

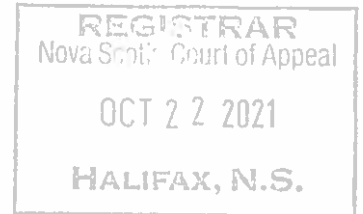
2021

C.A. No. 507611

**Nova Scotia Court of Appeal**

Between:

**DOUGLAS G. RUDOLPH**



Appellant

and

**THE ATTORNEY GENERAL OF NOVA SCOTIA, and,  
THE NOVA SCOTIA SECURITIES COMMISSION,  
THE STAFF OF THE NOVA SCOTIA SECURITIES  
COMMISSION, PETER A.D. MILL, CANGLOBE INTERNATIONAL  
CAPITAL INC., and, CFG\*CN LTD.**

Respondents

**Notice of Appeal (Tribunal) Amended: October 22, 2021**

**To:** The Attorney General of Nova Scotia  
1690 Hollis Street, 8th Floor  
Halifax, Nova Scotia, B3J 2L6

**And To:**

The Nova Scotia Securities Commission  
Suite 400 - Duke Tower  
5251 Duke Street  
Halifax, Nova Scotia, B3J 1P3

**And To:**

Staff of The Nova Scotia Securities Commission  
c/o Jennie Pick  
Suite 400 - Duke Tower  
5251 Duke Street  
Halifax, Nova Scotia, B3J 1P3

**And To:**

Peter A.D. Mill

**And To:**

CanGlobe International Capital Inc.  
1503-1959 Upper Water Street  
Halifax, Nova Scotia. B3J 3J5

**And To:**

CFG\*CN Ltd  
1700 -1959 Upper Water Street  
Halifax, Nova Scotia B3J 3J5

**Appellant appeals**

The appellant appeals from the decision dated May 28, 2021 in the proceedings in the Nova Scotia Securities Commission showing tribunal number 2021 NSSEC 3 made by the Nova Scotia Securities Commission panel consisting of Commissioners J. Walter Thompson, Q.C., Heidi Walsh-Sampson, and, Ken Wheelans.

The appellant also appeals from the sanctions decision dated September 16, 2021 in the proceedings in the Nova Scotia Securities Commission showing tribunal number 2021 NSSEC 7 made by the Nova Scotia Securities Commission panel consisting of Commissioners J. Walter Thompson, Q.C., Heidi Walsh-Sampson, and, Ken Wheelans.

The appellant appeals from the amended sanctions decision dated September 28, 2021 and subsequent order permitting the amended sanctions decision dated September 28, 2021.

**Order or decision appealed from**

The merits decision was made on May 28, 2021. It was made at Halifax, Nova Scotia. The sanctions decision was made on September 16, 2021. It was made at Halifax, Nova Scotia. The sanctions decision was amended on September 28, 2021 with an order amending the same issued thereafter. Both the amended sanctions decision and order were made at Halifax, Nova Scotia. The sanctions decision and order were then made into an order of the Nova Scotia Supreme Court on October 8, 2021.

**Grounds of appeal**

The grounds of appeal are:

**Merits Decision Grounds of Appeal:**

- (1) The Panel erred in law by failing to Order a Stay of Proceedings in this matter to address the multiple violations of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982 (UK), 1982, c 11* and in particular, sections 7 and 8 committed against Mr. Rudolph by the Nova Scotia Securities Commission staff.

- (2) The Panel erred in law by failing to follow and apply the relevant Nova Scotia *Civil Procedure Rules*. Including, but not limited to Rule 14.03.
- (3) The Panel erred in law in their application and interpretation of the *Securities Act*, RSNS 1989, c 418, s 1.
- (4) The Panel erred in law by allowing and considering evidence deemed to be inadmissible by way of a breach of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11 as in the decision of *R v Rudolph*, 2017 NSSC 333.
- (5) The Panel erred in law by allowing privileged information to be used as evidence at the hearing which contravenes common law principles of privilege as noted in the decision of *R v Rudolph*, 2017 NSSC 334.
- (6) The Panel erred in law by failing to apply Section 11 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11 respecting previous legal action against the Appellant pertaining to the same legal issues before the Nova Scotia Securities Commission.
- (7) The Panel erred in law by failing to consider the length of the delay from the filing of the Statement of Allegations to the hearing which contravened Section 11(b) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11 and in particular sections 11 (b) , (c) , (d) and (h).
- (8) The Panel erred in law by denying the Appellant's application by failing to Order a Stay of Proceedings to allow for the Appellant to make application for legal funding to retain legal counsel for the hearing.
- (9) The Panel erred in law by failing to apply the Nova Scotia Security Commission's General Rules of Practice and Procedure (Rule 15-501).
- (10) The Panel erred in law by failing to consider and apportion any degree of contributory Negligence between the Respondents under the *Contributory Negligence Act*, RSNS 1989, c 95.
- (11) The Panel erred in law by allowing certain witness evidence without reference being made to the relevance of the evidence as required under the Nova Scotia Security Commission's General Rules of Practice and Procedure (Rule 15-501).
- (12) The Panel erred in law by failing to compel the other Respondent to appear as allowed for under the Nova Scotia Security Commission's General Rules of Practice and Procedure (Rule 15-501).
- (13) The Panel erred in law by failing to require the Commission to provide their list of

Witnesses to the Respondents in advance of the Hearing as required under the Nova Scotia Security Commission's General Rules of Practice and Procedure (Rule 15-501) and subsequently permitting the witnesses to appear at the hearing without leave of the Commission.

- (14) The Panel erred in law by failing to require the Commission to provide advance disclosure of the documents relied on at the hearing as required under the Nova Scotia Security Commission's General Rules of Practice and Procedure (Rule 15-501).
- (15) The Panel erred in law by allowing a number of the allegations to stand at the hearing despite being barred by limitation periods under both the *Securities Act*, RSNS 1989, c 418, s 1, and, the *Limitation of Actions Act*, RSNS 1989, c 258, s 1 (in force at the time of the filing of the Statement of Allegations by the Commission).
- (16) The Panel erred in failing to uphold the principles of natural justice to require that the hearing proceed within reasonable time following the filing of the Statement of Allegations.
- ~~(17) The Panel erred in law in their penalties decision relating to this matter.~~
- (17) Such other grounds as may appear from a review of the record under appeal.

Sanctions Decision Grounds of Appeal:

- (1) The Panel erred in law by issuing a penalty against the Appellant that was not proportionate to the offence after taking into account the associated disgorgement award and costs award.
- (2) The Panel erred in law by failing to consider the penalties issued and the payments made by the Nova Scotia Barristers' Society with relation to the conduct of Mark David, former legal counsel for the corporate respondents.
- (3) The Panel erred in law by disproportionately sanctioning and penalizing the Appellant while ordering lesser penalties and sanctions on the other named respondents namely Peter A.D. Mill.
- (4) The Panel erred in law by failing to apportion any of the administrative penalty on the actions of Mark David, former legal counsel for the corporate respondents.
- (5) The Panel erred in law by awarding an administrative penalty that exceeded the available maximum administrative penalty of one hundred thousand dollars (\$100,000.00) / five hundred thousand dollars (\$500,000.00) noted in the *Securities Act*, RSNS 1989, c 418, s 1 (as amended) at the time of numerous alleged actions by the Appellant.
- (6) The panel erred in in law by failing to apply Subsection 11(i) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the

Canada Act, 1982 (UK), 1982, c 11 with respect to their administrative penalty.

- (7) The Panel erred in law by disproportionately finding that the additional violation of the Appellant warranted a penalty in the amount of \$200,000.00 without further justification.
- (8) The Panel erred in mixed law and fact by failing to apportion any administrative penalties on the corporate respondents despite the corporate respondents being found liable under the merits decision pursuant to Section 135 of the *Securities Act*, RSNS 1989, c 418, s 1.
- (9) The Panel erred in law by failing to apportion any costs on the corporate respondents despite the corporate respondents being found liable under the merits decision pursuant to Section 135A of the *Securities Act*, RSNS 1989, c 418, s 1.
- (10) The Panel erred in law by ordering that the Appellant be required to disgorge the Nova Scotia Securities Commission in the amount of \$435,205 in light of the other compensation provided through other administrative processes relating to the same matter that was before the Securities Commission
- (11) The Panel erred in in law by failing to apply Subsection 11(i) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act, 1982 (UK), 1982, c 11 with respect to their order requiring the Appellant to disgorge the Nova Scotia Securities Commission as such a sanction was not available during the relevant times of the alleged contraventions of the Appellant.*
- (12) The Panel erred in law by interpreting subsection 134(da) of the Nova Scotia *Securities Act*, RSNS 1989, c 418, s 1 to be preventative rather than punitive in nature.
- (13) The Panel erred in mixed law and fact by finding that the Appellant and Peter A.D. Mill obtained equal gain through the violations of securities law as reflected by the identical disgorgement awards issued.
- (14) The Panel erred in mixed law and fact by finding that the awarded disgorgement of the Appellant in the amount of \$435,205 returned the Appellant financially to the position that he was in before the violation.
- (15) In the event that a disgorgement award was permitted by the legislation at the time of the violations then the Panel erred in mixed law and fact by failing to apportion any disgorgement award on the corporate respondents despite the corporate respondents being found liable under the merits decision pursuant to Subsection 134(1)(da) of the *Securities Act*, RSNS 1989, c 418, s 1.
- (16) In the event that a disgorgement award was permitted by the legislation at the time of the Alleged violations then the Panel erred in mixed law and fact by failing to apportion any disgorgement award amount on Mark David for his involvement with the noted matter.

- (17) The Panel erred in law by awarding full cost indemnification against both the Appellant and Peter A.D. Mill.
- (18) The Panel erred in awarding costs exceeding the costs prescribed in the Securities Regulations, NS Reg 201/1987 (as amended).
- (19) The Panel erred in law by failing to consider the individual conduct of Peter A.D. Mill, Mark David and the corporate respondents in their costs award.
- (20) The Panel erred in law by failing to provide the Appellant with adequate time to retain counsel to provide costs submissions based on the timeline imposed by the Nova Scotia Securities Commission.
- (21) The Panel erred in law by failing to consider Section 11(h) of the Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c 11 with respect to the noted sanctions and the fact that the Appellant was previously acquitted of the alleged contraventions.
- (22) The Panel erred in law by considering evidence that should not have been admissible by way of a breach of the Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c 11 in the sanctions decision.
- (23) The Panel erred in law by considering evidence deemed to be covered under the implied undertaking rule (pursuant to Nova Scotia Civil Procedure Rule 14.03) that was provided for the separate criminal matter that was distinct from the Nova Scotia Securities Commission process.
- (24) Such other grounds as may appear from a review of the record of the sanctions decision under appeal.

### **Authority for appeal**

The Appellant relies on the following authorities:

*Securities Act*, RSNS 1989, c 418, s 1;  
Nova Scotia Security Commission's General Rules of Practice and Procedure (Rule 15-501);  
*Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*;  
*Contributory Negligence Act*, RSNS 1989, c95;  
*Limitation of Actions Act*, RSNS 1989, c 258, s 1; and,  
*Nova Scotia Civil Procedure Rules*; and,  
*Securities Regulations*, NS Reg 201/1987 (as amended)

## **Order requested**

### Order Requested for Appeal of Merits Decision:

The appellant says that the court should allow the appeal and that the order or decision appealed from be rescinded (including any decision relating to a penalty); an Order finding that the Nova Scotia Securities Commission Panel's decision was unlawful; removal of the decision from the Nova Scotia Securities Commission website and any information pertaining to the Appellant; costs on a solicitor-client basis; in the alternative, costs; and, any other remedy that the Court of Appeal deems just.

### Order Requested for Appeal of Sanctions Decision:

The Appellant requests that the penalties decision be rescinded with respect to the administrative penalty, disgorgement, and, costs ordered against them based on the fact that such findings are unlawful. Similarly, the Appellant seeks an order removing the decision of the sanctions decision and the amended sanctions decision and associated order from the Nova Scotia Securities Commission Website. The Appellant further seeks costs and any other remedy that the Court of Appeal deems just.

## **Respondent's Notice of Intention to Participate**

A respondent may participate in this tribunal appeal as a respondent only if the respondent files a notice of intention to participate no more than ten days after this notice of appeal is delivered to the respondent.

## **Motion for date and directions**

The appeal will be heard on a time and date to be set by a judge of the Court of Appeal. The appellant must, not more than twenty-five days after the date this notice is filed, make a motion to a judge of the Court of Appeal to set that time and date and give directions. You will be notified of the motion.

## **Contact information**

The appellant designates the following address:

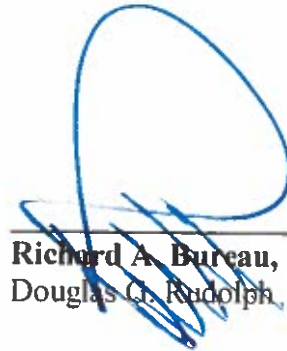
Richard A. Bureau  
Morris Bureau Barristers & Solicitors  
307 – 6080 Young Street  
Halifax, Nova Scotia B3K 5L2

Documents delivered to this address will be considered received by the appellant on delivery. Further contact information is available to each party through the Prothonotary.

**Signature**

~~Signed July 12<sup>th</sup>, 2021~~

Signed October 22, 2021



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**Richard A. Bureau**, as counsel for  
Douglas C. Rudolph

**Registrar's Certificate**

I certify that this amended notice of appeal was filed with the court on this 22 day of October, 2021.



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**Caroline McInnes**  
Registrar