

Re Nelson

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada**

and

Cynthia Nelson

2019 IIROC 22

Hearing Panel of the Investment Industry Regulatory Organization of Canada
(Québec District)

Hearing: May 22, 2019, Montréal, Québec
Matter taken under advisement: June 4, 2019
Decision: August 21, 2019

Hearing Panel

Michèle Rivet, C.M, Ad.E., Chair, François Gervais and Jacques Lemay

Appearances

Francis Larin, Senior Enforcement Counsel, for IIROC Staff

Jean Déry, Counsel for the Respondent, Cynthia Nelson

Cynthia Nelson (present)

DECISION ON FAILURE TO ATTEND AN INTERVIEW WITH THE IIROC INVESTIGATOR WHEN REQUESTED

¶ 1 This decision pertains to the failure of Cynthia Nelson to attend an interview with the IIROC investigator when requested.

¶ 2 In the months of May and June 2018, the Respondent failed to cooperate in an investigation conducted by IIROC Staff by failing, on two occasions, to attend the interview to which she had been duly convened, thus contravening Section 8104 of the Consolidated Enforcement, Examination and Approval Rules of IIROC (Consolidated Rules).

¶ 3 At the May 22 hearing, Counsel for IIROC, following several questions from the Chair, specified the penalties being sought:

“What we are proposing is the same penalty that was imposed in twenty-two (22) of the twenty-four (24) similar cases we had for the past sixteen (16) years, namely a permanent bar, and a \$50,000 fine, with costs.”¹

¹ Stenographic Notes, page 24, lines 15 to 20. TRANSLATION

¶ 4 The amount of the costs can be found in the IIROC Bill of Costs dated May 14, 2019, and reiterated in the sworn statement of Ms. Linda Vachet given the same day: the total costs amount to **\$26,931.12**, or 128 hours of work for the investigator, totaling **\$19,146.50**, and 43 hours for counsel in the matter, totaling **\$7,611.00**. That is what IIROC is asking.²

¶ 5 Cynthia Nelson testified at the hearing and, in reply to a question from her counsel, stated that she was prepared to appear before the investigator: “After seeing the scope of everything that has resulted from the situation, yes, I am in fact 100% ready to cooperate.”³

1. THE FACTS OF THE MATTER

¶ 6 Cynthia Nelson does not in any way dispute the allegations put forward by IIROC.

¶ 7 On or around August 15, 2017, IIROC Staff informed Ms. Nelson by registered mail that an investigation had been opened in her regard pursuant, notably, to an internal investigation conducted by RBC Dominion Securities Inc.: “You allegedly failed to conduct yourself in exemplary fashion as a registered representative when you accepted money transfers from third parties and transferred money to other third parties without providing satisfactory explanations on the legitimacy of these activities.”⁴

¶ 8 Ms. Nelson was employed with RBC Dominion Securities Inc. from April 14, 2014 until June 1, 2017. Ms. Nelson testified that she was dismissed “following transfers to a bank account under my name, an Employee account.”⁵

¶ 9 The transfers concerned three amounts totaling some \$5,500, which were sent from Vancouver by individuals whose identity was unknown to her and which were intended for her spouse, a point that she failed to mention to RBC during the internal investigation that led to her dismissal: “I didn’t want his name to be mixed up in all this, so that’s why I did not give his name in the beginning.”⁶ The deposits were allegedly made by an individual who has had run-ins with the law.⁷

¶ 10 On May 9, 2018, IIROC’s investigator, Nicolas D’Astous, sent a registered letter to Cynthia Nelson, requesting her attendance at IIROC’s offices on May 23, 2018 at 10 AM: “(...) In order to answer my questions and provide the required information in regard to this investigation, failing which disciplinary proceedings may be instituted against you without further notice (...).”⁸

¶ 11 Ms. Nelson having failed to attend on May 23, 2018, Mr. D’Astous communicated with her to find out the reasons for her absence. Ms. Nelson informed him then that she had not yet had time to retain the services of legal counsel and that she was in school until June 15, 2018; a new meeting was set for June 18, 2018, to which Ms. Nelson agreed.

¶ 12 Mr. D’Astous sent her a letter that same day to confirm the new appointment: “(...) To answer my questions and provide the required information in regard to this investigation, failing which disciplinary proceedings may be instituted against you without further notice (...).”⁹ On June 18, 2018, Ms. Nelson again failed to appear at IIROC’s offices.

¶ 13 On February 21, 2019, IIROC’s Enforcement Counsel, Francis Larin, sent Ms. Nelson a letter by FedEx

² Exhibit P-2.

³ Stenographic Notes, page 33, lines 13-15. TRANSLATION

⁴ IIROC’s document book, tab 1. TRANSLATION

⁵ *Ibid*, page 29, lines 9-11. TRANSLATION

⁶ *Ibid*, page 32, lines 5-7. TRANSLATION

⁷ *Ibid*, page 29, lines 12-14.

⁸ IIROC book of documents, tab 2. TRANSLATION

⁹ *Ibid*, Tab 4. TRANSLATION

containing a draft Statement of Allegations.¹⁰

¶ 14 On March 6, 2019, a Notice of Hearing was served to Ms. Nelson.¹¹

¶ 15 At the hearing, Ms. Nelson explained her failure to cooperate as follows:

“To answer the question, I did not, in fact... I did not cooperate because I was unaware of the scope of the accusations and I did not have a counsel. In short, truthfully, I was just afraid to show up and that’s the reason why I was not at the hearings that were set for me.”¹²

¶ 16 Consequently, at the hearing, the Hearing Panel found Ms. Nelson guilty of not attending the interview with the IIROC investigator as was duly requested, contrary to Rule 8104, *Enforcement Investigations*.¹³

2. THE APPLICABLE PRINCIPLES

¶ 17 It is therefore appropriate to look at the principles applicable in penalty matters, the guiding principles, such as the case law submitted by the parties.

2.1. The Guidelines

¶ 18 *IIROC Sanction Guidelines* took effect in February 2015. They state: “The primary purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity.”

¶ 19 The *Sanction Guidelines* are intended to “promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives”.

¶ 20 The *Sanction Guidelines* also suggest :

“The determination of the appropriate sanction in any given case is discretionary and a fact-specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. Hearing panels retain the discretion to impose the sanctions they consider appropriate. (...) The general principles and key factors set out in the *Sanction Guidelines* are not intended to fetter the discretion of a hearing panel in determining an appropriate sanction.”

¶ 21 According to the *Sanction Guidelines*, disciplinary sanctions:

“(...) should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices. (...) Sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence).”

2.2. The Relevant Case Law

¶ 22 Case law has intervened on many occasions to sanction a member for failing to attend an IIROC investigation when duly requested. We summarize this case law here, in the order presented by the parties.

¶ 23 In *Re Sole*¹⁴, several contraventions were alleged¹⁵, including that of failing to appear before the

¹⁰ *Ibid*, tab 6.

¹¹ *Ibid*, tab 7.

¹² Stenographic Notes, page 33, lines 1-5. TRANSLATION

¹³ *Ibid*, at p. 91.

¹⁴ *Sole (Re)*, 2018 IIROC 19.

¹⁵ In par. 2 of the decision: “Between August 2016 and September 2016, the Respondent, Robert Edward Sole (“the Respondent”), entered orders on IIROC-regulated marketplaces while his access to IIROC regulated marketplaces was suspended, contrary to Dealer Member Rule 29.1 and/or Consolidated Rule 1400 (effective as of September 1, 2016). Between August 2016 and September 2016,

investigator when requested, not to mention the hearing:¹⁶

“We accept and endorse Mr. Corlett's submission that for the public to have confidence in the integrity of capital markets, Regulated Persons must act with integrity, cooperate with regulatory requirements, and cooperate with regulatory investigations. Sanctions should be aimed at promoting that confidence, strengthening market integrity and sending a strong regulatory message that high standards of conduct are expected of Regulated Persons. Sanctions should reinforce the perception that unacceptable conduct will be taken seriously and can result in serious consequences.”

¶ 24 The *Sole* decision imposed an aggregate fine of \$80,000.00, a permanent bar on registration, and costs in the amount of \$10,000.00 as requested; the Bill of Costs came to \$30,500.00.

¶ 25 In *Re MacArthur*¹⁷, the respondent failed to attend both the interview with the investigator as well as the hearing before the Hearing Panel. The Hearing Panel established that no response had been served to IIROC (...) 2017. The Hearing Panel accordingly determined that (...) the facts and contraventions set forth in the Statement of Allegations should be accepted as proven. The MacArthur decision imposed a fine of \$50,000, a permanent bar on registration and costs in the amount of \$10,000, which “only represents approximately one-half of the investigation and prosecution costs incurred up to but not including the costs of preparation for the conduct of this hearing itself.”

¶ 26 In *Re Austin*¹⁸, the respondent Mr. Austin resisted most of the attempts made by IIROC Staff to communicate with him in 2015 and 2016. As the decision notes:

“He did not collect any of the registered letters sent to his last known NRD address. No one answered the door at that address to process servers. He did not respond to phone calls to his last known number. An email sent to his encrypted email address expired without collection. However, Austin was well aware that an IIROC investigation into his conduct had been opened. In July 2015, he accepted personal service at his NRD address of a package of previously uncollected IIROC letters advising him of the investigation and requiring him to attend an interview relating to his conduct at Edward Jones. He was subsequently advised by email and regular mail that the investigation included his conduct at Manulife Securities Inc. (...) The respondent failed to serve a response as required under rule 7.1 of the Rules of Practice and failed to attend the hearing.”

¶ 27 The hearing panel in *Austin* explains:

“We had some concerns about the fact that the fairly large cash penalties imposed here are unlikely ever to be recovered from this respondent, given he has left the industry after a relatively short tenure. However, recognising that we are providing for general as well as specific deterrence, we think it is important to make clear by our penalty award that the misconduct in issue here strikes at the heart of IIROC’s goal to maintain the confidence of retail investors in IIROC member firms and their registered representatives. There was a flagrant disregard for the actual circumstances of the clients and

the Respondent engaged in an outside business activity without obtaining the approval of his Dealer Member, contrary to Dealer Member Rule 18.14. In October 2017, the Respondent failed to cooperate with Enforcement Staff, who were conducting an investigation, contrary to Section 8104 of the Consolidated Rules.”

¹⁶ In pars. 24 and 25 of the decision.

¹⁷ *MacArthur (Re)*, 2017 IIROC 29, in par. 16 of the decision:

“As can be seen from the Statement of Allegations set forth in Schedule "B" of this Decision, the Respondent (while a Registered Representative with IIROC member firms) is alleged to have borrowed approximately \$1 million from a client and has failed to repay any of the principal amount borrowed or interest thereon. While that is not a matter that is before this Hearing Panel, the conduct of the Respondent *vis-à-vis* IIROC’s requests for information and documentation relevant to the client complaint filed with IIROC and his failure to attend interviews which IIROC had compelled the Respondent to attend in connection with its investigation of this complaint are matters of serious import which are the subject matter of this proceeding.

¹⁸ *Austin (Re)*, 2017 IIROC 9; 2017 IIROC 10 ADDENDUM., in par. 9.

manipulation of the KYC process to engaging in risky trading and generate commissions. Austin relied on a friendly relationship with the family spokesman to mislead a vulnerable family as to the true state of their accounts, and expose them to substantial losses. More even than the risk of outright fraud by a rogue broker, it is the fear of the outcome here - a reduced retirement due to the steady erosion of wealth through risky, self-serving transactions the clients could not readily follow -- that can undermine investor confidence and deter retail clients from entrusting their savings to the investment industry.”

¶ 28 The hearing panel in *Austin* ordered a permanent ban from registration with IIROC; a fine of \$50,000 for failure to cooperate; a combined fine of \$120,000 for failure to ensure that recommendations were suitable and for unauthorized trading; and disgorgement of commissions in the amount of \$60,000. Finally, it ordered costs in the amount of \$50,000.

¶ 29 In *Sojka*¹⁹, the respondent failed to attend both the interview with the IIROC investigator and the hearing. One witness was heard at the hearing. The hearing panel ordered the respondent to pay a \$50,000 fine for unsuitable trading in the client’s account and for unauthorized discretionary trading, a \$50,000 fine for failure to cooperate; costs in the amount of \$20,000; a permanent ban from approval with IIROC in any category.

¶ 30 In *Dirani*²⁰, the respondent failed to attend the interview with the IIROC investigator as well as the hearing before the hearing panel, requesting postponements on numerous occasions. The hearing panel decided to order a permanent ban from approval with IIROC, an aggregate fine of \$266,000 divided as follows: \$136,000 for misappropriation of client funds, \$30,000 for unauthorized transactions, \$50,000 for personal financial dealings with clients and \$50,000 for failure to cooperate with IIROC; the respondent was ordered to pay IIROC costs in the amount of \$12,000.

¶ 31 In *Dettelbach*²¹, the respondent failed to attend the interview with the IIROC investigator as well as the hearing before the hearing panel, as the decision notes²²:

“Further investigation by RBC DS revealed that the accounts of 15 clients had sustained losses as a result of the cancel and correct orders processed by the Respondent. The losses sustained totalled

¹⁹ *Sojka (Re)*, 2016 IIROC 13, in paragraph 1 of the decision: **Count 1:** Between March 2009 and May 2011, Sojka failed to use due diligence to ensure that the orders that he placed for the account of his client SF were suitable for her, contrary to IIROC Dealer Member Rule 1300.1(p) and/or 1300.1(q). **Count 2:** Between March 2009 and May 2011, Sojka engaged in discretionary trading for the account of his client SF without the account having been approved and accepted as a discretionary account, contrary to IIROC Dealer Member Rule 1300.4. **Count 3:** On January 6, 2016, Sojka failed to attend and give information in respect of an IIROC investigation into his conduct, contrary to IIROC Dealer Member Rule 19.5 and/or Rule 29.1.

²⁰ *Dirani (Re)*, 2016 IIROC 13.

“This matter was commenced by the NOH which contained four allegations against the Respondent, as follows: Count 1: From April 2014 to January 2015, the Respondent engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he misappropriated funds from clients, contrary to IIROC Rule 29.1. Count 2: From August to December 2014 the Respondent engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he executed unauthorized transactions in the accounts of clients, contrary to IIROC Rule 29.1. Count 3: From July 2012 to May 2015 the Respondent engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he engaged in personal financial dealings with clients, contrary to IIROC Rule 29.1. Count 4: From October to November 2015 the Respondent failed to cooperate with an IIROC investigation by failing to attend at a compelled interview, contrary to IIROC Rule 19.5.”

²¹ *Dettelbach (Re)*, 2011 IIROC 6, in paragraph 1:

From or about February to July 2008, Dettelbach, as an Investment Representative of a Member of IIROC, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that she misappropriated funds by improperly transacting approximately 50 cancel and correct orders, without instructions, resulting in a benefit to two clients, and a detriment to approximately 15 other clients, at her member firm employer, contrary to IIROC Rule 29.1. In or about November 2009, Dettelbach, as an Investment Representative of a Member of IIROC, failed to co-operate with IIROC in that she failed to attend at a properly constituted IIROC interview, contrary to IIROC Rule 19.5.

²² Paragraphs 29 and 31.

\$163,842.90. On or about December 10, 2008, RBC DS credited each of these accounts with an amount equal to the loss sustained.

The evidence revealed that the Respondent processed at least 53 improper trade tickets. On some tickets, the account numbers were improperly changed. On others, the number of shares bought and sold was altered. The change requests were handwritten by the Respondent.”

¶ 32 The hearing panel imposed a permanent ban from approval, a fine in the amount of \$25,000 for the contraventions of IIROC rule 29.1, a fine in the amount of \$50,000 for the contravention of IIROC Rule 19.5, and costs in the amount of \$40,000.

¶ 33 In *Re Smith*²³, in accordance with the Rules of Procedure, the hearing panel, following the respondent’s failure to serve a response to the notice of hearing and his failure to attend the disciplinary hearing, accepted as proven the facts and violations alleged by IIROC in the notice of hearing. The hearing panel imposed a fine of \$50,000, a permanent ban from registration, and costs in the amount of \$4,329.

¶ 34 In *Morrisson*²⁴, the hearing panel imposed a fine of \$50,000, a permanent ban from registration with IIROC, and costs in the amount of \$11,000. The decision notes²⁵ :

²³ *Smith (Re)*, 2009 IIROC 6, in paragraph 13 of the decision :

It is appropriate to set forth, in full, the Particulars alleged and proven as per the Notice of Hearing (Exhibit 1):

2. On June 1, 2008, the Respondent became a regulated person of IIROC.

Client Complaints

3. In or around August 2005, Client A opened a margin account and a registered retirement income fund (RRIF) at Northern Securities (collectively, the A accounts). The Respondent was the registered representative who was responsible for the A accounts. In or around February, 2008, Client A closed the A accounts.

4. The following chart summarizes the activity in the A accounts from August 2005 to January 2008:

	Margin Account	RRIF Account
Opening Value of Account	\$1,080,623.07	\$643,437.32
Value of Additional Deposits	\$0.00	\$0.00
Value of Total Withdrawals	\$149,500.00	\$77,022.80
Total Commission Charged	\$317,052.94	\$132,760.78
Number of Transactions (Buy or Sell)	1,421	574
Closing Value of Account	\$89,274.84	\$155,455.92

5. By way of a February 28, 2008 letter to Northern Securities, Client A, among other things, indicated that Respondent made numerous unsuitable and unauthorized trades on behalf of the A accounts.

6. In or around September, 2005, Client B opened a cash account at Northern Securities (the B account). The Respondent was the registered representative who was responsible for the B account. In or around February 2008 Client B closed the B account.

7. The following chart summarizes the activity in the B account from September 2005 to December 2007:

Opening Value of Account	\$50,000.00
Value of Additional Deposits	\$15,000.00

²⁴ *Morrisson (Re)*, 2009 IIROC 4, in paragraph 24:

In December, 2004, the Respondent was disciplined by the Association. Pursuant to a Settlement Agreement, he admitted that he distributed US \$56,000 in securities in the form of a company’s debtor certificates without a receipt or prospectus for the security having been obtained pursuant to the British Columbia *Securities Act* and without any exemption from the requirements of the Act being available, contrary to Association By-law 29.1. The Respondent was fined \$5,000 and ordered to pay \$1,500 in Association By-law 29.1. Further, the Respondent’s approval in any capacity was suspended for one year, which suspension was deemed served by the more than three year period that he was under strict or close supervision. The Respondent has paid the fine and costs to the Association.

²⁵ In paragraphs 48-51.

“In this case, the Respondent Morrison’s failure to cooperate was clearly intentional, and it was complete. The impact on his contravention on the investigation was to effectively prevent any real investigation of events or circumstances. His failure to file a Response, and his failure to attend the hearing demonstrate his ongoing unwillingness to comply.

The Respondent also was disciplined by the Association in December 2004, for distributing securities without a receipt or prospectus, and without any exemption from the requirements of the *Securities Act*. He was fined and ordered to pay costs, and was under strict, or close supervision for three years.

We also agree with, and would reiterate the view expressed in *Re: Stewart*, (supra page 8), that the seriousness of the alleged impropriety that forms the basis of the investigation which may have been frustrated in whole or in part by the Respondent’s failure to cooperate with the investigative process, can be considered a serious, aggravating factor. In our view that factor is present in this case.”

¶ 35 In *Lower*²⁶, the respondent having failed to attend both the interview with the investigator and the hearing, the hearing panel accepted as proven the facts as alleged and imposed a fine of \$50,000, a permanent ban from registration, and costs in the amount of \$5,065.

3. THE APPLICATION OF THE LAW TO THE FACTS

¶ 36 First, let it be said that there is a general principle that the requirement to cooperate in any investigation is fundamental to maintaining an efficient, competitive market environment, and also to maintain the integrity of the securities system and protect the public interest.

¶ 37 This obligation is clearly stated in IIROC Rule 8100, *Enforcement Investigations*. By failing to appear before Mr. D’Astous, Ms. Nelson contravened Rule 8104.

¶ 38 IIROC’s power to regulate its members is dependent on the latter’s willingness to be subject to it, and this regulatory power is valid only if violations of these rules can be sanctioned. To exercise its regulatory and disciplinary powers fully, IIROC must conduct investigations and prove the facts that are essential to the decisions of the hearing panels being called upon to sanction the violations. IIROC’s legitimacy as a self-regulatory organization is dependent on its capacity to fully exercise its investigative powers. The respect for this power to investigate is crucial to its ability to impose compliance with its rules.

¶ 39 Thus, a failure to submit to the investigative power is a misconduct that is heavy with consequences for IIROC’s very existence. We must weigh the consequences of this misconduct when we are called upon to determine penalties. Other than a total lack of knowledge of the consequences of failing to participate in an investigation, there is no excuse for not participating, so long as the investigators give the persons called to cooperate in the investigations the chance to comply, by offering them more than one opportunity to submit with a properly communicated summons. The person summoned must also fully understand the gravity of the failure to comply.

¶ 40 The necessity of having the cooperation of the participants in an investigation is important if not essential in order to obtain a true and complete picture of the alleged situation. This cooperation is all the more critical for IIROC since it does not have the power to compel cooperation in an investigation.

²⁶ *Lower (Re)*, 2009 IIROC 39, August 12, 2019, in paragraphs 3-5:

“On September 10, 2008, a detective with the Vancouver Police Department (the Detective) swore an Information to Obtain A Production Order (the ITO). In the ITO the Detective, among other things, stated that she had reasonable grounds for suspecting that the Respondent committed offences against the *Criminal Code*, R.S.C. 1985, c. C-46 (the *Criminal Code*), namely that between September 28, 2007 and January 17, 2008, the Respondent:

i. conspired to give four secret commissions to an agent contrary to sections 426 and 465 of the *Criminal Code*; and ii. gave three secret commissions to an agent, contrary to section 426 of the *Criminal Code*. On September 11, 2008, the police arrested the Respondent at the Vancouver head office of Global Securities Corporation (Global Securities). To date, he has not been charged with any offence. On September 11, 2008, following the Respondent’s arrest, Global Securities suspended him.”

¶ 41 Thus, what would be a fair and proportionate penalty to impose on Ms. Nelson in the circumstances?

¶ 42 The letters that Mr. D’Astous sent to Ms. Nelson, on May 23 as well as on June 18, 2018²⁷, mentioned that the purpose of the meeting was to: “answer my questions and provide the required information in regard to this investigation failing which disciplinary proceedings may be instituted against you without further notice.”²⁸

¶ 43 At the hearing, in response to a question from IIROC’s Enforcement Counsel, Mr. Larin, Mr. D’Astous indicated that he had spoken to Ms. Nelson once²⁹:

“(…) I remember speaking to Ms. Nelson at the time and telling her that we could indeed take measures against her if she did not attend and also mentioning to her the fact that this could have consequences for her future, should she at some point want to return to the industry since there would be consequences for her refusing to cooperate.”³⁰

¶ 44 In reply to a member of the Hearing Panel, Mr. D’Astous repeated that Ms. Nelson’s testimony was essential³¹: “Yes, in fact, her testimony was essential in order for me (…) to determine whether, yes or no, an offense had been committed, whether, yes or no, there was conduct unbecoming.”

¶ 45 The case law submitted to us imposed a \$50,000 fine, costs in varying amounts and not necessarily what was requested, and a permanent bar.

¶ 46 The fine of \$50,000 in these different decisions, with greatest respect, seems to have become almost automatic. This amount is found only in a series of decisions and is not the object of a formal directive from IIROC. We think that it is appropriate here to make that distinction.

¶ 47 In the different decisions submitted, the respondent attended neither the interview with investigators nor the hearing before the hearing panel seized of the matter. While it goes without saying that in no way should we suggest that the respondent need only wait for the hearing and not take his obligation to attend the interview with the investigator seriously, we cannot help but notice the failure to attend following any type of summons in the decisions submitted to us.

¶ 48 Furthermore, in the vast majority of the decisions, the failure to attend the interview with the investigator was in addition to other charges, or concerned a respondent who had tangled with IIROC before.

¶ 49 Since the Sanction Guidelines provide a framework to guide the exercise of discretion in determining sanctions that meet the general sanctioning objectives, “[t]he appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. Hearing panels retain the discretion to impose the sanctions they consider appropriate.”³²

¶ 50 Ms. Nelson having been with RBC Securities Inc. for a little over three years, namely until June 2017, is in the process of starting a business³³ with a family member after being on maternity leave. There have never been any disciplinary complaints against her other than the one before us, any customer complaints or any other complaint from her employer RBC Securities Inc.³⁴ Her income is very limited.³⁵

²⁷ See *supra*.

²⁸ Our emphasis.

²⁹ Stenographic Notes, page 73, lines 17-25. TRANSLATION

³⁰ Our emphasis. TRANSLATION

³¹ Stenographic Notes, page 82, lines 10, 14-16. TRANSLATION

³² *Supra*, Guidelines.

³³ Stenographic Notes, page 37, lines 13-15.

³⁴ Stenographic Notes, page 40, lines 12-20.

³⁵ Tax return for 2018, filed by Ms. Nelson's counsel.

¶ 51 Ms. Nelson says that she was unaware of the seriousness of the alleged offense and offered her cooperation to the investigator at the hearing: “After seeing the scope of everything that has resulted from this situation, yes, I am in fact prepared to cooperate 100%”³⁶, Ms. Nelson stated in her testimony before us. There is no evidence indicating that Ms. Nelson had been informed of the amount that this refusal could entail.

¶ 52 Both in the letters that he sent her³⁷ and at the hearing, Mr. D’Astous indicated that he had informed Ms. Nelson that IIROC could take measures against her, that these measures could have consequences for her future should she wish to return to the industry. There is no evidence indicating that Ms. Nelson would have been informed of the amount of the fine that this refusal might entail.

¶ 53 All these subjective elements, as they relate to this matter and to Ms. Nelson herself, must be taken into consideration, as the Guidelines request.

¶ 54 We must also take into account the gravity of the offense, as we have already explained that length.

¶ 55 In addition, in weighing the matter in light of the Guidelines and the analysis of the case law submitted to us, we conclude that an amount that properly reflects these different components must be \$15,000.

¶ 56 IIROC is claiming all of the hours billed by the investigator and the Enforcement Counsel, namely \$26,931.12. In the decisions we examined, we found that these amounts are weighted, either by Enforcement Counsel in their requests either by the hearing panels themselves.

¶ 57 Given all of the circumstances in this matter, we find that \$5,000 is a reasonable amount for costs.

¶ 58 Finally, we impose upon Ms. Nelson a permanent ban from registration with IIROC.

4. CONCLUSION

¶ 59 **FOR THESE REASONS**, the hearing panel:

ACCEPTS IIROC’s request in part,

ORDERS Ms. Nelson to pay IIROC:

- a fine in the amount of \$15,000.00,
- costs in the amount of \$5,000.00,

PERMANENTLY PROHIBITS Ms. Nelson’s registration with IIROC.

SIGNED at Montréal, this 21st day of August 2019.

Michèle Rivet

François Gervais

Jacques Lemay

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³⁶ Stenographic Notes, page 33, lines 13-15.

³⁷ *Supra*, letters of May 23 and June 18.