

VANCOUVER

Court of Appeal File No.

CA 042715

APR 13 2015

COURT OF APPEAL

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BETWEEN:

MANJIT SIHOTA AND PERMINDER SIHOTA

APPELLANTS

AND

BRITISH COLUMBIA SECURITIES COMMISSION AND THE EXECUTIVE DIRECTOR
OF THE BRITISH COLUMBIA SECURITIES COMMISSION

RESPONDENTS

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that Manjit Sihota and Perminder Sihota (collectively, the "Applicants"), hereby apply for leave to appeal to the Court of Appeal for British Columbia from the order of the British Columbia Securities Commission ("Commission") pronounced on March 13, 2015 ("Decision") at Vancouver, British Columbia.

1. The appeal is from a:

- ☐ Trial Judgment ☐ Summary Trial Judgment
☒ Order of a Statutory Body ☐ Chambers Judgment

2. If the appeal is from an appeal under Rule 18-3 or 23-6 (8) of the *Supreme Court Civil Rules* or Rule 18-3 or 22-7 (8) of the *Supreme Court Family Rules*, name the maker of the original decision, direction or order: N/A

3. Please identify which of the following is involved in the appeal:

- ☒ Constitutional/Administrative ☐ Civil Procedure ☐ Commercial
☐ Family ☐ Motor Vehicle ☐ Municipal Law
☐ Real Property ☐ Torts ☐ Equity
☐ Wills and Estates

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved at the hearing of this application for an Order that:

1. leave to appeal be granted;
2. if leave to appeal is granted, the following orders be made at the hearing of the appeal:
 - (a) an order that the disgorgement order in the amount of \$7,332,936 against the Applicants be set aside;
 - (b) an order that the administrative penalty in the amount of \$3,500,000 against Manjit Sihota be set aside;
 - (c) an order that the administrative penalty in the amount of \$1,000,000 against Perminder Sihota be set aside;
 - (d) a declaration of constitutional invalidity of the Commission's application of s. 162 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the "*Securities Act*") in the Decision, pursuant to s. 52 of the *Constitution Act, 1982*, as the appropriate and just remedy under s. 24(1) of the *Canadian Charter of Rights and Freedoms*, for infringement of s. 7 of the Charter on the grounds that the Decision is arbitrary, overly broad, levies a disproportionate administrative penalty upon the Applicants in a manner that does not accord with the principles of fundamental justice; and
 - (e) an order that the Applicants be granted costs of the appeal.

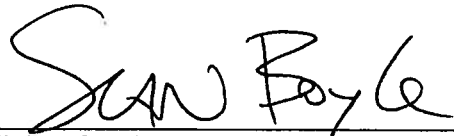
The grounds of appeal are that the Commission:

1. erred in law by making a joint and several order against the Applicants and others for disgorgement under s. 161(1)(g) of the *Securities Act* without an evidentiary basis or findings to establish that the Applicants received any of the funds ordered disgorged or were otherwise enriched;
2. erred in law and exceeded its jurisdiction by ordering an administrative penalty against the Applicants and others collectively of \$21,500,000 which sum is in excess of the maximum penalty of \$1 million per contravention as provided in s. 162 of the *Securities Act*, without particularizing the alleged contraventions or linking such contraventions to the \$21,500,000 penalty;
3. erred in law by ordering the \$21,500,000 penalty without giving any or adequate prior notice to the Applicants that the Commission was alleging anything other than a single contravention of the *Securities Act* by the conduct referred to in the Notice of Hearing, 2012 BCSECCOM 306;
4. erred in law by ordering a collective administrative penalty of \$21,500,000 selected as an amount approximately three times the amount order to be disgorged as a result of the contravention of s. 57(a) of the *Securities Act* because: (a) the order was made per incuriam and without adequate reasons; and (b) the order is arbitrary, overly broad and grossly disproportionate and contrary to s. 7 of the Charter and the principles of fundamental justice;

5. erred in law and exceeded its jurisdiction in ordering an administrative penalty of \$21,500,000 that is in pith and substance, penal and not administrative;
6. erred in law by interpreting s. 162 of the *Securities Act* as permitting it to order Manjit Sihota to pay the Commission an administrative penalty of \$3,500,000;
7. erred in law by interpreting s. 162 of the *Securities Act* as permitting it to order Perminder Sihota to pay to the Commission an administrative penalty in the amount of \$1,000,000;
8. erred in law in failing to observe the principles of natural justice and procedural fairness by:
 - a. failing to consider and conclude that the ex-parte communications between the prosecutorial and adjudicative branches of the Commission during an ongoing proceeding compromised the independence of the adjudicative branch of the Commission creating a reasonable apprehension of bias and compromising the independence of the Commission;
 - b. refusing to order the Executive Director of the British Columbia Securities Commission to make complete disclosure of in excess of 700 relevant documents in existence and in his possession, in breach of the requisite disclosure obligation.

The hearing of this proceeding occupied 11 days.

DATED at Vancouver, British Columbia, on this 13th day of April, 2015.



Solicitor for the Appellants
**Sean K. Boyle and Alexandra
Luchenko**

To the Respondents

British Columbia Securities Commission

Attention: Commission Secretary
1200 - 701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, BC V7Y 1L2

Executive Director of the B.C. Securities Commission

Attention: Paul Bourque
1200 - 701 Georgia Street
Vancouver BC V7Y 1L2
PO Box 10142

This NOTICE OF APPLICATION FOR LEAVE TO APPEAL is given by Sean K. Boyle of the firm BLAKE, CASSELS & GRAYDON LLP, Solicitors for the Appellant, whose address for service is Suite 2600, Three Bentall Centre, 595 Burrard Street, P.O. Box 49314, Vancouver, British Columbia, V7X 1L3. Telephone: 604.631.3300. Facsimile: 604.631.3309.

To the Respondents:

IF YOU INTEND TO PARTICIPATE in this proceeding, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and serve the notice of appearance on the appellant WITHIN 10 DAYS of receiving this Notice of Application for Leave to Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE,

- (a) you are deemed to take no position on the application, and
- (b) the parties are not obliged to serve you with any further documents related to the application.

The filing registries for the British Columbia Court of Appeal are as follows:

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby Street
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 Street
Kamloops, B.C. V2C 6K4

Inquiries should be addressed to (604) 660-2468
Fax filings: (604) 660-1951