

Securities Law Update - *IDA's Power Over Former Members Restricted*

In a Judgment released on June 20, 2007, the Saskatchewan Court of Appeal ruled that the Investment Dealers Association of Canada (the "IDA") does not have jurisdiction to pursue disciplinary charges against a former approved person of the IDA after the fifth anniversary of the person's departure from the IDA has passed. Gregory Thompson and David Stack of McKercher McKercher & Whitmore LLP were counsel for the former approved persons in this appeal.

The Court's Judgment arose out of an appeal by the IDA from a decision of the Saskatchewan Financial Services Commission, the primary securities regulator in Saskatchewan. In February of 2006, the Commission concluded that the IDA has no legal jurisdiction to pursue disciplinary charges against former members or approved persons. On appeal, the Saskatchewan Court of Appeal upheld the Commission's decision. The Court, however, decided the case on a different basis; specifically, the fact that the former approved person's association with the IDA had ended more than five years ago.

The Court of Appeal ruled that as a result of IDA By-law No. 20.7, the IDA loses all jurisdiction over a former approved person when five years elapses from the date on which the person's association with the IDA ended. Importantly, it was clarified by the Court that the IDA **cannot** preserve its jurisdiction past the five year period by commencing the proceedings before the expiry of the five year period. In other words, disciplinary proceedings must be completed before the five year period expires; otherwise, the IDA loses jurisdiction. In light of By-law 20.7, the Court of Appeal concluded that it did not have to decide whether or not the IDA has any legal jurisdiction to pursue disciplinary proceedings against former members. This issue will, therefore, have to be decided at a later date.

In the Judgment, the Court of Appeal also ruled that the Saskatchewan Financial Services Commission should direct the IDA to dismiss charges against another approved person on the basis that there had been unreasonable delay in bringing proceedings against this approved person. The Court found that a delay of three years and eight months was inordinate, and that it would unduly prejudice the approved person's reputation, career and personal life to allow continuation of the proceedings.

To discuss the impact of this decision, please contact Gregory Thompson or David Stack.