

October 24, 2016

FROM: Rodney Jack Wharram



TO: Chartered Professional Accountants of British Columbia
800-555 West Hastings Street
Vancouver, British Columbia
V6B 4N6

*sent via email: etanaka@bccpa.ca and lchan@bccpa.ca

**ATTENTION: Ms. Liz Chan, CA, CPA / Director of Ethics and/or
Mr. Ted Tanaka, Barrister & Solicitor– Director Ethics and Documentation**

RE: Elizabeth Chan, CA /of the *British Columbia Securities Commission* (“BCSC”)

Dear Ms. Chan and/or Mr. Tanaka,

Please except this as my formal complaint that **Ms. Elizabeth Chan** (“Chan”), of the *British Columbia Securities Commission*, has violated S.205 (False or Misleading Documents and Oral Representations) of the *Chartered Professional Accountants Act / CPA Code of Professional Conduct* (**the “Act”**) while conducting an investigation in her role as Senior Investigator.

Clearly, the Act states:

205 FALSE OR MISLEADING DOCUMENTS AND ORAL REPRESENTATIONS

RULE: A registrant shall not: (a) sign or associate with any letter, report, statement, representation or financial statement which the registrant knows, or should know, is false or misleading, whether or not the signing or association is subject to a disclaimer of responsibility, nor (b) make or associate with any oral report, statement or representation which the registrant knows, or should know, is false or misleading.

GUIDANCE - Rule 205

1. A registrant who is not in public practice is subject to Rule 205 just as is the registrant in public practice. It is recognized that this may place such a registrant in a difficult position with respect to the organization employing the registrant or entities engaging the registrant’s services. However, professional duty prohibits a registrant from being associated with financial statements or other information, whether written or oral, which the registrant knows, or should know, to be false or misleading.

2. When a registrant finds it necessary to become disassociated from false or misleading information, it would be prudent for the registrant to consider obtaining legal advice.

3. Registrants, and in particular students, are reminded that plagiarism and other forms of academic dishonesty are examples of association with false or misleading representations.

Section 205, CPA Code of Professional Conduct, Chartered Professional Accountants Act [Emphasis Added]

THE INVESTIGATION BY BCSC SENIOR INVESTIGATOR ELIZABETH CHAN

Starting in September 2010, the BCSC (via a junior investigator) started an investigation into myself and 3 of my corporate entities. By March 2012, I was contacted by Ms. Elizabeth Chan, who indicated she was a Senior Investigator at the BCSC and was going to look further into my business dealings. Over time, she requested several items, including bank statements and corporate books and records. I submitted to Ms. Chan all records that were in my possession.

On June 14, 2013, the BCSC issued a *Notice of Hearing* (“NOH”) and *Cease Trade Order* (“CTO”) alleging I committed fraud when I did not advance the majority of the funds to the Developer of a real estate project we were investing into. In simple terms, my companies raised \$9.3 million dollars to develop a real estate project (in Chilliwack, BC) and their allegation inferred I did not advance the majority of the funds raised to the Developer of the project. The definition of majority and a very simple grade 2 math calculation would tell ANYONE that the amount they alleged I did not advance to benefit of the Developer would equal roughly \$4,650,000 plus a penny. The BCSC alleged I only advanced \$3.936 million to the developer. Understanding my company’s day-to-day business and looking at my personal bank account, it was very easy to conclude that in NO WAY did I abscond with millions of dollars of my investor’s money so we decided to argue back against the allegations.

THE HEARING

During my hearing in April 2014, I was unrepresented by legal counsel (due to the BCSC freezing bank accounts) and was able to cross examine all witnesses the BCSC’s staff called on their behalf. Undoubtedly, the key witness for the BCSC was Investigator Elizabeth Chan as she had completed a significant portion of the evidence that was relied upon – specifically the math component which was the basis of nearly **all** of their allegations. Again, the crux of their case was that I did not advance the majority of the funds raised from investors to the developer.

Looking at the transcripts, we first had Chan give us her credentials:

Q Okay. Tell us again where you went to school?

A I went to UBC.

Q And what degree did you receive?

A Bachelors of Commerce.

Q And what other education do you have?

A Well, after I completed my Bachelors of Commerce, I obtained my chartered accountant designation from the Institute of Chartered Accountants. I took some courses with them, some additional training --I took some more training with them, in particular training in the Canadian Income Tax Act. And then again, more recently I've taken this Canadian securities course, and I'm enrolled to obtain my certified fraud examiners designation.

Q Okay. You would be considered a chartered accountant, a CA, if you will?

A Yes. Currently the CA body is in a merger with the CMAs and the CGAs, so they're merging to become CPAs, that's a chartered professional accountant, so sometimes we go by CPA, CA.

BCSC Hearing Transcript, April 9, 2014, P.34 –lines 19-25, p. 35 –lines 1-13

As I sat and listened to staff litigators question Ms Chan, it became very apparent they were confident in the allegations they had brought forward and were confident they would be able to prove them in front of a Commission appointed panel. In her direct, Ms. Chan rattled off number after number that supported the big \$5.45 million fraud allegation and I remember being impressed with the way she was able to regurgitate all the numbers off the top of her head.

Listening to them, two things became very apparent – first there was a distinct theory of events that the Executive Director at the BCSC alleged in the notice of hearing and it appeared that Ms.

Chan was prepared to “make the math work” no matter what she had to do to make that happen. Before the hearing - they went public and issued a press release that alleged I did not advance \$5.45 million which lead to many people thinking I took that money for my own personal use. The story was picked up by all media outlets - in fact, the story was on the front page of the April 8, 2014 *Vancouver Province* with a headline “*INVESTORS MILLIONS EVAPORATE*”. It was probably the most slanderous press release I have ever seen as it simply was not true.

Secondly, it was extremely obvious that Ms. Chan did not use all of the relevant numbers in her calculations – **despite knowing about them**. It seemed as though she either was told to come up with a pre-conceived number by her superiors or she made this terrible decision on her own due to being incompetent – with the latter being unlikely considering her education. Either way, after reading **Section 205 of the CPA Act** (above) it is clear she created a breach by “being associated with financial statements or other information, whether written or oral, which the registrant knows, or should know, to be false or misleading”. Unfortunately, this looks like a text book case of being in breach of your Act as several times during the hearing she admitted to knowing about several dollars of expenses she did not include in the summary page Staff litigators relied upon. The summary page she produced had the exact same figure (\$5.45 million) that was produced in the press release:

<http://www.bcsc.bc.ca/ViewDocument.aspx?DocNum=X7Q1L6RBC7T5S7M8E6GCI7UAB7O3>

Mistakes were made in the collection of evidence by the investigator or mysteriously omitted altogether depending on whether it suited Staff’s theory of the events. A small example, that instantly skews the numbers in the DCF allegations by \$10,000, is brought forward during the cross examination of Chan:

Q *I forget your answer. Is this \$10,000 written to these four entities included in these numbers?*

A *I don't believe it's in that \$5.4 million figure, I don't think it was part of the claim that you filed.*

Q *As leader of this investigation, would it be your testimony that the review by your department was accurate?*

A *Yes. I would say that the evidence that I obtained and the summaries I prepared are accurate.*

Q *And, again, besides this \$10,000, are you confident that there is not other expenses that were not included in the accounting by the respondents?*

A *I didn't do an accounting of the respondents.*

Q *Why not?*

A **I didn't think it was necessary.** *I mean it wasn't part of the investigation or the evidence gathering that I prepared.*

Q *So is it as simple as grabbing a couple of receipts and --*

A *No, it's not.*

Q *How can you say you don't need to do an accounting when you're using numbers that are directly in the Executive Director's Notice of Hearing?*

A As I stated, I obtained evidence which included the bank statements, okay, as well as other sources of documents to prepare these tables, as well as the other tables that I prepared.

Q Without doing an accounting, and I hate to use the word, but is it like cherry picking certain information?

A No.

Q How do you justify what you're doing at this juncture of the investigation?

A Again, I'm sorry, you have a couple of questions in there, but there is no cherry picking.

Q You select certain items?

A No.

Q Okay. It's not considering items like these four cheques give you a correct total in the 5.457067 in the summary page?

A That is a correct total based on the evidence that I obtained.

Hearing Transcript, April 14, 2014, p.30 Lines 3-25 and p.31 Lines 1-22 [Emphasis Added]

Chan, again during her cross examination, had this to say:

Q Is it possible that the number alleged to have not been funded to the developer by the two respondents in this matter is the 5.45 million that you determined through your accounting and summary of all actions of the two respondents?

A Well, the numbers in the Notice of Hearing, which I think were carried on to the news release, would have been based on my evidence, yes.

Hearing Transcript, April 11, 2014, p. 165 L 15-22

In this testimony, we have Chan, the Lead Investigator with conduct on the file, stating her findings were used in both the Notice of Hearing and News Release while admitting there are (valid) numbers not included in her summary evidence. Again, this goes directly against your very own Act – section 205 that ALL accountants in the Province of British Columbia must adhere to.

In the transcripts above, Chan indicates she does not select (or cherry pick) certain items yet we have just that occurring in different places. The Respondents maintain that in order for a multi-million dollar fraud to be proven, there should have been a detailed accounting with accurate numbers brought before the Panel but instead, we have an investigator who:

- admits that she did not do an accounting:

Hearing Transcript, April 14, 2014, p. 30 Line 18

- admits she did not obtain all of the documentation from banking institutes;

Hearing Transcript, April 9, 2014, p. 86 Lines 19-21

- admits she did not review credit card statements or even ask for them at any time during her investigation;

Hearing Transcript, April 11, 2014, p. 50 Line 20-23

- admits to not asking me about ANY shareholder loans placed into West Karma;

Hearing Transcript, April 11, 2014, p. 23 Lines 4-6

In furtherance, the allegation of not advancing the majority of the funds to the Developer disappears if she had used the complete set of numbers in her possession. Elizabeth Chan acted in bad faith by only producing numbers which suited the theory the BCSC was trying to prove. Ms. Chan admitted under oath that she provided the numbers to the Executive Director of the BCSC which led to him issuing the Notice of Hearing. She had to have known these numbers were not complete (and did not match up to the allegation made against me) because she admits to knowing about them during my cross-examination.

I am currently exploring the *Canadian Criminal Code* because I think Chan could also be in breach of Section 122:

Breach of trust by public officer

122 Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

R.S., c. C-34, s. 111.

Other sections of the Criminal Code then need to be looked at including *Fraudulent Concealment Section 341* and *False Information Section 372*. **Section 25** of the criminal code makes it clear that even law enforcement officers must abide by the law. Undoubtedly, Chan will hide behind her badge and the **BC Securities Act's Section 170** where it states:

Immunity of commission and others

170 (1) No action or other proceeding for damages lies and no application for judicial review under the *Judicial Review Procedure Act* may be instituted against the commission, a member of the commission, an officer, servant or agent of the commission, a designated organization, a director, officer, servant or agent of a designated organization, an auditor oversight body, a director, officer, servant or agent of an auditor oversight body, an employee appointed to administer this Act or any person proceeding under

- (a) an order, a written or oral direction or the consent of the commission,
- (b) an order of the minister made under this Act, or
- (b.1) a delegation or authorization referred to in section 167.2 (1) (a) or (b),

for any act done in good faith in the

- (c) performance or intended performance of any duty, or
- (d) exercise or the intended exercise of any power,

under this Act, including a duty or power referred to in section 167.2 (1) (c), or for any neglect or default in the performance or exercise in **good** faith of that duty or power.

(2) No person has any remedies and no proceedings lie or may be brought against any person for any act done or omission made as a result of compliance with this Act, the regulations or any decision rendered under this Act.

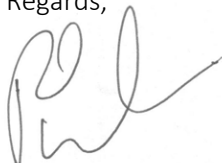
Our opinion is that she did not act in good faith and her actions are unacceptable. It would be of grave concern to all Directors of public/exempt market issuers to have an investigator working at the BCSC conducting herself in this manner. The losses of my investors were immense and can be directly blamed partially on the work conducted by Ms Chan on behalf of her employer the BC Securities Commission.

In closing, understanding that the BCSC (and their appointed staff) seem to be able to do “whatever they want” with respect to bringing forward allegations by simply hiding behind the Securities Act, I found the section quoted above (from the Chartered Professional Accountants Act) to be relevant when it comes to the actions of Ms Chan, regardless of what the Securities Act indicates. She knew the accounting she had completed was flawed, and she knew (or ought to have known) that it contained fundamental mistakes. In addition, during the hearing she admitted to knowing the *Notice of Hearing* contained a false statement but yet did not notify her superiors of this mistake.

I am eager to understand the process within your agency with respect to this letter. I would like a reply indicating timing of an investigation and what I can expect with respect to your contact with Ms. Chan and the BCSC. I can supply all relevant documents to support this letter if you wish – please do not hesitate to ask for them.

I await your reply and thank you for your attention to this matter.

Regards,

A handwritten signature in black ink, appearing to read 'Rodney J. Wharram', written in a cursive style.

Rodney J. Wharram

www.bcsctruthmovement.com