

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 1

NOTICE OF APPEAL (RULE 6(1))



Court of Appeal File No.
(For Registry Use Only)

Case File No. **CA50339**

Supreme Court File No.

The file number can be found on the upper right corner of the Supreme Court documents

Supreme Court Registry Location

To the respondent(s)

A Court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

1. PARTIES TO THE APPEAL

Appellant(s)

List the party(ies) appealing the Supreme Court or tribunal order. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (plaintiff, petitioner, etc.)

David Smillie (Respondent)

Respondent(s)

List the other party(ies) in the Supreme Court or tribunal order you are appealing who are affected by the appeal. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (defendant).

Executive Director of the British Columbia Securities Commission (Executive Director), British Columbia Securities Commission, and 1081627 B.C. Ltd. operating as ezBtc (Respondent)

2. THE ORDER YOU ARE APPEALING

Is leave to appeal required?
Court of Appeal Rule 12 explains when you need leave to appeal. If you are unsure, check "Yes".

☒ Yes ☐ No

Who made the order?
Name the justice or other decision maker who pronounced the order you are appealing.

Audrey T. Ho, James Kershaw, and Marion Shaw (Commissioners)

What court and/or tribunal pronounced the order(s)?

☐ Supreme Court ☒ Tribunal

British Columbia Securities Commission

Name of tribunal

Date the order was pronounced
Include the day, month and year that the order being appealed was pronounced (not the date the order was entered).

27/11/2024

DD/MM/YYYY

City where the order was pronounced

Vancouver

Length of lower court hearing
Indicate in days or hours the length of the hearing that led to the order you are appealing from. For example, if you are appealing a judgment from a trial that took two hours, enter "two hours."

Written submissions only for sanctions decision

What type of proceeding are you appealing from?
Check one only.

☐ Trial Judgment ☒ Order of a Tribunal
☐ Summary Trial Judgment ☐ Chambers Judgment

3. RELIEF SOUGHT

If leave to appeal is not required, fill out Part A. If you are seeking leave to appeal, fill out Part B.

PART A: LEAVE NOT REQUIRED

Part of the order being appealed
If you only want to appeal one part of an order, enter the part that is being appealed.

Order(s) you are seeking on appeal

*Briefly list the order(s) you will ask this Court to make on appeal
For example: "Set aside the trial judgment and order a new trial".
Include any order as to costs.*

PART B: SEEKING LEAVE TO APPEAL

Part of the order being appealed

If you are only seeking leave to appeal one part of an order, enter the part that you are seeking leave to appeal.

The Decision by a Hearing Panel of the British Columbia Securities Commission (the "Panel") dated November 27, 2024. In particular, the Decision that:

1. Smillie resign any position he holds as a director or officer of any issuer or registrant;
2. Smillie is permanently prohibited:
 - a) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives, a specific security or derivative or a specified class of securities or class of derivatives, except that he may trade and purchase securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, if he gives the registered dealer or registrant a copy of this Decision;
 - b) under section 161(1)(c) of the Act, from relying on any exemptions set out in the Act, the regulations or a decision;
 - c) under section 161(1)(d)(ii) of the Act, from becoming or acting as a director or officer of any issuer or registrant;
 - d) under section 161(1)(d)(iii) of the Act, from becoming or acting as a registrant or promoter;
 - e) under section 161(1)(d)(iv) of the Act, from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;
 - f) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity; and
 - g) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected to benefit him; and
3. Smillie pay to the Commission:
 - a) \$10.4 million, jointly and severally with ezBtc, under section 161(1)(g) of the Act; and
 - b) an administrative penalty of \$8 million under section 162 of the Act.

Grounds for leave to appeal

Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.

The grounds of appeal are that the Panel:

1. erred in law in making a disgorgement order of \$10.4 million jointly and severally liable with ezBtc without an evidentiary or factual basis or findings that Mr. Smillie was individually correspondingly enriched, and failing consider the Executive Director's ability to trace transfers of funds beyond Cloudbet and Fortunejack.
2. erred in law in and exceeded its jurisdiction by interpreting section 162 of the Securities Act in ordering Administrative Monetary Penalties against the Appellant in the sum of \$8 million.
3. erred in law by ordering a Disgorgement Order without adequate reasons; (b) determining the

date of the loss of cryptocurrency assets arbitrarily by determining not the dates of any transfers, but valuing the cryptocurrency on the midpoint of start and end of individual complaints (c) the order is arbitrary, overly broad and proportionate and contrary to section 7 of the Charter and the principles of fundamental justice.

4. erred in law by ordering a penalty of \$8,000,000 that is in pith and substance, penal and not administrative.

5. erred in law by ordering the Appellant to resign from any position held as a director and officer of all issuers pursuant to section 161(1)(d)(i) of the Securities Act, without limitation, including private companies of which he is a sole shareholders which is not in the public interest and contrary to section 7 of the Charter and the principles of fundamental justice.

6. Erred in law by the Panel exceeding its jurisdiction by finding that the cryptocurrency exchange activities of ezBtc and Mr. Smillie fell within the jurisdiction of the Securities Act.

7. Erred in law in failing to observe the principals of natural justice and procedural fairness by failing to consider the delay by the Executive Director in bringing enforcement action against the Appellant, the regulatory uncertainty when the BC Securities Commission did not expressly take jurisdiction over cryptocurrency activities at the relevant period of time.

8. further and other such grounds and this Honourable Court may permit.

4. ADDITIONAL INFORMATION

Sealing order

Is there an order sealing any part of the trial court or tribunal file?
If yes, add date(s).

☐ Yes ☒ No

Date

DD/MM/YYYY

Anonymity order/publication ban

Are there orders that protect the identity of a party or parties?
If yes, add date(s).

☐ Yes ☒ No

Date

DD/MM/YYYY

Areas of law raised in the appeal

You may check more than one box if appropriate. For example, you should check "motor vehicle accidents" and "torts" for a personal injury claim involving a motor vehicle accident.

☒ Constitutional/Administrative
☐ Motor Vehicle Accidents
☐ Torts
☐ Divorce Act (Canada)

☒ Civil Procedure
☐ Municipal Law
☐ Equity
☐ Family Law Act

☒ Commercial
☐ Real Property
☐ Wills and Estates
☐ Other

Appeals involving children

Does this appeal involve the rights or interests of a child? E.g., Parenting order

☐ Yes ☒ No

5. SERVICE

Are you representing yourself?

☐ Yes ☒ No

Name(s) and address(es)
within BC for service of
appellant(s). If you have a
lawyer, include the law firm's
address; otherwise provide your
own residential address.

Reedman Law
1030 W Georgia St #800a
Vancouver, BC V6E 2Y3
(attention: Cody G. Reedman)

Phone number(s) of appellant(s)

604-570-0005

Email address(es) for service of
appellant(s)
If you provide an email address,
you are consenting to have
documents served on you by
email.

creedman@reedmanlaw.com
cc: service@reedmanlaw.com

Date form completed

Date

24/12/2024

Name of lawyer or party
authorizing filing of this form

Cody Reedman

DD/MM/YYYY

To the appellant(s):

You must file and serve this form on each respondent named in this document within the timelines required by the *Court of Appeal Act* and Court of Appeal Rules. You must file a Notice of Hearing **not more than one year** after filing this Form 1 or your appeal will be placed on the inactive list (Rule 50(1)(a)).

To the respondent(s)

If you intend to participate in this proceeding, **you must give notice** of your intention by doing the following **not more than 10 days** after receiving this Notice of Appeal: (1) file a "Notice of Appearance" (Form 2 of the *Court of Appeal Rules*) in a Court of Appeal registry and; (2) serve the Notice of Appearance on the appellant.

If you fail to file and serve a Notice Appearance:

- (a) You are presumed to take no position on the appeal, or the application for leave to appeal (if leave is required).
- (b) The parties are not obliged to serve you with any further documents related to the appeal, including an order granting leave to appeal (if leave is required).

You are presumed to take no position if you fail to file and serve a Notice of Appearance within the time described above. The filing registries for the British Columbia Court of Appeal are as follows.

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby St.
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248
STN PROV GOVT
850 Burdett Ave.
Victoria BC V8W 1B4

B.C. Court of Appeal
223 - 455 Columbia St.
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468.