

IN THE MATTER OF THE SECURITIES ACT,  
S.N.B. 2004, c. S-5.5, as amended

AND

IN THE MATTER OF

**LOCATE TECHNOLOGIES INC., TUBTRON CONTROLS CORP.,  
BRADLEY CORPORATE SERVICES LTD., 706166 ALBERTA LTD.,  
LORNE DREVER, HARRY NILES, MICHAEL CODY AND  
DONALD NASON**

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**SECOND AMENDED STATEMENT OF ALLEGATIONS**  
(of Staff of the New Brunswick Securities Commission)

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**THE RESPONDENTS**

1. Locate Technologies Inc. (Locate) is a corporation incorporated in accordance with the laws of the Province of Alberta on 23 May 2000, and has an office at 3124 Parsons Road, Edmonton, Alberta. Locate was registered as an extra provincial corporation in New Brunswick on 21 November 2000.
2. Tubtron Controls Corp. (Tubtron) is a corporation incorporated in accordance with the laws of the Province of Alberta on 10 April 1997, and has an office at 3124 Parsons Road, Edmonton, Alberta. Tubtron was previously known as 733754 Alberta Ltd. and changed its name to Tubtron on 7 May 2003.
3. Bradley Corporate Services Ltd. (BCS) is a corporation incorporated in accordance with the laws of the Province of New Brunswick on 24 January 1986, and has an office at 70 Gloucester Crescent, Fredericton, New Brunswick. BCS was previously known as Bradley Insurance Services Ltd. and changed its name to BCS on 21 April 1993.
4. 706166 Alberta Ltd, (706166) is a corporation incorporated in accordance with the laws of the Province of Alberta on 15 August 1996, and has an office at 1310, 10025-102 A. Avenue, Edmonton, Alberta. 706166 is wholly owned by Lorne Drever. 706166 owns in excess of 40% of the shares of Locate and in excess of 25% of the shares of Tubtron.
5. Lorne Drever (Drever) is the President and sole director of Locate and Tubtron and resides at [REDACTED], Edmonton, Alberta. Drever was and continues to be the directing mind and will of Locate, Tubtron and 706166.

6. Harry Niles (Niles) is the sole director of BCS and resides at [REDACTED] in the City of Fredericton, New Brunswick. Niles was and continues to be the directing mind and will of BCS.
7. Michael Cody (Cody) resides at [REDACTED], Fredericton, New Brunswick and was registered with the New Brunswick Securities Commission (Commission) as a salesperson with Union Securities Ltd. from 17 August 2005 until 15 May 2006. His registration was revoked when he was terminated by Union Securities Ltd. for failing to complete certain required training. Cody has from time to time conducted business under the unregistered business name MTC Consulting.
8. Donald Nason (Nason) resides at [REDACTED], Tracy, New Brunswick and was registered with the Administrator, Securities Branch and/or the Commission at the following times:
  1. 2004/06/01 to 2007/11/01 - Dundee Private Investors Inc.
  2. 2002/12 to 2004/06 - Cartier Partners Financial Services Inc.
  3. 1995/11 to 2002/12 - Brunswick Funds Group Ltd.

## **PREVIOUS REGULATORY ACTIVITY**

### **2001 investigation**

9. On or about 17 October 2000, Locate contracted with 500998 N.B. Ltd. (500988), a now inactive corporation formerly wholly owned and controlled by Niles, to “raise funds for the company’s current Offering Memorandum”. The parties agreed to a commission of 10% of funds raised.
10. On or about 5 December 2000, Locate contracted with BCS and Niles to “move Locate into the public markets” at a fee of \$1,000 per day plus expenses.
11. In late October 2001 Staff of the Securities Branch of the New Brunswick Department of Justice (Securities Branch), received a tip that Locate was recruiting investors in New Brunswick and was holding a public information session in Fredericton, New Brunswick. Staff attended this session, which confirmed that Locate was soliciting sales of its shares in New Brunswick. In light of the fact that neither Locate nor any of the individuals soliciting shares were registered with the Securities Branch, Staff commenced an investigation into the affairs of Locate, BCS, Drever and Niles.
12. The investigation indicated that Locate, with the assistance of Drever, Niles and BCS, had between 5 December 2000 and 5 November 2001 raised \$320,000 from 42 New Brunswick investors, without having filed a prospectus or having sought registration under the then applicable legislation, the *Security Frauds Prevention Act*, R.S.N.B. 1973 (SFPA).

13. At the time there were no statutory exemptions from the registration or prospectus filing requirements in New Brunswick. The SFPA did permit discretionary relief from these requirements upon application to the Administrator of the Securities Branch but no such relief had been sought or otherwise granted to Locate.
14. In early November 2001, Staff of the Securities Branch contacted Locate and BCS and advised them that their activities were not compliant with the applicable legislation and summoned both Drever and Niles to attend before the Deputy Administrator, Enforcement and Compliance, of the Securities Branch, to be examined under oath.
15. On 8 November 2001, Niles and Drever, through their solicitors advised that they could not attend on the scheduled dates, but undertook to the Deputy Administrator, Enforcement and Compliance, of the Securities Branch, to “not engage in the “trading” (as defined as s. 1 of the *Security Frauds Prevention Act*, R.S.N.B. 1973 (SFPA) and s. 3 of the Regulation 84-128 under the *Security Frauds Prevention Act*) of securities of Locate Technologies from the present until November 29<sup>th</sup>, 2001”.
16. The date for the examination of Niles was adjourned to 5 February 2002, and on 17 January 2002, Niles undertook to the Deputy Administrator, Enforcement and Compliance, not to engage in “trading (as defined in s. 1 of the SFPA and s. 3 of the Regulation 84-128 under the *Security Frauds Prevention Act*) of securities of Locate Technologies from November 29, 2001 to February 5, 2002”.
17. This undertaking was subsequently extended to 28 February 2002.
18. On 3 April 2002, Drever represented and undertook to the Deputy Administrator, Enforcement and Compliance, that:
  1. he had not engaged in “trading” (as defined as s. 1 of the SFPA and s. 3 of the Regulation 84-128 under the *Security Frauds Prevention Act*) of securities of Locate Technologies from 29 November 2001 to 3 April 2002;
  2. He had not authorized nor was he aware of any individual who had engaged in the trading of securities of Locate since 7 November 2001; and
  3. He would not engage in the trading of securities of Locate until such time as authorized to do so by the Administrator, or upon the issuance of a certificate upon the filing of a prospectus, whichever event shall occur first.
19. On 5 April 2002, Staff of the Securities Branch advised Drever’s solicitor that it had become aware of one New Brunswick resident, B.W., who had subscribed for Locate shares after 7 November 2001.

20. In response to this information, Drever swore an affidavit on 9 April 2002, in which he attested that:
  1. "I have not nor have I authorized any one on behalf of the Corporation to engage in the trading of securities of the Corporation in the Province of New Brunswick on behalf of the Corporation since November 7, 2001".
  2. he was not aware of B.W.'s purchase of Locate shares.
  3. A subscription agreement and a cheque for Locate shares had been received from B.W. on 29 November 2001, and the said cheque had been deposited on 14 December 2001, without his knowledge.
  4. the said subscription agreement and funds had been returned to B.W. on 9 April 2002.
21. During July and August 2002, Locate and Niles negotiated with the Securities Branch and agreed to resolve their non-compliance on the following basis:
  1. Locate agreed to offer each and every New Brunswick subscriber to Locate shares an opportunity to rescind their investment and receive a full refund of all sums paid;
  2. Locate would unequivocally undertake that neither it, its employees or agents would trade in New Brunswick in any securities which had not been approved by the Administrator pursuant to section 13 of the SFPA; and
  3. Niles would unequivocally undertake that he would not engage in the trading of any securities whatsoever unless and until he became properly registered pursuant to the SFPA.
22. On 8 August 2002 and as part of this agreement, Locate, through its solicitor, provided a list of 36 New Brunswick shareholders in Locate to Staff of the Securities Branch and provided confirmation that a rescission letter had been sent to each of these shareholders.
23. On 2 August 2002, Locate also unequivocally undertook in writing that "neither it, its employees or agents will trade in New Brunswick in any securities which have not been approved by the administrator pursuant to section 13 of the Security Frauds Prevention Act, S.N.B., c. S-6, as amended, and that it will not affect [sic] any such approved trades other than through a registered broker, salesman or sub-agent of a registered broker as required by the Act."
24. On 6 August 2002, Niles undertook in writing that "I will not engage in the trading of any securities whatsoever unless and until I become properly registered pursuant to the

*Security Frauds Prevention Act, S.N.B. ch. S-6, as amended.”*

25. On 3 September 2002, the Administrator of the Securities Branch advised Locate’s counsel that Locate had abided by the terms of the agreement with the Securities Branch. The Securities Branch then closed its file.

### **2003 applications for exemptions by Locate and Tubtron**

26. On 20 June 2003, Locate applied to the Administrator for an exemption from the registration and prospectus requirements of the SFPA. Locate filed an Offering Memorandum, sample Subscription Agreement, as well as financial statements of Locate in support of this application.
27. On 29 October 2003, the Administrator of the Securities Branch issued Order 2003-80191 exempting certain trades and securities issued by Locate from the application of section 5 and 13 of the SFPA, on the condition that prospective purchasers be provided with an Offering Memorandum and executed a Risk Acknowledgment form when purchasing Locate shares and that no selling or promotional expenses were or would be paid, other than to a registered dealer or broker. In addition Locate was required to file a report of exempt distribution for all share purchases in New Brunswick within 10 days from the date of distribution.
28. On 15 October 2003, Tubtron also made application to the Administrator of the Securities Branch to be exempted from the provisions of sections 5 and 13 of the SFPA. In this application, Tubtron stated that it “is proposing to sell Class A common shares pursuant to the Offering Memorandum ... The shares will only be offered to purchasers in New Brunswick upon receiving exemptive relief from the Administrator.”
29. On 29 October 2003, the Administrator of the Securities Branch issued Order 2003-80183 exempting certain trades and securities issued by Tubtron from the application of section 5 and 13 of the SFPA, provided prospective purchasers were provided with an Offering Memorandum and executed a Risk Acknowledgment form when purchasing Tubtron shares and that no selling or promotional expenses were or would be paid, other than to a registered dealer or broker. In addition Tubtron was required to file a report of exempt distribution for all share purchases in New Brunswick within 10 days from the date of distribution.

### **2003 investigation**

30. On or about 20 November 2003, Staff of the Securities Branch became aware that the undertakings given by Drever, Locate and Niles in 2002 had been breached and that the list of investors provided in July 2002 was in fact incomplete. Specifically, R.R., a New Brunswick resident, had provided a total of \$10,000 to Locate for share purchases in November 2001 and January 2002. R.R. had not been included in the list of shareholders

provided to Staff in August 2002, to whom rescission notices had been sent.

31. On 21 November 2003, Staff of the Securities Branch wrote to Drever and Locate and requested full particulars of all New Brunswick residents who had provided money to and/or invested in Locate.
32. On 26 November 2003, Locate filed a Form 45-104 F4 - Report of Exempt Distribution with the Administrator, with respect to a distribution of 1,218,940 shares on 14 November 2003. R.R.'s name was not on the list of shareholders set out in this filing.
33. On 28 November 2003, Drever provided a list of all New Brunswick residents from whom Locate had accepted money. This list included 17 persons not included in the list previously held out in August 2002 as the New Brunswick shareholder list. This list also indicated that the trades Locate reported in the Report of Exempt Distribution filings of 14 and 26 November 2003, had in fact taken place before Locate sought an Exemption Order from the Administrator.
34. On 5 December 2003, Staff of the Securities Branch obtained an Entry Warrant from a Judge of the Provincial Court of New Brunswick to search 70 Gloucester Crescent, the office location of BCS in Fredericton. This Entry Warrant was executed on 9 December 2003 at that location.
35. Documents seized as a result of this Entry Warrant demonstrated, among other things, that:
  1. Locate had engaged in trading in shares in New Brunswick during the period when it had undertaken not to do so and in contradiction to the statements made by Drever in his sworn affidavit of 9 April 2002.
  2. B.W., the investor to which Drever refers in his sworn affidavit of 9 April 2002, re-invested well in excess of twice the amount refunded to him, within a few weeks after the initial investment had been reimbursed to him, without the Administrator being advised of this.
  3. A list of "Money Brought In" by Niles confirmed that investors had provided money to Niles during the times that undertakings had been given by Drever, Locate and Niles that no trading would take place.
  4. Drever wrote letters on behalf of Locate to these investors, confirming their investment, in January 2003.
  5. Locate took active steps to not send offer of rescission letters to certain investors in July 2002.

6. In June, July, August, September, and October 2003, and prior to 29 October 2003, the date the Administrator of the Securities Branch issued an order granting exemptive relief, securities in Tubtron were sold to New Brunswick residents.
36. On 10 December 2003, Locate filed a Form 45-104 F4 - Report of Exempt Distribution with the Administrator, with respect to a distribution of 134,953 shares, purportedly on 26 November 2003. In fact, many of these transactions had occurred well prior to that date.
37. Because Locate and Tubtron had obtained both the 29 October 2003 exemption orders by way of misrepresentations, the Administrator of the Securities Branch made application to the Court of Queen's Bench on 11 February 2004, to prohibit Locate, Tubtron, Drever, Niles, BCS and 500988 from further trading.
38. The Administrator's application was heard *ex parte* and an interim order was issued by the Court of Queen's Bench on 11 February 2004, prohibiting Locate, Niles, Drever, BCS, 500998 and Tubtron from trading in New Brunswick in any security.
39. This order was subsequently extended and Locate, Tubtron, Drever, Niles, BCS and 500988 agreed to a Consent Order dated 31 March 2004 issued by The Court of Queen's Bench which prohibited the referenced parties from trading in any security, without first obtaining from the Administrator a certificate or order that authorized trading pursuant to the SFPA.

#### **July 2004 - Enactment of the *Securities Act***

40. On 1 July 2004, the New Brunswick Securities Act came into force and effect. Pursuant to this Act and the Regulations and Rules in force under it, certain exemptions to registration and prospectus filing requirements became available to market participants.
41. On 1 December 2004, Tubtron filed a form 45-103 F4 Report of Exempt Distribution with the Commission. According to this document, Tubtron had sold shares to a number of New Brunswick residents on 9 November, 16 November, and 26 November 2004.

#### **2005 Tubtron trades**

42. In July 2005, Locate, through its solicitor, contacted Staff of the Commission and sought assurance that sales of shares in compliance with the available exemptions under the new Act, did not constitute a violation of the Consent Order issued by the Court of Queen's Bench on 31 March 2004.
43. In September 2005, Staff of the Commission requested that Locate provide a list of "all trading activities" in the province of New Brunswick with respect to Locate and Tubtron since the Consent Order of 21 March 2004.

44. On 16 December 2005, a reply to Staff's letter of September 2005 had not been provided by Locate. Staff wrote Locate's solicitor again and reiterated its request that the following be provided to it:
  1. A list of all trading activities in NB since March 31 2004;
  2. A list of shareholders as of March 31, 2004; and
  3. A current list of shareholders.
  
45. On 9 February 2006 (and subsequently supplemented on 22 June 2006) Locate, through its solicitor, provided a response to Staff's request. This response included what was held out as a complete shareholder list for both Locate and Tubtron. The response also stated that:
  1. Tubtron had not traded any shares in New Brunswick other than those set out in the 45-103 F4 Report of Exempt Distribution filed on 1 December 2004;
  2. Locate had not traded in any shares in New Brunswick after 26 November 2003; and
  3. As of 31 March 2004, a total of 11,383,766 shares in Locate had been issued.
  
46. On 3 March 2006 further to discussions between the solicitor for Locate and Tubtron and Staff of the Commission, and because Tubtron had not sought the necessary approval for these trades from the Commission, Tubtron agreed to offer the New Brunswick investors to whom it had sold since 31 March 2004, the right to rescind their investment and get their money back. On the same date staff reiterated to the solicitor for Locate and Tubtron, that the Court of Queen's Bench order prohibited any trading in securities without prior express authorization or approval by the Commission.
  
47. On 22 June 2006 the solicitor for Locate and Tubtron provided copies of letters sent to New Brunswick investors with respect to the Tubtron share sales. On 5 July 2006 Commission Staff closed its file on this matter.

## **RECENT EVENTS AND CURRENT INVESTIGATION**

### **Winter 2006 complaints from investors**

48. On 21 November 2006, Staff of the Commission received complaints from two New Brunswick residents, L.B. and R.B., who indicated they had purchased Locate shares in March 2005 but had never received their share certificates.
  
49. L.B. and R.B. do not appear on any of the shareholder lists previously provided by Locate.
  
50. L.B. and R.B. had purchased these shares through Cody.

51. L.B. and R.B. were not offered an opportunity to rescind their purchase as had been reported to the Commission in March 2006.
52. On 22 January 2007, Staff of the Commission became aware that L.P. and M.C., two Quebec residents, had purchased Tubtron shares through Cody while visiting family in New Brunswick in November 2003.
53. This share purchase by L.P. and M.C. did not appear on any of the shareholder lists previously provided by Tubtron.
54. L.P. and M.C. were not offered an opportunity to rescind their purchase as had been reported to the Commission in March 2006.
55. On 5 February 2007, Staff of the Commission became aware that T.G., a Nova Scotia resident, had purchased Locate shares through Cody in March and April 2005.
56. Neither T.G.'s name nor any trades with T.G. appear on any of the shareholder lists previously provided by Locate.
57. On 22 February 2007, Staff of the Commission became aware that G.K., another New Brunswick resident, had purchased \$50,000 worth of shares in Locate in 2004.
58. G.K.'s name did not appear on any of the shareholder lists previously provided by Locate.
59. The above referenced investors were instructed to make their cheques for the investments in Tubtron and Locate payable to 706166 or BCS.
60. Some of the above referenced investors were provided with subscription agreements or partial subscription agreements (in that pages were missing) for common shares of Locate and Tubtron.
61. On 28 March 2007, Commission staff wrote to Locate and Tubtron's counsel and requested particulars of all New Brunswick residents from whom either of these companies had received funds in exchange for shares, including those where no shares had in fact been delivered.
62. On 27 April 2007, a response was received from Drever which included a sworn affidavit attesting to the completeness of:
  1. Exhibit "A": "a complete list of all persons and corporations who are shareholders of Locate Technologies."
  2. Exhibit "B": "a complete list of all persons and corporations from whom Locate Technologies Inc. has received subscriptions for shares that whom [sic] have not

yet been issued shares of Locate Technologies Inc.”

63. A similar affidavit was provided with respect to Tubtron.
64. The list set out in Exhibit “B” indicated that investors paid an additional \$695,481 for Locate shares between 24 November 2004 and 12 May 2006, with respect to which Locate had to date not provided share certificates.
65. Exhibit “B” attached to Drever’s sworn affidavit of 27 April 2007 regarding Locate, suggested that Locate traded in its securities in New Brunswick in November and December 2004, every month in 2005 other than January, October and November, and from January to May 2006. Locate filed no reports of exempt distribution or otherwise sought to comply with New Brunswick securities law, with respect to these trades.
66. Staff subsequently became aware that the 27 April 2007 affidavit might be incomplete. As a result it requested that the Commission order that a proper shareholders list be produced. Such an order was issued on 15 October 2007 ordering that same be provided no later than 1 December 2007.
67. A further list of shareholders and subscribers was provided through counsel for Locate, Tubtron and Drever on 29 November 2007 (the 29 November 2007 list). This list indicates that there were in fact more investors as well as additional investments by existing investors, in both Locate and Tubtron, which had not been disclosed in the sworn affidavits of 27 April 2007.

### **BCS, Niles, Cody and Nason**

68. BCS, Niles, Cody and Nason acted in furtherance of the trades by Locate and Tubtron to New Brunswick residents. During the period of July 1, 2004 through to 2006, their activities included, among others, multiple instances of at least one or more of the following:
  1. soliciting potential investors,
  2. delivering subscription forms to persons who had agreed to invest,
  3. completing subscription forms,
  4. taking investment cheques,
  5. delivering investment cheques.
69. Cody was paid by Locate and BCS for these services.
70. Nason was paid by Locate and BCS for these services.
71. Niles and BCS were paid by Locate and 706166 for these services.

72. Between May 2004 and January 2005 Cody, Nason and/or Niles also directed at least 8 New Brunswick residents to make cheques in payment of their share purchases in Locate and/or Tubtron payable to BCS. These cheques totaled at least \$160,000.
73. These share purchases are absent from the investor lists set out in Exhibit "A" or "B" of Drever's affidavits of 27 April 2007 and are also are not reflected in the 29 November 2007 list.
74. Cody and Nason knew that BCS was a company controlled by Niles.

#### **706166**

75. A large number of investors in Locate and Tubtron were asked to make cheques for share purchases in Locate and/or Tubtron payable to 706166. These investors signed subscription agreements or partial subscription agreements (in that pages were missing) to purchase these shares from Locate or Tubtron.
76. In total, in excess of \$1.1 million was received by 706166 further to these Locate and Tubtron share purchases made.
77. 706166 had no source of income in 2005/06 other than an annual management fee due from Locate in the amount of \$50,000. 706166 had no income between June 2006 and May 2007.
78. In excess of \$350,000 of the funds received from investors were subsequently used to pay expenses unrelated to the activities of either Locate or Tubtron. These payments included payments for credit cards, payments to Drever's wife, personal expenses, mortgage payments, and payments to companies unrelated to Locate or Tubtron.

#### **Cody's application for registration in 2005 and statements to Staff**

79. In or about June 2005, Cody applied for registration under section 45 of the *Securities Act*.
80. In the course of enquiries by Staff of the Commission further to this application, Cody, on 4 November 2005 represented to Staff of the Commission that "during the period of Feb. 2002 to Sept. 2005, I was not involved in the sale or distribution of any securities as defined by the Securities Act."
81. On 19 December 2005, Cody represented to Staff that "be advised, for the THIRD time, I have NOT sold or distributed any shares of any company, including the two mentioned above, during the period of February 2002 to September 2005, as defined by the Securities Act."
82. Cody reiterated statements to this effect in an examination under oath by Staff of the

Commission on 22 June 2007.

83. During this examination, Cody also denied ever having received any remuneration for his involvement in the sale of Locate and/or Tubtron shares to New Brunswick residents.
84. During this examination, Cody also denied having any form of business relationship with Niles.

**Nason's statements to an investigator**

85. Nason was examined under oath by Staff of the Commission appointed as an investigator, on 28 June 2007.
86. During this examination, Nason represented to Staff that, *inter alia*:
  1. he had received no money or consideration from Locate, Tubtron, or 706166 for any of his activities in relation to the sale of shares of Locate and/or Tubtron or for any other reason;
  2. he had not received any money or consideration from Niles or BCS for any reason.

**Cody's statements to an investigator**

87. Cody was examined under oath by Staff of the Commission appointed as an investigator, on 22 June 2007.
88. During this examination, Cody represented to Staff that, *inter alia*:
  1. he had received no money or consideration from Locate, Tubtron, or 706166 for any of his activities in relation to the sale of shares of Locate and/or Tubtron;
  2. he had not received any money or consideration from Niles or BCS for any of his activities in relation to the sale of shares of Locate and/or Tubtron.

**Disclosure of summons**

89. Prior to his interview, Staff served Cody with a summons dated 5 June 2007, which gave explicit notice of the legal requirement that he not disclose the summons or even the existence of the investigation to any person other than legal counsel. Despite this legal requirement, and the notice given, Cody provided a copy of the summons to Drever by 13 June 2007.

### **Nason not acting in client's best interest**

90. While acting as a registered mutual funds salesperson for registered mutual funds dealers, Nason counseled and assisted clients to redeem mutual fund investments and re-invest the proceeds in Locate or Tubtron. In at least one case, an entire portfolio was redeemed and re-invested. Such action by Nason constitutes gross negligence and a breach of section 54 of the *Securities Act*.

### **BREACHES OF NEW BRUNSWICK SECURITIES LAW AND ACTS CONTRARY TO THE PUBLIC INTEREST**

#### **Breach of the February/March 2004 Court of Queen's Bench orders**

91. After 11 February 2004 Locate, Tubtron, BCS, Drever and Niles traded in securities in direct contravention of the orders from the Court of Queen's Bench of New Brunswick.
92. The breaches of the Court Order by these parties constitute acts contrary to the public interest.

#### **Trading without registration and failure to file a prospectus**

93. After 1 July 2004 and continuing in 2005 and 2006, Locate, Tubtron, BCS, Drever, Niles, Cody and Nason traded in securities as defined in the *Securities Act*, without having been registered as required by section 45 of the Act.
94. After 1 July 2004 and continuing in 2005 and 2006, Locate and Tubtron, through their agents and representatives, Drever, Niles, Cody, and Nason, without having filed a prospectus as required by section 71 of the Act, repeatedly traded in securities constituting a distribution.
95. As a result of these actions, at least 41 New Brunswick investors invested in excess of \$900,000 in Locate during this period. At least 14 New Brunswick investors invested in Tubtron during this time period.
96. Drever, Niles, Cody and Nason personally benefited from these activities.

#### **Misrepresentations, untrue or misleading statements, and omissions to investors**

97. Since 1 July 2004, Drever, Niles, Cody and Nason, have either directly or indirectly, and with the intention of effecting trades in securities,
  1. made representations relating to the future value or price of Locate or Tubtron securities in contravention of section 58(2) of the *Securities Act*;

2. made representations that Locate shares will be listed on an exchange, in contravention of section 58(3) of the *Securities Act*; and
3. made statements that were misleading or untrue or did not state a fact that was required to be stated or that was necessary in order to make the statement not misleading, in contravention of section 58(4) and/or 179(2) of the *Securities Act*.

### **Misrepresentations and breaches of undertakings**

98. Drever has made repeated misrepresentations to Staff of the Commission and the Securities Branch:
  1. Drever made representations and sworn statements to Staff, on 3 April 2002 and 9 April 2002, which were false.
  2. Drever represented in or about July/ August 2002, that a list of Locate shareholders provided by him was complete, which representation was false.
  3. Drever made representations to Staff on 9 February 2006 that Locate had not traded in any shares in New Brunswick after 26 November 2003, which statement was false.
  4. Drever made representations to Staff on 9 February 2006 that Tubtron had not traded in any shares in New Brunswick after 26 November 2003, which statement was false.
  5. On 9 February 2006 and 22 June 2006, Drever provided to Staff what he purported to be complete shareholder lists for Locate and Tubtron, when in fact these lists were not complete and constituted misrepresentations.
  6. On 27 April 2007 Drever made a sworn statement to Staff that a list provided by him constituted a “complete list of all persons and corporations who are shareholders of Locate Technologies”, which statement was false.
  7. On 27 April 2007 Drever made a sworn statement to Staff that a list provided by him constituted a “complete list of all persons and corporations who are shareholders of Tubtron Controls”, which statement was false.
  8. Failed to advise investors that the shares they were buying had been cease-traded by order of the Court of Queen’s Bench of New Brunswick.
99. Drever knew or ought to have known that the above referenced statements were misleading or untrue and constituted misrepresentations. These statements by Drever are acts contrary to the public interest and also constitute violations of sections 179(2)(a) and

58(4) of the *Securities Act*.

100. Cody represented to Staff of the Commission on one or more occasions that:
  1. he had not engaged in trading of securities between Feb. 2002 to Sept. 2005,
  2. He had not received payment of money for his involvement in the sale of Locate and/or Tubtron shares to New Brunswick investors, and
  3. That he had no business relationship with Niles, Drever, Locate or Tubtron,which statements were misleading or untrue.
101. Cody knew or ought to have known that the above referenced statements were false and constituted misrepresentations. These statements by Cody are acts contrary to the public interest and also constitute violations of sections 179(2)(a) and 58(4) of the *Securities Act*.
102. Nason represented to Staff of the Commission on one or more occasions that:
  1. He had not received payment of money for his involvement in the sale of Locate and/or Tubtron shares to New Brunswick investors or any other reason,which statements were misleading or untrue.
103. Nason knew or ought to have known that the above referenced statements were false and constituted misrepresentations. These statements by Nason are acts contrary to the public interest and also constitute violations of sections 179(2)(a) and 58(4) of the *Securities Act*.
104. On 6 August 2002, Niles undertook not to trade in any securities without becoming registered. Niles subsequently repeatedly breached this undertaking.
105. Those breaches by Niles are acts contrary to the public interest and also constitute violations of sections 179(2)(d) and (e) of the *Securities Act*.

## **RELIEF SOUGHT**

106. Staff seeks the following relief:
  1. Upon the commencement of a hearing in this proceeding, an order that the temporary order issued in this matter on 15 October 2007 continue and remain in effect until the final adjudication of this matter.
  2. Upon the conclusion of a full hearing in this matter, an order that:

1. pursuant to sections 184(1)(c) of the *Securities Act* all trading in the securities of Locate and Tubtron by Locate, Tubtron, their officers, directors, employees and/or agents, 706166, BCS, Drever, Niles, Cody, and Nason, or anyone else, shall cease permanently or for such period as is specified by the Commission;
2. pursuant to sections 184(1)(c), Locate, Tubtron, 706166, BCS, Drever, Niles, Cody and Nason cease trading in all securities permanently or for such period as is specified by the Commission;
3. pursuant to sections 184(1)(a), any registration granted to Cody and Nason be suspended permanently or for such period as is specified by the Commission;
4. pursuant to section 186, Locate, Tubtron, 706166, BCS, Drever, Niles, Cody and Nason each pay an administrative penalty;
5. pursuant to section 185(1) and 185(2) of the Act, the respondents each pay an appropriate portion of the fees and expenses for the costs of investigation and the fees and expenses relating to costs of or related to the hearing;
6. pursuant to section 184(1)(i) of the *Securities Act*, Drever, Niles, Cody and Nason are each prohibited from becoming or acting as a director or officer of any issuer; and
7. pursuant to section 184(1)(d) of the *Securities Act*, any exemptions in New Brunswick securities law do not apply to the respondents permanently, or for such period as is specified by the Commission.
8. pursuant to section 184(1)(p) of the *Securities Act*, that the respondents Niles, Bradley Corporate Services Ltd., Cody and/or Nason disgorge any amounts obtained as a result of their non-compliance.

3. Such further relief as Staff may request and the Commission may allow.

DATED at the City of Saint John this 23rd day of October 2008.

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