

News**TV cameras in securities commissions****TV cameras will be allowed to record BCSC hearings examining allegations that Global Group ran a Ponzi scheme**

By Jim Middlemiss | June 2015

In an unusual ruling, the British Columbia Securities Commission (BCSC) will allow cameras into a hearing examining whether former registrant Thomas Arthur Williams and the Global Group of Cos. engaged in a Ponzi scheme and committed fraud against investors. The move has lawyers wondering if cameras in regulatory hearing rooms will become the standard.

"Normally, it's very rare for cameras to be allowed into regulatory hearings of any nature," says Chris Wirth, a litigator with **Keel Cottrelle LLP** in Toronto, who represents professionals accused of misconduct. "It's probably the beginning of a wave that will increase over time."

However, Gordon Johnson, a litigator with **Borden Ladner Gervais LLP** in Vancouver who represents clients in investment cases, says the decision is "pretty limited. I think the percentage of time that the live media wants to be there is small."

TV cameras in a BCSC hearing is not unheard of, notes B.C. media lawyer Daniel Burnett with **Owen Bird Law Corp.** in Vancouver.

For example, in the 1990s, the BCSC allowed cameras during the Herb Doman insider trading hearings. Doman was accused of tipping off then premier Bill Bennett and the premier's brother, Russell, that the sale of Doman's company to a U.S.-based firm was called off.

"We've been getting cameras into their high-profile hearings starting 15 years ago or more," Burnett says.

But that was a high-profile case involving political figures. Securities litigators who practice regularly before the BCSC say that it hasn't happened for at least the past 10 years.

"It is quite a unique and unusual order," says Owais Ahmed, a securities litigator with **Harper Grey LLP** in Vancouver. "I would have real concerns as to what effect that order would have on the fairness of proceedings if it became routine."

The Williams case has been getting attention in B.C., where 123 investors provided him with \$11.7 million between February 2007 and April 2010, according to the BCSC charges.

The BCSC alleges that Williams "used several finders to introduce investors" to his group of

companies. Eleven of them are also named in the hearing notice, issued last July.

The notice alleges that Williams made several promises to investors, including that their investments were shielded from securities laws, that he would provide a return of at least 2% a month and that he would preserve the "integrity" of their funds.

However, the BCSC claims that Williams invested \$5.8 million of the funds with "individuals and companies introduced by or connected to persons who had criminal or regulatory histories of securities fraud. Williams did not inform investors about the fraudulent background of the people he was dealing with."

According to the BCSC, Williams did not inform his investors that their investments failed to produce any returns and continued to raise money, making interest and principal payments to some investors using other investors' money.

The hearing had been set to commence in April. In March, CTV applied to cover the hearing. Those named in the notice objected. In late April, the commission ruled that it was not prejudicial to allow cameras. (The main hearings in the Williams case were scheduled for mid-May.)

However, the ruling on cameras came with several important caveats that restrict coverage.

For example, witnesses, counsel and participants who object to being recorded cannot be recorded. As well, cameras cannot record lawyers' computer screens or notes, nor can they pick up conversations among lawyers or between lawyers and their clients or witnesses.

Furthermore, live broadcasting is not permitted and there must be a minimum two-hour delay between the end of the session and the broadcast. The recordings can only be used for news reports.

Burnett calls the limitations "quite unduly restrictive and quite micromanaging of the process." He notes that any member of the public could go to watch the proceedings - and they should be permitted to do so electronically.

But Wirth welcomes some of the restrictions, such as preventing the cameras from filming the lawyers' computer screens, which could have sensitive information on them. "If you are going to allow cameras to be in, it makes sense to put these restrictions on," he says.

Lawyers were also at odds over the general value of allowing cameras into the hearing room. It's a debate that courts have grappled with for years. When allowed, it's usually the Supreme Court of Canada or an appeal court that permits it.

The argument against allowing cameras is that they may change the demeanor of participants in the hearing room.

The presence of TV cameras, says Ahmed, "may well have an impact on how witnesses perform," or whether a respondent chooses to testify.

Having a public audience present watching the proceeding is one thing, he says, but "it is a whole lot different knowing that testimony is going to be broadcast on a potential national news program."

Johnson, who has argued before coroners' inquests where TV cameras were present, says, "I think it does change behaviour at least a little bit," and could lead to grandstanding. "If you are in an intense examination, you forget about the camera."

The problem is that afterward, the performance of the lawyers and witnesses is often dissected by critics, which affects how they may approach the hearing the next day, he adds.

However, Sean Boyle, a securities litigator with **Blake Cassels & Graydon LLP** in Vancouver, says he believes cameras provide transparency and an opportunity for an accused to get his or her side of the story told.

"Having more accessibility to what is in front of the commission is a good thing," he says.

Boyle says it is the provincial securities commissions that "decide where, when and how much information to put in the public domain." Allowing a respondent's statement to be recorded at the hearing helps balance the allegations. Says Boyle: "It might provide context to what are otherwise serious allegations."

However, Ahmed adds that if respondents choose not to be recorded, and a commission does, then reporters are left with only coverage from one side, making it difficult to provide that balance in the reporting.

But Johnson notes that allowing cameras into hearings also serves an investor education purpose. "Some of these investors are very articulate, sympathetic people. Allowing them to tell their story about how they ended up with nothing is a good way to get a message across to the public."

This B.C. case provides precedent for other provincial securities commissions. Interestingly, the **Ontario Securities Commission's** (OSC) rules allow for TV cameras to be present, yet the broadcast media have not taken advantage of the opportunity despite some recent high-profile cases.

Guidelines under the OSC Rules of Practice state that hearings are "generally open to the public, including all branches of the media." But the media can also be excluded. Requests to televise hearings must be made to the secretary of the OSC.

Part of the reason there haven't been more requests to get TV cameras into hearing rooms, Johnson says, is because much of the proceedings are mundane and boring and consists of lawyers entering documents.

Indeed, the type of cross-examination that makes for drama typical in movies and TV is rare, Johnson notes.

One of the interesting questions now is whether the ruling will lead to other financial regulatory bodies - such as the **Investment Industry Regulatory Organization of Canada** (IIROC) - allowing TV cameras into their hearings. Such hearings are normally public.

But the sense among lawyers is that cameras in hearings won't expand beyond the provincial securities commissions. Most other organizations are self-regulatory bodies with their own bylaws and rules, whereas provincial securities commissions are government bodies.

Says Boyle: "[Expansion of coverage] is possible, but I think it's unlikely. The relationship with firms and members is contractual and IIROC and the [Mutual Fund Dealers Association (MFDA)] are private organizations.

"The BCSC and the OSC are public institutions. There's a greater expectation of accessibility within public institutions."

Wirth warns advisors that they now risk seeing themselves on the evening news.

The Williams case, Wirth cautions, is "just a further example as to the extra scrutiny, which is being applied to people in this industry."

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