

VANCOUVER

CA 042714

APR 13 2015

Court of Appeal File No. ....

COURT OF APPEAL  
REGISTRY

COURT OF APPEAL

IN THE MATTER OF THE SECURITIES ACT  
R.S.B.C. 1996, C. 418

BETWEEN:

Thalbinder Singh Poonian and Shailu Sharon Poonian

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 the Appellants, Thalbinder Singh Poonian and Shailu Sharon Poonian, hereby apply for leave to appeal to the Court of Appeal for British Columbia from the decision of a hearing panel (the "Panel") of the British Columbia Securities Commission (the "Commission") rendered on the 13<sup>th</sup> day of March, 2015 at Vancouver, British Columbia (the "Sanctions Decision").

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 Accidents

☐ 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 following orders from the Sanctions Decision be set aside or modified:
    - i. Order number 8, being the disgorgement order of \$7,332,936 made joint and severally against the Appellants and others;
    - ii. Orders number 9(a) and 9(b) being the Administrative Monetary Penalty of \$10,000,000 made against the Appellant, Thalbinder Singh Poonian, and the Administrative Monetary Penalty of \$3,500,000 made against the Appellant, Shailu Sharon Poonian; and
    - iii. Order number 3, being the order that the Appellants resign any position held as director and officer of any privately held company;
  - b) a declaration of constitutional invalidity of the Panel's application of sections 161(1)(d)(i) and 162 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the "*Securities Act*") in the Sanctions 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 Sanctions Decision is arbitrary, overly broad, levies a disproportionate administrative penalty upon the Appellants, and unjustly restricts their ability to conduct private business, resulting in the deprivation of their right to liberty and security of the person in a manner that does not accord with the principles of fundamental justice;
  - c) an order that the Appellants be granted their costs of the Appeal.

The grounds of appeal are that the Panel:

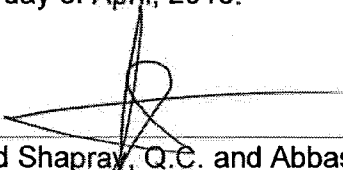
1. erred in law in making a disgorgement order of \$7,332,936 (the "Disgorgement Sum") pursuant to section 161(1)(g) *Securities Act*, jointly and severally against the Appellants and others without an evidentiary basis or findings to establish that the Appellants were individually correspondingly enriched;
2. erred in law and exceeded its jurisdiction by ordering Administrative Monetary Penalties against the Appellants and others collectively (the "Penalty") 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 interpreting section 162 of the *Securities Act* as permitting it to order a Penalty against the Appellant, Thalbinder Singh Poonian, in the sum of \$10,000,000 for a single breach of s. 57(a) of the *Securities Act*;
4. erred in law by interpreting section 162 of the *Securities Act* as permitting it to order a Penalty against the Appellant, Shailu Sharon Poonian, in the sum of \$3,500,000 for a single breach of s. 57(a) of the *Securities Act*;
5. erred in law by ordering a Penalty of \$21,500,000 without giving any or adequate prior notice to the Appellants 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;
6. erred in law in ordering a collective Penalty of \$21,500,000 selected as an amount approximately three times the Disgorgement Sum 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 disproportionate and contrary to section 7 of the *Charter* and the principles of fundamental justice;
7. erred in law and exceeded its jurisdiction in ordering a Penalty of \$21,500,000 that is in pith and substance, penal and not administrative;
8. erred in law in ordering the Appellants to resign from any position held as a director and officer of all issuers pursuant to section 161(1)(d)(i) *Securities Act*, without limitation, including private companies of which they are the sole shareholders (the "Director and Officer Prohibition") which is not in the public interest and contrary to section 7 of the *Charter* and the principles of fundamental justice;
9. erred in law and exceeded its jurisdiction in not limiting the Director and Officer Prohibition to British Columbia, thereby prohibiting them from conducting business through a corporate vehicle, without limitation;
10. 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 to make complete disclosure of in excess of 700 relevant documents in existence and in his possession, in breach of the requisite disclosure obligation;

11. such further grounds as counsel may advise and this Honourable Court may permit.

The hearing of this proceeding occupied one day.

Dated at Vancouver, British Columbia, this 13<sup>th</sup> day of April, 2015.



Howard Shapray, Q.C. and Abbas Sabur  
Shapray Cramer Fitterman Lamer LLP  
Solicitors for the Appellants,  
Thalbinder Singh Poonian and  
Shailu Sharon Poonian

To the Respondents  
And to its solicitor:

TO: Executive Director of the British  
Columbia Securities Commission  
701 West Georgia Street  
PO Box 10142, Pacific Centre  
Vancouver, BC V7Y 1L2

TO: British Columbia Securities  
Commission  
701 West Georgia Street  
PO Box 10142, Pacific Centre  
Vancouver, BC V7Y 1L2

This Notice of Application for Leave to Appeal is given by Howard Shapray, Q.C. and Abbas Sabur, of the firm Shapray Cramer Fitterman Lamer LLP, Solicitors for the Appellants, whose address for service is:

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Vancouver, BC V6C 3E1  
Tel: 604 681-0900  
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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 BC V2C 6K4

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