

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

AND

**THE SETTLEMENT AGREEMENT WITH
ROBERT CASSELS**

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

Hearing: Wednesday, November 17, 2004

Panel: Paul M. Moore, Q.C. - Vice-Chair (Chair of the Panel)
Robert W. Davis - Commissioner
David L. Knight - Commissioner

**Counsel: Kate Wooton - For Staff of the
Ontario Securities Commission**

David Roebuck - For Robert Cassels
Wendy Berman

The following statement has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on the transcript of the hearing, including oral reasons delivered at the hearing on the settlement agreement between staff of the Commission and Robert Cassels in the matter of Robert Cassels, Murray Hoult Pollitt and Pollitt & Co. Inc. The transcript has been edited, supplemented and approved by the chair of the panel for the purpose of providing a public record of the decision. This extract should be read together with the settlement agreement and the order signed by the panel.

Vice-Chair Moore:

[1] This is a hearing under section 127 of the Act for the Commission to consider whether it is in the public interest to approve a proposed settlement agreement between staff and the respondent, Robert Cassels, and to make an order approving the sanctions agreed to by staff and Cassels in relation to Cassels' conduct.

[2] We approve the settlement agreement as being in the public interest.

[3] It's important to note that staff have chosen not to proceed against Cassels in respect of the insider trading allegations set out in the statement of allegations.

[4] Staff advised that, looking at the relevant telephone call transcript reflecting the conduct in question and recognizing the possibility of different interpretations, it is staff's interpretation that there was no dishonesty intended, that the intention was to do what was right but that there was a lot of confusion and negligence in communicating instructions.

[5] Counsel for Cassels pointed out that Cassels recognizes that as a registrant he should be held to a higher standard of competency in this question of communication than a member of the public and that he acknowledges that his conduct was not appropriate for a registrant.

[6] Therefore, the settlement agreement before us today is not based on illegal insider trading, but on a violation of the spirit of section 2.1 of the Act. That section refers to the primary mandate of the Commission to maintain high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[7] Although no specific section of the Act is alleged as having been violated, staff and the respondent agree that the respondent, who was a registrant, failed to maintain high standards of fitness and business conduct, through negligence on his part.

[8] We accept staff's interpretation of the telephone call transcript.

[9] There are several statements in the transcript, such as questions as to whether what Mr. Cassels was suggesting would be all right or not, and also some suggestions that before any action be taken the registered representative to whom he was talking check back with him. That didn't happen. It was a case of the horse getting out of the barn before the doors were opened.

The Facts

[10] Briefly, the facts were that Cassels is registered in Ontario as an investment counsel and portfolio manager with the firm of Cassels Investment Management Inc. He is an officer and director and is a majority shareholder of that company. He serves as chief compliance officer and ultimate responsible person.

[11] On November the 11th, 2002 at approximately 3:08 p.m. Cassels received a voice mail from Pollitt & Co., a registered dealer, advising of a \$100 million convertible debenture issue proposed as a bought deal financing for Agricore and indicated that if Cassels was interested in participating in the deal he should contact Pollitt & Co..

[12] At approximately 3:14 p.m. Cassels spoke again with Pollitt & Co. and was advised of the terms of the bought deal. At the time of these communications, Cassels Investment Management held just under 70,000 shares of Agricore on behalf of various clients.

[13] At approximately 3:26 p.m., Cassels called his registered representative at another dealer and during the course of the telephone conversation between Cassels and the registered representative of the other dealer, Cassels explored the possibility of selling shares because he expected that the price of the stock could drop. An excerpt of the actual telephone call transcript is set out in the agreed statement of facts.

[14] It is key to note that the end of the conversation between Mr. Cassels and the registered representative, the question was asked whether there was a lower limit of price. Cassels said he wasn't sure what the lower limit was. The registered representative said: "Okay. Let me come back." And then Cassels said: "And maybe we just have to go on the market, but maybe you could get a bid for it, I don't know." The registered representative said: "Sure, I'll find out." And Cassels said: "Okay, thanks. Will you call me on my cell?" And the registered representative said: "Perfect."

[15] At approximately 3:30 p.m. a sell ticket was issued by the registered representative to sell 69,750 shares of Agricore on behalf of Cassels Investment Management. At approximately 3:32 p.m. 3,700 shares of Agricore were sold on the market at \$6. The convertible price, by the way, under the debenture was above that. The market price at the time was \$6, and subsequently the price went lower.

[16] Immediately following this conversation, Cassels called Agricore at approximately 3:36 p.m. to ascertain whether the issue was public. He was unable to find anybody knowledgeable at Agricore.

[17] Subsequent to the trade taking place, at approximately 3:34 p.m. the registered representative spoke with his superior at his dealer about his discussions with Cassels. Immediately following this conversation, at 3:38 p.m., the registered representative called Cassels and left a message advising that he did not think he could go ahead and sell the stock without further clarification in respect of the information known to Cassels.

[18] Shortly after the registered representative left Cassels the message, Cassels contacted the

registered representative at 3:40 p.m. and advised that he agreed the stock should not be sold without further clarification.

[19] At approximately 3:38 p.m. while the registered representative was leaving the message referred to above, trading in shares of Agricore was halted by The Toronto Stock Exchange.

[20] After 4:00 p.m. Cassels learned that the registered representative had sold some stock, and that trading in the stock had been halted.

[21] We accept as a fact that it was not Cassels' intention at the time to place an order to sell Agricore shares until he ascertained whether the bought deal was public and what the market conditions were. We accept the factual submissions of staff and Mr. Cassels that this was a question of negligent behaviour and not dishonesty on his part.

Acceptability of Agreed Sanctions

[22] Staff and Cassels have agreed to the following sanctions: 1) pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Cassels under the Act will be suspended for a period of 30 days effective from the date of the order of the Commission approving the settlement agreement; 2) pursuant to clause 127(2) of the Act, Cassels will be required to successfully complete the Canadian Securities Institute's Conduct and Practices Handbook Course within one year of the date of the order of the Commission approving the settlement agreement; 3) pursuant to clause 6 of subsection 127(1) of the Act, Cassels will be reprimanded by the Commission; 4) pursuant to section 127.1 of the Act, Cassels agrees to make payment by certified cheque to the Commission in the amount of \$6,000 in respect of a portion of the costs of the investigation and proceeding in relation to this matter; and, 5) Cassels has agreed to attend in person to receive the reprimand.

[23] I'm not going to refer to the law in this matter other than to say we set out the relevant considerations in the hearing that approved a settlement agreement with Pollitt and Pollitt & Co. Inc., prior to this hearing. As we concluded in Pollitt, the mandate of the Commission is to act in the public interest on a preventative and protective basis looking to future conduct based on past conduct. It is not to punish or remediate.

[24] The Commission has held that in determining sanctions, prior decisions should be viewed cautiously as each case must depend on its particular facts. I refer specifically to *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7747.

[25] It is not very instructive to look at other cases because of the uniqueness of the fact situation in this case.

[26] We have a dual role as a Commission: to be fair and honest to investors as well as to registrants.

[27] We accept the submission of counsel for Cassels that his reputation is a very important asset and has been harmed in this matter. There's no reason why it should be harmed further by inappropriate sanctions.

[28] One mitigating factor is that the conduct in question was not only an isolated event, but it happened in a brief span of time with the suggestion at the end of the telephone call that decisions discussed were not final. The registered representative would check back. The time frame is from 3:08 p.m. to approximately three quarters of an hour later.

[29] Although Cassels' conduct was contrary to the public interest, it was not at the high end of the spectrum in terms of seriousness.

[30] We have no reason to believe that such conduct will be undertaken again in the future or that somehow the conduct indicates unfitness to continue as a registrant. We do, however, think it is appropriate that Cassels take the course he has agreed to take.

[31] We note that Cassels is remorseful for his conduct. He has approximately 14 years of experience in the industry. As we said, his reputation has already suffered.

[32] Finally, I'd like to observe that one of the objectives of the securities regulation system is to deal speedily with aberrations of conduct among market participants. We note that this matter, partly through the cooperation of Cassels, has been brought on quickly. That is to be encouraged, and the fact that Cassels has been very cooperative right from the start is an indication to us that he is truly remorseful for what happened.

[33] Taking all these facts into consideration, we are very comfortable in approving this settlement agreement as being in the public interest. Commissioner Knight, do you have a word or two you'd like to say?

Commissioner Knight:

[34] Thank you, Mr. Chairman, I do. Coming back to the one-year period that the draft order would allow for completion of this course, as I said earlier, I think one year is a long time, and my concern is not sufficient to not approve the order, but do I urge Mr. Cassels to get on with it and to complete that program as soon as is reasonably possible. Thank you.

Vice-Chair Moore:

[35] Mr. Cassels, would you please stand? Mr. Cassels, you've heard the proceedings today. You are remorseful. You have learned a lesson. We hereby reprimand you and trust that you will not conduct yourself in this way in the future.

Approved by the chair of the panel on November 17th, 2004.

“Paul M. Moore”

Paul M. Moore, Vice-Chair