

## Re Turcotte

IN THE MATTER OF:

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

**and**

**Nelson Turcotte**

2017 IIROC 45

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

Hearing held on June 27, 2017, in Montréal, Québec  
Written decision rendered on August 31, 2017

**Hearing Panel:**

Me Guy Lemoine, Chair, Mr. Denis-Marc Gagnon and Mr. Jean Jeannot

**Appearances:**

Me Fanie Dubuc, Enforcement Counsel, for IIROC and  
Mr. Nelson Turcotte, Respondent, absent

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## DECISION ON PENALTIES

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### BACKGROUND

¶ 1 On June 27, 2017, a hearing was convened before a hearing panel (the Hearing Panel) of the Investment Industry Regulatory Organization of Canada (IIROC) to consider the appropriate penalties to be imposed on Mr. Nelson Turcotte (the Respondent).

¶ 2 The hearing was pursuant to a decision rendered orally on June 9, 2017 and in writing on June 12, 2017. In this decision, the Hearing Panel found the Respondent liable for the following contravention:

*On or around November 12, 2014, the Respondent forged a client's signature (forged endorsement) on an account document, and thereby engaged in business conduct or practice unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.*

¶ 3 Twenty minutes after the time set for the hearing, the Hearing Panel, after checking, found that Mr. Nelson Turcotte (Respondent) was still absent and began the hearing at 9:50 a.m.

¶ 4 Counsel for IIROC entered into evidence a proof of delivery by registered mail, signed by the recipient (exhibit P-5), attesting that, on June 16, 2017, the Respondent received a notice confirming that a penalty hearing would take place on June 27, 2017 at 9:30 a.m. at IIROC's offices, pursuant to the previously mentioned decision against him. This notice was itself pursuant to a notice to the same effect that had been sent to him by email by the National Hearing Coordinator, as well as one or more unsuccessful phone calls.

¶ 5 Counsel for IIROC informed the members that she had received no representations from the Respondent regarding the sanctions to be imposed in this matter.

¶ 6 The Hearing Panel therefore proceeded with the penalty hearing in the Respondent's absence.

## **THE FACTS**

¶ 7 The facts that gave rise to these proceedings are related in the Statement of Allegations accompanying the Notice of Hearing, as follows:

1. *On or around November 12, 2014, the Respondent forged a signature on a new account application form used to update the account information, with the client's consent.*
2. *The Respondent has been approved as a registered representative with IIROC, as well as its predecessor the Investment Dealers Association of Canada (IDA), since May 1979;*
3. *The Respondent was employed with Desjardins Securities Inc. (DS) from October 2003 to February 2015;*
4. *The Respondent's employment with DS was terminated on February 27, 2015 and he has not been a registrant of IIROC since that date.*
5. *On or around September 26, 2014, following a query from the DS Compliance Department, the Respondent met with client CG to have the latter sign an updated new account application form;*
6. *The form was signed by the client CG on September 26, 2014;*
7. *The version of the form used to effect the update was outdated;*
8. *On or around November 3, 2014, the Compliance Department rejected the outdated form signed on September 26, 2014 and asked the Respondent to obtain client CG's signature on a valid version of the form;*
9. *On or around November 11, 2014, following the DS Compliance Department's rejection of the outdated form, the Respondent contacted client CG to explain the situation and schedule another meeting;*
10. *The Respondent confirmed to Staff of IIROC that, due to health problems, client CG refused to take part in a second meeting to sign the valid form (second form);*
11. *The Respondent also confirmed to Staff of IIROC that he therefore proposed to client CG that he imitate the latter's signature on the second form, to which the client agreed. The Respondent accordingly signed the second form for his client and dated it the same date as the outdated form, namely September 26, 2014;*
12. *On or around November 12, 2014, the Respondent gave the second form to his assistant and she noticed that the second form was dated September 26, 2014, just like the first form;*
13. *The Respondent's assistant then informed a member of the branch management of this irregularity;*
14. *The Respondent quickly went to see his superiors and admitted having imitated client CG's signature on the second form;*
15. *On or around November 14, 2014, the Respondent met with client CG to complete the update process and have the latter sign a third and last form.*

## **REPRESENTATIONS BY IIROC**

¶ 8 Counsel for IIROC deposited three documents for purposes of her representations regarding penalties. The first document is a table analyzing eight decisions from the case law regarding sanctions imposed by IIROC hearing panels in disciplinary matters of a similar nature (exhibit P-6). The second document is a book

of rules and authorities (exhibit P-7). The last document is the decision Re Gill, 2015 IIROC 39 (exhibit P-8).

¶ 9 Counsel for IIROC then recapped the facts contained in the Statement of Allegations accompanying the Notice of Hearing and reiterated the IIROC Rules applicable in this matter. She invited the Hearing Panel to weigh the facts in order to set an appropriate penalty, to apply the IIROC Sanction Guidelines (the Guidelines) and to consider the precedents that she had submitted for our attention.

¶ 10 She emphasized that the Guidelines state that “Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices”. They must have a deterrent effect for both the offender and the other market participants.

¶ 11 According to Counsel for IIROC, the Hearing Panel must consider suspension as a measure according to the provisions of the Guidelines.

¶ 12 She mentioned that, though no fraud was intended, the Respondent committed a conscious and deliberate offence, that his misconduct had harmed the integrity of the marketplace, that it shows a lack of honesty and is of a nature to undermine public confidence in capital markets. She reminded the panel that forgery is a serious regulatory matter.

¶ 13 She then commented on the relevant key factors that the Hearing Panel must consider in determining what sanctions to impose and which are mentioned in Part II of the Guidelines.

¶ 14 Counsel for IIROC also commented on the decisions handed down by IIROC hearing panels in similar matters.

¶ 15 Finally, she suggests that the following sanctions be imposed on the Respondent:

- a) a fine in the amount of \$7,500,
- b) prohibition from approval as a representative for six months following the decision,
- c) the requirement to take the Conduct and Practices Handbook Course before reapproval,
- d) close supervision and monitoring for a 12-month period following reapproval,
- e) costs in the amount of \$5,000.

¶ 16 The book of authorities contains an affidavit from Ms. Linda Vachet (Exhibit P-7, tab 2), Enforcement Assistant in the Enforcement Department of the Investment Industry Regulatory Organization of Canada (IIROC), attesting to the total cost of the investigation and prosecution of this matter, which is considerably higher than the \$5,000 claimed for this purpose by Counsel for IIROC.

## **ANALYSIS**

¶ 17 For purposes of our analysis, in light of the facts under study, we have considered the disciplinary sanction powers that are delegated to us, along with the Guidelines and other decisions, in order to determine what sanctions to impose.

### **A) THE HEARING PANEL’S POWERS TO SANCTION**

¶ 18 The Hearing Panel’s powers to sanction are stated in IIROC’s Consolidated Enforcement, Examination and Approval Rules (Consolidated Rules), more specifically in Rule 8200 – Enforcement Proceedings.

¶ 19 Rule 8210 provides the possibility to impose the following sanctions:

*8210 Sanctions for Regulated Persons other than Dealer Members*

*(1) If after a hearing, a hearing panel finds that an Approved Person, a non-Dealer Member user or subscriber of a Marketplace for which IIROC is the regulation services provider or an employee, partner, director or officer of such a user or subscriber has contravened a IIROC requirement, a securities legislation requirement, or other requirement relating to trading or advising in respect of*

*securities, commodities contracts, or derivatives, the hearing panel may impose on such person one or more of the following sanctions: ...*

- (iii) *a fine not exceeding the greater of*
  - (a) *\$5,000,000 for each contravention, and*
  - (b) *an amount equal to three times the profit made or loss avoided by the person, directly or indirectly, as a result of the contravention,*
- (iv) *suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions,*
- (v) *imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace,*
- (vi) *prohibition of approval in any capacity, for any period of time, including access to a Marketplace,*
- (vii) *revocation of approval,...*
- (x) *any other sanction determined to be appropriate under the circumstances.*

¶ 20 In addition, Rule 8214 of the Consolidated Rules provides that a hearing panel may order costs:  
8214. *Cost*

(1) *After a hearing under this Rule, ..., a hearing panel may order a person who is the subject of a sanction to pay any costs incurred by or on behalf of IIROC in connection with the hearing and any investigation related to the hearing....*

## **B) PRINCIPLES APPLICABLE TO SANCTIONS**

¶ 21 IIROC's Guidelines set forth the principles on which a hearing panel must rely in order to determine appropriate sanctions. Here are certain excerpts that seem to us particularly relevant to the matter before us.

*The primary purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity. ...*

*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 sanction guidelines are divided into two parts: ...*

### *Part I – Sanction Principles for IIROC Disciplinary Proceedings*

*The following principles provide a framework that should be considered in connection with the imposition of sanctions in all cases.*

*1. Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.*

*The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, 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). ...*

*General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on*

*respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.*

*2. Disciplinary sanctions should be more severe for respondents with prior disciplinary records. ...*

*5. A suspension should be considered where:*

- there has been one or more serious contraventions;*
- there has been a pattern of misconduct;*
- the respondent has a prior disciplinary history;*
- the contraventions involved fraudulent, willful and/or reckless misconduct; or*
- the misconduct in question has caused some measure of harm to investors, the integrity of a marketplace or the securities industry as a whole.*

¶ 22 Part II of the Guidelines contains a non-exhaustive list of key factors that should be considered when determining appropriate sanctions. The Hearing Panel has drawn on it for inspiration in the analysis of the current matter and, in particular, retains the following elements for purposes of evaluating what penalties to impose:

- The Respondent committed a serious offence when he imitated the signature of one of his clients; it was an isolated action, but deliberate.
- The Respondent's misconduct did not harm his client, who knew about and had accepted the Respondent's suggestion that he imitate the client's signature, the Respondent having had him sign, a few weeks earlier, an update to the new account application form that was unfortunately outdated.
- His conduct was in order to facilitate things, and not to enrich himself; the Respondent derived no financial benefit from forging his client's signature.
- However, forging a signature throws into disrepute the reputation and integrity of the financial marketplaces and the securities industry as a whole. It causes harm to the fundamental principles of honesty and trust that investors have a right to expect. The forged signature was intended to elude the requirements of his employer's compliance department and therefore constituted an abuse of their trust. It behooved the Respondent to comply with his employer's requirements rather than attempt to evade them by imitating his client's signature.
- The document forgery was detected by his employer the very same day and the Respondent had the third form properly signed by his client two days later.
- The Respondent has no prior disciplinary history despite his long career – more than 35 years.
- The Respondent did not turn himself in, but neither did he deny that he had broken the rules.
- He was not subject to internal disciplinary proceedings by his employer.
- However, the Respondent did leave his job three months later.
- He has not been a registrant of IIROC since February 2015, that is more than 30 months.
- He participated in the investigation and acquitted himself of his duty to cooperate. He acknowledged the forgery during questioning.
- He did not attempt to impede the course of the investigation.

¶ 23 We emphasize that, objectively, the creation of a false document is a serious offence in an industry that is based on trust. While there are no minor offenses when it comes to forgery, we must however distinguish between different levels of severity within this category based on the facts of each matter. The facts of this

matter lead us to conclude that the Respondent's misconduct is at the lower end of the scale for this type of serious offence.

## **CASE LAW**

¶ 24 For purposes of evaluating the nature and scope of the penalties to impose, the Hearing Panel has also examined the disciplinary decisions rendered in similar matters.

### **Re Duchaine, 2015 IIROC 25**

¶ 25 In this matter, only one of the five counts against Mr. Duchaine is relevant to the present case, namely Count 5, which reads as follows:

*On or around February 23, 2011, the Respondent tried to forge a client's signature to complete a retirement savings plan application form, which was missing the signature, contrary to IIROC Dealer Member Rule 29.1.*

¶ 26 Note that in Re Duchaine, the Hearing Panel was seized of four other counts. Regarding Count 5, the Hearing Panel declared:

*12 Getting back to the penalties suggested by IIROC, we consider them justified, except in respect of count 5. Not that an attempt to forge a client's signature shouldn't be liable to a fine of this nature, but the facts in the matter demonstrate that the client concerned had neglected to sign the appropriate form to open an RRSP account, whereas the deadline for completing an RRSP transaction was just days away. The Respondent was only trying to save his client, who was also a friend and former coworker, an extra trip. The Respondent's intention was not dishonest. Although this did not justify forging a signature, the fact remains that the circumstances surrounding this action must be taken into consideration when determining the penalty.*

*13 With respect to count 5 in this matter, it seems to us that a more appropriate measure would be nearer to those applied in Re Sklar and Re Gee, in which the fines imposed were for \$2,500 and \$5,000 respectively. In other cases where the fines were heavier, the contravention involved multiple clients.*

*14 This led us to conclude that a lower fine than that suggested by IIROC should be imposed on Count 5.*

*15 We also took into account the fact that, at the material time, the Respondent was a relative neophyte in the industry. He lost his job and no longer works in the securities industry.*

¶ 27 The hearing panel imposed the following sanctions on the respondent:

- a) an aggregate fine of \$57,500 for all five counts, including a \$2,500 fine for Count 5,
- b) suspension of approval for a period of one year from the date of this decision,
- c) the requirement to successfully rewrite the Conduct and Practices Handbook Course examination, before seeking reapproval,
- d) twelve (12) months of strict supervision, with mandatory submission of monthly supervision reports, in the event of reapproval,
- e) costs in the amount of \$5,000.

¶ 28 The facts in this case being similar to those in the matter before us, the Hearing Panel has therefore accorded considerable importance to this precedent in determining the penalties to impose. We note that in Re Duchaine, the signature was imitated without the client's knowledge, whereas in the current case, the forged signature was applied with the knowledge and consent of the client. We consider this an aggravating circumstance in the Duchaine case, compared to the facts in the present matter. Nevertheless, forgery of a signature in the current case constitutes a grave offence since the intention was to elude the requirements of his employer's compliance department.

**Re Dickson, 2013 IIROC 53**

¶ 29 The contravention alleged by IIROC and admitted by the Respondent is set out in the Settlement Agreement and reads as follows:

*In April 2012, the Respondent forged client signatures on various account documentation, which was conduct unbecoming or detrimental to the public interest, contrary to IIROC Rule 29.1.*

¶ 30 The material facts are described as follows:

*In April 2012, after meeting with the clients and obtaining their signatures on some of the investment account documentation, afterwards, without the clients' consent, as a matter of convenience for these clients, the Respondent signed the signatures of two husband-and-wife clients, on the documentation for which he omitted to obtain their signature. Subsequently, after discovery, the clients did ratify the documentation initially signed by the Respondent. The Respondent received no personal benefit.*

*9 The actions which the Respondent has admitted, viz. signing client's signatures, contrary to IIROC Rule 29.1, is a serious infraction which would merit serious sanctions from the standpoint of both specific and general deterrence. On the other hand both counsel point to a number of mitigating factors which are:*

- (a) The Respondent's actions were for the convenience of the clients and therefore were not as egregious as other examples of forgery;*
- (b) The documents were not misleading and accurately reflected the clients' wishes as confirmed by the clients;*
- (c) There was no personal gain to the Respondent;*
- (d) There was no detriment to the clients;*
- (e) The Respondent admitted his actions, is remorseful about them, cooperated with IIROC's investigation and entered into the settlement (thus avoiding the trouble and the expense of a hearing);*
- (f) The actions occurred over a short time frame;*
- (g) This was the Respondent's first job in the investment industry, and had been on the job only three months at the time of his actions;*
- (h) The Respondent lost his job as a result of his actions and was unemployed for 14 months;*
- (i) The Respondent has no prior disciplinary history with IIROC.*

¶ 31 The following sanctions were imposed:

- a) a fine in the amount of \$7,500,
- b) suspension of approval with IIROC in any capacity for a period of six months,
- c) the requirement to rewrite the Conduct and Practices Handbook examination within six months following reapproval with IIROC, in any capacity,
- d) costs in the amount of \$1,000.

¶ 32 Let us keep in mind, in terms of the differences between the Respondent's actions and those of Mr. Dickson, that in the latter's case the contraventions concerned the account of four clients, that the forged signatures had been applied without the consent of his clients, that he was a young representative with only three months' experience and that the matter was entertained as a settlement agreement.

**Bell (Re) [2005], I.D.A.C.D. No. 15**

¶ 33 Mr. Bell was the subject of an information comprising three counts, one for having distributed

marketplace newsletters to over fifty people without his firm's prior approval, a second for failing to disclose to his employer that he had signed a services contract with a third party and, finally, one count alleging forgery of three client signatures between December 2002 and April 2003.

¶ 34 In an agreement on the facts, the parties acknowledge that:

*During the period December 2002 and April 2003 or thereabouts, the Respondent forged the signature of three clients thereby engaging in conduct unbecoming, contrary to Association By-law 29.1*

¶ 35 In one case, the forged signature was on a document that a client had to sign in order to purchase a security. In another case, the respondent imitated the signature of two spouses to authorize a transfer of funds from a joint account in order to make a contribution to the wife's RRSP account. The spouses subsequently signed an authorization letter in this regard.

¶ 36 The Hearing Panel analyzed a number of decisions in order to determine what penalties to apply. Among them, the decision rendered in *Re Gee*, [2004] I.D.A.C.D. No. 58 presents important similarities with the present matter. Here is how it presents:

*Re Gee, [2004] I.D.A.C.D. No. 58*

26 *The Respondent forged a client's signature on one document. The Respondent was confused about the form of document to have signed and had previously sent three other documents to the client for purposes of completing the same transaction. The first three documents were signed and returned, but when the Respondent realized that they were not the correct documents he forged the client's signature on the correct document "in order not to appear like an incompetent professional, as a matter of convenience and in order not to delay the transfer". The Respondent realized his error and within a day or two forwarded a correct document to the client for signature.*

27 *The panel imposed a fine of \$5,000 and ordered that, as a condition of the Respondent's re-registration, he rewrite and pass the examination based on the Conduct and Practices Handbook for Securities Industry Professionals and be subject to a requirement of close supervision for one year.*

28 *The panel noted that the Disciplinary Sanction Guidelines approved by the Association in January 2003 (the "Guidelines") suggest a minimum fine for forgery of \$25,000, and referred to the Preamble to the Guidelines, which says:*

*The minimum fines suggested within the individual guidelines are intended to establish the "baseline" fine for specific offences - in other words, the lowest fine that can be expected by a respondent where there are no aggravating factors and all mitigating factors have already been taken into account.*

*However, nothing in these guidelines shall fetter the discretion of a District Council to impose a lesser or greater penalty in specific circumstances.*

29 *The panel described a number of considerations that led them to the conclusion that a fine of \$25,000 was not appropriate in this case. The Respondent made several attempts to get things right before resorting to the forgery; he neither sought nor obtained any advantage by the forgery; his client suffered no detriment; the client had clearly indicated his wish, intention and willingness to sign a document that accomplished what the forged document was intended to accomplish; and the Respondent moved quickly to repair what he had done. While the panel did not disagree with the description of the Respondent's act as "dishonest", they indicated that its more salient characteristic was that it represented "an appalling lapse of judgment". The panel noted that the Respondent had already suffered heavily for that lapse, referring to the termination of his employment in the securities industry (approximately 14 months prior to the hearing) and his inability so far to find other employment in the securities industry, and the fact that his "record" would make it more difficult to find any employment. For these reasons, the panel concluded that a fine of \$5,000 was more appropriate, both to Mr. Gee and*

as a matter of general deterrence.

¶ 37 Still in *Re Bell*, the members also considered another important decision for our Hearing Panel, namely *Re Sklar*, [2001] I.D.A.C.D. No. 20, which states:

30 *The Respondent forged the signature of a client on a Cash Account Agreement. The client had signed such an agreement but that document was lost or misplaced. The Respondent was frustrated with trying to contact the client and forged the client's signature on a new, identical document.*

31 *The panel imposed a fine of \$2,500 and ordered that, as a condition of re-registration, she re-write and pass the examination based on the Conduct and Practices Handbook for Securities Industry Professionals. The panel recognized a number of factors which tended to mitigate the penalty in this case. The Respondent did not profit from the forgery and the document was a duplicate of one already signed by the client, evidently forged to avoid inconvenience to the client or embarrassment to the Respondent. The Respondent admitted her mistake, did not contest the enforcement proceeding, resigned her employment as a result of this incident in 1998 and disclosed her intent not to re-enter the industry.*

¶ 38 For his part, Mr. Bell was imposed an aggregate fine of \$30,000, the obligation of one year of close supervision in the event of reapproval, and costs in the order of \$3,000. This decision seemed important to us as much for the principles that it sets forth, as for the Gee and Sklar decisions to which it refers, given the similarity of the facts in these cases with those in the present matter.

#### **Re Faber, 2014 IIROC 14**

¶ 39 In this matter, the parties signed a settlement agreement which was submitted to a hearing panel of IIROC. Ms. Faber admitted to the following misconduct:

*In September 2010, Kathryn Faber forged client signatures on various account documentation for three clients, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.*

¶ 40 Ms. Faber forged the signatures of three of her clients on a dozen documents without their knowledge. The signatures were forged in order to correct various transactions that were improperly completed and to keep her clients' holdings from being sold by reason of the overdraft positions which had been created. Ms. Faber did not sign the clients' accounts for personal gain and they did not suffer any financial harm as a result of Ms. Faber's misconduct. The clients concerned did in fact sign the documents within the next few days.

¶ 41 We appreciate the soundness of the following principle to which the hearing panel in this matter refers:

*Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. The trust and confidence between the registrant and the client is very often destroyed by the deceptive conduct on the part of the registrant. Forgery harms the Dealer Member firm as well. As a result, forgery often attracts severe sanctions. ...*

¶ 42 The settlement agreement provides for the imposition of the following sanctions:

- a) a \$15,000 fine,
- b) a two-month suspension of approval with IIROC, in any capacity,
- c) the requirement to rewrite the CPH examination within six months following any return to the industry,
- d) costs to IIROC in the amount of \$1,000.

¶ 43 It should be noted that in the Turcotte matter there was only one event involving one document and concerning just one client. The Respondent's forgery was not part of a financial transaction or to avoid financial consequences. It was in the context of updating a new account application form. The Respondent had already obtained one new signature from his client for this update but the new version of the form that was used was

already out of date, thus requiring a second update on a valid form. The client having refused to come to a second meeting, it was agreed between the client and the Respondent that the latter would imitate the client's signature.

### **Re Abbott, 2012 IIROC 2**

¶ 44 In a settlement agreement, Ms. Abbott admits to having committed the following contraventions:

*In June and July 2011, the Respondent forged the signatures of over 40 clients on certain account opening documents, transfer documents and letter instructions contrary to IIROC Rule 29.1.*

¶ 45 The principal facts in the matter are stated as follows in the settlement agreement:

*11. The Respondent was required to re-do client account documentation for certain clients. She was required to contact clients and advise them of the need to complete the new documentation. Rather than do so, she forged the signatures of over 40 clients on certain client account documents. ...*

*28. The Respondent also signed approximately 6 letters on behalf of her clients to her former firm, for the purposes of expediting the transfers of those client accounts to Manulife. However, the Respondent did not send those letters to her former firm.*

¶ 46 After concluding that the settlement was fair, reasonable and in the public interest, the hearing panel accepted the proposed settlement agreement and imposed the following sanctions:

- a) a fine in the amount of \$25,000,
- b) suspension of approval in any registered capacity with IIROC for a period of six (6) months,
- c) the requirement that the Respondent successfully complete the Conduct and Practices Handbook (CPH) Course prior to seeking re-registration,
- d) costs to IIROC in the amount of \$3,500.

¶ 47 The Hearing Panel notes that important distinctions exist between the facts in the Abbott matter and this one. In *Re Abbott*, the signatures of over 40 clients were forged without their knowledge. Ms. Abbott, who had no prior disciplinary history, turned herself in to her employer and to IIROC.

### **Re Eley, 2014 IIROC 52**

¶ 48 Mr. Eley committed two contraventions, including stated below in Count 2:

*Count 2: From or about August 2011 to April 2013, the Respondent engaged in conduct unbecoming a registrant or detrimental to the public interest, in that he falsely endorsed the signatures of several clients on certain client account documentation and other forms, contrary to IIROC Dealer Member Rule 29.1.*

¶ 49 The material facts of the matter reveal that Mr. Eley's contraventions continued for 16 months, involved the accounts of numerous clients as well as different types of documents, and were part of a scheme to misrepresent his clients' net worth in order to facilitate their access to a leveraged investment strategy. What's more, Mr. Eley's conduct provided him with a direct economic benefit. The hearing panel states the following principle:

*52 The proper functioning of the investment industry, and the protection of public investors, depends upon each registered representative executing his or her duties with honesty. This is particularly so with respect to the information which the registered representative puts into documents and systems relating to the suitability of investments. It is impossible and impracticable for the employer to check that information before it is acted upon. The same goes for the signature on a document or the use of a document. Others using the document must be able to have total confidence that the document was signed by the person whose signature appears on the document and that the document is being used properly. It is these fundamental principles underlying the investment industry that Mr. Eley abused. ...*

¶ 50 Mr. Eley was imposed the following penalties:

- a) a fine in the amount of \$50,000,
- b) a six-month suspension from seeking reapproval with IIROC,
- c) one year of strict supervision, and
- d) costs in the amount of \$15,000.

¶ 51 Although we completely share the principles on the analysis of the hearing panel in this matter, the sanctions imposed in Re Eley are based on very different facts from those that concern us in the matter at hand. Our penalties must therefore be adapted accordingly.

**Re Gill, 2015 IIROC 39**

¶ 52 The respondent was charged with three counts. Count one alleged the following contravention:

*On or about June 10, 2013, the Respondent signed the signature of a client on an account form without the client's express consent and without approval from his firm contrary to Dealer Member Rule 29.1.*

¶ 53 All of the material facts in the matter ran from March to June 2013. A client opened a trading account for the purpose of transferring in shares which were to be sold within by a specific time frame. There were some delays in opening the account and transferring in the shares. The client became increasingly agitated by the slow progress. The Respondent signed the client's name on a share transfer document without the client's express authorization in an effort to speed up the transactions as the client was overseas on business at the time and could not physically sign the documents.

¶ 54 Prior to signing the client's name on the share transfer document, the Respondent created a false Client Holding Report and provided it to the client. This false Report showed the shares of the company that the client wanted to sell in the account when the shares were not actually in the account.

¶ 55 The Respondent also created a false Transaction History in another client's account showing the sale of certain shares when those shares had not yet been deposited in the client's account.

¶ 56 Pursuant to a settlement agreement, the following aggregate penalties were imposed:

- a) a fine in the amount of \$30,000,
- b) nine months' suspension from approval with IIROC, in any capacity,
- c) 12 months of close supervision upon reregistration in any capacity with IIROC,
- d) retake the Conduct and Practices Handbook Course before seeking reapproval with IIROC,
- e) costs in the amount of \$2500.00.

¶ 57 The contraventions in Re Gill are much more serious than in the matter at hand. The forgery was ultimately intended to mislead the client in order to reassure him, the contravention continued over a period of three months and involved three separate incidents.

**Re Lamontagne, [2009] IIROC No. 6**

¶ 58 Mr. Lamontagne was the subject of an information involving two counts. The first count stated the following:

*The Respondent, while a Registered Representative with the Member, CIBC Investor Services Inc. (CIBC), and particularly, during the approximate period August 2006 to November 2006, engaged in the conduct of forgery of thirteen (13) client signatures to the Respondent's client account documentation, which conduct is unbecoming a registrant and detrimental to the public interest, contrary to By-law 29.1 of the Investment Dealers Association of Canada.*

¶ 59 Following his admission, the hearing panel found that he did commit the alleged contraventions.

¶ 60 The facts of the matter indicate that Mr. Lamontagne had in some cases omitted to have his clients sign investment plans, which is considered a deficiency in the event of an internal audit. His firm conducted random internal audits of its representatives' files. He had received an unsatisfactory (red) audit rating for his files following an internal audit conducted on August 24, 2006. He knew that if he received a second unsatisfactory (red) audit, he would not get his annual bonus. He anticipated receiving an annual bonus amount of approximately \$83,000 upon achieving an overall satisfactory (green) audit rating for the year 2006. He was notified that he would again be subject to an internal audit of his files.

¶ 61 He was aware that certain files were incomplete, that he was missing the signature of some of his clients on several documents. The auditor selected several of the respondent's files at random and, in the course of his examination, discovered discrepancies in the client signatures relative to six files. The suspicious client signatures were all on Investment Plans and Financial Advice Disclosure documents. When asked about the discrepancies discovered during the audit, the respondent denied having forged the suspicious signatures at the time. Later on, gradually, he acknowledged having forged the signatures of 13 clients over a two-month period.

¶ 62 The hearing panel imposed the following penalties on him:

- a) a fine of \$35,000 to be paid within 12 months of the decision date,
- b) a six-month suspension,
- c) costs of \$15,000 to be paid within the same 12 months.

¶ 63 We recognize that serious aggravating factors existed in the Lamontagne matter, compared with the current cause. Mr. Lamontagne was the subject of an information comprised of two counts, he forged the signature of 13 clients, he knew that if he received a second unsatisfactory audit rating (red audit) he would not receive his annual bonus and he denied having committed the contravention at the outset. We note however, that following these actions, Mr. Lamontagne has had no work and has lost some major bonuses.

#### **CONCLUSION:**

¶ 64 The Hearing Panel has considered the facts in this matter, its powers to sanction, the principles applicable to penalties and the relevant case law.

¶ 65 We consider unequivocally that the fabrication of a false document constitutes a serious contravention and that the Respondent's misconduct caused some measure of harm to the integrity of the marketplace or to the securities industry as a whole. However, we note that it was an isolated act committed by a representative who, for 35 years, had no disciplinary history, that the Respondent has not profited or benefited financially from his conduct, that the client consented to the Respondent's act after the latter had already had him sign a form to regularize the situation in his account, that the client suffered no loss, that the Respondent soon afterwards had his client sign in order to regularize his account status, and that the Respondent has not been an IIROC registrant for more than 30 months.

¶ 66 We remind you that according to the IIROC Dealer Members Disciplinary Sanction Guidelines:

*The primary purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity. ...*

*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). ...*

*General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.*

¶ 67 We have given careful consideration to the decisions brought to our attention. However we retain, more

specifically, the Duchaine, Dickson, Gee and Sklar decisions mentioned above, as their facts relate more to the facts in this matter.

¶ 68 Consequently, the Hearing Panel imposes the following sanctions on the Respondent:

- a) a fine in the amount of \$2,500,
- b) prohibition from seeking IIROC approval as a representative for six months following the decision,
- c) the requirement to successfully complete the Conduct and Practices Handbook Course before seeking reapproval with IIROC,
- d) twelve months of close supervision in the event of reapproval with IIROC,
- e) costs in the amount of \$2,500.

Signed at Montréal, on August 31, 2017.

Guy Lemoine

Panel Chair

Denis Marc Gagnon

Panel Member

Jean Jeannot

Panel Member

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