

IN THE MATTER OF  
THE SECURITIES ACT, 1988, S.S. 1988, c. S-42.2

AND

IN THE MATTER OF  
LORING WARD INVESTMENT COUNSEL LTD.

DECISION

Hearing held April 14 and 15, 1992

Before: Marcel de la Gorgendiere, Q.C., Chairman  
Herbert Dow, Vice Chairman  
Morley Meiklejohn, Commission Member  
Rand Flynn, Commission Member

Appearances: J.M. Hall representing the Commission staff  
Douglas A. Ballou and Brian J. Kenny representing  
Loring Ward Investment Counsel Ltd.

Decision dated May 21, 1992

## DECISION

Loring Ward Investment Counsel Ltd. ("Loring Ward") made an application on January 8th, 1992 under Section 83 (1)(a) of The Securities Act, 1988, S.S. 1988, c.S-42.2 (the "Act") to exempt Loring Ward from the requirement to establish and maintain a business office in Saskatchewan in accordance with Section 18 of The Securities Regulations R.R.S. c. S-42.2 Reg 1 ("the Regulations") so as to remove an existing restriction in its registration providing that it could only act as an investment counsel to institutional clients.

The application was considered by the staff of the Saskatchewan Securities Commission (the "Commission") who were unable to agree upon a recommendation to the Commission in regard to the application. As the staff was of two minds, doubt also arose in the mind of the Chairman and the matter was referred to the Commission and a hearing directed. It was further directed that the Notice of Hearing be served on potential registrants who would be affected by any possible decision by the Commission as well as certain representatives of the investing public such as the Canadian Association of Consumers (Saskatchewan Branch) and the Canadian Share Owners Association.

In its original application of January 8th Loring Ward had indicated that it would be willing to accept a number of conditions in any ruling that would exempt it from the provisions of maintaining a business office under the regulations. At the Hearing the Applicant further modified the provisions of its application stating that it was now willing to immediately establish a business office within Saskatchewan. It was requesting an exemption from the provision of Local Policy Statement 3.1 (based on the provisions of Section 35(2) of the Act) that a manager for the office possess the required residence qualification.

The representations made on behalf of the Applicant and the commission staff as well as industry and a consumer representative led to a thorough discussion of the public interest requirement for residency within the Province of at least one responsible officer of a registrant even if the business office requirement itself was not in issue in the application by the time of the Hearing. These representations were most helpful to the Commission and while it does not make the decision easier to make, it is at least made on the basis of a thorough canvass of the issues from more than one point of view.

The evidence presented shows that it is clear that residency requirements are in a state of flux across Canada. The Commission agrees with the Applicant's contention that the provisions of the Act and Regulations in Saskatchewan make the residency requirement a discretionary one. However, this does not preclude the Commission from establishing policies which establish that the

Director is to exercise discretion in support of a residency requirement.

The Act provides that any individual may make an application for exemption from the requirements on the grounds that it would not be prejudicial to the public interest. This then is the position we are in regarding this application, to decide whether the residency requirement for a manager for Loring Ward can be waived upon certain conditions suggested by the Applicant and that such an exemption would be in the public interest. Those conditions (which are detailed later) satisfy, we believe, the purposes for which business office and residence qualifications have been a requirement in most jurisdictions until relatively recently. As set out in the Applicant's submission with the agreement of the staff of the Commission, they are to:

- (a) provide an appropriate level of service and advice to retail investors in Saskatchewan;
- (b) ensure that the adviser understands capital markets and Saskatchewan investors' objectives;
- (c) ensure access to books and records of the adviser;
- (d) ensure that the Commission regulate the advisor; and
- (e) ensure that clients are able to bring action without difficulty or impediment against the adviser.

However the Commission does not at this time feel that the final agreed purpose that was stated as being to "demonstrate a commitment to the capital markets in Saskatchewan and to the best interest of Saskatchewan investors" would be satisfied by any of the conditions agreed to by the Applicant as the basis of the exemption unless a further condition is imposed.

That further condition rises for the following reason. The Commission accepts that the population base and economic conditions currently within the Province of Saskatchewan are such that the full time residency requirement during the start-up phase of a business would result in a misallocation of resources and have such a debilitating effect upon the other operations of the Applicant so as to eliminate it as being a feasible option. There are, however, other registrants who are operating and through their commitment to the service of investors within Saskatchewan they provide a source of contact for investors and play a role in the development of the capital markets within the Province. Developing or preserving a market is more than having access to a computer terminal. It is knowing the needs of individuals and the special requirements of a region and being involved in the community to help in ancillary ways to raise the knowledge level of investors

and potential investors so as to obtain their participation in that market. Just as the Province of Quebec maintains residency requirements because of the unique cultural and linguistic requirements of a majority of its citizens, Saskatchewan with its agricultural and resource based economy and an underdeveloped manufacturing and processing base has some differences from other provinces who do not require residency requirements because there are an ample number of financial industry personnel of all types registered within the province residing there.

Saskatchewan has not only needed people to advise on investments, but also to advise on raising of capital not only for small business but also in order to obtain wide public participation in special debt issues by government corporations or of purchase of stock that the publicly owned corporations wish to dispose of. In these matters there was a public perception that many of the areas of the province were not properly served by traditional registrants because of their relatively small numbers. Allowing the market to be served from afar would present those who chose to stay with a degree of competition which was not balanced by the necessity to staff office or personnel within the boundaries of the Province. It serves to reduce the potential base for those that remain as part of the community and puts at risk their ability to continue.

While the public protection of residency and office requirements to the extent that they exist can be met by conditions such as suggested by the Applicant, in the end it is only the presence of personnel that provides for market growth and development through the education that comes from the contact of individuals participating in the community. For this reason the Commission will accept the application of Loring Ward only under the understanding and condition to its registration that the exemption will be removed at the end of one year from the date of the establishment of its office in Saskatchewan unless it has a qualified resident manager. The Commission will review any application to continue the exemption only on the basis of unforeseen economic factors or genuine unavailability of a qualified manager willing to meet the residency requirements. The Commission will not entertain any continuation on the basis that there is no reason in the public interest for maintaining a residency qualification.

It may be that eventually the Commission may have to reconsider its basis for its policy, but it is not willing to do so at this time. The Commission, in the course of the Hearing, heard representations in connection with the possibility of residency requirements being ultra vires pursuant to the so-called mobility provisions of the Charter of Rights. It was agreed by the Applicant that it was not requesting a decision on the basis of that argument and no notice was given pursuant to the Constitutional Questions Act. While the Commission did not have to decide that question, it was not made aware in the discussion of any matter that would make it believe

that its justification for exercising its discretion pursuant to the statutory provisions was not a matter of a law or practice of general application in force in a province in accordance with Section (6)(3)(a) of the Charter which bears "a rational relationship to a valid governmental objective - - and that objective bears a rational relationship to the proposed limitation". (Chief Justice Dickson in R.V. Oakes, 1986 S.C.R. 103)

The Commission, in short, is not prepared to admit that residency requirements for investment advisors is an anachronistic feature of securities regulation in Saskatchewan. Whatever clinging to the past is involved in these requirements, they are justified in the public interest due to the state of development of the economy and the size and nature of the investing public within the Province at this time.

The Commission does, however, agree that when the purposes of the policy can be met within a reasonable period of time that consideration should be paid to economic factors in granting some leeway in implementing the rules. The Commission feels that the conditions suggested by the Applicant together with its own additional provision will maintain the objectives of the policy and provide for the Applicant's participation as a resident in the investment life of the Province as soon as it is feasible.

The Commission, therefore, will allow the application of Loring Ward for the removal of the conditions limiting its dealing with certain retail clients providing that the following conditions are adhered to:

1. that Loring Ward will open a branch office within Saskatchewan staffed with one or more Loring Ward employees. The office is to be clearly identifiable as being that of Loring Ward. The office must be operated so that copies of all contracts with Saskatchewan clients are maintained there as well as copies of client records, including debit requisitions, account proceeds forms and monthly statements prepared and issued by the custodian agreed to between the client and Loring Ward;
2. that it will enter into an investment counsel agreement among Loring Ward, its client and the custodian in a form acceptable to the Saskatchewan Securities Commission and will advise the Saskatchewan Securities Commission in the event of any revision to the form of agreement;
3. that Loring Ward will not hold securities, funds and other assets of Saskatchewan clients, but rather such assets shall be held either by the individual Saskatchewan clients of Loring Ward or by the custodian agreed to by the client and that custodian satisfies the

requirements of Section 7 of National Policy 39 - Mutual Funds;

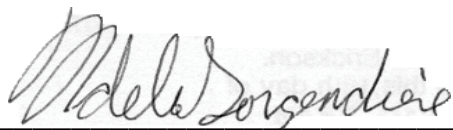
4. that Loring Ward will provide investment advice to Saskatchewan clients with portfolios of over \$150,000.00;
5. that Loring Ward have a representative who is registered to provide investment advice and portfolio management services in Saskatchewan, to advise Saskatchewan clients to respond to calls on a toll-free line and to attend, on at least a quarterly basis, in Saskatchewan for any clients wishing to review their portfolio with a representative personally;
6. that Loring Ward appoint an agent for service in Saskatchewan that is acceptable to the Saskatchewan Securities Commission;
7. that Loring Ward file with the Saskatchewan Securities Commission and provide to each Saskatchewan client a statement indicating:
  - (i) the name of the agent for service and address for service in Saskatchewan; and
  - (ii) that Loring Ward does not have any significant assets located in the Province, that its partners, directors and officers are not resident in Saskatchewan and that as a result a Saskatchewan client may find it more difficult to enforce any legal rights that such a client may have against Loring Ward;
8. that Loring Ward shall attorn to the jurisdiction of the Saskatchewan Securities Commission and the courts of Saskatchewan;
9. that Loring Ward shall file with the Commission such reports as to its advising in respect of securities as the Director of the Saskatchewan Securities Commission may require;
10. that Loring Ward maintain its registration as investment counsel in the Province of Manitoba;
11. that Loring Ward shall inform the Director of the Saskatchewan Securities Commission as soon as Loring Ward becomes aware that:
  - (i) its registration in any other province or territory is not renewed, lapses or is revoked; or

- (ii) it is the subject of an investigation by any securities regulatory authority in Canada;
12. that Loring Ward shall have at least one registered senior office resident in Canada;
  13. that Loring Ward provides an undertaking to not object to any hearing on the basis that Loring Ward was not present or represented if it has received a notice to appear from the Saskatchewan Securities Commission;
  14. that it meets all other conditions of registration which apply to investment counsel and portfolio managers and a form 39 Bond in the amount of \$200,000 has been provided to the Saskatchewan Securities Commission by Loring Ward; and
  15. that the exemptive relief granted to Loring Ward will be reviewed at the end of one year unless it has a qualified resident manager.

While the Commission will not set out in the conditions of registration a precise provision to this effect, the Commission is aware of the undertaking of Loring Ward, to the extent that it receives competitive bids, to place the purchase and sale of securities on behalf of its clients through Saskatchewan registrants in the same proportion as its Saskatchewan clients represent of its entire managed portfolio and the Commission staff shall request a report annually in regard to Saskatchewan trading.

The Commission realizes that there are a number of provisions in the conditions enumerated which could conceivably require further elaboration in order to provide for implementation in a manner acceptable to the Commission staff and the Applicant and the Commission is open to an application by the staff or the Applicant in order to provide any clarifications.

Dated at Saskatoon, in the Province of Saskatchewan this 21st day of May, 1992.



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Marcel de la Gorgendiere, Q.C.  
Chairman