

BC Securities Commission Denies Driving Privileges to Enforce Securities Fraud Sanctions

A three-member panel of the BC Securities Commission dismissed an application by Paul Se Hui Oei to overturn the Executive Director's (ED) decision to deny Oei a driver's licence. The panel found that the necessary statutory conditions were present and that it was in the public interest for the ED to have exercised its power to notify the Insurance Corporation of British Columbia (ICBC) not to renew Oei's licence. The full decision can be found [here](#).

Background

Oei is in default of a 2018 commission order to pay enforcement and administrative penalties totaling \$7.6 million.

The commission imposed the penalties against Oei after finding that Oei committed 63 acts of securities fraud contrary to then s. 57(b)¹ of the British Columbia *Securities Act* (the Act).² Pursuant to Oei's fraudulent scheme, Oei and companies in his control defrauded investors and misappropriated investor funds, thereby enriching themselves by \$5,033,088. In the sanctions decision that followed, the commission emphasized that fraud is "the most serious misconduct under the Act" and issued against Oei a disgorgement order of \$3,087,977.41 and an administrative penalty of \$4,500,000.³ Oei has not paid the penalties imposed on him.

In an effort to enforce the penalties, the ED engaged recently enacted s. 163.2 of the Act. The section provides a mechanism for the ED to deny driving privileges to those in default of certain monetary penalties for contraventions of the Act by issuing a notice to ICBC that that person is in default of penalties imposed under the Act. Upon receipt of such notice, ICBC must not issue or renew that person's driver's licence.

To engage section 163.2, the ED or commission must notify the person of its intention to deny driving privileges and provide the person with an opportunity to be heard. Section 163.3 requires the ED or commission to withdraw action taken under s. 163.2 if the person whose licence has been denied shows that

1. the notice to ICBC was based on an error;
2. the loss of licence will significantly reduce the person's ability to pay the orders against them, and they have entered into an arrangement to report their financial circumstances to the ED from time to time; or
3. the person has entered into a payment arrangement with the ED or commissioner.

The ED provided notice to Oei that it intended to revoke Oei's driving privileges. Oei objected in writing, submitting that he required his driver's licence to act as an emergency driver for his father-in-law and daughter and that he had no ability to pay the penalties imposed on him. After considering Oei's arguments, the ED instructed ICBC not to issue or renew Oei's licence, citing a lack of evidence to support Oei's objections to the action taken under s. 163.2.

Oei brought an application under s. 165 of the Act, seeking to overturn the ED's decision.

The Decision

The commission panel dismissed Oei's application. It stated that the necessary conditions of s. 163.2 had been met, thus allowing the ED to notify ICBC not to issue or renew Oei's licence:

1. Oei was in default of monetary orders;
2. the amount owing by Oei was in excess of \$3,000;



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3. the ED had given Oei the required 30-day notice and an opportunity to be heard before action was taken in respect of Oei's licence; and
4. Oei did not establish that the lack of a driver's licence will significantly reduce his ability to pay the penalties imposed against him.

The panel also found that it was in the public interest to give effect to the ED's use of the s. 163.2 scheme, noting that the legislature had seen fit to provide the ED with such collection powers specifically for circumstances such as Oei's outstanding penalties. Further to this point, the panel emphasized the serious nature of Oei's misconduct:

The Applicant was found to have committed the most serious misconduct under the Act. Significant sums of money were fraudulently misappropriated by the Applicant and others. The Applicant has neither paid any part of the very significant amounts that remain outstanding nor made any proposal for a payment plan ... the Applicant continues to show no remorse or responsibility for his role in the fraud and misappropriation in this matter and ... makes clear that he has failed to accept the original findings and decision of the panel ...

The panel rejected Oei's argument that, without a licence, he would be unable to serve as an emergency driver for his father-in-law and daughter if either needed medical assistance. The panel found these arguments were unsupported by any or any compelling evidence. The panel did note, however, that "an applicant's need to be available to provide medical assistance for a family member is a factor to consider ... [but] in the circumstances present, it is not a compelling factor."

The panel also rejected Oei's argument that s. 163.3 was unconstitutional. Oei submitted that the Supreme Court of Canada case of *Maloney*⁴ — in which the SCC found that an Alberta law allowing for the suspension of a driver's licence to enforce a debt owed to the province was unconstitutional — prohibited the ED's use of s.163.3 of the Act. The panel found that *Maloney* was irrelevant. The impugned law, in that case, was held unconstitutional because it allowed Alberta to revoke driving privileges even where the debtor had been issued a discharge in federal bankruptcy proceedings, which circumstances were not at issue in *Re Oei*.

Takeaways

Re Oei marks the commission's first consideration of section 163.2. It sets out a framework for the commission to follow in future considerations of the section and the necessary elements that must be present for the ED to validly revoke driving privileges to enforce contraventions of BC securities laws.

The decision may also suggest the lengths to which the ED and commission are willing to go in exercising newly acquired powers to enforce penalties imposed under the Act. Section 163.2 came into force among recent sweeping amendments to the Act, many of which enhanced the ED and commission's enforcement and collection powers. *Re Oei* highlights that significant litigation may be required for the ED to exercise its powers — in this case, simply to revoke a driver's licence to enforce a debt. The ED engaged (and presumably incurred the costs of) outside counsel to run the litigation and collect on Oei's outstanding penalties; the ED appears ready to employ all available tools to enforce outstanding judgments.

Re Oei may, therefore, represent early action by the ED in an increased collections program enabled by the amendments. Indeed, at the time they were announced, British Columbia emphasized that the recent amendments ensured the commission "has the strongest enforcement and collection tools in the country to help crack down on white collar crime," and the Minister of Finance stated that the amendments "send a clear signal to fraudsters that ... [if they break securities laws in BC], there will be consequences." But the amendments only recently came into force, and it remains to be seen how the commission will exercise its enhanced powers going forward, including in respect of penalties smaller than those imposed on Oei or for contraventions of the Act considered less serious than fraud. It also remains to be seen whether revoking driving privileges will have a marked effect on the recovery of unpaid securities sanctions.

¹ Section 57 of the Act has since been amended. The current version of the Act can be found [here](#).

² *Re Oei*, 2017 BCSECCOM 365

³ *Re Oei*, 2018 BCSECCOM 231

⁴ *Alberta (Attorney General) v. Maloney*, 2015 SCC 51
