IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia Securities Commission v. Pasquill,* 2023 BCSC 2150

Date: 20231206
Docket: S188653
Registry: Vancouver

Between:

British Columbia Securities Commission

Plaintiff

And

Earle Douglas Pasquill, Vicki Irene Pasquill and Vicker Holdings Ltd.

Defendants

Before: The Honourable Mr Justice Crerar

Reasons for Judgment

Counsel for the Plaintiff:	L.L. Bevan A.T. Paczkowski
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Place and Dates of Hearing:	Vancouver April 3–6, 2023
Supplemental Written Submissions of the Plaintiff:	April 20, 2023
Supplemental Written Submissions of the Defendants, Vicki Irene Pasquill and Vicker Holdings Ltd.:	April 21, 2023
Place and Date of Judgment:	Vancouver December 6, 2023

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I. INTRODUCTION

[1] These reasons are the latest in a complicated series of regulatory and judicial proceedings arising from fraudulent activities dating back 15 years.

[2] There are three intertwined applications before the Court.

[3] The plaintiff, the British Columbia Securities Commission (the "**Commission**"), applies to amend its existing pleading and file a Third Amended Notice of Civil Claim.

[4] The defendants, Vicki Irene Pasquill and Vicker Holdings Ltd. ("**Vicker Ltd.**", collectively the "**Vicker Defendants**"), apply under Rules 9-6(4) and (5) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the "**Rules**") to summarily dismiss the Commission's claims with respect to Vicki Pasquill's 7th Avenue Property (as defined below), alleging that those claims have now been abandoned. They also apply to have the claim dismissed for want of prosecution under Rule 22-7(7).

[5] Counsel for the first named defendant, Earle Pasquill, attended the hearing and made brief submissions endorsing those of the Vicker Defendants. Earle Pasquill himself brought no applications.

[6] The Vicker Defendants' brief sets out a useful overview of their position:

> These applications share the same core question: what claims, if any, should the Commission be permitted to pursue?
>
> In all the circumstances, the answer is properly: none. After bringing claims it had no standing to bring, a fact that was apparent from, *inter alia*, the *Poonian* decision in this very matter, and resisting an application to strike, all but one claim were struck on multiple grounds. In respect of the remaining claim (the subject of the Rule 9-6 motion), the Commission has had clear affidavit evidence there was no merit to it for 3.5 years, and now proposes to abandon it. After legislative amendments creating new causes of action to facilitate collection, and despite being given leave to apply to amend, the Commission chose to delay as long as possible, it may be inferred because prolonging the stay of the Tort Action was to its advantage. It clearly stalled the ability of Vicki (a pensioner in her mid-70s) and Vicker to pursue their own action, relying on the stay. No other explanation has been provided for this delay; no affidavit filed. While it delayed, inordinately, the limitation period to bring its new statutory claims has expired. The only remaining claim in this action (the claim of fraudulent conveyance/preference in respect of the West

> 7th Property) is also properly dismissed, both as abandoned, and without merit on the evidence.

[7] For the reasons that follow, the Court permits the amendments, and dismisses the Vicker Defendants' applications and arguments that would have the effect of barring the amendments, and dismissing the claim. This complicated and novel proceeding should be determined at trial rather than on a summary application such as the present. It is not surprising that some delay would accompany this complicated and novel proceeding, in light of the various related proceedings between the Pasquills and the Commission arising from the 2008 frauds, the extensive amendments to the *Securities Act*, RSBC 1996, c 418 [the "**Act**"] creating new causes of action (the "**2020 Enactments**"), and further complicated by the COVID-19 pandemic. The ultimate reason for this delay, and for the initiation of these ancillary proceedings against the Vicker Defendants, is the ongoing failure of Earle Pasquill (or his business associate Michael Lathigee) to pay the $21.7 million Judgment (as defined below), which funds a panel of the Commission (2014 BCSECCOM 264, 2015 BCSECCOM 78), and the Court of Appeal (*Poonian v. British Columbia Securities Commission*, 2017 BCCA 207) confirmed that they obtained through fraud. It was reasonable for the Commission to focus its efforts on pursuing Messrs Pasquill and Lathigee, the primary targets, and responding to their various appeals and applications. The present proceeding against the Vicker Defendants is a secondary collections action that would be rendered unnecessary if the Commission is able to collect from any of the primary targets.

[8] These reasons will start with a brief overview of the proceedings to date. These reasons also attach as **Appendix A** excerpts from the decision of Mr Justice Davies that provide more expansive background facts: 2021 BCSC 1047 [the "**Davies J Reasons**"].

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II. FACTUAL AND LEGISLATIVE BACKGROUND

A. 2012–2017: the Securities Proceedings and appeal

[9] On March 1, 2012, the Commission's executive director issued a notice of hearing to Earle Pasquill and others, seeking orders under ss. 161(1), 162, and 174 of the Act, asserting that Earle Pasquill and others perpetrated a fraud on investors in three companies that they controlled, collectively referred to as the "Freedom Investment Club" (the "**FIC Group**"), contrary to s. 57(b) of the Act (the "**Securities Proceedings**").

[10] On July 8, 2014, a panel of the adjudicative branch of the Commission issued its liability findings. The panel found that Messrs Pasquill and Lathigee had perpetrated a fraud when they raised $21.7 million from 698 investors without disclosing to those investors the FIC Group's precarious financial condition. They perpetrated a further fraud when they raised $9.9 million from 331 investors for the purpose of investing in foreclosure properties, but instead used most of the funds to make unsecured loans to other FIC Group companies (the "**Liability Decision**").

[11] The frauds date back to 2008. Our Court of Appeal described them further in *Poonian*, the appeal of the Liability Decision:

> **Lathigee and Pasquill**
>
> [19] Lathigee and Pasquill jointly directed a group of companies called the "Freedom Investment Club" (the "FIC Group") which purported to provide members a chance to learn and develop investment skills while presenting them with the opportunity to participate in investments offered by the FIC Group.
>
> [20] The FIC Group's primary business was real estate development, mostly in Alberta, of which the largest project was Genesis on the Lakes, a residential development ("Genesis"). In May 2007, TD Bank provided a $22.1 million credit facility to FIC Group entities for Genesis. As part of the security for the loan, TD required, among other things, that it be assigned an investment portfolio held by 0760838 BC Ltd. ("076"), an FIC Group company. The market value of the portfolio was to be maintained at a minimum value of $9 million for the life of the Genesis project.
>
> [21] Genesis faced difficulties, including $10 million in cost overruns. In February 2008, contractors had filed liens against the development, violating a term of the TD loan prohibiting subsequent encumbrances. By early March 2008, 076 also had a $2.2 million tax bill due. The market value of the 076

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> portfolio fell well below $9 million – by the end of March it was at $5.9 million, at the end of April its value was $7.9 million, and by the end of May 2008, it fell to only $4.9 million. The Commission found Lathigee and Pasquill knew of the breaches of the terms of the TD credit facility, they knew that FIC would be "doomed" if TD called its loan, and they knew that it was a real possibility that could happen.
>
> [22] Email communications and meeting minutes indicated the FIC Group faced severe cash flow problems. From February 1 through August 21, 2008, the FIC Group, through three of its investment companies, proceeded to raise $21.7 million.
>
> [23] On March 7, 2008, Lathigee held a conference call and webcast, primarily with FIC members, to promote the distribution of promissory notes to investors in FIC Real Estate Projects Ltd. ("FIC Projects"), an FIC Group company which invested in Alberta real estate, and the issuance of shares in WBIC Canada Ltd. ("WBIC"). From the issuance of promissory notes in March, April and July 2008, $9.8 million was raised. An additional $2 million was raised in April and May 2008 through the issuance of the WBIC shares. The Commission found that what Lathigee said in the conference call was untrue and grossly misleading, and that he omitted any mention of the important fact of FIC Group's cash flow problems and financial condition. This dishonesty and failure to disclose FIC Group's financial condition formed the basis for the first finding of fraud against Lathigee and Pasquill.
>
> [24] Another FIC Group investment was FIC Foreclosure Fund Ltd. ("FIC Foreclosure"), which was promoted as investing in foreclosures of residential properties in the United States. In statements contained in a subscription agreement, an offering memorandum, and in another conference call in April 2008, Lathigee promoted his expertise and reasons for investing in U.S. foreclosures through FIC Foreclosure. From February through August 2008, FIC Foreclosure raised $9.9 million. However, instead of making investments in foreclosure properties in the U.S., Lathigee and Pasquill used at least part of these funds to meet their short-term cash needs by extending unsecured loans to other FIC Group companies to pay liabilities that included Genesis's contractors and 076's tax liability. This misuse of funds formed the basis for the second finding of fraud against them.
>
> [25] The Commission noted in *Lathigee Sanctions* at para. 8, "The magnitude of the fraud perpetrated in this case is among the largest in British Columbia history."

[12] On March 16, 2015, a panel of the adjudicative branch of the Commission found Earle Pasquill, along with Mr Lathigee and the FIC Group, jointly and severally liable to pay to the Commission $21.7 million pursuant to s. 161(1)(g) of the Act—the total amount obtained directly or indirectly as a result of their contraventions of the Act—as well as an administrative penalty of $15 million imposed under s. 162 (the "**Sanctions Decision**").

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[13] On April 1, 2015, the Commission successfully applied to have the $21.7 million Sanctions Decision disgorgement order registered as a judgment of this Court (the "**$21.7 Million Judgment**").

[14] On May 31, 2017, in *Poonian,* the Court of Appeal dismissed the appeal of Messrs Pasquill and Lathigee, thereby confirming the Commission's ability to pursue Earle Pasquill for the $21.7 Million Judgment (the "**Appeal**").

[15] The Commission ostensibly took no immediate steps to collect on the $21.7 Million Judgment. The Vicker Defendants allege that the Commission only started collection steps after and because the *Vancouver Sun* published its November 17, 2017 article, "Hundreds of millions of penalties issued by B.C. Securities Commission going unpaid". That article specifically discussed the uncollected fines levied against Earle Pasquill, and set out Vicki Pasquill's ownership of various valuable Vancouver real estate assets.

B. 2018: the Collection Action against Earle Pasquill and the Vicker Defendants

[16] On August 9, 2018, the Commission filed proceedings in Vancouver Registry No. S188653 (the "**Collection Action**") against Earle and Vicki Pasquill, seeking to enforce the $21.7 Million Judgment against each of them. In September 2018, the Commission amended the claim to join Vicker Ltd. (a corporation owned by Vicki Pasquill, and formerly owned by Earle Pasquill) as a defendant (the "**2018 Claim**").

[17] Vicki Pasquill owns five British Columbia properties, with a combined assessed value in 2020 of $11,641,700. Vicker Ltd. owns two British Columbia properties, with a combined assessed value of $5,507,500. Earle Pasquill transferred his Vicker Ltd. shares to Vicki Pasquill in 2000.

[18] The Collection Action, as pleaded in the 2018 Claim, resembled a typical fraud claim. It alleged that Earle Pasquill transferred various assets derived from the proceeds of his fraud to the Vicker Defendants, as "benefits conferred on" the Vicker Defendants. The claims were based in knowing receipt, unjust enrichment,

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fraudulent conveyance, and fraudulent preference. The claims sought orders for tracing and accounting, following the path of the fraudulently-obtained funds, to claim an interest in turn in assets obtained and maintained by the Vicker Defendants, through declarations of constructive trust.

[19] For example, the Commission advanced a claim to interests in seven properties owned by Vicki Pasquill and Vicker Ltd. Among these properties was a house located on West 7th Avenue (the "**7th Avenue Property**") in Vancouver that Vicki Pasquill obtained in 2012 (after the fraud) and a house on West 27th Avenue (the "**27th Avenue Property**") that Earle Pasquill transferred to Vicki Pasquill in 1995 and 2000 (before the fraud). The 2018 Claim alleged that the Vicker Defendants used funds received from Earle Pasquill to acquire and maintain these and other properties. To that end, the Commission also filed certificates of pending litigation ("**CPLs**") against the titles of those and other properties under the provisions of the *Land Title Act*, RSBC 1996, c 250.

[20] The claim also pleaded that Earle Pasquill's transfers to the Vicker Defendants after March 2012, the start of the Securities Proceedings, were made to defeat, delay, or hinder the Commission's just and lawful remedies, and thus were void and of no effect, citing the *Fraudulent Conveyance Act*, RSBC 1996, c 163.

[21] Neither of the Vicker Defendants had been a party in the Securities Proceedings or to the Appeal. In those proceedings, the Commission did not engage in an analysis of whether Earle Pasquill passed on the fraudulently-obtained benefits to any other person. The Commission was not obliged or entitled to conduct such an analysis, as there was no allegation that a third party—specifically either Vicker Defendant—participated in the 2008 frauds.

C. 2019: the Vicker Defendants' Tort Action

[22] On December 12, 2019, the Vicker Defendants commenced action No. S1914087 in the Vancouver Registry (the "**Tort Action**"), alleging that the Commission's Collection Action and CPLs constituted misfeasance in public office and an abuse of process.

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[23] As set out below, Davies J dismissed the abuse of process claim, and stayed that action generally pending resolution of this Collection Action.

D. The 2020 Enactments amending the Act

[24] The Commission's legal basis for the claims against the Vicker Defendants changed on March 27, 2020, when the *Securities Amendment Act, 2019* (Bill 33) extensively amended the Act, *inter alia*, to create new statutory collection remedies (the "**2020 Enactments**").

[25] The central relevant addition was "Part 18.1 – Preservation Orders and Additional Collection Remedies". Part 18.1 introduces new statutory remedies, including court orders against family members for joint and several liability with the person found in contravention of a securities law, and forfeiture of "claimable property": specifically property transferred by the contravening person to a family member for less than market value.

[26] Those remedies allow forfeiture orders based not only on transfers that occur during or after the fraud or other contravention of the Act, but extend to transfers that occurred before the contravention: "at any time". This remarkable provision seeks to address the reality that fraudsters and others operating on the margins of market probity will structure their affairs in advance of precarious transactions, promotions, and other activities, often transferring assets to family members or other third parties, in order to protect themselves from future judgments and sanctions.

[27] The Part 18.1 provisions are the first of their kind in Canada: Davies J Reasons, para 203. They are not only novel in British Columbia, but have no direct statutory precedent elsewhere to guide the Court in their interpretation.

[28] Bill 33 also amended s. 3 ("Exempted claims") of the *Limitation Act*, SBC 2012, c 13. Subsection 3(1)(o) now provides that the *Limitation Act* "does not apply" to fines or penalties under the Act, or to "a claim for an amount payable pursuant to an order made under ss. 155.1(b), 157(1)(b), 161(1)(g), or 164.09" of the Act.

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[29] Bill 33 also amended the *Court Order Enforcement Act,* RSBC 1996, c 78 to permit the Commission to take collection actions in relation to registered plans, such as an RRSP or life income fund ("**LIF**").

[30] On November 28, 2019, the 2020 Enactments received Royal Assent. They came into force on March 27, 2020.

E. The 2020 Enactments applied to the proceedings against the Vicker Defendants

[31] The Commission drafted a proposed Third Amended Notice of Civil Claim, advancing, *inter alia*, claims under the newly enacted ss. 164.09 to 164.12 of the Act, that the Vicker Defendants forfeit property received from Earle Pasquill, at any time, for less than market value (the "**2020 Draft Claim**": as it was drafted and provided in 2020, I have referred to this document as such, although it was ultimately considered and decided by Davies J in 2021).

[32] Most of the portions of the 2020 Draft Claim based on the 2020 Enactments are also carried forward, with further particularity, in the present proposed claim before this Court.

[33] The 2020 Draft Claim pleaded (and the present proposed pleadings pleads) that the Vicker Defendants were jointly and severally liable to the Commission with Earle Pasquill, and were obliged to pay to the Commission an amount equal to any "undervalue benefit" received by each of the Vicker Defendants.

[34] "Undervalue benefit" is defined as "the amount by which the fair market value of a property at the time of its transfer exceeded the consideration given for the property in respect of the transfer": Act, s. 164.01.

[35] Section 164.09 reads:

> **Joint and several liability**
>
> **164.09** (1) If an order is made ***against a person*** under section 155.1(b), 157(1)(b) or ***161(1)(g),*** the commission may apply to the Supreme Court for an order under subsection (2) of this section if

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> (a) the person transferred property
>
> (i) to a family member ***at any time***, ***or***
>
> (ii) to a third-party recipient ***on or after the date the unlawful activity occurred***, and
>
> (b) the family member or third-party recipient ***received an undervalue benefit*** as a result of the transfer.
>
> (2) In the circumstances described in subsection (1), the Supreme Court ***must order that the person*** and the family member, or the person and the third-party recipient, as the case may be, are jointly and severally liable to pay to the commission an amount equal to the lesser of
>
> (a) the undervalue benefit received by the family member or third-party recipient, and
>
> (b) the amount specified in the order made under section 155.1(b), 157(1)(b) or 161(1)(g).
>
> (3) Subsection (2) does not apply in respect of a third-party recipient if the third-party recipient proves that, at the time of the transfer of the property to the third-party recipient, the third-party recipient and the person were dealing with each other at arm's length.
>
> [emphasis added]

[36] The 2020 Draft Claim also sought (and the present proposed pleadings seek) this Court's order under s. 164.10 forfeiting to the Commission the whole or a portion of an interest in property that is "claimable property" of a family member, Vicki Pasquill. Section 164.01 defines "claimable property":

> (a) with respect to a family member of a person referred to in section 164.04 (2),
>
> (i) ***property that was transferred to the family member, at any time,*** from the person, and
>
> (ii) ***if property referred to in paragraph (a) (i) has been transferred by the family member to another person, other property of the family member tha***t, as of the valuation date, ***is equivalent in value to the property*** referred to in paragraph (a) (i), and
>
> (b) with respect to a ***third-party recipient of property from a person referred to in section 164.04 (2),***
>
> (i) the property if the property was transferred to the third-party recipient from the person on or after the specified date, and
>
> (ii) ***if the property referred to in paragraph (b) (i) has been transferred by the third-party recipient to another person, other property of the third-party recipient that, as of the valuation date, is equivalent in value to the property referred to in paragraph (b) (i)…***

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[emphasis added]

[37] Under s. 164.10, the Commission sought (and seeks) an order that Vicki Pasquill, as a family member, forfeit any claimable property received from Earle Pasquill before, during, or after the 2008 frauds. Vicker Ltd., as a corporation—not a family member—would only be liable to forfeit claimable property received from Earle Pasquill for less than market value consideration during or after the 2008 frauds.

[38] Under s. 164.12, the Court "*must* make an order forfeiting to the [C]ommission the whole or the portion of an interest in property that the court finds is claimable property" (emphasis added).

[39] As indicated in s. 164.12 and ss. 164.01(a)(ii) and (b)(ii), above, details of any further transfers from a family member to a third party are relevant to the statutory claim, in the same manner but to different effect, of an accounting and tracing.

[40] The s. 164.12 forfeiture provision is subject to the s. 164.13 relief from forfeiture provisions, under which this Court may refuse, limit, or put conditions on the forfeiture order if it is "clearly not in the interests of justice".

[41] The 2020 Draft Claim alleged (and the present proposed pleadings allege), *inter alia*, several specific undervalue benefits conferred by Earle Pasquill on Vicki Pasquill subject to a forfeiture order:

a) the 1995 and 2000 transfer of his interests in the 27th Avenue Property to Vicki Pasquill for $1.00 each; and

b) the 2000 transfer of his shares in Vicker Ltd. for less than the fair market value.

[42] The 2020 Draft Claim pleaded a third category of undervalue benefits, described as the "Transfer of Proceeds of Fraud and Fraudulent Dispositions", including transfer of Earle Pasqill's LIF proceeds, and unspecified transfers to the Vicker Defendants "before, during or after" the fraudulent activities. The present draft

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claim contains a similar third category, now entitled “Other Transfers”, which funds Vicki Pasquill is alleged to have used to maintain and pay mortgages over the 27th Avenue Property and the 7th Avenue Property.

[43] The present draft claim also seeks orders that were largely sought in the 2020 Draft Claim (at para 91):

a) an accounting of the Other Transfers to Vicki Pasquill and Vicker Ltd., and an order that Vicki Pasquill and Vicker Ltd. forfeit those amounts to the Commission (paras 48–49);

b) an order under s. 164.12 of the Act that the whole of Vicki Pasquill’s interest in the 27th Avenue Property (or a portion thereof) is forfeit to the Commission (para 50); and

c) an order under s. 164.12 of the Act that Vicki Pasquill’s interest in the Vicker Shares and the Other Transfers (or a portion thereof) is forfeit to the Commission, or alternatively other property of Vicki Pasquill equivalent in value to the Vicker Shares or the Other Transfers is forfeit to the Commission (paras 51–52).

[44] On July 20, 2020, the Commission sent its draft Third Amended Notice of Civil Claim to the defendants in the Collection Action seeking their consent to file it under the Rules. On August 10, the Vicker Defendants declined their consent.

F. 2021: the Davies J Reasons

[45] From January 11 to 15, 2021, Davies J heard the cross applications, leading to his June 1, 2021 reasons: the Davies J Reasons.

[46] The Commission applied to further amend its notice of civil claim in the Collection Action to plead, amongst other things, the enforcement powers under the 2020 Enactments, as set out above.

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[47] The Vicker Defendants applied under Rule 9-5(1)(a) to strike the Commission's pleadings in their existing form: the 2018 Claim. Davies J largely agreed with the Vicker Defendants' submissions, striking all but one of the Commission's existing causes of action in the Collection Action.

[48] First, Davies J found that the Commission lacked statutory authority to bring and maintain most aspects of the Collection Action. While the Act allows the Commission to start Supreme Court proceedings against a person found in contravention by a Commission panel, to recover amounts due to it under a s. 161(1)(g) enforcement order, the Commission has no express statutory power to pursue third parties, such as family members, for those amounts:

> [82] Vicki Pasquill and Vicker Holdings Ltd. thus submit that the limited circumstances in which the Commission may commence proceedings in the Supreme Court of British Columbia and most significantly the exclusion of breaches of s. 161(1)(g) of the Act from compensation and restitution proceedings reflects the ***legislative intent to limit the Commission's jurisdiction to pursue such claims in this Court.***
>
> [83] The applicants say that ***because the legislature did not explicitly provide the Commission with the power to initiate proceedings by way of a Supreme Court action against third parties to recover amounts due to it under an enforcement order issued against a respondent to a Commission proceeding under s. 161(1)(g) (when the*** Act ***provided such power in other circumstances), application of the presumption of coherence in interpreting the*** Act***'s provisions must lead to the conclusion that the Commission had no power to commence its claims for compensation or restitution against them in the Collection Action***. See: *Ted Leroy Tucking Ltd. v. British Columbia (Minister of Revenue)*, 2008 BCCA 285 at para. 20.
>
> [84] I agree with that submission.
>
> [85] The applicants also submit that the Court of Appeal's decision in ***Poonian further precludes any conclusion that the*** Act ***implicitly authorizes enforcement actions by the Commission against third parties to recover monies due to it by a respondent found to have breached*** s. 161(1)***(g) of the*** Act***.***
>
> [86] They say that is so because, as noted above, at para. 100 in *Poonian* in considering the nature of orders under s. 161(1)(g) of the Act, MacKenzie J.A. concluded as a matter of statutory interpretation:
>
> > … the phrase ***"any amount obtained" refers to amounts obtained directly or indirectly by <u>the</u> person who is to pay pursuant to the order, because <u>the</u> person contravened the*** Act. The fact that "amount obtained" must also be causally connected to ("as a result of") <u>the</u> contravention (or failure to comply) of <u>the</u> person further

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> supports this interpretation as the consistent, plain, and ordinary meaning. [Emphasis of MacKenzie J.A.]
>
> [87] Vicki Pasquill and Vicker Holdings Ltd. thus submit that ***because they were not respondents to the Commission proceedings that gave rise to the findings against Earle Pasquill and there is no allegation that either of them took any step in contravention of the*** Act***, Poonian precludes a determination that the Collection Action against them is implicitly authorized.***
>
> [88] I also agree with that submission.
>
> [emphasis added]

[49] As the Commission's pleadings did not allege that either Vicker Defendant had contravened the Act, the Commission had no statutory authority over them. As noted above, *Poonian* had found at para 100 that, as a matter of statutory interpretation, "any amount obtained" under s. 161(1)(g) refers solely to amounts obtained directly or indirectly by *the* person who committed *the* contravention that formed the subject of the Securities Proceedings: paras 85–88 (emphasis added).

[50] *Poonian* also doomed the Commission's alternative argument: that its public interest mandate to recover funds for the benefit of Earle Pasquill's victims gave it the jurisdiction to bring the Collection Action against third parties not before it in the Securities Proceedings. At paras 94-95, Davies J noted the *Poonian* finding (at paras 112–113) that the public interest mandate must be exercised within the designated statutory powers, and does not in itself grant or extend the Commission's statutory powers. In effect, the public interest tail cannot wag the statutory interpretation dog.

[51] Those findings alone would have been sufficient to grant and resolve the Vicker Defendants' strike application. Given the complex interwoven issues in the Collection Action and the Tort Action, and the fullness of the parties' week-long arguments, however, Davies J decided to address the other bases advanced by the Vicker Defendants towards striking the Commission's existing notice of civil claim. Davies J summarised his conclusions at para 189:

> 1) The Commission lacks statutory authority to bring and maintain all of the causes of action alleged in the Collection Action with the exception of its claims of fraudulent preference and/or fraudulent conveyance.

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> 2) Registration of the $21.7 million Judgment awarded under the Sanctions Decision as a judgment in the Supreme Court of British Columbia does not merge with and extinguish the underlying action or alternative remedies that may have been sought in the underlying action.
>
> 3) The declaratory relief upon which equitable remedies are advanced against [the Vicker Defendants] by the Commission is not available to it and must be struck.
>
> 4) The Commission's claims that [the Vicker Defendants] hold property on an express, resulting and/or constructive trust; claims based upon knowing receipt; and, claims based upon unjust enrichment are bound to fail.
>
> 5) Except with respect to Vicki Pasquill's 50% interest in the 7th Avenue Property obtained by her in March 2012, the Commission's claims against the applicants based upon allegations of fraudulent preference and/or fraudulent conveyance disclose no reasonable cause of action.

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[52] Based on the above conclusions that almost all of the 2018 claims, as formulated, disclosed no cause of action, Davies J granted the application of the Vicker Defendants to remove the CPLs against all of the properties. The sole surviving exception was the CPL filed against Vicki Pasquill's 50% interest in the 7th Avenue Property, which interest she obtained, in contrast to the other properties, after the 2008 frauds, and which thus might conceivably support the claim in fraudulent preference or conveyance: paras 185–187, 197–201.

[53] Davies J also denied the Commission's application to amend its claim based upon the 2020 Enactments, at least at that time.

[54] Davies J began with comments that would generally support the liberal granting of an amendment. He noted that the amendments advanced novel and important theories of liability that should be determined on a full evidentiary record, rather than on a summary strike application: paras 217–220. He further noted that neither defendant had established that she or it would suffer any prejudice as a result of those amendments, in a manner that could not be remedied through a costs order or otherwise: para 222.

[55] That said, Davies J declined to grant the proposed amendments at that time, because the Commission's 2020 Draft Claim continued "… to advance and in some cases re-cast, re-organize, and/ or particularize allegations, causes of actions and

remedies against Vicki Pasquill and Vicker Holdings Ltd. that I have found are not available to the Commission because most of its pleadings in the Second Amended Notice of Civil Claim must be struck." (at para 224)

[56] In effect, Davies J's orders striking wide swaths of the existing 2018 Claim left the 2020 Draft Claim in messy tatters.

[57] Accordingly, Davies J anticipated and gave leave to the Commission to tidy up the 2020 Draft Claim, and re-apply for leave to amend a proposed claim in a form that conformed with the Davies J Reasons:

> [226] In order to rectify that situation by removing those claims that cannot proceed the Commission will have liberty, on notice to the defendants, to apply to amend the Second Amended Notice of Civil Claim to conform to my rulings.
>
> [227] If those amendments are not opposed they will be allowed to proceed. If not, I will be seized of that further amendment application unless I otherwise order.

[58] Davies J seised himself of that future amendment application. That eminent jurist retired, however, on September 4, 2022, with the result that I and not he heard these applications.

[59] Finally, as the main focus of the Collection Action would become the enforceability of the 2020 Enactments, and in order to avoid a multiplicity of proceedings, and potentially inconsistent judicial findings, Davies J stayed the Vicker Defendants' Tort Action until determination of the issues in the Collection Action: para 246. He also struck the Vicker Defendants' claim of misfeasance in public office, directing that they amend their claim to that effect: para 246. The Vicker Defendants have not yet done so.

III. DISCUSSION AND DECISIONS

A. The Commission's application to amend

[60] These reasons attach as **Appendix B** the Commission's present proposed Third Amended Notice of Civil Claim. The following provides a high-level tour.

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[61] The proposed claim removes roughly 210 lines from and adds roughly 265 lines to the existing 2018 Claim.

[62] Certain proposed amendments are uncontroversial: for example, further facts about the decisions and proceedings against Earle Pasquill, and adjustments of defined terms. Other amendments concern Earle Pasquill, rather than the Vicker Defendants: these include the allegation that Earle Pasquill receives monthly draws from two LIF accounts.

[63] Other proposed amendments represent uncontroversial compliance with the Davies J Reasons. Gone are the legal bases of knowing receipt, fraudulent preference, fraudulent conveyance, and unjust enrichment, as well as the remedies of CPLs, constructive trust, and tracing. Also removed are allegations with respect to all of the properties except for the 7th Avenue Property and the 27th Avenue Property.

[64] Other proposed amendments reflect further particulars of the alleged transfers that underly the claim against the Vicker Defendants. For example, more detail is added with respect to the transfers from Earle Pasquill to Vicki Pasquill of his interest in the 27th Avenue Property, and more detail is provided with respect to the 7th Avenue Property. Of course, it is not unusual for particulars to be regularly provided and updated in a fraud claim, as the litigation proceeds, and discoveries are made.

[65] As detailed above, under “E. The 2020 Enactments applied to the proceedings against the Vicker Defendants”, most of the proposed amendments are carried over from the 2020 Draft Claim before Davies J, as well as those existing paragraphs that were not struck as disclosing no cause of action.

[66] The legal basis now consists entirely of the 2020 Enactments. The proposed claim now categorises transfers from Earle Pasquill to the Vicker Defendants not as fraudulent conveyances, or transfers of funds derived from fraud, but as:

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a) "undervalue benefits" for which the Vicker Defendants are jointly and severally liable with Earle Pasquill to pay to the Commission (or up to the value of the amount Earle Pasquill owes to the Commission, whichever is less): under s. 164.09; and

b) "claimable property" in the form of transfers from Earle Pasquill to Vicki Pasquill (before, during, or after the 2008 frauds) and Vicker Ltd. (after 2008), subject to forfeiture: under ss. 164.10–164.12.

[67] The present draft claim particularises several transfers from Earle Pasquill to Vicki Pasquill subject to a forfeiture order, including his transfers of his interests in the 27th Avenue Property, his shares in Vicker Ltd., and LIF proceeds, as well as other unspecified transfers "before, during and after" the fraudulent activities. It alleges that Vicki Pasquill used these transfers in part to maintain and pay mortgages over the 27th Avenue Property and the 7th Avenue Property.

[68] The Court is satisfied that the Commission has followed the directions in the Davies J Reasons: that is, revised the 2018 Claim to reflect those reasons, including removing the struck claims. The Commission has also largely rolled over the 2020 Draft Claim advanced under the 2020 Enactments, with some further particulars, into its present proposed pleadings.

[69] The Court is also satisfied that the present proposed claim, while recast as causes of action created by the 2020 Enactments, carries over the same essential facts and claims as existed in the 2018 Claim before Davies J, seeking to claim the direct and indirect benefits of transfers from Earle Pasquill to the Vicker Defendants.

[70] Davies J himself noted that the 2020 Draft Claim amendments before him, similar to those now before the Court, were not fresh inventions:

> [210] The amendments sought by the Commission ***rely for the most part upon the provisions of ss. 164.09 and 164.10 of the Act to, in some cases particularize and in others, recast and/or supplement their previous assertions*** of breach of trust; knowing receipt; unjust enrichment; fraudulent preference and/or fraudulent conveyance in respect of the acquisition of the Properties by Vicki Pasquill and Vicker Holdings Ltd. ***to***

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seek relief pursuant to the new statutory causes of action and remedies that are now but were not previously available.

[emphasis added]

[71] To give some examples, the 2018 Claim reads:

Benefits conferred on Ms. Pasquill and Vicker

13. Mr. Pasquill disbursed or transferred, or caused FIC Group to disburse or transfer, significant funds to Ms. Pasquill, directly or indirectly, for her direct or indirect benefit. The funds were, at all material times, funds obtained by breach of trust as a result of the Fraud.

…

24. Mr. Pasquill and Ms. Pasquill also knowingly used the Proceeds of Fraud to purchase, in whole or in part for their own direct or indirect benefit, various assets, investments, registered retirement savings plans, chattels, including motor vehicles, and services (the "**Secondary Assets**"), the particulars of which are presently unknown to the Commission.

25. At all material times when the benefit of the Proceeds of Fraud were being acquired or used by, and/or the Fraudulent Dispositions were made to Ms. Pasquill, she knew or ought to have known that:

(a) Mr. Pasquill was liable to or in debt to various investors in the FIC Group arising from the Fraud;

(b) the effect of receiving such transfers of property and the Proceeds of Fraud would be to defeat, delay, or hinder the investors and, after March 1, 2012, the Commission's lawful remedies as against Mr. Pasquill; and that

(c) the transfers of property, including the Proceeds of Fraud, were being made for no or nominal consideration.

…

28. But for the receipt of property including the Proceeds of Fraud, or the Fraudulent Dispositions to Ms. Pasquill and Vicker, Ms. Pasquill and Vicker would not have been able to acquire the Properties, fund the holding costs and expenses to maintain ownership of the Properties, service the mortgage and other debts required to be paid to keep the Properties or build any equity arising from her or its interest in the Properties.

29. But for the receipt of the Proceeds of Fraud or the Fraudulent Dispositions, Mr. Pasquill, Ms. Pasquill and Vicker would not have been able to acquire their interests in the Secondary Assets.

…

32. As against Vicki Irene Pasquill and Vicker Holdings Ltd.:

(a) Judgment, jointly and severally,:

(i) in the amount of the Proceeds of Fraud traced to Ms. Pasquill or to her benefit; and/or

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(ii) in the amount of the value of the Fraudulent Dispositions;

(b) in the alternative, damages in knowing receipt, or in the further alternative, in unjust enrichment, by Ms. Pasquill and Vicker of some or all of the Proceeds of Fraud or the Fraudulent Dispositions;

…

37. Ms. Pasquill knowingly used or accepted the use; and caused Vicker to use or accept the use, of some or all of the Proceeds of Fraud for (i) the purchase, (ii) the betterment, improvement and maintenance of the Properties including in respect of payment of taxes, holding costs and other levies, or (iii) to service the mortgage debt on the Properties, through which she and/or Vicker were able to acquire equity in the Properties, directly or indirectly.

38. In the circumstances, Ms. Pasquill and Vicker each holds their interest in the Properties, or a portion thereof, on an express, resulting or constructive trust in favour of the Commission, to the extent that the Proceeds of Fraud can be traced, either directly or indirectly through payment of holding costs, into the Properties.

39. Mr. Pasquill and Ms. Pasquill, directly and through Vicker, also knowingly used the Proceeds of Fraud to purchase, maintain and grow the Secondary Assets.

[72] The present proposed pleading reads:

The Other Transfers of Property

42. In addition to the 27th Avenue Property Transfers and the Share Transfer, before, during and after the Fraud, Earle Pasquill transferred other funds and property, including but not limited to the proceeds of the LIF Accounts, to Vicki Pasquill and Vicker, directly or indirectly (the "**Other Transfers**").

43. The full particulars of the dates and amounts of the Other Transfers are currently unknown to the Commission, but are within the knowledge of Earl[e] Pasquill, Vicki Pasquill and Vicker.

44. The Other Transfers were made for no or nominal consideration.

45. Vicki Pasquill and Vicker used the Other Transfers or their proceeds to contribute to and/or fund the holding costs and expenses required to maintain ownership of the Properties or Vicker's assets, service the mortgage and other debts required to be paid to keep the Properties or Vicker's assets, and build equity arising from her or its interest in the Properties or Vicker's assets.

46. Under section 164.09 of the *Act*, an order that Vicki Pasquill is jointly and severally liable to pay to the Commission an amount equal to the undervalue benefit she received from:

(a) the 27th Avenue Property Transfers;

(b) the Share Transfer; and

(c) the Other Transfers;

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or the amount Earle Pasquill has been ordered to pay to the Commission under section 161(l)(g) of the *Act*, whichever is less.

…

57. Vicker is a third-party recipient of property from Earle Pasquill for the purposes of Part 18.1 of the *Act*. Vicker received an undervalue benefit as a result of the Other Transfers made to Vicker by Earle Pasquill during or after the Fraud.

58. The Commission seeks orders under section 164.09(2) of the *Act* that Vicki Pasquill and Vicker are jointly and severally liable to the Commission with Earle Pasquill in an amount equal to the lesser of the undervalue benefit received by each of Vicki Pasquill or Vicker, or the amount Earl Pasquill has been ordered to pay under section 161 (1)(g) of the *Act*.

…

65. To the extent that Vicki Pasquill transferred the Vicker Shares or the proceeds of the Other Transfers to another person, other property of Vicki Pasquill equivalent in value to the Vicker Shares or the funds or property received by way of the Other Transfers is "claimable property" within the meaning of section 164.01 of the *Act*.

66. Under section 164.10(2) of the *Act*, the Commission seeks forfeiture of:

> (a) the whole of Vicki Pasquill's interest in the 27th Avenue Property, or alternatively, a portion of Vicki Pasquill's interest in the 27th Avenue Property;
>
> (b) the whole of Vicki Pasquill's interest in the Vicker Shares, or alternatively, a portion of Vicki Pasquill's interest in the Vicker Shares;
>
> (c) the whole of the funds or property transferred to Vicki Pasquill pursuant to the Other Transfers that are retained by Vicki Pasquill, or alternatively, a portion of those funds or property.

67. In the alternative, if Vicki Pasquill has transferred the 27th Avenue Property, the Vicker Shares, or the funds or property received by way of the Other Transfers to another person, the Commission seeks forfeiture under section 164.10(2) of the *Act* of other property of Vicki Pasquill that, as of the valuation date, is equivalent in value to 27th Avenue Property, the Vicker Shares, or the funds or property received by way of the Other Transfers, including but not limited to Vicki Pasquill 's interest in the 7th Avenue Property.

…

69. To the extent that Vicker transferred the funds or property received by it pursuant to the Other Transfers to another person, other property of Vicker that, as of the valuation date, is equivalent in value to the funds or property received by Vicker pursuant to the Other Transfers in or after February 2008, is "claimable property" within the meaning of section 164.01 of the *Act*.

70. Under section 164.10(2) of the Act, the Commission seeks forfeiture of:

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> (a) any of the funds or property received by Vicker pursuant to the Other Transfers in or after February 2008, and retained by Vicker; or
>
> (b) in the alternative, other property of Vicker that, as of the valuation date, is equivalent in value to the funds or property transferred to Vicker pursuant to the Other Transfers received in or after February 2008.

[73] To give another example touched upon by the above passages, the 2018 Claim sets out Earle Pasquill's transfers of his interest in the 27th Avenue Property to Vicki Pasquill in 1995 and 2000 for nominal consideration (paras 16–17), and alleges that the Vicker Defendants used the proceeds of fraud to maintain and pay mortgage debt on, *inter alia*, that property (paras 28, 37–38). As set out above, the 2023 proposed amendment repeats and expands on these allegations in greater particularity.

[74] Each of the 2018 Claim and the 2020 and 2023 iterations of the proposed claim allege at their core that the Vicker Defendants benefited from transfers from Earle Pasquill related to his fraudulent activities, and seek therefore to collect the $21.7 Million Judgment in whole or in part from them based on those transfers.

[75] These conclusions address the Vicker Defendants' repeated arguments that the Commission is advancing, in a dilatory and prejudicial manner, entirely new claims and allegations for the first time in 2023.

[76] These conclusions also raise something approaching, but not constituting, *res judicata*, prompting this judge to give great weight to the *obiter dicta* comments of Davies J on this precise issue.

[77] But for the concern that the proposed pleadings had to be revised to reflect the Davies J Reasons, Davies J telegraphed his inclination to allow the 2020 Draft Claim amendments—again, largely rolled over into the present proposed pleading.

[78] Davies J started by noting the liberal approach to pleadings (which the Vicker Defendants, appropriately, did not and do not contest):

> [209] The general principles to be applied concerning applications to amend pleadings under Rule 6-1(1)(b)(i) were usefully summarized by G.P.

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> Weatherill J. in *Peterson v. 446690 B.C. Ltd.*, 2014 BCSC 1531 at para. 37 as follows:
>
> > 1) Amendments to pleadings should be allowed unless the pleadings fail to disclose a cause of action or defence;
> >
> > 2) Amendments are usually permitted to determine the issue between the parties and ought to be allowed unless it would cause prejudice to a party's ability to defend an action;
> >
> > 3) The party resisting an amendment must prove prejudice to preclude an amendment and mere potential prejudice is insufficient to preclude an amendment;
> >
> > 4) Costs are the general means of protecting against prejudice unless it would be a wholly inadequate remedy; and
> >
> > 5) Courts should only disallow amendments as a last resort.

[79] Davies J then addressed the Vicker Defendants' arguments in opposition to those proposed amendments:

> [215] The primary bases upon which the amendments are opposed by Vicki Pasquill and Vicker Holdings Ltd. relate to:
>
> > 1) The substance of those amendments to the *Act* which purport to make available causes of action and remedies against the applicants that did not exist when the Collection Action was commenced.
> >
> > 2) The timing of the amendments to the *Act* following upon the unfavourable publicity engendered by the Commission's failure to recover significant amounts of money from offenders such as Earle Pasquill.

[80] Davies J indicated that the Vicker Defendants' arguments against the 2020 Draft Claim amendments would fail to displace the liberal approach towards amendments, and the judicial desire to resolve matters substantively rather than procedurally:

> [217] Those issues which remain outstanding for determination ***do not, however, preclude the amendments now sought by the Commission to seek recovery based upon the*** Act ***as now amended.***
>
> [218] ***That is so because the amendments sought by the Commission concern new and novel substantive statutory causes of action and remedies.***
>
> [219] ***While the applicants may have defences to both, including limitation defences and possible Charter challenges or remedies because of the differentiation in the treatment of family members and unrelated third parties under the*** Act***, those are important issues that***

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> ***must be fully and properly explored in the litigation process on a full evidentiary record.***
>
> [220] ***Such issues should not and cannot be summarily dismissed at the amendment stage.***
>
> [221] Although the amended pleadings may be lacking in respect of particulars, that can, of course, be the subject of demands for particulars under the Rules.
>
> [222] I am also satisfied that neither Vicki Pasquill nor Vicker Holdings Ltd. has established that they are prejudiced by the proposed amendments in a way that cannot ultimately be addressed and, if necessary, remedied by an order for costs.
>
> [emphasis added]

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[81] At para 227, Davies J anticipated that, given his guiding comments, the proposed amendments might well be filed by consent: "[i]f those amendments are not opposed they will be allowed to proceed. If not, I will be seized of that further amendment application unless I otherwise order."[1]

[82] Applying the same liberal approach to amendments, to largely the same proposed pleadings based on the 2020 Enactments, this Court reaches the same conclusion as suggested by Davies J, rendering the hypothetical real. It cannot be said that the proposed amendments fail to disclose a cause of action: the 2020 Enactments remain good law, and any challenge to them should not be determined summarily. Nor will the amendments irremediably prejudice the Vicker Defendants' ability to defend the action. The amendments are granted.

B. Has the limitation period expired?

1. Position of the Vicker Defendants

[83] In opposition to the amendment, as well as in support of its application to dismiss for want of prosecution, the Vicker Defendants argue that the Commission's proposed claim is statute-barred, not by the *Limitation Act*, which the 2020 Enactments expressly amended to exempt certain proceedings under the Act, but by the limitation provisions in the Act itself.

[84] As set out above, Bill 33 amended s. 3 of the *Limitation Act*, to now read:

> **Exempted claims**
>
> **3**(1) This Act does not apply to the following:
>
> **…**
>
> (o) fines or penalties under the *Securities Act* or a claim for an amount payable pursuant to an order made under section 155.1(b), 157(1)(b), 161(1)(g) or 164.09 of that Act. [2]

[85] The Vicker Defendants further point to the *Limitation Act*, s. 3(2):

> This Act does not apply to a claim or court proceeding for which a limitation period has been established under another enactment, except to the extent provided for in the other enactment.

[86] The Vicker Defendants argue that with this double ousting of the *Limitation Act*, the limitation period in s. 159 of the Act applies:

> **Limitation period**
>
> **159**(1) Proceedings under this Act, other than an action referred to in section 140 or 140.94, must not be commenced more than 6 years after the date of the events that give rise to the proceedings.

[87] The Vicker Defendants argue that the "event[] that g[a]ve rise" to these proceedings was the issuance of the Sanctions Order on March 16, 2015, triggering the running of the s. 159 six-year limitation period for the Part 18.1 claims against them. Taking into account the one-year suspension of limitation periods due to the COVID-19 pandemic, the limitation period therefore expired on March 17, 2022.

2. Discussion and decision

[88] These reasons will dismiss the Vicker Defendants' limitation argument on two simple bases, before providing some *obiter dicta* ruminations on the s. 159 limitation provision in the Act.

a) The proposed amendments flow from facts previously pleaded

[89] First, where the proposed amendments flow from facts previously pleaded, even if in support of a new or alternative claim or remedy, there will be no issue as to the potential expiry of a limitation period: *Taylor v. Blenz The Canadian Coffee Company Ltd*., 2019 BCSC 906 at paras 35 and 44, citing *Swiss Reinsurance*

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Company v. Camarin Limited, 2018 BCCA 122 at para 21. A proposed amendment will only be refused after the expiry of a limitation period where it seeks to advance a fundamentally different claim: *1100997 Ontario Limited v. North Elgin Centre Inc.,* 2016 ONCA 848 at para 22 [*North Elgin*].

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[90] Again, while the 2020 and 2023 proposed claims recast the facts and claims to fit under the 2020 Enactments, the factual and legal essence of the claims remains the same: that the Vicker Defendants benefited from transfers from Earle Pasquill, used those funds to acquire and maintain properties, and are jointly and severally liable to pay those amounts to the Commission to satisfy the $21.7 Million Judgment. Those claims were expressed in the language of knowing receipt, fraudulent conveyance, and unjust enrichment in the original 2018 Claim, and expressed in the language of the 2020 Enactments in the present amended claim. The facts underlying the claims are essentially identical. Insofar as there are some new facts alleged (for example, the LIF allegations), again, it is not unusual in a fraud or execution proceeding to provide further particulars, often expansive particulars, of transfers and assets, as the claimant investigates and untangles the oft-complicated and opaque financial arrangements of a fraudster and his family and related entities.

[91] Amendments to pleadings do not raise a new claim “if a party merely pleads a new or alternative remedy based on the same facts already pleaded”: *Swiss Reinsurance Company* at para 31, also citing *North Elgin,* at paras 20–21. As stated in *North Elgin*:

> [20] In Morden & Perell, *The Law of Civil Procedure in Ontario*, 2nd ed. (Markham: LexisNexis Canada Inc., 2014), at p. 142, the authors state:
>
> > ***A new cause of action is not asserted if the amendment pleads an alternative claim for relief out of the same facts previously pleaded and no new facts are relied upon, or amount simply to different legal conclusions drawn from the same set of facts, or simply provide particulars of an allegation already pled or additional facts upon which the original right of action is based***. [Footnotes omitted.]
>
> [21] In *Dee Ferraro Ltd. v. Pellizzari*, this court noted ***the distinction between pleading a new cause of action and pleading a new or***

> ***alternative remedy based on the same facts originally pleaded***. The appellants had commenced an action against their lawyer claiming damages for breaches of contract, trust and fiduciary duty and for fraud and negligence. The appellants then sought to amend their pleading. This court, in overturning the motion judge's dismissal of the motion to amend, concluded that the proposed amendments, such as claims for a mandatory order and a constructive trust over shares, could be made because they flowed directly from facts previously pleaded.
>
> [22] By contrast, ***a proposed amendment will not be permitted where it advances a "fundamentally different claim" after the expiry of a limitation period***: *Frohlick v. Pinkerton Canada Ltd.* In that case, the court did not permit the plaintiff in a wrongful dismissal action to amend the statement of claim to assert a claim for damages for constructive dismissal on the basis that the limitation period had expired. This court dismissed the appeal. The amendment regarding constructive dismissal related to events that occurred prior to the events described in the original statement of claim that were unrelated to that claim. The defendant was unaware of the new allegations prior to the plaintiff seeking the amendments, and the events were not put in issue or encompassed within the original claim.
>
> [emphasis added]

[92] Here, to paraphrase *Dee Ferraro Limited v. Pellizzari*, 2012 ONCA 55 at para 4, the amendments simply claim additional forms of relief, or clarify the relief sought, based on the same facts as originally pleaded (and as could reasonably be amended or particularised). The Commission does not seek to advance a fundamentally different claim, and no limitation issue is engaged.

[93] Nor does this conclusion undermine the rationales of limitation periods identified in *M(K) v. M(H),* [1992] 3 SCR 6 at 29–30: certainty, evidentiary, and diligence. The Vicker Defendants could not be surprised or prejudiced by the factual allegations levelled against them in the proposed amended claim: they have known since at least 2018 that the Commission has sought to collect from them the direct or indirect benefits of Earle Pasquill's fraud received through various transfers from Earle Pasquill, and have likely known since October 2019 of the then-proposed 2020 Enactments. The claims based on the 2020 Enactments do not disturb their repose or require them to locate or preserve evidence beyond that engaged in the initial iteration of the claim. In any case, as noted in *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67*,* in sanctioning a broad interpretation of the s. 159 limitation period:

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> [68] While it is true that the application of s. 159 to the secondary proceeding provisions such as s. 161(6)(d) will have the effect, as a practical matter, ***of extending the period under which the cloud of potential regulatory action hangs over a person, that, of itself, is not offensive to the legislative purpose of limitation provisions. Limitations periods are always "driven by specific policy choices of the legislatures***" (*Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623, at para. 230, *per* Rothstein J., dissenting), as they attempt to "balance the interests of both sides" (*Murphy v. Welsh*, [1993] 2 S.C.R. 1069, at p. 1080).
>
> [emphasis added]

b) The proposed amendments could not have been brought, and the limitation period could not run, before the 2020 Enactments came into force

[94] Second, even if the proposed amendments engaged the s. 159 limitation period, the limitation clock could not have started to run before the new enactments on which they are based became law. Specifically, as confirmed by several authorities, the limitation clock will not run for a claim based upon a new statutory cause of action, until the promulgation of such an enactment makes such a claim available.

[95] In *Tracy v. The Iranian Ministry of Information and Security*, 2016 ONSC 3759, aff'd 2017 ONCA 549 at paras 77–83, for example, Justice Hainey concluded that the limitation period for statutory causes of action under the *Justice for Victims of Terrorism Act*, SC 2012, c 1, only started to run from the date that statute came into force in 2012:

> [94] The plaintiffs' claims to recognize and enforce the U.S. judgments are statutory claims under s. 4(5) of the JVTA. In *Peixiero*, the Supreme Court of Canada considered a statutory cause of action and held that there can be no cause of action until the plaintiff's injury meets the statutory criteria. In this case it was only when the JVTA came into force and Iran's immunity was removed that the plaintiffs met the statutory criteria and their causes of action under s. 4(5) of the JVTA arose. I am of the view that the applicable limitation period began to run from the date when the JVTA came into force in 2012.
>
> [95] Further, the application of the discoverability principle to the plaintiffs' claims also supports the conclusion that any limitation period governing the plaintiffs' claims in Ontario did not begin to run until the JVTA came into force. Under the discoverability principle (codified in ss. 4 and 5 of the *New Limitations Act*), a limitation period begins to run only when the

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> plaintiff discovers or reasonably ought to have discovered his or her claim. "Claim" is defined in s. 1 of the *New Limitations Act* as a "claim to remedy an injury, loss or damage that occurred as a result of an act or omission."
>
> [96] There was no statutory remedy in Ontario for the plaintiffs' losses arising from Iran's nonpayment of the U.S. judgments until s. 4(5) of the JVTA came into force and Iran was added to the list of state sponsors of terrorism referred to in s. 6.1(2) of the SIA. Prior to the JVTA coming into force and Iran being listed under the SIA, the defendants were immune from the Ontario court's jurisdiction. The plaintiffs did not have causes of action against the defendants until Iran's immunity was lifted and the JVTA came into force in 2012.

[96] In *Workshop Holdings Limited v. CAE Machinery Ltd.*, 2005 BCSC 631, Justice Wedge declined to dismiss a claim brought following the enactment of a new statutory cause of action for remediation of contaminated soil, which contamination occurred at least 50 years before the claim was filed, and 20 years before the then-ultimate limitation period of 30 years:

> [53] CAE could not, however, articulate the precise cause of action that might have arisen during those 30 years. ***Any cause of action concerning the copper and zinc contamination of the property did not arise until 1993, when the current legislative scheme first created liability for a "contaminated site" within the meaning of the legislation.***
>
> [54] Section 27(1) provides that a person who is responsible for the remediation of a contaminated site is "absolutely, retroactively and jointly and severally liable" for the cost of remediating the contamination. Section 27(4) provides that remediation may be pursued from responsible persons "in accordance with the principles of liability set out in this Part." As noted by the Court of Appeal in *Workshop v. CAE*, s. 27 of the *Act* created a ***"new civil cause of action, entire unto itself, as a means of requiring the polluter to pay and encouraging an owner to remediate".***
>
> [55] ***Workshop's action is such a "new civil cause of action". It did not exist prior to the inception of the legislative scheme. Without deciding whether the ultimate limitation period may apply in other actions brought pursuant to the Act, I conclude that it does not apply in this case.***
>
> [emphasis added]

[97] In *First National Properties Ltd. v. Northland Road Services Ltd*., 2008 BCSC 569, concerning the same legislation, Justice D. Smith (then of this court) similarly declined to dismiss as statute barred a claim that could not have been brought until the enactment of the legislation, regardless of earlier knowledge of the contamination:

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> [57] … While the facts upon which the action is based were conclusively known to First National as early as 1996, they were not material facts until the cause of action was created in 1997…

[98] The *First National* Court found further support in first principles governing limitation legislation: the limitation clock does not start to run until all of the elements of the cause of action come into existence. As stated by Esson JA in *Bera v. Marr* (1986), 1 BCLR (2d) 1 (CA) at 14:

> The Limitations Act, as appears from ss. 3(2) and 8(1), defines the beginning of the period of limitation as being the date on which the right to bring action arose. That must mean ***the date upon which the cause of action was complete; the date upon which all the elements of the cause of action had come into existence, whether or not the person entitled to the cause of action was aware of all the facts upon which its existence depended.***
>
> [emphasis added]

[99] This conclusion tracks the common law discoverability principle recognised in *Kamloops v. Nielsen*, [1984] 2 SCR 2 and *Central Trust Co. v. Rafuse*, [1986] 2 SCR 147 and *Peixeiro v. Haberman*, [1997] 3 SCR 549 at para 36: “discoverability is a general rule applied to avoid the injustice of precluding an action before the person is able to raise it".

[100] The discoverability principle is codified and made central in the present *Limitation Act* after its 2012 reformulation:

> **General discovery rules**
>
> **8** Except for those special situations referred to in sections 9 to 11, a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:
>
> (a) that injury, loss or damage had occurred;
>
> (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
>
> (c) that the act or omission was that of the person against whom the claim is or may be made;
>
> (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

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[101] Paraphrasing *Bera* and *First National,* the causes of action the Commission advances under the 2020 Enactments were not complete, and a claim could not have been brought, until March 27, 2020, when those enactments came into force. The proposed amended notice of civil claim was delivered soon thereafter: in July 2020.

3. *Obiter dicta*: does s. 159 apply to the 2020 Enactments?

[102] The Commission's primary reply to the limitation argument is ambitious. It says that s. 3(1)(o) of the *Limitation Act* clearly indicates that no limitation period is to apply to a claim "for an amount payable pursuant to an order made under section…164.09 of that Act," as here. It argues that s. 159 does not apply to the…:

> …newly created collection remedies, because a time limit could be exploited by planning to ensure that assets are moved around so that after the passage of enough time they will be permanently out of reach. That would defeat the purpose of the new remedies.

[103] The Commission cites the Hansard words of the Minister of Finance and Deputy Premier as an encapsulation of the purpose of the 2020 Enactments, partly realised through the deliberate omission of limitation periods:

> [Fraudsters] transfer their assets before they begin a fraud. They will ensure that they don't have the assets as they begin a fraud. So ***if a timeline was put into an act*** — say, two years, as the member gives as an example — fraudsters would know they have an ability to transfer their assets. ***They know they have a two-year time period where they're not going to get caught, where we can't go back and find that asset because of the time frame.***
>
> [emphasis added]

[104] The Commission argues that the Act, and in particular s. 159 and Part 18.1, must take into account these policy objectives, and "be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para 26. It argues that the s. 159 limitation period only applies to regulatory proceedings before the Commission, and not proceedings before this Court: the s. 159 limitation period is found in Part 18, which

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focuses on proceedings before the Commission, and not proceedings before this Court.

[105] The Court demurs from pronouncing comprehensively on this issue, as the limitations issue may be appropriately decided on the two more narrow grounds set out above.

[106] I agree with the Commission that the likely desired intention of the s. 3(1)(o) *Limitation Act* carve-out of Part 18.1 s. 164.09 claims was to exempt them from any limitation period. The Legislature likely thought that this carve-out would be sufficient and clear.

[107] There are two difficulties with that assumption, however. Section 3(1) does not state that "no limitation period applies to any of the following claims". Rather, it simply excludes operation of the *Limitation Act* against such claims: "This Act does not apply to the following:…"

[108] Further, the *Limitation Act,* a default statute, expressly and immediately defers to (rather than renders inapplicable) limitation provisions in other statutes:

> 3(2) This Act does not apply to a claim or court proceeding for which a limitation period has been established under another enactment, except to the extent provided for in the other enactment.

[109] As stated by the Ministry of Justice, in its annotation of s. 3(2) in its *The New Limitation Act Explained*[3]:

> • The new Act is a default statute. Therefore, if another statute sets out a specific limitation period, the new Act does not apply (e.g. a 10-year limitation period under the *Civil Forfeiture Act* to apply to the court for a forfeiture order).
>
> • If there is no statute that contains a limitation period for a specific legal problem, then the new Act applies.

[110] Most of the list of excluded claims under the *Limitation Act* ss. 3(1)(a)–(o) are common law claims untethered by statutes or statutory limitation periods (e.g., (i) sexual assault), or claims related to statutes that do not purport to contain a general limitation clause or a limitation clause specific to that particular excluded claim. For

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example, s. 3(1)(l) excludes "a claim for arrears of child support or spousal support payable under (i) a judgment, or (ii) an agreement filed… under… the *Family Law Act*". The *Family Law Act*, SBC 2011, c 25 contains no general limitation period, or limitation period specific to claims brought under a filed agreement; that statute, in fact, creates the presumption, under s. 198, that subject to express limitations over specific claims and applications, "a proceeding under this Act may be started at any time."

[111] The difficulty arises here because the Act, in contrast, does contain a general limitation provision in s. 159 ("**Limitation period**"), quoted above, in the introduction to this section.

[112] In this, the Vicker Defendants' argument would appear to accord with common sense, the plain wording and structure of the Act, and the jurisprudence examining s. 159 and limitation periods generally.

[113] Contrary to the Commission's submissions, Part 18, where s. 159 is located, is not solely concerned with proceedings before the Commission: s. 163, for example, enables the Commission to file its decision in the Supreme Court.

[114] More importantly, s. 159 does not limit its effect to Part 18, but expressly refers to "Proceedings *under this Act*…" (emphasis added). Section 159 also refers to sections of the Act beyond Part 18, expressly carving out from its effect s. 140 in Part 16.

[115] As the express wording of s. 159 itself illustrates, a "proceeding" includes an "action", including actions before this Court (the subject matter of the excluded ss. 140 and 140.94). This is consistent with the general statutory breadth of the term "proceeding", as illustrated by its Rule 1-1 definition: "…an action, petition proceeding and a requisition proceeding, and includes any other suit, cause, matter, stated case under Rule 18–2 or appeal." The new Part 18.1, Division 3—the present focus—is expressly entitled "Civil Actions and Forfeiture Orders". Its ss. 164.09 and 164.10 concern applications to this Court for the purpose of obtaining forfeiture

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orders against third-parties such as spouses and children; its s. 164.12 refers to "proceedings" under s. 164.10; its ss. 164.11 and 164.18 also refer to "a proceeding" and "proceedings".

[116] Further, for consistency, if s. 159 intended to exclude actions under Part 18.1 from the effects of its general limitation period "under this Act", it would and should have expressly excluded Part 18.1 and its specific sections, as it expressly excluded ss. 140 and 140.94 from its effects.

[117] In this, with apologies for hoisting the Commission on its own petard, in *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101, the Commission argued, and the Court of Appeal accepted (at paras 56-57), that a provision in the Act governing proceedings "under this Act" indeed applied to the entire Act and not just to the section where it appears (albeit with respect to a different section and part):

> [45] The Commission says that the appellant's proposed interpretation is inconsistent with a purposive and contextual approach. The Commission notes that s. 57.5 is not located within Part 17 of the Securities Act but rather is in Part 7, which—as its heading suggests—contains provisions pertaining to "Trading in Securities Generally". ***If the Legislature intended to limit the scope of s. 57.5 to investigations for which an investigation order has been issued under Part 17 of the Act, it could have used limiting language as it has in other provisions: for example, ss. 159(2), 164.04(2)(b), and 164.04(3)(b).*** Instead, the Legislature used the phrase ***"under this Act", which the Commission says encompasses any powers of investigation exercisable by the Commission.***
>
> [emphasis added]

[118] The history of specific and lofty jurisprudential examination of s. 159 also indicates that if the Legislature intended to exclude Part 18.1 from its reach, it would and should have expressly done so. In *McLean* at para 49, the Supreme Court of Canada confirms that "[u]nlike ss. 140 and 140.94, which refer to specific proceedings in the *Act*, s. 159 is a *residual limitation provision applicable to all other proceedings*" under the Act (emphasis added). It is granted that this statement arose in the context of proceedings entirely before the Commission and other securities commissions, and not proceedings before this Court, but one would think the

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breadth of the Supreme Court of Canada statement, presumably well-known by the Commission and the Legislature, would have prompted express statutory confirmation that s. 159 does not apply to Part 18.1.

[119] The controversy about the shifting scope of s. 159 in *McLean*, and the risk it posed to the efficacy of the new legislation in question in that case should have been top of mind to the Legislature, such as to state plainly the inoperability of s. 159 to the 2020 Enactments. The issue before the *McLean* Court was whether "the events that give rise to the proceedings" in s. 159 could only possibly refer to the "underlying misconduct" as the date triggering the limitation clock. The Court ultimately rejected that interpretation (to be more precise, in the administrative law context, it deferentially decided not to interfere with the Commission's broader interpretation of its home statute, a reasonable alternative interpretation):

> (4) The Provision Read in Context
>
> [48] The use of the phrase ***"the events that give rise to the proceedings" in s. 159 is relatively open-ended,*** as can be seen when contrasted with the language used in other limitations provisions in the *Act*. For example, s. 140(a), which provides for limitation periods for actions for rescission, speaks of "180 days after the date of the transaction that gave rise to the cause of action". Section 140.94, which concerns actions related to secondary market disclosure, speaks of "3 years after the date on which the document containing the misrepresentation was first released".
>
> [49] The distinctive diction of s. 159 arguably makes sense in context. Unlike ss. 140 and 140.94, which refer to specific proceedings in the *Act*, s. 159 ***is a residual limitation provision applicable to all other proceedings. Thus, it stands to reason that "the events" is a deliberately open-ended phrase because it must be capable of applying to a variety of different contexts.*** As applied to s. 161(1)(a)(i), "the events" read in its ordinary sense means the date of the misconduct whereby a person was "contravening . . . a provision of [the] Act". That, of course, was the interpretation as understood prior to the introduction of s. 161(6). But it is also easy to see how, as applied to s. 161(6)(a), "the events" can mean the date the person "has been convicted . . . of an offence". And as applied to s. 161(6)(d), the provision at issue here, "the events" can mean the date the person "has agreed with a securities regulatory authority [. . .] to be subject to sanctions, conditions, restrictions or requirements".
>
> [50] What the appellant asks the Commission to do is to interpret "the events that give rise to the proceedings" restrictively as "the *misconduct* that gives rise to the proceedings". Indeed, that is essentially how Manitoba's general limitation provision reads; see *Securities Act*, s. 137 ("the

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> proceedings to prosecute a person or company for an offence under this Act shall not be commenced after eight years after the date on which the offence was committed"). ***It cannot be said, however, that a contextual reading of s. 159 points toward such a restrictive interpretation. Rather, a flexible reading of "the events" — capable of adapting to the various provisions to which it is applied, including new provisions added over time, such as s. 161(6)(d) itself — makes more sense in context.*** Accordingly, and setting aside whatever quibbles one might have with the significance of the provision's drafting history, a contextual reading of s. 159 supports the Commission's interpretation.
>
> [emphasis added]

[120] *En route* to that conclusion, the Court noted that until the new amendments in question in that case, it had been clear that the s. 159 limitation period ran from the triggering event of the underlying misconduct:

> [45] The limitation period in s. 159 predates the addition of s. 161(6) by roughly a decade. ***Before s. 161(6) was introduced by the Securities Amendment Act, 2006, S.B.C. 2006, c. 32, it was clear that s. 159 ran from the date of the underlying misconduct***; see, e.g., *Dennis (Re)*, 2005 BCSECCOM 65, 2004 LNBCSC 705 (QL), at para. 38; *Bapty*, at para. 28. As mentioned, the parties do not contend otherwise.
>
> [46] ***It was only with the addition of s. 161(6) that the start date for the limitations clock became unclear. Given that the legislature chose not to change the wording of s. 159 after it added s. 161(6), it stands to reason that the legislature intended "the events" in s. 159 to continue to refer to the misconduct at issue, regardless of the addition of s. 161(6). In other words, the original meaning of "the events" did not change overnight.*** And as Dickson J. (as he then was) observed, "words must be given the meanings they had at the time of enactment" (*Perka v. The Queen*, [1984] 2 S.C.R. 232, at p. 265, citing E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 163). If one accepts this line of reasoning, it lends support to the appellant's interpretation.
>
> [emphasis added]

[121] In this case, the Commission urges the Court to reach a similar conclusion to that reached in *McLean*: the scope of the limitation period must be guided by the objectives of the 2020 Enactments. The Commission goes further than *McLean*, however, in arguing that s. 159 has no application to Part 18.1. It thereby contradicts *McLean* in arguing that s. 159 is not a limitation period governing all sections "under this Act".

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[122] This Court shares the *arguendo* concern of the *McLean* Court: if the legislature wished that effect, and wished to displace the broad language in s. 159 and the broad interpretation of that broad language in the 2013 *McLean* decision, it could and should have done so with clear language. One would expect the Legislature, in drafting the expansive new enactments under Part 18.1, and even exempting such claims from the scope of the general *Limitation Act*, would have either exempted Part 18.1 from s. 159, or expressly stated in Part 18.1 that no limitation period, under s. 159, the *Limitation Act*, or otherwise, applied to proceedings under that part.

[123] Finally, regardless of the policy objectives of the Act, and the complex and creative means fraudsters employ to move assets beyond the reach of execution, it is anomalous that Part 18.1 would have no limitation period. The *Limitation Act* itself imposes a 10-year limitation on court proceedings to enforce or sue on a judgment. And even claims in fraud are subject to the 15-year ultimate limitation period, albeit one that runs from when the beneficiary becomes "fully aware" of all four discovery considerations: *Limitation Act*, ss. 12(2), 21. The Commission's urged interpretation that no limitation applies for execution proceedings would be sufficiently statutorily unusual such as to expect clear and unambiguous language to that effect.

[124] As these reasons need not decide the issue on these grounds, I will say nothing more, and will leave the issue to the Legislature to clarify, or to a future Court to decide.

C. The Vicker Defendants' want of prosecution application

[125] The Vicker Defendants argue tenaciously that the claim should be dismissed for want of prosecution under Rule 22-7. They argue that delay has been inordinate: in the four-and-a-half years since filing, it remains at its pleadings stage. Further:

> …no examinations for discovery have been set and the defendants' demands and applications for document production remain outstanding. For nearly two of those years, the Commission took no steps to move this litigation forward at all. The best the Commission can do is point to correspondence between counsel and the cancellation of CPLs (which never should have been filed, or re-filed) as evidence of its claimed "active" prosecution of this action. It does

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> so despite overwhelming authority to the contrary: only formal steps which are either required or permitted by the Rules (not including the filing of a Notice of Intention to Proceed) and which move the action forward are relevant to the court's analysis of delay.

[126] The parties agree that *Wiegert v. Rogers*, 2019 BCCA 334 at paras 31–33 and *0690860 Manitoba Ltd. v. Country West Construction Ltd*., 2009 BCCA 535 at para 27 [***Country West***] guide the analysis. In order to have the proceeding dismissed for want of prosecution, the applicant defendant must establish each of four factors:

a) there has been inordinate delay: that is, delay that is immoderate, uncontrolled, excessive and out of proportion to the matters in question. The delay should be analysed holistically, not in a piece-meal fashion. The extent to which it may be excusable is highly fact-dependent;

b) the delay is inexcusable in the circumstances, including whether it was intentional or tactical, or whether the delay was the product of dilatoriness, negligence, impecuniosity, illness or another relevant cause;

c) the delay has caused or is likely to cause serious prejudice to the defendant in presenting a defence and, if so, whether it creates a substantial risk that a fair trial is not possible. Once a defendant establishes that delay is inordinate and inexcusable, a rebuttable presumption of prejudice arises; and

d) on balance, justice requires dismissal of the action. This decisive and most important question encompasses the other three factors.

[127] Informing all of these considerations is the oft-repeated admonition that dismissal for delay is a draconian remedy to be exercised with caution: *Tundra Helicopters et al. v. Allison Gas Turbine et al.*, 2002 BCCA 145 at para 37; *Mackenzie Delta Industrial Ltd. v. North American Enterprises Ltd*., 2022 BCSC 16

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at para 72. Usually, but not invariably, the plaintiff will be given a stiff warning and an opportunity to cure the defect by moving the claim forward in accordance with a specified timeline of filings and events: *Tundra Helicopters* at para 37; *Chu v. Chu*, 2023 BCCA 129 at para 14.

[128] Despite their vigorous arguments, the Vicker Defendants have failed to establish any of the four factors. Specifically, viewed holistically, the complexity of the underlying facts, the introduction and implementation of the 2020 Enactments, the Pasquills' multifarious applications and appeals in resistance to the Commission investigation and proceedings, and the overall complexity of the proceedings to date, as exemplified by this, and the Davies J hearing and reasons, the passage of time is neither unreasonable nor indicative that justice requires its dismissal. To repeat, much of the complexity and delay arises from the manner in which the Pasquills have arranged their affairs, and Earle Pasquill's failure to pay any or all of the $21.7 Million Judgment. It is in the interests of the Commission, this Court, the public, and, indeed, the Vicker Defendants themselves that the Commission avoid active pursuit of these ancillary proceedings before determination of whether the $21.7 Million Judgment can be collected from the primary target, Earle Pasquill. Indeed, avoidance of multiple and perhaps redundant proceedings prompted Davies J to stay the Tort Action.

[129] Put conversely, as a shorthand of activity and complexity, viewed holistically, there has been much activity and many steps taken in the Commission's pursuit of Earle Pasquill and Ms Pasquill generally. The Commission provides an abbreviated summary of significant steps in the various proceedings between the Commission and the Pasquill parties, from May 2017 to March 2023. It lists 88 significant steps, over eight pages, with no padding in words or events.

[130] As a further shorthand of activity and complexity, the Vicker Defendants' own summary of significant steps from August 2018 to March 2023 in this Collection Action alone lists 37 steps over three full pages, with no padding in words or events.

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[131] As a still further shorthand of activity and complexity, the court file in this Collection Action alone reveals regular filings, from its commencement to the date of the Vicker Defendants' application, albeit with a gap between June 2021 (after the Davies J Reasons) and January 2023.

[132] As a first response to the gap, it was reasonable for the Commission to take some time in addressing the many aspects of the Davies J Reasons affecting its conduct of the action, from extensive revisions to the proposed claim, to addressing the removal of the CPLs from the multiple properties owned by the Vicker Defendants.

[133] This ostensible gap must also be viewed, again, in the context that the present proceeding is merely an ancillary execution proceeding against the Vicker Defendants, and one of many heavily-fought and time-consuming proceedings between the Commission and the Pasquill parties, which proceedings continued through the gap.

[134] For example, the gap overlaps considerably with Earle Pasquill's appeal from the Commission panel's November 2020 decision to uphold the preservation order against the LIF accounts. Leave was granted in February 2021. The appeal was heard in October 2021. In November 2021, the Court of Appeal set aside the Commission's preservation order over the LIF accounts. The outcome of the LIF appeal would reasonably affect the scope of these ancillary proceedings against the Vicker Defendants.

[135] During the gap, the Commission was also responding to a freedom of information request and proceedings before the Office of the Information and Privacy Commissioner ("**OIPC**") initiated by the Vicker Defendants, with production pursuant to those requests and directions. These proceedings included particular activity from September 2022, when the OIPC issued its Notice of Written Inquiry and Investigator's Fact Report, through November and December 2022, when the parties submitted their written submissions to the OIPC, to January 2023, when the Commission submitted its reply.

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[136] Further, the Commission sent and received regular communications about this and related Pasquill matters throughout the period. In assessing a want of prosecution application, a court is to consider not only formal steps in the proceeding, such as discoveries, but also informal steps such as correspondence between counsel. As stated by Justice Giaschi in *Mackenzie Delta:*

> [44] The suggestion that a court should be limited to considering only formal steps in a proceeding is also completely inconsistent with the whole thrust and purpose of the test that has been established for such applications. The ultimate objective of the test is to do justice between the parties. That requires a consideration of all the circumstances and not just formal steps.

[137] The Vicker Defendants argue that *Mackenzie Delta* is *per incuriam*, as it did not consider certain want of prosecution decisions that limit consideration of "steps" in a proceeding to formal steps that clearly move the action forward towards trial (e.g., *New Rightway Contracting Ltd. v. 0790792 B.C. Ltd*., 2023 BCSC 216 at paras 25, 28, applying *Kelly v. Dyno Nobel Canada Inc*., 2016 BCSC 1601 at para 19). Those authorities draw upon *Ellis v. Wiebe,* 2011 BCSC 683 at para 12 which confirms the well-established principle that a *notice of intention* to proceed under Rule 22-4(4) does not constitute a “step” in the litigation process because it does not advance the action toward trial; that case says nothing to the effect that correspondence is not to be considered in the holistic want of prosecution assessment. *Ellis* in turn relies on *Easton v. Cooper*, 2010 BCSC 1079, which also says nothing about the want of prosecution enquiry, but rather asks whether the plaintiff had taken a “step in a proceeding” before July 1, 2010, such that the former *Supreme Court Rules* applied, as per Rule 24-1, governing the transition between the former rules and the present rules. *Easton* in turn cites *Khan v. Johal et al. and Sidhu et al.*, 2006 BCSC 1547 at para 14, which again says nothing about the want of prosecution enquiry, but rather concerns the cancellation of a CPL on the ground that no step had been taken in the proceeding for one year, under s. 252 of the *Land Title Act*.

[138] In those and other cases drawn upon by the Vicker Defendants, the courts were called upon to interpret the word “step”, as expressly and strictly used in the

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wording of a statute or rule. In contrast, the want of prosecution rule, Rule 22-7(7), does not contain the word “step”. In concept as well as statutory language, the want of prosecution rule stands in contrast to statutes or rules restricting the actions of a party (e.g., Rule 22-7(4): “An application [to set aside for irregularity] must not be granted unless the application is made…(b) before the applicant has taken a fresh step after knowledge of the irregularity”), or awarding costs for certain steps (e.g., Rules 14-1(1)(b)(ii), (d) and (15)).

[139] Most germanely, the wording of Rule 22-7(7) stands in contrast to statutes and rules requiring precise measurements akin to a limitation period. In this, the neighbouring Rule 22-4 itself expressly uses the term “step” where the court is limited to consideration of formal steps:

> **Notice of intention to proceed after delay of one year**
>
> (4) In a proceeding in which judgment has not been pronounced and ***no step has been taken for one year***, a party must not proceed until
>
> (a) the expiration of 28 days after service, on all parties of record, of notice in Form 44 of that party's intention to proceed, and
>
> (b) a copy of the notice of intention to proceed and proof of its service has been filed.
>
> [emphasis added]

[140] Such restrictions, limitations, and releases require a narrow and precise definition of “step” in order to provide temporal certainty. In contrast, a narrow consideration of formal steps alone would be antithetical to the holistic approach mandated by the governing want of prosecution jurisprudence: see particularly *Ed Bulley Ventures Ltd. v. The Pantry Hospitality Corporation*, 2014 BCCA 52 at para 38. And, of course, while some correspondence between counsel is dilatory or obfuscatory, most correspondence is necessary and helpful in moving the matter towards trial. While formal steps provide a useful consideration and metric in a want of prosecution application, they do not determine or dominate the holistic enquiry. I agree with and apply Giaschi J’s analysis above.

[141] Finally, while courts have not placed much weight on the COVID-19 pandemic as an excuse in want of prosecution applications, the requisite holistic

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examination of the pace of the proceedings must consider that every aspect of life slowed down during that period: see, for example, *Mackenzie Delta* at para 56. The COVID-19 pandemic specifically caused the lengthy adjournment of the parties' cross applications to strike the Tort Action and the Collection Action, from April 2020 to January 2021.

[142] The passage of time between the filing of the claim and the application has not been inordinate. As noted in *Wiegert* at para 32, citing *Sun Wave Forest Products Ltd. v. Xu*, 2018 BCCA 63 at para 25, the concept of inordinate delay is relative: "some cases are naturally susceptible of fast carriage or call for more expeditious prosecution than others". As evidenced by the abbreviated recitation of the history of these proceedings set out above, and the ten tomes of materials before the Court on these interlocutory motions alone, and the five days of argument before Davies J, and the four days of argument before this Court, the present case "is not naturally susceptible of fast carriage". Nor does it involve "relatively simple claims" as in *Drennan v. Smith*, 2022 BCCA 86 at para 60, where the Court nonetheless reversed the dismissal of a five-year-old claim.

[143] Further, most actions in the want of prosecution jurisprudence start, continue, and are dismissed, in the context of well-known and established factual and legal foundations: delay in prosecuting a claim based in breach of contract or negligence is difficult to excuse in itself. That was the case in *Irving v. Irving* (1982), 140 DLR (3d) 157 (BCCA) at 159, the jurisprudential drum pounded most loudly by the Vicker Defendants. Here, again, the legal parameters of the claim were not established and could not have been established, until the new enactments on which the claim is now primarily founded came into force (March 2020: 35 months before the Vicker Defendants' application to dismiss) and the Davies J Reasons (June 2021: 20 months before the application). It is not unusual, inordinate, or unfair for a complicated execution proceeding stemming from a complicated fraud, to take such time.

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[144] Indeed, while dismissal is based on holistic considerations rather than arithmetical calculations of time, even simple claims outstanding for four or five years will typically withstand a want of prosecution application, or at least be given a final chance to move the matter forward, before its dismissal. The Commission provides a useful survey of comparator delays in authorities where claims with longer delays and simpler facts and law survived applications to dismiss:

a) *Drennan*: five years (trespass and unjust enrichment: tree-cutting);

b) *Wiegert*: six years (personal injury: motor vehicle accident);

c) *Country West*: three-and-a-half years (payment for work performed under a subcontract);

d) *Tundra Helicopters*: five years (damaged helicopter);

e) *Almas Bros. Contracting Ltd. v. Tomax Enterprises Ltd*., 2023 BCSC 68: three years (builder's lien proceeding);

f) *Extra Gift Exchange Inc. v. Accurate Effective Bailiffs Ltd*., 2015 BCSC 915: four years (a ten-year-old bailment proceeding arising from unpaid strata fees).

[145] Conversely, the defendants were unable to point to a case that was either dismissed for want of prosecution based on the lapse of four-and-a-half years from start to application, or based on a single year of inactivity.[4] While ordinarily, a full year of inactivity is not to be praised, it is, again, understandable in the present circumstances for the Commission to focus on the primary target rather than the secondary target. In any case, this is not the first case where a plaintiff has taken no action for a year. And of course, the Rules anticipate that some cases will pause, forgivably and remedially, for a year or more: Rule 22-4(4) expressly allows the filing of a notice of intention to proceed, which the Commission did in a timely manner in the present case.

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[146] The Vicker Defendants argue that other factors in this litigation make any delay inordinate. They argue that the Commission, as a public institution, has a heightened obligation to proceed swiftly, particularly where fraud is alleged, citing by analogy *R. v. Jordan*, 2016 SCC 27. They argue that any delay will be to the advantage of the Commission, given Vicki Pasquill's age. They argue that the Commission dragged its heels in anticipation of the new enactments, thus undermining her ability to properly respond to the claim.

[147] The allegations that the Commission has moved slowly for tactical gains are unsupported by the evidence. Again, the key aspects of the 2020 Enactments were made public since at least October 2019. The 2018 Claim alleged knowing receipt against Vicki Pasquill; those have now been replaced with the less prejudicial and more morally neutral enforcement and collection provisions under the new enactments. There is no evidence that the Commission has done anything but acquit its public role in combating securities fraud, and seeking to gain redress for its victims, in the face of complicated and historical asset arrangements, and in the face of changing legislation. Any allegations that the Commission has behaved in any improper manner are appropriately left to consideration of the defences in this action, or the trial of the Tort Action, rather than on a summary basis, on affidavits unconducive to explorations of impropriety or bad faith.

[148] I turn to the consideration of prejudice. As the delay has not been inordinate, no factual presumption of prejudice arises.

[149] The Vicker Defendants do not advance any specific prejudice that would impede their mounting and presentation of their defence, as required: *0803589 B.C. Ltd. (formerly Ralph's Auto Supply (B.C.) Ltd.) v. Ken Ransford Holding Ltd*., 2015 BCSC 1428 at paras 28, 41–44. They point to Vicki Pasquill's age (she is now in her mid-70s)[5] and the general effect of the passage of time on memories and evidence. Such general assertions fall short of the specificity and seriousness generally expected in the want of prosecution jurisprudence: see *Drennan* at paras 46, 55–58; *Tundra Helicopters* at paras 32–37; *Country West* at para 50; and *Ralph's Auto*

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Supply at para 44. In any case, there is no medical or other evidence indicating any present or anticipated frailty of memory or competence indicating an inability to mount a defence, as expected where such prejudice is asserted: see *Matheny v. British Columbia Transit Corp*., 1997 CanLII 4184 at paras 21-25 (BCSC)(M). On the contrary, Vicki Pasquill's various affidavits convey a detailed comprehension of her assets, and the claims against her. Further, again, Vicki Pasquill has been aware of the allegations against her husband since 2012, and the specific allegations against her and her assets since 2018; she has had ample time to preserve and muster documentary and testamentary evidence. Finally, while not a complete answer to concerns about trial preparedness, all of the material witnesses in the matter have sworn affidavits on the central matters in dispute, preserving their evidence, as well as undermining any assertion of faded memories, at least presently: see *Drennan* at paras 55–58.

[150] The Vicker Defendants also argue prejudice based on the filing of the CPLs. This is an irrelevant factor, as it does not in itself impact the defendants' ability to mount a defence or obtain a fair trial: *Almas Bros. Contracting* at para 46.

[151] Finally, the Vicker Defendants allege prejudice in the continued stay of their Tort Action. Davies J has already determined that many of the issues in that action overlap with those that will be determined in the present action. In any case, the ongoing stay does not erode the Vicker Defendants' ability to mount a defence in the present action, and their development of the evidence and arguments in the defences of the present action will overlap with that necessary for their prosecution of the Tort Action.

[152] To conclude, under the governing overarching principle, the Vicker Defendants have not shown that the interests of justice require the dismissal of the action for want of prosecution. If Earle Pasquill paid the $21.7 Million Judgment, the costs and complication of this proceeds would immediately become unnecessary. It is reasonable and perhaps even responsible that the Commission did not proceed at rapid pace against the secondary sources of collection: the Vicker Defendants.

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Regardless of the speed of the litigation, this Court agrees with Davies J, again, that these complicated claims seeking to assist 698 bilked investors, based on new legislation enacted to assist the public and ensure integrity in capital markets, be determined on a full evidentiary record, rather than on a summary basis.

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[153] In any case, if the Court is incorrect in its assessment of the want of prosecution considerations applied to the progress of this proceeding, it would have followed the predominant practice of giving the Commission the opportunity to remedy its default, by committing to a managed series of dates for steps in the litigation, rather than dismissing the claim outright: *Tundra Helicopters Ltd.* at para 37; *Country West* at para 20.

D. The Defendants' abandonment application

[154] The Vicker Defendants apply under Rules 9-6(4) and (5) for summary judgment against the Commission's existing claim against the 7th Avenue Property. They argue:

> ***Absent the new Part 18.1 Claims in the Proposed Third Amended Claim***, the Commission's sole claim against Vicki pleads fraudulent conveyance and/or fraudulent preference in respect of the 7th Avenue Property. This claim has been abandoned by the Commission, and in any event, presents no genuine issue for trial and ought to be summarily dismissed.
>
> [emphasis added]

[155] Ruling on the Vicker Defendants' prior application to strike, Davies J expressly allowed the claims in fraudulent conveyance and fraudulent preference to stand with respect to the 7th Avenue Property. Those claims survived in relation to that property alone, solely due to the timing of the transfer: Vicki Pasquill obtained her 50% interest in the 7th Avenue Property in March 2012, after the 2008 frauds. Accordingly, that specific pleading was not bound to fail, and survived the strike application.

[156] The Vicker Defendants argue that those pleadings must now be dismissed based on Vicki Pasquill's affidavit averments that the property had been in her family since around 1975, and that in March 2012 she became the joint tenant owner of the

property with her elderly aunt, for whom she served as the primary caregiver. She was also her aunt's sole heir. She acquired her interest in the 7th Avenue Property for no consideration, as the aunt's sole heir, for estate planning purposes.

[157] The Vicker Defendants note that the Commission does not seek to rebut these facts through its own responsive affidavit or otherwise. While Davies J was entitled to dismiss the Vicker Defendants' application to strike, the Court should grant their present application, under the more robust summary judgment rule.

[158] The italicised portion of the Vicker Defendants' passage above provides the primary answer to why their application should be dismissed. The proposed amended claim, which amendments this Court has granted, continues the claim focused on the 7th Avenue Property. It has been recast, not abandoned: while previously framed in fraudulent conveyance and fraudulent preference, it is now cast under the new Part 18.1 execution remedies. Specifically, the new pleading alleges that Vicki Pasquill undertook approximately $400,000 in property upgrades, and placed a $1,050,000 mortgage on the property to secure a loan, the amount of which is presently unknown. The Commission seeks an order under s. 164.12 that her interest in the 7th Avenue Property be forfeit to the Commission. The new claim provides a factual basis for a claim against the 7th Avenue Property regardless of Vicki Pasquill's estate planning assertions.

[159] Accordingly, the primary basis for the Vicker Defendants' application is now moot: all references to fraudulent conveyance, fraudulent preference, and fraudulent disposition have now been removed and replaced with the Part 18.1 proceedings, *inter alia,* against the 7th Avenue property, in the new amended claim.

[160] Further, granting summary judgment with respect to this sole property alone, in this factually and legally complicated dispute, would represent unwarranted and dangerous litigation in slices. A summary ruling of discrete issues could well embarrass a future court, and unnecessarily consume the court and litigants' time, if the investigation and adjudication of the Pasquills' affairs in the Collection Action reveals a basis for a claim under the new pleadings under Part 18.1. That

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investigation and adjudication is now statutorily freed of the temporal limitations underlying the Davies J Reasons (see paras 181-187). This potential embarrassment of the court is more profound, given the multiplicity of proceedings. Davies J expressly voiced this concern, in declining to strike the Collection Action as an abuse of process under Rule 9-5(1)(d):

> [191] I also do not do so because Vicki Pasquill and Vicker Holdings Ltd.'s allegations of tortious abuse of process in the Tort Action are largely factually identical to their abuse of process submissions under Rule 9-5(1)(d) in the Collection Action so that consideration of the issues in the pleadings context in the Collection Action at this time on an incomplete evidentiary record has the potential to result in inconsistent findings in the two proceedings.

[161] Finally, again, the novelty and uniqueness of the legislation, and its public importance, further disincline the Court to rule summarily on a discrete aspect of the complicated factual and legal matrix.

[162] In *LD (Guardian ad litem of) v. Provincial Health Services Authority*, 2012 BCCA 491 at paras 12, 18–19, the Court of Appeal reversed the decision below to dismiss, under Rule 9-6(5), a proposed class proceeding seeking remedies under the *Privacy Act*, RSBC 1996, c 373, as well as s. 8 of the *Canadian Charter of Rights and Freedoms*. In the absence of a settled body of jurisprudence, the court should not dismiss a claim under Rule 9-6(5) "without a proper factual foundation on which to explore, develop and apply the tests": *LD* at para 19.

[163] Similarly, in *Pearce v. 4 Pillars Consulting Group Inc.*, 2021 BCCA 198, the Court of Appeal concluded that the chambers judge did not err in dismissing the appellants' Rules 9-5 and 9-6 applications to strike pleaded statutory causes of action under the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, and the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3: see paras 76, 125, 127, 140, 177, 183. Regarding that conclusion, the Court of Appeal stated:

> [71] In some complex cases involving novel questions of statutory interpretation, where the judge is of the view that the evidence could unfold in ways affecting the interpretation or there is not sufficient factual foundation in the materials before the judge, the proper course is to defer to trial the determination of the issues raised on a summary judgment application….

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IV. CONCLUSION

[164] My costs order matches that of Davies J: costs in the cause.

[165] The Court is grateful for the able submissions and advocacy of Mr McEwan and Ms Bevan, exhibiting their usual thoroughness and tenacity.

"Crerar J"

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Appendix A: substantive and procedural background from Davies J Decision (italics added)

[20] In 2009 the Commission commenced an investigation into the companies in the FIC Group that were, at the time, jointly directed by Earle Pasquill and his then business partner Michael Lathigee.

[21] That investigation resulted in the Securities Proceedings commenced in 2012 by the Executive Director of the Commission against Earle Pasquill, Michael Lathigee and companies in the FIC Group under the provisions of s. 161(1) and 161(2) of the Act.

[22] In the Securities Proceedings the Commission alleged that by February 2008 the FIC Group had taken over $35 million in debt in relation to several Alberta real estate properties it was attempting to develop known as the Genesis Project.

[23] The Commission alleged that fraud was perpetrated by Earle Pasquill and Michael Lathigee in breach of s. 57(b) of the Act from February 2008 through August 2008 when they:

1. *Raised $21.7 million from 698 investors without telling the investors important facts about the financial conditions of the FIC Group; and*
2. *Raised $9.9 million from 331 investors in FIC Foreclosure Fund Ltd. for the purpose of investing in foreclosures of residential properties in the United States and instead used most of the funds to make loans to other FIC Group companies.*

[24] On July 8, 2014 a panel of the Commission's adjudicative arm issued lengthy reasons (the Liability Decision) in which it held that Earle Pasquill and Michael Lathigee had subjective knowledge that the financial conditions of the FIC Group could cause deprivation to the investors who had been solicited to invest because they understood or should have understood that the FIC Group "was close to insolvency or because the Toronto Dominion Bank would call the [$21.7 million] loan" resulting in a finding of fraud contrary to s. 57(b) of the Act.

[25] The panel also concluded that a second fraud was perpetrated in relation to a sub-set of the $21.7 million raised from the investors in that the second $10 million that was raised was supposed to be for the purpose of investing in foreclosure properties in the United States. Instead it was used to assist with the FIC Groups' debts and cash flow problems, exposing the investors to the "business and credit risks of the FIC Group as a whole".

[26] There were no findings of fact made by the panel that anyone other than Michael Lathigee and Earle Pasquill directed or controlled the FIC Group or any of the companies that were found to have breached the Act.

[27] There were also no findings made by the panel that any of the investors' funds that gave rise to findings against Earle Pasquill, Michael Lathigee or companies in

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the FIC Group were transferred to either Vicki Pasquill or Vicker Holdings Ltd. or used for the benefit of either of them and neither is referred to in the panel's Liability Decision.

[28] Following the Liability Decision, the panel issued the Sanctions Decision on March 16, 2015.

[29] On the issue of the enrichment of the respondents in the Securities Proceedings (a factor relevant to sanctions under the Act) the Executive Director took the position that documents showed that approximately $388,000 was transferred out of the FIC Group directly to Earle Pasquill comprised of: $58,931.91 in pay cheques: $242,000 in expenses and a "one—time payable" of $87,000.

[30] The panel thus confirmed that on the evidence before it the limit of Earle Pasquill's enrichment since January 2008 was less than $400,000 and that "the bulk of the $21.7 million was used for the benefit of the FIC Group of companies".

[31] In the Sanctions Decision the panel ordered that Earle Pasquill, Michael Lathigee and the three corporate respondents were jointly and severally liable to pay to the Commission $21.7 million pursuant to s. 161(1)(g) of the Act being the total amount obtained directly or indirectly as a result of their contraventions of the Act.

[32] Both Earle Pasquill and Michael Lathigee were also ordered to pay an administrative penalty of $15 million.

[33] Section 161(1)(g) of the Act provides:

> *161. (1) If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:*
>
> *…*
>
> *(g) if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;*

[34] Earle Pasquill and Michael Lathigee obtained leave to appeal the Commission's s. 161(1)(g) enforcement order to the Court of Appeal.

[35] In the Appeal, Earle Pasquill and Michael Lathigee, who did not personally "obtain" the $21.7 million (which was instead used to benefit the FIC Group), asked the Court of Appeal to determine whether s. 161(1)(g) requires that the "amount obtained" be obtained by the person against whom the order is made and also whether the section permits joint and several orders.

[36] In Poonian, in deciding those questions, MacKenzie J.A. for the Court of Appeal held:

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1) At para 100 that:

> *… the phrase "any amount obtained" refers to amounts obtained directly or indirectly by the person who is to pay pursuant to the order, because the person contravened the Act. The fact that "amount obtained" must also be causally connected to ("as a result of") the contravention (or failure to comply) of the person further supports this interpretation as the consistent, plain, and ordinary meaning. [Emphasis of MacKenzie J.A.]*

and;

2) At paras. 125 to 126 that:

> *[125] The Executive Director here, for example, submits the Poonians and Sihotas were each found to have been "directly involved in and contributed to" the market manipulation scheme (Poonian Sanctions at paras. 82-83). This finding is not challenged on appeal. Therefore, the Executive Director contends they all acted in concert with the common purpose of perpetrating the manipulation scheme, which supports the propriety of a joint and several disgorgement order against them, as was the case in Limelight.*
>
> *[126] … Respondents cannot be held jointly and severally liable for a s. 161(1)(g) order purely on the basis they acted in concert with the common purpose of breaching the Act. This is because the language of s. 161(1)(g) requires the disgorged amount to be obtained, directly or indirectly, by the person. Acting jointly is not synonymous with obtaining amounts, directly or indirectly. As I will explain below, however, having direction and control over another respondent or entity may constitute indirect obtainment. [Emphasis of MacKenzie J.A.]*

[37] Notwithstanding those conclusions the Court of Appeal dismissed the Appeal. In doing so the Court determined (at para. 130) that by establishing a link in s. 161(1)(b) between the "amount obtained" by the person subject to the order by using the works "directly or indirectly" modifying "obtained", the Legislature ensured that the purpose of the section was not frustrated by complex schemes.

[38] Justice MacKenzie went on to say at para 131:

> *[131] In my view, the use of these explicit words indicates that the amount need not be obtained directly by the person who has contravened the Act (who is also the person against whom the order to pay is made). In addition, it could be obtained indirectly. By using those words, the Legislature intended "amount obtained" to capture amounts the wrongdoer obtained through indirect means (e.g., through agents, nominees, alter egos), as opposed to direct means (i.e., where the money is received directly into that wrongdoer's "pockets" or accounts). This is especially operative in certain types of wrongdoing such as illegal distributions (e.g., non-exempt trading without prospectus or registration) where, by the nature of the activity*

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> *(fundraising), the money flows not to the wrongdoer (e.g., the promoter), but to some other entity (e.g., the corporate issuer of securities). If s. 161(1)(g) is to function properly and achieve its goal of deterrence by the divesting of ill-gotten amounts, then the amounts obtained by the issuer must also be capable of being disgorged.*

[39] In result, in respect of the Commission's findings of liability and imposition of sanctions upon Earle Pasquill and Michael Lathigee under s. 161(1)(g), MacKenzie J.A. concluded (at paras. 157 to 162) that:

> *[157] Whether the corporate entity was initially created for a fraudulent purpose or later became a vehicle for fraud does not change the fact that the corporate entity, controlled and directed by the individual wrongdoers, was a vehicle for fraud. The critical finding is that these entities obtained funds as a result of the fraud, and the individuals controlling and directing them received the funds indirectly.*
>
> *[158] Lathigee and Pasquill also contend that some of the funds fraudulently raised were used for their intended purpose (i.e., invested in the advertised opportunities). I cannot sustain this argument. While some of the funds may have been used for their intended purpose, the fact they were raised by fraudulent misrepresentations or omissions is what constitutes the contravention.*
>
> *[159] As to the receipt of the funds by the corporate, and not the personal, entities, this argument founders when one considers the economic reality of raising capital. It is the nature of fraudulent fundraising that funds raised are received (obtained) by the corporate vehicle, and not the personal fraudster. Indeed, the entire transaction is the exchange for money of securities of the issuer. The money goes to the issuer, not to the individual. An interpretation sensitive to economic reality would hold jointly and severally liable the fraudster and the vehicle he was found to have directed and controlled for the amounts they received because the fraudster had indirectly received those funds.*
>
> *[160] The Commission found as a fact that Lathigee and Pasquill had jointly directed and controlled the relevant FIC Group entities that raised (obtained) the money: Lathigee Liability at para. 5. This factual finding is not challenged on appeal, and I see no reason to disturb it.*
>
> *[161] Therefore, the Commission found that each of Lathigee and Pasquill had "obtained" the offering "amount", albeit indirectly through certain FIC Group entities they directed and controlled. This accords with the decision in Michaels because Lathigee and Pasquill and their corporate entities were "effectively one person".*
>
> *[162] On that basis, I consider it was appropriate and within the scope of s. 161(1)(g) to make the joint and several order for the full offering amount.*

[40] No steps were taken by the Commission to collect on the $21.7 million Sanctions Decision award against Earle Pasquill and Michael Lathigee that had been confirmed by the Court of Appeal in Poonian in May 2017 until after

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the Vancouver Sun published an article on November 17, 2017 under the headline "Hundreds of Millions in Penalties issued by the B.C. Securities Commission Going Unpaid".

[41] That article specifically addressed the uncollected fines levied against Earle Pasquill and set out information concerning Vicki Pasquill's ownership of her various valuable real estate assets in Vancouver.

[42] Shortly after that article the British Columbia Minister of Finance issued a written statement concerning the Commission's collection record.

[43] In that statement (reported in the Vancouver Sun on November 21, 2017) the Minister stated, amongst other things, that the Government would "encourage any proposals" from the Commission "on any new mechanisms they may need to collect the fines they issue under the B.C. Securities Act."

[44] After those developments the Commission took steps to enforce the orders it had made against Earle Pasquill and Michael Lathigee as follows:

1) *In March 2018 the Commission commenced proceedings against Michael Lathigee in Nevada (where he lives) to enforce the $21.7 million Judgment. In doing so the Commission filed a declaration under Nevada's Uniform Foreign-Country Monetary Judgment Recognition Act, NRS 17.770 declaring that the order made by the Commission and filed as a judgment of this Court is final, conclusive and enforceable.*

2) *On August 9, 2018 the Commission commenced the Collection Action against Earle Pasquill and Vicki Pasquill, and later added Vicker Holdings Ltd. as a defendant, and, as noted above, as security for the relief it sought in the Collection Action filed the CPLs against the titles to the seven real estate properties in British Columbia owned by Vicki Pasquill and Vicker Holdings Ltd. having an assessed value of $20.4 million.*

[45] On October 28, 2019 Vicki Pasquill and Vicker Holdings Ltd. filed an application to set aside the CPLs returnable on November 18 and 19, 2019.

[46] That application, brought on the basis of hardship and inconvenience, also included allegations that the pleadings in the Collection Action failed to disclose a cause of action and constituted abuse of process.

[47] Those applications were however, at the request of the Commission, adjourned to February 2020 to, among other things, allow it time to consider the potential impact of proposed amendments to the Act which had passed third reading on October 31, 2019.

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[48] Negotiations next ensued with respect to the release of the CPLs filed against four properties owned by Vicki Pasquill because of hardship and inconvenience.

[49] On November 28, 2019 the amendments to the Act upon which the Commission relies in seeking to further amend its Notice of Civil Claim received Royal Assent.

[50] On December 12, 2019 Vicki Pasquill and Vicker Holdings Ltd. commenced the Tort Action alleging abuse of process by the Commission in pursuing the Collection Action and in the filing of the CPLs.

[51] On December 16, 2019 agreement was reached to allow the temporary release of the CPL filed against one of Vicki Pasquill's properties on the basis of hardship and inconvenience to allow refinancing in the amount of $1.1 million.

[52] The balance of Vicki Pasquill and Vicker Holdings Ltd.'s application to set aside the CPLs and to strike the pleadings in the Collection Action was then adjourned to February 14, 2020.

[53] Before these applications were heard the Commission served counsel for Vicki Pasquill and Vicker Holdings Ltd. with an application to strike their pleadings in the Tort Action that was set for a five-day hearing from April 6 to 10, 2020.

[54] All of the competing applications were then adjourned to the April 6, 2020 hearing date.

[55] However, because of the closure of all courthouses in the Province on March 18, 2020 due to the Covid-19 pandemic all of those applications were then adjourned generally.

[56] On March 27, 2020 the amendments to the Act came into force.

[57] On October 19, 2020 the Commission filed an application to amend its Notice of Civil Claim in the Collection Action (now for the third time) to seek relief based upon those amendments.

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Appendix B: proposed Third Amended Notice of Civil Claim

SCHEDULE "A"

Amended pursuant to [•]
Amended pursuant to the Order of Master Scarth
made September 7, 2018
Amended Notice of Civil Claim filed August 15, 2018
Original Notice of Civil Claim filed August 9, 2018

NO. VLC-S-S-188653
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA SECURITIES COMMISSION

PLAINTIFF

AND:

EARLE DOUGLAS PASQUILL, VICKI IRENE PASQUILL and VICKER HOLDINGS LTD.

DEFENDANTS

THIRD AMENDED NOTICE OF CIVIL CLAIM

….

Part 1: STATEMENT OF FACTS

1. The British Columbia Securities Commission (the "**Commission**") is a corporation continued pursuant to the *Securities Act*, R.S.B.C. 1996, c. 418 (the "***Act***"), having an address for delivery in this proceeding at 1600 - 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

2. The Defendants Earle Douglas Pasquill ("**Earle Pasquill**") and Vicki Irene Pasquill ("**Vicki Pasquill**") are a married couple with an address in British Columbia at 4027 West 27th Avenue, Vancouver, British Columbia, V6S 1R6.

3. The Defendant Vicker Holdings Ltd. ("**Vicker**") is a British Columbia corporation with a registered and records office at 2800 Park Place, 666 Burrard Street, Vancouver, British Columbia, V 6C 2Z7. ~~The Defendant~~ Vicki ~~Irene~~ Pasquill is the sole director of Vicker.

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4. At all material times, ~~Mr.~~Earle Pasquill was a director of and jointly controlled a group of companies called, collectively, the Freedom Investment Club Group ("**FIC Group**").

5. At all material times, Vicki Pasquill was employed as a teacher in Vancouver, earning an annual salary of approximately $80,000.

The Commission's ~~judgment~~ orders against Earle ~~Douglas~~ Pasquill

6. ~~5.~~ By Notice of Hearing dated March 1, 2012 (the "**Notice of Hearing**"), the Commission gave notice to ~~Mr.~~Earle Pasquill, ~~and others~~Michael Patrick Lathigee, and three corporate entities in the FIC Group, that it would ~~conduct~~hold a hearing ~~regarding their dealings with the FIG Group~~at which the Executive Director of the Commission would make submissions and apply for orders against the respondents under sections 161, 162 and 174 of the *Act*.

7. The Notice of Hearing alleged that Earle Pasquill and the other respondents perpetrated a fraud on investors in FIC Real Estate Projects Ltd., FIC Foreclosure Fund Ltd., and WBIC Canada Ltd., contrary to section 57(b) of the *Act*.

8. ~~6.~~ In a decision dated July 8, 2014 (the "**Liability Findings**"), the Commission found that ~~Mr.~~Earle Pasquill, together with others, perpetrated a fraud (the "**Fraud**"), contrary to section 57(b) of the *Act* when, between February and August 2008, the FIC Group:

   (a) raised $21.7 million from 698 investors without disclosing to those investors important facts about FIC Group's financial condition; and

   (b) raised $9.9 million from 331 investors for the purpose of investing in foreclosure properties, and instead used most of the funds to make unsecured loans to other FIC Group companies, the proceeds of which were used at least in part to pay salaries and other overhead expenses of the FIC Group.

9. ~~7.~~ Specifically, the Commission made the following findings of fact as against ~~Mr.~~Earle Pasquill in relation to the Fraud in the Liability Findings at paragraphs 296-299:

> [~~Mr.~~Earle Pasquill was] equally aware of the gravity of FIC Group's financial condition. The essence of his testimony was that he did not believe that FIC Group was close to insolvency or that TD would call the loan. He says he believed that revenues coming in the summer of 2008 would solve FIC Group's cash woes. Even if they did not, he says he believed that FIC Group had assets to sell or to borrow against to raise cash. He also says he believed that there would be opportunities to replace the TD financing if it became necessary to do so.
>
> We have rejected this evidence from Pasquill, but even if it were believable, it would fall into the category of hoping that "deprivation would not take place," as the Court put it in

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> Théroux. In our opinion, a business executive of Pasquill's experience, knowing of FIC Group's financial condition, had to know that there was at least a possibility that investors' pecuniary interests would be put at risk if they invested in an FIC Group company, especially if they were not told about FIC Group's financial condition.
>
> We find that Lathigee and Pasquill had subjective knowledge that the respondents' failure to disclose FIC Group's financial condition could have as a consequence the deprivation of the investors in the corporate respondents.

10. ~~8.~~ And further at paragraphs 347-353:

> Based on our findings, the evidence is clear that Lathigee and Pasquill had subjective knowledge that the respondents made improper use of FIC Foreclosure's funds.
>
> They knew that they told the investors that the proceeds of the FIC Foreclosure distribution would be invested in foreclosure properties in the US real estate market...
>
> Lathigee knew that was not how the FIC Foreclosure funds were being used. Woods asked them for permission to divert FIC Foreclosure funds to other FIC Group companies and they agreed. They knew that FIC Group used inter-company loans as a standard operating procedure at FIC Group, and the evidence is that they did not treat FIC Foreclosure any differently. To the contrary, the evidence is that they treated FIC Foreclosure as just another source of cash for FIC Group.
>
> Lathigee and Pasquill were the sole directors and officers of FIC Foreclosure and FIC Group. They caused FIC Foreclosure to make the inter-company loans.
>
> Lathigee and Pasquill… also had to have known that, as a result of the investors' funds having been used for unsecured loans to other FIC Group companies, the investors were now exposed to the business and credit risks of the FIC Group as a whole.
>
> Lathigee and Pasquill were the acting and directing minds of FIC Foreclosure, so their state of mind is attributable to FIC Foreclosure. We find that FIC Foreclosure had subjective knowledge that its funds were improperly used. We find that FIC Foreclosure had subjective knowledge that this dishonesty could result in deprivation to their investors.

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11. ~~9.~~ On March 16, 2015, as a result of the Liability Findings, the Commission issued a sanctions decision (the "**Sanctions Decision**"), in which the Commission ordered, among other things, that ~~Mr.~~ Earle Pasquill:

    (a) under section 161(1)(g) of the *Act*, pay to the Commission the sum of $21.7 million, being the total amount obtained, directly or indirectly, as a result of his contraventions of the *Act* ~~(the "**Disgorgement Order**")~~, jointly and severally with other respondents; and

    (b) under section 162 of the *Act*, pay an administrative penalty of $15 million

    (collectively, the "**Orders**").

12. ~~10.~~ Pursuant to section 163(1) of the *Act*, on April 1, 2015, the Sanctions Decision was registered in the Vancouver Registry ~~as a judgment of the British Columbia Supreme Court~~ under court file number L-150117 ~~(the "**Judgment**")~~. As a result, under s. 163(2) of the *Act*, the Sanctions Decision has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

13. ~~11.~~ Earle Pasquill and others sought and obtained leave to appeal from the Sanctions Decision. The Court of Appeal dismissed ~~the~~ Earle Pasquill's appeal in reasons dated May 31, 2017, and indexed as 2017 BCCA 207.

14. ~~12.~~ Despite repeated demands for payment, ~~on Mr.Pasquill, the Judgment remains unsatisfied~~ Earle Pasquill has made no payments to the Commission on account of the Orders, and the Orders remain unpaid.

~~**Benefits conferred on Ms. Pasquill and Vicker**~~

~~13. Mr. Pasquill disbursed or transferred, or caused FIC Group to disburse or transfer, significant funds to Ms. Pasquill, directly or indirectly, for her direct or indirect benefit. The funds were, at all material times, funds obtained by breach of trust as a result of the Fraud.~~

~~14. Ms. Pasquill knew or ought to have known of Mr. Pasquill's wrongful conduct and breach of trust, and specifically, that monies earned by or paid to Mr. Pasquill from FIC Group, and then subsequently transferred or paid to Ms. Pasquill and/or Vicker, represented the proceeds of the Fraud (the "**Proceeds of Fraud**"), or that property was being disposed of by Mr. Pasquill to her directly or indirectly, including to Vicker (the "**Fraudulent Dispositions**") to defeat, delay or hinder the lawful rights of the FIC Group investors and/or the Commission.~~

~~15. Ms. Pasquill and Vicker used the Proceeds of Fraud to either acquire or contribute to the acquisition, or the accruing of equity in, various assets and/or accepted the Fraudulent Dispositions of assets and property, which included real estate holdings, including without limitation, the following lands and premises:~~

~~Civic address: 4027 27th Avenue West, Vancouver, British Columbia~~

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~~P.I.D. 010-031-685~~
~~Lot 10 Block 79 District Lot 2027 Plan 8551~~

~~(the "**27th Avenue Property**").~~

~~Civic address: 930 40th Avenue East, Vancouver, British Columbia~~
~~P.I.D. 010-658-327~~
~~Lot 5 Block 2A District Lot 666 Plan 7337~~

~~(the "**40th Avenue Property**")~~

~~Civic address: 2601 - 198 Aquarius Mews, Vancouver, British Columbia~~
~~P.I.D. 024-522-988~~
~~Strata Lot 319 False Creek New Westminster District~~
~~Strata Plan LMS3903~~
~~Together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on form 1~~

~~(the "**Aquarius Mews 1 Property**")~~

~~Civic address: 2606 - 193 Aquarius Mews, Vancouver, British Columbia~~
~~P.I.D. 024-844-764~~
~~Strata Lot 151 False Creek New Westminster District~~
~~Strata Plan LMS4255~~
~~Together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on form v~~

~~(the "**Aquarius Mews 2 Property**").~~

~~Civic address: 23 7th Avenue West, Vancouver, British Columbia~~
~~P.1.D. 015-555-569~~
~~Lot 11 Block 35 District Lot 200A Plan 197~~

~~(the "**7th Avenue Property**")~~

~~Civic address: 192 47th Avenue West, Vancouver, British Columbia~~
~~P.I.D. 010-102-949~~
~~Lot A Block 6 of Block 1000 District Lot 526 Plan 8386~~

~~(the "**47th Avenue Property**")~~

~~Civic address: 6038 Macdonald Street, Vancouver, British Columbia~~
~~P.I.D. 011-232-323~~
~~Lot 2 South 1/2 of Block 2 District Lot.2027 Plan 5287~~

~~(the "**Macdonald Property**")~~

~~(collectively, the "**Properties**")~~

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The LIF Accounts

15. Earle Pasquill is the owner of property held in two life income fund accounts identified by numbers 36L-36PT-1 and 36L-36PT-2 (the "**LIF Accounts**") at Canaccord Genuity Wealth Management at 2200 – 609 Granville Street, Vancouver, British Columbia. The market value of the LIF Accounts was approximately $644,951.13 in 2020.

16. Earle Pasquill receives a draw from the LIF Accounts each month. Earle Pasquill draws the gross amount of approximately $6,575.94 per month from the LIF Accounts.

The 27th Avenue Property

17. In 1981, Earle Pasquill acquired legal title to the real property at 4027 West 27th Avenue, Vancouver, British Columbia (the "**27th Avenue Property**"). The legal description of the 27th Avenue Property is as follows:

> Civic address: 4027 27th Avenue West, Vancouver, British Columbia
> P.I.D. 010-031-685
> Lot 10 Block 79 District Lot 2027 Plan 8551

~~16. Ms. Pasquill is the sole registered owner of the 27th Avenue Property. However, the 27th Avenue Property was previously owned by Mr. Pasquill who:~~

18. ~~(a)~~ On or about May 12, 1995, Earle Pasquill transferred one half of his ~~sole~~ interest in the 27th Avenue Property to ~~Ms.~~ Vicki Pasquill~~. Thereafter, on~~ for payment of $1.00. At the time of the transfer, the stated market value of the 27th Avenue Property was $595,000.

19. On or around December 2, 1996, ~~Mr.~~ Earle Pasquill and ~~Ms.~~ Vicki Pasquill granted a mortgage over the 27th Avenue Property in favour of Vancouver City Savings Credit Union, as security for a revolving credit facility, the particulars of which are presently unknown to the Commission~~; and~~.

20. ~~(b) on December 12,~~In 2000, Earle Pasquill transferred ~~his~~the remaining ~~50%~~one half of his interest in the 27th Avenue Property to ~~Ms.~~Vicki Pasquill~~.~~, for payment of $1.00. At the time of the transfer, the declared market value of the 27th Avenue Property was $500,000.

21. The fair market value of the interests in the 27th Avenue Property transferred by Earle Pasquill to Vicki Pasquill in 1995 and 2000 (collectively, the "**27th Avenue Property Transfers**") exceeded the consideration given by Vicki Pasquill in respect of the transfers.

22. On or around November 8, 2006, ~~Ms.~~ Vicki Pasquill granted a mortgage over the 27th Avenue Property in favour of Canadian Imperial Bank of Commerce, as security for a

revolving credit facility, the particulars of which are presently unknown to the Commission.

23. ~~17. The~~Vicki Pasquill remains the sole registered owner of the 27th Avenue Property, which is the primary residence ~~for Mr.~~of Earle Pasquill and ~~Ms.~~Vicki Pasquill.

24. Earle Pasquill uses a portion of the proceeds of the LIF Accounts to maintain the 27th Avenue Property, including payment of property taxes and utilities.

25. In 2020, the assessed value of the 27th Avenue Property was $3,061,900.

The 7th Avenue Property

26. Vicki Pasquill is the sole registered owner of the real property located at 23 7th Avenue West, Vancouver, British Columbia (the "**7th Avenue Property**"). The legal description of the 7th Avenue Property is:

> P.I.D. 015-555-569
> Lot 11 Block 35 District Lot 200A Plan 197

27. Vicki Pasquill first acquired a one half interest in the 7th Avenue Property in March 2012 from registered owner Mary Colarch.

28. Vicki Pasquill acquired the remaining one half interest in 2019, after Mary Colarch's death.

29. In or around 2016, Vicki Pasquill undertook property upgrades at the 7th Avenue Property, with an estimated cost of approximately $400,000.

30. On or around May 5, 2018, Vicki Pasquill obtained a commitment letter for a loan from Anthony Terence McNeice, in an amount presently unknown to the Commission, to be secured by a mortgage registered on title to the 7th Avenue Property.

31. In February 2020, with the consent of the Commission, Vicki Pasquill granted a mortgage on the 7th Avenue Property in favour of Anthony Terence McNeice, in the amount of $1,050,000. Earle Pasquill is a covenantor of the mortgage.

32. In 2020, the assessed value of the 7th Avenue Property was $5,537,000.

33. The 27th Avenue Property and the 7th Avenue Property are referred to collectively as the **"Properties".**

~~18. Ms. Pasquill is the sole registered owner of the 40th Avenue Property, and took title on or about April 19, 1996, pursuant to the probate of the last will and testament of a~~

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~~Lydia·Knott. On or around September 23, 2004, Ms. Pasquill granted a mortgage over the 40th Avenue Property in favour of CIBC Mortgages Inc., as security for a loan in the approximate amount of $300,000.~~

~~19. Ms. Pasquill is the registered owner of a 50% interest in the Aquarius Mews 1 Property, which she owns with an Andrea Pasquill. The Aquarius Mews 1 Property was purchased on or about August 31, 2004 for' the sum of $360,000 and was partially financed by a loan in the amount of $270,000, secured by a mortgage in favour of CIBC Mortgages Inc.~~

~~20. Ms. Pasquill is the registered owner of a 1/3 interest in the Aquarius Mews 2 Property, which she owns with Andrea Pasquill and Jennifer Nicole Pasquill, in joint tenancy. The Aquarius Mews 2 Property was purchased on or about February 28, 2006 for the sum of $404,000, and was partially financed by a loan in an amount unknown to the Commission, secured by a mortgage in favour of Vancouver City Savings Credit Union ("**Vancity**"), as security for a revolving credit facility, the particulars of which are presently unknown to. the Commission.~~

~~21. Ms. Pasquill is the registered owner of a 50% interest in the 7th Avenue Property, which she owns as a joint tenant with Mary Colarch, whose occupation is noted as retired. Ms. Pasquill's 50% interest in the 7th Avenue Property was purchased from Ms. Colarch on or about March 8, 2012 for the sum of $623,000. No mortgage financing was obtained to facilitate Ms. Pasquill's purchase of her 50% interest in the 7th Avenue Property.~~

~~22. Vicker is the registered owner of the 47th Avenue Property. Vicker purchased the 47th Avenue Property on or around April 15, 1981 for the sum of $230,000. On or around August 12. 1996, Vicker granted a mortgage in favour of Vancity in the amount of $200,000 on the 47th Avenue Property, as security for a revolving credit facility, the particulars of which are presently unknown to the Commission.~~

~~23. Vicker is the registered owner of the Macdonald Property. Vicker purchased the Macdonald Property on or around April 15, 1981, for a sum presently unknown to the Commission. On or about August 8, 2002, Vicker granted a mortgage over the Macdonald Property in favour of CIBC Mortgages Inc. as security for a loan in the amount of $495,000.~~

The Share Transfer

34. Vicker was incorporated in or around 1981. Earle Pasquill was the sole shareholder in Vicker, and was a director of Vicker.

35. Vicker is the registered owner of the real property located at 192 47th Avenue West, Vancouver, British Columbia, PID 010-102-949, Lot A Block 6 of Block 1000 District Lot 526 Plan 8386 (the "**47th Avenue Property**").

36. Vicker purchased the 47th Avenue Property on or around April 15, 1981 for the sum of $230,000.

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37. On or around August 12, 1996, Vicker granted a mortgage in favour of Vancity in the amount of $200,000 on the 47th Avenue Property, as security for a revolving credit facility, the particulars of which are presently unknown to the Commission.

38. Vicker is the registered owner of the real property located at 6038 Macdonald Street, Vancouver, British Columbia, PID 011-232-323, Lot 2 South ½ of Block 2 District Lot 2027 Plan 5287 (the "**MacDonald Property**").

39. Vicker purchased the Macdonald Property on or around April 15, 1981, for a sum presently unknown to the Commission.

40. On or about August 8, 2002, Vicker granted a mortgage over the Macdonald Property in favour of CIBC Mortgages Inc. as security for a loan in the amount of $495,000.

41. In or around December 2000, Earle Pasquill transferred all of the shares of Vicker (the "**Vicker Shares**") to Vicki Pasquill for less than the fair market value of the shares (the "**Share Transfer**").

The Other Transfers of Property

42. In addition to the 27th Avenue Property Transfers and the Share Transfer, before, during and after the Fraud, Earle Pasquill transferred other funds and property, including but not limited to the proceeds of the LIF Accounts, to Vicki Pasquill and Vicker, directly or indirectly (the "**Other Transfers**").

43. The full particulars of the dates and amounts of the Other Transfers are currently unknown to the Commission, but are within the knowledge of Earl Pasquill, Vicki Pasquill and Vicker.

44. The Other Transfers were made for no or nominal consideration.

45. Vicki Pasquill and Vicker used the Other Transfers or their proceeds to contribute to and/or fund the holding costs and expenses required to maintain ownership of the Properties or Vicker's assets, service the mortgage and other debts required to be paid to keep the Properties or Vicker's assets, and build equity arising from her or its interest in the Properties or Vicker's assets.

~~24. Mr. Pasquill and Ms. Pasquill also knowingly used the Proceeds of Fraud to purchase, in whole or in part for their own direct or indirect benefit, various assets, investments, registered retirement savings plans, chattels, including motor vehicles, and services (the "**Secondary Assets**"), the particulars of which are presently unknown to the Commission.~~

~~25. At all material times when the benefit of the Proceeds of Fraud were being acquired or used by, and/or the Fraudulent Dispositions were made to Ms. Pasquill, she knew or ought to have known that:~~

~~(a) Mr. Pasquill was liable to or in debt to various investors in the FIG Group arising from the Fraud;~~

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~~(b) the effect of receiving such transfers of property and the Proceeds of Fraud would be to defeat, delay, or hinder the investors and, after March 1, 2012, the Commission's lawful remedies as against Mr. Pasquill; and that~~

~~(c) the transfers of property, including the Proceeds of Fraud, were being made for no or nominal consideration.~~

~~26. The 2018 assessed values of the Properties are as follows:~~

~~The 27th Avenue Property~~	~~$4,345,200~~
~~The 40th Avenue Property~~	~~$1,654,900~~
~~The Aquarius Mews 1 Property~~	~~$874,000~~
~~The Aquarius Mews 2 Property~~	~~$968,000~~
~~The 7th Avenue Property~~	~~$4,989,000~~
~~The 47th Avenue Property~~	~~$2,556,600~~
~~The Macdonald Property~~	~~$4,652,300~~
~~Totals 2018 Assessed Values~~	~~$20,040,000.00~~

~~27. At all material times, Ms. Pasquill was employed as a teacher in Vancouver, earning an annual salary of approximately $80,000.~~

~~28. But for the receipt of property including the Proceeds of Fraud, or the Fraudulent Dispositions to Ms. Pasquill and Vicker, Ms. Pasquill and Vicker would not have been able to acquire the Properties, fund the holding costs and expenses to maintain ownership of the Properties, service the mortgage and other debts required to be paid to keep the Properties or build any equity arising from her or its interest in the Properties.~~

~~29. But for the receipt of the Proceeds of Fraud or the Fraudulent Dispositions, Mr. Pasquill, Ms. Pasquill and Vicker would not have been able to acquire their interests in the Secondary Assets.~~

Part 2: RELIEF SOUGHT

Joint and Several Liability

46. Under section 164.09 of the *Act*, an order that Vicki Pasquill is jointly and severally liable to pay to the Commission an amount equal to the undervalue benefit she received from:

(a) the 27th Avenue Property Transfers;

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(b) the Share Transfer; and

(c) the Other Transfers;

or the amount Earle Pasquill has been ordered to pay to the Commission under section 161(l)(g) of the *Act*, whichever is less.

47. Under section 164.09 of the Act, an order that Vicker is jointly and severally liable to pay to the Commission an amount equal to the undervalue benefit Vicker received as the result of the Other Transfers made to Vicker in or after February 2008, or the amount Earle Pasquill has been ordered to pay to the Commission under section 161(1)(g) of the *Act*, whichever is less.

Forfeiture Orders

48. An accounting of the Other Transfers to Vicki Pasquill, and of all the benefits, uses and profits obtained by Vicki Pasquill through the use of the proceeds of the Other Transfers, and an order that Vicki Pasquill forfeit those amounts to the Commission.

49. An accounting of the Other Transfers to Vicker in or after February 2008, and of all the benefits, uses and profits obtained by Vicker through the use of the proceeds of the Other Transfers, and an order that Vicker forfeit those amounts to the Commission.

50. Under section 164.12 of the *Act*, an order that the whole of Vicki Pasquill's interest in the 27th Avenue Property, or such portion thereof as determined by the Court, is forfeit to the Commission.

51. Under section 164.12 of the *Act*, an order that Vicki Pasquill's interest in the Vicker Shares, or such portions thereof as determined by the Court, or alternatively other property of Vicki Pasquill that, as of the valuation date, is equivalent in value to the Vicker Shares, is forfeit to the Commission;

52. Under section 164.12 of the *Act*, an order that Vicki Pasquill' s interest in proceeds of the Other Transfers, or such portions thereof as determined by the Court, or alternatively other property of Vicki Pasquill that, as of the valuation date, is equivalent in value to the Other Transfers made to Vicki Pasquill, including but not limited to Vicki Pasquill's interest in the 7th Avenue Property, is forfeit to the Commission.

~~31. As against Earle Douglas Pasquill:~~

~~(a) a declaration that the Sanctions Decision arose out of fraud, misappropriation, or defalcation contrary to the *Securities Act*;~~

~~(b) a tracing in equity and common law, of the Proceeds of Fraud; and~~

~~(c) to the extent that any of the Proceeds of Fraud were used to purchase or can be traced into them, a declaration that Mr. Pasquill holds any and all funds, monies, investments, chattels, including motor vehicles, or other property or assets of~~

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whatever kind in trust for and as trustee of the Commission to the extent of his indebtedness to the Commission; and

31. As against Earle Douglas Pasquill, Vicki Irene Pasquill and Vicker Holdings Ltd.:

(a) A declaration that the Fraudulent Dispositions and transfer of Proceeds of Fraud were made to defeat, delay or hinder the lawful remedies of the Commission, and. are void as against the Commission; and

(b) A declaration that the Commission may proceed against any of the property making up the Fraudulent Dispositions as if it were the property of Earle Douglas Pasquill.

32. As against Vicki Irene Pasquill and Vicker Holdings Ltd.:

(a) Judgment, jointly and severally,:

(i) in the amount of the Proceeds of Fraud traced to Ms. Pasquill or to her benefit; and/or

(ii) in the amount of the value of the Fraudulent Dispositions;

(b) in the alternative, damages in knowing receipt, or in the further alternative, in unjust enrichment, by Ms. Pasquill and Vicker of some or all of the Proceeds of Fraud or the Fraudulent Dispositions;

(c) an accounting of the Proceeds of Fraud traceable to Ms. Pasquill and of all the benefits, uses and profits obtained by Ms. Pasquill through the use of the Proceeds of Fraud or Fraudulent Dispositions;

(d) a declaration that any assets purchased with or into which the Proceeds of Fraud can be traced, including the Properties, are held in trust by Ms. Pasquill and/or Vicker for the Commission to the extent of her indebtedness to the Commission; and

(e) a declaration that Ms. Pasquill and/or Vicker holds any beneficial interest Mr. Pasquill may have in the Properties in trust for the Commission, to the extent of his·indebtedness to the Commission;

33. General, special, aggravated and punitive damages; and

34. A Certificate of Pending Litigation as against Ms. Pasquill's interest in and to the Properties:

P.I.D. 010-031-685
Lot 10 Block 79 District Lot 2027 Plan 8551

P.I.D. 010-658-327

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~~Lot 5 Block 2A District Lot 666 Plan 7337~~

~~P.I.D. 024-522-988~~
~~Strata Lot 319 False Creek New Westminster District Strata Plan LMS3903~~
~~Together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on form 1~~

~~P.I.D. 024-844-764~~
~~Strata Lot 151 False Creek New Westminster District Strata Plan LMS4255~~
~~Together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on form v~~

~~P.I.D. 015-555-569~~
~~Lot 11 Block 35 District Lot 200A Plan 197~~

~~35. A Certificate of Pending Litigation as against Vicker Holdings Ltd.'s interest in and to the Properties:~~

~~PID: 010-102-949~~
~~Lot A Block 6 of Block·1000 District Lot 526 Plan 8386~~

~~PID: 011-232-323~~
~~Lot 2 South 1/2 of Block 2 District Lot 2027 Plan 5287~~

Costs

53. ~~36.~~ Solicitor and own client costs, or in the alternative, costs.

Part 3: LEGAL BASIS

~~37. Ms. Pasquill knowingly used or accepted the use; and caused Vicker to use or accept the use, of some or all of the Proceeds of Fraud for (i) the purchase, (ii) the betterment, improvement and maintenance of the Properties including in respect of payment of taxes, holding costs and other levies, or (iii) to service the mortgage debt on the Properties, through which she and/or Vicker were able to acquire equity in the Properties, directly or indirectly.~~

~~38. In the circumstances, Ms. Pasquill and Vicker each holds their interest in the Properties, or a portion thereof, on an express, resulting or constructive trust in favour of the Commission, to the extent that the Proceeds of Fraud can be traced, either directly or indirectly through payment of holding costs, into the Properties.~~

~~39. Mr. Pasquill and Ms. Pasquill, directly and through Vicker, also knowingly used the Proceeds of Fraud to purchase, maintain and grow the Secondary Assets.~~

~~40. In the circumstances, Mr. Pasquill, Ms. Pasquill and Vicker hold their interest in the Secondary Assets on an express, resulting or constructive trust in favour of the~~

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~~Commission, to the extent that the Proceeds of Fraud can be traced into the Secondary Assets.~~

~~41. In the alternative, Ms. Pasquill and Vicker have been unjustly enriched by knowing receipt of the Proceeds of Fraud, without juristic reason. The Commission claims against Ms. Pasquill and Vicker for unjust enrichment and monies had and received.~~

Joint and Several Liability

54. Section 164.09 in Part 18.1 of the *Act* provides that if a person against whom an order has been made under s. 161(1)(g) of the *Act* transfers property to a family member or third-party recipient, and the family member or third-party recipient has received an undervalue benefit as the result of that transfer, the Court must order that the family member or third-party recipient are jointly and severally liable with the person to pay to the commission an amount equal to the lesser of the undervalue benefit received, or the amount specified in the order made under section 161(l)(g):

> Joint and several liability
>
> 164.09 (1) If an order is made against a person under section 155.1(b), 157(1)(b) or 161(1)(g), the commission may apply to the Supreme Court for an order under subsection (2) of this section if
>
> > (a) the person transferred property
> >
> > (i) to a family member at any time, or
> >
> > (ii) to a third-party recipient on or after the date the unlawful activity occurred, and
> >
> > (b) the family member or third-party recipient received an undervalue benefit as a result of the transfer.
>
> (2) In the circumstances described in subsection (1), the Supreme Court must order that the person and the family member… are jointly and severally liable to pay to the commission an amount equal to the lesser of
>
> > (a) the undervalue benefit received by the family member or third-party recipient, and
> >
> > (b) the amount specified in the order made under section 155.1(b), 157(1)(b) or 161(1)(g).
>
> (3) Subsection (2) does not apply in respect of a third-party recipient if the third- party recipient proves that, at the time of the transfer of the property to the third- party recipient, the third-party recipient and the person were dealing with each other at arm's length.

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55. Section 164.01 of the *Act* provides that "undervalue benefit" means the amount by which the fair market value of a property at the time of its transfer exceeded the consideration given for the property in respect of the transfer.

56. Vicki Pasquill is a family member of Earle Pasquill for the purposes of Part 18.1 of the *Act*. Vicki Pasquill received an undervalue benefit as a result of

(a) the 27th Avenue Property Transfers;

(b) the Share Transfer; and

(c) the Other Transfers

made to her by Earle Pasquill.

57. Vicker is a third-party recipient of property from Earle Pasquill for the purposes of Part 18.1 of the *Act*. Vicker received an undervalue benefit as a result of the Other Transfers made to Vicker by Earle Pasquill during or after the Fraud.

58. The Commission seeks orders under section 164.09(2) of the *Act* that Vicki Pasquill and Vicker are jointly and severally liable to the Commission with Earle Pasquill in an amount equal to the lesser of the undervalue benefit received by each of Vicki Pasquill or Vicker, or the amount Earl Pasquill has been ordered to pay under section 161(1)(g) of the *Act*.

Forfeiture of Vicki Pasquill's interest and Vicker's interest in real and personal property

59. Sections 164.10(2) and 164.12(b) of the *Act* provide that on the application of the Commission, the Court must order that all or any portion of an interest in property that is claimable property in the hands of a family member or third party recipient is forfeit to the Commission, unless the Court determines under section 164.13 that such an order is not in the interests of justice or there is proof relief from forfeiture is warranted.

60. More specifically, section 164.10(2) of the Act provides as follows:

> (2) If an order is made against a person under section 155.1(b), 157(1)(b) or 161(1)(g), the commission may apply to the Supreme Court for an order forfeiting to the commission
>
> > (a) the whole of an interest in property that is claimable property of a family member or third-party recipient, or
> >
> > (b) a portion of an interest in property that is claimable property of a family member or third-party recipient.

61. Section 164.12(b) provides:

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> Subject to section 164.13, (b) if proceedings are commenced under section 164.10 (2), the court must make an order forfeiting to the commission the whole or the portion of an interest in property that the court finds is claimable property.

62. The relevant portions of section 164.13(2) of the *Act* read as follows:

> (2) In the case of claimable property, in addition to the grounds set out under subsection (1), the court may grant relief from forfeiture, if the family member or third-party recipient proves,
>
> (a) in the case of a family member or third-party recipient, the family member or third-party recipient did not, directly or indirectly, acquire the property from the person that contravened securities law,
>
> (b) in the case of a family member, the family member acquired the property for fair market value, or
>
> (c) in the case of a third-party recipient,
>
> (i) the third-party recipient was the rightful owner of the property before the unlawful activity occurred,
>
> (ii) the third-party recipient acquired the property for fair market value, or
>
> (iii) at the time of the transfer of the property from the person to the third-party recipient, the third-party recipient and the person were dealing with each other at arm's length

63. "Claimable property" is defined in section 164.01 of the *Act* as follows:

> "claimable property" means,
>
> (a) with respect to a family member of a person referred to in section 164.04 (2),
>
> (i) property that was transferred to the family member, at any time, from the person, and
>
> (ii) if property referred to in paragraph (a) (i) has been transferred by the family member to another person, other property of the family member that, as of the valuation date, is equivalent in value to the property referred to in paragraph (a) (i), and
>
> (b) with respect to a third-party recipient of property from a person referred to in section 164.04 (2),
>
> (i) the property if the property was transferred to the third-party recipient from the person on or after the specified date, and

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(ii) if the property referred to in paragraph (b) (i) has been transferred by the third-party recipient to another person, other property of the third-party recipient that, as of the valuation date, is equivalent in value to the property referred to in paragraph (b) (i);

Forfeiture of Vicki Pasquill's Claimable Property

64. With respect to Vicki Pasquill, the 27th Avenue Property, the Vicker Shares, and the funds or property transferred to Vicki Pasquill pursuant to the Other Transfers are "claimable property" within the meaning of section 164.01 of the *Act*.

65. To the extent that Vicki Pasquill transferred the Vicker Shares or the proceeds of the Other Transfers to another person, other property of Vicki Pasquill equivalent in value to the Vicker Shares or the funds or property received by way of the Other Transfers is "claimable property" within the meaning of section 164.01 of the *Act*.

66. Under section 164.10(2) of the *Act*, the Commission seeks forfeiture of:

(a) the whole of Vicki Pasquill's interest in the 27th Avenue Property, or alternatively, a portion of Vicki Pasquill's interest in the 27th Avenue Property;

(b) the whole of Vicki Pasquill's interest in the Vicker Shares, or alternatively, a portion of Vicki Pasquill's interest in the Vicker Shares;

(c) the whole of the funds or property transferred to Vicki Pasquill pursuant to the Other Transfers that are retained by Vicki Pasquill, or alternatively, a portion of those funds or property.

67. In the alternative, if Vicki Pasquill has transferred the 27th Avenue Property, the Vicker Shares, or the funds or property received by way of the Other Transfers to another person, the Commission seeks forfeiture under section 164.10(2) of the *Act* of other property of Vicki Pasquill that, as of the valuation date, is equivalent in value to 27th Avenue Property, the Vicker Shares, or the funds or property received by way of the Other Transfers, including but not limited to Vicki Pasquill’s interest in the 7th Avenue Property.

Forfeiture of Vicker's Claimable Property

68. With respect to Vicker, the funds or property transferred to Vicker pursuant to the Other Transfers in or after February 2008, are "claimable property" within the meaning of section 164.01 of the *Act*.

69. To the extent that Vicker transferred the funds or property received by it pursuant to the Other Transfers to another person, other property of Vicker that, as of the valuation date, is equivalent in value to the funds or property received by Vicker pursuant to the Other Transfers in or after February 2008, is "claimable property" within the meaning of section 164.01 of the *Act*.

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70. Under section 164.10(2) of the *Act*, the Commission seeks forfeiture of:

(a) any of the funds or property received by Vicker pursuant to the Other Transfers in or after February 2008, and retained by Vicker; or

(b) in the alternative, other property of Vicker that, as of the valuation date, is equivalent in value to the funds or property transferred to Vicker pursuant to the Other Transfers received in or after February 2008.

~~42. In the further alternative, to the extent that Mr. Pasquill made any of the Fraudulent Dispositions after March 1, 2012, such transfers were made with the intention to defeat, delay, or hinder the Commission's just and lawful remedies, both on its own behalf or on behalf of investors, and as such, the transfer is void and of no effect as against the Commission.~~

~~43. The Commission pleads and relies on the *Fraudulent Conveyance Act*, R.S.B.C. 1996, c. 163 and, to the extent that Ms. Pasquill had any claim as against Mr. Pasquill, the *Fraudulent Preference Act*, R.S.B.C. 1996, c. 164.~~

…

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[1] These passages anticipating the granting of the amendments also rebut the Vicker Defendants' *leitmotif* that the Commission tactically waited for the retirement of Davies J before re-applying to amendment the claim.

[2] Claims exempted under s. 3(1)(a)–(m) include claims subject to a limitation period established by an international convention or treaty that is adopted by an Act; for possession of land; by a debtor in possession of collateral to redeem that collateral; by a landlord to recover possession of land from a tenant who is in default or over holding; relating to misconduct of a sexual nature and sexual assault; for assault or battery against a minor; for arrears of child or spousal support; and fines or penalties under the *Offence Act*, RSBC 1996, c 338.

[3] Ministry of Justice, "The New *Limitation Act* Explained", (online): <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/legislation-policy/limitation-act/la_explained.pdf> at 21.

[4] The shortest delay on which a British Columbia claim was dismissed for want of prosecution appears to be that in *Sichuan Xiangtianxia Restaurant Management Limited Company v. Spice World Restaurant Ltd.*, 2020 BCSC 1009, where Chief Justice Hinkson dismissed a claim stalled for just over two years. The plaintiff was particularly lax: demands for particulars and disclosure remained unanswered, and the plaintiff did not file a response to the remaining defendants' application to dismiss. The Chief Justice noted the plaintiff's failure to explain the delay, and inferred that the outstanding allegations were prejudicial to a commercial enterprise: paras 13–14. The Chief Justice also noted the plaintiff's failure to advise their counsel, despite knowing of the remaining defendants' application for dismissal of want of prosecution: para 18.

[5] Her submissions set out different ages.

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