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In the Public Interest: BCSC Panel Finds Man Abused BC's Capital Markets

Jessica L. Lewis

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On October 9, 2018 the British Columbia Securities Commission (BCSC or Commission) found that it was in the public interest to make orders against a party, Matthew John Hamilton, for what was described as "deception of securities regulators, capital markets gatekeepers, and the public about the true ownership and control of Guru Health Inc."[1]

The Commission found that Hamilton concealed his control over Guru Health – a company traded on the OTC Bulletin Board (OTCBB) in the United States – when he created the company by installing nominee directors and officers. Hamilton also impersonated the company's CEO when conducting Guru Health's affairs, and failed to disclose his involvement with the company when he arranged the filing of its registration statement with both the BCSC and a US regulator.

The BCSC also found that Hamilton made efforts to create the illusion of independent shareholders in order to obtain a listing on the OTCBB. Hamilton failed to disclose to the Financial Industry Regulatory Authority, or the sponsoring firm, that he and another involved individual had actually provided the funds and purchased the shareholders' shares. Hamilton received US$190,000 for the sale of Guru Health (which he sold the control of without the appropriate public disclosure).

The Supreme Court of Canada has made it clear that the Commission has the authority to make an order in the public interest without finding a contravention of the *Securities Act*.[2,3]

Notably, in *Re Hamilton*, the Commission found that it disagreed with the submissions of Hamilton in which he submitted that it was inappropriate for the panel to use the public interest jurisdiction because the Executive Director could have relied on other provisions of the Act. The BCSC stated that while portions of conduct may have engaged specific provisions of the Act, in its entirety, the misconduct is something more than fits appropriately into just one provision or contravention of the Act or even a combination of a number of different contraventions. Further, it held that it was not inappropriate for the Executive Director to allege that in its entirety, the conduct, viewed as a whole, amounted to a real and substantial harm to BC's capital markets.

The Commission distinguished this situation from one where the Executive Director may cite a particular provision that has allegedly been infringed upon, but then relies on public interest as a type of back-up allegation, should the conduct in question be found not to contravene the first provision.

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Going forward there will likely be an increase in the Commission's use of the public interest jurisdiction for alleged misconduct which, viewed as whole by the regulator, may amount to real and substantial harm to BC's capital markets.

For more information, please contact the authors of this article or any member of the Cassels Securities Litigation Group.

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[1] *Re Hamilton*, 2018 BCSECCOM 290
[2] RSBC 1996, c 418 (the Act)
[3] *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37

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