ALBERTA SECURITIES COMMISSION

DECISION

Citation: KCP Innovative Services Inc., Re, 2009 ABASC 521 **Date: 20091020**

KCP Innovative Services Inc. and James Woodrow Baker

Panel:	Glenda A. Campbell, QC Beverley A. Brennan, FCA Karl M. Ewoniak, CA
Appearing:	Tom McCartney for Commission Staff Robert Burgener for James Woodrow Baker
Date of Hearing:	6 October 2009
Date of Decision:	20 October 2009

I. INTRODUCTION

[1] This decision concludes a two-part hearing into allegations against KCP Innovative Services Inc. ("KCP") and James Woodrow Baker ("Baker") of conduct in breach of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") or contrary to the public interest or both. We considered the merits of these allegations in the first part of the hearing and sustained certain of them in our decision dated 9 August 2007 (the "Merits Decision", cited as *Re KCP Innovative Services Inc.*, 2007 ABASC 584).

[2] It remained to be considered in the second part of the hearing what, if any, orders ought to be made against KCP and Baker (together, the "Respondents"). We invited the parties to make submissions on sanction and costs. Specifically, staff ("Staff") of the Alberta Securities Commission (the "Commission") and the Respondents were directed to file any written submissions by 31 August 2007 and 21 September 2007, respectively, and Staff were directed to file any written reply by 28 September 2007. Any party wishing to make oral submissions was also to advise of such by 7 September 2007.

[3] Staff filed their written submissions on 31 August 2007. However, prior to the September 2007 filing deadline for their written submissions, the Respondents applied for judicial review of the Merits Decision in the Court of Queen's Bench of Alberta, which, on 7 January 2008, quashed the Merits Decision (the "Queen's Bench Decision"). Subsequently, on 24 March 2009, an appeal from the Queen's Bench Decision was allowed by the Court of Appeal of Alberta. On 12 June 2009 Staff filed supplementary written submissions.

[4] On 3 June 2009 we directed that the Respondents file any written submissions on sanction and costs by 24 June 2009, that Staff file any written reply by 30 June 2009 and that any oral submissions would be heard on 7 July 2009. These deadlines were extended in response to requests by counsel for Baker.

[5] Baker's written submissions were filed on 1 September 2009 and Staff filed their written reply on 8 September 2009. We heard oral submissions from Staff and counsel for Baker, and we heard from Baker himself, on 6 October 2009. KCP – which, we are satisfied, had adequate notice – chose not to participate in the second part of the hearing.

[6] For the reasons set out in this decision, which should be read in conjunction with the Merits Decision, we are ordering:

- in the public interest, that:
    - KCP is prohibited from trading in securities and using exemptions until it has filed a prospectus and received a receipt therefor; and
    - Baker is prohibited from acting as a director or officer of any issuer for five years, and must pay an administrative penalty of $15 000; and
- that KCP pay $11 000, and Baker pay $9000, towards the costs of the investigation and hearing.

II. BACKGROUND

[7] This proceeding originated in a notice of hearing dated 25 April 2006, in which Staff made allegations against three corporations and three individuals – the Respondents, Lavallee Financial Corporation ("LFC"), Lavallee Financial Inc. ("LFI"), Lambert "Bert" Lavallee ("Lavallee") and Brian Patrick Hughes ("Hughes") – concerning trades and distributions of securities of KCP and certain activities related to those trades and distributions in breach of the Act and contrary to the public interest.

[8] At the outset of the first part of the hearing in March 2007, the allegations against LFC, LFI and Lavallee were severed, to be heard and decided separately. During the first part of the hearing, the allegations against Hughes – which became the subject of an agreed statement of facts binding on Hughes only – were also severed, to be considered separately, and Staff abandoned certain of the allegations against Baker.

[9] The Respondents participated through counsel in the first part of the hearing into the merits of the allegations against them, namely that:

- KCP engaged in illegal distributions of KCP securities in Alberta contrary to section 110 of the Act;
- Baker engaged in illegal trades and distributions of KCP securities in Alberta contrary to sections 75(1)(a) and 110 of the Act;
- Baker made misrepresentations to the Commission in documents required to be filed under Alberta securities laws; and
- as a result of the foregoing and otherwise, the Respondents acted contrary to the public interest.

[10] In the Merits Decision, we sustained certain of the allegations against the Respondents. We found that KCP illegally distributed KCP securities, thereby contravening section 110 of the Act, and that Baker – a director and senior officer of KCP and the guiding mind of KCP in its raising of money in the exempt market during the relevant period – illegally traded and distributed KCP securities, thereby contravening sections 75(1)(a) and 110 of the Act. We also found that, in so doing, both acted contrary to the public interest.

[11] In so concluding, we found that the sales of KCP securities, namely KCP shares, or acts in furtherance of those sales to Alberta investors by the Respondents during the relevant period – at least 107 Albertans invested in excess of $1.5 million in KCP – constituted "trades" in those securities within the meaning of the Act. As those securities had not been previously issued, those trades were also "distributions" within the meaning of the Act. The evidence was that KCP had never filed or received a receipt for a prospectus for its offering of securities to Alberta investors, that KCP had never been registered under the Act to trade in securities and that Baker was not a registrant under the Act during the relevant period. In selling the KCP securities to Alberta investors during the relevant period, the Respondents purported to rely on the accredited investor exemption from the registration and prospectus requirements of the Act, but we found that that exemption was not available for the trades and distributions by the Respondents to the five Alberta-resident investor witnesses. We therefore found that there were trades and

distributions of KCP securities to Alberta investors during the relevant period in contravention of sections 75(1)(a) and 110 of the Act.

[12] We also found that KCP was responsible for the illegal distributions, and Baker was responsible for the illegal trades and distributions, of KCP securities during the relevant period, despite their counsel's contention that their responsibility was negated by their reliance on legal advice and their presumption that the agents on which KCP depended to trade and distribute its securities in Alberta were complying with Alberta securities laws. We so found because "Baker and KCP, through Baker or otherwise, failed to implement reasonable measures aimed at translating the sound legal advice that they had received into practice by those at the forefront of the money-raising efforts for KCP, the KCP agents" (at para. 107). When KCP chose to depend on the KCP agents to trade and distribute its securities in Alberta, it was "obliged to take reasonable care and be diligent in instructing and supervising those agents with a view to ensuring their adherence to Alberta securities laws" (at para. 108). However (at para. 108):

> . . . there was no evidence that Baker had stressed to the KCP agents the critical importance of ensuring that KCP securities were sold only to those who qualified as accredited investors or that he had ensured that the KCP agents understood the importance of compliance with the [a]ccredited [i]nvestor [e]xemption. Indeed, . . . there was a paucity of instruction from Baker to the KCP agents and Baker failed to supervise the KCP agents adequately or at all in their money-raising efforts. These deficiencies in instruction to and supervision of the KCP agents led to efforts being expended on behalf of KCP that were incompatible with and obstructive of the apparent intent of the Subscription Agreements. In the result, because Baker failed to take reasonable care and be diligent in his instruction to and supervision of the KCP agents, KCP [securities] were sold to persons who did not qualify as accredited investors as particularized in their Subscription Agreements.

III. SANCTIONS

A. Parties' Submissions

1. Staff's Submissions

[13] In their initial written submissions, Staff contended that it would be in the public interest to impose on Baker a cease-trade order, a denial of exemptions and a director-and-officer ban, all for seven years, and an administrative penalty of $35 000. Staff further contended that the public interest would be served by ordering that KCP be cease-traded and denied exemptions until it has filed a prospectus and received a receipt therefor.

[14] In so contending, Staff addressed sanctioning factors identified in *Re Lamoureux*, [2002] A.S.C.D. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253). Staff submitted that the Respondents' misconduct was serious. Staff argued that Baker had significant experience in the capital market through "[h]is senior roles as both director and officer of KCP" and his registration as a salesperson/registered representative with an investment dealer from September 1997 to October 2002. Staff accordingly argued that Baker should have had but did not have, or had but operated in disregard of, "a basic understanding of the investor protection principles behind the capital[-]raising exemptions". Staff submitted that the Respondents' misuse of the accredited investor exemption not only jeopardized the integrity of the Alberta capital market but also put at risk the entire exemptions regime. Staff focussed on the need for general deterrence. They suggested that in sanctioning Baker we might be guided by *Re Hughes*, 2007 ABASC 583, and *Re InstaDial Technologies Corp.*, 2005 ABASC 965, and further that *Re Hampton Court Resources Inc.*, 2006 ABASC 1841, might be of assistance in sanctioning KCP. Finally, Staff acknowledged, as a mitigating factor, that the Respondents have not been previously sanctioned

by the Commission. However, Staff submitted that it is not mitigating that the Respondents obtained legal advice about raising money in the exempt market when there were no diligent attempts made to follow it. Indeed, Staff argued that, in the circumstances, it is open to us to conclude that the Respondents chose to ignore, or at best wilfully or recklessly ignored, the legal requirements associated with raising money in the exempt market.

[15] In their supplementary written submissions, Staff sought "more significant" sanctions against Baker: a cease-trade order, a denial of exemptions and a director-and-officer ban, all for ten years, and an administrative penalty of $60 000. Staff contended that several Commission decisions issued since their initial written submissions – *Re Atlas Communications Inc.*, 2007 ABASC 749; *Re Maitland Capital Ltd.*, 2007 ABASC 818 (affirmed 2009 ABCA 186); and *Re Innovative Energy Solutions Inc.*, 2008 ABASC 136 – "support the imposition" of these more significant sanctions. Staff also suggested that *Re Lavallee*, 2008 ABASC 78 (affirmed on other grounds 2009 ABCA 52), might be of assistance in sanctioning Baker.

[16] In their reply submissions, Staff submitted that Baker "presents himself as unrepentant", alternately blaming others for his misconduct. Staff argued that Baker's failure to recognize the seriousness of his misconduct argues in favour of significant sanctions against him.

[17] In their oral submissions, Staff submitted that KCP's failure to participate in the second part of the hearing and Baker's blaming of others for his misconduct indicate that they do not recognize the seriousness of their misconduct and thus that specific deterrence is needed.

2. KCP's Submissions

[18] KCP made no written or oral submissions on sanction or costs.

3. Baker's Submissions

[19] In his written submissions, Baker submitted that it was not his intention to challenge the findings made in the Merits Decision. He argued that another, the chairman of the KCP board of directors, was ultimately responsible for KCP's operations, and that, insofar as Baker failed to supervise the KCP agents, the chairman, who was "Baker's boss", failed to supervise Baker. Baker also emphasized the roles that Lavallee and Hughes played in the illegal trades and distributions of KCP securities. Specifically, Baker submitted that "Lavallee was the sophisticated individual and in hindsight not controllable" and that "Lavallee coached Hughes and Hughes knew more [than] he admitted". Baker stated that KCP retained "security law professionals . . . to organize its business and to prepare its business forms and documents to comply with . . . Alberta securities laws", and he argued that these forms and documents were provided to the KCP agents and further that he followed the advice of these professionals that KCP's registration and filing of a prospectus "were not necessary to the KCP business model". Baker submitted that none of the five investor witnesses, in executing their Subscription Agreements, depended on any representations by him. Indeed, he stated that he did not meet investors nor make representations to them. Baker argued that investors signed Subscription Agreements "that they knew or believed to be untrue", that "Baker's role was honest", that it was the responsibility of investors to be honest in completing Subscription Agreements and that "the Commission should be less concerned with protecting the dishonest citizen [than with pursuing] the businessman that attempts to raise money honestly". Baker believed, in sum, that his actions "met the requirements of . . . Alberta securities laws".

[20] In his written submissions, Baker further submitted that, since he sought legal advice and attempted to follow the rules but failed, he should not be subject to a "penalty" greater than that imposed on Lavallee or Hughes or that would discourage the seeking of legal advice. Baker argued that, because he has not held the position of director of any public company since December 2006, a three-year director-and-officer ban would be the equivalent of a six-year ban, and further stated that he has no intention to act as a director of a public company. He also argued that, because he has not been involved in any business that has purported to take advantage of any exemptions since this matter arose, he has been subject to "a three[-]year voluntary suspension". He submitted that he has paid substantial legal fees in defending himself against the numerous allegations made against him by Staff, most of which were dismissed, and stated that he has suffered additional personal loss as a result of his involvement with KCP. Baker concluded that it is not in the public interest to "punish" him and that leniency is warranted given that the Merits Decision seems to have created a new strict or absolute liability "offence" for a corporate director's or officer's failure to supervise agents.

[21] In oral submissions, counsel for Baker suggested that the Commission should be careful not to create absolute liability "offences" that go beyond the intended scope of the Act. He emphasized that Baker's "offence" was "one of omission" or a "technical breach", that the Alberta investors in KCP received shares in an operating publicly-traded company, that there is no evidence of loss to any investor and that Baker is remorseful. He submitted that Baker's responsibility was less than that of Hughes and thus that we should be considering lesser sanctions for Baker than those imposed on Hughes.

[22] Baker personally addressed us. He told us that he had been a professional engineer for 25 years and then a broker from around 1995 until October 2002 and is now a life agent and that in these capacities there had never been a professional complaint made against him. Baker related, in some detail, his involvement with KCP, his seeking of legal advice with a view to KCP's expansion and going public and his actions in reliance on the legal advice obtained. In so relating, he explained that his investigative interview answer – denying that the KCP agents were provided with any instructions regarding the Subscription Agreements – was taken out of context and was not a complete answer. He said that Hughes brought in most of the Alberta investors in KCP and that he, Baker, believed Hughes when he said he was going through the documents in detail with the investors. Baker stated that he believed he did everything he could and that, if there were errors on his part, they were honest ones. He indicated that, when he resigned from KCP in December 2006, KCP's revenues were about $2 million, up from $150 000 in 2004.

[23] Baker told us that he is very sorry for and regrets his misconduct, and assured us that he does take this matter seriously. He said that he has learned from this experience, which has been very embarrassing for him and has caused him to suffer financially and health-wise. He indicated that, since December 2006, he has not acted, and has no desire or intention to act, as a director of a public company. He also indicated that he has not sold any securities since 2005.

B. Sanctioning Principles and Factors

[24] The Commission is responsible for the administration of Alberta securities laws. We exercise our public interest jurisdiction over the trading and distributing of securities in Alberta to, among other things, protect investors and the Alberta capital market from misconduct by capital market participants. Our authority to order sanctions in the public interest under sections 198 and 199 of the Act is prospective, protective and preventive; we do not punish or remedy capital market misconduct (*Committee for the Equal Treatment of Asbestos Minority*

Shareholders v. Ontario (Securities Commission), 2001 SCC 37 at paras. 39-45). In making protective and preventive orders, we consider the need for specific and general deterrence (*Re Cartaway Resources Corp*., 2004 SCC 26 at paras. 52-62).

[25] Several factors may be relevant to determining whether, or what, sanctions are in the public interest in a particular case. We are guided in our analysis by a consideration of the *Lamoureux* factors, as refined by the Commission in *Re Workum and Hennig*, 2008 ABASC 719 at para. 43:

- the seriousness of the findings against the respondent and the respondent's recognition of that seriousness;
- characteristics of the respondent, including capital market experience and activity and any prior sanctions;
- any benefits received by the respondent and any harm to which investors or the capital market generally were exposed by the misconduct found;
- the risk to investors and the capital market if the respondent were to continue to operate unimpeded in the capital market or if others were to emulate the respondent's conduct;
- decisions or outcomes in other matters; and
- any mitigating considerations.

C. Sanctioning Considerations

[26] In applying the sanctioning principles and factors to the circumstances of the Respondents' misconduct, we are of the view that sanctions against them are in the public interest for the following reasons.

Seriousness of Misconduct and Recognition of Seriousness

[27] The Respondents failed to comply with the registration and prospectus requirements of the Act when the accredited investor exemption from those requirements was misused in the sale of KCP securities to some Albertans. These failures resulted in some Albertans investing money in KCP without the benefit of the advice of a registrant and the information provided by a prospectus. Any failure to comply with the key registration and prospectus requirements of the Act is serious misconduct, calling for significant sanction.

[28] Having received no submissions from KCP in this part of the hearing, there is no indication that KCP recognizes the seriousness of, or accepts responsibility for, its misconduct. This does not argue for any moderation of the significant sanction required by KCP's serious misconduct.

[29] Having regard to the entirety of Baker's submissions and his comments to us, we are satisfied that he is not unaware of the seriousness of his misconduct and that he is genuinely remorseful. However, those same submissions and comments – in particular, his emphasis on the roles that others played in the illegal trades and distributions of KCP securities, his assertion that his role was "honest" and his belief that his actions were in compliance with Alberta securities laws – do not convince us that Baker completely understands the duties he, as a director and senior officer of KCP and the guiding mind of KCP in its raising of money in the exempt market, was to discharge in relation to the impugned trades and distributions or where he failed in that regard. In short, we cannot find that he fully recognizes or understands the seriousness of, or fully accepts responsibility for, his misconduct. This incomplete recognition and acceptance by Baker argues for some moderation in sanction against him but not to the extent that his full recognition and acceptance would.

Capital Market Experience and Activity

[30] Baker had considerable prior experience in the Alberta capital market through his registration as a salesperson/registered representative with an investment dealer from September 1997 to October 2002. With this considerable experience – apart from the legal advice obtained about raising money in the exempt market – Baker and KCP, through Baker, would or should have been aware that there are regulatory requirements that must be strictly observed when using exemptions to raise money from investors. However, the Respondents' conduct in relation to the impugned trades and distributions, whether by action or omission, exhibited disregard for these requirements and, in turn, inadequate regard for Alberta investors and our capital market.

[31] This factor calls for significant sanction against the Respondents.

Harm to Investors or the Capital Market and Benefits to the Respondents

[32] The extent to which Alberta investors in KCP have been harmed financially as a result of the Respondents' misconduct is unclear. While we do not know the current status of KCP's operations, we understand that during the relevant period KCP was a company that carried on a legitimate business. Further, there is no evidence before us of misuse of the invested money by KCP. That said, in consequence of the Respondents' misconduct, some Alberta investors in KCP were solicited to invest without due regard for their financial circumstances, investment objectives or risk tolerances, which certainly exposed them to the risk of financial harm.

[33] The Respondents' misconduct may also have harmed the integrity of the Alberta capital market generally, to the detriment of law-abiding issuers and their prospective investors. Some Alberta investors in KCP may be reluctant to invest in the exempt market in future, and other Albertans learning of the Respondents' misconduct may be similarly hesitant. Further, we note that the accredited investor exemption has been a frequently abused capital-raising exemption and that further demonstrated abuses such as occurred here may put in jeopardy the very existence of this and other exemptions used to raise capital without the involvement of a registrant or the filing of a prospectus.

[34] KCP clearly benefited through the investment in it of significant money during the relevant period, some of which was invested by reason of its misconduct, but we again note that there is no evidence before us of misuse of the invested money by KCP. There is also no evidence before us of Baker benefiting financially from his misconduct. However, we do not doubt that Baker expected to benefit financially.

[35] These factors also call for sanction.

Mitigating Factors

[36] As was conceded by Staff, neither KCP nor Baker has been previously sanctioned by the Commission. This, we are satisfied, has some mitigating effect.

[37] In the Merits Decision, we noted that the Respondents obtained sound legal advice about raising money in the exempt market and that the Subscription Agreements utilized by KCP were drafted with a view to ensuring compliance with the accredited investor exemption. However, while these were prudent actions in the circumstances, they are of little mitigating effect because the Respondents failed to implement reasonable measures aimed at translating this sound legal advice into practice by the KCP agents at the forefront of KCP's money-raising efforts. In our

view, Baker, as a director and senior officer (the vice-president of corporate development and subsequently the chief executive officer) of KCP and the guiding mind of KCP in its raising of money in the exempt market, should have acted as a gatekeeper and, in that role, taken reasonable care to ensure that the legal advice obtained was observed. Had Baker taken such reasonable care, the Respondents would have been entitled to presume that the KCP agents were complying with Alberta securities laws and that all Alberta investors in KCP were accredited investors.

Need for Deterrence

[38] In all the circumstances, we are persuaded that specific deterrent measures are necessary. In particular, we are not satisfied that KCP or Baker is sufficiently conversant in the regulatory requirements associated with money-raising efforts in the exempt market, nor that either fully understands the necessity for strict compliance with them and the attendant duties – instructional and supervisory – of directors and officers of issuers. Indeed, KCP's lack of participation in this part of the hearing gives us no comfort that it is sufficiently motivated to become conversant in such regulatory requirements. Further, we are not convinced that Baker is currently fit to act as a director or officer of an issuer. Therefore, we apprehend that, without appropriate sanction, the same or similar misconduct by the Respondents would result.

[39] Moreover, general deterrent measures, sufficing to dissuade others from similar misconduct, are also in order.

Other Decisions

[40] With two exceptions, we do not find the facts underlying the decisions cited by Staff to be of sufficient similarity to render the decisions of much assistance in determining the sanctions appropriate here.

[41] However, in our sanctioning of Baker, we do take some guidance from the two decisions rendered in relation to four of the original respondents in this matter. In *Hughes* – which involved a statement of admissions and a joint proposal as to market-access bans – a cease-trade order and a denial of exemptions, each for three years, and a $10 000 administrative penalty were imposed on Hughes. We are mindful, in considering *Hughes*, that negotiated admissions and joint proposals may be reflective of unknown considerations and that the market-access bans imposed on Hughes were accepted as "reasonable in the circumstances of a joint submission" (at para. 24).

[42] In *Lavallee*, the panel imposed on Lavallee a cease-trade order, a denial of exemptions and a director-and-officer ban, each for five years, and a $20 000 administrative penalty. In taking guidance from *Lavallee*, we note that Lavallee was sanctioned for illegally trading and distributing KCP securities in his capacity as a KCP agent, who actively participated in the solicitation of investors and "proceeded with knowledge that the accredited investor representations were obtained from some investors in circumstances that rendered the representations (at best) factually unreliable" (at para. 13). In contrast, any sanctions we impose on Baker will be for his failure to take reasonable care and be diligent in instructing and supervising the KCP agents and must serve to protect against and prevent the same or similar misconduct by him or other market participants.

D. Sanctions Ordered

[43] For the foregoing reasons, we believe that to allow KCP to continue to operate in the exempt market would pose a serious threat to the financial well-being of Alberta investors and the integrity of the exempt market. Therefore, we consider that it is in the public interest to order sanctions against KCP that would remove it from the exempt market.

[44] For the reasons given, we also consider that it is in the public interest to order sanctions against Baker that would remove him from positions of authority with issuers for five years and would require, having regard to his contraventions of the Act, his payment of a monetary penalty of $15 000. We are satisfied that these sanctions will achieve the specific and general deterrence necessary to protect against and prevent the same or similar misconduct.

[45] Accordingly, we consider that it is in the public interest to make the following orders:

- under sections 198(1)(b) and (c) of the Act, KCP must cease trading in securities, and all of the exemptions contained in Alberta securities laws do not apply to it, unless and until it files a prospectus with the Commission and receives a receipt therefor;

- under sections 198(1)(d) and (e), Baker must resign all positions he holds as a director or officer of any issuer, and he is prohibited for five years from the date of this decision from becoming or acting as a director or officer (or both) of any issuer; and

- under section 199, Baker must pay an administrative penalty of $15 000.

IV. COSTS

[46] Staff also requested that we order, under section 202 of the Act, that each of KCP and Baker pay $12 000 towards the costs of the investigation and hearing. To that end, Staff tendered a one-page itemization of investigation costs (about $43 000) and hearing costs (about $20 000) totalling approximately $63 000, less $4000 in costs ordered to be paid by Hughes. Staff also remarked: "There appeared nothing remarkable about the manner in which this hearing was conducted or the efficiency of the Respondents or counsel."

[47] We received no submissions on costs from KCP.

[48] In oral submissions, counsel for Baker argued that, in assessing costs, we should take into account that certain of Staff's allegations against Baker were abandoned or dismissed.

[49] An order for payment of costs under section 202 of the Act is not a sanction but, rather, is directed at the recovery of costs incurred by the Commission in conducting enforcement proceedings related to a market participant's contravention of Alberta securities laws or conduct contrary to the public interest. A costs order is also a means by which the Commission can promote procedural efficiency in the conduct of enforcement proceedings. Therefore, it is generally appropriate that a respondent, who has been found to have contravened Alberta securities laws or acted contrary to the public interest, pay at least a portion of the costs of the investigation and hearing that led to such findings. A factor that we consider when deciding the

amount of the costs incurred that ought to be paid by the respondent is the extent to which the respondent facilitated or impeded an efficient investigation and hearing process.

[50] The types of costs itemized by Staff are the types for which we can make costs orders under section 202 of the Act. While the total amount of costs claimed does not appear unreasonable for the investigation and hearing that occurred here, the investigation costs must be somehow allocated among the six original respondents in this matter and the hearing costs must be in some way allocated among three of those respondents. An apportionment of these costs – 1/6 of the investigation costs and an amount somewhat less than 1/2 of the hearing costs (to take into account the extent of Hughes' participation in the first part of the hearing) – would result in each of the Respondents being potentially responsible for at least $15 000. This apportionment, we believe, is not unreasonable in all the circumstances (including a consideration of the costs orders made in *Hughes* and *Lavallee*) and indeed could be considered conservative in relation to the Respondents. Further, because Staff's itemization is deficient in substantiating detail, we discount the costs for which each of the Respondents would be potentially responsible to $13 000. Moreover, we assume that some of the costs claimed were incurred in pursuing one allegation against KCP that was not sustained and five allegations against Baker that were abandoned or not sustained. We therefore apply a further discount which, because we are of the view that the principal allegations against the Respondents were sustained, results in $11 000 in costs recoverable from KCP, and $9000 in costs recoverable from Baker, before considering the conduct of the Respondents during the investigation and hearing.

[51] There is no evidence before us that the Respondents facilitated, or impeded, Staff's investigation. Further, we note no particular efficiencies, or inefficiencies, in the hearing process, attributable to the Respondents.

[52] We accordingly consider it reasonable and appropriate to order that KCP pay $11 000, and that Baker pay $9000, towards the costs of the investigation and hearing. We therefore so order under section 202 of the Act.

V. PROCEEDING CONCLUDED

[53] This proceeding is now concluded.

20 October 2009

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Beverley A. Brennan, FCA

"original signed by"
Karl M. Ewoniak, CA