

Court File No.:

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

**HER MAJESTY THE QUEEN**

Applicant

- and -

**ANDREW RANKIN**

Respondent

**NOTICE OF MOTION FOR LEAVE TO APPEAL PURSUANT  
TO SECTION 131 OF THE *PROVINCIAL OFFENCES ACT***

**TAKE NOTICE** that a motion will be made before the presiding Justice at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, on the 2<sup>nd</sup> day of February, 2007 at 10:00 a.m. or as soon after that time as this motion can be heard, for an order under s. 131 of the *Provincial Offences Act* (“*POA*”) granting leave to appeal from the judgment of the Honourable Mr. Justice I.V.B. Nordheimer given on the 9<sup>th</sup> day of November, 2006 at the City of Toronto allowing an appeal by the Respondent, Andrew Rankin, from the judgment of His Honour Judge R. Khawly given on the 15<sup>th</sup> day of July, 2005 at the City of Toronto convicting Andrew Rankin on 10 counts of informing another person of a material fact before the material fact has been generally disclosed (“tipping”) contrary to s. 76(2) and s. 122 of the *Securities Act*, R.S.O. 1990, c. S. 5 as amended (the “*Act*”).

**THE SPECIAL GROUNDS FOR LEAVE TO APPEAL ARE:**

1. The convictions against Andrew Rankin are the first convictions for the offence of tipping in Ontario under the *Securities Act*. The tipping prohibitions are designed to restrict misuse of confidential information in order to protect investors from unfair,

improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets, the two purposes of the *Act* set out in s. 1.1.

2. Rankin was a Managing Director in the Mergers & Acquisitions group at RBC Dominion Securities. After 25 days of trial, he was convicted of tipping confidential information on 10 different client deals over a 14 month period. The serious consequences of a senior officer of a major investment bank tipping confidential information on multiple corporate deals include harm to the clients of RBC Dominion Securities whose confidential information was at issue, harm to the reputation of his employer and the investment industry, harm to investors, and decreased confidence in the integrity of the capital markets.

3. The successful prosecution of such offences will normally depend upon the use of substantial circumstantial evidence as well as inferences arising from patterns in trading and patterns in association. The errors of law made by the *POA* Appeal Court Judge, in part, relate to the proper application of circumstantial evidence and similar fact evidence in a case such as this. His Judgment is the first precedent in this area of law and it will be binding on all future prosecutions, which must be brought by the Ontario Securities Commission at the Ontario Court level.

4. In light of the harm caused by the Respondent's offences, the multiple errors of law committed by the *POA* Appeal Court Judge in quashing the Respondent's convictions, and the binding, precedential effect of the *POA* Appeal Court decision, it is essential in the public interest and for the due administration of justice in future cases that leave to appeal be granted.

**THE GROUNDS FOR APPEAL ARE:**

1. The *POA* Appeal Court Judge erred in misapprehending and misapplying the standard of review pursuant to s. 120(1)(a)(ii) and (b)(iii) of the *Provincial Offences Act*. In particular, the *POA* Appeal Court Judge adopted a highly interventionist approach in

substituting his view of the evidence for that of the trial judge and in substituting his view of the credibility of a witness, Daniel Duic, for that of the trial judge. Further, he misapprehended the evidence which he relied upon in substituting his views in a manner inconsistent with the trial record.

2. The *POA* Appeal Court Judge erred in that he misapprehended or misapplied the law regarding similar fact evidence in this case. In particular, he failed to assess the probative value of the overall patterns of trading (which was conceded at trial by the defence) and he erred in law in holding that the failure by the prosecution to call evidence of other examples of trading (outside of the 10 counts) to show the “broader context” caused prejudice. This approach misapprehends and modifies the similar fact rule as applied to a multi-count Information in a manner inconsistent with the principles in *R. v. Arp* (1998), 129 C.C.C. 321 (S.C.C.), *R. v. Handy* (2002), 164 C.C.C. (3d) 481 (S.C.C.), and *R. v. Thomas* (2004), 190 C.C.C. (3d) 31 (Ont. C.A.).

3. The *POA* Appeal Court Judge erred in misapprehending and misapplying the standard of review regarding a trial judge’s reasons as set out in *R. v. Sheppard* (2002), 162 C.C.C. (3d) 298 (S.C.C.). The *POA* Appeal Court Judge applied a highly exacting standard to individual words and phrases within the trial judge’s lengthy reasons instead of applying the broad, functional and purposive standard in *R. v. Sheppard* to the reasons of a provincial court trial judge.

4 Section 131 of the *Provincial Offences Act*, R.S.O. 1980, c. S. 5 as amended.

5. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**IN SUPPORT OF THIS MOTION THE APPLICANT RELIES UPON THE FOLLOWING:**

1. This Notice of Motion;

2. The proposed Notice of Appeal;
3. An affidavit to be sworn;
4. The Information;
5. The transcripts of the proceedings;
6. The Reasons for Judgment of the Honourable Mr. Justice I.V.B Nordheimer of the Superior Court of Justice, Provincial Offences Appeal Court, dated November 9, 2006;
7. The Reasons for Judgment of His Honour Judge R. Khawly of the Ontario Court of Justice (Provincial Division) dated July 15, 2005;
8. The Reasons for Sentencing of His Honour Judge R. Khawly of the Ontario Court of Justice (Provincial Division) dated October 27, 2005;
9. Such further and other materials as counsel may advise and this Honourable Court may permit.

**THE RELIEF SOUGHT IS:**

An Order granting leave to appeal from the Judgment of the Honourable Mr. Justice I.V.B. Nordheimer given on the 9<sup>th</sup> day of November, 2006 at the City of Toronto.

The Applicant's address for service is:

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The Applicant's address is:

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20 Queen Street West  
Toronto, ON, M5H 3S5

DATED at Toronto this 11<sup>th</sup> day of December, 2006.

[Original Signed by Kelly M. McKinnon]

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Ontario Securities Commission

Per: Kelley M. McKinnon

TO: The Registrar of this Honourable Court

AND TO: Andrew Rankin  
Respondent  
c/o Brian Greenspan  
Greenspan Humphrey Lavine  
15 Bedford Road  
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