IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the Act)

-AND

IN THE MATTER OF
THALBINDER SINGH POONIAN, SHAILU SHARON POONIAN, ROBERT JOSEPH LEYK, MANJIT SINGH SIHOTA AND PERMINDER SIHOTA
(collectively, the Respondents)

Order
(Sections 134(1) and 134(1A) of the Act)

WHEREAS the Director of Enforcement for the Nova Scotia Securities Commission (the Commission) submitted a Notice of Application dated the 17th day of May, 2016;

AND WHEREAS the Respondents were provided an opportunity to be heard by way of written response;

AND WHEREAS the Respondents *did* provide a written response to this application;

AND WHEREAS proper service was effected upon the Respondents and an Affidavit of Service was filed with the Commission;

AND UPON reviewing and considering the submissions of counsel for the Director of Enforcement;

AND UPON the British Columbia Securities Commission having found that the Respondents contravened the securities laws of that jurisdiction and having ordered sanctions and penalties against the Respondents in its Decision issued March 13, 2015;

AND UPON the Commission determining it is in the public interest to issue this order reciprocating the sanctions ordered by the British Columbia Securities Commission pursuant to section 134(1A)(c) of the Act;

IT IS HEREBY ORDERED that:

1. Pursuant to subsection 134(1)(b) of the Act, that the Respondents cease trading in securities in Nova Scotia permanently;

2. Pursuant to subsection 134(1)(ba) of the Act, that the Respondents cease acquisition of securities in Nova Scotia permanently;

3. Pursuant to subsection 134(1)(c) of the Act, that any exemptions contained in Nova Scotia securities laws do not apply to the Respondents permanently;

4. Pursuant to subsections 134(1)(d)(i) and (ii) of the Act, that the Respondents resign and be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager permanently, except that Manjit Sihota may continue to act as a director and officer of Richmond Plywood Corporation Limited

provided that Richmond Plywood Corporation Limited remains a non-reporting issuer; and

5. Pursuant to subsection 134(1)(g) of the Act, that the Respondents are permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter.

DATED at Halifax, Nova Scotia, the 17th day of August, 2016.

NOVA SCOTIA SECURITIES COMMISSION

Sandra MacPherson Duncan, Q.C.

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED ("Act")

-AND

IN THE MATTER OF

THALBINDER SINGH POONIAN, SHAILU SHARON POONIAN, ROBERT JOSEPH LEYK, MANJIT SINGH SIHOTA AND PERMINDER SIHOTA

(collectively the "RESPONDENTS")

Panel: Sandra MacPherson Duncan, Q.C., Commission Member

Decision Date: August 16, 2016

Introduction

[1] This decision concerns an application by enforcement counsel for a Reciprocal Enforcement Order under Section 134(1) and 134(1A) of the *Securities Act*, R.S.N.S. 1989, c. 418, as amended (the "Act") against the Respondents.

[2] By way of background, following hearings before a panel of the British Columbia Securities Commission and by decision dated August 29, 2014 (2014 BCSECCOM 318) (the "Liability Decision") certain findings were made against the Respondents. By further decision dated March 13, 2015 (2015 BCSECCOM 96) certain sanctions were imposed. (the "Sanctions Decision").

[3] In the Liability Decision, the Respondents were found guilty of contravening s. 57(a) of the British Columbia Securities Act by orchestrating a complex, predatory and highly deceptive market manipulation scheme that targeted unsophisticated investors. The Panel

found that each of the Respondents knowingly engaged in, or participated in, the manipulation of OSE shares in a sophisticated and extensive way. Having artificially manipulated and inflated the share price of OSE shares, the Respondents ultimately liquidated their share positions in OSE and made over $7 million in profits. The findings in the Liability Decision are extensive. They are incorporated by reference here. As set out in the Sanctions Decision, the following order was made against the Respondents on March 13, 2015:

-the Respondents are permanently prohibited from trading in, or purchasing securities and exchange contracts;

- all exemptions contained in British Columbia securities laws do not apply to the Respondent,s permanently;

- the Respondents resign and are permanently prohibited from becoming or acting in any positions held as a director or officer of any issuer, except that Manjit Sihota may continue to act as a director and officer of Richmond Plywood Corporation Limited provided that Richmond Plywood Corporation Limited remains a non-reporting issuer;

- the Respondents are permanently prohibited from becoming or acting as a registrant or promoter;

-the Respondents are permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities or derivatives market; and

-the Respondents are permanently prohibited from engaging in investor relations activities.

[4] The Poonian Respondents sought leave to appeal the Liability Decision to the British Columbia Court of Appeal. By decision dated March 4, 2016 leave to appeal was denied. (Docket CA42714) None of the remaining Respondents appealed the Liability Decision.

[5] The Poonian and Sihota Respondents appealed the Sanctions Decision. Again, on March 4, 2016 (Docket CA42715 and CA42714) leave to appeal the Sanctions Decision was denied by the British Columbia Court of Appeal in all respects except in relation to an order for disgorgement which has no relevance to this Reciprocal Order application.

[6] The matter before this panel was commenced by a Notice of Application dated May 19, 2016. It stated that an application would be made in writing to a member of the Commission on May 19, 2016 or as soon thereafter as it could be made. It requested that an order be made in the public interest pursuant to sections 134(1) and 134(1A) of the Act against the Respondent. Specifically application has been made to the Commission for the following order::

1. pursuant to subsection 134(1)(b) of the Act, the Respondents shall cease trading in a specific security or in a class of securities;

2. pursuant to subsection 134(1) (ba) of the Act, the acquisition of any securities by the Respondents be prohibited;

3. pursuant to subsection 134(1)(c) of the Act, that any or all of the exemptions contained in Nova Scotia securities laws do not apply to the Respondents;

4. pursuant to subsection 134(1)(d)(i) and(ii) of the Act, that the Respondents resign and be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

5. pursuant to subsection 134(1)(g) of the Act, that the Respondents be prohibited from acting as a registrant, investment fund manager or promoter.

Section 134(1A) of the *Securities Act*

[7} Section 134(1A) of the Act provides as follows:

> ***(1A)*** *The Commission may, after providing an opportunity to be heard, make an order under clauses (a) to (h) of subsection (1) against a person or company if the person or company*
>
> *(c) has been found by a securities commission, self -regulatory organization or other person or body empowered by statute to regulate trading in securities or to administer, regulate or enforce securities laws of another province of Canada to have contravened the securities laws of that prov ince or territory,*

[8] To grant the requested order, in addition to the finding by the securities commission of another province that securities laws have been contravened, the Commission must be

satisfied that proper service has been effected upon the Respondent, that the principles of natural justice have been observed, that the Respondent has been given an opportunity to be heard, and that the order be in the public interest.

Service

[9] Following review of the Affidavits of Service of Marlene E. Bucci, sworn on May 19, 2016, and July 15, 2016 respectively, I am satisfied that the Poonian and Sihota Respondents were sent copies of the Notice of Application, draft order and written submissions of enforcement counsel by email and by Purolator courier to the addresses set out in the affidavit and that the Respondent Leyk was sent the documents by Purolator courier to 976 Ryder Drive in Kelowna, British Columbia. Email receipts were attached to the affidavit for the Poonian and Sihota Respondents and the Purolator "express" labels were also attached for all Respondents..

[10] Part 1 of the General Rules of Practice and Procedure of the Commission (Rule 15-501) provides for service of documents "by any means effective to deliver the Notice or document or copy thereof to the person or company being served". The Rules provide that the notice or document shall be sufficiently served upon a person or company if it is served if is:

> *a) personally served upon the person or company;*
>
> *b) sent to the person or company by prepaid mail at the last address of the person or company appearing in the records of the Commission or, if not so appearing to such address as the Commission may direct, or*
>
> *c) given in such manner as the Commission may direct.*
>
> *A notice or document served in accordance with paragraph b) of this section shall be deemed to be received by the person or company on the fifth day after it is mailed.*

The rules further provide that "service may be proved by an affidavit, to which is attached as an exhibit a copy of all notices or documents served, which shall state by whom

the notice or document was served, the day of the week and the date on which it was served, where it was served and how".

[11] The two Affidavitts of Service of Marlene E. Bucci satisfies this panel that the requirements for service on the Respondents under the General Rules of Practice and Procedure with respect to this application have been duly satisfied. Documents were sent to the last known addresses of the Respondents being the contact information for Thalbinder Singh Poonian, Shailu Sharon Poonian, Robert Joseph Leyk, Manjit Singh Sihota and Perminder Sihota on the Canadian Securities Administrators Reciprocal Orders online database. In respect of the Respondents this database was populated with their respective last known contact information by the British Columbia Securities Commission.

Opportunity To Be Heard

[12] As previously indicated, to make an Order under Section 134(1A) I must be satisfied that the principles of natural justice have been observed. Included in this is the requirement that the Respondents must have been provided an opportunity to be heard. An opportunity to be heard does not require that an oral hearing take place, but rather provides a flexible procedure that satisfies natural justice proportional to the case being advanced against the Respondent. Enforcement counsel has submitted that the application in writing delivered to the Respondents with all supporting documentation and which contemplated an opportunity for the Respondents to be heard in writing provided a procedurally fair process and satisfied the requirement of natural justice. The Panel agrees. Specifically, the opportunity given the Respondents to respond in writing by Monday, June 27, 2016 to the Notice of Application, submissions, and supporting documentation, provided the Respondents a procedurally fair opportunity to be heard. No response was received from the Sihota or Leyk Respondents. Representations were received from the Poonian Respondents. They continue to dispute the factual findings of the British Columbia Securities Commission, say the proposed order is not in the public interest, that this is not

properly the subject of a written application and response and that the legislative authority to grant the requested order has been revoked. Further representations were received by way of reply from enforcement counsel. The Poonian Respondents requested and were given an opportunity to make further representations but ultimately declined the opportunity.

Public Interest

[13] The principal purpose of securities regulation in Nova Scotia, as set out in Section 1(A) of the Act, is the protection of investors from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets. In the Commission's prior decision in Tri Clean Enterprises Inc. dated October 5, 2010, it was held that the Commission's jurisdiction to make an order under subsection 134(1A) required a finding that to do so was in the public interest and that it included actual or potential violations of Nova Scotia securities laws, or other sufficient reason relevant to Nova Scotia. In this panel's view, investor protection is one such compelling reason.

[14] It is appropriate to rely on the reciprocal order provision when it would serve a protective purpose. The reality of today's capital markets is that the free flow of capital in this country has been facilitated by many measures. It is clear, for example, that the Securities Act of Nova Scotia contemplates interprovincial cooperation and allows for extra provincial delegation of authority. Section 134 (1A) is an example of interprovincial cooperation the object of which is to ensure interprovincial investor protection. In a real sense it provides comity of investor protection between provinces. The ability of sanctioned individuals and companies to relocate makes such protection absolutely essential. It contemplates a mechanism by which Nova Scotia investors can be protected now and in the future from those persons and companies who have been found to have engaged in practices and activities that have harmed investors in another provinces.

[15] In the present case the prohibitions and restrictions being sought by the Commission

against the Respondent emanate from significant violation of securities laws in another province in Canada where unsophisticated investors were duped by a complex market manipulation scheme to the ultimate benefit of the Respondents. There is more than sufficient reason to be concerned about protecting Nova Scotia investors from such activities in the future. This is sufficient reason relevant to Nova Scotia. The requested order serves the broader public interest of protecting Nova Scotia investors and capital markets. It addresses considerations of both specific and general deterrence by ensuring the Respondents do not engage in similar conduct in the future and by discouraging others from similar deleterious conduct. Investors and capital markets in Nova Scotia will benefit from the protection afforded to them from the requested order.

Repeal of s. 134(1A)

[16] The Poonian Respondents have raised the further argument that no valid order can be made under s. 134 (1A) as it has now been repealed. It is correct that section 134 (1)A was repealed as part of a series of amendments to the Nova Scotia Securities Act which received Royal Assent on May 20, 2016. The new legislation provides, in part, for a streamlined process to allow for orders made by and agreements entered into with a securities regulatory authority in Canada to have effect in Nova Scotia as if issued by or entered into with the Nova Scotia Securities Commission;. The process no longer requires that Respondents be given an opportunity to be heard. The new legislation has no retrospective or retroactive effect. The repeal of section 134 (1A) offers no benefit to the Respondents. As set out in section 9 and 23 of the **Interpretation Act of Nova Scotia** c. 235 R.S.N.S. as amended:

> *9 (1) The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.*
>
> ***Effect of repeal or repeal and substitution***
>
> *23 (1) Where an enactment is repealed, the repeal does not*

(a) revive any enactment or provision of law that was repealed by the en actment or prevent the effect of any saving clause contained in the enact ment;

(b) affect the previous operation of the enactment so repealed or anything duly done or suffered under it;

(c) affect a right, privilege, obligation or liability acquired, accrued, ac cruing or incurred under the enactment;

(d) affect an offence committed against or a violation of the provisions of the enactment, or any penalty, forfeiture or punishment incurred under the enactment; or

(e) affect an investigation, legal proceeding or remedy concerning any right, privilege, obligation, liability, penalty, forfeiture or punishment ac quired or incurred under the enactment.

(2) An investigation, legal proceeding or remedy, of the kind described in clause (e) of subsection (1), may be begun, continued or enforced as if the enactment had not been repealed.

[17] Therefore, the Nova Scotia Legislature has provided for the survival and continued application of repealed legislation to facts arising prior to repeal. This means quite simply that section 134 (1A) applies to these matters that arise prior to May 20, 2016. For further elucidation on this topic I refer to pp. 733 and 831 of **Sullivan on Construction of Statutes** 6th edition by Ruth Sullivan, published by Lexis Nexis.

Conclusion

[18] Accordingly, the Commission finds the Respondent has been adequately served, has been provided with an opportunity to be heard and has not responded, and that it is in the public interest that an Order be granted in the terms sought by enforcement counsel.

Sandra MacPherson Duncan, Q.C.

Commission Member