

May 13, 2016

TO: Brenda Leong - Chair
British Columbia Securities Commission
PO Box 10142 (Pacific Centre)
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2

FROM: Rod Wharram / West Karma Ltd., Deercrest Construction Fund Inc., Falls Capital Corp.



(the "Respondents in BCSC Action")

SENT VIA EMAIL TO: bleong@bcsc.bc.ca

RE: STAFF LITIGATORS ACTING IN BAD FAITH

FACTS

1. In June 2013, 3 of my companies and myself personally were parties in allegations brought forward by the *British Columbia Securities Commission* ("BCSC"). The Respondents attended a hearing from April 7 – April 16, 2014 at the Commissions office in Vancouver, completed Written Submissions from May - August of 2014 and finished Oral Submissions on November 21, 2014.
2. The Respondents at all relevant times were self-represented in the proceedings. The BCSC was represented by *Ms. C. Paige Leggat* ("Leggat") during the pre-hearing meetings, the hearing, and the Written Submissions. *Mr. Olubode Fagbamiye* ("Fagbamiye") was present for the pre-hearing meetings, the hearing, the Written Submissions, and the Oral Submissions.
3. As I have read on the *Law Society of BC's* website under *Standards of the Legal Profession*, it clearly states:

2.1-2 To Courts and Tribunals

(a) A lawyers conduct should at all times be characterized by candour and fairness. The lawyer should maintain toward a court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of clients, at the same time discharging professional duties to clients resolutely and with self-respecting independence.

(b) Judges, not being free to defend themselves, are entitled to receive the support of the legal profession against unjust criticism and complaint. Whenever there is proper ground for serious complaint against a judicial officer, it is proper for a lawyer to submit the grievance to the appropriate authorities.

(c) A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law and should not, either in argument to the judge or in address to the jury, assert a personal belief in an accused's guilt or innocence, in the justice of merits or the clients cause or in the evidence tendered before the court.

(d) A lawyer should never seek privately to influence a court or tribunal, directly or indirectly, in the lawyer's or a client's favour, nor should the lawyer attempt to curry favour with juries by fawning, flattery or pretended solicitude for the personal comfort.

EMPHASIS ADDED

4. And in the Annotations to *Chapter 2 – Standards of the Legal Profession Annotations to Rule 2.1-2 To Courts and Tribunals* it states:

A lawyer who is negligent and reckless and displays a casual disregard for the truth in making misrepresentations to the court and to the Law Society, is guilty of professional misconduct. [PCH] [DCD 01-16](#)

EMPHASIS ADDED

5. At all relevant times while my company was raising capital from investors, we relied upon exemptions allowed as per the Offering Memorandum given to investors at time of investment. This document is the foundation on which capital was raised by our companies and was professionally prepared by a Calgary Law firm.
6. The Executive Director and Staff Litigators entered my Offering Memorandums as exhibits from their Disclosure List during the hearing. These are documents they wanted to (and did) rely on during the proceedings.
7. At the conclusion of the hearing the parties were instructed to exchange Written Submissions by the Panel Chair.

STAFF'S ACTIONS ARE HORRIFIC

8. On May 23, 2014, Wharram received the *Executive Directors Submissions of Liability* via email and while reading it over he soon discovered the writer(s) had manipulated two significant portions of the document.
9. Specifically, in paragraph #10 (on page 5 of their Submission), the writers manipulated two different portions of the Offering Memorandum, removed the heading, and make a distinct

attempt to sway the reader of this paragraph into believing their theory that the Respondents did not advance the majority of the funds to the Developer.

10. In our *Reply Submissions on Liability* (dated July 6, 2014), we brought this to the attention of the Panel and the Executive Directors Staff yet they failed to address it in their *Executive Directors Reply Submissions on Liability* received by the Respondents on July 18, 2014.
11. On February 11, 2015, the Panel rendered their decision and thankfully we think they caught on to what the Executive Director's Litigation Staff were attempting. The allegations, specifically related to what they manipulated, were not proven and were dismissed by the Panel.
12. The following is the full paragraph #10 as it appeared in their submissions:
 10. The Falls 2007 OM and the Falls 2008 OM (collectively, the Falls OMs) said that the Falls would:
 - a) lend the majority of the funds raised from investors to a developer who was intending to develop the Falls Resort; and

The Corporation is raising funds pursuant to this Offering for the purpose of lending the majority of the funds raised hereunder for the purposes of meeting its financial contribution obligations as set forth in Item 2.2.3 below (the "FCC Loan").

The majority of the proceeds of this Offering will be loaned to meet its financial contribution obligations pursuant to 4 joint venture agreements to facilitate funding of The Falls: Road to 2010 Development. See Items 2.2.1 – The Joint Ventures and 2.2.3 – The Joint Venture Agreements; and

BCSC 00163/EXH00133 (the Falls 2007 OM) P4 Section 1.2 and P5-P7 Section 2.2

BCSC 00164/EXH00134 (the Falls 2008 OM) P4 Section 1.2 and P5 Section 2.2

Hearing Day 1 P47 L16-L25, P48-P51, P52 L1-L23, P56 L1-L4, P58 L8-L14 (Chan testimony)

13. Staff's submission has the appearance that it is all from one portion of the Offering Memorandum but it is not; it is actually from 2 different pages of the document. To top it all off, they actually omitted some of the titles and a graph that spelled out directly the formula that the Respondents were to adhere to while raising capital. The Respondents find this pathetic considering what was at stake if the Respondents had not pointed this out to the Panel in their Submissions.
14. This is how the section of the Offering Memorandum (as pointed out in the *Respondents Reply Submissions*) actually appeared:

68. Section 1.1 and 1.2 of the FCC Offering Memorandum(s) indicate:

1.1 Net Proceeds

The net proceeds of this Offering of Units (the "Offering") and the funds that will be available to the Corporation after this Offering are as follows:

	Assuming Minimum Offering	Assuming Maximum Offering
A Amount to be raised by issuance of this Offering	\$50,000	\$52,000,000
B Selling commissions (10%) ⁽¹⁾	\$0	\$0
C Working Capital Deficiency due to Offering costs	\$62,985	\$62,985
D Net proceeds: D = A - (B + C)	\$11,015	\$51,961,015

Notes:

⁽¹⁾Selling commissions, if any, shall be paid by West Karma Ltd ("WKL").

⁽²⁾Offering costs includes legal fees, accounting fees, printing expenses, and other third party costs. The Issuer has a working capital deficiency of \$62,985 as at October 15, 2007. The working capital has been advanced by WKL, a related company, to the Corporation and will be repaid from the proceeds of this Offering.

As of the date of this Memorandum, WKL owns 40% of the issued and outstanding Class A shares of the Corporation. The Officers and Directors of the Issuer are also Officers, Directors and Shareholders of West Karma Ltd. **See Item 3.1 - Compensation Paid and Securities Held.**

1.2 Use of Net Proceeds

The available funds will be used as follows:

Description of intended use of available funds listed in order or priority	Assuming Minimum Offering	Assuming Maximum Offering
1. The majority of the proceeds of this Offering will be loaned to meet its financial contribution obligations pursuant to 4 joint venture agreements to facilitate funding of The Falls: Road to 2010 Development. See Items 2.2.1 - The Joint Ventures and 2.2.3 - The Joint Venture Agreements, and	\$1,015	\$50,200,000
2. To pay for all management, administration, marketing and operating expenses incurred by the Issuer in the conduct of its business. See Item 2.9 - Material Agreements.	\$10,000	\$1,761,015
Total	\$11,015	\$51,961,015

BCSC00163/EXH00133 (the Falls 2007 OM) P4 Section 1.1 - 1.2
 BCSC00164/EXH00134 (the Falls 2008 OM) P4 Section 1.1 - 1.2 [Emphasis Added]

15. The point the Respondents are trying to make is that the definition of 'majority' came into play throughout the hearing in April 2014. Staff relied upon summary information and did

not take into consideration all relevant expenses the Respondents were required (and able) to pay via the Offering Memorandum.

16. It is not out of the question that Staff realized this after the hearing and needed to make their theory of the events become the focal point that they wanted the Panel to read. It is clear that when one reads the entire section of the Offering Memorandum it states the Issuer was able to use funds for expenses, and in the case of Deercreech even interest was allowed to be paid under the Offering Memorandum.

THESE ACTIONS MUST BE ADDRESSED

17. The actions of the Executive Director and Litigation Staff are appalling as these actions could have had a very derogatory affect in the outcome of this matter. If the Respondents had not discovered this manipulation, they could have faced several million dollars in disgorgement and fines in the multi-million dollar range.
18. These actions are not to be taken lightly and strike at the core of a Respondents ability to defend themselves – especially when they are self-represented as was the case in this matter.
19. The Respondents questioned repeatedly during the Oral Submissions for Staff to tell the Panel why they felt the need to cut and paste a significant portion of an exhibit. Excerpts from these submissions included:

WHARRAM: My interpretation of the OM, which was supplied to the commission before their investigation even began, was right there in black and white, never changed at any relevant time and it is vital, as I point out, I did not have to cut and paste portions of it to persuade the panel to my way of thinking. **The respondents bring a fairly damning accusation in their written submissions in paragraph 102, but staff don't even once try to explain this action in their reply submissions. Why not? Why did they not explain why they manipulated a legal submission that is now public record? Not a word of it.** Manipulating a very significant portion of the OM and submitting it as a document which they want this panel to consider while making their decision of the allegations of fraud is unfathomable. Is this not fraud in itself? The fact that both litigators signed their names to this document I assume they will both be taking responsibility for it in the future.

Hearing Transcript, November 21, 2014, P131 Lines 22-25 / P132 Lines 1-17 [Emphasis Added]

WHARRAM: The fact we have here is that the executive director staff have submitted inaccurate, incomplete and biased evidence in an attempt to sway the panel, even going as far as cutting or pasting different sections of the OM to bolster this claim to create the calculations needed to support their theory of the case. One needs to question why staff felt the need to do this, and once

again I challenge the staff litigator standing next to me to tell this panel why he elected to do this. Was it an attempt to sway the panel to their theory of the case or did they realize midstream the case they tried to bring forward had flaws as pointed out in the respondents' submissions in paragraphs 85, 185 and 186 and needed to resort to this in an attempt to rectify a mistake.

Hearing Transcript, November 21, 2014, P.144 Lines 21-25 / P. 145 Lines 1-12 [Emphasis Added]

20. Despite the opportunity for Mr. Fagbamiye to explain his actions – to date he has elected to not make a comment on my inquiry. Nor, did the Panel address this in their Findings despite being asked to do so. Ironically, Leggat resigned in 2014 and has never been formally asked of her involvement in the writing of these submissions. This is unfortunate as her signature is on the document as well.

In closing, the actions of both of the lawyers who signed their names to their submissions need to be held accountable for their actions. Actions that are word for word taken from the **Standards of the Legal Profession** outlined above.

Lawyers, whether or not they are employed by the BCSC, should be held to a high standard. They should not be allowed to manipulate exhibits in an attempt to sway the reader of their submissions. Lawyers need to be professional and ethical in their attempt to prove their case. Neither of these Staff litigators can say they were in this matter.

CAN YOU PLEASE TELL ME WHERE THE CHAIR OF THE BCSC STANDS WITH RESPECT TO THE CONTENTS AND MY ALLEGATIONS OUTLINED IN THIS LETTER? IS THIS SOMETHING THE CHAIR OF THE BCSC WOULD TOLERATE? ARE YOUR STAFF LITIGATORS ALLOWED TO MANIPULATE A DOCUMENT THEY DISCLOSED AS EVIDENCE? WHAT WOULD THE RESULT BE IF A RESPONDENT HAD MANIPULATED A DOCUMENT TO SUITE THEIR THEORY OF THE CASE?

I am fully prepared to provide all transcripts, exhibits and other relevant information at your request. I look very forward to hearing back from you without delay within the next 10 days.

Respectfully,

A handwritten signature in black ink, appearing to read 'Rodney J. Wharram', written over a light blue horizontal line.

Rodney J. Wharram