

# Re Lamontagne

IN THE MATTER OF:

A DISCIPLINARY HEARING PURSUANT TO PART 10 OF BY-LAW 20 OF  
THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

DUSTIN RENE JOHN LAMONTAGNE

2009 IIROC 6

Investment Dealers Association of Canada  
Hearing Panel (Alberta District Council)

Heard: December 11, 2008 at Calgary, Alberta  
Decision: January 27, 2009  
(51 paras.)

## Hearing Panel:

Alan V.M. Beattie, Q.C. - Chair  
Donald W. Milligan, Industry Representative  
Peter McWilliams, Industry Representative

## Appearances:

Charlene McLaughlin, Counsel for the Association  
Robert S. Abells, Counsel For the Respondent

For the Association:

Gil Gauthier, The Manager, Investigations, Calgary Office of the Association  
Fay Emanuel, Enforcement Counsel  
Leslie McKernan, Investigator

For the Respondent:

Dustin Rene John Lamontagne

---

## REASONS FOR DECISION

---

1.	Background of the Proceedings	para 1
2.	Notice of Hearing (Including particulars, penalties and costs)	para 13
3.	Disciplinary Sanction Guidelines	para 14
4.	Agreed Statement of Facts	para 15
5.	Further Evidence	para 16
6.	Argument of Association	para 42
7.	Argument of the Respondent	para 43
8.	Decision	para 44

## 1. BACKGROUND OF THE PROCEEDINGS

1. Unfortunately, circumstances resulted in the process leading to this Hearing being more protracted and difficult than it should have been and would normally have been.
2. Ms. McLaughlin, Enforcement Counsel for the Association, was seeking, in August, 2008, advice from Mr. Abells, Counsel for the Respondent, of whether the Respondent intended to file a Response to the Notice of Hearing (which response was already overdue) and/or to respond to the draft Agreed Statement of Facts which she had forwarded to Mr. Abells in May, 2008. Mr. Abells replied that he intended to file a Response and also would be working on an Agreed Statement of Facts. He advised that due to commitments to the Court of Appeal he would not be able to attend to the matter until September 15.
3. The Association learned from Mr. Abells, on September 4, and subsequently through a Notice of Termination on September 11, that Mr. Lamontagne's employment with CIBC Investor Services Inc. ("CIBC") had been terminated. It appeared to the Association that the reasons for termination were different, in part, from the alleged misconduct outlined in the Notice of Hearing (below). Ms. McLaughlin suggested an adjournment of the Hearing, then scheduled for October 1, 2 and 3 in order that the Association might review the circumstances of Mr. Lamontagne's termination from CIBC. Counsel were unable to agree on the adjournment, Mr. Abells advising Ms. McLaughlin that an adjournment beyond a couple weeks was problematic for Mr. Lamontagne and advising that "it is essentially a guilty plea". Ms. McLaughlin submitted a Notice of Motion and supporting Affidavit in support of an application for adjournment. In a conference call involving Ms. McLaughlin, Mr. Abells and the Panel Chair, it was agreed that the Hearing would be adjourned until December 11 and 12, and an Order issued accordingly.
4. Ms. McLaughlin, on November 21, advised Mr. Abells that the Association would be proceeding with the Hearing on the basis of the allegations set out in the Notice of Hearing without amendment. On November 21 Mr. Abells indicated that he would review the draft Agreed Statement of Facts with a view to finalizing it and also indicated that he intended to call Mr. Lamontagne as a witness at the Hearing to give oral evidence on the penalty issue; he agreed to provide a Witness Statement setting out a summary of the Respondent's testimony. Later on November 21, Mr. McLaughlin advised Mr. Abells that the Respondent's Witness Statement was required no later than December 1 and a response to the draft Agreed Statement of Facts was required during the week of November 24 in order to incorporate it in the Hearing Book. Mr. Abells, on November 27, sent an e-mail message to Ms. McLaughlin advising that he would be in the Court of Appeal on December 2 on *ASC v. Ironside (Blue Range)* (a well-known very extensive proceeding) and would not be able to meet with his client until after that appearance but would get the Witness Statement and Agreed Statement of Facts to Ms. McLaughlin by December 5. On November 27 Ms. McLaughlin sent a letter by fax to Mr. Abells advising that his proposed course of action was not acceptable and that she intended to apply to the Hearing Panel on December 11 to accept as proven the facts and violations alleged in the Notice of Hearing; she also advised of her intention, if necessary, to apply to the Hearing Panel for an Order excluding the oral evidence of Mr. Lamontagne. She further advised that if the Association was required to prove their case by tendering evidence before the Hearing Panel, she would seek an adjournment of the December 11, 12 hearing and an order for costs against Mr. Lamontagne relating thereto.
5. On December 4 Mr. Abells, by e-mail to Ms. McLaughlin, requested clarification relating to three paragraphs of the Agreed Statement of Facts and stating that otherwise the draft Agreed Statement of Facts could be finalized subject to the Association agreeing that "the facts may be augmented by Mr. Lamontagne when he testifies". He advised that he would be sending to Ms. McLaughlin a "will say of the Respondent's anticipated evidence".

6. On December 5, Ms. McLaughlin advised Mr. Abells that she had prepared a Notice of Motion, and supporting Affidavit, seeking the foregoing Order. She advised that she was not prepared to acknowledge that Mr. Lamontagne could augment the Agreed Statement of Facts with oral testimony and that she had understood, from their discussions, Mr. Lamontagne would be called to speak to the issue of penalty only, subject to receipt of a Witness Statement summation of that testimony. She advised that if she and Mr. Abells were able to have the issues of the Agreed Statement of Facts and Respondent Witness Statement resolved to her satisfaction well in advance of the Hearing it would not be necessary to proceed with the Association's Motion. On December 5 Mr. Abells sent to Ms. McLaughlin the Agreed Statement of Facts with his signature and a Witness Statement outlining Mr. Lamontagne's anticipated evidence. The Agreed Statement of Facts was stated as being provided "subject to our client testifying without objection". Finally, on December 5, Ms. McLaughlin advised Mr. Abells that she would be objecting to Mr. Lamontagne presenting oral evidence at the Hearing and would be proceeding with her application for an Order disallowing the oral testimony of Mr. Lamontagne.
7. At the commencement of the Hearing on December 11, Ms. McLaughlin began with her application for the Order (above). The Panel shortly interjected, feeling that the impasse was unfortunate but that there should be a means of resolving it and proceeding with the Hearing on the basis of penalty only. Mr. Abells advised the he was prepared to proceed on that basis and that he would withdraw his condition regarding the Agreed Statement of Facts. Ms. McLaughlin advised that the Association was placed in a difficult, prejudicial, position by the late Witness Statement because there was not adequate time for the Association to investigate whether several of the aspects of the proposed evidence were accurate or not. (One aspect of the evidence bore out her concern but, as will be apparent, below, the Association has not been prejudiced by its admission.)
8. Mr. Abells responded that he has "never had this much trouble pleading guilty" and that he has "attempted to accommodate the Association at every opportunity". (Ms. McLaughlin, understandably, took exception to the latter statement.) Mr. Abells referred to the very difficult schedule he faced because of the Blue Range case. He said he and Ms. McLaughlin had attempted to reach agreement on penalty, without success, and that the evidence to be given by Mr. Lamontagne would relate only to penalty and to why Mr. Lamontagne "has learned his lesson". He referred to Mr. Lamontagne having been interviewed under oath twice by the Association.
9. With a brief adjournment, and discussion, it was suggested, and agreed, that the Hearing proceed in the normal course and oral evidence of Mr. Lamontagne would be subject to rulings on any objections and be admitted or not admitted, and judged, by the normal standards of relevance and weight.
10. While we empathize with Mr. Abells for his required intensive immersion in the Blue Range case, we certainly understand Ms. McLaughlin's frustration and the difficult position she has been placed in by not being able to get the Agreed Statement of Facts and Witness Statement provided on a timely basis.
11. In addition to the documents referred to above, relating to the correspondence and Notices of Motion, Counsel for the Association had earlier provided two Hearing Books and a binder of "IIROC Documents" to Mr. Abells and the Panel Members. At the Hearing a number of documents (referred to below) were marked as exhibits including a binder of "IIROC Documents" (Exhibit 4).
12. The proceedings were recorded by Court Reporters.

## **2. NOTICE OF HEARING (INCLUDING PARTICULARS, PENALTIES AND COSTS)**

13. The following is the Notice of Hearing dated July 2, 2008:

**TAKE NOTICE** that pursuant to Part 10 of Dealer Member Rule 20 and to Section 1.9 of Schedule C.1 to Transition Rule No. 1 of the Investment Industry Regulatory Organization

Canada (IIROC), a hearing will be held before a hearing panel of the IIROC (Hearing Panel) on October 1, 2 and 3, 2008, at Alberta Securities Commission, 6<sup>th</sup> Floor, Hearing Room "A", 300 - 5 Avenue SW, Calgary, Alberta, at 10:00 am, or as soon thereafter as the hearing can be heard.

**TAKE FURTHER NOTICE** that pursuant to Rule 6.2 of the Dealer Member Rules of Practice and Procedure, the hearing shall be designated on the:

- X The Standard Track
- The Complex Track

**TAKE FURTHER NOTICE** that on June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (IDA) and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for the IDA to carry out its regulatory functions with respect to the conduct of IDA Members and registrants occurring before June 1, 2008.

**THE PURPOSE OF THE HEARING** is to determine whether Dustin Rene John Lamontagne (Respondent) has committed the following contraventions that are alleged by Staff of IIROC, on behalf of the IDA (Staff):

#### **Count 1**

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.\

#### **Count 2**

The Respondent, while a Registered Representative with the Member, CIBC Investor Services Inc. (CIBC), and particularly, on or about October 23, 2006, misled CIBC by providing false information to CIBC in respect of client signature irregularities, all involving 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.

### **PARTICULARS**

**TAKE FURTHER NOTICE** that the following is a summary of the facts alleged and intended to be relied upon by Staff at the hearing:

#### **General**

1. By COMSET memorandum dated February 8, 2007, CIBC Investor Services Inc. (CIBC) notified the Investment Dealers Association of Canada (IDA) that the Respondent was the subject of an internal investigation and had been found to have forged several client signatures on Investment Plans and Financial Advice Disclosure Agreements dated Between April and July 2006.
2. On or about February 8, 2007, a CIBC Disciplinary Panel ratified internal disciplinary action imposed upon the Respondent, as follows:

- Letter to Human Resources file with the Member;
- Forfeiture of 2006 deferred compensation of \$73,789;
- Close supervision of trade practices, audit reviews, and compliance for a period of 6 months;

Rewrite of the CPH by March 31, 2007; and  
 To obtain legitimate signatures on all forged documentation no later than  
 February 28, 2007

3. CIBC has confirmed that the Respondent fulfilled all internal disciplinary requirements.
4. An IDA investigation in respect of the Respondent's alleged misconduct was commenced and an opening letter was sent to the Respondent, by registered mail, dated July 4, 2007, advising the Respondent of the IDA's investigation.

**Background of the Respondent**

5. The Respondent has been duly registered and approved as follows:

<b>Registration Category</b>	<b>Registration Termination Date</b>	<b>Employer Termination Date</b>	<b>Registration</b>
05/1996 Mutual Fund Representative	03/2000	Royal Bank of Canada	
07/17/2001 Representative	08/18/2003	CIBC Investor Services Inc. (Retail)	Investment
08/18/2003 Representative	12/31/2004	CIBC Financial Planning Inc.	Registered (Retail)
12/31/2004 Representative	Present	CIBC Investor Services Inc.	Registered (Retail)

6. The Respondent is currently employed with CIBC Investor Services Inc. as an Investment Specialist.
7. On June 1, 2008, the Respondent became a regulated person of IIROC.

**Summary of Events**

8. At the material time, as an Investment Specialist, the Respondent would prepare Investment Plans for clients referred to him by Investment Advisors at CIBC. The Investment Plan was prepared and presented to the client either by the Respondent and the Advisor, or either of them independently.
9. Investment Plans were required to be signed by the clients, which signatures would typically be obtained at the time of the client's acceptance of the Investment Plan. The failure to have the client signature on the Investment Plan form would result in a negative finding on an internal audit.
10. Client signatures were not necessary for the implementation of Investment Plans, unless account assets exceeded \$500,000 or the plan involved managed monies in excess of \$100,000.
11. At the material time, CIBC conducted random internal audits of Investment Specialist's files at least once every year. The Respondent's files were subject to internal audits on nine (9) occasions prior to October 2006.
12. The Respondent had received an unsatisfactory (red) audit rating of his files after an internal audit conducted on August 24, 2006.
13. The Respondent was aware that CIBC management had some discretion regarding the awarding of annual bonuses and, in particular, he was aware that should he receive a

second unsatisfactory (red) audit rating, he would not receive his annual bonus (calculated as 20% of annual gross commissions).

14. The Respondent anticipated receiving an annual bonus amount of approximately \$83,000 upon achieving an overall satisfactory (green) audit rating for the year 2006.
15. On October 23, 2006, the Respondent was notified by CIBC that he would again be subject to an internal audit of his files. The Respondent has stated that he was unable to completely prepare his files for the October 2006 audit. The Respondent was aware that some of his files were deficient, in that client signatures were missing from several investment Plans and Financial Advice Disclosure documents.
16. For the October 23, 2006 audit the CIBC auditor randomly selected several of the Respondent's files and through the review process identified irregular client signatures relating to six (6) client files. The suspicious client signatures were all on Investment Plans and Financial Advice Disclosure documents.
17. The CIBC auditor confronted the Respondent about the identified irregular client signatures at the time of the October 2006 audit. The Respondent denied forging any of the identified irregular client signatures, at that time.
18. On December 8, 2006, the Respondent was questioned formally by CIBC about the identified irregular client signatures and, at that time, he admitted to committing forgeries of client signatures relating to six (6) of his client files.
19. On or about January 8, 2007, the Respondent admitted to CIBC that he committed client signature forgeries relating to a further three (3) of his client files.
20. The Respondent admitted to IDA Staff that he committed thirteen (13) client signature forgeries on twelve (12) Investment Plans and Financial Advice Disclosure documents dated between April and August 2006.
21. The client signature forgeries were all committed during the period August 24, 2006 to October 23, 2006.
22. There are no client complaints relating to the Respondent's misconduct.
23. All clients affected by the Respondent's misconduct had consented to and received copies of their Investment Plans.
24. There was no direct benefit to the Respondent from his misconduct as referenced above.

### **Conclusion**

25. Staff submits that the Respondent's conduct as referenced herein was in violation of IDA By-law 29.1, in that he committed forgeries of thirteen (13) client signatures and, further, that he misled CIBC by initially denying the acts of forgery of client signatures.
26. The Respondent has no disciplinary history with the IDA or with IIROC.

.....

### **RESPONSE TO NOTICE OF HEARING**

**TAKE FURTHER NOTICE** that the Respondent must serve upon Staff a Response to the Notice of Hearing in accordance with Rule 7 of the Rules of Practice and Procedure within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a

Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

### **FAILURE TO RESPOND OR ATTEND HEARING**

**TAKE FURTHER NOTICE** that if the Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the Rules of Practice and Procedure:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions alleged by Staff in the Notice of Hearing; and
- (c) order penalties and costs against the Respondent pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

*[Hearing Panel note: The Respondent did not serve a Response to the Notice of Hearing but, as described in section 1 of this Decision (above) entered into an Agreed Statement of Facts (below) admitting to the allegations in the Notice of Hearing.]*

### **PENALTIES & COSTS**

**TAKE FURTHER NOTICE** that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Notice of Hearing, the Hearing Panel may, pursuant to Dealer Member Rules 20.33 and Dealer Member Rules 20.34, impose any one or more of the following penalties:

#### **Where the Respondent is/was an Approved Person:**

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
  - (i) \$1,000,000 per contravention; and
  - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
- (c) suspension of approval for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued approval;
- (e) prohibition of approval in any capacity for any period of time;
- (f) termination of the rights and privileges of approval;
- (g) revocation of approval;
- (h) a permanent bar from approval with the IIROC; or
- (i) any other fit remedy or penalty

....

**TAKE FURTHER NOTICE** that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may pursuant to Dealer Member Rules 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

### **3. DISCIPLINARY SANCTION GUIDELINES**

14. Extracts from the Association’s “Disciplinary Sanction Guidelines” follow:

## **GENERAL PRINCIPLES**

The following principles and rules are proposed to provide a framework for assessing the gravity of a particular breach of the Association’s By-laws, Regulations, Rules and Policies, and help to determine which sanction(s) is reasonable in the circumstances.

### **1. Main Concerns When Determining An Appropriate Penalty**

As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26, at page 3, a Hearing Panel’s main concerns in determining an appropriate penalty are:

1. Protection of the investing public;
2. Protection of the Investment Dealers Association’s membership;
3. Protection of the integrity of the Investment Dealers Association’s process;
4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration.

The penalty imposed in a specific proceeding should reflect the Hearing Panel’s assessment of the measures necessary in the specific case to accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent’s conduct and specific and general deterrence.

### **2. Disciplinary Sanctions As Deterrence**

Registrants and Member firms have significant responsibilities that they must meet if investors are to be protected and market integrity maintained. Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators. Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.

General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant’s specific misconduct, but also being in line with industry expectations. As was observed by the Hearing Panel in *Re Mills*, [200] I..D.A.C.D. No. 7, April 17, 2001, at p. 3:

*Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association’s disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrence effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.*

However, an important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on “repeat offenders”. For this reason, when appropriate, a Hearing Panel should consider a respondent’s relevant disciplinary history in determining sanctions. Relevant disciplinary history may include (a) past misconduct similar to that at issue; or (b) past misconduct that, while unrelated to the misconduct at issue, evidences prior disregard for regulatory requirements, investor protection, or commercial integrity. Even if a respondent has no history of relevant misconduct, however, the misconduct at issue may be so serious as to justify a higher penalty.

### **3. Key Considerations When Determining Sanctions**

The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list additional factors. This list is illustrative, not exhaustive, and the Hearing Panel should consider case-specific factors in addition to those listed here and in the guidelines. Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the gravity of the misconduct and the relative degree of responsibility of a respondent. To properly assess the gravity of specific misconduct, the decision-maker should look to a number of factors, including, but not restricted to the following:

*[Hearing Panel note: The factors are listed, below, without the extensive explanatory comment related to each factor.]*

- 3.1 Harm to Clients, Employer and/or the Securities Market
- 3.2 Blameworthiness
- 3.3 Degree of Participation
- 3.4 Extent to which the Respondent was Enriched by the Misconduct
- 3.5 Prior Disciplinary Record
- 3.6 Acceptance of Responsibilities, Acknowledgement of Misconduct And Remorse
- 3.7 Credit For Cooperation
- 3.8 Voluntary Rehabilitative Efforts
- 3.9 Reliance on the Expertise of Others
- 3.10 Planning and Organization
- 3.11 Multiple Incidents Of Misconduct Over An Extended Period Of Time
- 3.12 Vulnerability of Victim
- 3.13 Failure to Cooperate with the Association's Investigation
- 3.14 Significant Economic Loss to the Client and/or Member Firm

#### **4. Use of Sanctions**

As set out above, sanctions should be remedial in nature and “fit” the misconduct, Sanctions should effectively address the conduct in question in such a way as to discourage and prevent future misconduct by the respondent, and at the same time, promote general adherence to industry rules and standards.

##### **4.1 Fines**

....

##### **4.1.2 Credit for Internal Sanctions**

In imposing sanctions, a credit should be accorded for any fine or suspension that may have been imposed upon a respondent by his/her own Member firm arising out of internal disciplinary action.

....

##### **4.3 Suspension Of Association Membership or Approved Persons Status**

##### **4.3.1 Suspension**

A suspension may be appropriate where:

there have been numerous serious transgressions;  
 there has been a pattern of misconduct;  
 the respondent has a disciplinary history;  
 the misconduct has an element of criminal or quasi-criminal activity; or  
 the misconduct in question has caused some measure of harm to the integrity of the securities industry as a whole.

#### **4.3.2 Permanent Bar From Approval or Expulsion/Termination of Membership**

....

##### **Guideline 1.2 Forgery: Association By-law 29.1**

Forgery is the creation of a false document with the intent that it be acted upon as the original or genuine document.

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 Member firm as well. As a result, forgery often attracts severe sanctions. While there is no such thing as a “minor case” of forgery, Hearing Panels may distinguish between more and less egregious examples of forgery.

##### Considerations in Addition to General Principles:

##### Recommended Sanctions:

- |  |   |
|--|---|
| 1. Nature of document(s) forged.   | Fine: Minimum of \$25,000 for Approved Persons; minimum of \$100,000 for Member firms.          |
| 2. Number of documents forged  | In the absence of mitigating circumstances a permanent ban on approval will be appropriate.     |
| 3. Client(s) knowledge/consent.  |   |
| 4. Loss of client(s).  | If mitigating circumstances exist, consider suspension for 3 months to 10 years.                |
| 5. Respondent’s intent.  |   |
| 6. Whether the Respondent was unjustly enriched and obtained/attempted to obtain a financial benefit from the forgery. | Re-write CPH.<br><br>Fine should include the amount of any financial benefit to the Respondent. |
| 7. Whether the Respondent concealed/attempted to conceal their conduct from the Member firm or the Association.        |   |

##### **Guideline 5.5 Misrepresentations**

Negligently or knowingly misrepresenting facts to clients or a Member firm may result in a contravention of Association By-law 29.1. The misrepresentation, the context in which it was made, and the motivation for it (if any) are significant factors to be considered.

Considerations in Addition to  
General Principles

1. Was the misrepresentation intentional or negligent?
2. To whom was the misrepresentation made?
3. Did anyone rely on the misrepresentation?
4. Was the misrepresentation corrected subsequently
5. Did the Respondent benefit in anyway from the misrepresentation?

Recommended Sanctions

Fine: Minimum of \$15,000 for Approved Persons and \$50,000 for a Member firm.

Disgorgement of any benefit received as a Result of misrepresentation.

In egregious cases, a permanent ban on approval or termination of membership should be considered.

**4. AGREED STATEMENT OF FACTS**

15. The Agreed Statement of Facts is in the same form as the “Particulars” in the Notice of Hearing (set out at pp. 4 - 9 above) with the following exceptions (by reference to paragraph numbers in the “Particulars”):
  1. “Financial Advice Disclosure Agreements” is changed to “Financial Advice Disclosure Acknowledgements”.
  2. “CPH” is changed to “Conduct Practices Handbook”.
  9. The words are added after “internal audit”: “Of the Respondent’s files”.
  15. In the second sentence the words “has stated that he” do not appear.
  20. “IDA” is changed to “Association”. The following sentence is added: “These thirteen (13) client signature forgeries relate to the same nine (9) client files identified by CIBC, referenced in paragraphs (19 and 20) above.”
  24. The following words are added at the commencement of the sentence: “Other than obtaining a satisfactory (green) audit review”.
  25. Deleted
  26. “IDA or with IIROC” is changed to “Association”.

**5. FURTHER EVIDENCE**

16. To provide particulars of action taken by the Association to which Mr. Abells had objected (section 1, above) (1) documents including News Releases, a letter from the Association to the RCMP, a memo of Mr. Gauthier and correspondence between Mr. Abells and Mr. Funt, Vice President, Western Canada, of the Association, were admitted as Exhibit 2 and (2) an Affidavit of Mr. Funt was admitted as Exhibit 3. In the News Release, dated July 17, 2008, which was published on the Association website and distributed to the media, notice was given that a hearing had been scheduled to deal with the two allegations against the Respondent which were set out as follows:
  1. 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.

2. the Respondent, while a Registered Representative with the Member, CIBC Investor Services Inc. (CIBC), and particularly, on or about October 23, 2006, misled CIBC by providing false information to CIBC in respect of client signature irregularities, all involving 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.

17. The next paragraph in the News Release included the sentence:

The matter has been reported to the appropriate police authorities.

18. The letter from Mr. Gauthier to the RCMP Commercial Crime Section in Edmonton, dated September 12, 2007 (Exhibit 2D) includes:

It is our policy to alert police agencies when we become aware of the possibility that a registrant of our Association has conducted unlawful activity.

Lamontagne is currently employed as a Registered Representative with CIBC Investor Services Inc. in Edmonton, Alberta. We recently opened an investigation into his conduct as he forged nine client signatures on financial plans. It appears that he did so in order to avoid an unsatisfactory audit finding. He did not obtain any direct financial benefit from the forgeries, and no client suffered a loss.

19. The RCMP advised Mr. Gauthier that the letter would be recorded in its system but they would not investigate since there were no client losses (Exhibit 2E).
20. Mr. Abells sent a letter to Mr. Funt dated August 14, 2008 (Exhibit 2F) in which he stated that the reference in the News Release to the matter being "reported to the appropriate police authorities" is "in our opinion both defamatory and in breach of a duty which IIROC owes to Mr. Lamontagne". Regarding the alleged forgery of 13 client signatures on "client account documentation", Mr. Abells stated in his letter:

Predictably readers took this to mean that Mr. Lamontagne had stolen funds from his clients. In this sense, the published words are defamatory. Further, "client account documentation" is typically understood to mean account application documents required by IIROC rules. The documents in question are actually other internal CIBC supporting documents, referred to by Mr. Gauthier in his letter to Sergeant Jespersion as "financial plans", a distinction expressly drawn to Mr. Gauthier's attention by Robert Ruzza, branch manager for Mr. Lamontagne's employer. The failure to make the same distinction in the press release exacerbated the defamatory meaning of the words published.

After publication of the press release, the private banking division of Mr. Lamontagne's employer advised Mr. Lamontagne that it will no longer invite its high net worth clients to meet with him. Others at his employer have indicated the same thing. Mr. Lamontagne estimates that he will lose between \$120,000 and \$150,000 in income this year alone.

Additionally, in the publication of the Notice of Hearing on your website, IIROC included particulars of Mr. Lamontagne's private and confidential information, including the amount and manner of calculation of his annual bonus. We suggest that this was a gratuitous and unnecessary breach of Mr. Lamontagne's privacy rights.

Mr. Lamontagne is considering an action for damages. Should IIROC consider publishing a full and fair retraction and apology, I suggest that a form be reviewed and approved by me prior to publication.

Please note that we intend to inform the panel hearing this disciplinary matter of these circumstances in further mitigation of any penalty it may consider.

21. Mr. Funt replied to Mr. Abells by letter dated August 27, 2008 (Exhibit 2G) advising that “a retraction and apology will not be forthcoming”. He went on to state:

The wording in the Enforcement Notice of which your client takes offence to is, first and foremost, factually accurate. The statement in the Enforcement Notice that the matter has been referred to “appropriate police authorities” is standard wording used in Enforcement Notices in circumstances where the conduct under review is potentially criminal in nature. IIROC has a public duty and established practice to refer potentially criminal matters to the police authorities.

The wording in the Enforcement Notice relating to the Respondent’s bonus monies is factual information relevant to the matter under review and is factual information which the hearing panel may want to consider, if and, when it deliberates the issue of sanction. As a registrant with IIROC and participant in the securities industry, the Respondent does not enjoy a strict expectation of privacy. He has contracted with IIROC to disclose any and all relevant factual information in the circumstances of this disciplinary matter, and other circumstances relating to his registration status with IIROC.

22. In an Affidavit in these proceedings, sworn December 4, 2008 (Exhibit 4), Mr. Funt incorporated the Recognition Order regarding the Association from the Alberta Securities Commission and referred to “IIROC (having) a directive to share information and cooperate with financial intelligence or law enforcement agencies or authorities, among others”.
23. Mr. Lamontagne testified under oath. He is 34 years of age, married with 2 children. He graduated in 1996 from the University of Manitoba with a Bachelor of Commerce in Finance. Commencing 1996 he took the training program with the Royal Bank of Canada and worked with that Bank as an Investment Retirement Planner for five years. He joined CIBC in 2001 and engaged in their training program. He took the Canadian Securities course and the Personal Financial Planning program. He qualified as a Chartered Financial Planner and a Personal Financial Planner. During his several years with CIBC he dealt with 600 - 700 appointments a year in a “high volume, high sales environment”. He would meet with high net worth clients, develop their plans and either handle their investments himself or refer them to “the most appropriate” people in the Bank. He testified that he has never had a client complaint. (In cross-examination he acknowledged that there was a client complaint in 2003 regarding discretionary trading for which he was disciplined and “had to rewrite”.)
24. Mr. Lamontagne described the Investment Plans and Financial Advice Disclosure documents which he forged as “roadmaps regarding investment plans” based on the client’s overall financial picture. In the case of each forgery he had met with the client and presented the Investment Plan to the client for approval but did not obtain a signature at the time. The Financial Advice Disclosure documents he described as “cover your butt” documents which are required by the Bank for every client interaction to show the relationship with the client and to calculate “how we get paid”. He said those documents are in addition to Know Your Client and other regulatory forms.
25. Mr. Lamontagne testified that he was the top investment specialist with the Bank in Western Canada and second in Canada, for five successive years. He had prepared 16 - 18 plans a month on average. Supervision by the Bank involves one or two audits a year. He said “most of the time I got a green (above and beyond requirements) or amber audit”. He testified regarding a red audit which he received in August, 2006:

Typically when an auditor comes in he'll be looking for deficiencies. We can't be expected to have 100% i's dotted and t's crossed. They may give us an opportunity to (rectify deficiencies). I wasn't there that day. It had nothing to do with forgeries. I was just too busy to do everything. (A red audit) is detrimental. To get a bonus you have to be in good standing. Two red audits in a row you (do not get a bonus).

26. Regarding the forgeries in the fall of 2006, and not initially admitting them in a conversation with the CIBC auditor, Mr. Lamontagne testified:

I was overwhelmed. I only had one-quarter share of an assistant and needed a full assistant. I was by far the busiest planner in Western Canada and had been for a few years. I knew my bonus depended on (not getting a red audit).
27. He said that he had not done anything like the forgeries in the past or since. He said that he admitted it to the CIBC Enforcement Department in December, 2006. His next audits in early 2007 and September, 2007 were green audits.
28. He said that as part of the "close supervision" under which he was placed, e-mails were sent by the Bank to those with whom he worked.
29. Mr. Lamontagne described how his 2006 deferred compensation of \$73,789, based on 20% of gross commissions, was forfeited. He said the close supervision, which was to be for six months, continued until his employment with CIBC was terminated on September 4, 2008. Prior to that he successfully rewrote the Conduct Practices Handbook exam. He also "obtain(ed) legitimate signatures on all forged documentation" prior to February 28, 2007, as required by CIBC. On instructions from CIBC he did not tell the clients about his having forged their signatures.
30. In the spring of 2007 he had discussions with the TD Bank resulting in a "very favourable offer" of employment which he accepted. On or about July 4, 2007 he received the letter from Mr. Funt (Tab 8 of Exhibit 4) advising that the Association would be "investigat(ing) allegations that you forged clients signatures on account application documents". (Hearing Panel note: As indicated above, the documents were misdescribed.) Mr. Lamontagne informed the TD Bank of the investigation. The TD Bank initially lowered its offer but when he met with TD Bank Compliance and "told them all the facts they wanted to wait and they rescinded the offer".
31. Mr. Lamontagne stated that on October 27, 2007, he met with his boss, Mr. Ruzza, the Regional Sales Manager. Mr. Ruzza told Mr. Lamontagne he would not be getting a 2007 bonus (which Mr. Lamontagne estimated to be in the range of \$100,000) and that he was being reassigned from the south side of Edmonton to the north side which Mr. Ruzza described to him as being "to facilitate my close supervision". Mr. Lamontagne protested, pointing out that the close supervision was to have ended by then, and he sought legal advice. In cross-examination he acknowledged that he had received notice from CIBC that they were extending the period of close supervision but he had not earlier provided that information to the Association because: "I didn't think I needed to provide it". He was advised by legal counsel that, because he had built up a relationship and business with clients, the reassignment (from the south side to the north side) was "constructive dismissal".
32. CIBC offered to pay Mr. Lamontagne "\$35,000 per month for six months (January to June, 2008, a total of \$210,000) as compensation to let me build up a new sales relationship and get back up to where I was".
33. Mr. Lamontagne testified that his July, 2008 audit was amber. He explained:

In the switch of territories there were 3 or 4 investment specialists who took over the south side. We were required to do updates in 90 days. It was impossible with all the switch. We each had accounts on each others codes, so there was an automatic amber.

34. Mr. Lamontagne said that the News Release by the Association (pp. 14, 15 above) came to his attention when the Mutual Funds Department e-mailed it to everyone in his area. The Private Banking group were “told by their boss that she did not want me meeting with her clients”. He was told that she took that position because of the News Release referring to the matter being “reported to the appropriate police authorities”. He said that aspect of the News Release was “very detrimental to me”. He testified:

I went to Employee Relations and said (the Bank) can’t keep punishing me. I was soon fired so I didn’t get to start things with ER. I knew it was only a matter of time before I’d be asked to leave once they lost faith in me.

35. The letter of termination from CIBC to the Mr. Lamontagne was dated September 4, 2008 (Exhibit 2H) and states simply that his employment “is terminated for a cause and without payment”. Regarding the termination Mr. Lamontagne testified:

It was based on a sales ticket being in error and a report I sent to the Financial Planners Standard Counsel (for renewal) in which they asked if I was under investigation. The Bank told me to answer “no” because it was not public. They used it to fire me. I told the Financial Planners Standard Council I was terminated and there was an investigation (by the Association). I’ll likely have my Chartered Financial Planner Designation revoked and be suspended for a period of time as well.

36. Mr. Lamontagne testified that, despite attempts by him, he has not been employed since September 4, 2008 and has received no compensation. He agreed that he has not submitted any documentation to the Association regarding his efforts to obtain employment but reiterated “I have attempted (to get employment)”. He said he has no evidence that the rejections of his attempts to obtain employment were related to the forgery matter.

37. In cross-examination Mr. Lamontagne said he did not realize he had to file a Response to the Notice of Hearing. (Hearing Panel note: The seeming impasse between Counsel which developed is discussed in section 1 of this Decision.) It was suggested to Mr. Lamontagne in cross-examination that the TD Bank offer had nothing to do with this matter; he responded:

I disagree. The fact another company sought my services and then rescinded (their offer) because of this shows the price I’ve had to pay. I wanted a back-up plan. I could lose my job (at CIBC).

38. There was the following exchange between Counsel and Mr. Lamontagne in cross-examination:

Q: It was the fact of misconduct that created the circumstance; if you’d approached (TD Bank) after it was made public there would have been no offer?

A: I don’t know.

39. Counsel for the Association tendered documents (Exhibit 5) relating to the Financial Planning Standards Counsel 2008 attestation form in connection with the renewal of certification of Mr. Lamontagne. In answer to a question in the form about whether he was under investigation or subject to discipline, Mr. Lamontagne had answered “no”. He said that his manager, Mr. Ruzza, had told him he did not think he had to disclose it because “it had not been made public, so I said ‘no’”. Mr. Lamontagne testified that when he asked Mr. Ruzza six months later whether he recalled the discussion, Mr. Ruzza “didn’t recall”. The documents in Exhibit 5 include “the following responses made by Robert Ruzza” (in answer to questions put by the Association):

1. Provide comments and descriptions of any conversations you may have had with Mr. Lamontagne **prior** to him completing and submitting the 2008 FPSC Attestation form, including but not limited to:

Did you have any conversations relating to the questions on the form? **No.**

Did you provide any advice or direction on how to answer the questions? Specifically in relation to Item 1.c) - which discusses disclosure of investigations or inquiries of any self-regulatory body. **No**

2. Provide comments and descriptions of any conversations you may have had with Mr. Lamontagne **after** he completed and submitted the 2008 FPSC Attestation form. Including but not limited to:

When did you review the form? **On or shortly before Feb 29/08**

Were you aware that Mr. Lamontagne answered “No” to Item 1.c)? If yes, did you report it to anyone? **Once I reviewed it I saw that Dustin answered “no” to Item 1.c and I reported it to our Employee Relations for direction/advice on Feb 29/08 by email.**

Did you ever question Mr. Lamontagne about his responses on the form? **ER and Compliance were both looking into the matter and it wasn’t until September 4 that the matter was brought to Dustin’s attention.**

40. When the foregoing was put to him Mr. Lamontagne responded: “I’m not a liar”.
41. At the end of Mr. Lamontagne’s testimony there was the following exchange between Panel Members and Mr. Lamontagne:

Q: You showed (the clients) the completed documents but didn’t have them signed?

A: Yes. I was concentrating on getting the (main) documents signed, some got missed.

Q: How do you rationalize why they got missed?

A: The volume of documents...if there is not an audit coming up they sometimes don’t get signed until the next attendance (with the client).

## 6. ARGUMENT OF THE ASSOCIATION

42. Ms. McLaughlin, Counsel for the Association, made the following submissions:

1. The Association seeks the following sanctions against the Respondent:

- Fine \$35,000
- Suspension for 6 months commencing the date of Hearing
- Costs of \$31,679.75 (summarized in #11, below)

2. The “Main Concerns When Determining An Appropriate Penalty” and “Disciplinary Sanctions as Deterrence” (both set out above at pp. 9, 10) are very important frameworks for determining the appropriate penalty.

3. Most of the “Key Considerations When Determining Sanctions” (set out above at pp. 10, 11) apply in this case. Any dishonest conduct has the potential to harm the employer, the industry and particularly the clients (although the clients did not suffer harm in this case). The Respondent acted independently and was fully to blame. His motivation was to “enrich” himself by qualifying for the bonus. He misled the CIBC when he initially denied the forgeries although he subsequently admitted his misconduct to CIBC and the Association. He has cooperated since the denial but that is balanced by the initial denial. There were multiple incidents of forgery but it was over a limited period of time so it is not as aggravating a factor as if it had been over an extended period of time.

4. As to the “Use of Sanctions” Guidelines (set out above at p. 11, 12), the Association has taken into account the “internal sanctions” by CIBC including the withholding of the bonus. As a result the Association is seeking a lower fine than it would have otherwise.

5. A suspension of six months is appropriate under the Guidelines. Forgery is a serious transgression and there were thirteen incidents; “the misconduct has an element of criminal or quasi-criminal activity”.
6. As to the specific Guideline 1.2, dealing with forgery (set out above at pp. 12, 13), it was the Respondent’s intent that the “false document be acted upon as the original or genuine document”. Forgery is a “serious regulatory matter and shows that the Respondent lacks the honesty required of a professional in the securities industry”. The Association agrees that distinctions should be made between more and less egregious examples of forgery and that the forged documents in this case were less egregious types of documents than documents such as new client application forms, regulatory documents, guarantees, cheques, etc. The clients had consented to their Investment Plans although they had not signed them. The Respondent was seeking, through the forgeries, to obtain financial benefit, i.e. the bonus, and he did attempt to conceal the conduct. The misconduct goes to character. Although the type of document is a mitigating factor, the document should not be the primary focus in this case.
7. Regarding the contention of the Respondent that the News Release led to all the serious ramifications to the Respondent, it is important to recognize that the other personnel at CIBC did not know about the misconduct until the News Release. Had they known earlier, the same consequences would have occurred earlier. It is also to be noted that at the CIBC investigation, when he was advised he would not be receiving a bonus and he was being given a different territory, CIBC paid him \$210,000 over the transition six months. There was no substantiating evidence that the offer from the TD Bank was rescinded directly as a result of the Association’s investigation.
8. Although he was sanctioned by CIBC, the minimum recommended fine of \$25,000 (Guideline) is, in the Association’s view, considering the related misrepresentation (#8, below) inadequate. Because of the mitigating circumstances the Association is seeking a suspension of only six months rather than a permanent ban; the minimum recommended suspension of three months (Guideline) is not appropriate in the Association’s view.
9. Applying the Guidelines regarding misrepresentation (set out above at p. 13), the Respondent’s initial denial was an intentional misrepresentation which was not corrected for several months. He sought to benefit from the misrepresentation. The minimum recommended fine for misrepresentation is \$15,000 (Guideline) and the minimum fine for forgery (above) is \$25,000. A total fine of \$35,000 is reasonable and appropriate.
10. A number of IDA/IIROC Panel decisions are helpful in assessing the appropriate penalties:
  - Gee* (2004) I.D.A.C.D. No. 58; Bulletin No. 3358, December 2, 2004 (British Columbia District Council) - low end of the scale; terminated and out of work for fourteen months; \$5,000 fine and re-write exams.
  - Holowatiuk* (2004) I.D.A.C.D. No. 64; Bulletin No. 3376, December 29, 2004 (Settlement Agreement) (Alberta District Council) - high end of the scale on both seriousness of misconduct and penalty; permanent ban, fine of \$40,000 and costs of \$5,000.
  - Quimper* (2004) I.D.A.C.D. No. 62; Bulletin No. 3372, December 23, 2004 (Alberta District Council) - low to mid-range of the scale; had been terminated and out of the industry and unemployed for three months; re-employed at a reduced income; no suspension, no costs sought, fine of \$15,000, re-write exams.
  - Bell* (2005) I.D.A.C.D. No. 15; Bulletin No. 3417, May 6, 2005 (Alberta District Council) - low end of the scale; less egregious than some forgeries; Panel said if respondent had not been terminated and out of the industry eighteen months they would have suspended for six months; \$30,000 fine, close supervision, \$3,000 costs. The decision is helpful in setting out general principles regarding forgery.

*Inglis* (2005) I.D.A.C.D. No. 10; Bulletin No. 338, February 16, 2005 (Ontario District Council) - low to mid-range on the scale of seriousness respecting the forgery count; two year suspension; \$15,000 fine, re-write exams, \$15,000 costs (relating to two counts).

11. Little or no weight should be attached to the Respondent's belated unsupported information.

12. The Summary of the Association's costs show investigation costs of \$16,019.25 (152 hours) and prosecution costs of \$15,660.50 (120 hours) for total enforcements costs of \$31,679.75 (the amount being sought as costs). Ms. McLaughlin explained that her time relating to "the second investigation" was substantially reduced in the Summary and the time of an investigator relating to the "second investigation" was not included in the costs being sought. Ms. McLaughlin said more time was required on her part because of having to prepare for three different approaches to the Hearing due to the impasse which developed (section 1 of this Decision).

## 7. ARGUMENT OF THE RESPONDENT

43. Mr. Abells, Counsel for the Respondent, made the following submissions:

1. The opening paragraph of the "Use of Sanctions" Guideline (set out above at p. 11) states well the mandate of the Panel: "Sanctions should be remedial in nature and 'fit' the misconduct, as well as serving as a deterrent". Sanctions should be remedial, not punitive. Panels have to make up their own minds based on the circumstances of each case.

2. The decisions in *Quimper* and *Bell* (both above) of the Alberta District Council Panels chaired by Mr. Spink, who is highly regarded, are of considerable assistance. In particular the "general principles" set out in *Bell* are very instructive. No suspension was imposed in *Bell* because he had been terminated and out of the industry for eighteen months. That approach should be considered in this case.

3. The Respondent has paid a very heavy price for his foolish breach of conduct including his initial denial. Since that time he has admitted his misconduct to the CIBC and the Association and has cooperated throughout the investigation. The price which he has paid includes:

- His employment was terminated
- He lost the 2006 bonus of \$73,000 and the 2007 bonus (estimated at \$100,000)
- He lost a lucrative alternative job offer (which hopefully can be renewed, no doubt in part based on this Panel's Decision)
- He was under an extended period of close supervision and his client base was cut off, in good part

4. As is clear from the decisions of other Panels (above) it is very important to draw a distinction when considering forgery, between forgery of documents which is egregious in that which is less egregious. The documents in this case were not "account application" documents (as they were incorrectly described in the initial letter from the Association to CIBC: Exhibit 2E) and in the Association's letter to the Respondent re its intention to investigate (Exhibit 4, Tab 8). CIBC advised the Association that the documents were "supporting documents" (Exhibit 2E) which the Bank recognized as an important distinction. The documents were "financial plans" which had been approved by the clients, albeit not signed by them. They were correctly described as "financial plans" by Mr. Gauthier in his letter to the RCMP (Exhibit 2D, set out above at p. 15). Mr. Gauthier's actions were scrupulous.

5. The Association was not as scrupulous in its News Release (Exhibit 2A set out above at p. 14, 15) in describing the documents as "client account documentation". That misdescription, compounded by the reference to "the matter (being) reported to the appropriate police authorities" no doubt led to unintended consequences and huge ramifications to the Respondent. The Respondent does not contend that the Association did not have an obligation to report matters to the appropriate authorities. Had the New Release referred to the documents correctly as "financial plans" and advised that the police would

not be investigating because there was no loss suffered by clients, it would have been the whole truth, not part of the truth. The New Release led, in good part, to the consequences outlined above (#3). The Respondent recognizes that everything flowed from his misconduct. The point of his testifying, under oath, was to emphasize the severe consequences which he has suffered and to show that there is no likelihood of such misconduct occurring again.

6. It is important to recognize that the judgement of his employer, the CIBC, was not to terminate him over the forgeries. They terminated him only after the matter became public. They had obviously considered him able to be rehabilitated.

7. Regarding the sanctions sought, the number of hours spent by investigators and counsel are surprisingly high. The claim for costs of \$31,700 seems punitive after all the punishment the Respondent has endured. Costs of \$5,000 and a fine of \$20,000 would be more appropriate and in line with the other Panel decisions. The rationale of the Panel in *Gee* is pertinent: "To be blunt about it, we are hard pressed to understand...what could possibly have taken up 142 hours of an investigator's time". The Panel in *Gee* ordered \$2,500 in costs. The Respondent has already effectively been suspended for three months; the Panel should consider this as a case in which no further suspension is required.

## 8. DECISION

44. The Respondent has admitted, and we find, that the Respondent committed the following contraventions alleged by the Association (with a modification to the Counts as described in the Notice of Hearing, p. 5 above):

### Count 1

The Respondent, while a Registered Representative with the Member, CIBC Investor Services Inc. (CIBC), and particularly during the approximate period August 2006, engaged in the conduct of forgery of thirteen (13) client signatures to the Respondent's client investment plans and financial advice disclosure documents, 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.

### Count 2

The Respondent, while a Registered Representative with the Member, CIBC Investor Services Inc. (CIBC), and particularly, on or about October 23, 2006, misled CIBC by providing false information to CIBC in respect of client signature irregularities, all involving Respondent's client investment plans and financial advice disclosure documents, 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.

(The modification referred to above is to change the words "client account documentation" which was contained in the Counts, to "client investment plans and financial advice disclosure documents.")

45. As is stated in the Forgery Guideline 1.2 (above, p. 12):

Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry....forgery often attracts severe sanctions. While there is no such thing as a "minor case" of forgery, Hearing Panels may distinguish between more and less egregious examples of forgery.

46. In this case it is agreed that the documents forged were of the less egregious type, which is a mitigating factor, but offsetting that factor are:

- The Respondent's intent was to "unjustly enrich" himself (Guideline 1.2) by avoiding being disqualified for a substantial bonus

- He initially denied, and only weeks later admitted, the forgeries

47. We agree with Counsel for the Respondent that he has paid a significant price for his misconduct, including being out of work since September 4, 2008. We recognize that the Respondent has no disciplinary history with the Association, that no client was affected by the Respondent's forgeries, that the Respondent was obviously a very affective investment analysis and top producer, and that it is likely he has learned his lesson. We are persuaded that, as Counsel for the Respondent contended, the inaccurate description of the documents, and the omission of an explanation that there would be no further investigation by the police, were very detrimental to the Respondent. Considering all of the above factors, and being guided by the standards established in the other Panel decisions (above) we would have been inclined to impose a somewhat shorter suspension than six months.
48. However, there is another consideration which, in our view, tips the balance against varying the proposed six month suspension. It is the revelation of character and moral judgement that was manifested by the Respondent answering "no" to the question on the Financial Planning Standards Council renewal attestation as to whether he was under investigation or subject to discipline. He attempted, in his evidence, to deflect blame for that indiscretion onto his manager. It is incredible to us that a person in his predicament, involved in an investigation by the Association and obviously facing discipline, could rationalize a "no" answer. His manager, Mr. Ruzza, in written answer to questions from the Association (Exhibit 5, p. 21 above) denies having advised or directed the Respondent regarding the answer to the question. We recognize that we do not have the benefit of the sworn testimony of Mr. Ruzza, including the benefit of his being cross-examined, so we cannot assess his credibility. However, we take the view that (1) it is very improbable that a manager would risk the consequences of making such an improper suggestion, and (2) even if he did, the Respondent should have had the good sense and moral judgement to reach his own decision as to what was right. The conduct of the Respondent in all these transgressions, including the "no" answer, can aptly be characterized, as the Panel did in Gee, as "an appalling lapse of judgement".
49. In these circumstances we are dissuaded from varying the proposed six month suspension as we believe that a strong message of deterrence must be sent to the Respondent and anyone else in the industry, that this type of misconduct cannot be condoned. We feel it important to add that a more contrite, remorseful approach by the Respondent in his evidence, rather than the impression that he is a victim, would have cast the Respondent in a better light. It was his Counsel, and not the Respondent himself, who contended that the Respondent had learned his lesson.
50. Other than on the issue of costs, we are of the view that a summation of the other Panel decisions is not required. They have been reviewed, and a comprehensive list of considerations regarding forgeries set out (including an analysis of the scale of "egregious" forgeries) in Bell. The circumstances of this case, including the "no" answer, are somewhat different than any of the other cases but we believe our decisions on each of the sanctions fits within the framework established by those decisions. In particular we note that in one case the costs awarded were \$15,000 but in no other case did the costs exceed \$5,000. Although we accept that the investigators and Counsel spent the time claimed, the costs do seem high and to award costs in excess of \$15,000 would be out of line with all the cited decisions.
51. The Panel's decision for the Respondent's breach of Association By-law 29.1 is:
1. Suspension for six months from the date of Hearing (which makes the end of the suspension June 10, 2009).
  2. Fine of \$35,000 to be paid within twelve months of the date of this Decision.
  3. Costs of \$15,000 to be paid within the same twelve months.

January 27, 2009

Alan V.M. Beattie  
Donald W. Milligan  
Peter McWilliams

*Copyright © 2009 Investment Industry Regulatory Organization of Canada. All Rights Reserved.*