

CANADA / JUDGMENT

Sihota (Re)

2025 BCSC 1639

COURT

Supreme Court of British Columbia

DECIDED

7 July 2025

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2025 BCSC 1639 Sihota (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sihota (Re),

2025 BCSC 1639

Date: 20250707

Docket: B200270

Registry: Vancouver

In the Supreme Court of British Columbia

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy of

Perminder Sihota

Before: The Honourable Justice G.C. Weatherill

Oral Reasons for Judgment

In Chambers

Counsel for the British Columbia Securities Commission:

A.T. Paczkowski

W.L. Roberts

L.L. Bevan

(July 7, 2025)

Perminder Sihota, appearing in person:

P. Sihota

(June 3, 2025)

Place and Dates of Hearing:

Vancouver, B.C.

June 3 and July 7, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 7, 2025

[1] THE COURT: By notice of application filed May 9, 2025, the British Columbia Securities Commission (the "Commission") seeks the following:

- a) a declaration that the disgorgement order in the amount of \$1,126,260 (the "Disgorgement Order") made against the bankrupt by the Commission in a decision dated May 16, 2018 and registered with the Supreme Court of British Columbia in Vancouver Registry Action L180185 is a debt or liability resulting from false pretenses or a fraudulent misrepresentation for the purposes of s. 178(1)(e) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA].
- b) a declaration that pursuant to s. 178(1)(e) of the BIA, the amounts owing by the bankrupt to the Commission pursuant to the Disgorgement Order shall not be released by any order or discharge granted to the bankrupt.

[2] The bankrupt in question is a woman by the name of Perminder Sihota ("Ms. Sihota").

[3] The hearing of this application was originally scheduled for June 3, 2025, however, the hearing was adjourned at Ms. Sihota's request to allow her more time to obtain legal advice. I was advised by counsel for the Commission at the opening of the hearing this morning that Mr. Ritchie Clark contacted Commission counsel approximately two weeks ago to advise that he had been retained by Ms. Sihota, that he had reviewed the application materials and confirmed that he would not be filing a response to them or appearing at today's hearing.

Background

- [4] In 2014, Ms. Sihota, along with persons named Thalbinder Singh Poonian, ("Thal Poonian"), Robert Joseph Leyk, and the bankrupt's husband, Manjit Singh Sihota (collectively, the "Participants"), were found by a panel of commissioners at the Commission to have breached s. 57(a) of the Securities Act, R.S.B.C 1996, c. 418 by manipulating the market shares of OSE Corp., an otherwise obscure oil and gas company publicly traded on the TSX Venture Exchange.
- [5] Based on extensive evidence presented during a nine-day hearing, none of which evidence was disputed by Ms. Sihota's husband (who represented her for at least a portion of the hearing), the panel found that between September 10, 2007 and March 31, 2009, the Participants and certain of their relatives, friends, and associates (the "Secondary Participants") engaged in the following scheme (the "Scheme"):
- a) they acquired a dominant share position in OSE at \$0.10 to \$0.17 per share through two private placements of OSE shares and warrants;
 - b) they increased OSE's share price to a high near \$2 by various manipulations, including by trading amongst themselves through brokerage accounts held by the Participants or the Secondary Participants;
 - c) they sold OSE shares at artificially high prices to unsophisticated, financially vulnerable investors introduced to OSE by a debt-management services company called Phoenix Credit Risk Management Consulting Inc. ("Phoenix"), reaping aggregate net trading gains, in other words, profits, from the sale of OSE shares in excess of \$7 million; and
 - d) they paid substantial commissions to people associated with Phoenix for the referral of Phoenix clients to buy OSE shares at artificially high share prices.
- [6] Details of the evidence presented at the hearing regarding the Scheme and the findings of the panel are set out in the panel's lengthy written decision of August 29, 2014 indexed at Singh Poonian (Re), 2014 BCSECCOM 318.
- [7] The panel found that while Thal Poonian was the master of the Scheme, Ms. Sihota directly and extensively participated in the market manipulation, including by acquiring 1.3 million OSE shares at low cost through the private placements, allowing OSE shares to be bought and sold in her brokerage accounts by Thal Poonian, making and receiving payments from other Participants, and funding payments to Secondary Participants to support the artificial trading of OSE shares and indirectly paying commissions to Phoenix.
- [8] In its liability findings issued on August 29, 2014 (the "Liability Findings"), the Commission panel concluded that Ms. Sihota knew, or reasonably should have known, that her conduct in relation to OSE shares would result in a misleading appearance of trading activity and an artificial price for OSE shares. The panel held that Ms. Sihota and the other Participants engaged in market manipulation in breach of s. 57(a) of the Securities Act.

- [9] In its initial sanctions decision issued on March 13, 2015, the Commission panel concluded that the aggregate net trading gain of \$7,332,936 in the brokerage accounts of the Participants and the Secondary Participants over the relevant period was the amount obtained as the direct result of the Participants' contraventions of the Securities Act, and ordered that the Participants disgorge that amount to the Commission jointly and severally under s. 161(1)(g) of the Securities Act.
- [10] The panel also imposed administrative penalties on each of the Participants under s. 162 of the Securities Act, including a \$1 million administrative penalty against Ms. Sihota.
- [11] The Participants successfully appealed from the joint-and-several Liability Finding. The BC Court of Appeal remitted the matter back to the Commission to assess the amount obtained by each of the Participants, specifically from their respective contraventions of the Securities Act. Leave to appeal from the Liability Findings and the administrative penalties was refused.
- [12] On May 16, 2016, the Commission pronounced its reassessment decision on sanctions against Ms. Sihota and the other Participants (the "Reassessment Decision") in which Ms. Sihota was ordered jointly and severally with Mr. Thal Poonian to disgorge \$1,126,260 net trading gains realized in Ms. Sihota's brokerage accounts as the result of trades in OSE shares during the relevant period, as defined earlier in these reasons, the Disgorgement Order. Ms. Sihota was also ordered to pay a \$1 million administrative penalty under s. 162 of the Securities Act.
- [13] To date, Ms. Sihota has not paid any of those amounts.
- [14] On June 5, 2018, pursuant to s. 163 of the Securities Act, the Reassessment Decision was filed in the Supreme Court of British Columbia under file number L180185 and, thereby, became enforceable as an order of this court.
- [15] On September 17, 2018, Ms. Sihota made an assignment in bankruptcy. Her application for discharge in April 2024 was opposed by the trustee in bankruptcy, who I understand was J. Bottom & Associates Ltd. That application for discharge was adjourned at the hearing on April 15, 2024.
- [16] Ms. Sihota remains an undischarged bankrupt.

Analysis

- [17] The BIA permits an honest but unfortunate debtor to obtain a discharge from debts and a fresh start. However, any debt or liability arising from obtaining property or services by false pretenses or fraudulent misrepresentations (other than a debt or liability that arises from an equity claim) is not discharged: BIA s. 178(1)(e); *Poonian v. British Columbia (Securities Commission)*, 2024 SCC 28, paras. 1 and 21 (*Poonian SCC*).

[18] The Scheme was the subject of a similar declaration sought by the Commission in Poonian SCC. The Supreme Court of Canada in Poonian SCC at para. 54 set out the test for determining whether a debt or liability survives bankruptcy pursuant to s. 178(1)(e). The creditor, in this case, the Commission, must establish that:

- a) the bankrupt was engaged in false pretenses or fraudulent misrepresentations;
- b) a passing of property or provision of services; and
- c) a link between the debt or liability and the fraud.

[19] A court cannot take judicial notice of fraud or infer fraud in a cursory manner: Poonian SCC at paras. 66-67. However, where false pretenses or fraudulent conduct has been determined by an administrative panel, as it was here, there is no need for the court to conduct a full rehearing or carry out a full review of the record that was before the panel. The court is entitled to rely on the panel's findings of fact for its determination of whether those facts constitute false pretenses or fraud: Poonian SCC at paras. 69, 97-99 inclusive.

[20] Deceit, whether by a positive act or failure to disclose material facts, is at the core of both the concepts of false pretenses and fraudulent misrepresentation in s. 178(1)(e) of the BIA. The onus is on the creditor to prove that debts or liabilities, in this case the Disgorgement Order, were obtained as a result of the bankrupt's deceitful conduct: Poonian SCC at paras. 61, 66.

[21] To establish false pretenses or fraudulent misrepresentation for the purposes of s. 178(1)(e), the creditor must establish:

- a) a representation was made;
- b) the representation was false;
- c) the representation was made knowingly without belief in its truth, including willful blindness or recklessness; and
- d) the creditor relied on the representation and turned over property to the debtor.

Poonian SCC at paras. 62-65.

[22] Market manipulation misrepresents the market. It is at its core a fraudulent misrepresentation and false pretense, particularly when it takes the form of an elaborate, multi-party scheme to disguise the true nature of trades with the use of aliases and nominee accounts. The market manipulation engaged in by the Participants in this case was fraudulent because it was designed to, and did, mislead the public generally and the investors who purchased the OSE shares as recommended by Phoenix as to the true value of the shares. Conduct that artificially inflates share prices is conduct that misleads buyers and sellers. The artificially high share price is a misrepresentation of the genuine demand for the stock in the market: Poonian (Re), 2021 BCSC 555, at paras. 103 to 112 inclusive.

- [23] In this case, the panel found, among other things, that:
- a) The Scheme involved layers of deception to conceal the Participants' roles of the manipulation, including making OSE private placement share purchases, funding purchases of OSE shares in the Secondary Participants' brokerage accounts, participating in the artificial transfer of shares among the Participants and Secondary Participants, and paying commissions (indirectly) to Phoenix for advising its clients to invest in OSE shares. Ms. Sihota was involved, to varying degrees, in each of these deceptions.
 - b) Ms. Sihota had direct, extensive, and repeated involvement in the Scheme's activities, and she knew or ought to have known that her conduct contributed to a misleading appearance of trading activity in OSE shares and an artificial price for them. As an active participant in the Scheme, Ms. Sihota participated in misrepresentation of the price of OSE shares in order to profit. Investors, mostly Phoenix clients, relied on those misrepresentations to buy OSE shares at artificially inflated prices.
- [24] Section 178(1)(e) of the BIA requires a direct causal link between the creation of the liability and the debtor's deceit. However, there is no requirement that the misrepresentation be made directly to the creditor, in this case, the Commission: Poonian SCC, at paras. 83 to 86 and 94 and 95.
- [25] The Disgorgement Order represents the money that Ms. Sihota obtained as a result of the scheme. There is a direct link between her fraudulent conduct and the disgorgement order: Poonian SCC at paras. 108-113 inclusive.
- [26] I have no difficulty finding on the facts as were determined by the panel in this case that Ms. Sihota obtained the \$1,126,260 that is the subject of the Disgorgement Order from investors by false pretenses or fraudulent misrepresentation, indeed both. Her conduct, as determined by the Commission panel, was the very meaning of fraud.
- [27] I also have no difficulty finding that Ms. Sihota's conduct resulted in a loss in the form of a transfer of property, namely money, as well as a debt or liability corresponding to that loss. Section 178(1)(e) does not require that the bankrupt be the recipient of the property of which a person was deprived. The property need not be obtained or retained by the bankrupt and may have passed directly or indirectly from the person to a third party at the bankrupt's direction or on his or her behalf. What is required is that the fraud induce the person to give the property to the bankrupt or someone associated with the bankrupt: Poonian SCC at para. 73.
- [28] The facts as determined by the panel demonstrate that this is precisely what occurred here. The investors were induced by Ms. Sihota's fraudulent conduct to purchase OSE shares at artificially inflated prices.
- [29] Moreover, the debt or liability captured by the Disgorgement Order was created as a result of Ms. Sihota's false pretenses and fraudulent misrepresentation. The debt or liability represents the value of the property obtained by false pretenses or fraudulent

misrepresentation. A creditor, in this case, again, the Commission, who is not directly victimized by the fraudulent conduct falls within the provisions of s. 178(1)(e) provided the claim is the result of a person being deprived of property or services after having detrimentally relied on the debtor's false pretenses or fraudulent misrepresentation. There is no requirement that the creditor be the direct recipient of the deceitful conduct: Poonian SCC at paras. 94-95. The Disgorgement Order represents the value of Ms. Sihota's liability caused by her fraudulent conduct: Poonian SCC at para. 112. There is a direct link between the Disgorgement Order debt and Ms. Sihota's deceitful conduct.

Disposition

[30] The declaration sought by the Commission in Part 1 of its notice of application filed May 9, 2025 are granted.

"G.C. Weatherill J."

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