

**DECISION OF A PANEL APPOINTED PURSUANT TO *THE FINANCIAL AND CONSUMER AFFAIRS
AUTHORITY OF SASKATCHEWAN ACT***

In the Matter of

***The Securities Act, 1988*, ss 1988-89, c S-42.2**

and

In the Matter of

**Jay Max Olesiuk
(Also known as Jay Maks Olesiuk)
(Also known as Andrij Olesiuk)**

Hearing on: May 30, 2023

Before: Howard Crofts, Panel Chairperson
Honourable Eugene Scheibel
Norman Halldorson

(referred to as the “Panel”)

Appearances: Connor Smith as legal counsel (“Securities Counsel”) of the Securities Division of
the Financial and Consumer Affairs Authority of Saskatchewan (the “FCAA”)

Jay Max Olesiuk, representing himself as the Respondent

Date of Decision: August 16, 2023

I. INTRODUCTION

1. This is the Panel’s decision in respect to its deliberations on the merits of the allegations and proposed sanctions against Mr. Jay Max Olesiuk (“Olesiuk”) brought by Securities Counsel in a Statement of Allegations dated April 29, 2020 (the “Statement of Allegations”) pursuant to *The Securities Act, 1988*, ss 1988-89, c S-42.2 (the “Act”) and as amended on December 16, 2021 (the “Amended Statement of Allegations”). On May 11, 2020, the Chairperson of the FCAA appointed this Panel to hear this matter pursuant to section 17(2) of *The Financial and Consumer Affairs Authority of Saskatchewan Act*, SS 2012, c F-13.5.

2. A virtual hearing was held on May 30, 2023, (the “Hearing”) that was consistent with the *Guidelines for Managing Hearings during a Pandemic [Guidelines]*. These *Guidelines* supplement and amend, to the extent necessary, Part 11 and Rule 11.1 of *Saskatchewan Policy Statement 12-602, Procedure for Hearings and Reviews [Local Policy]*. All parties agreed to proceed with the virtual hearing approach; all parties, except Olesiuk who did not attend the Hearing, were in attendance. The purpose of the Hearing

was to decide an application brought by Securities Counsel pursuant to section 134(1.1)(a) of the *Act*. This section allows the Panel to make a sanctions order, after providing an opportunity to be heard, where a respondent has been criminally convicted of an offence relating to securities. For the reasons that follow, we are satisfied that Olesiuk has been criminally convicted of fraud relating to securities, and that as a result the sanctions sought by Securities Counsel are appropriate.

II. BACKGROUND

3. The FCAA Securities Division began its investigation of Olesiuk after receiving a complaint from an investor (referred to herein as “Investor 1”) on or about May 28, 2018. During the interview with Investor 1, the FCAA Securities Division investigator (“Securities Division Investigator”) learned that Olesiuk held himself out to be the Chief Executive Officer, Hedge Fund Manager, and/or Senior Broker/Partner of incorporated business entities named Aero Capital Ltd. and/or Aero Capital Inc. and as holding a U.S. Stock Broker’s License.

4. According to the Amended Statement of Allegations, between approximately March 9, 2017 and January 3, 2018, Olesiuk accepted a total of \$40,000 in investment funds from Investor 1 and represented to Investor 1 that the funds either had been or would be invested in securities identified as CannaETF, AerocannaETF and Bitcoin. The securities identified as CannaETF and AerocannaETF did not exist, nor were any investments made in Bitcoin by Olesiuk on behalf of Investor 1. Olesiuk, without informing Investor 1, used some or all of Investor 1’s investment funds for a purpose different from that expressed by Investor 1, namely for the purchase of goods and services to be used solely by and/or for the benefit of Olesiuk.

5. On or about August 14, 2018, the Securities Division Investigator interviewed a second investor (referred to herein as “Investor 2”) who had been referred to Olesiuk by Investor 1. According to the Amended Statement of Allegations, on or about February 2, 2018, Olesiuk accepted a total of \$25,000 in investment funds from Investor 2 and represented to Investor 2 that the funds would be invested in securities identified as Bitcoin and marijuana stocks. Investor 2’s investment funds were not invested in Bitcoin, marijuana stocks, or any other securities or derivatives. Olesiuk, without informing Investor 2, used some or all of Investor 2’s investment funds for a purpose different from that expressed by Investor 2, namely for the purchase of goods and services to be used solely by and/or for the benefit of Olesiuk.

6. During the investigation, the Securities Division Investigator became aware that Olesiuk had been charged with multiple criminal offenses including committing fraud over \$5,000 contrary to section 380(1)(a) of the *Criminal Code*, RSC 1985, c C-46 (the “*Code*”). On June 23, 2020, Olesiuk appeared in Provincial Court in Saskatoon, Saskatchewan before The Honourable Judge B. M. Klause and entered a guilty plea to this charge. The Crown and the Defence submitted a joint sentencing recommendation to the Court of eleven months in relation to the s. 380(1)(a) fraud charge, which Judge B. M. Klause agreed to. Olesiuk was incarcerated and spent a total of fourteen months in Saskatchewan’s Provincial Correctional Centre

for his actions. The other criminal charges (i.e., the charges other than the section 380(1)(a) fraud charge), including the corresponding three-month sentence, are not related to securities matters, and therefore, not relevant to this decision.

7. For our purposes, along with the jail sentence imposed by the Court, Olesiuk was:

- a. Prohibited from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person, for a period of 5 years; and
- b. Ordered to make restitution in the amounts of \$40,000 and \$25,000 to Investor 1 and Investor 2 respectively that he had defrauded.

8. The FCAA Securities Division filed the Statement of Allegations alleging that Olesiuk had contravened the *Act* as noted in paragraphs (a) through (g) below. The FCAA Securities Division subsequently filed the Amended Statement of Allegations which introduced alias names that Olesiuk used from time to time. The Amended Statement of Allegations was approved by this Panel on April 29, 2022. Olesiuk appeared at the teleconference to discuss the Amended Statement of Allegations. The Amended Statement of Allegations alleged that during the relevant time and by carrying out certain acts, with respect to Investors 1 and 2:

- a. Olesiuk acted as a dealer as defined by section 2(1)(n) of the *Act* without being registered to do so in contravention of paragraph 27(2)(a) of the *Act*;
- b. Olesiuk acted as an adviser as defined by section 2(1)(a.1) of the *Act* by engaging in or holding himself out as engaging in the business of advising another as to the investing in or the buying or selling of securities or derivatives without being registered to do so in contravention of paragraph 27(2)(b) of the *Act*;
- c. Olesiuk engaged or participated in acts, practices, or courses of action relating to securities or derivatives or underlying interests in derivatives that he knew or reasonably ought to have known resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, a security or a derivative or an underlying interest in a derivative in contravention of subsection 55.1(a) of the *Act*;
- d. Olesiuk engaged or participated in acts, practices, or courses of action relating to securities or derivatives or underlying interests in derivatives that he knew or reasonably ought to have known perpetrated a fraud on a person or company in contravention of subsection 55.1(b) of the *Act*;

- e. Olesiuk made a statement that he knew or reasonably ought to have known was misleading or untrue in a material respect, and/or said statement did not include a fact required to be stated or that was necessary to make the statement not misleading in a material respect, at the time and in the light of the circumstances under which it was made, and the statement would reasonably have been expected to have a significant effect on the market price or value of a security or derivative in contravention of subsection 55.11(1) of the *Act*;
 - f. Olesiuk traded in a security on his own behalf or on behalf of another person or company where the trade was a distribution of the security without filing a preliminary prospectus relating to the distribution of the security with the FCAA and without receiving a receipt for the preliminary prospectus in contravention of subsection 58(1) of the *Act*; and
 - g. Insofar as Olesiuk is unable to prove the availability of any exemptions from the requirements of subsection 58(1) of the *Act*, Olesiuk contravened section 6.1 of National Instrument 45-106.
9. As a remedy for the above allegations, Securities Counsel requested this Panel to consider whether it is in the public interest to make the following orders:
- a. Pursuant to paragraph 134(1)(a) of the *Act*, all of the exemptions in Saskatchewan securities laws do not apply to Olesiuk, permanently;
 - b. Pursuant to paragraph 134(1)(d) of the *Act*, Olesiuk shall cease trading in any securities and derivatives in Saskatchewan, permanently;
 - c. Pursuant to paragraph 134(1)(d.1) of the *Act*, Olesiuk shall cease acquiring securities and derivatives for and on behalf of residents of Saskatchewan, permanently;
 - d. Pursuant to paragraph 134(1)(e) of the *Act*, Olesiuk shall cease giving advice respecting securities, derivatives, and trades thereof in Saskatchewan, permanently;
 - e. Pursuant to subparagraph 134(1)(h)(i) of the *Act*, Olesiuk shall resign any position that he holds as a director or officer of an issuer, a registrant, or an investment fund manager;
 - f. Pursuant to subparagraph 134(1)(h)(ii) of the *Act*, Olesiuk is prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager, permanently;
 - g. Pursuant to subparagraph 134(1)(h)(iii) of the *Act*, Olesiuk shall not be employed by any issuer, registrant, or investment fund manager in any capacity that would entitle him to trade or advise in securities or derivatives, permanently;

- h. Pursuant to paragraph 134(1)(h.1) of the *Act*, Olesiuk is prohibited from becoming or acting as a registrant, an investment fund manager, or a promoter, permanently;
- i. Pursuant to section 135.1 of the *Act*, Olesiuk shall pay an administrative penalty to the FCAA in the amount of \$40,000.00, or any other amount allowed by the Panel;
- j. Pursuant to section 135.6 of the *Act*, Olesiuk shall pay financial compensation to each person or company found to have sustained financial loss caused in whole or in part by contraventions of Saskatchewan securities laws committed by him, in amounts to be determined; and
- k. Pursuant to section 161 of the *Act*, Olesiuk shall pay the costs of or relating to the hearing of this matter.

10. On May 11, 2022, Securities Counsel brought a Notice of Application seeking an Order covering the remedies listed in subparagraphs 9(a) through (h) above pursuant to section 134(1.1)(a) of the *Act* on the basis of Olesiuk's criminal conviction (the "Application"). In the Application, Securities Counsel excluded the orders sought in the Amended Statement of Allegations noted in paragraphs 9(i) through (k) above, acknowledging that the remedies in those paragraphs are not available on an application pursuant to section 134(1.1)(a) of the *Act*.

11. On May 27, 2022, the Panel held a First Appearance call to schedule a hearing date (the "First Appearance"). Olesiuk was present on the First Appearance call and hearing dates were set for July 5, 2022. During this call Securities Counsel confirmed that their requests to impose administrative penalties and costs on Olesiuk were being withdrawn. Further, Securities Counsel confirmed that the request for compensation to investors was also being withdrawn on the basis that restitution was ordered when Olesiuk was sentenced so compensation orders from this Panel would be double counting.

12. On July 5, 2022, a hearing proceeded as scheduled, but for reasons explained below it was later discovered to be defective (the "Defective Hearing").

13. At the Defective Hearing, Securities Counsel provided written submissions which addressed the following factors that the Panel should take into consideration in deciding on sanctions:

- a. Olesiuk's conduct is on the more serious end of the spectrum;
- b. Fraud is one of the most egregious contraventions of the *Act*;
- c. Olesiuk's actions took place over an extended period of time and involved two investors. This was not an isolated incident, nor a single rash decision that was immediately regretted and

stopped of his own accord. His actions were planned, deliberate, and intentional and only stopped when the fraud was discovered and the FCAA investigation commenced;

- d. The total amount of money taken from the victims was \$65,000 and while this sum is not as great as in some other cases, it is not a trivial sum given the harm to the investors;
- e. There was significant harm to the investors in this case. Both Investors 1 and 2 provided victim impact statements to the Court at the criminal sentencing hearing explaining the harm that had been done to them personally and financially;
- f. The severity of Olesiuk's actions and the harm that had been caused by those actions to the individual investors and to capital markets;
- g. There has been significant harm to the integrity and reputation to Saskatchewan's capital markets as a result of Olesiuk's conduct. As noted by previous Panels, in circumstances such as these, capital markets will inevitably suffer a loss of confidence, which requires a significant response in order to deter potential future misconduct on the part of other market participants;
- h. Olesiuk was in a position of trust and violated that trust with the clients that he defrauded;
- i. Strong sanctions are warranted in order to send a sufficient message to capital market participants that fraud will not be tolerated; and
- j. The risk that Olesiuk poses to the investing public is so great that a permanent ban on access to capital markets is warranted.

14. As to mitigating factors, the only mitigating factor admitted by Securities Counsel was that Olesiuk had no prior contraventions of the *Act*.

15. In addition to the submissions noted above, Securities Counsel filed Affidavits of the Securities Division Investigator (the "Affidavit Materials") that exhibited the following documents from the Provincial Court confirming the court proceedings, the agreed facts, and the sentence imposed on Olesiuk:

- a. Warrant of Committal confirming the fraud conviction and eleven-month sentence;
- b. Transcripts of the Crown's submissions that referenced victim impact statements at Olesiuk's June 23, 2020, court and sentencing proceedings;
- c. Transcripts of Defence Counsel's submissions confirming agreement with the joint stated facts and the joint sentencing recommendation with the Crown;

- d. Restitution Orders ordering Olesiuk to pay restitution to Investors 1 and 2, the victims that lost money through their investments with him;
 - e. Order of Prohibition prohibiting Olesiuk from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person, for a period of five (5) years; and
 - f. Probation Order imposing a twelve (12) month probation period post-incarceration.
16. Olesiuk signed all Orders acknowledging all of the above-noted sanctions and conditions imposed on him by the Court.
17. Olesiuk did not appear at the Defective Hearing. However, during his attendance at the First Appearance call and in the Transcripts of his court and sentencing proceedings, Olesiuk provided the following representations on his own behalf:
- a. He was remorseful for his actions and for the embarrassment and stress that he had caused to his wife and young family;
 - b. He is paying restitution as ordered by the Provincial Court in Saskatchewan;
 - c. He takes full responsibility for his actions; and
 - d. He confesses fully to all of the allegations against him.
18. Following the July 5, 2022, Defective Hearing the Panel realized that the May 27, 2022 Order (the “Defective Order”) setting hearing dates was defective. The Defective Order identified the wrong party and misidentified the purpose of the hearing. This Order was the only written notice Olesiuk could have received of the Defective Hearing. Therefore, the notice Olesiuk received of the hearing was inadequate, and the Defective Hearing was a nullity.
19. On September 16, 2022, the Panel issued an Order of Revocation for the Defective Order setting the original hearing dates (“Order of Revocation”) pursuant to its authority under section 158(3) of the *Act*. A Notice of Videoconference for October 6, 2022, was issued simultaneously to attempt to schedule a new hearing date.
20. Unfortunately, despite attempts to do so, the Notice of Videoconference was not able to be sent to or served on Olesiuk, and he made no appearance at the October 6, 2022, videoconference. Therefore, on October 6, 2022, the Panel verbally elected to dismiss the Notice of Application for an Order under section 134(1.1) without any ruling on the merits of the application and without prejudice to the Securities Division’s ability to file a new application on substantially the same grounds, which could proceed with proper notice.

The basis for the Panel's decision was that it would not be procedurally fair to Olesiuk to proceed with a hearing without additional attempts to give him written notice. On October 7, 2022, the Panel issued a formal Order confirming its verbal decision.

21. On January 10, 2023, the Securities Division filed a Notice of Motion for an order waiving service or, alternatively, for an order for substituted service on Olesiuk (the "Substitutional Service Motion"). In support of the Substitutional Service Motion the Securities Division filed Affidavit material and written argument to the effect that Olesiuk's current whereabouts is unknown, that his last known address in Saskatchewan is a residential address in Saskatoon, and that members of his extended family reside at that address. The Securities Division argued that these circumstances warranted a waiver of service, or alternatively a substitutional service order for all further processes in this matter. The Substitutional Service Motion was not sent or served on Olesiuk.

22. On January 31, 2023, the Panel held a conference without notice to Olesiuk for the purpose of hearing the Substitutional Service Motion. The Panel's authority to proceed to hear this Motion without notice to Olesiuk and without his presence is necessarily incidental to the Panel's authority to order substitutional service where it is not practicable to serve a respondent. As a matter of logic, this power will only be exercised where a respondent has not been served or given proper notice. The Panel therefore waived notice of the Substitutional Service Motion and ordered that future service on Olesiuk could be effected by registered mail delivered to the residential address in Saskatoon (the "Substitutional Service Order"). On this date a second hearing on the merits of the Application for an order under section 134(1.1) was set for February 23, 2023.

23. On February 23, 2023, Counsel for the Securities Division appeared at the scheduled hearing and informed the Panel that it had not been possible to effect service in accordance with the terms of the Substitutional Service Order, as the documents sent by registered mail had been returned undelivered. Counsel for the Securities Division filed affidavit material confirming this state of affairs. Counsel for the Securities Division requested an additional order allowing service to be effected by affixing the materials to the door at the last known residential address for Olesiuk. The Panel suggested that a copy of the Supreme Court of Canada's decision in *Abrametz v Law Society of Saskatchewan*, 2022 SCC 29 ("*Abrametz*"), be provided to Olesiuk to enable him to make informed submissions on delay if he so chose.

24. On February 27, 2023, the Panel issued an Order that all future materials be served on Olesiuk by affixing them to the door of the last known residential address for Olesiuk on file (the "Deemed Service Order"). The Panel also ordered that the matter be adjourned *sine die*, but that any party could schedule a further appearance by filing a request with the Registrar.

25. On March 22, 2023, Olesiuk was served with the Notice of Application dated May 11, 2022, the Affidavit of Brett Wawro dated May 11, 2022, the Brief of Law dated May 11, 2022, the Order of Revocation and the Order dated October 7, 2022, pursuant to the Deemed Service Order.

26. On April 25, 2023, following receipt of a request from Counsel for the Securities Division, the Panel ordered that the Merits Hearing on this matter be scheduled for 9:00 a.m. May 30, 2023.

27. On April 28, 2023, Olesiuk was served with a copy of the Order setting Hearing Dates dated April 25, 2023, a copy of the Deemed Service Order, and a copy of *Abrametz* pursuant to the terms of the Deemed Service Order.

28. On May 30, 2023, the Merits Hearing for the Notice of Application dated May 11, 2022, proceeded as scheduled. Counsel for the Securities Division briefly summarized the arguments contained in the Brief of Law and emphasized that delay was not applicable in this case. Olesiuk did not appear.

29. All the above submissions, material, and evidence have been considered in this Panel's decision on the Application against Olesiuk and the appropriate sanction.

III. ISSUES

30. The issues for this Panel to consider are:

- a. Whether the circumstances under subsection 134(1.1)(a) of the *Act* apply to Olesiuk, namely, has Olesiuk been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives; and if so
- b. Whether the FCAA should exercise its jurisdiction to make an order in the public interest in respect of Olesiuk pursuant to subsection 134(1) of the *Act*.

IV. DECISION

31. Given the background in this matter, the fact that Olesiuk pleaded guilty to fraud charges, and the fact that the fraud charges arose from transactions related to securities, this Panel finds it appropriate to order a permanent ban on Olesiuk for all of the prohibitions requested by Securities Counsel in paragraphs 9(a) through (h) above. Our analysis and reasons for this decision follow.

V. ANALYSIS AND REASONS FOR OUR DECISION

32. There is a recent case from this jurisdiction with similar circumstances to this matter (i.e., where a criminal conviction for a securities-related offence is being used as a basis for the Panel to impose sanctions on a respondent): *Vince Mullee Financial Inc. (Re)*, 2022 CanLII 31772 (SKFCAA) ("*Mullee*"). Securities

Counsel cited *Mullee* as well as cases from British Columbia, Alberta and Ontario supporting their request for a permanent ban. The cases cited are discussed below.

33. Section 134(1.1)(a) of the *Act* provides as follows:

Order to cease trading

134[...]

(1.1) In addition to the power to make orders pursuant to subsection (1), the Commission or the Director may, after providing an opportunity to be heard, make an order mentioned in subsection (1) against a person or company, if the person or company:

(a) has been convicted of an offence arising from a transaction or carrying on a business or course of action related to securities or derivatives; [...]

34. This provision has three essential elements:

- a. An opportunity for the respondent to be heard;
- b. A criminal conviction against the respondent; and
- c. A connection between the criminal conviction and the securities regulated by the *Act* in that the conviction must arise from a transaction or carrying on a business or course of action related to securities.

35. In *Mullee*, the individual Respondent Vincent John Mullee ("Vincent Mullee") sold fictitious investments to twenty-one investors over the course of approximately sixteen years. As a result of this activity, Vincent Mullee was convicted of and sentenced on a criminal fraud charge in Provincial Court on July 22, 2020. Vincent Mullee was sentenced to five years and six months in Federal prison, ordered to pay restitution in the amount of \$1,982,095 to all twenty-one investors, and was subject to an order prohibiting him from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person, for a period of 25 years. After satisfying itself that the elements required under section 134(1.1)(a) of the *Act* were met, the Panel imposed a permanent ban from participating in the capital markets in Saskatchewan on Vincent Mullee.

36. The *Mullee* decision is directly comparable to the case at hand with respect to application of section 134(1.1)(a) of the *Act*.

37. The Panel met the condition of allowing Olesiuk the opportunity to be heard even though he did not appear at the Merits Hearing on May 30, 2023. Olesiuk appeared and participated early in the proceedings on April 29, 2022, when the Amended Statement of Allegations was approved and at the First Appearance where he made the submissions mentioned above and indicated that he was available for the Defective Hearing date. Therefore, as a matter of fact he had actual notice of the Amended Statement of Allegations.

Pursuant to section 9(3.1) of the *Act* it was incumbent on Olesiuk to file a written response to the Amended Statement of Allegations. He did not do so. Pursuant to Part 1.4.1 of the *Local Policy* every person who files a document is required to provide an address for service, and to provide an updated address for service if that information changes. Olesiuk did not do so. After the Defective Hearing every reasonable effort was made to provide written notice of the Hearing to Olesiuk according to the terms of the Substitutional Service Order and the Deemed Service Order. Despite Olesiuk's choice not to meaningfully participate in these proceedings, the Panel is satisfied that he has had an opportunity to be heard. The Panel is entitled to proceed in his absence pursuant to section 9(15) of the *Act*. Moreover, the Panel considered Olesiuk's submissions at the April 29, 2022, teleconference and the First Appearance as well as the representations made on his behalf in Provincial Court as evidenced by the Transcripts on file. This element is satisfied.

38. The second and third essential elements of section 134(1.1)(a) of the *Act* are also satisfied. Olesiuk was convicted of committing fraud over \$5,000 contrary to section 380(1)(a) of the *Code*. On the agreed facts presented at the joint sentencing hearing, the fraud involved soliciting funds from investors under the false pretense of being a stock broker registered in the United States of America, falsely claiming to have invested the funds in various fictitious investments, and misappropriating the funds. The funds raised through this fraudulent scheme are obviously transactions relating to securities. The essential elements of section 134(1.1)(a) of the *Act* are met.

39. The next question for our consideration is the appropriate sanction given that the requirements of section 134(1.1)(a) of the *Act* have been met. As noted above, the Panel also looked to other jurisdictions with legislation and cases with similar circumstances to this matter.

40. In Ontario in *Theroux, (Re)*, 2019 ONSC 20, after Mr. Theroux was found guilty of five counts of fraud over \$5,000, the Hearing Panel of the Ontario Securities Commission ("OSC") wrote:

[18] Mr. Theroux has been convicted in Ontario of five counts of fraud over \$5,000 contrary to the *Criminal Code*. Those convictions arose from transactions, a business or a course of conduct related to securities. Theroux admitted he solicited and accepted funds in excess of \$1,000,000 from investors, reflecting their investments in bonds, promissory notes and bridge financing marketed in respect of a biofuel venture with a company with which Theroux was associated. These fraudulent investments constituted investment contracts and therefore securities for purposes of the *Act*. Returns of up to 100% for a one-year term were promised. Substantial portions of the monies raised were diverted for his own personal use or to pay other investors and not invested in the biofuel venture. The five investors whose investments were used as the factual basis for Theroux's conviction turned over funds totalling \$445,000, \$178,800 of which was retained by Theroux. None of them received their promised returns or the return of their initial investments. [internal footnote omitted]

41. In its decision, the OSC Hearing Panel imposed a permanent ban on Mr. Theroux preventing him from participating in the capital markets (at para. 34).

42. In British Columbia in *Beiklik, (Re)*, 2020 LNBCSC 224, 2020 BCSECCOM 261 (QL), the British Columbia Securities Commission relied on a section equivalent to section 134(1.1)(a) of the Act where the Respondent was found guilty of two counts of fraud over \$5,000 in provincial court in securities related contraventions and it imposed a permanent market access ban (at paras 6-8 and 47).

43. In Alberta in *Re Carruthers*, 2020 ABASC 177, after Carruthers pled guilty to twenty counts of fraud over \$5,000 in the Alberta Queens Bench Court, a Hearing Panel of the Alberta Securities Commission decided it was in the public interest to impose a permanent ban against the Respondent from participating in the capital markets in Alberta (at paras. 2, 6, and 40).

44. The above cases from the other jurisdictions demonstrate that it is not unusual to impose a permanent ban in circumstances comparable to the present case. Further, a permanent ban was previously imposed in this jurisdiction in comparable circumstances in the *Mullee* case. After taking into consideration the uncontradicted evidence and submissions provided by Securities Counsel and the aggravating and mitigating factors noted in paragraphs 11 through 17 above, the Panel finds it within its jurisdiction, and in the public interest, to impose a permanent ban against Olesiuk from capital market access in Saskatchewan and/or activities related thereto identified in paragraphs 9(a) through (h) above.

45. In their written and oral submissions, Securities Counsel addressed the possible issue of delay in bringing this case to a Hearing. Securities Counsel argued that there was no inordinate delay and no prejudice in this case, and therefore no reason to consider delay. The Panel is cognizant of the delay issue and analysed the timeframe that transpired in bringing this case to the Hearing as follows:

Date(s)	Description of Event(s)	Number of Months between Events
March 9, 2017 to February 2, 2018	Dates of alleged securities transactions	Not part of delay period
May 28, 2018	FCAA Investigation commenced	Beginning of process
April 29, 2020	Issuance of Statement of Allegations	23.0
June 23, 2020	Conviction/incarceration date	2.0
August 23, 2021	Assumed date incarceration ended	14.0
December 16, 2021	Issuance of Amended Statement of Allegations	4.0
April 29, 2022	Panel approved Amended Statement of Allegations	4.5
May 27, 2022	1st Appearance conference call setting July 5, 2022 as Merits Hearing date	1.0
July 5, 2022	Merits Hearing adjourned due to inadequate notice to Olesiuk of the Hearing	1.5
September 16, 2022	Panel revokes May 27, 2022 order for July 5, 2022 Hearing date and sets October 6, 2022 as date for merit re-hearing	2.0
October 7, 2022	Panel issues Order dismissing the Original Notice of Application without prejudice and grants leave for the FCAA Securities Division to file and new Notice of Application on the same grounds as the Original Notice of Application	1.0
January 19, 2023	Panel sets January 30, 2023 as new Merits Hearing date, including an Order Waiving Service or for Substituted Service	3.0
January 31, 2023	Having been unable to serve Olesiuk re the January 30, 2023 Hearing date, the Panel orders that Olesiuk be served by registered mail to last known Saskatoon address and sets February 23, 2023 as new date for Merits Hearing	0.5
February 27, 2023	February 23, 2023 Hearing was adjourned sine die after learning that registered mail service ordered on January 31, 2023 was refused, the Panel ordered that Substitutional Service be effected by way of affixing all materials to the door of the last known Saskatoon residence	1.0
April 25, 2023	Panel sets May 30, 2023 as new date for Merits Hearing	2.0
May 30, 2023	Merits Hearing held virtually; no attendance by Olesiuk	1.0
Total elapse timeframe		60.5

46. Given the length of time this matter took to bring to a Merits Hearing, the Panel looked to the recent *Abrametz* delay decision. The appeal was about the length of time the Law Society's investigation and discipline processes took, such that Abrametz contended that it caused inordinate delay which amounted to an abuse of process. During the disciplinary proceedings, Abrametz applied for a stay of the proceedings but his application was dismissed by the Hearing Committee of the Law Society. Abrametz then appealed the Law Society Hearing Committee's (LSS) decision to the Saskatchewan Court of Appeal (SKCA) where the member's conduct appeal was dismissed but his appeal of the stay decision was allowed, with the SKCA concluding that there had been inordinate delay which resulted in significant prejudice to the member such that the public's sense of decency and fairness would be affected and the Law Society's disciplinary process brought into disrepute.

47. The LSS then appealed to the Supreme Court of Canada (SCC) seeking to overturn the SKCA's decisions. In July 2022, the SCC rendered its decision reversing the decision of the SKCA. In its decision, the SCC revisited the applicable standards of review and the three-part test from *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 ("*Blencoe*").

48. First, the SCC addressed the appropriate standards of review at paragraph 29 citing that the *Abrametz* case is a statutory appeal pursuant to *The Legal Profession Act, 1990* and therefore the standard of review is correctness for questions of law and palpable and overriding error for questions of fact and of mixed fact and law. In rendering its decision, the SCC concluded that the SKCA had applied the applicable standard of review but failed to apply it properly, stating that deference should have been accorded to the LSS Hearing Committee as to its findings of fact and of mixed fact and law. Instead, the SKCA made its own findings of fact when this option was not open to them.

49. Next, the three-part test from *Blencoe* was articulated in the SCC decision at paragraph 101 of *Abrametz*, which read as follows:

[101] Where delay has not affected the fairness of a hearing, the test to determine if the delay amounts to an abuse of process has three steps:

1. First, the delay must be inordinate. This is determined on an assessment of the context overall, including the nature and purpose of the proceedings, the length and causes of the delay, and the complexity of the facts and issues in the case; and
2. Second, the delay itself must have caused significant prejudice;
3. When these two requirements are met, the court or tribunal should conduct a final assessment as to whether abuse of process is established. This will be so when the delay is manifestly unfair to a party to the litigation or in some other way brings the administration of justice into disrepute.

50. Early in its reasons, at paragraph 59, the SCC had explained:

[59] As noted, a lengthy delay is not *per se* inordinate; it may be justifiable when considered in context. For instance, a case will sometimes involve parallel criminal and administrative proceedings. Such disciplinary proceedings involve allegations of conduct that may be criminal, such as sexual misconduct, fraud and obstruction of justice ... In some cases, disciplinary bodies will proceed while criminal proceedings are outstanding. In other circumstances, suspension of the disciplinary proceedings to await the conclusion of criminal proceedings can be justified. This can be consistent with procedural fairness and not constitute an abuse of process, even if the delay that results is lengthy. [internal reference omitted, emphasis added]

51. Applying this test to the present case, the Panel is of the view that there was no inordinate delay in administering this matter. Considering the first step of the test noted above, and with reference to the time analysis above at paragraph 45, the earliest date this matter could have begun is when the investigation of the alleged transactions giving rise to allegations against Olesiuk commenced on May 28, 2018. Between that date and the date of the Hearing on May 30, 2023, is a total period of some 60.5 months. Of this total elapsed timeframe, Olesiuk was incarcerated for fourteen of those months and attempting to conduct a Hearing on the matter would have been difficult if not impossible. If one deducts the fourteen-month incarceration period, of the remaining 46.5 months, the Panel was unable to locate and appropriately serve Olesiuk with all relevant documents relating to the matter for another 6.5 months (between October 7, 2022 and April 25, 2023). Given these facts, the Panel is of the view that the remaining 40 months that it took to bring this matter to a Merits Hearing is not an inordinate amount of time and therefore this first test is not met.

52. This is especially so under the *Act*, which has its own limitation period. Section 136(1) provides that:

Limitation period

136(1) Notwithstanding *The Limitations Act*, no proceedings pursuant to this Part are to be commenced in a court later than six years from the date of the occurrence of the last material event on which the proceedings are based.

(2) Notwithstanding *The Limitations Act*, no proceedings pursuant to this Act are to be commenced before the Commission later than six years from the date of the occurrence of the last material event on which the proceedings are based.

53. In this case, not only were the proceedings *commenced* within the 6-year period specified in the *Act*, but they were also *completed* within that time.

54. In applying the second part of the test, that the delay itself must have caused significant prejudice, the Panel is of the view that the entire timeframe analysed above would not have caused Olesiuk any prejudice. There is no evidence of prejudice before the Panel, and the *Act* expressly contemplates an administrative proceeding following the conclusion of a criminal proceeding for securities related fraud.

55. Under the third branch of the test from *Blencoe* and as reiterated by the SCC in *he Abrametz* decision, since neither of the first two tests are met it is not necessary to conduct the final assessment. There can be no abuse of process where there is neither inordinate delay nor prejudice. The Panel's conclusion is that there is no issue of delay in administering this matter.

56. Finally, on the issue of delay, during any of the proceedings that Olesiuk did attend, he did not raise delay as a concern.

57. This is a unanimous decision of the Panel.

Dated at Regina, Saskatchewan this 16th day of August, 2023.

"Howard Crofts"

Howard Crofts, Hearing Panel Chairperson

"Honourable Eugene Scheibel"

Honourable Eugene Scheibel

"Norman Halldorson"

Norman Halldorson