

IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988, c.S-42.2

AND
IN THE MATTER OF

WADE DOUGLAS MacBAIN, KARL EDWARD NEUFELD AND FREDERICK HENRY
SMITH (collectively the “Applicants”)
AND
THE INVESTMENT DEALERS ASSOCIATION OF CANADA (the “IDA”)

DECISION

Hearing Held: December 8, 2005

Before: David Wild
Arthur Wakabayashi
W. F. Ready, Q.C. (Chairperson)

Appearances: Counsel for the Applicants, Messrs Thompson and Stack
Counsel for the IDA, Ms. Brooks and Mr. Blair

Decision dated: December 15, 2005

The IDA launched disciplinary proceedings against Wade Douglas MacBain (“MacBain”), and Karl Edward Neufeld (“Neufeld”) and Frederick Henry Smith (“Smith”) by way of Notices of Hearing dated October 26, 2004, alleging breaches of the Bylaws, Rules and Policies of the IDA.

In response by the Applicants, a number of specific Motions were launched for a stay of the disciplinary proceedings on the following grounds, namely:

1. MacBain and Neufeld are no longer Members of the IDA and cannot be regulated by it;
2. The IDA has no authority to prosecute and adjudicate breaches by MacBain and Neufeld of the securities legislation of the North-West Territories and British Columbia;
3. There has been unreasonable delay in the investigation or prosecution of the charges listed in the Notice of Hearing relative to MacBain, Neufeld and Smith.

(During the Hearing Counsel for the IDA indicated that the complaints referred to in Number 2 above, had been withdrawn, or were being withdrawn by the IDA.)

In addition the Applicants moved that, inter alia, a certain affidavit by one Hinson Ng be struck out.

All of the foregoing motions were dismissed by the IDA Hearing Panel.

From these dismissals the Applicants launched appeals to the IDA Appeal Panel. With the exception of the appeal motion relative to the Ng affidavit, (which the IDA Appeal Panel dismissed) it held that it should not then decide these other Appeals but rather decision on the other Appeals should be postponed until the IDA Hearing Panel had decided all matters at issue in the disciplinary proceedings.

From the decision of the IDA Appeal Panel the Applicants launched an Application to the Saskatchewan Financial Services Commission (the "Commission") for a Hearing and Review of such decision. The procedure for the hearing of this appeal is in process and it should be perfected shortly.

By Application dated October 25, 2005, the Applicants have applied to the Commission for a stay of the disciplinary proceedings before the IDA Hearing Panel, pending disposition of the Appeal.

The law respecting the granting of a stay of the disciplinary proceedings is well settled. The Applicants must satisfy three tests, namely:

1. Is there a serious issue;
2. Will there be irreparable harm to the Applicants if the stay is not granted;
3. What is the balance of convenience.

Is there a serious issue to be tried?

If the Applicants are successful on any of the grounds raised by them in their Motions for a stay of proceedings before the IDA Hearing Panel, that will end the matter. Accordingly we are of the view that the issues raised by them, are serious. This test is met.

Will irreparable harm be suffered by the Applicants if the stay is not granted?

Separate and apart from every other consideration, if the disciplinary proceedings go forward before this Appeal is completed, and if the Appeal is allowed, thereby ending the disciplinary matters, the Applicants will have been put to needless expense and effort. At the Hearing before us it was indicated that all costs so thrown away could not be recovered by the Applicants from the IDA.

It was held in a Saskatchewan Queen's Bench decision *The University of Saskatchewan v. The University Employees Union Local 1975 C. U.P.E.* and the *University of Regina* (unreported) that the inability to recover costs thrown away by aborted proceedings constitutes irreparable harm. The magnitude of the harm is not determinative (*RJR -MacDonald v. Canada Attorney*

General (1994) 1 S. C.R.. 311)

Accordingly we are of the view that the Applicants will suffer irreparable harm if the stay is not granted. This test is met.

What is the balance of convenience?

The inconvenience to the Applicants, if the stay is not granted, is the time and money and effort they will have to expend defending themselves in the proceedings before the IDA Hearing Panel. If the Appeal to Commission is allowed, these expenditures will have been wasted.

The inconvenience to the IDA, and similarly the inconvenience to the public's interests which the IDA is charged with protecting, will result from the fact that it cannot go ahead with this matter on January 3, 2006. Considering the length of time these disciplinary matters have been on the go, the fact that the IDA will be held up a little longer, pending disposition of the Appeal is not serious.

Everything considered we think the balance of convenience weighs in favour of the Applicants. This test is met.

Accordingly a stay of the disciplinary proceedings before the IDA Hearing Panel is granted pending disposition of this Appeal.

DATED at Regina, Saskatchewan, December 15, 2005

"W..F. Ready"

W. F. Ready, Q.C., Chairperson

"David Wild"

David Wild

"Art Wakabayashi"

Arthur Wakabayashi