



Case in Brief: ***Poonian v. British Columbia (Securities Commission)***

Judgment of July 31, 2024 | On appeal from the Court of Appeal for British Columbia

Neutral citation: 2024 SCC 28

---

***The Supreme Court concludes that bankruptcy does not release people from orders to pay amounts obtained by fraud, but could release them from administrative penalties.***

This appeal is about whether bankruptcy releases persons from having to comply with certain orders imposed on them by a regulatory agency for having broken the law. Bankruptcy is a legal process through which a person can be released, or discharged, from having to pay certain debts, subject to conditions.

Between 2007 and 2009, Thalbinder Singh Poonian and Shailu Poonian engaged in a scheme in which they manipulated the share price of a public oil and gas company called OSE Corp. and then sold the overpriced shares to investors. The scheme caused vulnerable investors to lose millions of dollars.

In 2014, the British Columbia Securities Commission found that the Poonians had violated the province's *Securities Act*. It eventually ordered them to pay \$13.5 million in administrative penalties. Administrative penalties are consequences for having broken the law that are imposed by administrative tribunals or regulatory agencies instead of the courts. The Commission also ordered the Poonians to pay a further \$5.6 million, representing the amounts they had obtained as a result of the scheme. These are called "disgorgement orders".

In 2018, the Poonians went into bankruptcy. Section 178(1) of the federal *Bankruptcy and Insolvency Act* lists certain debts from which a person is not released through bankruptcy (debts that are "exempted from discharge"). The Commission asked the Supreme Court of British Columbia to decide whether the amounts owed to it by the Poonians would be exempted from discharge, based on this rule.

The Supreme Court of British Columbia said that the orders would be exempted from discharge. It found that the exceptions in s. 178(1)(a) — relating to penalties "imposed by a court" — and in s. 178(1)(e) — relating to debt that results from "obtaining property or services by false pretences or fraudulent misrepresentation" — both applied.

The Poonians' appeal to the Court of Appeal was dismissed. The Court of Appeal concluded that although the s. 178(1)(a) exception did not apply because the Commission's decisions were not "imposed by a court", the exception in s. 178(1)(e) did apply. The Poonians appealed to the Supreme Court of Canada.

The Supreme Court has allowed the appeal in part. It has reversed the Court of Appeal's conclusion that the administrative penalties are exempted from discharge under s. 178(1)(e), while upholding its conclusion that the disgorgement orders are exempted.

**Orders to pay amounts that were obtained by fraud are directly linked to that fraud in a way that administrative penalties are not.**

Writing for the majority, Justice Côté held that neither the administrative penalties nor the disgorgement orders are exempted from discharge pursuant to s. 178(1)(a). The words "imposed by a court" in s. 178(1)(a) do not capture orders made by administrative tribunals or regulatory agencies, such as the Commission, that are subsequently registered as judgments of a court.

In addition, the administrative penalties do not come within the exception in s. 178(1)(e), as they did not result directly from the fraudulent scheme; rather, they arose indirectly as a result of the Commission's decision to sanction the Poonians. The disgorgement orders, however, are captured by the s. 178(1)(e) exception as there is a direct link between them and the Poonians' fraudulent conduct. Therefore, they will not be released by any possible future order of discharge.

**Breakdown of the decision:** *Majority:* Justice [Côté](#) allowed the appeal in part (Chief Justice [Wagner](#) and Justices [Rowe](#), [Jamal](#) and [O'Bonsawin](#) agreed) | *Dissenting in part:* Justice [Karakatsanis](#) would have dismissed the appeal (Justice [Martin](#) agreed)

**More information:** [Decision](#) | [Case information](#) | [Webcast of hearing](#).

**Lower court rulings:** [Judgment](#) (Supreme Court of British Columbia) | [Appeal](#) (Court of Appeal for British Columbia)

---