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Court of Appeal Affords Deference to Alberta Securities Commission in Platinum Equities Case

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Case Commented On: *Alberta (Securities Commission) v Chandran,* 2015 ABCA 323

In February 2014 the Alberta Securities Commission found that Shariff Chandran was the governing mind of an elaborate scheme of capital market misconduct under the general umbrella of Platinum Equities and ruled that Chandran and others were guilty of contravening various provisions of the *Securities Act*, RSA 2000, c S-4 concerning the illegal distribution of approximately $58 million in securities to the public, misrepresentations, fraud, and conduct contrary to the public interest (See *Re Platinum Equities Inc*, 2014 ABASC 71). In addition to these administrative proceedings before the Commission, there are civil and criminal proceedings underway concerning Platinum Equities. In September 2014 the Commission issued its sanctions order 2014 ABASC 376 against Chandran and others for their misconduct under the *Securities Act*. Chandran asked the Court of Appeal to set aside a portion of these sanctions ordered by the Commission, and in *Alberta (Securities Commission) v Chandran* the panel of Justices Martin, O'Ferrall, and Shutz dismisses his appeal. The Court's decision is a good example of how deference should work in substantive judicial review.

Section 38 of the *Securities Act* provides for a right of appeal to the Court by a person who is directly affected by a Commission decision. Notably section 38 does not limit this right of appeal to questions of law and neither does it require leave of the Court. Moreover, section 38 expressly states the Court may confirm, vary or reject the Commission decision, direct the Commission to re-hear the matter, or even decide the matter itself and substitute its decision for that of the Commission. In short, section 38 is a very generous and potentially intrusive statutory appeal provision.

I set out section 38 in some detail here to give the context for this decision from the Court, but also say a few words about where the Court seems to be headed on standard of review. Readers may recall I posted some entries earlier this year on decisions from the Court of Appeal on standard of review that seem to stray from the direction of the Supreme Court of Canada on the presumption of deference to administrative decision-makers interpreting their home legislation. In particular, see Where are we going on standard of review in Alberta? posted in March 2015 in relation to the Court's decision in *Edmonton East (Capilano) Shopping Centres Limited v Edmonton (City)*, 2015 ABCA 85 where the Court stated oddly that the presence of a statutory right of appeal is a strong indication that the presumption of deference is rebutted. In the Court's words from *Capilano*:

> Where the Legislature has specifically provided for a right of appeal to the ordinary courts, the Legislature clearly intended that the administrative decision maker make the initial decision, subject to review by the court. As pointed out in Pushpanathan at para 43 (quoted supra, at para 21), if a correctness review is not applied, this legislative scheme makes little sense. The presence of a statutory right of appeal may not invariably signal a correctness standard of review, but it is clearly enough to displace any presumption that reasonableness applies (*Capilano*, at para 24).

I noted back in March that the Court was far too strong in *Capilano* stating the presence of a statutory right of appeal provides for an exception to the presumption of deference, and the Court's decision here in *Chandran* is case-in-point. Section 38 in the *Securities Act* is as broad and generous a statutory right of appeal as will be found in a legislative scheme and would thus under the reasoning of *Capilano* seemingly rebut the presumption of deference owed to the Commission. And yet the Court here in *Chandran* makes very short work of the standard of review applicable to the Commission sanction order, stating definitively that the standard is reasonableness (at paras 12 to 14). No mention of the *Capilano* decision or the generous statutory right of appeal in section 38 whatsoever. No question by the Court that it should defer to the Commission's sanction order, which is itself a highly discretionary decision under sections 198 and 199 of the *Securities Act*.

As for what deference looks like in practice, I would say the Court's decision here is a good example of that. In its September 2014 sanctions order, the Commission considers a number of factors such as the seriousness of the misconduct and any mitigating circumstances in deciding on appropriate sanctions to be applied against Chandran. The Court simply makes reference to the Commission's analysis and justification for the sanctions ordered, and finds the Commission analysis to be intelligible and transparent, and the sanctions ordered to be within the range of acceptable outcomes. Accordingly, the Court finds the sanctions ordered to be reasonable and dismisses the appeal (at paras 15 to 22).