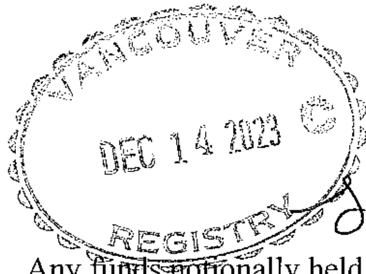


S=238490
No.
Vancouver Registry

In the Supreme Court of British Columbia

Civil Forfeiture Action in Rem Against

Any funds notionally held in the trust account(s) of Ronald Norman Pelletier doing business as Ron Pelletier Law Corporation and/or Pelletier Legal Group and/or Pelletier Litigation directly in favour of Kevin Patrick Miller or indirectly in favour of Kevin Patrick Miller through beneficial ownership of Rahela International Inc. and/or Las Colinas Ltd. (the "Miller Funds"), and their proceeds

Between

Director of Civil Forfeiture

Plaintiff

and

The Owners and all Others Interested in the Miller Funds, in Particular, Kevin Patrick Miller

Defendant

NOTICE OF APPLICATION

Name of applicant: the plaintiff, Director of Civil Forfeiture

To: the defendant, Kevin Patrick Miller

TAKE NOTICE that an application will be made by the applicant, Director of Civil Forfeiture (the "**Director**"), to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC at 9:45 am on Thursday, February 1, 2024 for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Pursuant to Division 1.2 of the *Civil Forfeiture Act*, SBC 2005, c. 29 (the "***Act***"), an order that the defendant, Kevin Patrick Miller ("**K. Miller**"), provide a statement (the "**Statement**") to the Director that includes particulars regarding K. Miller's acquisition and maintenance of any funds notionally held directly in favour of K. Miller or indirectly in favour of K. Miller through Rahela International Inc. and/or Las Colinas Ltd. in the trust account(s) of Ronald Norman Pelletier doing business as Ron Pelletier Law Corporation and/or Pelletier Legal Group and/or Pelletier Litigation (the "**Miller Funds**");

2. An order that the Statement include:

   a. any information or records in the custody or control of K. Miller that are related to the contents of the Statement;

   b. an updated accounting of the Miller Funds plus any accrued interest of the Miller Funds; and

   c. the specific location of the originals of any of the above-ordered information or records.

3. An order that the Statement and any information or records be provided by solemn declaration and delivered to counsel for the Director of Civil Forfeiture as soon as

reasonably practicable after the date on which this order is made and, in any case, on or before 14 days from the date of this order;

4. An order for any other information or particulars as specified by the court; and

5. An order that the Director of Civil Forfeiture be granted liberty to apply to this Court for an order for any further information or particulars in relation to the Statement provided by K. Miller.

Part 2: FACTUAL BASIS

1. K. Miller asserts ownership over the Miller Funds.

Affidavit #2 of Phil Tawtel made December 12, 2023 ("**Tawtel #2**"), at para. 3, Ex. A being the Affidavit #1 of Kevin Miller made November 4, 2022 ("**Miller #1**") in SCBC Vancouver Registry Action No. VLC-S-S-229152 (the "**Miller Proceedings**"), at paras. 7-12

2. K. Miller's last stated address is in the town of Birżebbuġa, Malta.

Tawtel #2, at para. 3, Ex. A

3. In the proceedings herein, the Director intends to seek forfeiture of the Miller Funds as both proceeds and an instrument of unlawful activity (collectively, the "**Unlawful Activity**"), namely the following:

   a. offences contrary to the US *Securities Act of 1933* (the "**US *Securities Act***");

   b. offences contrary to the BC *Securities Act*, RSBC 1996, c. 418 (the "**BC *Securities Act***"); and

   c. the following offences contrary to the *Criminal Code of Canada*, RSC 1985, c.C-46 (the "***Criminal Code***"): (i) possession of the proceeds of crime; (ii) committing fraud over $5,000; (iii) affecting the public market price of stocks, shares, merchandise, or anything that is offered for sale to the public; and (iv) laundering the proceeds of crime.

The United States SEC Investigation, Complaint, and Judgment

4. In or around November 17, 2015, the United States Securities and Exchange Commission (the "**SEC**") filed a complaint, which was amended on August 8, 2016 (the "**SEC Complaint**") commencing proceedings against K. Miller and other defendants (collectively, the "**Unlawful Scheme Participants**") in which the SEC alleged that the Unlawful Scheme Participants had committed securities fraud by engineering a "pump and dump" scheme involving the securities of Jammin' Java Corp, doing business as Marley Coffee ("**Jammin' Java**") (the "**Unlawful Scheme**").

Tawtel #1, at para. 4, Ex. A, page stamp ("p.") 1, Ex. B (p. 3)

5. The Unlawful Scheme was orchestrated by Shane Whittle, the former CEO of Jammin' Java, who utilized a reverse merger to secretly gain control of millions of Jammin' Java shares and then distributed the shares to offshore entities owned by the Unlawful Scheme Participants.

Tawtel #1, at para. 7a, Ex. A (p. 1), Ex. B (p. 3)

6. The SEC Complaint alleged that the Unlawful Scheme Participants had violated the US *Securities Act* and the US *Securities Exchange Act of 1934* via the Unlawful Scheme by:
    a. conducting an illegal offering and fraudulent touting of stock;
    b. buying and selling unregistered securities,
    c. facilitating the illegal offering through offshore entities,
    d. failing to disclose their ownership of Jammin' Java securities; and
    e. utilizing a sham financing arrangement.

Tawtel #1, at para.7b, Ex. A (p. 1), Ex. B (p. 3)

7. After a significant increase in Jammin' Java's stock price, the stock price fell after Jammin' Java disclosed on May 9, 2011, that it had become aware of an unauthorized and unaffiliated internet stock promotion causing innocent investors to lose millions of dollars.

Tawtel #1, at para. 7c, Ex. A (p. 1), Ex. B (p. 3)

8. The SEC Complaint states that Jammin' Java's share price rose from $0.17 USD per share and no volume in December 2010 to $6.35 USD per share and a volume of 20 million shares on May 12, 2011, and that the Unlawful Scheme Participants, through the Unlawful Scheme, generated at least $78,000,000.00 USD in illicit trading profits from February to May 2011.

Tawtel #1, at para. 7d, Ex. A (p. 1), Ex. B (p. 3)

9. The SEC determined that K. Miller participated in the Unlawful Scheme as a beneficial owner of at least two shell entities: Las Colinas Ltd., formed in the Marshall Islands, and Rahela International Inc. ("**Rahela**"), formed in Panama, which another Unlawful Scheme Participant used to hold and trade Jammin' Java stock (collectively, the "**Shell Corporations**").

Tawtel #1, at para. 7e, Ex. A (p. 1), Ex. B (p. 3, p. 15-16)

10. On May 24, 2017, judgment was granted in regard to the SEC Complaint against K. Miller, by way of consent, for violations of the US *Securities Act*. K. Miller was ordered to pay $899,999.99 USD in disgorgement and pre-judgment interest on net profits gained from the Unlawful Scheme as well as to comply with certain trading sanctions (the "**Final Judgment**").

Tawtel #1, at para. 9, Ex. C (p. 72)

11. On October 2, 2017, judgment was granted in the SEC Complaint against one of the other Unlawful Scheme Participants, Wayne Weaver, ordering them to pay disgorgement of $26,371,585.20 USD, prejudgment interest in the amount of $5,221,808.64 USD, and a civil penalty of $26,371,585.20 USD, for a total of $57,964,979 USD in relation to the net profits gained from the Unlawful Scheme. Except for Wayne Weaver, all of the other Unlawful Scheme Participants consented to judgment with respect to the SEC Complaint.

Tawtel #1, at paras. 11, 12, Ex. D (p. 77)

Miller Funds Transferred to the Pelletier Firm

12. During all material times, K. Miller and some of the Unlawful Scheme Participants retained Ronald N. Pelletier ("**R. Pelletier**"), as their legal counsel who practiced in British Columbia through Pelletier Litigation from July 1, 2014 to April 9, 2015, and through Ron Pelletier Law Corporation as Pelletier Legal Group from April 2015 onward (collectively, the "**Pelletier Firm**").

> Tawtel #1, at paras. 19, 20, 28, Ex. E (p. 79, p. 82, p. 83), Ex. H (p. 176, 177) being the Affidavit #1 of Tara McPhail made January 31, 2023 in the Miller Proceedings ("**McPhail #1**"), at paras. 18-27; Tawtel #2, at para. 3, Ex. A (p. 1) [Miller #1, at paras. 2, 7-15]

13. On April 1, 2016, R. Pelletier transferred $75,000.00 held in trust for the benefit of another client to K. Miller's client trust ledger (the "**Miller Trust Ledger**") for an "advance on legal fees".

> Tawtel #1, at para. 29a; Ex. H (p. 176, p. 180) [McPhail #1, at para. 20, Ex. K (p. 257)]; Tawtel #2, Ex. A (p.1) [Miller #1, at para. 7]

14. The Miller Trust Ledger indicates that on December 8, 2016, R. Pelletier received $1,772,122.52 USD from Rahela, one of the Shell Corporations, on behalf of K. Miller.

> Tawtel #1, at para. 29b, Ex. H (p. 176, 181) [McPhail #1, at para. 22, Ex. K (p. 257), Ex. M (p. 328)]; Tawtel #2, Ex. A (p. 1) [Miller #1, at paras. 9-10), Ex G (p. 28), Ex. H (p. 31), Ex. I (p. 34),

15. On March 16, 2017, two months prior to when the Final Judgment was issued, R. Pelletier received into trust $3,006,900.80 from Bank Saradar, a Lebanese bank, on behalf of K. Miller.

> Tawtel #1, at para. 29c, Ex. H (p. 176, p. 181) [McPhail #1, at para. 24, Ex. K (p. 257)]

LSBC Investigation, Hearing, and Determination of K. Miller's Lawyer, Ronald N. Pelletier

16. In or around April 16, 2018, the Law Society of British Columbia ("**LSBC**") initiated proceedings concerning R. Pelletier and the Pelletier Firm based on its belief that it had a *prima facie* case that R. Pelletier had, *inter alia*:

    a. permitted the Pelletier Firm's trust account(s) to be used in connection with K. Miller and some of the Unlawful Scheme Participants without providing substantial legal services in connection with the trust matters;

    b. permitted the Pelletier Firm's trust account(s) to be used by K. Miller and some of the Unlawful Scheme Participants to hide funds from tracing; and

    c. engaged in an activity that R. Pelletier knew or ought to have known assisted or encouraged K. Miller and some of the Unlawful Scheme Participants in dishonesty, crime, or fraud, contrary to Rule 3.2-7 of the *Professional Code of Conduct for British Columbia* (the "***BC Code***").

> Tawtel #1, at para. 21c, Ex. H (p. 176-177) [McPhail #1, at paras. 8-9]

17. On November 26, 2020, the LSBC Discipline Committee issued a citation against R. Pelletier which was amended on May 10, 2022 (collectively, the "**Citation**") and alleged that R. Pelletier committed professional misconduct between September 2014 and May 2018 by, *inter alia,* engaging in activities that assisted in or encouraged dishonesty, crime, or fraud contrary to the *BC Code*. Specifically, the Citation stated that R. Pelletier used or permitted the use of the Pelletier Firm's trust accounts to receive or disburse, or both, some

or all of approximately $24,092,710.37 CAD and $5,360,839.11 USD, on behalf of one or more of K. Miller and some of the Unlawful Scheme Participants, at a time, when they knew that one or both of K. Miller and some of the Unlawful Scheme Participants were being investigated for securities fraud by the SEC and that some or all of the funds received or disbursed were proceeds of that securities fraud ("**Allegation 1**").

Tawtel #1, at para. 21g, Ex. H (p. 176-180) [McPhail #1, at paras. 14-16, Ex. D (p. 202), Ex. F (p. 207)]

18. On June 26, 2023, in a Decision of the Hearing Panel on Facts and Determination, issued by the LSBC Hearing Tribunal Panel (the "**LSBC Panel**") (the "**Determination Decision**"), LSBC Panel found that the LSBC had proven professional misconduct with respect to Allegation 1, namely, that R. Pelletier knew that K. Miller and some of the other Unlawful Scheme Participants were being investigated for securities fraud by the American authorities, R. Pelletier received and or disbursed funds that they knew to be from the securities fraud, and assisted and encouraged dishonesty, crime or fraud by receiving and or disbursing the funds.

Tawtel #1, at para. 23b, Ex. K (p. 435) [Determination Decision, at paras. 8, 27, 32, 34]

19. As set out in the Determination Decision, during the hearing R. Pelletier testified that:

> "... he was aware of the SEC Complaint, the SEC's investigations into his clients' activities, and the Indictment. He also agreed that he received funds, millions of dollars, into his trust account that <u>he knew or suspected were proceeds from the Scheme</u>. The Respondent testified that he held those funds for the purpose of "settlement" with the American authorities. <u>He testified that it would not be in his clients' interest for the American authorities to know what amount of money was available for a settlement. The Respondent testified that he hoped, if the American authorities did not know how much money was available, he might be able to get a more favourable settlement for his clients</u>." [*emphasis added*]

Tawtel #1, at Ex. K (p. 435) [Determination Decision, at para. 11]

20. The LSBC Panel stated in response, in part:

> "There are two difficulties with the Respondent's position regarding these funds. <u>The first difficulty is that the Respondent is freely admitting to possessing illicit funds in his trust account for the purpose of hiding those funds from the authorities</u>. The <u>Respondent was aiding and abetting his clients in their securities fraud</u>. The only logical inference from his evidence is that the Respondent hoped to obtain a settlement for less than the remaining funds thereby <u>enabling his clients to profit from the securities fraud</u>. Even if the Respondent did not intend to assist his clients in receiving illicit profits, <u>he was knowingly possessing the proceeds of securities fraud</u>. It is not acceptable for a lawyer to knowingly accept or possess stolen, fraudulent or otherwise illicit funds from a client. In this case, the Respondent knowingly possessed the proceeds of securities fraud and purposely continued to do so for an extended period..." [*emphasis added*]

Tawtel #1, at Ex. K (p. 435) [Determination Decision, at para. 12]

21. In a decision issued on November 17, 2023, in 2023 LSBC 47 (the "**Disciplinary Action Decision**"), the LSBC Panel stated that the Citation was "novel as it appears to be the first time a lawyer has been disciplined for money laundering – purposely using his status as a

lawyer and his trust account to assist his clients to hide the illegal proceeds of their securities fraud" and held that R. Pelletier must be disbarred.

Tawtel #1, at para. 25, Ex. L (p. 451)

Miller Proceeding Seeking the Return of the Miller Funds

22. On November 8, 2022, K. Miller filed a petition to the court commencing the Miller Proceedings, seeking a declaration that K. Miller is entitled to the Miller Funds held in the trust accounts of the Pelletier Firm and an order that the LSBC, as custodian of the trust accounts of the Pelletier Firm, deliver the Miller Funds to K. Miller. K. Miller subsequently filed an amended petition on March 24, 2023.

Tawtel #1, at paras. 13, 26, Ex. E (p. 79)

23. K. Miller admits to causing the Miller Funds to be transferred to the trust accounts of R. Pelletier in or around the time the SEC Complaint was filed and amended, and prior to the Final Judgment.

Tawtel #1, at para. 28, Ex. F (p. 86); Tawtel #2, at para. 3, Ex. A (p. 1) [Miller #1, at paras. 7-12, Ex. D (p. 19), Ex. E (p. 22), Ex. F (p. 24), Ex. G (p. 28), Ex. H (p. 31), Ex. I (p. 34), Ex. J (p. 36), Ex. K (p. 40)]

24. K. Miller asserts that because the SEC Complaint has been resolved with respect to the Final Judgment, there is no juristic reason for the LSBC to continue to withhold the Miller Funds from K. Miller.

Tawtel #1, Ex. F (p. 86); Tawtel #2, Ex. A (p.1) [Miller #1, at para. 15]

25. In the response to petition, filed January 31, 2023 by the LSBC, and the Affidavit #1 of Michael Rhodes of the LSBC made May 30, 2023 ("**Rhodes #1**") in the Miller Proceedings, the LSBC opposes the relief sought with respect to the Miller Funds, asserting that it is the belief of the LSBC that the Miller Funds "are not in fact Mr. Miller's funds and are, on a balance of probabilities, proceeds of the securities fraud alleged in the SEC Complaint" and that "[i]t is for this reason that the Law Society has not acceded to" K. Miller's request for the return of the Miller Funds.

Tawtel #1, at para. 27, Ex. H (p. 176, 183-184) [McPhail #1, at para. 31], Ex. I (p. 390-391) [Rhodes #1, at para. 7]

Amount of the Miller Funds

26. The specific amount of the Miller Funds is unknown to the Director as there are inconsistencies between the information provided by the LSBC and K. Miller.

Tawtel #1, at para. 30

27. During the Benchers' Hearing, the Benchers found that as of January 3, 2018, the Pelletier Firm held in its trust accounts $3,469,077.80 CAD and $101,631.98 USD in trust for K. Miller.

Tawtel #1, at para. 31, Ex. H (p.176) [McPhail #1, at para. 11], Ex. B (p.188) [Determination Decision, at para. 22]

28. In the Miller Proceedings, K. Miller states that, as of March 29, 2019, the Pelletier Firm holds $583,114.51 CAD and $2,974,399.23 USD in trust for their benefit.

Tawtel #1, at para. 32; Tawtel #2, Ex. A (p.1) [Miller #1, at para. 12, Ex. L (p.45)]

Basis for Suspicion K. Miller Directly or Indirectly Engaged in the Unlawful Activity

29. Based on the forgoing, the Director:

  a. suspects that K. Miller directly or indirectly engaged in the Unlawful Activity;

  b. believes that the Miller Funds are proceeds of the Unlawful Scheme that K. Miller directly, and/or indirectly through the Shell Corporations, participated in; and

  c. believes that there is a serious question to be tried in this matter as to whether the Miller Funds, or the whole or a portion of an interest in the Miller Funds, was acquired and/or maintained directly or indirectly as a result of the Unlawful Activity.

Tawtel #1, at paras. 33-35

Part 3: LEGAL BASIS

1. The *Act* provides for an *in rem* cause of action against property located in British Columbia that is either an instrument or proceeds of unlawful activity. The overarching purpose of the *Act* is threefold: (i) to take the profit out of unlawful activity ("disgorgement"); (ii) to prevent the use of property to unlawfully acquire wealth or cause bodily injury ("prevention"); and (iii) to compensate victims of crime and fund crime prevention and remediation ("compensation").

British Columbia (Director of Civil Forfeiture) v Onn, 2009 BCCA 402 ("***Onn***"), at para. 14

Definition of Proceeds, Instruments, and Unlawful Activity

2. "Proceeds" and "instruments" of unlawful activity are defined in s. 1(1) of the *Act* as follows:

  a. proceeds of unlawful activity is property, in British Columbia, that is acquired directly or indirectly by unlawful activity, or property that is equivalent in value to the amount of an increase in value of the whole or the portion of interest in the property if the increase in value results directly or indirectly from unlawful activity;

  b. an instrument of unlawful activity is property in British Columbia that has been used in, or is likely to be used in, unlawful activity that resulted in, or was likely to result in, the acquisition of property or an interest in property.

3. "Unlawful activity" is also defined in s. 1(1) of the *Act* to include offences under provincial or federal law, or acts or omissions occurring outside Canada that are illegal in the jurisdiction they occurred and would be offences here.

Unexplained Wealth Orders

4. Section 11.11(2) of the *Act* states that [*emphasis added*]:

   (2) Unless it is clearly not in the interests of justice, the court must make an unexplained wealth order in relation to property if the court is satisfied that

   (a) the director has reasonable grounds to suspect that

(i)the respondent, or a person affiliated with the respondent, directly or indirectly engaged in unlawful activity, or

....,

(b) the director has <u>reason to believe</u> that

(i) one or more of the circumstances listed in subsection (3) apply, and

(ii) the fair market value of the property is greater than $75 000, and

(c) one or more of the following constitutes <u>a serious question to be tried</u>:

(i) whether the known sources of the respondent's lawfully obtained income would have been insufficient for the purpose of enabling the respondent to acquire or maintain the property or the whole or the portion of the interest in the property held by the respondent;

(ii) the property has been used to engage in unlawful activity;

(iii) the property or the whole or a portion of an interest in the property was acquired or is maintained directly or indirectly as a result of unlawful activity.

5. Section 11.11(3) of the *Act* states, in part, that:

(3) The following circumstances are listed for the purposes of subsection (2) (b) (i):

(a) the respondent is a registered or unregistered owner of the property or the whole or a portion of an interest in the property;

...

(c) the respondent is connected to a corporation that holds the whole or a portion of an interest in the property.

Miller's Unlawful Activity

6. It is an offence to contravene the US *Securities Act* to: (i) offer to sell unregistered securities (s. 5(a)); and (ii) offer to buy unregistered securities (s. 5(c)).

7. It is an offence under the BC *Securities Act* to:

a. directly or indirectly, engage in or participate in conduct relating to a security, derivative, or underlying interest of a derivative if the person knows, or reasonably should know, that the conduct (ss. 57(1) and 155):

   i. results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security,

   ii. contributes to a fraud perpetrated by another person, or contributes to another person's attempt to commit a fraud, relating to a security, derivative or underlying interest, or

   iii. results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a derivative or an underlying interest of a derivative;

b. directly or indirectly, engage in or participate in conduct relating to a benchmark if the person knows or reasonably should know, that the conduct results in or contributes to

a false benchmark, or the conduct results in or contributes to a false benchmark (ss. 57(3) and 155); and

c. unless exempted, distribute a security unless a preliminary prospectus and a prospectus have been filed with the executive director and the executive director has issued receipts for the preliminary prospectus (ss. 61 and 155).

8. It is an offence under the *Criminal Code* to: (i) possess the proceeds of crime (s. 354); (ii) commit fraud over $5,000 (s. 380(1)(a)); (iii) affect the public market price of stocks, shares, merchandise, or anything that is offered for sale to the public (s. 380(2)); and (iv) launder the proceeds of crime (s. 462.31).

Standard of Reasonable Grounds to Suspect

9. The test for "reasonable grounds to suspect" echoes that of "reason to believe", albeit with an even lower threshold. While "reasonable grounds to suspect" requires something beyond mere subjective suspicion, the standard means something less than belief.

R. v. Storrey, 1990 CanLII 125 (SCC), [1990] 1 S.C.R. 241 ("***Storrey***"), at para. 16; *Sellathurai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255 ("***Sellathurai***"), at para. 112; *R. v. Debot*, 1989 CanLII 13 (SCC), [1989] 2 S.C.R. 1140, at para. 53; *R. v. Kang-Brown*, 2008 SCC 18, at para. 75

10. Reasonable suspicion is a lower standard, as it engages the reasonable possibility, rather than probability.

R. v. Chehil, 2013 SCC 49, at para. 27

11. The standard of "reasonable grounds to suspect" is based is the cumulative effect of the evidence or the totality of the circumstances and has both a subjective and an objective component. The individual taking the action must subjectively believe that he or she has reasonable grounds to do so, and that belief must be based on objectively ascertainable facts.

Storrey, at para. 16;
Sellathurai, at paras. 112-114

12. Notwithstanding the apparent parallels to the "reasonable grounds to believe" test in the criminal context, section 16 of the *Act* states that "[f]indings of fact in proceedings under Part 2 or 3 or section 14.11 and the discharge of any presumption are to be made on the balance of probabilities".

Reason to Believe Standard

13. As a legal standard, "reason to believe" (which is synonymous with "reasonable grounds to believe") represents a low range of probative evidence required and sits somewhere between those of "more than a mere possibility" (i.e., a 20% probability) and a "serious probability" (i.e., a 40% probability).

Merck Frosst Canada Ltd v Canada (Health), 2012 SCC 3, at para 64;
Sky Regional Airlines Inc. v. Trigonakis, 2021 FC 513, at paras. 95-97

14. The standard of proof for "reason to believe" is more than "mere suspicion" but "less than the standard applicable in civil matters of proof on the balance of probabilities".

Mugesera v. Canada (Minister of Citizenship and Immigration), 2005 SCC 40 ("***Mugesera***"), at para. 114

15. "Reason to believe" will be found to exist "where there is an objective basis for the belief which is based on compelling and credible information."

Mugesera, ibid

16. The threshold to meet is below that of a factual conclusion. As per the Supreme Court of Canada *British Columbia (Attorney General) v. Provincial Court Judges' Association of British Columbia,* 2020 SCC 20, at para. 76 (in the context of document disclosure):

> "This threshold is met if the party seeking review can show that there is reason to believe that the Cabinet document may contain something that would undermine the validity of the government response. <u>This requires the party seeking review to point to something in the record, including otherwise admissible evidence, that supports its view</u>..." [*emphasis added*]

Serious Question to be Tried

17. The Director submits that "serious question to be tried" should be interpreted in a manner consistent with the test for granting interlocutory injunctive relief set out in the decision of the Supreme Court of Canada in *RJR*, which was determined to be the test applicable to interim preservation orders granted under s.8(5) of the *Act.*

British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd., 2009 BCSC 322 paras. 180-182 citing *RJR MacDonald Inc. v. Canada (Attorney General),* [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385 [*RJR*] at 337-338 (aff'd 2010 BCCA 539) ("***Angel Acres #2***")

18. As the S.C.C. held in *RJR*, the threshold for "serious question to be tried" is a low one. "There are no specific requirements to be met in order to satisfy the test". If the Court is satisfied that the application is neither frivolous or vexation, then it should proceed to the second and third prongs of the test. "A prolonged examination of the merits is generally neither necessary nor desirable."

Angel Acres #2 at para. 180 citing *RJR*

Application

19. The Director has reasonable grounds to suspect that K. Miller either directly or indirectly engaged in the Unlawful Activity based on:

    a. the SEC Complaint;

    b. the Final Judgment against K. Miller and the other Unlawful Scheme Participants;

    c. the affidavit evidence in the Miller Proceedings identifying that the Miller Funds were transferred the Pelletier Firm's trust account in or around the SEC Complaint was filed and amended and the Final Judgment rendered against K. Miller; and

    d. the Determination Decision made against R. Pelletier who was acting as K. Miller's legal counsel, which found that R. Pelletier knew K. Miller and some of the Unlawful Scheme Participants were being investigated for securities fraud by the SEC and that some or all of the funds received or disbursed were proceeds of that securities fraud.

20. Further, based on the above, the Director:

   a. has reason to believe the Miller Funds are proceeds of the Unlawful Scheme that K. Miller directly, or indirectly through the Shell Corporations, participated in; and

   b. submits there is a serious question to be tried as to whether the Miller Funds, or the whole or a portion of the Miller Funds, was acquired and or maintained directly, or indirectly, as a result of the Unlawful Activity.

21. Accordingly, upon the Court being satisfied that the respondent has been served with the notice of application, the orders the Director is seeking ought to be granted as sought.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of P. Tawtel, made December 8, 2023.
2. Affidavit #2 of P. Tawtel, made December 12, 2023.

The applicant estimates that the application will take 1.5 hours.

This matter is **not** within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, pursuant to s. 11.10(4) of the *Civil Forfeiture Act*, SBC 2005, c. 29, at least 5 business days before the date set for the hearing:

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

  (i) you intend to refer to at the hearing of this application, and

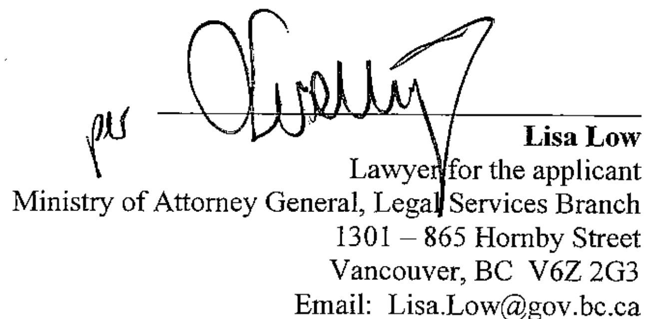
  (ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

  (i) a copy of the filed application response; and

  (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on the person.

Date: December 14, 2023



Lisa Low
Lawyer for the applicant
Ministry of Attorney General, Legal Services Branch
1301 – 865 Hornby Street
Vancouver, BC V6Z 2G3
Email: Lisa.Low@gov.bc.ca

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs .... of Part 1 of this notice of application

[ ] with the following variations and additional terms:

....

....

....

Date: ....

[dd/mmm/yyyy]   Signature of [ ] Judge [ ] Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

[ ] discovery: comply with demand for documents
[ ] discovery: production of additional documents
[ ] other matters concerning document discovery
[ ] extend oral discovery
[ ] other matter concerning oral discovery
[ ] amend pleadings
[ ] add/change parties
[ ] summary judgment
[ ] summary trial
[ ] service
[ ] mediation
[ ] adjournments
[ ] proceedings at trial
[ ] case plan orders: amend
[ ] case plan orders: other
[ ] experts
[x] none of the above