

June 9, 2016

TO: Brenda Leong – Chair  
British Columbia Securities Commission  
PO Box 10142 (Pacific Centre)  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2  
[belong@bcsc.bc.ca](mailto:belong@bcsc.bc.ca)

Honorable Michael de Jong, Q.C.  
Room 153, Parliament Buildings  
Victoria, British Columbia  
V8V 1X4  
[mike.dejong.mla@leg.bc.ca](mailto:mike.dejong.mla@leg.bc.ca)

Paul Bourque – Executive  
British Columbia Securities Commission  
PO Box 10142 (Pacific Centre)  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2  
[pbourque@bcsc.bc.ca](mailto:pbourque@bcsc.bc.ca)

Honorable Christy Clark  
West Annex, Parliament Buildings  
Victoria, British Columbia  
V8V 1X4  
[premier@gov.bc.ca](mailto:premier@gov.bc.ca)

## RE: LACK OF RESPONSE BY THE CHAIR OF THE BCSC

Dear Honorable Christy Clark et al,

My name is Rodney Jack Wharram and I write today with respect to the frustration I have had with Staff at the *British Columbia Securities Commission* ("BCSC") and their repeated deflection from answering questions I have sent to them. My feeling is they are very much public servants and should be held accountable to the same public when called upon to answer questions. I have tried to keep my questions internal and directed at BCSC Chair, Ms. Brenda Leong but she has failed to reply to my questions. I would like you as the Premier of British Columbia to get my questions answered in a timely fashion.

### BACKGROUND

My company, West Karma Ltd. ("WKL") raised capital from the public in the exempt securities market from May 2006 to September 29, 2010. In September 2010, I received an email from a BCSC Staff Investigator indicating my company had a complaint sent to the BCSC and they were going to start an investigation into my fund raising activities for 2 of my companies – Falls Capital Corp ("FCC") and Deercrest Construction Fund Inc. ("DCF"). I complied with all request for information and sent it directly to the BCSC without delay.

In June of 2012, Ms. Brenda Leong ("Leong") issued an Investigation Order into my companies and a formal investigation began by a Senior Investigator. I was told they had found something and wanted to further investigate the matter.

In December of 2012, I received notice that Staff wanted to conduct a compelled interview and needed to issue a Summons to do so. Again, I fully cooperated even going as far as to drive from my home in Chilliwack to Vancouver to be formally served the summons.

On June 14, 2013, I received a *Notice of Hearing* ("NOH") and *Asset Freeze Order* seizing funds from 5 bank accounts, including one that had NOTHING to do with the capital markets. The NOH alleged many things including that the Respondents did NOT forward the majority of the funds that it raised to the Developer – this equated to an allegation of a blanketed \$5.45 million fraud. Other allegations included taking funds to pay for approximately \$500,000 worth of items that ranged from personal use to lending funds to my wife for a business she was involved with.

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.

In April 2014, we were involved in a 9-day hearing at the BCSC and the parties were then ordered to exchange written submissions to argue the points of their case. On May 23, 2014, I received Staff's *Submission on Liability* and was shocked to find that they manipulated the **MOST** significant document (submitted as an exhibit by Staff) in order to suit their theory of the case.

### STAFF'S ACTIONS ARE HORRIFIC

Specifically, in paragraph #10 (on page 5 of their Submissions), 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. 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.

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. In *Addendum A* (attached herein) is paragraph #10 as it actually appeared in their submissions.

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.

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.

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. In *Addendum B* (attached herein) is how the section of the Offering Memorandum (as pointed out in the *Respondents Reply Submissions*) actually appeared.

## THE CRUX OF THE MATTER

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.

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.

On May 13, 2016, I sent to Ms. Brenda Leong ("Leong") a very simple letter outlining my concerns with two Staff Litigators assigned to my matter by the Executive Director of the British Columbia Securities Commission ("BCSC"). In my letter, I expressed a desire to have answers with respect to their actions – specifically as it related to manipulating a significant document in the proceedings against me. To date, Leong has yet to respond to my letter. This is not acceptable – as government employees holding a public office, I would think you are compelled to answer questions the public asks of you, regarding the actions of her Staff.

## COMPLAINT TO THE LAW SOCIETY FALLS ON DEAF EARS

We lodged a formal complaint the Law Society of BC on February 13, 2015 and received an email on February 17 indicating they had received my formal complaint. Only 3 days later, on February 20, I received an email indicating they were closing the file. This is very unfortunate but was expected as we know what side of the fence they are protecting.

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

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

## THESE ACTIONS MUST BE ADDRESSED

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. Furthermore, 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.

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]

WHARRRAM: 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]

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 PREMIER OF BRITISH COLUMBIA AND/OR THE FINANCE MINISTER STANDS WITH RESPECT TO THE CONTENTS AND MY ALLEGATIONS OUTLINED IN THIS LETTER? IS THIS SOMETHING THAT IS TO BE TOLERATED IN THIS PROVINCE? ARE THE BCSC 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 in a cursive style.

Rodney J. Wharram



ADDENDUM A

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)

## ADDENDUM B

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%) <sup>(1)</sup>	\$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:

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

<sup>(2)</sup>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. <b>See Items 2.2.1 – The Joint Ventures and 2.2.3 – The Joint Venture Agreements,</b> 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. <b>See Item 2.9 - Material Agreements.</b>	\$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]