

IN THE COURT OF APPEAL

IN THE MATTER OF: An intended appeal from a Decision of The
Manitoba Securities Commission dated
June 10, 2020

AND IN THE MATTER OF: *The Securities Act*, C.C.S.M. c. S50

BETWEEN:

WAYNE SOKAL and ESP SOFTWARE INC.,

(Respondent) Applicant,

- and -

THE MANITOBA SECURITIES COMMISSION,

Respondent.

**NOTICE OF MOTION
FOR LEAVE TO APPEAL**

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TAKE NOTICE that a motion will be made on behalf of Wayne Sokal and ESP Software Inc. (hereinafter collectively referred to as “Sokal and ESP”) before the Honourable Chambers Judge, at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, in the Province of Manitoba, on Thursday, the 23rd day of July, 2020, at the hour of 10:00 o’clock am, or as soon thereafter as counsel can be heard.

THE MOTION IS FOR:

1. An Order, that Sokal and ESP be granted leave, pursuant to Section 30(1.1) of *The Securities Act*, C.C.S.M. c. S50 (the "Act") from the Decision of The Manitoba Securities Commission (the "Commission") made on June 10, 2020, and mailed on June 11, 2020, on the grounds herein.
2. Such other Order as may be just.

AND TAKE NOTICE that the grounds for the intended appeal are as follows:

1. Pursuant to Section 30 of the Act, an appeal lies from any direction, decision, order or ruling of the Commission given or made under the Act to the Court of Appeal, with leave from a judge of the Court of Appeal.
2. The Commission erred in law and exceeded its jurisdiction in issuing an order that Grant Kaufman ("Kaufman") shall not be barred from obtaining an order of the Commission for compensation for financial loss against Sokal and ESP subject to Kaufman discontinuing Court of Queen's Bench Action No. CI 13-01-86495 (the "Action"), consenting to judgment dismissing the Action, staying the Action, or

otherwise abandoning the Action on terms acceptable to the Commission.

3. The Commission erred in law in finding that it has the jurisdiction or authority to make an order for financial compensation in favour of a claimant that has commenced civil proceedings in respect of the same loss;
4. The Commission erred in law in its interpretation and application of subsection 148.2(7) of the Act, and in particular, that the term “has commenced” shall be interpreted such that any action shall not be considered as being commenced where such action has been discontinued, dismissed, stayed, or otherwise abandoned, which interpretation is contrary to the language, purpose, and objects of the Act;
5. The Commission erred in law in its interpretation and/or application of subsection 146(1) of the Act, and in particular, that subsection 146(1) authorizes the Commission to grant an order that is conditional on a claimant discontinuing a civil Action, consenting to a judgment dismissing a civil Action, staying a civil Action or otherwise abandoning a civil Action on terms acceptable to the Commission;

6. The Commission erred in law in finding that it has the jurisdiction, or alternatively the Commission erred in law and/or exceeded its jurisdiction by deciding to exercise any such jurisdiction, to hear the motion, and make an order on the motion, brought by Kaufman, a non-party to the proceedings;
7. *The Securities Act*, C.C.S.M. c. S50, Sections 146, and 148.2;
8. Such further and other grounds as counsel may advise and this Honourable Court may permit.

AND TAKE NOTICE that in support of such application will be read:

1. The Affidavit of Wayne Sokal, to be filed;
2. The Reasons for Decision of The Manitoba Securities Commission dated June 10, 2020;
3. The Appeal Book, to be filed;
4. The Motion Brief of Sokal and ESP, to be filed;
5. The Book of Authorities of Sokal and ESP, to be filed;
6. Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATED this 9th day of July, 2020

FILLMORE RILEY LLP
Barristers & Solicitors
1700 - 360 Main Street
Winnipeg, MB R3C 3Z3
Solicitors for the Applicant

Per:

A handwritten signature in blue ink, appearing to be 'A Favreau', written over a horizontal line.

Alex Favreau on behalf of Brandon
Barnes Trickett

TO: THE REGISTRAR OF THE COURT OF APPEAL

AND TO: THE MANITOBA SECURITIES COMMISSION

500-400 St. Mary Avenue
Winnipeg, MB R3B 3L3

IN THE COURT OF APPEAL**NOTICE OF INTENT TO EXERCISE LANGUAGE RIGHT**

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Registrar
Manitoba Court of Appeal
Room 100E Law Courts Building
408 York Avenue
Winnipeg, Manitoba
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Registraire
Cour d'appel du Manitoba
Palais de justice
408, avenue York, pièce 100E
Winnipeg, Manitoba
R3C 0P9