

**The Falls Capital Corp., Deercrest Construction Fund Inc., West Karma Ltd.
and Rodney Jack Wharram**

(collectively, the Respondents)

SECTION 161 OF THE *SECURITIES ACT*, RSBC 1996, c. 418

**EXECUTIVE DIRECTOR'S
SUBMISSIONS ON LIABILITY**

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THE ALLEGATIONS

1. The Notice of Hearing alleges that Rodney Jack Wharram (Wharram), and three companies of which he was the president and director, perpetrated fraud on investors by:
 - a) raising \$9,395,400 for property development and only advancing about \$3,936,000 to the developer; and
 - b) using about \$500,000 of the investments for Wharram's personal expenses.
2. As well, the Notice of Hearing alleges that Wharram lied to investigators when he told them that he had not raised funds from investors in 2013 and was not currently trying to raise any funds from investors when, in fact, he had raised \$50,000 just days before and raised an additional \$400,000 just after.

FACTS

Background

3. The Falls Capital Corp. (the Falls) raised funds from investors (the Falls Investors) purportedly to lend to a developer to develop a recreational property (the Falls Resort) located in Chilliwack, BC.

BCSC00163/EXH00133 (the Falls 2007 OM) P5 Section 2.2.2, P6
Section 2.2.3 para1, P8 Section 2.2.3 para. 1,
BCSC00164/EXH00134 (the Falls 2008 OM) P5 Section 2.2.2, P6
Section 2.2.3 para. 1, P8 Section 2.2.3 para. 2
Hearing Day 1 P39 L6-L22 (Chan testimony)

4. Deercrest Construction Fund Inc. (Deercrest) raised funds from investors (the Deercrest Investors) purportedly to lend to a developer to develop the Deercrest townhomes and clubhouse located at the Falls Resort (the Deercrest Property).

BCSC 00185/EXH00155 (the Deercrest 2009 OM) P6 Section 2.2.2.2,
P5 Section 2.2.1 para. 3
BCSC00186/EXH 00156 (the Deercrest 2010 OM) P5 Section 2.2.1
para 3, P6 Section 2.2.2.2
Hearing Day 1, P40 L16-L25, P31 L1-L7 (Chan testimony)

5. West Karma Ltd. (West Karma) raised capital for the Falls and Deercrest by marketing and promoting their offering memorandum (OM) offerings. West Karma owned 40% of the voting shares of the Falls.

BCSC 00163/EXH00133 (the Falls 2007 OM) P12 Section 2.9.5
BCSC00164/EXH00134 (the Falls 2008 OM) P12 Section 2.9.5
Hearing Day 1 P42 L4-L17, P92 L11-L25, P93 L1-L10 (Chan
testimony)

6. The Falls, Deercrest and West Karma (the Corporate Respondents) have never been registered or filed a prospectus under the Act.

BCSC00015/EXH00050 (Section 168 Certificate)
BCSC00016/EXH00051 (Section 168 Certificate)
BCSC 00017/EXH00052 (Section 168 Certificate)
Hearing Day 1 P43 L14-L25, P44 L1-L6, P45 L17-L25, P136 L20-
L25, P137 L1-L5 (Chan testimony)

7. Wharram became a British Columbia resident in June 2007, was a director and president of the Corporate Respondents, and managed their business. He has never been registered under the Act.

BCSC00018/EXH00053 (Section 168 Certificate)
BCSC00162/EXH00132 (Wharram driver license)
BCSC00163/EXH00133 (the Falls 2007 OM)
BCSC00164/EXH00134 (the Falls 2008 OM)
BCSC00185/EXH00155 (the Deercrest 2009 OM)
BCSC00186/EXH00156 (the Deercrest 2010 OM)
BCSC00168/EXH00138 P14 L9-L18, P15 L3-L8, P25, P48 L16-L27,
P49
Hearing Day 1 P 44 L7-L22, p88 15-110 (Chan testimony)

The Falls

8. The Falls had one OM dated October 15, 2007 (the Falls 2007 OM) and one dated October 15, 2008 (the Falls 2008 OM).

BCSC00015/EXH00050 P1 (Section 168 Certificate)
Hearing Day 1 P44 L23-L25, P45, P46 L1-25, P47 L1-L4, P56 L5-25
(Chan testimony)
BCSC 00163/EXH00133 (the Falls 2007 OM)
BCSC 00164/EXH00134 (the Falls 2008 OM)

9. The Falls raised all of its capital using an OM. It raised capital on behalf of Blackburn Developments Ltd. (Blackburn) and Blackburn was the developer of the Falls Resort.

BCSC00168/EXH00138 P23 L4-13, P 28 L23-26, P102 L7-10 (March 12, 2013 transcript of Wharram interview)
Hearing Day 1 P 57 L 21-L25, P58 L1-L14 (Chan testimony)

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)

- b) make loans to four joint ventures (the Joint Ventures) in order to develop the Falls Resort by advancing funds to the following four entities:

- i. The Falls Resort Hotel & Spa Ltd.;
- ii. The Falls Resort Boutique Hotel Ltd.;
- iii. The Falls Resort GNC Ltd.; and
- iv. The Falls Winter Club Ltd.

(collectively, the Bare Trustees).

BCSC00163/EXH00133 (the Falls 2007 OM) P4 Section 1.2 para 1,
P5-P7 Section 2.2 and Section 2.21
BCSC00164/EXH00134 (the Falls 2008 OM) P4 Ssection 1.2 para 1,
P5-P7 section 2.2 and section 2.2.1

11. The investors who invested in the Falls thought they were investing in real estate:

a) Jonathan Lo testified that:

19	171	Q	Now, what did you think you were investing in at
20			the time you invested in The Falls?
21		A	After looking at the package, the offering
22			memorandum and the projection I thought I was
23			investing in a real estate investment trust, a
24			REIT, yeah.

Hearing Day 2 P40 L19-L24

b) Kyla Lucas testified that she thought she was investing in a great land improvement:

8	Q	What did Jim Duke tell you about The Falls Capital
9		Corp.?
10	A	He told me it was a great investment, and I should
11		consolidate all of my investments I had currently
12		with him and put it all into this fund.
13	Q	Did he say why it was a great investment?
14	A	He said it was a land improvement investment, and
15		land value doesn't depreciate so my money should be
16		secure there.
17	Q	Did he say why where it was located?
18	A	He just said it was in B.C.

Hearing Day 3 P15 L8-L16

c) Gerald Schacher (Schacher) testified that he thought he was investing in:

11 400 Q Okay. What did you think you were invested in at
 12 the time you invested in the Falls Capital Corp.?
 13 A Well, we seen, we seen eighteen holes and the
 14 clubhouse and the project, talked with the
 15 developer, and basically they were going to be
 16 putting another nine holes in there, a Greg Norman
 17 course. He was a pro, was a professional golfer
 18 from Australia, he was going to design nine holes.
 19 And there was also talk of Glenn Sather putting in
 20 a winter club for a world-scale hockey arena, and
 21 tennis courts and stuff like that. So, it --
 22 there was -- it was just -- I was really enthused
 23 about the project.

Hearing Day 4 P95 L11-L23

12. Senior Investigator Chan (Chan), the investigator assigned to the file, interviewed Wharram on March 12, 2013 (the March 12 Interview) and March 13, 2013 (the March 13 Interview). During the March 12 Interview, Wharram stated that he departed from the structure of the arrangement in the Falls OMs and at some point started advancing the funds that he, the Falls, and West Karma raised to Blackburn.

1 Q Were most of the funds loaned to Blackburn directly?
 2 A Yes.
 3 Q Okay. And why were the funds loaned to Blackburn and
 4 not the bare trustees?
 5 A I don't know. That decision was made by the
 6 comptroller and Rick Wellsby. Like I said, I would
 7 get a statement to close and I would -- I would write
 8 cheques to the -- wherever they deemed that the funds
 9 were needed.

BCSC00168 P86 L3-L27, P87 L11-L14, P92 L15-L27, P93 L1-L10,
 L16-L27, P94, P95 L1-L14, P96 L6-L27

13. The Falls, West Karma, and Wharram raised \$5,442,400 from the Falls Investors between December 2006 and December 2009 using the Falls OMs (the Falls Investments).

BCSC00169/EXH00139 (March 13 Interview) P48 L7-24

BCSC00171/EXH00141 P1-5
Hearing Day 1 P 57 L1-L11 (Chan testimony)

- a) The Falls advanced only about \$2,300,000 to Blackburn.

BCSC00169/EXH00139 P61 L23-27 (March 13 Interview)
BCSC00173/EXH00143 P1-P4 (The Falls Proof of Claim against
Blackburn dated August 18, 2011); P5-34 (supporting documents
for the Falls Proof of Claim against Blackburn).
BCSC00175/EXH00145 P1(The Falls cheque summary)
BCSC00158/EXH00128 P3 para 19-para 23, P4 (Chan 1st Affidavit
sworn June 14, 2013)
Hearing Day 1 P67, P68-P73, P74 L1-5, P75 (Chan testimony)

14. Wharram provided to Chan three investor lists which confirmed that the Falls Investments totaled \$5,442,400.

BCSC00169/EXH00139 P 202-P204
BCSC00171/EXH00141 P1-P5
BCSC00273/EXH00180
BCSC00276/EXH00183
Hearing Day 1 P59 L4-L25, P60 L1-L23

15. Wharram provided to Chan a Falls investor list on October 31, 2012. During the March 13 Interview, Chan questioned Wharram about the list and Wharram pointed out that he did not assign the correct salespeople to the investors on the list. Therefore:

- a) Wharram's counsel provided to Chan a second investor list on April 29, 2013; and
b) Wharram provided to Chan a third investor list (electronically) on September 6, 2013.

Each of the three investor lists Wharram provided confirmed that the Falls raised \$5,442,400 and the total commissions paid to sales agents was \$469,806. In his under oath interview, Wharram confirmed that the Falls raised \$5,442,400 from the Falls Investors.

BCSC00169/EXH00139 P38 L2-L15; P 39 L15-L26; P42 L17-22; P43
L12-L14, P43 L17-L23, P202-P204 (March 13Interview)
BCSC00171/EXH00141 P1-P5
BCSC00273/EXH00180
BCSC00276/EXH00183
Hearing Day 1 P59 L4-L25, P60-P65, P66 L1-L7 (Chan testimony)

16. The Falls OMs stipulate that:

- a) all fees and commissions from the sale of units sold pursuant to the Falls OMs will be paid on the Falls' behalf by West Karma; and
- b) West Karma was entitled to receive 13.4615% from the funds advanced to the Joint Ventures as reimbursement for "any and all costs and expenses WKL [West Karma] incurs as a result of this Offering".

BCSC 00163/EXH00133 (the Falls 2007 OM) P2 "Selling Agents", P4 Section 1.1 note 1, P7 Section 2.2.3 (i)
 BCSC00164/EXH00134 (the Falls 2008 OM) P1, P2 "Selling Agents", P7 Section 2.2.3 (i)
 BCSC00169/EXH00139 P56 L2-L21, P57 L5-L12
 Hearing Day 1 P52 L24-L25, P53 L1-L16 (Chan testimony)
 BCSC 01102/EXH00220 P1 and P10

- 17. During the March 13 Interview, Wharram confirmed that West Karma was entitled to 13.416% of the funds loaned to the Joint Ventures for reimbursement of sales commission and expenses.

BCSC00169/EXH00139 P56 L2-L21, P57 L5-L12

- 18. Blackburn was granted protection from its creditors in February 2011, and in March 2012 a receiver was appointed.

Hearing Day 1 P66 L8-L25, P67-P69, P70 L1 -L5, L17- L25, P71-P74, P75 L1-L12, P76, P77 L1-L23 (Chan Testimony)

- 19. The Falls filed claims against Blackburn in August 2011 (the Falls Claims).

BCSC00173/EXH00143 (The Falls Proof of Claim and supporting documentation)
 BCSC00181/EXH00151 P1- P6, P7-P28

- 20. According to the Falls Claims, the Falls made payments to Blackburn totaling \$2,189,301.42 and payments to the Bare Trustees totaling \$113, 031.33 for a grand total of \$2,302,332.75.

BCSC00173/EXH00143 P1-P4

- 21. Wharram confirmed in the March 13 Interview that \$2,189,301.42 was the total amount of the loans made specifically by the Falls to Blackburn.

BCSC00169/EXH00139 P61 L23-L27

- 22. In September 2011, the Falls sold its creditor claims against Blackburn for proceeds of about \$63,779.31 (the Sale of Claims Proceeds).

BCSC00158/EXH00128 P6 para 38 and para39
BCSC00182/EXH00152 P1-P2
Hearing Day 1P66 L8-L25, P67-P69, P70 L1-L5, L17-L25, P71-P74,
P75 L1-L12, P76, P77 L1-L23 (Chan Testimony)

23. Wharram used at least \$47,500 of the Sale of Claims proceeds for personal expenses including paying his mortgage and restoring his father's jeep.

BCSC00184//EXH00154 P1-P9
Hearing Day 1 P123 L7-L25, P124-P131, P132 L 1-L24, P134 L5-
L25, P135, P136 L1-L15
BCSC00169/EXH00139 P113 L23-27, P114 L1-L9, L12- L16, P115
L3-22

Deercrest

24. Deercrest had one OM dated March 2, 2009 (the Deercrest 2009 OM) and one dated March 2, 2009- Amended March 31, 2010 (the Deercrest 2010 OM).

BCSC00016/EXH00051 (Section 168 Certificate)
BCSC 00185/EXH00155 (the Deercrest 2009 OM)
BCSC 00186/EXH00156 (the Deercrest 2010 OM)
Hearing Day 1P136 L24-L25, P137 L1-L25

25. The Deercrest 2009 OM and the Deercrest 2010 OM (collectively, the Deercrest OMs) said that Deercrest would lend the majority of the funds raised from investors to a developer to develop the Deercrest Property:

The Corporation's primary investment objective is to provide its Bond Holders with sustainable income. The Corporation is raising funds pursuant to this Offering for the purpose of lending the majority of the funds raised hereunder to Deercrest Resort and Clubhouse Ltd (referred to herein as "DRCL or the "Developer"). The Corporation will seek to achieve this principal investment objective by lending funds to DRCL. Income will primarily consist of interest received on the loans secured by the mortgages, less direct costs associated with operations of the Issuer.

BCSC 00185/EXH00155 P5 Section 2.2.1 para 3 (the Deercrest 2009 OM)
BCSC 00186/EXH00156 P5: Section 2.2.1 para 3 (the Deercrest 2010 OM)
BCSC 00168/EXH00138 P176 L7-L27
Hearing Day 1 P139 L5-L25, P140-141, P146L1-L9, L21-25, P147
L1-L8 (Chan testimony)

26. Wharram:
- a) a hundred percent owned and controlled Deercrest;
 - b) was the president and sole director of Deercrest;
 - c) made all the decisions for the company;

- d) had the Deercrest office at his address at 235-51075 Falls Court, which was also the office space used by the Falls and West Karma.

BCSC00168/EXH00138 P48-P50

27. During the March 12 Interview, Wharram confirmed the following:

3 | Q Were you responsible for managing the financial
4 | affairs and maintaining the financial records for
5 | Deercrest Construction Fund?
6 | A Yes.
7 | Q And did you make all of the bank deposits?
8 | A Yes.
9 | Q Did you approve and pay all of the company's expenses?
10 | A Yes.

BCSC00168 P64 L3-L10 (March 12 Interview)

28. Wharram explained in the March 12 Interview that:

- a) Blackburn was the developer of the Deercrest property;
- b) Rick Wellsby (Wellsby) of Blackburn asked for his assistance to raise funds to develop the property;
- c) Deercrest used the Deercrest OMs to raise funds for the construction financing of the Deercrest Resort units and more specifically for the purpose of building 70 private residence units and a clubhouse on the Falls Resort; and
- d) Deercrest's financial contribution obligation was to advance funds to Blackburn to build out units.

BCSC00168/EXH00138 PP. 165-167, 170-173

29. The Deercrest 2009 OM explained the intended development, in part, as follows:

2.2.2 The Deercreech Resort and Clubhouse Development

2.2.2.1 The Falls Resort Project

The Falls Resort is located 60 miles east of Vancouver in the Fraser Valley at the foot of Mount Cheam in the BC Cascade Mountain Range and located in the City of Chilliwack with a population of 80,000. A group of companies control approximately 400 acres of land which make up this planned resort ("The Falls Resort"). As of the filing of this Offering, the Falls Resort has successfully developed a 18 hole golf course, 90 home single family subdivision and has multi-family developments in the construction stages with the balance of the lands held for future development.

The Falls Resort has a comprehensive zoning Outdoor Recreational / Resort (OR-3) which allows for a mixture of uses including recreation, hotel/ resort, residential, commercial and institutional as part of a residential resort community. The lands have been designated with an average density of 24.6 units per hectare translating into approximately 4100 units depending on the mix of residential units to commercial square footage to resort components. In total the existing zoning allows for over 7 million square feet of development.

[...]

As part of the Falls Resort master plan, the Falls Resort is undertaking in the next phase of development the construction of an amenity clubhouse for the resort and the completion of the 80 unit townhome development. These two developments are to be developed concurrently and comprehensively by DRCL however on two separate titles of land within the Falls Resort (refer to item 2.2.2.2 below for details). In addition to the developments being undertaken by

[...]

2.2.2.2 DRCL Development

DRCL intends to develop a resort townhouse development and clubhouse amenity building which will include the following (the "Development"):

- 70 Private residence units (the "Townhomes") to be sold on a whole ownership basis, of which the Townhomes can be rented out on an overnight basis. The Townhomes have two residential units per building and most of the units have a lock off suite, which allows for the unit to have two suites that can be rented on an overnight basis.
- Clubhouse and amenity building consisting of the following (the "Clubhouse"):
 - private members area for resort unit owners and guests
 - fitness and games area
 - indoor pool
 - boutique spa area
 - restaurant, lounge and banquet facilities for the public and guests staying at The Falls
 - golf pro shop with 2 putting greens and outdoor bar.

BCSC00185/EXH00155 P5-P6 (the Deercreech 2009 OM)

30. Deercreech raised all of its capital using an OM. It raised capital on behalf of Blackburn.

BCSC00168/EXH00138 P51 L24-L27, P176 L10-L27, P177 L1-L2,
P178 L2-L6
Hearing Day 1 P146 L11-25, P147 L1-L13 (Chan Testimony)

31. The investors who invested in Deercreech thought they were investing in real estate:

- a) Bartho Amado testified that:

13 | 15 Q Okay. Now, what did you think you were investing
14 | in at the time you invested in Deercrest?
15 | A We were investing in houses being built and sold,
16 | real estate, I guess you might want to call it.

Hearing Day 5 P7 L13-16

b) Jorge Cardoza testified that:

21 | 90 Q Now, at the time that you were investing in
22 | Deercrest what did you think you were investing
23 | in?
24 | A At the time when the Jeff came to my house he show
25 | me the paper and it was for construction houses
22:1 | and golf course, and he showed me all the paper
2 | and it looks very legit, and I said okay, looks
3 | good to do it.

Hearing Day 2 P21 L21-L25, P22 L1 -L4

c) Kyla Lucas testified that she thought she was investing in land improvement:

10 | Q Okay. And so when, so at the meeting that Jim Duke
11 | had with you and your mother?
12 | A Uh-huh.
13 | Q Could you please tell the panel what he told the
14 | two of you about Deercrest?
15 | A He told us that it was a wise investment because it
16 | was land, and it was land improvement, and he
17 | showed us some pictures of the land, and said that
18 | it would be a very secure investment, seeing as
19 | land value doesn't drop, and that land doesn't ever
20 | go away.
21 | Q And did he say what they were going to do with the
22 | land?
23 | A The improvements to the land were to be to a golf
24 | course and setting up a golf house, and building
25 | condominiums on it to sell at a later date.

Hearing Day 3 P17L10-L25

d) Bonnie Scardillo testified that:

15 579 Q So, when you made your investment in Deercrest,
16 what did you think you were investing in?
17 A I was invest -- I thought I was investing in
18 either townhouses or condos, and I thought I was
19 going to get, you know, my money back plus
20 interest. That's what I thought I was investing
21 in. That's, that's what I thought I was investing
22 in.

Hearing Day 4 P128 L15-L22

32. Between March 2009 and October 2010, Deercrest, West Karma and Wharram raised \$3,953,000 from investors pursuant to the Deercrest OMs (the Deercrest Investments):

BCSC00169/EXH00139 P73 L9-L27
BCSC00188/EXH00158 P1-P4
BCSC00273/EXH00180
BCSC00276/EXH00183
BCSC00168 P52L6-L15, P53 L19-L27
Hearing Day 1 P147 L18-L25, P156 L1-L6(Chan testimony)

- b) Deercrest only advanced \$1,636,000 to Blackburn.

BCSC00169/EXH00139 P85 L19-27
BCSC00191/00161(Deercrest cheque summary)
BCSC00158/EXH P9 para 55-56
Hearing Day 1 P159 L4-L25, P160

33. Wharram provided to Chan three investor lists which confirmed the total of the Deercrest Investments was \$3,953,000.

BCSC00169/EXH00139 P 219-P220
BCSC00188/EXH00158 P1-P4
BCSC00273/EXH00180
BCSC00275/EXH00182
Hearing Day 1 P148 L1-L2

34. Wharram provided to Chan a Deercrest investor list on October 31, 2012. During the March 13 Interview, Wharram pointed out that the he did not assign the correct salespeople to the investors on the Deercrest investor list. Therefore:

- a) Wharram's counsel provided to Chan a second investor list on April 29, 2013; and
b) Wharram provided to Chan a third list (electronic) by email on September 6, 2013.

Each of the three Deercrest investor lists Wharram provided confirmed that Deercrest raised \$3,953,000 and the total commissions paid to sales agents was \$331,480. In his under oath interview, Wharram confirmed that Deercrest raised \$3,953,000 from the Deercrest Investors.

BCSC00169/EXH00139 P71 L19-L27, P72 L1 –L17, P73 L3-L19
Hearing Day 1 P148 L1-L12, L17-L25, P149, P150-P154 L1-L24
(Chan testimony)
BCSC01103/EXH00221
BCSC00188/EXH00158 P1-P4
BCSC00273/EXH00180
BCSC00275/EXH00182

35. Deercrest filed a creditor claim against Blackburn (the Deercrest Claim). The Deercrest Claim was dated August 18, 2011 and was signed by Wharram. According to the Deercrest Claim, Deercrest made payments to Blackburn totaling \$1,636,000. In the March 13 Interview, Wharram confirmed that \$1,636,000 was the total amount Deercrest loaned to Blackburn. The Deercrest Claim was disallowed because it was not part of the Blackburn creditor protection proceeding.

BCSC00190/EXH00160 (Copy of Deercrest Claim)
BCSC00169 P85 L19-L27 (March 13 Interview)
BCSC00191/00161(Deercrest cheque summary).
Hearing Day 1P158, P159 , P160L1-L9, P157 L1-L16 (Chan testimony)

36. The Deercrest OMs stated that 10% of the loan amount for transfer could be paid for sales commissions. Wharram and Wellsby added a 2% marketing fee to this, increasing the amount to 12%.

BCSC 00185/EXH00155 P1 last para, P4 Section 1.1 Note 1, Section 1.2, Section 5.2 P17 Item 7 “Commissions:”
BCSC 00186/EXH00156 P1 last para, P4 section 1.1 Note 1, Section 1.2, Section 5.2 P17 Item 7 “Commissions:”
BCSC 00169/EXH00139 P75
BCSC01103/EXH00221 P2 and P8 (Chan table)
BCSC01115/EXH00233 (Chan table)
Hearing Day 1 P 144 L19-L25 P145 (Chan testimony)
Hearing Day 2 P123 L3-10 (Chan testimony)

ARGUMENT

Balance of probabilities is the applicable standard of proof

37. Prior to the *McDougall* decision of the Supreme Court of Canada in 2008, there was uncertainty about the standard of proof to be applied in civil cases which involved grave allegations like fraud:

Much has been written as judges have attempted to reconcile the tension between the civil standard of proof on a balance of probabilities and cases in which allegations made against a defendant are particularly grave. Such cases include allegations of fraud, professional misconduct, and criminal conduct, particularly sexual assault against minors.

F.H. v. McDougall, [2008] 3 S.C.R. 41 at para. 26

38. The confusion arose as a result of cases like the British Columbia Court of Appeal's decision in *Anderson* in which the Court found that fraud under s. 57 of the *Act* is a "very serious allegation" requiring a "high standard of proof." The Court invoked the adjectives "clear and convincing" to describe the proof required for fraud under the *Act*.

Anderson v. British Columbia (Securities Commission), 2004 BCCA 7, at para. 29

39. This is no longer the law in British Columbia or anywhere else in Canada as the Supreme Court of Canada has expressly rejected this approach.
40. In *McDougall* the Supreme Court of Canada addressed the "clear and convincing" standard and decided "once and for all" that balance of probabilities is the only civil standard of proof:

[39] I summarize the various approaches in civil cases where criminal or morally blameworthy conduct is alleged as I understand them:

- (1) The criminal standard of proof applies in civil cases depending upon the seriousness of the allegation;
 - (2) An intermediate standard of proof between the civil standard and the criminal standard commensurate with the occasion applies to civil cases;
 - (3) No heightened standard of proof applies in civil cases, but the evidence must be scrutinized with greater care where the allegation is serious;
 - (4) No heightened standard of proof applies in civil cases, but evidence must be clear, convincing and cogent; and
 - (5) No heightened standard of proof applies in civil cases, but the more improbable the event, the stronger the evidence is needed to meet the balance of probabilities test.
- (4) The Approach Canadian Courts Should Now Adopt

[40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow. [emphasis added]

F.H. v. McDougall, supra, at paras. 39-40

41. The Executive Director submits that the standard of proof applicable in this case is proof on a balance of probabilities.
42. We further submit that we have met that burden and far exceeded it with the evidence in this case.

Fraud pursuant to section 57(b) of the Act

43. From November 22, 2007 to present, section 57(b) of the Act has stated:

57 A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct

...

(b) perpetrates a fraud on any person.

[Securities Act](#), RBC 1996, c 418, s. 57

44. The earlier version of section 57(b) was worded differently but does not significantly alter the approach to be taken in this case.

Securities Act, RBC 1996, c. 418, s 57 [eff June 29, 1999 to November 21, 2007]

45. The Commission in its recent decision in *IAC* found fraud after considering the framework of analysis set out in the Supreme Court of Canada decision *Theroux*. The Executive Director submits that the framework of analysis which applies the *actus reus* and *mens rea* elements of fraud as cited in *Theroux* and *Anderson* is the framework through which the present case should be assessed.

[Anderson v. British Columbia \(Securities Commission\)](#), 2004 BCCA 7
[R. v. Theroux](#), [1993] 2 SCR 5
[Re IAC](#), 2014 BCSECCOM 93

46. The *actus reus* of fraud will be established by proof of:
 - a) the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
 - b) deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interest at risk.

Theroux, supra, at p. 20

47. Correspondingly, the *mens rea* of fraud is established by proof of:
- a) subjective knowledge of the prohibited act; and
 - b) subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

Theroux, supra, at p. 20

48. The Supreme Court of Canada held in *Theroux* and in *Zlatic* that:

Where the conduct and knowledge required by these definitions are established, the accused is guilty whether he actually intended the prohibited consequence or was reckless as to whether it would occur.

Theroux, supra, at p. 20

[R. v. Zlatic](#), [1993] 2 S.R.C. at p. 43

49. Pursuant to *Theroux*, the unauthorized diversion of funds falls within "other fraudulent means" in the *actus reus* of fraud.

Theroux, supra, at para. 18.

50. In *Zlatic*, the Supreme Court of Canada considered the Ontario Court of Appeal decision in *Currie* to be a concrete example of the application of the principles which constitute "other fraudulent means". In *Currie*, the Court confirmed that the use of investors' funds in a manner which was not authorized was sufficient grounds for finding that the accused acted dishonestly.

Zlatic, supra, at pp. 45, 47

R. v. Currie (Ont. C.A.), [1984] O.J. No. 147

The conduct relates to securities

51. Section 57 requires that the conduct amounting to fraud relate to securities.

52. The Respondents' fraudulent scheme involved the offer of:

- a) units in the Falls, each unit comprised of one share and one bond (Falls Securities); and
- b) Deercrest bonds (Deercrest Securities),

both of which fall within the definition of “security” in the Act.

[Securities Act](#), RSBC 1996, c. 418, s.1(1) definition of
“security”
BCSC00163/EXH00133 P2 and BCSC00164/EXH00164 P1
(Falls OMs)
BCSC00185/EXH00155 P1 and BCSC00186/EXH00156
P1 (Deercrest OMs)

Prohibited act and deprivation- actus reus

The Falls

53. The Falls OMs said that the majority of money raised from investors would be loaned to a developer for the development of the Falls Resort.

BCSC00163/EXH00133 Section 1.2, P4; Section 2.2; P5 (October 15, 2007 OM)
BCSC00164/EXH00134 P4: Section 1.2 and P5, Section 2.2 (October 15, 2008 OM)
Hearing Day 1 P39 L17-L23

54. During the March 12 Interview, Wharram confirmed that the Falls raised all of its capital using an OM to issue securities.

BCSC00168/EXH00138 P28 L23-26

55. The Executive Director submits that the investor lists Wharram provided to Chan, and Wharram’s statement below at the March 13 Interview, prove that the Falls Investments totaled \$5,442,400:

Q Okay. So if we look at the bottom of page 3, and the bottom of the column titled "Amount invested", there's a total listed here and it's for \$5,442,400.

A Correct.

Q You see that there. Is this the total funds raised from The Falls Capital Investors?

A Yes.

Q Okay. And all of these funds were raised pursuant to the Offering Memorandum dated October 15th, 2007?

A Or the amended one.

Q Okay.

A Okay, yes.

Q That's correct. Is that correct?

A Yes.

BCSC00169/EXH00139 P48 L7-20, P202-P204, P37 L27, P38, P39
L1-L2 (March 13 Interview)
BCSC00171/EXH00141 P1-P5
BCSC00276/EXH00183
BCSC00169/EXH00139 P39, P42 L17-L22
BCSC01115/EXH00233 (Chan table)
BCSC01114/EXH00232 (Chan table)
Hearing Day 1 P59 L11-L25, P60 L1-L3

56. Wharram signed the Falls Claims on behalf of the Falls and the Bare Trustees claiming only \$2,302,333 in advances to Blackburn in the creditor claims proceedings, substantiating that the Falls only loaned \$2,302,333 to Blackburn for the development of the Falls Resort.

BCSC00173/EXH00143 (Falls Claims)
BCSC00169/EXH00139 P58 L8-L27, P59, P60-P65 L1-L26
BCSC01115/EXH00233 (Chan table)
BCSC01114/EXH00232 (Chan table)
Hearing Day 1 P157 L2-L25, P158-P160 L1-L19

57. Wharram confirmed at the March 13 Interview that the Falls itself only loaned \$2,189,301 to Blackburn:

Q Okay. So I'm going to ask the question again. The total at the bottom of this column of \$2,189,301, is this the total amount of the loans made by The Falls Capital to Blackburn?

A Yes.

BCSC00169/EXH00139 P61 L23-L27

58. Wharram provided a summary of all cheques written by the Falls to the Falls Resort (the Falls Cheques Summary). According to the Falls Cheques Summary, the Falls made payments totaling \$2,189,301.42 to Blackburn and payments totaling \$113,031.33 to the Bare Trustees.

BCSC00158/EXH00128 P4 para. 23
BCSC00175/EXH00145
BCSC01114/EXH00232 (Chan table)

59. The Executive Director submits that:
- a) the investor lists, Wharram's interview statements confirming the quantum of the Falls Investments and the amount of the loans made by the Falls to Blackburn, the Falls Cheques Summary, and the Falls Claims prove that Wharram, the Falls, and West Karma raised \$5,442,400 from the Falls Investors and only advanced approximately \$2,300,000 to Blackburn; and
 - b) by not advancing the majority of the Falls Investments to a developer for the development of the Falls Resort as represented in the Falls OMs, Wharram, the Falls, and West Karma committed a prohibited act.
60. The Falls had one bank account, which it held at Scotiabank with the number 124190031410 (the Falls Account). Wharram was the sole authorized signatory on the Falls Account.

BCSC00070/EXH00079 P12-P17
BCSC00168/EXH00138 P27 L21-L27, P28 L1-L6
BCSC00158/EXH00128 P5 para 26
Hearing Day 1 P88 L5-L10, L16-L25, P89 L1-L21

61. West Karma had a bank account at Scotiabank with the number 124190009415 (the West Karma Account). Wharram was the sole authorized signatory.

BCSC00070/EXH00079 P25-P28
BCSC00158/EXH00128 P5 para 26
Hearing Day 1 P88 L5-L10 (Chan testimony)

62. Chan testified that \$2,136,153.21 was transferred from the Falls Account to the West Karma Account.

BCSC01104/EXH222 (Chan table)
BCSC01105/EXH223 (Chan table)
BCSC00177/EXH00147
BCSC00074/EXH00082
BCSC01115/EXH233 (Chan table)
Hearing Day 1 P91 L14-L25, P92 L1-L10, P93 L14-L25, P94-P95, P96
L1-L25, P97-P99 L1-L19 (Chan testimony)

63. West Karma filed claims against Blackburn of only \$33,923 (\$30,000 in cheques, plus interest) in the creditor claims proceedings (the West Karma Claims). Wharram signed the West Karma Claims.

BCSC00158/EXH00128 P11 para 75 and para 76
BCSC00197/EXH00167

64. The Falls OMs stated that West Karma was solely responsible for commissions.

BCSC00168/EXH138P192 L4-16
BCSC00163/EXH00133 P2-last sentence under Selling Agents
BCSC00164/EXH00134 P1 and P2-last sentence under Selling Agents

65. Pursuant to the Falls OMs, West Karma was entitled to receive from the Falls 13.4615% of the funds advanced to the Joint Ventures as reimbursement for all costs and expenses West Karma incurred as a result of the Falls OMs.

BCSC 00163/EXH00133 (the Falls 2007 OM) P2 "Selling Agents", P7
section 2.2.3 (i)
BCSC00164/EXH00134 (the Falls 2008 OM) P1,2 "Selling Agents",
P7 section 2.2.3 (i)
BCSC00169/EXH00139 P56 L2-L21, P57 L5-L12
Hearing Day 1 P52 L24-L25, P53 L1-L16 (Chan testimony)

66. Wharram confirmed at the March 12 Interview that West Karma was not entitled to any other reimbursement or compensation from the Falls beyond the 13.4615% of the loans:

Q Besides this 13.4615 percent of the loans, was West Karma entitled to any other reimbursement or compensation from The Falls Capital?

A No.

BCSC00168/EXH 00138 P114 L12-L15

67. Chan testified that she calculated 13.4615% of \$2,302,333, the amount the Falls loaned to Blackburn, to be \$309,929.

BCSC01115/EXH00233 (Chan table)
BCSC00173/EXH00173
BCSC00163/EXH00133 (Falls 2007 OM)
BCSC00164/EXH00134 (Falls 2008 OM)
Hearing Day 2 P 120 L22-L25, P121, P122 L1-L6

68. West Karma paid \$469,806 in commissions to agents who sold Falls Securities.

BCSC00158/EXH00128 P5 para 32, P6 para 35
BCSC00169/EXH00139 P202-P204
BCSC00171/EXH00141 P1-P5
BCSC00276/EXH00183
BCSC01115

69. The Executive Director submits that by failing to advance the majority of the Falls Investments to the developer as stated in the Falls OMs, Wharram, the Falls, and West Karma committed a prohibited act, specifically an unauthorized use of investors' funds which falls within the "other fraudulent means" component of the *actus reus* of the fraud- the prohibited act.

Zlatic, supra, at pp. 45, 47
Currie, supra

70. The Executive Director further submits that, by failing to advance such a large portion of the investors' funds, Wharram, the Falls, and West Karma put the entirety of the Falls Investments at risk within the second component of the *actus reus* of the fraud- deprivation.

Theroux, supra, at p. 16

71. There was risk of deprivation in that Wharram, the Falls, and West Karma only advanced 42.30% of the Falls Investments to the development in which investors had intended the majority of their funds to be invested pursuant to the Falls OMs. Having less than half of the Falls Investments forwarded to Blackburn greatly increased the project's risk and therefore risk of deprivation was present for the entirety of the Falls Investments.

BCSC01114 /EXH00232
Hearing Day 2 P118 L12-L25, P119 L1-L17

72. The Executive Director submits that in this case there was also actual deprivation.

73. The Falls Investors did not get their principal back.

74. Investor witnesses testified that they lost all of their principal:

a) Jonathan Lo testified that:

7	186	Q	Did you get your principal back?
8	---	A	No, I didn't.

Hearing Day 2 P43 L12-L23

b) Kyla Lucas testified that:

23	Q	And did you get your investment out of The Falls?
24	A	No.

Hearing Day 3 P15 L23-L24

c) Schacher testified that:

18	414	Q	Okay. Did you get your principal back from the
19			Falls Capital Corp.?
20		A	No, I didn't.

Hearing Day 4 P98 L18-L20

75. On a narrower scale of actual deprivation, Wharram admitted that he advanced less than half of the Falls Investments to Blackburn.

Wharram used at least \$75,000 of Falls Investments towards home purchase

76. The Executive Director submits that Wharram used at least \$75,000 of the Falls Investments towards the purchase of his residence (the Residence Purchase Payment).

77. Ms. Chan testified that, using the first in first out methodology (FIFO), the source of the funds that was used to pay the \$75,000 for Wharram's residence was investor funds which flowed through the Falls Account to the West Karma Account and then out in the form of a bank draft.

78. The Executive Director submits that using the Falls Investments for the Residence Purchase Payment was a prohibited act perpetrated by Wharram, the Falls, and West Karma. Wharram and West Karma had already exceeded the amount they were entitled to for costs and expenses pursuant to the Falls OMs just through the payment of the commissions detailed above.
79. This prohibited act caused actual deprivation: the Falls Investors were deprived of the \$75,000 from the Residence Purchase Payment.

Personal use of sale of claims proceeds

80. The Executive Director submits that Wharram spent about \$47,500 of the Sale of Claims Proceeds on the following personal expenses:

- a) property taxes on Wharram residence (\$11,018.48);

BCSC01109/EXH00227
BCSC00184/EXH00154 P2

- b) work to restore his father's jeep (\$16,000);

BCSC00184/EXH00154 P3

- c) payment to reinstate his mortgage (\$14,260.50);

BCSC00184/EXH00154 P5

- d) payment to Beck Robinson & Company in Trust not for the Falls;

BCSC00184/EXH00154 P8-P9

- e) payment to Scotiabank for mortgage (\$2,581.02); and

BCSC00076/EXH00083 P3

- f) purchases at grocery, liquor, Value Village, pet and sports stores (\$1,637.78).

(the Personal Use of Sale of Claims Proceeds)

BCSC00183/EXH00153 P1-P9
BCSC01109/EXH00227(Chan table)

81. Chan testified that she:

- prepared a table to show how Wharram used the funds that the Falls received from Streetwise Capital Partners Inc. (Streetwise) from its sale of claims to Streetwise;
- relied on monthly statements and supporting documents she obtained on demand from Scotiabank (for September 30, 2011 to January 17, 2012) to show that Wharram used at least \$47,500 of the funds obtained from Streetwise for personal expenses.

BCSC01109
Hearing Day 1 P124 L20-L25, P125, P126-P133 L1-L16, P134 L6-L25, P135-P136 L1-L15

82. The Executive Director submits that Wharram's spending \$47,500 of the Sale of Claim Proceeds on personal expenses rather than returning the funds to Falls Investors to recoup part of their Falls Investments was a prohibited act.

Hearing Day 1 P123 L10-L25, P124 L1-L8
BCSC00424/EXH00195
BCSC00158/EXH00128 P6 para 39 and para 40
BCSC00181/EXH00151 P1-P6, P6-P28
BCSC01109/EXH00223
BCSC00184 /EXH 00154 P2-P9
BCSC0076/EXH00083 P3-P4
BCSC00183/EXH00153 P1-P9

83. The Executive Director submits that the prohibited act deprived the Falls Investors of the last \$47,500 they could have recouped from the Falls Investments.

84. The Executive Director submits that:

- a) in diverting Falls Investors' funds from their intended purpose and instead having them spent on the Residence Purchase Payment and the Personal Use of Sale of Claims Proceeds, Wharram, the Falls and West Karma committed a prohibited act within the first branch of the *actus reus* of fraud; and
- b) actual deprivation flowed from this prohibited act.

85. The Executive Director submits that there is proof on the balance of probabilities that Wharram, the Falls, and West Karma committed prohibited acts and that those acts caused both risk of deprivation and actual deprivation.

86. Wharram, the Falls, and West Karma did not use a substantial portion of the Falls Investments for the purpose for which the investors had entrusted those funds to them.

[Franklin Mesidor \(Re\)](#), 2013 BCSECCOM 460, at para. 32

87. The Executive Director submits that we have exceeded proof on the balance of probabilities of the *actus reus* of the fraud which Wharram, the Falls, and West Karma perpetrated on the Falls Investors.

Subjective knowledge of the prohibited act and deprivation - mens rea

Wharram, and through him, the Falls and West Karma, had subjective knowledge of the prohibited acts

88. The Executive Director submits that Wharram had subjective knowledge of the prohibited acts that:

- a) of the \$5,442,400 of Falls Investments, the Falls and the Bare Trustees had only advanced \$2,300,000 to Blackburn instead of investing the majority of the funds; and
- b) he had diverted the Falls Investors' funds from their intended purpose and instead spent part of the Falls Investments on the Residence Purchase Payment and the Personal Use of Sale of Claims Proceeds.

89. Wharram:

- a) was the sole authorized user of the Falls Account and had knowledge of where the funds from the Falls Account went because he was the only one authorized to move those funds around; and

BCSC00158/EXH00128 P4 para. 23
BCSC00175/EXH00145
BCSC01114/EXH00232 (Chan table)

- b) signed the Falls Creditor Claims, which in our submission is an admission that he and the Falls only advanced \$2,300,000 to Blackburn.

90. Wharram knew that he, as sole authorized signatory on the Falls Account and West Karma Account, had advanced about \$2.1 million from the Falls Account to the West Karma Account. He diverted the funds from the Falls Account to West Karma.

91. Wharram knew that he, the Falls, and West Karma were not using investors' funds as represented in the Falls OMs because he did not advance the majority of investor funds to the developer as stated in the Falls OMs.

92. Therefore Wharram had subjective knowledge of the prohibited acts.

93. The Executive Director submits that:

- a) Wharram was the directing mind of the Falls and West Karma as the companies' president and director; and
- b) Wharram's state of mind is attributable to the Falls and West Karma and therefore they too had subjective knowledge of the prohibited acts.

IAC, supra, at para. 45

Wharram, and through him, the Falls and West Karma, had subjective knowledge that the prohibited acts could cause deprivation

94. The Executive Director submits that Wharram, and through him the Falls and West Karma, had subjective knowledge that not advancing the majority of the Falls Investments to the developer as per the Falls OMs put the entirety of the Falls Investments at risk.

95. Wharram had to have appreciated those consequences at least as a possibility.

Theroux, supra, at pp. 18-19
IAC, supra, at paras. 38, 41-45

96. Of course investing less than half the funds in the intended real estate development puts the investments at risk.

97. Wharram had subjective knowledge that the prohibited act could, as a consequence, put the Falls Investors' pecuniary interests at risk.

IAC, supra, at para. 44

98. In addition, Wharram knew that diverting the funds which were not advanced to Blackburn resulted in depriving Falls Investors of those funds.

99. Wharram knew that when he spent the Falls Investments on the Residence Purchase Payment and the Personal Use of Sale of Claims Proceeds, he was taking those funds for an unauthorized purpose and depriving Falls Investors of their funds.

100. The Executive Director submits that:

- a) Wharram was the directing mind of the Falls and West Karma as the companies' president and director; and

- b) Wharram's state of mind is attributable to the Falls and West Karma and therefore they too had subjective knowledge that the prohibited acts could have as a consequence the deprivation of the Falls Investors.

IAC, supra, at para. 45

101. The Executive Director submits that we have exceeded proof on the balance of probabilities of the *mens rea* of the fraud which Wharram, the Falls, and West Karma perpetrated on the Falls Investors.

Prohibited act and deprivation- actus reus

Deercrest

102. Deercrest, West Karma and Wharram used the Deercrest OMs to offer the Deercrest Securities to investors to raise money to lend to a developer to develop the Deercrest Property, which was planned to be 70 residence units and a clubhouse at the Falls Resort.

BCSC00168/EXH00138 PP164-167, 172
BCSC 00185/EXH00155
BSCS 00186/EXH00156

103. Wharram confirmed that Deercrest raised all of its capital using an OM to issue securities.

BCSC00168/EXH00138 P51 L24-27
BCSC00169/EXH00139 P73 L9-L9

104. The Deercrest OMs said that:

- a) the majority of the money raised from investors would be loaned to facilitate funding of the "Deercrest Resort and Clubhouse Development"; and
- b) Deercrest was raising funds for the purpose of lending the majority of funds raised to Deercrest Resort and Clubhouse Ltd. (DRCL).

BCSC 00185/EXH0155 P4 Section 1.2, P5 Section 2.2.1 para. 3,
Sections 2.2.2.1-2.2.2.3, Section 2.7 (Deercrest 2009 OM)
BSCS00186/EXH00156 P4 section 1.2, P5 section 2.2.1 para. 3,
Sections 2.2.2.1-2.2.2.3 (Deercrest 2010 OM)

105. During the March 12 Interview, Wharram confirmed that according to the Deercrest 2010 OM, Deercrest was going to lend the majority of funds raised to DRCL. He then responded as follows to Chan's questions:

1 Q And who were the investor funds actually loaned to?
2 A Blackburn.
3 Q And why were the investor funds loaned to Blackburn
4 and not DRCL as originally outlined in the offering
5 memorandum?
6 A I -- I don't know. I don't know.
7 Q Whose decision was that?
8 A It would be Rick Wellsby's and -- I don't recall if
9 Nancy was still there, the comptroller. I think
10 she -- I don't know when she resigned.
11 Q Did you have any conversations with Mr. Wellsby or
12 anybody at Blackburn as to why you were sending the
13 investor funds to Blackburn instead of DRCL?
14 A I -- I don't know.
15 Q Did you have any e-mail correspondence with Mr.
16 Wellsby on this topic?
17 A Not that I recall, no.
18 Q Do you remember when this decision was made to loan
19 the funds to Blackburn instead of DRCL?
20 A From the beginning. I don't think I -- I do not
21 recall writing a cheque to DRCL.
22 Q And when you say the beginning, when are you referring
23 to?
24 A From our time of our first closing in spring/summer of
25 2009.
26 Q And can you tell me what the relationship is between
27 Blackburn Developments and DRCL?

1 | A No, I can't.
2 | Q So although it says in the offering memorandum that
3 | DRCL is referred to as "the Developer," was it your
4 | understanding instead that Blackburn was going to be
5 | the developer of the Deercrest property?
6 | A Yes.

BCSC00168 PP176-178

106. The Executive Director submits that the:

- a) three investor lists Wharram provided to Chan showing that \$3,953,000 was the amount of the Deercrest Investments, and
- b) following statement of Wharram at the March 13 Interview:

Q I only say that because it's a two-page document, and there's no total at the bottom of that column. I've calculated the total to be 3,953,000. I know that there's no total there, but does that sound like the number that was raised from Deercrest Construction investors?

A Yes.

Q And were all these funds raised pursuant to the Offering Memorandum dated March 2nd, 2009, or the Offering Memorandum that was amended March 31st, 2010?

A Yes.

BCSC00169/EXH 00139 P73 L9-19, P219-P220
BCSC00188/EXH00158 P1-P4
BCSC00273/EXH00180
BCSC00275/EXH00182
Hearing Day 1 P148 L1-L2

prove that the Deercrest Investments totaled \$3,953,000.

107. The Executive Director submits that:

- a) the existence of the Deercrest Claim for \$1,636,000 which Wharram signed and which was filed against Blackburn; and
- b) Wharram's confirmation at the March 13 Interview that Deercrest loaned \$1,636,000 to Blackburn:

Q And the total at the bottom of this column is \$1,636,000. Do you see that?

A That's correct.

Q Is this the total amount of funds advanced by Deercrest Construction to Blackburn?

A It matches the cheques, yes.

Q Is this the total amount loaned by Deercrest to Blackburn?

A Yes.

prove that Deercrest only loaned \$1,636,000 out of the Deercrest Investments to Blackburn.

BCSC00169/EXH00139 P85 L19-27; P221-P238
BCSC00190/EXH00160

108. The Executive Director submits that:

- a) the evidence above proves on the balance of probabilities that Wharram, Deercrest, and West Karma raised \$3,953,000 in Deercrest Investments and only advanced \$1,636,000 to Blackburn; and
- b) by not advancing the majority of the Deercrest Investments to a developer to develop the Deercrest Property as represented in the Deercrest OMs, Wharram, Deercrest, and West Karma committed a prohibited act.

109. Wharram was responsible for managing Deercrest's financial affairs, making all bank deposits, and approving and paying all of the company's expenses.

BCSC00168 P64 L3-L10

110. Wharram:

- a) a hundred percent owned and controlled Deercrest;
- b) was the president and sole director of Deercrest;
- c) made all the decisions for the company;
- d) had the Deercrest office at his address at 235-51075 Falls Court, which was also the office space used by the Falls and West Karma.

BCSC00168/EXH00138 P48-P50

111. Deercrest had one chequing account, which it held at Scotiabank with the number 90100 00520 19 (the Deercrest Account). It also had a savings account but that account wasn't used. Wharram was the sole authorized signatory on the Deercrest Account.

BCSC00168/EXH00138 P50L15-L27, P51 L1-L12

112. Chan testified that \$1,367,086.72 was transferred from the Deercrest Account to the West Karma Account.

BCSC01106 (Chan table)
BCSC01107 (Chan table)
Hearing Day 2 P59 L25, P60-P63 L1-L2

113. The West Karma Claims were only for about \$33,923 (including interest).

BCSC00158/EXH00128 P11 para 75 and para 76
BCSC00197/EXH00167

114. The Deercrest OMs specify that 10% of the loan amount for transfer could be paid for sales commissions. During the March 13 Interview, Wharram said that he and Blackburn decided to add a 2% marketing amount to this to bring it up to 12%.

BCSC 00185/EXH00155 P1, last para, P4 section 1.1, note 1, section 1.2, Section 5.2 P17 item 7 "Commissions:"
BCSC 00186/EXH00156 P1, last para, P4 section 1.1 note 1, section 1.2, Section 5.2 P17 item 7 "Commissions:"
BCSC 00169/EXH00139 P75
BCSC01103/EXH00221 P2 and P8 (Chan table)
BCSC01115/EXH00233 (Chan table)
Hearing Day 1 P 144 L19-L25, P145 (Chan testimony)
Hearing Day 2 P123 L3-10 (Chan testimony)

115. Giving Wharram the benefit of the extra 2%, Ms. Chan testified that she calculated 12% of the \$1,636,000 loan amount to be \$196,320.

BCSC01115/EXH00233
Hearing Day 2 P123 L3-L13

116. West Karma paid commissions of \$331,480 on the Deercrest Investments.

BCSC00158/EXH00128 P8 para 5
BCSC00275/EXH00182
BCSC01115/EXH00233

117. The Deercrest OMs stipulated that Deercrest would pay out 12.5% in interest to investors.

BCSC00185/EXH00155 P13 section 5.1(c)
BCSC00186/EXH00155 P13 section 5.1(c)

118. Deercrest paid interest to investors out of the Deercrest Account. All of the interest paid by Deercrest was paid using investor funds.

BCSC 00079/EXH00086 P2-P86, P88-P105, P107-P154, P157-161,
P163-165, P169-P193 and P195
BCSC 00080/EXH 00087 P1-P15, P18-26, P29-P30, P32- P34, P37-
P80, P83-P84, P89-P92, P94-P120, P122-P135, P138-P173, P175-
P212, P214-P278, P280-P288, P290-P328, P330-P337
BCSC 00081/EXH00088 P1-P41, P43-P51, P53-P54, P56-P145, P147-
P171
BCSC 00082/EXH00089 P2-P5, P7-P69, P71-P91, P93-P184, P186-
P201
BCSC00169/EXH00139 P97 L 11-18

119. The Executive Director submits that by failing to advance the majority of the Deercrest Investments to DRCL as stated in the Deercrest OMs or Blackburn as arranged with Wellsby, Wharram, Deercrest, and West Karma committed an unauthorized use of investors' funds which falls within the "other fraudulent means" branch of the first component of the *actus reus* of the fraud. Failing to advance the majority of the funds was a prohibited act.

Zlatic, supra, at pp. 45, 47
Currie, supra

120. The Executive Director further submits that, by failing to advance such a large portion of the Deercrest Investments, Wharram, Deercrest, and West Karma put the entirety of the Deercrest Investments at risk, within the second component of the *actus reus* of the fraud- deprivation.

Theroux, supra, at p. 16

121. There was a prohibited act and risk of deprivation in that Wharram, Deercrest, and West Karma only advanced 41.39% of the Deercrest Investments to the development in which investors had intended their funds to be invested pursuant to the Deercrest OMs. Having less than half of investors' funds forwarded to Blackburn greatly increased the project's risk and therefore risk of deprivation was present for the entirety of the Deercrest Investments.

BCSC01114/EXH00222
Hearing Day 2 P119 L19-L25, P120

122. The Executive Director submits that in this case there was also actual deprivation.

123. The Deercrest Investors did not get their principal back. Wharram confirmed at the March 13 Interview that Blackburn did not repay any of the loan principal to Deercrest.

BCSC00169/EXH00139 P74-P75

124. Investors testified at the hearing that they lost their investment:

a) Bartho Amado testified that he did not get his principal back:

6	Did you ask to have your investment returned to
7	you by Deercrest?
8	As far as I know, there were a lot of -- a lot of
9	things happening with Deercrest, and I can't
10	recall if I specifically asked for it, but I know
11	I never got any of my money back.

Hearing Day 5 P10 L6-L11

b) Jorge Cardoza testified that he did not get his principal back:

6	104	Q	And did you get your principal back from
7			Deercrest?
8		A	No.

Hearing Day 2 P24 L6-L8

c) Kyla Lucas testified that she did not get her principal back:

5	Q	Did you or your mother receive any of your hundred
6		thousand dollar investment back?
7	A	No.

125. Bonnie Scardillo testified that she did not get her principal back:

25 130:1 2 3	587	Q	And Mrs. Scardillo, did you receive any of your \$46,000 back?
		A	No. I, I received -- no, I didn't get any 46,000 back, but I got a little bit of interest, like,

126. On a narrower scale of actual deprivation, Wharram admitted that he advanced less than half of the Deercrest Investments to the Blackburn.

Purchase of residence

127. The Executive Director submits that Wharram, from the Deercrest Investments, used at least \$130,000 towards the purchase of his residence (the Additional Residence Purchase Payment).

128. Chan testified that about \$133,000 of investor funds went towards the purchase of the bank draft of \$166,190.53 which was used to purchase Wharram's residence. Chan walked the Panel through a table she prepared using the first-in -first out method (FIFO) to show that investor funds from the Deercrest Investments went towards the purchase of the bank draft.

129. The Executive Director submits that using the Deercrest Investments for the Additional Residence Purchase Payment was a prohibited act perpetrated by Wharram, Deercrest, and West Karma.

130. This prohibited act caused actual deprivation: the Deercrest Investors were deprived of the \$130,000 from the Deercrest Investments which was used for the Additional Residence Purchase Payment.

Money for wife to open grocery store

131. The Executive Director submits that Wharram, from the Deercrest Investments, used \$240,000 to lend to his wife to invest in a grocery store called Nature's Fare (the Wife's Grocery Store Payment).

BCSC 00195/EXH00165 P1-P7
BCSC00169/EXH00139 P136 L5-L27, P137-140
BCSC01112 (Chan table)
Hearing Day 2 P81-P93 L1-L19, P94-P106 L1-L12
Hearing Day 4 P4 – P15 L1-L6

132. Wharram in the March 13 Interview stated that the four Deercrest Account payments to Nature's Fare totaling \$240,000 were a loan to his wife to buy 50% of Nature's Fare Langley.

BCSC00169/EXH00139 P136 – P140

133. Wharram further stated that:

21 | Q Did you inform Deercrest Construction investors about
22 | this loan to your wife?
23 | A No.
24 | Q And did any of the investors know about these payment
25 | to Nature's Fare?
26 | A No.

BCSC00169/EXH00139 P140 L21-L26

134. Chan testified that the \$240,000 in bank drafts was purchased using investor funds from the Deercrest Account. Chan walked the Panel through a table she prepared to show that investor funds from the Deercrest Investments went towards the Wife's Grocery Store Payment.

Hearing Day 2 P81-P93 L1-L19, P94-P101 L1-L22
BCSC01112/EXH00230 (Chan table)

135. The Deercrest Investors whose funds went towards the purchase of the \$240,000 bank draft include Bonnie Scardillo, Kyla Lucas, and Bartho Amado, who all testified that they had never heard about Nature's Fare.

Hearing Day 3 P23 L3-L4 (Kyla Lucas' testimony)
Hearing Day 4 P129 L1-L3 (Bonnie Scardillo's testimony)
Hearing day 5 P11 L4-L6 (Bartho Amado's testimony)

136. Rick Monahan testified that:

- he is the director and CEO of Nature's Fare Natural Foods
- Jennifer Boyd and Rod Wharram asked to be partners of Nature's Fare
- Jennifer Boyd invested \$300,000 and signed an agreement with Nature's Fare
- Nature's Fare bought Jennifer Boyd's shares and returned the \$300,000 by a bank draft made payable to West Karma and she ceased to be a director

Hearing Day 4 P4 – P15L1-L6

137. The Executive Director submits that using the Deercrest Investments for the Wife's Grocery Store Payment was a prohibited act perpetrated by Wharram, Deercrest, and West Karma.

138. This prohibited act caused actual deprivation: the Deercrest Investors were deprived of the \$240,000 from the Deercrest Investments which was used for the Wife's Grocery Store Payment.

Diamond ring for wife

139. The Executive Director submits that Wharram, from the Deercrest Investments, used \$24,000 to purchase a diamond ring for his wife (the Wife's Diamond Ring Payment).

BCSC00169/EXH00139 P141 L4-27, P142, P143 L17-L24
BCSC01113 (Chan table)
Hearing Day 2 P110-P118 L1-L7

140. Chan testified that the Wife's Diamond Ring Payment came from the Deercrest Account.

BCSC01113 (Chan table)
Hearing Day 2 P110-P118L1-L7

141. The Executive Director submits that the Wife's Diamond Ring Payment came from Deercrest Investments. Ms. Chan walked the Panel through a table she prepared to show that investor funds from Deercrest Investments went towards the Wife's Diamond Ring Payment.

BCSC01113/EXH00231 (Chan table)
Hearing Day 2 P110-P114, P118 L1-L7

142. During the March 13, 2013 Interview, Wharram said the following about the Wife's Diamond Ring Payment:

4 EXHIBIT 27: Draft dated January 21, 2010
5 Q It was also purchased from one of the Deercree
6 Construction Fund accounts, Scotiabank.
7 A Okay.
8 Q It's dated January 21st, 2010 in the amount of \$24,000,
9 pay to the order of Golden Chi (phonetic) Jewellers.
10 Did you purchase this draft, Mr. Wharram?
11 A Yes.
12 Q What was this payment for?
13 A Jewellery, at Golden Chi Jewellers. I can't say that
14 word.
15 Q What was the jewellery?
16 A It was a ring.
17 Q What kind of ring?
18 A A ring, a diamond ring.
19 Q Okay, a diamond ring. Do you remember the size of the
20 diamond?
21 A I don't, no.
22 Q Okay. And who was this diamond ring being purchased
23 for?
24 A My wife.
25 Q Was it a wedding ring?
26 A No.
27 Q Was it a gift?

BCSC00169 P141 L4-27

143. Wharram stated the following:

17 | Q What was this -- that's good. What was this gift for,
18 | was it an anniversary gift?
19 | A It was -- no, it was honestly for having my son --
20 | Q Okay.
21 | A -- and having a -- being a good mom, and stuff.
22 | BY MS. CHAMBERS:
23 | Q Did the investors know about this one?
24 | A No.

BCSC00169 P143 L17-24

144. The Executive Director submits that using the Deercrest Investments for the Wife's Diamond Ring Payment was a prohibited act perpetrated by Wharram, Deercrest, and West Karma.
145. This prohibited act caused actual deprivation: the Deercrest Investors were deprived of the \$24,000 from the Deercrest Investments which was used for the Wife's Diamond Ring Payment.
146. The Executive Director submits that in spending Deercrest Investors' funds on the Additional Residence Purchase Payment, the Wife's Grocery Store Payment, and the Wife's Diamond Ring Payment instead of advancing the majority of the Deercrest Investments to the development of the Deercrest Property, Wharram, Deercrest and West Karma committed prohibited acts and deprived investors of those amounts.
147. The Deercrest investors who testified at the hearing said that they thought they were investing in houses or condominiums being built and sold- in real estate.

Hearing Day 5 P7 L13-20 (Bartho Amado)
Hearing Day 3 P17 L10-25, P18 L1-4 (Kyla Lucas)
Hearing Day 2 P21 L21-25, P22 L1-3 (Jorge Cardoza)

148. The Executive Director submits that Wharram, Deercrest, and West Karma, through the overall conduct detailed above, committed prohibited acts and that those acts caused both risk of deprivation and actual deprivation.
149. They did not use a substantial portion of investors' funds for the purpose for which the investors had entrusted those funds to them.

Mesidor, supra, at para. 32

150. The Executive Director submits that we have exceeded proof on the balance of probabilities of the *actus reus* of the fraud which Wharram, Deercrest, and West Karma perpetrated on Deercrest Investors.

Subjective knowledge of the prohibited act and deprivation – mens rea

Wharram, and through him, Deercrest and West Karma, had subjective knowledge of the prohibited acts

151. The Executive Director submits that Wharram had subjective knowledge of the prohibited act that of the \$3,953,000 million raised from Deercrest Investors, Deercrest had only advanced \$1,636,000 to Blackburn.
152. Wharram owned and controlled Deercrest, was its president and sole director, made all its decisions, had its office at his home, was the sole authorized signatory on the Deercrest Account, and signed the Deercrest Claims.
153. Wharram's signing of the Deercrest Claims in our submission is an admission that he only advanced \$1,636,000 to Blackburn. He later confirmed this was the amount during his interview.
154. Wharram knew that \$1,367,086.72 had been advanced from the Deercrest Account to the West Karma Account because he was the sole authorized user of both of these accounts. He diverted the funds from the Deercrest Account to West Karma.
155. Wharram knew that he, Deercrest, and West Karma were not using investors' funds as represented in the Deercrest OMs because he did not advance the majority of the Deercrest Investments to the developer as stated in the Deercrest OMs.
156. Therefore Wharram had subjective knowledge of the prohibited act.
157. The Executive Director submits that Wharram also had subjective knowledge of the prohibited act of diverting some of the Deercrest Investments to pay for the Additional Residence Purchase Payment, the Wife's Grocery Store Payment, and the Wife's Diamond Ring Payment instead of advancing the majority of the Deercrest Investments to the development of the Deercrest Property
158. As the sole authorized user of the Deercrest Account and the West Karma Account, Wharram had knowledge of where the funds went, and knew that he spent the money on himself and on his wife.
159. The Executive Director submits that Wharram was the directing mind of Deercrest and West Karma as the companies' president and a director, and as such his state of mind is attributable to Deercrest and West Karma and they too had subjective knowledge of the prohibited acts.

IAC, supra, at para. 45

Wharram, and through him, Deercrest and West Karma, had subjective knowledge that the prohibited act could cause deprivation

160. The Executive Director submits that Wharram, and through him Deercrest and West Karma, had subjective knowledge that not advancing the majority of the Deercrest Investments to Blackburn put the entirety of the Deercrest Investments at risk.

161. Wharram had to have appreciated those consequences at least as a possibility.

Theroux, supra, at p. 18
IAC, supra, at paras. 38, 41-45

162. The Executive Director submits that Wharram had subjective knowledge that the prohibited act could, as a consequence, put the investors' pecuniary interests at risk.

IAC, supra, at para. 44

163. In addition, Wharram knew that diverting the funds which were not put into the intended investment resulted in depriving Deercrest Investors of those funds.

164. Wharram knew that when he spent Deercrest Investments on the Additional Residence Payment, the Wife's Grocery Store Payment, and the Wife's Diamond Ring Payment, he was taking them for an unauthorized purpose and depriving Deercrest Investors of their funds.

165. Through Wharram, Deercrest and West Karma had this subjective knowledge.

166. The Executive Director submits that we have exceeded proof on the balance of probabilities of the *mens rea* of the fraud which Wharram, Deercrest, and West Karma perpetrated on the Deercrest Investors.

167. The Executive Director further submits that Wharram's conduct was dishonest.

168. The Falls and Deercrest OMs pursuant to which he and the Corporate Respondents raised investor funds said that the majority of the money raised would be advanced to a developer to develop the Falls Resort and the Deercrest Property. Wharram and the Corporate Respondents did not advance the majority of the funds. As a result of this dishonest conduct, investors' pecuniary interests were put at risk and investors suffered actual loss.

Liability under section 168.2 of the Act

169. Wharram was a director and president of the Falls, Deercrest, and West Karma.

170. The Executive Director submits that the evidence establishes that Wharram controlled the conduct of the Falls, Deercrest, and West Karma.
171. Wharram authorized, permitted, and acquiesced in the Corporate Respondents' contraventions of section 57 and thereby committed the same contraventions pursuant to section 168.2 of the Act.

Securities Act, RSBC 1996, c. 418 s.168.2

Extensive investigation uncovered evidence well beyond balance of probabilities

172. The Executive Director submits that Chan conducted an extensive investigation which uncovered evidence which exceeded that required to discharge the Executive Director's burden to prove the allegations on the balance of probabilities.
173. Senior Investigator Chan took the following steps to review the funds raised for the Falls and Deercrest:

- a) obtained list of investors from Wharram three times and the amounts were the same;

BCSC00169/ EXH00139 P202-P204
BCSC00171/EXH00141 P1-P5
BCSC00276/EXH00183
BCSC00169/EX00139 P219-P220
BCSC00188/EXH00158 P1-P4
BCSC00273/EXH00180
BCSC00275/EXH00182

- b) questioned Wharram about the amount in detail in compelled interview and he confirmed the amount raised was that totaled from his list;

BCSC00169/EXH00139 P48 L7-L13, L21-L24, P61-L8-16, P62 L1-L3, P71 L19-L27, P72 L13-L15, P73 L9-L19, P85 L19-L27
BCSC00191/EXH00161

- c) analyzed subscription agreements Wharram had provided against the lists and did not find inconsistencies;

Hearing Day 4 P74 L12-L25, P75, P76, P77 L1-L23, P155 L7-L19

- d) spoke to investors and what they said corresponded with the information Wharram had provided;

Hearing Day 4 P154 L12-L23

- e) reviewed bank deposits during same period of time and amounts deposited into accounts exceeded amount of investments on list; and

Hearing Day 4 P157, P158 L1-L11, L15-L19

- f) confirmed in interview source of funds in the company was from investors.

BCSC00169/EXH00139 P 48 L7-L13 and L21-L24, P73 L9-L27, P116 L11-L13, P105 L15-L27, P106 L1-L15
BCSC00168 /EXH00138
Hearing Day 1 P114 L12-L25, P115 L1-L10

174. Chan took the following steps to review the loans advanced for Falls and Deercrest:

- a) obtained from PWC all claims (Falls, Bare Trustees, Deercrest, West Karma) filed in Blackburn CCAA proceedings;

BCSC00173/EXH00143
BCSC00181//EXH00151 P1-P28
Hearing Day 1 P67 L2-L25, P68 L1-L23

- b) asked Wharram in interview about amounts of claims and he said he provided the information which was the basis for the claims and approved them and signed them;

BCSC 00169/EXH00139-P58 L 8-27, P59 L22-L27, P60-L1-L7
BCSC00190/EXH00160 P1-P5
Hearing Day 1 P69-P70 L1-L5, L17-L25, P71

- c) asked Wharram in interview about amounts of claims and he confirmed that those were the amounts loaned;

Hearing Day 1 P74-P75 L1-L10, P75 L21-L25, P76 , P77 L1-L23

- d) provided May 10 2012 letter with summaries and support cheques which he captioned “amounts loaned to Falls/Deercrest project”;

BCSC 00175/EXH00145 P 1-P5-Falls cheque summary
BCSC00191/EXH00161-Deercrest cheque summary

- e) had discussions with PWC about Companies Creditors’ Arrangement Act process and claims approval process which built up reliability of amount;

Hearing Day 4 P72, P73, P74

175. Chan took the following investigative steps as part of her investigation regarding the Sale of Claims Proceeds:

a) issued a demand to Streetwise;

BCSC00158/EXH0000128

b) obtained Streetwise agreements;

BCSC00181/EXH00151 P1- P28;
BSC00182/EXH00152
Hearing Day 1 P123 L12-L25, P124 L1 -L19

c) questioned Wharram about it and he admitted what all the expenditures for; and

BCSC00169/EXH00139 P 103 L5-L27, P104, P105 L1-L12

d) obtained the bank statements and all the support for the transactions.

BCSC01109/EXH00227
Hearing Day 1 P125-P131 L1-L9

176. Chan also did the following in the course of her extensive investigation:

a) two full days of interviewing Wharram in which she put 41 documents to him;

BCSC00168/EXH00138
BCSC00169/EXH00139

b) spoke to:

- i. 16 Falls Investors,
- ii. 6 Deercrest Investors but attempted to reach at least 8 (sometimes had a few conversations with them),
- iii. Rick Wellsby of Blackburn,
- iv. PWC and Ernst and Young (E&Y),
- v. the Monahans of Nature's Fare,
- vi. Daryl Francouer of 360 Fabrication,
- vii. Bob Bhindi of Golden Tree Jewellers,
- viii. Streetwise,
- ix. staff at Capital Direct,
- x. Scott Simpson notary regarding 235 house purchase,

- xi. Calgary law firm regarding 215 house purchase,
- xii. Envision staff Jaime Lord,
- xiii. Scotiabank staff, and
- xiv. spring 2013 investors Drury and Neigum.

BCSC00567/EXH00112 P1, P12, P13, P15, P17-P20, P22, P35-P43,
P51-P, P59
BCSC00573/EXH00118
BCSC00572/EXH00117
BCSC00568/EXH00113 P45, P49, P50, P51
BCSC00567/EXH00112 P7, P8, P9, P11, P21, P22, P24, P31-P33, P48
BCSC00154/EXH00111 P3 para 14

- c) in addition to receiving materials voluntarily, sent numerous Demands including to Wharram, Nature's Fare, Simpson Notaries, 360 Fabrication, Envision, Scotiabank, Streetwise;

BCSC 00158/EXH00128 P4 para 22, para 24-25, P5 para 31, P6 para
38
BCSC00174/EXH00144
BCSC00109/EXH00101
BCSC00114/EXH00104
BCSC00070/EXH0070 P2-P8
BCSC00565/EXH00207
BCSC00181/EXH/00151

- d) reviewed records:

- i. Scotiabank records of Respondents' bank accounts and support documents

Hearing Day 1 P84, P85 L1-L22.

- ii. Envision records which she obtained further to information Chan obtained from Wharram during interview;

BCSC00158/EXH00128 P12 para 80-81
BCSC00199/EXH/EXH00169

- iii. had to attempt numerous times to get documents from Wharram

Hearing Day 6 P2 L25, P3

- iv. documents from Wharram provided by him or his counsel;

BCSC00158/EXH00128 P3, para 14, P4 para 22,-23

- v. reviewed general ledger supplied by Wharram but did not rely on it heavily as had the source documents themselves- bank statements.

21 | A The other evidence that I obtained. I mean, this
22 | is the general ledger. It's, it's a summary of
23 | accounting entries. It's not a set of financial
24 | statements that have been audited by an
25 | independent party.

Hearing Day 4 page 83 L21-L25

14 | A Well, this isn't the corporate bank statement.
15 | It's an accounting of it. So, uhm, I had the
16 | actual bank statements and so I looked at those,
17 | not this one.

Hearing Day 4 page 84 L14-L17

- vi. for Deercrest, Ms. Chan gave evidence that she:

11 | A Uhm, I looked at the investor list, combined with
12 | the investors I spoke to, looking at the
13 | subscription agreements, as well as the bank
14 | statements themselves and the amount of funds
15 | deposited there compared to the investor list.
16 | Q And what were your findings?
17 | A Uhm, that the total deposits were close to the
18 | figure of the total investments reported on your
19 | list.

Hearing Day 4 Page 155 L11-L19

- vii. Simpson Notaries documents which were back-up for home purchase;

BCSC00441/EXH00202 P1-P74
BCSC00193/EXH00163
BCSC00169/EXH00139 P135 L6-L27, P136 L1-L4,

- viii. 360 Fabrications documents regarding jeep restoration;

BCSC00116/EXH00106
BCSC00184/EXH00154 P3

- ix. documents from Monahans about Nature's Fare;

BCSC00111/EXH00102

- x. proof of claim documents from PWC/ E&Y;

BCSC00173/EXH00143

- xi. Documents from StreetWise;

BCSC00181/EXH00151

177. In addition, regarding some specific documents which Chan obtained from Wharram and then reviewed, she:

- a) obtained Falls and Deercrest investor list at least 3 times;

BCSC00169/EXH00139 P201-P204, P 219-P220 29

BCSC00171/EXH00141 P1-P5

BCSC00188/EXH00158 P1-P4

BCSC00276/EXH00183

BCSC00275/EXH00182

- b) substantiated this by comparing to

- i. JV agreements and subscription agreements and exempt distribution reports;

BCSC00055/EXH00072-Exempt Distribution Reports

- ii. binders including list of payments to development with supporting cheques and general ledgers and marketing materials under cover of May 10 2012 letter;

BCSC00158/EXH00128 P4 para 22-23

BCSC00174/EXH00144

BCSC00175/EXH00145

- iii. copies of OMs;

BCSC00163/EXH00133 (The Falls 2007 OM)

BCSC00164/EXH00134 (the Falls 2008 OM)

BCSC00185/EXH00155 (Deercrest 2009 OM)

BCSC00186/EXH00156 (Deercrest 2010 OM)

- iv. list of all salespeople and contact information;

BCSC00101/EXH00096 P111-P114; P116-P120

BCSC00152/EXH00109

- v. marketing update letters sent to investors;

BCSC00105/EXH00097

- vi. April 29 2013 letter from Anderson attachments.

BCSC 00101/EXH00096

178. Chan reviewed bank statements and available support and traced some of the funds. She did not do a full tracing as it was unnecessary given the admissions Wharram made in his interview.

Hearing Day 3 P87 L 7-16

Hearing Day 4 P77 L 9-23

Hearing Day 5 P32 L5-L21, P33 L8-12, P74 L15-25, P75 L1-25, P76 L1-L6

False statements to an investigator Section 168.1

179. Section 168.1 of the Act says:

- (1) A person must not

(a) make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading, or

(b) make a statement or provide information in any record required to be filed, provided, delivered or sent under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

- (2) A person does not contravene subsection (1) if the person

(a) did not know, and

(b) in the exercise of reasonable diligence, could not have known

that the statement or information was false or misleading.

Securities Act, RBC 1996, c 418, s. 168.1(1)

180. The Commission considered the purpose of section 168.1 in *Johnson*:

Section 168.1 is important in preserving the integrity of the regulatory system by requiring those required to provide information to the commission to do so truthfully.

181. Chan and Lori Chambers were appointed pursuant to an Investigation Order dated June 29, 2012.

BCSC00166/EXH00136
Hearing Day 2 P124 L8-L16

182. During the March 13 Interview, Wharram stated:

7 | Q And that's the calendar year, okay. Have you raised
8 | any funds from investors in 2013?
9 | A No.

(the First False Statement)

10 | Q Are you currently trying to raise any funds from
11 | investors?
12 | A No.

(the Second False Statement)

BCSC00169/EXH00139 P175 L7-12 [emphasis added]
Hearing Day 2 P124 L17- P125 L9

183. The Executive Director submits that the First False Statement and the Second False Statement were false. Chan summarized what she learned through further investigative steps:

10	380	Q	Ms. Chan, did you continue to investigate this
11			file after this interview?
12		A	Yes, I did.
13	381	Q	And did you learn in your later investigation
14			whether Mr. Wharram had raised any funds from
15			investors in 2013 prior to making this statement
16			to you?
17		A	Yes, I did. I learned that he raised funds from
18			an individual in March of 2013 prior to the
19			interview date of March 13. I also learned that
20			he had called another individual in February of
21			2013 asking them to invest funds in the Deercrest
22			project.
23	382	Q	And what else did you learn in your later
24			investigation about whether in 2013 Mr. Wharram
25			was trying to raise any funds from investors?
126:1		A	I learned that he raised funds from two other
2			investors, one in March, and one in April of 2013.

Hearing Day 2 P125 L10- P126 L2

184. Account opening documents and bank statements for First West Credit Union and Envision Financial Division West Karma account #2452894 (the West Karma Envision Account) show that Wharram was the sole authorized signatory on and sole authorized user of the West Karma Envision Account.

BCSC00154/EXH00111 P1 Para. 6, PP. 7-10
Hearing Day 2 P126 L7- P127 L15

185. On March 8, 2013, the West Karma Envision Account received a \$49,995 deposit with the description "MT 2478334 Gerald Schacher Investment" (the March 8 Schacher Investment).

BCSC00154/EXH00111 PP23, 37
Hearing Day 2 P128 L13-24, P130 L10- P131 L16

186. Schacher was an investor in the Falls and in Wharram's 2013 attempts to revive Deercrest. He is listed on the Falls list of investors which Wharram provided to Chan. Schacher attended the hearing as an investor witness for staff and testified about his investments.

BCSC00169/EXH00139 P202-204
BCSC00171/EXH00141
BCSC00276/EXH00183
BCSC00154/EXH00111 PP23, 37
Hearing Day 4 PP93 - 122

187. Schacher testified as follows:

8 417 Q Thank you. Mr. Schacher, did you provide any
9 funds to Mr. Wharram in 2013?
10 A Yes, I did, yes.
11 418 Q And how much did you provide to Mr. Wharram in
12 2013?
13 A It was \$50,000.
14 419 Q Do you recall when you provided Mr. Wharram with
15 50,000 in 2013?
16 A In March of 2013.
17 420 Q What was the reason you provided Mr. Wharram with
18 50,000 in 2013?
19 A Well, Mr. Wharram was still trying to put that,
20 that Deercrest project together so that he could
21 finish the unfinished properties and basically pay
22 us investors some of our money back, our principal
23 at least. And as he mentioned to me that day, he
24 said I was his last resort, that Primex, who was
25 the major lender, the only lender there to, to
:1 Blackburn, that was in creditor protection, they
2 were taking Mr. Wharram's offer off the table at
3 that date if they didn't get \$50,000 on their
4 desk, so.
5 421 Q How did you send the 50,000 to Mr. Wharram in
6 March of 2013?
7 A I wired it to his account I guess. Yes. It was
8 the only way we could do it that quickly. If they
9 needed it that fast, I had to act quickly.
10 422 Q Thank you. Did Mr. Wharram return the 50,000 to
11 you?
12 A Yes, he did, yes.
13 423 Q When did he return the money to you?
14 A April 10th, something like that. In April, yeah.
15 424 Q Madam hearing officer, please bring up BCSC 00154.
16 I will be going to page 50. Mr. Schacher, please
17 identify this document.
18 A That's the cheque that was sent to me.
19 425 Q And on the cheque we see the sum of 55,000?
20 A That's correct.
21 426 Q What was the reason you were paid 55,000?
22 A Well, that was basically interest on the loan or
23 it was a way of me recouping some of my losses and
24 it was agreed upon that that was the only way I
25 was going to be able to do the 55,000.
:1 427 Q Mr. Schacher --
2 A Or the 50,000 loan.

Hearing Day 4 P99 L8 – P101 L2

188. During cross-examination, Schacher testified as follows:

2 | 475 Q I know we touched on this a moment ago, but I am
3 | going to ask you a couple of quick questions.
4 | When I called you in March of last year and asked
5 | for, for the loan, do you remember what I asked
6 | for and what the term I requested?
7 | A Yes. You asked for \$50,000 and basically we
8 | needed to act immediately. I couldn't even finish
9 | watching my TV show. Uhm, and that you wanted it
10 | for one week and that you offered to give me
11 | \$55,000 back. That was the conversation. And
12 | that you, basically you needed it right away or
13 | you were going to lose that Deercrest offer to
14 | Primex.

Hearing Day 4 P110 L2 – 14

189. The wire transfer instructions for the March 8 Schacher Investment called the transfer “Investment” under the payment details and the receiver was shown as West Karma.

BCSC00154/EXH00111 P37
BCSC00573/EXH00118
Hearing Day 2 P131

190. Immediately prior to the March 8 Schacher Investment, the balance in the West Karma Envision Account was \$46.57. After the March 8 Schacher Investment, the balance in the West Karma Envision Account was \$50,038.57.

BCSC00154/EXH00111 P23
Hearing Day 2 P131 L17- P132 L1

191. Wharram signed a March 8, 2013 \$50,000 cheque on the West Karma Envision Account (the Wharram March 8 \$50,000 Cheque). The memo reads Deposit Primex. The cheque cleared the West Karma Envision Account on March 11, 2013.

BCSC00154/EXH00111 PP23, 41
Hearing Day 2 P132 L2-16

192. The Executive Director submits that, contrary to the First False Statement, Wharram had raised funds from an investor on March 8, 2013, just 5 days prior to the time he made the First False Statement on March 13, 2013 at the March 13 Interview.

193. The West Karma Envision Account received \$149,995 on March 25, 2013, with a description referring to Drury, Loretta (the \$150,000 March 25 Drury Funds).

BCSC00154 P23

194. One of the Falls Investors had the surname Drury.

Hearing Day 2 P129

Insert numbers for all 3 falls investor lists

195. Chan testified that on June 5, 2013 she asked Gordon Drury about the \$150,000 March 25 Drury Funds:

19			to paragraph 12. Did you have a call with Gordon
20			Drury on June 5th, 2013?
21		A	Yes, I did.
22	416	Q	And did you ask him about the \$149,995 deposit
23			with the description Drury Loretta PR?
24		A	Yes, I did. Mr. Drury said that he had made
25			150,000 loan to West Karma to provide the funds to
133:1			Mr. Wharram to help him complete the development
2			of phase 2 of the Deercrest Villas, and he also
3			said that Mr. Wharram had called him around
4			February 2013 asking him to put money into the
5			Deercrest project.

Hearing Day 2 P132 L19 – P133 L5

BCSC00573/EXH118

196. The West Karma Envision Account received \$40,000 on April 2, 2013 (the \$40,000 April 2 Funds).

Hearing Day 2 P129 L19-25

BCSC00154/EXH00111 P22

197. Chan testified that a senior investigator of security at Envision told her the \$40,000 April 2 Funds was a deposit from an individual named Ryan Lang and was a short term loan made to the West Karma Envision Account. She said it was repaid with interest on April 10, 2013.

Hearing Day 2 P134 L1-15

198. The West Karma Envision Account received \$249,995 on April 10, 2013 with a description referring to Norm P. Neigum Housing Development (the \$250,000 April 10 Neigum Funds).

BCSC00154/EXH00111 P20

BCSC00573/EXH00118

199. Chan testified that she asked Norm Neigum about the \$250,000 April 10 Neigum Funds:

19	page 3, paragraph 14. Did you have a telephone
20	conversation with Norm Neigum on June 5th, 2013?
21	A Yes, I did. I asked him about the deposit of
22	\$149,995 that had been made in April of 2013, he
23	said he had invested 250,000 in response to a
24	request made to him by Mr. Wharram where Mr.
25	Wharram was asking him for help to complete the
134:1	development of the Deercrest project.

BCSC00154 P3 Para. 14

200. The Executive Director submits that the evidence detailed above proves the following facts:

- a. Wharram called Gordon Drury in February 2013 asking him to invest funds in the Deercrest project;
- b. Wharram asked Schacher for \$50,000 and conveyed they needed to act immediately or he was going to lose the Deercrest offer to Primex, and that he would repay him \$55,000;
- c. Schacher, an investor in the Falls, provided \$50,000 to Wharram on March 8, 2013 and Wharram paid him back \$55,000;
- d. the Wharram March 8 \$50,000 Cheque contained a memo stating "Deposit Primex" and cleared the West Karma Envision Account on March 11, 2013, two days prior to the March 13 Interview;
- e. prior to the March 8 \$50,000 Investment, the balance in the West Karma Envision Account was \$46.57;
- f. the Wharram March 8 \$50,000 Cheque cleared the West Karma Envision Account on March 11, 2013, leaving a balance of \$38.57;
- g. Drury provided to Wharram the \$150,000 March 25 Drury Funds to help him complete the Deercrest villas;
- h. Wharram asked Neigum for help to complete the development of the Deercrest project and in response Neigum invested the \$250,000 April 10 Neigum Funds; and
- i. the West Karma Envision Account received the \$40,000 April 2 Funds from Ryan Lang as a short-term loan which was repaid with interest on April 10, 2013.

(the Wharram Spring 2013 Fundraising).

Hearing Day 2 P125 L13 – P134 L15
Hearing Day 4 P99 L8 – P101 L2 P110 L2-14
BCSC00154 P1 Para. 6, PP 7-10, P12, P23, P31-32

201. The Executive Director submits that, based on the cumulative proven facts of the Wharram Spring 2013 Fundraising, we have proven that Wharram was “currently trying to raise funds from investors”.
202. He was raising funds leading up to the March 13 Interview and following the March 13 Interview.
203. Wharram was currently trying to raise funds because he was continually raising money leading up to and after the interview.
204. The Executive Director submits that the:
 - a) Second False Statement was false;
 - b) First and Second False Statements were, in a material respect and at the time and in light of the circumstances under which they were made, false;
 - c) First and Second False Statements went right to the heart of the investigation.
205. The Executive Director submits that Wharram misled commission investigators Chan and Chambers by making the First and Second False Statements, which statements were the opposite of the actual facts.

Johnson, supra, at para. 26.

206. Chan stated under cross that she didn’t know whether Wharram had been untruthful to her. She further stated that she didn’t bring forward the allegation; she provided the evidence for the allegation.

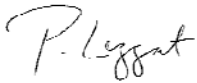
Hearing Day 6 P4 L14-16

207. Wharram was asking Chan about the ultimate issue. It is for the Commission to make a finding as to whether the statements were false, not Chan.
208. The Executive Director submits that the evidence tendered through Chan of her conversations with investors, review of West Karma Envision Account statements, and interview statements of Wharram prove that Wharram made false statements to an investigator appointed under the Act.

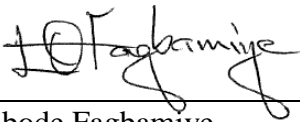
Conclusion

209. The Executive Director submits that we have proved the allegations in the Notice of Hearing on the balance of probabilities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED May 16, 2014.



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INDEX OF AUTHORITIES

Securities Act, RSBC 1996, c. 418

1. [Section 1](#), definition of “security”
2. [Section 57](#) (current)
3. Section 57 [eff June 29, 1999 to November 21, 2007]
4. [Section 168.1\(1\)](#)
5. [Section 168.2](#)

Cases

6. [Anderson v. British Columbia \(Securities Commission\)](#), 2004 BCCA 7
7. [Edward Bernard Johnson \(Re\)](#), 2007 BCSECCOM 437
8. [F.H. v. McDougall](#), [2008] 3 S.C.R. 41
9. [Franklin Mesidor \(Re\)](#), 2013 BCSECCOM 460
10. *R. v. Currie (Ont. C.A.)*, [1984] O.J. No. 147
11. [R. v. Theroux](#), [1993] 2 SCR 5
12. [R. v. Zlatic](#), [1993], 2 S.C.R. 29
13. [Re IAC](#), 2014 BCSECCOM 93

APPENDIX A

WITNESS TRANSCRIPT REFERENCES

WITNESS	TRANSCRIPT
Elizabeth Chan	April 7, 2014 (Day 1) Pages 31 – 157 April 8, 2014 (Day 2) Pages 57 – 134 (end of Direct) April 9, 2014 (Day 3) Pages 34 – 96 (start of Cross) April 11, 2014 (Day 4) Page 20 – 85 Pages 144 – 170 April 14, 2014 (Day 5) Pages 17 – 83
Daryl Francouer	April 8, 2014 (Day 2) Pages 3 – 17
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Bartho Amado	April 14, 2014 (Day 5) Pages 4 – 15