Blaneys Partners Representing Intervenor in Case Before the Supreme Court of Canada

Date: March 20, 2013

Blaneys' partners Lou Brzezinski and John Polyzogopoulos will make submissions to the Supreme Court of Canada on Thursday, March 21, 2013, on behalf of The Financial Advisors Association of Canada (Advocis), which has been granted Intervenor status in the case of *McLean v. British Columbia Securities Commission*.

The case involves Patricia McLean, an Ontario resident and director of an Ontario reporting issuer, who reached a settlement agreement with the Ontario Securities Commission (OSC) in 2008 resulting in an order made by the OSC that same year. The OSC proceeding related to misconduct that occurred in 2001. The OSC had commenced proceedings in 2005 — well within the six-year window.

In 2010, almost nine years after the underlying misconduct, and two years after the OSC agreement and order, the British Columbia Securities Commission (BCSC) commenced its own proceedings in respect of the same 2001 misconduct, relying exclusively on the details disclosed in the OSC agreement and the OSC's order.

The BCSC argues the limitation period to commence its secondary proceeding was reset in 2008, when the OSC agreement and order were made. The BCSC therefore maintains that its enforcement proceeding was within the six-year window.

McLean argues that any enforcement proceeding commenced against her must be based on the actual misconduct completed in 2001, and therefore the BCSC's proceeding was commenced outside the limitation period. McLean lost at the British Columbia Court of Appeal, but was granted leave to appeal to the Supreme Court of Canada.

The securities acts of the various provinces and territories (with the exception of Quebec) contain very similar provisions and limitation periods to the ones at issue in British Columbia. The outcome of the McLean case will therefore have ramifications for how enforcement

proceedings are conducted throughout the country, thereby impacting financial advisors in all provinces.

Advocis is an association of financial advisors with approximately 11,000 members across the country. Advocis' position is that if the BCSC's interpretation of when the limitation period commenced is correct, this will subject its members to multiple proceedings with potentially different outcomes in each province over decades, as each time an order is made in one province, another province can claim the making of the order in that other province restarted the limitation period. Such an interpretation will effectively eliminate the protection of the limitation period, whose purpose is to encourage diligent prosecution by securities regulators and to provide parties with repose from ancient obligations. While Advocis is in favour of a true reciprocal enforcement regime where the order of one province is adopted in the other Canadian jurisdictions, that is not the regime that currently exists, since each provincial regulator is currently entitled to make its own decision on what sanctions, if any, to impose.

The Factum filed on behalf of the Intervenor, Advocis, can be viewed here.

PEOPLE

- John Polyzogopoulos

PRACTICES

- Commercial Litigation