

November 20, 2012

**IN THE MATTER OF: THE SECURITIES ACT**

- and -

**IN THE MATTER OF: IMAGIN DIAGNOSTIC CENTRES INC. and  
PATRICK J. ROONEY**

**REASONS FOR DECISION  
OF  
THE MANITOBA SECURITIES COMMISSION**

Panel:

Acting Chair:	Ms. L.M. McCarthy
Commission Members:	Ms. K.E. Hughes
	Mr. D.H. Smith

Appearances:

Ms. K.G.R. Laycock	)	Counsel for the Commission
Mr. P.J. Rooney (by telephone)	)	Representing both Respondents
	)	

## Background

On April 18, 2012, a Notice of hearing ("NOH") was issued giving notice of the intention of The Manitoba Securities Commission ("MSC") to hold a hearing pursuant to section 148.4 of *The Securities Act* ("Act"), naming IMAGIN Diagnostic Centres Inc. ("IMAGIN") and Patrick J. Rooney ("Rooney") as respondents ("Proceedings").

The matter was heard by a panel of the MSC on September 26, 2012. The Proceedings were adjourned to October 24, 2012. In the interim, a written submission was made by IMAGIN and Rooney and a written response submitted by MSC staff counsel ("Staff").

The proceedings were initiated by way of section 148.4 of the Act, Inter-jurisdictional enforcement, reproduced below (emphasis added):

### Inter-jurisdictional enforcement

**148.4(1)** After providing an opportunity to be heard, the commission *may* make one or more orders under subsections 8(1), 19(5), 31.3(1), 139(2), 148(1) and 148.3(1) against a person or company that

- (a) has been convicted of a criminal offence arising from a transaction, business or course of action related to securities;
- (b) has been found by a court inside or outside Manitoba to have contravened this Act, the regulations or a decision of the commission or the Director, or the securities laws of another jurisdiction;
- (c) is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person or company; or
- (d) has agreed with a securities regulatory authority in Canada or elsewhere to be subject to sanctions, conditions, restrictions or requirements.

The sections of the Act referred to in 148.4(1) that are relevant to the Proceedings are reproduced below (emphasis added):

### Removal of exemptions

**19(5)** Notwithstanding subsections (1) and (2), the commission may, *where in its opinion such action is in the public interest*,

- (a) order that subsection (1) does not, with respect to such of the trades referred to in that subsection as are specified in the order, apply to the person or company named in the order; and
- (b) order that subsection (2) does not, with respect to such of the securities referred to in that subsection as are specified in the order, apply to the person or company named in the order.

### Order suspending trading

**148(1)** If the commission *considers that it is in the public interest*, it may, with or without conditions, order that trading in securities by or of a person or company cease permanently or for a specified period. Except as allowed by subsection (2) or (3), the commission shall not make an order without a hearing.

### Orders respecting directors and officers

**148.3(1)** If the commission *considers it to be in the public interest*, the commission may, after a hearing, make one or more of the following orders:

- (a) an order that a person must resign as a director or officer of an issuer;
- (b) an order that a person is prohibited from being a director or officer of an issuer;
- (c) an order that a person be appointed as a director or officer of an issuer.

Staff submits that all that is required for the MSC make a reciprocal order is the existence of the originating Ontario Securities Commission ("OSC") Order, and that an order from another jurisdiction is in itself proof that the public interest test is satisfied. The only evidence submitted by staff was the OSC Order dated June 30, 2011 against IMAGIN and Rooney.

On behalf of both respondents, Rooney submitted as evidence

- the Reasons and Decision of the OSC in the original matter against himself and IMAGIN, and
- the Alberta Securities Commission's ("ASC") Notice of Withdrawal of Notice of Hearing.

## **Discussion**

The panel agrees that 148.4(1) permits the issuance of a reciprocal order based on the mere existence of an order made by a securities regulator in another jurisdiction; 148.4(1), however, does not automatically require that a reciprocal order be issued.

Sections 19(5), 148(1), and 148.3(1) state that orders may be issued under these sections if it is considered to be in the public interest to do so.

The existence of an order in another jurisdiction has not given the panel sufficient information to determine the public interest in Manitoba. No other evidence was submitted by Staff.

Exhibit 6 in the Proceedings, the reasons and decision of the OSC, provides some insight into the issue of public interest:

[9]...Staff's allegations do not relate to the cancer diagnosis technology aspect of IMAGIN's business or the use of proceeds derived from the distribution of IMAGIN's securities. Staff's allegations relate only to registration issues.

[77] Staff does not dispute the admission that IMAGIN dealt with accredited investors. Staff contends that the accredited investor exemption from registration was not available to IMAGIN because it was a market intermediary.

The panel can infer from the Ontario decision that there were no allegations regarding misappropriation of funds, and that the investors approached to invest in IMAGIN shares were accredited investors.

Exhibit 5, the ASC Notice of Withdrawal of Notice of Hearing states that

the Respondents complied with the applicable Alberta securities laws in respect of the distributions that the Respondents made to Alberta residents

The panel can, again, infer from the ASC decision not to pursue a reciprocal order that the existence of the OSC order did not, in itself, create a public interest concern in Alberta.

Staff's submission included the reasons for decision of the British Columbia Securities Commission in issuing a reciprocal order in the Patricia McLean matter. Paragraph 11 begins: "Securities legislation in Canada is uniform in all **material** respects." (emphasis added).

The ASC Notice of Withdrawal of Notice of Hearing (Exhibit 5 in the Proceedings) shows, however, that legislation across Canada is not identical:

"AND TAKE NOTICE THAT while the Ontario Securities Commission in a decision dated 31 August 2010 (the **Decision**) found that the respondents breached Ontario securities laws in respect of certain distributions made by the Respondents in and from Ontario, Staff have concluded, based on a review of the facts contained in the Decision, that the Respondents complied with the applicable Alberta securities laws in respect of the distributions that the Respondents made to Alberta residents, those laws differing from the applicable Ontario securities laws at the time of the impugned distributions."

In his submission, Rooney indicates that IMAGIN shares were sold in Manitoba, and that the relevant rules were followed. The Panel received no evidence to support or disprove compliance with Manitoba securities law. The "Conduct in Manitoba" section in Staff's submission does indicate to the panel that there was trading activity in Manitoba.

Reciprocal orders provide protection for investors and markets outside the sanctioning jurisdiction so that the misconduct in one jurisdiction cannot be duplicated in another jurisdiction. In this case, we know that the activity that was carried out in Ontario was also carried out in Alberta. The same activity that broke the rules in Ontario, however, complied with the rules in Alberta.

If the activity in Manitoba complied with Manitoba securities laws, the panel does not see a need for sanctions against the respondents; if the activity did not comply with Manitoba securities laws, Manitoba has its own enforcement

processes that would determine and recommend what, if any, sanctions were appropriate.

**Decision**

The panel, in considering the evidence submitted in addition to the OSC order, has not concluded that it is in the public interest to issue the proposed order against the Respondents, and does not approve the issuance of the requested reciprocal order.

*“L.M. McCarth*

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Chair

*“K.E. Hughes*

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Member

*“D.H. Smith”*

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Member