



Citation: 2013 BCSECCOM 131

**Thalbinder Singh Poonian, Shailu Sharon Poonian, Robert Joseph Leyk,
Manjit Singh Sihota and Perminder Sihota**

Securities Act, RSBC 1996, c. 418

Panel	Suzanne K. Wiltshire	Commissioner
	Kenneth G. Hanna	Commissioner
	Don Rowlatt	Commissioner

Date of hearing February 1, 2013

Date of ruling February 8, 2013

Date of reasons for ruling July 12, 2013

Appearing

C. Paige Leggat For the Executive Director

Sean K. Boyle For Manjit Sihota and Perminder Sihota
Freda Carmack

Jeremy D. West For Thalbinder Singh Poonian and Shailu Sharon
Ryan Lee Poonian

Reasons for Ruling

INTRODUCTION

- ¶ 1 On August 2, 2012, the executive director issued a notice of hearing and temporary order under section 161(2) of the *Securities Act*, RSBC 1996, c. 418 against the respondents, Thalbinder Singh Poonian (Thal Poonian), Shailu Sharon Poonian (Sharon Poonian), Robert Joseph Leyk (Leyk), Manjit Singh Sihota (Manjit Sihota) and Perminder Sihota (2012 BCSECCOM 306).
- ¶ 2 In the notice of hearing, the executive director alleges that the respondents
- acquired a dominant share position in the shares of OSE Corp.(OSE), an Ontario company listed on the TSX Venture Exchange (TSX-V), by purchasing its shares at \$0.10 to \$0.11 in two private placements;



- b) manipulated the price of OSE shares to around \$2.00 per share by trading through brokerage accounts held by the respondents and certain relatives, friends and associates of the respondents (collectively referred to in the notice of hearing as the Poonian Group); and
 - c) made approximately \$7 million by selling OSE shares to clients of Phoenix Credit Risk Management Consulting Inc. (Phoenix), an Ontario debt management company that purports to help individuals access funds in their registered retirement savings plans or locked-in retirement accounts.
- ¶ 3 The executive director alleges that through this conduct, the respondents contravened section 57(a) of the Act by engaging or participating in conduct relating to OSE shares when they knew, or reasonably should have known, that the conduct resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, OSE shares.
- ¶ 4 On August 14, 2012, we extended the temporary order and adjourned to September 24, 2012, the executive director's application for an order under section 161(3) to further extend the order.
- ¶ 5 On September 24, 2012, we varied paragraph 3(b) of the temporary order, extended the temporary order as varied, and adjourned to February 1, 2013, the executive director's application to further extend the order.
- ¶ 6 We heard the executive director's application to extend the temporary order on February 1, 2013. Leyk had notice, but did not appear or make submissions and has not participated in the proceedings. The other respondents appeared through counsel.
- ¶ 7 On February 8, 2013, we extended the temporary order, as previously varied, until a hearing is held and a decision is rendered.
- ¶ 8 The temporary order, as varied, is that until a hearing is held and a decision rendered,
 - a) each respondent cease trading in and is prohibited from purchasing securities, except that each respondent may trade and purchase securities in accounts in his or her own name at one registered dealer if he or she first gives the dealer a copy of this temporary order and provides the dealer's name to the executive director;
 - b) each respondent resign any position he or she holds, and is prohibited from becoming or acting, as a director or officer of any issuer; other than an issuer all the securities of which are owned by him or her; except that Manjit Singh Sihota may act as an officer and director of Richmond Plywood Corporation Limited; and



- c) each respondent is prohibited from engaging in investor relations activities.

¶ 9 These are our reasons for extending the temporary order.

EXTENSION OF TEMPORARY ORDER

¶ 10 Section 161(3) of the Act says:

If the commission...considers it necessary and in the public interest, the commission...may...make an order extending a temporary order until a hearing is held and a decision rendered.

¶ 11 When seeking to extend a temporary order in cases such as this, the onus is on the executive director to produce evidence for the panel to assess whether there is *prima facie* evidence of the misconduct alleged and whether in the circumstances it is necessary and in the public interest to extend the temporary order against each respondent. See *Fairtide Capital Corp.* 2002 BCSECCOM 993; and *Terry James Minnie and Raymond Patrick Shaw* 2004 BCSECCOM 677.

¶ 12 As the commission stated in *Fairtide* and *Minnie*, there is no bright line test for the commission to determine whether extending the temporary order is necessary and in the public interest. Rather, as stated in *Fairtide* at paragraph 29, the commission

... considers evidence using its expertise and specialized understanding of the markets and the securities related activities it supervises to determine what is in the public interest in any given circumstance.

EVIDENCE

¶ 13 The executive director filed lengthy affidavits of two staff investigators which contained 196 exhibits in total. The respondents did not tender any evidence and did not seek to cross-examine any of the affiants. For the purpose of the application, the respondents did not contest that there was *prima facie* evidence of the misconduct alleged.

¶ 14 The executive director's evidence was extensive. Most of it was documentary evidence which included

- records from or filed by OSE such as regulatory filings, news releases, financial statements, information circulars, treasury orders and exempt distribution reports
- records from the TSX-V and IIROC regarding OSE shares, including trade summary and surveillance reports and High-Low-Close reports
- records from OSE's share transfer agents
- brokerage records, including account statements for accounts held by Poonian Group members, account opening documents and third-party securities deposit forms



- bank records including account opening documents, account statements, cheques, bank drafts, and transfer and deposit receipts
- telephone records for accounts in the name of
 - a. Sharon Poonian and Shailu (aka Sharon) Poonian, including one phone number Thal Poonian listed in an account opening statement as his cellular phone number; and
 - b. Marco Myatovic (Myatovic), a Canaccord Capital Corporation broker for some Poonian Group members
- transcripts of sworn interviews, including those of
 - a. the respondents Sharon Poonian and Manjit Sihota
 - b. three placees in the OSE private placements who are members of the Poonian Group
 - c. Jawad Rathore (Rathore) and Vincenzo Petrozza, officers and directors of Phoenix
- emails between Rathore and a Hotmail email account for “Tim Jensen” that, according to Rathore, Thal Poonian used to communicate with Rathore about trading OSE shares. The emails from Rathore to Thal Poonian included the number of OSE shares purchased, the price, brokerage firm used and referral fee
- a settlement agreement between the Ontario Securities Commission (OSC) and Phoenix, Rathore, Petrozza and others
- Land Title and Company Registry records.

¶ 15 The evidence was not controverted. It shows the following.

¶ 16 The respondents at all material times resided in British Columbia.

¶ 17 The respondent Poonians and Sihotas are relatives.

¶ 18 Manjit Sihota and Leyk were directors and Manjit Sihota was an officer of OSE. Thal Poonian is the officer and director of two TSX-V listed companies, one incorporated in BC and one in Alberta. Leyk was a director of one of these companies until 2010 and Manjit Sihota was a director of the other. These two companies and OSE share a head office in Delta, BC. According to a BC Assessment Roll Report, Perminder Sihota owns the commercial property where the office is located.

¶ 19 Leyk was the sole officer and director of 0805912 B.C. Ltd.

¶ 20 Thal Poonian and Leyk formerly were registered representatives under the Act.



- ¶ 21 In September and December 2007, OSE distributed shares and warrants through two private placements, at \$0.10 and \$0.11 per unit (consisting of one share and one warrant), respectively. OSE relied on the family, friends and business associates exemption to make these private placements. Following the private placements, the Poonian Group held 88% of OSE's issued and outstanding shares. Leyk and Manjit Sihota signed the OSE treasury orders for these private placements.
- ¶ 22 Between January 2008 and February 2009, several placees exercised warrants and acquired additional OSE shares. Leyk and Manjit Sihota signed the treasury orders for the issuance of these shares.
- ¶ 23 In numerous instances, at or around the time the placees paid OSE for their shares, Thal Poonian, through a bank account held in the name JCP Financial Ltd., or Leyk, through 0805912 B.C. Ltd., paid the placees an amount equal to the amount they paid for their shares. Banking records show JCP Financial's address as the Vantage Way premises and Thal Poonian as its president with signing authority over its accounts.
- ¶ 24 Before December 20, 2007, OSE shares traded only sporadically. The last board lot trade was at \$0.29 a share, on November 27, 2007.
- ¶ 25 Between December 20, 2007 and January 2, 2008, accounts held by Poonian Group members purchased 64,500 OSE shares. These purchases accounted for 81% of the total trading volume. There were seven uptick trades and three high closing trades.
- ¶ 26 Thal Poonian had trading authority over, and traded through, some of the Poonian Group members' accounts.
- ¶ 27 The respondents issued cheques and delivered bank drafts to members of the Poonian Group that were used to cover debit balances in the members' brokerage accounts.
- ¶ 28 On January 2, 2008, the OSE share price closed at \$1.00.
- ¶ 29 On January 9, 2008, there were 12 uptick trades of OSE shares in accounts held by Poonian Group members and the share price closed at \$1.50.
- ¶ 30 On January 10 and April 18, respectively, the shares issued in the two private placements became free trading.
- ¶ 31 Between January 10, 2008 and March 31, 2009, accounts held by Poonian Group members dominated trading in OSE shares – this trading accounted for 65% of the purchase volume and 89% of the selling volume. Approximately 200 trades were uptick trades and at least 10.4 million shares were traded where a Poonian Group account was on both sides of the trade.



- ¶ 32 From January 10 to January 31, 2008, the OSE share price increased steadily, closing at \$2.00 on January 31. Between February and September 2008, the OSE share price traded at around \$2.00 a share and between October and December 2008, was between \$1.50 and \$1.98 a share.
- ¶ 33 Myatovic is a broker at Canaccord Capital Corporation and the broker for several Poonian Group members. The evidence shows trades being made during or shortly after phone calls between Myatovic and phone numbers listed as belonging to Sharon or Shailu (aka Sharon) Poonian. The evidence also shows that Thal Poonian listed one of the phone numbers as his in Canaccord Capital account opening documents. It is also the phone number that Rathore of Phoenix used to call Thal Poonian.
- ¶ 34 According to Rathore in his settlement agreement with the OSC, Thal Poonian agreed to pay him fees for referring Phoenix clients to buy OSE shares. Between January 2008 and March 2009, Phoenix clients purchased more than 4.6 million OSE shares, almost all of them from accounts held by Poonian Group members. The average price was \$1.80 per share for a total cost of more than \$8 million.
- ¶ 35 Between November 2007 and March 2009, Sharon Poonian, Leyk through 0805912 B.C. Ltd., Thal Poonian through JCP Financial's bank account and Thal Poonian's parents, paid \$2.6 million to Phoenix Pension Services Inc. and Rathore & Associates Asset Management Ltd., two companies controlled by Rathore. In his interview under oath with OSC and BCSC staff, Rathore said that these were payments for referring Phoenix clients to purchase shares in Thal Poonian's companies, including OSE.
- ¶ 36 The accounts held by Poonian Group members made more than \$7 million by selling OSE shares.
- ¶ 37 The OSE share price declined rapidly after mid January 2009 closing at \$0.08 on March 31, 2009. Based on their net holding of OSE shares on that date, Phoenix clients had unrealized losses of more than \$7 million. After March 31, 2009, the average closing price of OSE shares was \$0.047 from April 1 to December 31, 2009, and \$0.035 from January 1 to December 31, 2010.

Evidence Relating to Thal Poonian

- ¶ 38 Thal Poonian was not a placee in either private placement, but on January 15, 2008, three of the September private placement placees transferred 900,000 OSE shares (by then free trading) to Thal Poonian. On June 11, 2008, a December private placement placee transferred 300,000 of her OSE shares to Thal Poonian.
- ¶ 39 Between September 2007 and March 31, 2009, he purchased 1,124,200 OSE shares on the TSX-V, 916,600 of which were purchased from members of the Poonian Group.



- ¶ 40 He sold 1,354,100 shares during that period. Of those shares, he sold 622,000 to members of the Poonian Group and 636,200 (worth \$1,246,906) to Phoenix clients.
- ¶ 41 He issued cheques and paid bank drafts from his bank account and that of JCP Financial to six members of the Poonian Group, totaling \$672,000, that were used to cover debits in the members' brokerage accounts.
- ¶ 42 He issued five cheques from JCP Financial's account, totaling \$176,000, to Rathore & Associates Management Ltd. He issued a number of cheques from his bank account and that of JCP Financial Ltd. to 0805912 B.C. Ltd. which were followed on the same day by a payment from 0805912 B.C. Ltd. to Phoenix Pension Services Inc. or Rathore & Associates Asset Management Ltd.
- ¶ 43 He paid \$347,500 in total to 0805912 B.C. Ltd. and \$54,000 to Manjit Sihota.

Evidence Relating to Leyk

- ¶ 44 Leyk received 1.2 million OSE shares during the two private placements and in January 2008, he transferred 400,000 shares to Thal Poonian. He exercised warrants in February 2009 and obtained 800,000 more OSE shares.
- ¶ 45 From September 2007 to March 2009, his company 0805912 B.C. Ltd. purchased 198,500 shares and sold 1,650,000 shares of OSE. Of the shares purchased, 155,500 were purchased from Poonian Group members. Of the shares sold, 1,416,600 were sold to Poonian Group members and 181,700 (worth \$359,097) were sold to Phoenix clients.
- ¶ 46 He issued cheques and delivered bank drafts from the account of 0805912 B.C. Ltd. to eight Poonian Group members, totaling \$2,926,300, that were used to cover debits in the members' brokerage accounts.
- ¶ 47 He transferred funds and issued cheques from the account of 0805912 B.C. Ltd. to Phoenix Pension Services Inc. totaling \$46,875 and to Rathore & Associates Asset Management Ltd. totaling \$1,858,000.
- ¶ 48 He issued 10 cheques and made four transfers totaling \$587,454 to Sharon or Thal Poonian, and issued six cheques totaling \$209,000 to Manjit and Perminder Sihota.

Evidence Relating to Sharon Poonian

- ¶ 49 Sharon Poonian received 1.05 million OSE shares during the two private placements and in January 2008, exercised warrants and obtained 650,000 more shares. Between June and December 2008, four Poonian Group members also transferred 1,090,185 OSE shares to her.



- ¶ 50 Between September 5, 2007 and March 31, 2009, she purchased 1,476,800 OSE shares on the TSX-V. Of those shares, she purchased 1,307,200 from members of the Poonian Group.
- ¶ 51 She sold 3,204,000 shares during that period. Of the 3,204,000 shares sold, she sold 2,190,900 shares to members of the Poonian Group and 830,300 shares (worth \$1,661,982) to Phoenix clients.
- ¶ 52 She issued cheques from her bank account to six members of the Poonian Group, totaling \$1,138,100, that were used to cover debits in the members' brokerage accounts.
- ¶ 53 She made one transfer and issued seven cheques totaling \$331,900 to Manjit and Perminder Sihota. She made one transfer and issued 21 cheques totaling \$1,134,500 to 0805912 B.C. Ltd.
- ¶ 54 She issued one cheque for \$170,000 to Phoenix Pension Services Inc., and issued seven cheques and made four transfers totaling \$293,000 to Rathore & Associates Asset Management Ltd.

Evidence Relating to Manjit Sihota and Perminder Sihota

- ¶ 55 Manjit Sihota received 250,000 OSE shares during the December private placement and subsequently obtained 150,000 shares from another placee.
- ¶ 56 Between September 5, 2007 and March 31, 2009, he purchased 449,900 OSE shares on the TSX-V. He purchased 413,100 of those shares from members of the Poonian Group. He sold 329,000 shares, 323,600 of which he sold to members of the Poonian Group.
- ¶ 57 Perminder Sihota received 200,000 OSE shares during the December private placement. A total of 950,000 shares were transferred from two other placees to the Skyway Foundation of Canada, an Ontario corporation with a mailing address at the Vantage Way premises, of which Perminder Sihota was a director. She subsequently exercised warrants in February 2008 and February 2009, and obtained an additional 1.1 million OSE shares.
- ¶ 58 Between September 5, 2007 and March 31, 2009, she purchased 337,900 OSE shares on the TSX-V. She purchased 320,700 of those shares from members of the Poonian Group.
- ¶ 59 She sold 1,273,100 shares during that period. Of those shares, she sold 1,145,000 shares to members of the Poonian Group and 128,100 shares (worth \$202,653) to Phoenix clients.
- ¶ 60 Manjit Sihota issued cheques from his and Perminder's joint line of credit to members of the Poonian Group, totaling \$1,315,500, that were used to cover debit balances in the members' brokerage accounts.



- ¶ 61 Manjit Sihota and Perminder Sihota also issued 13 cheques totaling \$900,500 from their joint line of credit to Sharon and Thal Poonian. Perminder Sihota signed one of these cheques, for \$30,000 to Sharon Poonian. Perminder Sihota also issued from, the joint line of credit, a cheque for \$22,000 to Thal Poonian's father (her uncle) who was also a member of the Poonian Group.
- ¶ 62 Manjit Sihota and Perminder Sihota issued 17 cheques and made one transfer to 0805912 B.C. Ltd. totaling \$747,750. Perminder Sihota signed one of the cheques to 0805912 B.C. Ltd. for \$10,250. On the same day her cheque was deposited into 0805912 B.C. Ltd.'s account, \$10,000 was transferred from 0805912 B.C. Ltd.'s account to Rathore & Associates Asset Management Ltd.

ANALYSIS

***Prima facie* evidence of alleged misconduct**

- ¶ 63 As noted above, for the purpose of the application the respondents did not contest that there was *prima facie* evidence of the alleged misconduct.
- ¶ 64 Section 57 (a) of the Act says:
- A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct
- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract...
- ¶ 65 The evidence shows, to a *prima facie* standard, that all respondents directly or indirectly participated in conduct relating to securities, such as trading or arranging trades, paying for trades or referral fees for trades, receiving shares, and paying or receiving payment from other respondents and Poonian Group members.
- ¶ 66 The evidence also shows several classic hallmarks of market manipulation with respect to OSE shares, such as market dominance, upticks and high closing. In addition, OSE's public disclosure provides no reasonable justification for the price increases seen during the relevant period. This is *prima facie* evidence of a misleading appearance of trading activity in, or an artificial price for, OSE shares.
- ¶ 67 Finally, we find to a *prima facie* standard that the respondents knew or ought to have known that their conduct would result in or contribute to a misleading appearance of trading activity in, or an artificial price for, OSE shares.
- ¶ 68 Thal Poonian, Leyk and Manjit Sihota were directors or former directors of public companies, including OSE in the case of Manjit Sihota and Leyk. Thal Poonian and Leyk were former registrants under the Act.



- ¶ 69 Leyk and Manjit Sihota authorized the private placements to Poonian Group members and authorized exercise of warrants. Thal Poonian directed trades of OSE shares, traded in the accounts of Poonian Group members and agreed to pay fees for Rathore referring Phoenix clients.
- ¶ 70 All of the respondents were involved in trading OSE shares and many of the trades were with other members of the Poonian Group and to Phoenix clients.
- ¶ 71 The respondents received private placement shares, exercised warrants and made or received payments to or from Poonian Group members or respondents. They also paid companies related to Rathore, which he says were fees for referring Phoenix clients to purchase OSE shares.
- ¶ 72 Based on our review of the evidence, and taking into consideration the fact that the respondents did not contest there was a *prima facie* case, we find the executive director has provided *prima facie* evidence that the respondents contravened section 57(a) of the Act.

Is it necessary and in the public interest to extend the temporary order

- ¶ 73 The respondents argued that extension of the temporary order can only be necessary and in the public interest if there is some evidence of ongoing or recent misconduct. They argued that there can only be a risk of future harm if there is current ongoing conduct. We disagree.
- ¶ 74 While ongoing misconduct is one factor that can be considered when determining what is necessary and in the public interest, it is not the only factor. Past conduct can show a risk of future harm. In our view, in this instance we need to consider the nature of the *prima facie* case.
- ¶ 75 Here, the evidence shows a *prima facie* case of serious misconduct, namely market manipulation, a type of fraud. As this commission has stated, “[n]othing strikes more viciously at the integrity of our capital markets than fraud”: *Manna Trading Corp Ltd.*, 2009 BCSECCOM 595.
- ¶ 76 The evidence shows, to a *prima facie* standard, that a sophisticated fraud was carried out through carefully orchestrated steps over an extended period of time; it involved multiple parties, accounts and jurisdictions; and resulted in approximately \$7 million in trading profits.
- ¶ 77 Significantly, unlike in many market manipulation cases, there is *prima facie* evidence that a specific group of individual investors was targeted and harmed.



- ¶ 78 This *prima facie* case is based on a large volume of documentary evidence, much of it coming from various participants in the scheme or third parties; it is much more than “staff’s opinion or belief”: *Minnie*, paragraph 22.
- ¶ 79 The respondents asked us to draw comparisons to other cases where temporary orders were not issued in instances where serious misconduct was alleged. We do not find these comparisons helpful. As noted in *Fairtide*, we must consider the public interest in the circumstances of this particular case and on the current state of the evidence.
- ¶ 80 The respondents also argued that the temporary orders are onerous and caused or would cause them harm, including reputational harm. There was no evidence to support these claims.
- ¶ 81 In *Fairtide* at paragraphs 17 and 18, the commission said:
17. The Securities Act is a regulatory statute with a public interest mandate. Its overarching purpose is to ensure investor protection, capital market efficiency and public confidence in the system. See: *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at 589; *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 at 26; *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494.
18. The public interest purpose in imposing regulatory enforcement orders is neither remedial nor punitive but protective and prospective in nature. The purpose of these powers is to **prevent likely future harm to the integrity of our capital markets** not to punish.
- (emphasis added)
- ¶ 82 We believe the integrity of our markets would be harmed and that the public would lose confidence in our system if the respondents were allowed to participate in our markets in the face of this *prima facie* evidence of serious misconduct. As the commission stated in *Minnie*, “where there is *prima facie* evidence of egregious behaviour, our main aim must be to protect the public”.
- ¶ 83 Based on the sophistication of the scheme in issue here, we also believe that there is a risk that the respondents could participate, directly or indirectly, in conduct relating to securities trading that harms our markets.
- ¶ 84 For these reasons, we extended the temporary order until a hearing is held and a decision rendered.



¶ 85 These reasons are based on the *prima facie* evidence, which was not contested by the respondents. We have not made any findings of a contravention of the Act - the Executive Director has the onus to prove the alleged misconduct at the hearing.

¶ 86 July 12, 2013

¶ 87 **For the Commission**

Suzanne K. Wiltshire
Commissioner

Kenneth G. Hanna
Commissioner

Don Rowlatt
Commissioner