

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**COLIN HEATHERINGTON**

Petitioner

AND

**BRITISH COLUMBIA (SECURITIES COMMISSION)**

Respondent

**NOTICE OF CONSTITUTIONAL QUESTION**

TO: **MS. LISA RIDGEDALE**  
Counsel to: British Columbia Securities Commission  
Lang Michener LLP  
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AND TO: **ATTORNEY GENERAL OF BRITISH COLUMBIA**  
Attention: Constitutional and Administrative Law Division  
1001 Douglas St.  
Victoria, B.C. V8V 1X4  
Fax: (250) 387-6411

**TAKE NOTICE** that the Petitioner will apply on a date to be set at 10:00 a.m. in the forenoon at the Law Courts at 800 Smithe Street, Vancouver, British Columbia, for a declaration that:

1. Section 142(1)(b) of the *Securities Act*, R.S.B.C. 1996, c. 418 infringes section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 (the “*Charter*”), and is not saved by section 1 of the *Charter* and is therefore of no force and effect pursuant to section 52 of the *Charter*, in failing to statutorily authorize the circumstances and criteria pursuant to which the materials filed in support of an application for an Investigation Order made

pursuant to the said provision may be made available to a person sought to be compelled pursuant to the said Order;

2. Section 144 of the *Securities Act*, R.S.B.C. 1996, c. 418 infringe sections 7, 8 and/or 13 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 (the "*Charter*"), and is not saved by section 1 of the *Charter* and is therefore of no force and effect pursuant to section 52 of the *Charter*, in that the said provision is overly broad in purporting to authorize the compulsion of a witness in circumstances where there is and can be no guarantee of accompanying use and derivative use immunity, a condition precedent to any constitutionally valid compulsion; or, alternatively
3. The circumstances of this case are such that the Demand for Production and Summons to Attend before an Investigator, dated April 14, 2009, infringe the Petitioner's rights pursuant to sections 7, 8 and 13 of the *Charter* and should be quashed pursuant 24(1) of the *Charter*.

The material facts and legal basis for this request for constitutional remedy are set out in detail in the Applicant's Memorandum of Fact and Law dated June 1, 2009 filed within these proceedings.

Dated at Vancouver, British Columbia this 1<sup>st</sup> day of June 2009.



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**DAVID J. MARTIN**

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