material fact.

(Criminal Judgement, *supra* at paras. 97 and 99)

[15] On October 9, 2003, Landen attended a meeting of Agnico-Eagle senior management, where a shortfall in gold production at the LaRonde mine was discussed. In the Criminal Judgement, Shamai J. summarized that discussion and her conclusions as follows:

... Mr. Scherkus and Mr. Boyd testified that at the October 9, 2003 meeting, the reconciliation issue was vastly more significant than in any other monthly report. There was a discrepancy of 16.5%: 6000 ounces difference between the projected gold output and the actual output. The highest previous discrepancy was 2000 ounces. This reconciliation issue was in the context of a production total of 51,000 ounces for the quarter, a number which made the achievement of the Q3 projections and consequently the year’s production an [*sic*] virtual impossibility. The significance was magnified. ... It had grave implications not only for that quarter and that month, but for the entire enterprise at LaRonde, then the only producing asset of [Agnico-Eagle]. A plan was immediately put in place, to conduct labour intensive tests of the ore as it came out of the ground and as well to audit the mill. Clearly, there was great significance of this reconciliation discrepancy for senior management at [Agnico-Eagle]. ...

...

In the result, I view the reconciliation issue as a material fact. There is no evidence to suggest that anyone, but those present at the October 9 meeting, including Mr. Landen, and the pertinent staff, was aware of the reconciliation issue. Unlike production and mine issues which had been the subject of previous press releases, public discussions, and analyst opinions, the reconciliation issue was not disclosed to the general public.

(Criminal Judgement, *supra* at paras. 93 and 95)

[16] As a result, Shamai J. concluded that Landen had knowledge of two material facts that were not generally disclosed when he traded in common shares of Agnico-Eagle held by Jakmin on October 10, 2003 and October 24, 2003. Those material facts were that:

1. Agnico-Eagle was experiencing financial problems or mine production problems in the third quarter of 2003 that would likely negatively affect the

share price of Agnico-Eagle, including but not limited to a problem with reconciliation; and

2. the senior management of Agnico-Eagle was considering reducing its long-term gold production forecast including but not limited to its forecast for 2004.

(Criminal Judgement, *supra* at paras. 2 and 111)

[17] Shama J. made the following comments with respect to Landen's conduct:

Exceptionally high mill discrepancy, profoundly low quarterly production: the significance would be obvious to someone as experienced as was Mr. Landen, just as it was to the members of the senior management team who testified about the meeting.

...

Not only is his possession of that information the natural inference from his attendance at the meetings, there are a number of circumstances which shade his actions with consciousness of guilt. Mr. Landen did not comply with the internal company policies and Code of Business Conduct and Ethics. He did not comply with reporting obligations under the *Ontario Securities Act*, requirements he was well aware of, considering numerous and recent filings of that sort. The statement he made in the presence of his own counsel, to the Board of Directors on December 1, 2004, in the context of an internal investigation into a possible breach of his *[sic]* employment contract, that he did not consider his status as an insider affecting the sale of Jakmin shares, is not credible. Mr. Landen was a long-time officer of [Agnico-Eagle], trained in accountancy. He had sole trading responsibility for all the securities held by the company which survived the founder of the company he worked for. He enjoyed an exceptional level of trust, given that portfolio. He decided to liquidate the entirety of the holdings in the company which the creator of the holding company had founded. Although it is hardly necessary, given the simple fact of his attendance at the meetings where these items were discussed, the dubious and shady way Mr. Landen dealt with these transactions adds to the atmosphere of suspicion attendant upon them.

(Criminal Judgement, *supra* at paras. 108 and 109)

[18] Shama J. found beyond a reasonable doubt that:

- (a) Landen was in a special relationship with Agnico-Eagle, being an officer of Agnico-Eagle;
- (b) Landen sold securities of Agnico-Eagle;

(c) Landen had knowledge of material information about Agnico-Eagle at the time he sold; and

(d) the material information had not been generally disclosed.

(Criminal Judgement, *supra* at para. 111)

[19] Accordingly, Shamai J. found that Landen contravened subsections 76(1) and 122(1)(c) of the Act.

[20] Charges that Landen violated subsections 76(2) and 122(1)(c) of the Act by informing another person of the material information (i.e., by “tipping” that person) were dismissed.

[21] Landen was sentenced to 45 days imprisonment and was ordered to pay a \$200,000 fine (Sentencing Decision, *supra* at paras. 65 and 66).

B. SUBSECTION 127(10) OF THE ACT

[22] Subsection 127(10) of the Act provides as follows:

127 (10) Inter-jurisdictional enforcement – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

1. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities.

2. The person or company has been convicted in any jurisdiction of an offence under a law respecting the buying or selling of securities.

3. The person or company has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting the buying or selling of securities.

...

[23] Staff submits that the findings of Shamai J. in the Criminal Judgement give us jurisdiction to impose sanctions under subsection 127(1) of the Act in the circumstances contemplated by subsection 127(10) of the Act.

[24] Subsection 127(10) was added to the Act and became effective on November 27, 2008, well after the events that gave rise to the Criminal Judgement (which occurred in October 2003).

[25] In *Re Euston Capital Corp.* (2009), 32 O.S.C.B. 6313 (“*Euston Capital*”), the Commission concluded that subsection 127(10) can be the grounds for an order in the

public interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

... we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.

(*Euston Capital, supra* at para. 26)

[26] In a recent decision, the Commission found that the respondent's criminal conviction for fraud over \$5,000 in the Ontario Superior Court of Justice, pursuant to subsection 380(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, could be relied upon by the Commission, in the circumstances contemplated by subsection 127(10), to make an order in the public interest under subsection 127(1) (*Re Lech* (2010), 33 O.S.C.B. 4795 ("**Lech**")).

[27] In *Euston Capital*, the Commission also concluded that the presumption against retrospectivity does not apply to public interest orders made by the Commission in the circumstances contemplated by subsection 127(10):

Based on a plain reading of subsection 127(10) in the context of section 127 as a whole, and after taking into account the Supreme Court of Canada's decisions in *Brosseau* and *Asbestos*, we conclude that the purpose of purpose of [*sic*] subsection 127(10) is to protect the public. Hence, the presumption against retrospectivity is not applicable, and subsection 127(10) may operate retrospectively.

While the courts in *Brost* and *Thow* had to consider the retrospective application of a provision which expanded the sanctioning powers of a securities regulator, subsection 127(10) of the Act does no such thing. Rather, subsection 127(10) of the Act simply allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest.

Moreover, this Commission has considered the conduct of individuals in other jurisdictions in the past when making an order under subsections 127(1) and (5) in the public interest, even before subsection 127(10) came into effect ...

(*Euston Capital, supra* at paras. 56-58)

[28] A similar finding was made by the Commission in *Lech, supra* at paragraphs 24 to 32 and in *Re Elliott* (2009), 32 O.S.C.B. 6931 at paragraphs 16 to 26.

[29] We therefore find that we are entitled to make a public interest order under subsection 127(1) of the Act in the circumstances contemplated by subsection 127(10), based on the Criminal Judgement and the Sentencing Decision, notwithstanding the fact that the relevant events took place in October 2003.

C. SUBMISSIONS OF THE PARTIES

Staff's Submissions

[30] Staff request the following sanctions be ordered by the Commission against Landen:

- (a) a permanent prohibition on trading in securities,
- (b) a permanent prohibition on the acquisition of securities,
- (c) a permanent exclusion from reliance on securities law exemptions,
- (d) a reprimand,
- (e) an order that Landen resign any positions held as a director or officer of an issuer, registrant or investment fund manager,
- (f) a permanent prohibition on becoming or acting as a director or officer of any issuer, and
- (g) a permanent prohibition on becoming or acting as a promoter.

[31] Staff is not seeking any monetary sanctions. Staff submits that an order for a monetary sanction is not warranted in the circumstances because of Landen's current financial circumstances and the fact that a \$200,000 fine was imposed for trading in which the loss avoided was \$115,000. Staff is not seeking monetary sanctions, so we will not address whether or not such sanctions would be appropriate or warranted in the circumstances.

[32] In imposing sanctions, Staff asks us to consider Landen's senior position with Agnico-Eagle. As vice-president of a major Canadian mining company that was listed on the TSX and the NYSE, he was trusted with sensitive market information. Staff submits that he improperly used that sensitive information when he sold all of the shares of Agnico-Eagle held by Jakmin. Staff submits that Landen was experienced in the marketplace and would have been aware of the insider trading prohibition.

[33] Staff characterizes Landen's actions as an egregious breach of trust and his offence of insider trading as one of the most serious offences under the Act.

[34] Staff submits that we are entitled to impose sanctions based solely on the evidence before us, which consists only of the Criminal Judgement and the Sentencing Decision.

Landen's Submissions

[35] Counsel for Landen agrees that subsection 127(10) can be the basis for Commission sanctions under subsection 127(1) of the Act in reliance on the Criminal Judgement and the Sentencing Decision and the facts contained in them. However, he submits, based on the Commission's decision in *Euston Capital*, that while the Commission is permitted to do so, it is not mandatory that we do so.

[36] Landen does not contest the fact that he was convicted of insider trading. He admits that he made the relevant trades at a time when he was a vice-president of Agnico-Eagle and therefore an insider. However, he submits that there is a spectrum of material information that must be disclosed to the public and that some material information is more significant than other material information. He submits that the two material facts at issue here are at the lowest end of that spectrum.

[37] Landen's counsel describes Landen as a "low level" vice-president and submits that Landen did not have responsibilities commensurate with that status. He submits that Landen was not one of Agnico-Eagle's inner circle of management, as Staff suggests.

[38] Landen also objects to and disagrees with Staff's allegation that Jakmin avoided a loss of \$115,000 through his trades on October 10 and October 24, 2003. His counsel submits that despite Shamai J.'s finding that the material facts at issue were disclosed in Agnico-Eagle's third quarter news release on October 29, 2003, upon review of that news release, he is unable to find that disclosure. Accordingly, Landen submits that there is no clear date from which to calculate the loss avoided by his trading. He submits that we should review the news release and consider that issue in making our decision.

[39] Landen submits that the following terms would be appropriate in the circumstances:

- (a) that he be permitted to trade in and acquire securities for his own account to better enable him to pay the \$200,000 fine owed as a result of the Sentencing Decision;
- (b) that any sanctions include carve-outs that would permit him to rely on the accredited investor and private company exemptions;
- (c) that a 10-year prohibition on becoming or acting as a director or officer of a reporting issuer would be more appropriate than the permanent bans requested by Staff; and
- (d) that a 10-year prohibition on becoming or acting as a promoter would be a more appropriate sanction than a permanent prohibition.

[40] Landen submits that his circumstances can be distinguished from those in other Commission insider trading cases. Landen submits that he was entirely passive in the circumstances that gave rise to the material information and he did not prevent or interfere with the disclosure of that information. He makes that submission in

distinguishing his conduct from that of the respondent in *Re Harper* (2004, 27 O.S.C.B. 3937 (“*Harper*”). Landen also submits that the trades were executed for the benefit of Jakmin and that he did not benefit personally.

D. FINDINGS

[41] We rely on the facts and the conclusions set out in the Criminal Judgement and the Sentencing Decision.

[42] Landen was found in the Criminal Judgement to have breached subsections 76(1) and 122(1)(c) of the Act. That constitutes a conviction for an offence under a law respecting the buying or selling of securities as well as a conviction for an offence arising from a transaction, business or course of conduct related to securities, within the meaning of subsection 127(10) of the Act.

[43] We are not required to make an order under subsection 127(1) in this matter, but we may do so if we consider it to be in the public interest. In our view, it is not appropriate for us in exercising that jurisdiction to revisit or second-guess the court’s findings of fact or legal conclusions. We note in this respect that Shama J. concluded in the Sentencing Decision that the loss avoided by reason of the trading by Landen was \$115,000 (see the Sentencing Decision, *supra* at para. 61). We are not prepared to revisit or second-guess that conclusion. We note that Landen has not suggested a different amount as the loss actually avoided or how that different amount would be calculated. Having said that, the loss avoided is simply one factor to be considered by us in imposing sanctions.

[44] Based on the evidence before us, we find that Landen breached subsection 76(1) of the Act and acted contrary to the public interest.

E. SHOULD AN ORDER FOR SANCTIONS BE IMPOSED?

[45] We must consider the purposes of the Act when exercising our public interest jurisdiction under section 127 of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

- (a) to protect investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

[46] In pursuing these purposes, we must have regard for the fundamental principles described in subsection 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[47] An order under section 127 of the Act is protective and preventive in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611:

... the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person’s future conduct might reasonably be expected to be; we are not prescient, after all.

[48] The Supreme Court of Canada has also held that the Commission may impose sanctions which have as their objective general deterrence. The Supreme Court of Canada stated that: “...it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative” (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[49] Although Landen has been sentenced by the Ontario Court of Justice for the offence of insider trading, the Commission retains jurisdiction to make orders in the public interest under section 127 of the Act relating to the same acts.

[50] After considering all of the relevant facts and circumstances, we find that it is in the public interest to make an order against Landen under subsection 127(1) of the Act. The principal objective of that order is to protect investors in this jurisdiction from future unfair or improper conduct by Landen.

F. THE APPROPRIATE SANCTIONS

[51] In determining the nature and duration of the appropriate sanctions, we must consider all of the relevant facts and circumstances before us, including:

- (a) the seriousness of the offence committed,
- (b) the respondent’s experience in the marketplace,
- (c) whether or not the respondent has recognised the seriousness of the offence committed,
- (d) whether or not the sanctions imposed may serve to deter not only the respondent but any like-minded people from engaging in similar conduct, and
- (e) any mitigating factors.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 (“*Belteco*”) at paragraphs 25 and 26.)

[52] We considered the following facts and circumstances in determining the sanctions that should be ordered against Landen under subsection 127(1) of the Act:

- (a) Landen has been convicted of insider trading by the Ontario Court of Justice, contrary to subsections 76(1) and 122(1)(c) of the Act;
- (b) Landen's insider trading resulted in a loss avoided by Jakmin of \$115,000;
- (c) the trades were made at a time when Landen was Vice-President, Corporate Affairs of Agnico-Eagle;
- (d) Landen also breached Agnico-Eagle's company policy on trading during a "blackout period";
- (e) Landen did not comply with the insider reporting obligations under Ontario securities law with respect to the trades;
- (f) Landen was in a position of trust, with sole trading responsibility for the securities held by Jakmin Trust;
- (g) Landen's actions were also held to be a breach of trust (see paragraph 63 of the Sentencing Decision);
- (h) Landen's senior position, market experience and his age; and
- (i) Landen's apparent lack of remorse for his actions (see paragraph 64 of the Sanctions Decision).

[53] We have also considered the fact that Landen was fined \$200,000 and was sentenced to imprisonment for 45 days, under the Sentencing Decision.

[54] We do not accept Landen's submissions that the sanctions that should be ordered should be mitigated because the material facts underlying the Criminal Judgement are at the low end of the spectrum of materiality. Landen traded with knowledge of material facts obtained through his position as an officer of a reporting issuer. Shama J. held that it should have been clear to him in the circumstances that he could not trade while in possession of that knowledge.

[55] We do not consider the fact that Landen may not have been part of the "inner circle" of senior management of Agnico-Eagle or that the shares that were sold were owned by Jakmin to be mitigating circumstances.

[56] Insider trading is an extremely serious offence under the Act and we see no significant mitigating circumstances in this case.

[57] We have reviewed the Commission and other decisions on sanctions referred to us by Staff and Landen in assessing the sanctions appropriate in this case. In reviewing those decisions, we note that each case depends upon its particular facts (*Re M.C.J.C.*

Holdings Inc. (2002), 25 O.S.C.B. 1133 at paras. 9 and 10 and *Belteco, supra* at para. 26). It is a matter of judgement in each case as to what the appropriate sanctions should be. Generally, more recent decisions should be given greater weight in light of the evolution of the regulatory approach to sanctions over time. Ultimately, the question before us is whether the overall sanctions to be imposed are in the public interest in light of all of the circumstances.

[58] We have reviewed the following Commission decisions in coming to a conclusion as to the appropriate sanctions to be imposed in this matter: *Harper, Re Duic* (2004), 27 O.S.C.B. 2754 (“**Duic**”), *Re Zuk* (2007), 30 O.S.C.B. 3967, *Re Melnyk* (2007), 30 O.S.C.B. 5253, *Re Rankin* (2008), 31 O.S.C.B. 3303 (“**Rankin**”), *Re Leung* (2008), 31 O.S.C.B. 8764 (“**Leung**”) and *Re Rajeev Thakur* (2009), 32 O.S.C.B. 4201 (“**Thakur**”). Counsel for Landen also referred us to, and we have reviewed, the decision of the British Columbia Securities Commission in *Re Torudag* (2009), BCSECCOM 339 and the decision of the Alberta Securities Commission in *Re Laprade* (2009), ABASC 14. We note that permanent cease trade and market prohibition orders were made in *Duic*, *Rankin*, *Leung* (with a carve-out) and *Thakur* (with a carve-out).

[59] *Harper* and *Leung* may be the most relevant decisions for our purposes.

[60] In *Harper*, the respondent was convicted of insider trading and sentenced to six months imprisonment and a fine of \$2.4 million in circumstances in which a loss of \$1,364,536 was avoided. In that case, the Commission ordered that the respondent be prohibited from trading in securities for 15 years, with carve-outs for trading for his own account, and that he be prohibited from becoming or acting as a director or officer of a reporting issuer for 15 years.

[61] In *Leung*, the Commission ordered, pursuant to a settlement agreement, a permanent prohibition on trading in and acquiring securities, with a carve-out to permit trading in mutual fund securities, and payments of an administrative penalty and costs, where the profit from the insider trading was \$51,568.61.

[62] Landen requests that any sanctions imposed permit him to trade for his own account and Staff takes no position on whether such a carve-out from any trading prohibition would be appropriate.

[63] We believe that it is appropriate for any trading prohibition to include a limited carve-out that would permit Landen to trade for his own account pursuant to a registered retirement savings plan or a registered retirement income fund. We do not find it appropriate to provide a more general trading carve-out. In our view, a person who commits a serious insider trading offence should have limited rights to trade securities in the future.

[64] After considering all of the facts and circumstances, we have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following sanctions on Landen:

- (a) Landen shall be prohibited from trading in securities for a period of twelve years from the date of this order, subject to a carve-out to allow him to trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:
- (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges), are issued by a mutual fund that is a reporting issuer or are debt securities;
 - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only (and he must close any trading accounts that are not in his name only);
- (b) Landen shall be prohibited from acquiring securities for a period of twelve years from the date of this order, subject to a carve-out to allow him to trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:
- (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges), are issued by a mutual fund that is a reporting issuer or are debt securities;
 - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only.
- (c) exemptions in Ontario securities law (as defined in the Act) shall not apply to Landen for a period of twelve years from the date of this order, except to permit the trading authorized under paragraphs (a) or (b) above;
- (d) Landen shall be reprimanded;

- (e) Landen shall be ordered to resign any positions he holds as a director or officer of a reporting issuer, registrant or investment fund manager;
- (f) Landen shall be prohibited from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager for a period of twelve years from the date of this order; and
- (g) Landen shall be prohibited from becoming or acting as a promoter for a period of twelve years from the date of this order.

III. CONCLUSION

[65] Accordingly, we find that it is in the public interest to issue an order substantially in the form attached as Schedule A hereto.

Dated at Toronto this 12th day of October, 2010.

“James E. A. Turner”

“Paulette L. Kennedy”

James E. A. Turner

Paulette L. Kennedy

SCHEDULE A



Ontario
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IN THE MATTER OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF BARRY LANDEN

ORDER (Subsections 127(1) and 127(10) of the Act)

WHEREAS on November 4, 2008, the Ontario Court of Justice released a decision convicting Barry Landen (“Landen”) of insider trading contrary to subsections 76(1) and 122(1)(c) of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”) (the “Criminal Judgement”);

AND WHEREAS, as a result of the Criminal Judgement, Landen was sentenced to 45 days imprisonment and was fined \$200,000 by the Ontario Court of Justice;

AND WHEREAS Staff of the Commission filed a Statement of Allegations in this matter on October 6, 2009 and the Commission issued a Notice of Hearing on October 7, 2009;

AND WHEREAS on February 22, 2010, the Commission held a hearing to consider whether it is in the public interest to make an order against Landen based on the Criminal Judgement, pursuant to subsection 127(1) of the Act in the circumstances contemplated by subsection 127(10) of the Act;

AND WHEREAS on October 12, 2010, the Commission issued its Reasons for Decision in this matter;

AND WHEREAS we find that it is in the public interest to make an order against Landen pursuant to subsections 127(1) of the Act;

IT IS ORDERED THAT:

- (a) Landen is prohibited from trading in securities for a period of twelve years from the date of this order, subject to a carve-out to allow him to trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:
- (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges), are issued by a mutual fund that is a reporting issuer or are debt securities;
 - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only (and he must close any trading accounts that are not in his name only);
- (b) Landen is prohibited from acquiring securities for a period of twelve years from the date of this order, subject to a carve-out to allow him to trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:
- (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor

exchanges), are issued by a mutual fund that is a reporting issuer or are debt securities;

(ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only;

(c) exemptions in Ontario securities law (as defined in the Act) do not apply to Mr. Landen for a period of twelve years from the date of this order, except to permit the trading authorized under paragraphs (a) or (b) above;

(d) Landen is reprimanded;

(e) Landen is ordered to resign any positions he holds as a director or officer of a reporting issuer, registrant or investment fund manager;

(f) Landen is prohibited from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager for a period of twelve years from the date of this order; and

(g) Landen is prohibited from becoming or acting as a promoter for a period of twelve years from the date of this order.

Dated at Toronto this 12th day of October, 2010.

James E. A. Turner

Paulette L. Kennedy