

# Re Steinhoff

IN THE MATTER OF:

**THE DEALER MEMBER RULES OF THE  
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

AND

**THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA**

AND

**CAROLANN STEINHOFF**

2010 IIROC 8

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Pacific District)

Heard: November 12, 13, 16 to 19, 23 to 26, December 2 to 4, 2009

Decision: March 5, 2010

(173 paras.)

**Hearing Panel:**

Leon Getz, Q.C., Chris Lay, and Don Teatro

**Appearances:**

Paul J. B. Smith for the Investment Industry Regulatory Organization of Canada

Robert W. Cooper and Joelle Walker for Carolann Steinhoff

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## DECISION

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*Introduction – the Notice of Hearing*

¶ 1 This hearing was convened pursuant to a Notice of Hearing dated June 30, 2009 (the “Notice of Hearing”) for the purpose of determining whether Carolann Steinhoff, while registered at Wellington West Capital Inc. (Wellington) and working at its branch in Victoria, British Columbia, committed certain contraventions of IDA By-law 29.1 and IIROC Dealer Member Rule 29.1. The alleged contraventions are set out in three Counts, as follows:

**Count 1**

From approximately January 2004 until approximately March 17, 2007, the Respondent, while a Registered Representative, and for the later part of said time period, a Co-Branch Manager and Officer at Wellington in Victoria, British Columbia,

1.1 engaged in business conduct or practice that was unbecoming or detrimental to the public interest contrary to IDA By-law 29.1; or

1.2 failed to observe high standards of ethics and conduct in the transaction of her business contrary to IDA By-law 29.1,

in that she encouraged, instructed, or condoned a practice whereby her registered and nonregistered assistants:

- (a) photocopied or cut client signatures from older or unrelated forms and then pasted or copied the client signature on to new forms or letters of direction with different instructions; or
- (b) whited out the instructions and dates but not the signatures on older forms or letters of direction and inserted revised instructions and dates without having the client sign the revised document and faxed them to Wellington's Head Office as properly executed documents.

## **Count 2**

On March 13, 2007 and again on March 14, 2007, the Respondent, while a Registered Representative, Co-Branch Manager and Officer at Wellington in Victoria, British Columbia:

2.1 engaged in business conduct or practice that was unbecoming or detrimental to the public interest contrary to IDA By-law 29.1; or

2.2 failed to observe high standards of ethics and conduct in the transaction of her business contrary to IDA By-law 29.1, in that she directly instructed two different assistants to create a false client Guarantee and fax it to Wellington's Head Office as a properly executed document by:

- (a) changing the date on an approximately 3 year old Guarantee and inserting a new date without having the client sign and then photocopying and faxing it; or
- (b) cutting out the client signature from another document already on file and pasting it on to a new Guarantee and then photocopying and faxing it.

## **Count 3**

In or about March 2007 and subsequently in approximately December 2007 and April, May and October 2008 the Respondent, while a Registered Representative, Officer, and for the first month of said time period, Co-Branch Manager at Wellington in Victoria, British Columbia:

3.1 engaged in business conduct or practice that was unbecoming or detrimental to the public interest contrary to IDA By-law 29.1 and IIROC Dealer Member Rule 29.1;

in that she attempted to frustrate and/or obstruct Wellington's internal investigation and/or Staff's investigation into the conduct alleged in Counts 1 and 2 above by attempting to deceive Wellington and/or Staff investigators by:

- (a) not responding truthfully or completely to Wellington and Staff with respect to her actions and other circumstances relating to the allegations in Counts 1 and 2 above;
- (b) not responding truthfully or completely to Wellington and Staff with respect to her intent when she sent the March 13, 2007 and March 14, 2007 emails referenced in Count 2 above;
- (c) altering a courier delivery receipt and then presenting it to Staff as evidence which corroborated previous statements she made to Wellington and Staff with respect to her actions relating to the allegations in Counts 1 and 2 above; and
- (d) counseling or otherwise encouraging or influencing BR, one of her unregistered assistants, to make evasive or misleading statements to Wellington and Staff that were favourable to the Respondent and consistent with statements the Respondent made to Wellington and Staff with respect to her actions relating to the allegations in Counts 1 and 2 above.

¶ 2 The Notice of Hearing includes some 90 paragraphs of particulars of the main allegations. These were amended by letter on August 24, 2009.

¶ 3 In point of time the three Counts in the Notice of Hearing broadly proceed in sequence. Count 1 relates

to a period between January 2004 and March 17, 2007. It is alleged, briefly, that Mrs. Steinhoff's assistants during this period widely employed a procedure to give effect to client instructions that is referred to as the "cut and paste" procedure involving, in essence, the creation of forged documents, and that Mrs. Steinhoff either counselled, instructed or acquiesced in the use of this procedure. Count 2 relates to events on March 13 and 14, 2007 and revolves around certain emails sent by Mrs. Steinhoff that instructed her assistants to create a forged guarantee. Count 3 concerns the period from March 2007 to October 2008. During this period Mrs. Steinhoff's employer, Wellington, conducted an internal investigation into certain matters covered by the first two Counts and this investigation, in turn, led to a similar investigation by IIROC. It is alleged that Mrs. Steinhoff did various things designed to obstruct those investigations. As will we think become apparent, the three Counts are connected by a fairly intricate fabric of interrelated facts.

#### *The onus and standard of proof*

¶ 4 It is common ground that to succeed in its case against Mrs. Steinhoff IIROC must persuade us, by evidence that is "clear, convincing and cogent" that it is more likely than not that she did what she is alleged to have done in the Notice of Hearing. See *F.H. v. McDougall*, [2008] SCR 53. Evidence that is "fragile or suspect" cannot be relied upon: see *Re Shanahan*, [2006] I.D.A.C.D. No. 5, at paragraph [12].

#### *The dramatis personae*

¶ 5 We begin with a brief account of the principal characters who feature in the reasons that follow.

#### *Mrs. Carolann Steinhoff and her assistants*

##### *(a) Mrs. Steinhoff*

¶ 6 Mrs. Steinhoff holds a B.Sc. degree from Concordia University in Montreal and a certificate in high school science teaching from the University of British Columbia. She pursued, but did not complete, a program of graduate studies leading to an M.Sc. degree in biology at the University of Victoria. Between 1978 and 1986 she worked as a pharmaceutical representative for a leading pharmaceutical company.

¶ 7 Mrs. Steinhoff has worked in the securities industry since 1988. She began at ScotiaMcLeod Inc. where she was a director, senior vice president and investment advisor; then, from 1999 to 2004 she worked at United Capital Securities Inc., where she was a senior investment advisor. In January 2004 she joined Wellington as a partner, senior vice-president and investment advisor. She is currently a senior vice president and investment advisor at Queensbury Securities Inc.

¶ 8 Mrs. Steinhoff has been a certified financial planner since 2004. She has completed numerous courses offered by the Canadian Securities Institute including the Canadian Securities Course, the Canadian Options Course, the Canadian Futures Course, the Partners, Directors and Senior Officers Qualifying Exam, and courses for Canadian Investment Managers, for Branch Managers and for Options Supervisors. In addition to these she has also completed, among others, a course on investment management techniques.

¶ 9 Mrs. Steinhoff has been active in community affairs in Victoria. Her participation on various charitable boards and related philanthropic activity led in 2005 to her being nominated for an award as a Woman of Distinction by the Greater Victoria YWCA.

¶ 10 Mrs. Steinhoff has been very successful in her chosen second career as an investment advisor. She testified that by the time she left Scotia McLeod Inc. in 1999 she was its largest producer in Western Canada and the third largest in the country with a book of around \$225 million. She estimated that in 2006 and 2007 at Wellington her book was of the order of \$125 to \$130 million representing the accounts of approximately 250 clients.

¶ 11 One does not achieve results like these without intelligence, a degree of single-mindedness and dedication. Mrs. Steinhoff impressed us as having all of those qualities: sophisticated, vastly experienced, exceptionally hard-working, energetic and, to a degree, driven. While testifying, however, Mrs. Steinhoff seemed to us to display a highly developed sense of entitlement and station that at times verges on hubris. While she seems to have been a loyal and generous employer of her assistants she was also demanding, at times

impatient, occasionally insensitive and, it was our impression, quick to anger. The combination of the size of her client base, her energy and her demanding and impatient nature was a frequent source of stress to those around her. It is not insignificant, in our view, that Mrs. Steinhoff's relationship with each of her former assistants ended on terms of something less than endearment.

¶ 12 We should say here that in addition to hearing Mrs. Steinhoff give evidence before us, we also had the opportunity to watch and listen to videotaped excerpts from her interviews with IIROC investigators. As a witness on her own behalf, Mrs. Steinhoff did not in our opinion serve herself well. Although she was unfailingly courteous, she often seemed to us, particularly on matters "close to the bone", as it were, more concerned to make an argument, to justify herself or to divine some point she suspected might be hidden behind a question than to provide a direct answer to it. On some of those matters her evidence often seemed to have little connection to the questions put to her, was sometimes rambling and confusing, occasionally unintelligible and, as we shall explain below, in some respects inconsistent and in our view unconvincing. We have come to the conclusion that on some of these "sensitive" matters her evidence simply strains credulity.

(b) *The assistants*

(i) *Kim Christiansen*

¶ 13 Ms. Christiansen has a fairly lengthy history in the securities industry. She has been continuously registered for about 20 years. Between about 1986 and 1990 she worked for several different dealers. In 1990, she joined Scotia McLeod, Inc. where she was employed as a branch administrator for some years. Mrs. Steinhoff was also at Scotia McLeod during this period but they did not work together. Both of them later left that firm. In December 2000 Ms. Christiansen joined Mrs. Steinhoff as her sales assistant at United Capital and when Mrs. Steinhoff moved to Wellington in 2004, Ms. Christiansen went with her. She continued to work for Mrs. Steinhoff until September 2006 when she left to join another dealer. Of all Mrs. Steinhoff's assistants who feature in this case, Ms. Christiansen is the one who worked for her for the longest continuous period – some six years.

¶ 14 Although for most of this period the relationship between Mrs. Steinhoff and Ms. Christiansen was good and mutually supportive, it seems that at some point in the late spring of 2006 it began to deteriorate. Mrs. Steinhoff's evidence was that she began to notice a deterioration in the quality of Ms. Christiansen's work and began to suspect that Ms. Christiansen had a "gambling problem". It seems that the suspicion was well-founded. In August 2006 Ms. Christiansen described Mrs. Steinhoff to Janice Goldsborough, Wellington's human resources officer based in Winnipeg, as a "bully" guilty of "intimidation" and as a "nightmare boss". They did not part on particularly good terms. It is fair to say, however, that Ms. Christiansen seems to have been somewhat less than straightforward in her relationship with Mrs. Steinhoff. At the same time that she was complaining to others of Mrs. Steinhoff's alleged bullying and intimidation, she was protesting her loyalty to and admiration of her.

(ii) *Jane Trites*

¶ 15 Jane Trites has been a registrant for about 15 years. She worked originally for a discount brokerage based in eastern Canada; but in 2006 moved to British Columbia to be closer to her family. In June 2006 she was hired by Mrs. Steinhoff. Ms. Trites testified that her original understanding of the position that she was hired to fill was that of an associate – that is, someone who would assist in developing Mrs. Steinhoff's clientele and who would be providing service, based on Mrs. Steinhoff's investment ideas, to the clients whom she attracted. She said, however, that in fact her work turned out to be more administrative in nature, of the kind commonly done by a sales assistant.

¶ 16 In October 2006 Ms. Trites was appointed assistant branch administrator for the Victoria branch and in this role she acted as a contact person for communications from Wellington's head office in Winnipeg.

¶ 17 Ms. Trites was disappointed that she did not have the opportunity to perform the role that she said she had been led to believe would be hers; and so she began to explore other work opportunities elsewhere. At some point, however, she was approached by Mr. Schneider to consider joining his team and she agreed to do

so, beginning work with Mr. Schneider on December 6, 2006. This did not endear either of them to Mrs. Steinhoff. Initially she and Mr. Schneider worked in the same general office as Mrs. Steinhoff and her team but later, some time around the end of March 2007, they moved onto a different floor in the same building. Ms. Trites continued to work for Mr. Schneider until June 2008 when she left Wellington for another dealer.

(iii) *Trish Terrell*

¶ 18 Ms. Terrell graduated from the University of Victoria with a commerce degree in August 2006. In October that year, with no prior experience in the brokerage industry, she was hired to work for Mrs. Steinhoff at Wellington. Initially her work involved preparing portfolio reviews for use in meetings between Mrs. Steinhoff and her clients. In early December 2006, however, following the departure of Jan Trites to work for Mr. Schneider, Ms. Terrell began to perform more administrative work, preparing the documentation necessary to effect various transactions and activities in the client accounts, such as address changes, cheque issuances and the like and faxing copies of required documents to the Wellington head office in Winnipeg. Ms. Terrell testified that she was trained in the relevant requirements and routines by Ms. Trites, with whom she had developed a cordial working relationship and Ms. Reside, whom we shall refer to below.

¶ 19 Ms. Terrell resigned her employment at Wellington on March 14, 2007 apparently because she had grown increasingly unhappy with the work environment in general and her relationship with Mrs. Steinhoff in particular. It seems that, as in the case of Ms. Trites, Ms. Terrell's relationship with Mrs. Steinhoff had become, not to put too fine a point on it, strained.

(iv) *Tjerk De Gruijter*

¶ 20 Mr. De Gruijter graduated from the Faculty of Business at the University of Victoria in 2007. As part of the requirements for his degree he undertook co-op work terms in 2005 and 2006 with CIBC Wood Gundy and from January to April or May 2007 with Mrs. Steinhoff at Wellington. Upon graduation in the summer of 2007 he began work, initially as a part time assistant to Mrs. Steinhoff and then, in September 2007, full-time. On January 18, 2008 Mr. De Gruijter handed Mrs. Steinhoff a letter of resignation. In it he made some accusations which, if true, are very serious. Those allegations are not before us. Mrs. Steinhoff was obviously outraged by his charges and there was a somewhat angry and apparently noisy confrontation between them. Mrs. Steinhoff refused to accept Mr. De Gruijter's letter of resignation and declared that he was fired. He left the premises.

¶ 21 In cases in which Mr. De Gruijter's evidence was directly inculpatory of Mrs. Steinhoff and is unsupported by any other credible evidence, we have treated it with a great deal of reserve, for two related reasons. First, his hostility to her was undisguised. He testified that when he was approached by counsel for Mrs. Steinhoff to participate in a conference call with them, he declined to do so saying, "I think Carolann should go down for what she did and I don't want to give you any kind of ammunition to make that not happen".<sup>1</sup> Secondly, Mr. De Gruijter was interviewed by IIROC investigators on November 21, 2007. At the time, he was still employed by Mrs. Steinhoff and he had some expectation of becoming her partner in the brokerage business. He more or less conceded that in answering questions put to him by the investigators, he had deliberately chosen to "hedge". On the one hand, he did not wish to lie to the investigators; and on the other, he did not wish to incriminate her and jeopardise his business prospects. So he opportunistically and discredibly chose, to use his own words, a "middle ground" – which does not of course exist – between truth and falsehood.

(v) *Bonnie Reside*

¶ 22 Mrs. Reside first worked as an assistant to Mrs. Steinhoff from about 1989 to 1994 when the latter was employed at Scotia McLeod. In 1994 she left to start and raise her family. She rejoined Mrs. Steinhoff at Wellington in September 2006, replacing Ms. Christiansen, and has continued as her assistant following Mrs.

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<sup>1</sup> Transcript of evidence, November 19, 2009, page 41, lines 1 to 4. Mr. De Gruijter added "I believe that the IIROC's allegations are based on fact and . . . the reason for Carolann having counsel is either to discredit my testimony or my personal integrity. Any prudent, rational person would not accept their invitation." *Ibid.* lines 6-11. See also, Transcript of evidence, November 19, 2009 page 70, line 24 to page 71, line 15.

Steinhoff's move to Queensbury.

(b) *David Schneider and Melissa Huston*

(i) *David Schneider*

¶ 23 David Schneider has some 25 years' experience in the investment industry. In 1994 he became the branch manager of the downtown Victoria branch of Nesbitt Thompson and when the latter firm merged with Burns Fry he became the branch manager of the combined firm, a position he held until 2003, when he joined Wellington. When Mrs. Steinhoff joined Wellington in 2004 Mr. Schneider was appointed branch manager of the Victoria branch and held this position until April 2006 when he and Mrs. Steinhoff were appointed co-branch managers. This arrangement continued until April 2007 when the office arrangements at the Victoria branch were re-organized and Mr. Schneider and his then assistant, Jane Trites, moved into space on a different floor in the same building as Mrs. Steinhoff.

¶ 24 While relations between Mr. Schneider and Mrs. Steinhoff were perhaps never particularly cordial it is clear that at some point they began to deteriorate markedly. From late 2005 or early 2006 they communicated little with one another – a fact that became obvious to others in the office and that affected the general working environment. Mr. Schneider described the relationship between them as “quietly tense” and said that at times he regarded her as a bully. Their dislike of one another seems to have been palpable and neither made any secret of it. At one point, indeed, a fellow worker suggested in an email to both Mr. Schneider and Mrs. Steinhoff that a proposed 2006 office Christmas party be cancelled because of the discomfort expressed by some employees “in attending a group party given the strained relationship between you both.” Oddly, the discord between the two seems to have been one, at least, of the reasons for the decision to appoint them co-branch managers; it also led to the decision in April 2007 to separate them physically.

(ii) *Melissa Huston*

¶ 25 Miss Huston is a graduate of the University of Victoria from which she obtained the B.A. degree in June 2006. Following graduation she began a search for office employment and in November 2006 she was hired by Wellington as the receptionist in the Victoria office. She continued in this capacity until the end of March 2007, whereupon she became an assistant to Mrs. Steinhoff, replacing Ms. Terrell, who had left about two weeks earlier.

## **COUNT 1**

### *The “cut and paste” procedure*

¶ 26 [26] “Cut and paste” is a description of two different, but related procedures that were allegedly employed to alter existing documents with a view to giving prompt and convenient effect to a client's instructions.<sup>2</sup> The first involved photocopying or cutting client signatures from older or unrelated forms and then pasting or copying the client signature onto a new form or letter of direction or authorization (“LOA”) with different instructions in order to give prompt and convenient effect to the client's instructions. The second involved whiting out the instructions and dates but not the signatures on older forms or LOAs and inserting revised instructions and dates without having the client sign the revised document. In each case, as we understand it, the documents thus created reflected the actual oral instructions of the client. When resorted to, the practice was used for the convenience of clients, to ensure that their instructions were promptly acted on without the delay or inconvenience of having them come into the office to sign documents. Wellington's office procedures contemplated that copies of “genuine” LOAs be faxed to its head office in Winnipeg, with the originally signed documents being sent by courier and a copy being retained in the branch office.

¶ 27 We accept that Mrs. Steinhoff's assistants did in fact employ the cut and paste procedure and did so fairly widely. Each of her former assistants who gave evidence acknowledged having used the procedure and so did Ms. Reside, who currently works for her. The practice seems to have been transmitted, whether by demonstration or exposition, from older to newer assistants. Ms. Huston, who was a receptionist in the Victoria

<sup>2</sup> The description that follows is adapted from paragraph 11 of the particulars set out in the Notice of Hearing.

office for part of the relevant period, did not herself use it but said she had seen others do so. A significant number of LOAs demonstrably altered through the employment of one or other of the cut and paste procedures were introduced into evidence. Nothing is to be gained from an examination of any particular altered LOA or LOAs.<sup>3</sup> We merely observe here that the procedure sometimes requires a great deal of care, precision and finesse. Where a signature block is copied from an original document and pasted onto a new one, for example, care must be taken to ensure that any distinctive characteristics of the original signature – such as the fact that it crosses a signature line – are not replicated on the new one so as to, as it were, obviously “give the game away”.

¶ 28 The main thrust of the allegations in Count 1 is that Mrs. Steinhoff “encouraged, instructed or condoned” the creation of fake LOAs<sup>4</sup> through the use of the cut and paste procedure by her assistants. In support of these propositions IIROC has alleged in the Particulars a number of specific examples of circumstances which are said to show that Mrs. Steinhoff “communicated to her assistants directly and indirectly in a variety of ways<sup>5</sup> that the [cut and paste procedure] was acceptable practice” for members of her team. These examples are clearly stated to be illustrative only. The particulars also allege that it was the understanding of Mrs. Steinhoff’s assistants that the cut and paste procedure was acceptable office practice for members of her team, that they made no attempt to conceal its use from her and that she condoned it.

¶ 29 In her formal reply, Mrs. Steinhoff expressly denied that she had done or failed to do any of the things that are alleged against her in paragraph 12 of the Particulars. More generally, in paragraph 29 of the reply she set out her general position on Count 1 in the following language:

29. Until March 2007, Ms. Steinhoff was unaware the Assistants may have been using a “Cut/Copy and Paste Procedure” with respect to LODs or other documents, or of the extent to which this may have been done . . . all administrative tasks relating to client accounts were performed by the Assistants and were not reviewed or vetted by Ms. Steinhoff. Ms. Steinhoff trusted the Assistants, and in particular, [Kim Christiansen], a registered assistant with significant experience in the industry, to perform all administration related activities in accordance with Wellington’s policies or practices. Ms. Steinhoff had no reason to believe that the Assistants were not doing so.

¶ 30 By way of general support for her position that she was unaware that her assistants were using the cut and paste procedure, Mrs. Steinhoff testified that she leaves all administrative matters to the assistants. Her main focus is “money management. My focus are my clients, the markets”. She added that over the years she

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<sup>3</sup> The Particulars (paragraphs 17 – 22) set out a variety of details concerning the “prevalence” of use of the cut and paste procedure. The evidence substantially established these details and justify the claim that use of the procedure was prevalent.

<sup>4</sup> As we understand it, Count 1 relates principally to LOAs and not to the guarantees that are the subject of Count 2, though these are referred to paragraph 12 (f) and (g) of the Particulars. In our view, the matters related to the guarantees are clearly relevant to Count 1.

<sup>5</sup> Particulars, paragraph 12. The illustrative details are:

- (a) at a point early in KC’s employment at United Capital, the Respondent specifically told KC to take a document out of a file and photocopy an old signature;
- (b) at a point early in TT’s employment at Wellington, after TT explained to the Respondent that a client was upset with having to sign a LOD, the Respondent asked why TT would not have simply gone to the file, used an old signature and copied it;
- (c) when the Respondent observed TT showing TDG the Cut / Copy and Paste Procedure, the Respondent, complimented TT for doing a good job or being fast;
- (d) when the Respondent observed KC and other assistants effecting the Cut / Copy and Paste Procedure, the Respondent didn’t tell them it was unacceptable;
- (e) in her own joint account with her husband, the Respondent signed her husband’s name on an LOD in the presence of KC;
- (f) on March 13, 2007 the Respondent told one of her assistants to change the date on a 3 year old Guarantee and insert a current date and present the Guarantee as new and genuine document;
- (g) on March 14, 2007 the Respondent asked two of her assistants to show another assistant how to affect (sic) the Cut / Copy and Paste Procedure.

had tried to train her clients to deal, on administrative matters, with her assistants and not directly with her, and that for the most part that is what happens. Occasionally, in the course of a telephone conversation or at a meeting with a client, a decision would be made that needs some form of administrative action, such as the preparation of an LOA, for its implementation. In that case, according to Mrs. Steinhoff, she generally printed out the client's account, hand-wrote the decision that needed to be implemented, and left the paper on the desk of whoever was her principal assistant at the time. It was for that person to decide who should actually do the required work. Mrs. Steinhoff's evidence was that she was not involved in and did not review any of this work. Her concern was to ensure that the client's instructions were carried out and she monitored this on a daily basis on a computer screen in her office without the necessity to look at the underlying paperwork.

¶ 31 There is no reason to question Mrs. Steinhoff's description of how work was divided among her and her assistants. It was essentially corroborated by other witnesses<sup>6</sup> and we accept it as accurate. That having been said, however, it does not follow from the fact that Mrs. Steinhoff did not involve herself in the work of her assistants that she did not "encourage, instruct (which we have taken to mean "direct", rather than demonstrate or explain) or condone" use of the cut and paste procedure by them. We would in any event have thought that if indeed her focus is on her clients, her responsibilities would surely include *all* of the work that is done on their behalf. In addition, as co-branch manager she had a duty to supervise the operation of the branch and ensure that the work done on behalf of clients is in full compliance with legal and regulatory requirements.

¶ 32 Paragraph 12 of the Particulars sets out a number of alleged facts from which, IIROC asserts, it may reasonably be inferred that Mrs. Steinhoff either encouraged, instructed or condoned the use of the procedure and we shall now deal with those.

¶ 33 The first of them relates to an incident that allegedly occurred when Mrs. Steinhoff and Ms. Christiansen were working at United Capital when, it is alleged, Mrs. Steinhoff specifically told Ms. Christiansen to take a document out of a file and photocopy an old signature. Ms. Christiansen told the IIROC investigators about it and also testified about it before us.

¶ 34 The circumstances, according to Ms. Christiansen, were these. She told Mrs. Steinhoff that there was a document that required a signature. Mrs. Steinhoff, she told the investigators, responded "just cut and paste" and then proceeded to demonstrate to her how this was done. Ms. Christiansen provided the investigators with virtually no detail about what had happened.<sup>7</sup> Her evidence in chief was similarly vague.<sup>8</sup> Under cross-examination, however, Ms. Christiansen purported to recall such details as that Mrs. Steinhoff had used a scissors, not a knife, to cut the signature from the existing document, and used tape, not glue, to paste it onto the new document and that she had then photocopied it.<sup>9</sup> These details were essentially supplied in response to possibilities suggested by counsel for Mrs. Steinhoff. Mrs. Steinhoff herself categorically denied that the incident had happened as described or at all.

¶ 35 Ms. Christiansen seemed to us quick – somewhat too quick – to accept any suggestion of detail that might lend plausibility to her original somewhat barebones account given to the investigators. Moreover, as the only one of Mrs. Steinhoff's assistants who was herself the subject of an investigation of this matter, we cannot discount the possibility that her evidence may have been influenced by the sense of an opportunity for advantage through implicating others. And thirdly, based on our impression of Mrs. Steinhoff and her attitudes, there seems to us something distinctly improbable about the whole idea of her demonstrating how to "cut and paste". These considerations have led us to the view that Ms. Christiansen's evidence about this subject does not rise to the required level of clarity, cogency or conviction.

¶ 36 Paragraph 12 (b) of the Particulars<sup>10</sup> refers to an incident first mentioned by Ms. Terrell in a telephone

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<sup>6</sup> Including Mr. Schneider. See Transcript of evidence, November 26, 2009, page 10, lines 6-15. And see generally Transcript of evidence, November 26, 2009, pages 13 to 17.

<sup>7</sup> Transcript of evidence, November 23, 2009, page 122, line 2 to page 126, line 4.

<sup>8</sup> Transcript of evidence, November 23, 2009, page 9, lines 1 to 11.

<sup>9</sup> Transcript of evidence, November 23, 2009, page 117, line 8 to page 118, line 14.

<sup>10</sup> Above, note 5.

interview with Ms. Walters-Sagher, a Wellington compliance manager, on March 15, 2007 as part of the latter's internal review of the allegations of use of the cut and paste procedure. Ms. Terrell said she had told Mrs. Steinhoff about a client who became very upset when asked to sign an LOA to effect a change of address. According to Ms. Walters-Sagher's notes, Mrs. Steinhoff replied: "why wouldn't you go to the file, cut signature, paste it and then fax it in?"

¶ 37 Later on March 15, 2007 Ms. Terrell sent an email to Mr. Sean Shore. He is, as we understand it, Wellington's chief compliance officer. Ms. Terrell again referred to this incident. She wrote:

As mentioned I can not quote her [Mrs. Steinhoff] on what happened. I remember that she asked what form I sent to the client and I replied a letter of direction. I cant remember if she implied I should have gone to the file, or if I said there were no signatures in the file to copy. Its really blurry and I don't want to use that example if it is not concrete.

¶ 38 In her direct evidence to us Ms. Terrell testified only that Mrs. Steinhoff had asked "why wouldn't you go to the file" but not that she added the words "cut signature, paste it and then fax it in? She said, however, that she knew that the observation about going to the file was a reference to copying and pasting a signature from an existing document. Asked how she knew this, Ms. Terrell replied: "I just knew", apparently, as we understood her evidence, on the basis that she knew that Mrs. Steinhoff was aware that the cut and paste procedure was being used by her assistants. In her evidence under cross-examination Ms. Terrell agreed that Mrs. Steinhoff had not referred to going to the file *and* cutting and pasting a signature.

¶ 39 In view of the apparent inconsistencies in Ms. Terrell's evidence on this point and her acknowledged "blurry" recollection of the incident, we do not think it can safely be relied on to establish that Mrs. Steinhoff said what she is alleged in paragraph 12 (b) of the Particulars to have said.

¶ 40 Paragraph 12 (c) of the Particulars concerns an occasion upon which it is alleged that Mrs. Steinhoff, having observed Ms. Terrell showing Mr. De Gruijter how to use the cut and paste procedure, complimented her on doing a good job. Both Ms. Terrell and Mr. De Gruijter gave evidence about this.

¶ 41 Ms. Terrell's direct evidence on the matter is quite unclear. She said at one point that she was showing Mr. De Gruijter how to cut and paste; and at another that she was merely telling him about the procedure.<sup>11</sup> Under cross-examination she said that she was probably not demonstrating the procedure for him<sup>12</sup> and also that she did not remember whether she was showing the procedure or talking about it.<sup>13</sup> She said that Mrs. Steinhoff had seen (or, presumably if she was explaining rather than demonstrating, heard) what was happening and had offered "a praise of some sort, like "good job" or "you're a fast learner". Under cross-examination she said that Mrs. Steinhoff observed her showing him or heard her telling him, as the case may be, for about five seconds, from a distance, according to Ms. Terrell, of some 3 metres, and complimented him. Ms. Terrell did not actually know whether Mrs. Steinhoff had heard her; she merely assumed this because she, Ms. Terrell, is "fairly loud". We are bound to say that this evidence seems to us, at best, "fragile".

¶ 42 The difficulty in Ms. Terrell's evidence on this matter is not resolved by that of Mr. De Gruijter about the same occasion. His direct evidence was that the compliment was offered by Mrs. Steinhoff to Ms. Terrell in the former's office, not outside it; that it was offered during the course of a conversation between the two concerning how the latter had accomplished some result and that Ms. Terrell had explained that she had used the cut and paste procedure. In Mr. De Gruijter's version, he was not involved in the matter at all but had merely overheard the conversation. Mr. De Gruijter had no recollection of the incident described by Ms. Terrell.

¶ 43 We do not consider that there is any clear, convincing and cogent evidence about this incident that we would be warranted in relying on.

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<sup>11</sup> Transcript of evidence, November 17, 2009, page 29, line 21 to page 30, line 11.

<sup>12</sup> Transcript of evidence, November 17, 2009, page 29, line 21 to page 30, line 11

<sup>13</sup> Transcript of evidence, November 17, 2009, page 94, line 18 to page

¶ 44 In support of its contention that she knew of the use of the cut and paste procedure and condoned it, IIROC also invokes some transactions that were done in April 2006 in the accounts of Mrs. Steinhoff and her husband that involved recourse to the procedure by Ms. Christiansen.

¶ 45 Two groups of transactions were involved, the first around April 10, 2006 and the second between April 26 and 28, when Mrs. Steinhoff and her husband were on a trip out of the country. We will deal only with the former. Mrs. Steinhoff required certain US dollar funds to pay an account related, as we understand it, to certain renovations on her home. The amount involved, some US\$41,000, was not trivial. She evidently gave instructions to Ms. Christiansen to take the necessary steps to get a cheque issued in favour of the party owed the money. Ms. Christiansen did so by creating a fake LOAs purportedly signed by Mrs. Steinhoff through use of the cut and paste procedure. Having done so, she sent Mrs. Steinhoff an email explaining that she had faxed an LOA to Wellington headquarters. Mrs. Steinhoff, of course, had not signed any LOA, nor had she been asked to do so.

¶ 46 Mrs. Steinhoff claimed that, not having been asked to sign an LOA in respect to this transaction, and not being involved in this aspect of the work of her assistants, she would not have known at the time and did not know that an LOA was required. She also denied that she knew that she had not signed any LOA<sup>14</sup> and contended, in essence, that her curiosity or concern was not aroused by the information Ms. Christiansen gave her.

¶ 47 Mrs. Steinhoff's claim that she did not know that she had not signed an LOA in connection with this transaction despite having been told that one was used, is simply incredible and we do not believe it. She does not claim that she did not know that an LOA – any LOA - must be signed by the client. In this case, she was the client and she was told that an LOA had been used.<sup>15</sup> Yet she asked no questions, expressed no concerns, raised no objection – in fact she acquiesced in or, in the words of the Notice of Hearing, condoned – the creation of a document with a “manufactured” signature – her own. There is, moreover, evidence that Mrs. Steinhoff herself had been a witness to client signatures on LOAs in comparable circumstances. Her seeming indifference to the fact that she had not signed the LOA can only be explained on the basis that the activity was nothing out of the ordinary and she was content to have Ms. Christiansen do whatever was needed to ensure that Wellington's head office was satisfied that the proper documentation existed including, if need be, creating fake documents with fake signatures by cutting and pasting.

¶ 48 In our view the evidence is clear that in at least two instances Mrs. Steinhoff did in fact “instruct” assistants to employ the cut and paste procedure. Those two instances are the subject-matter of Count 2 and relate to the First Email and the Happy Face Email. We examine them at some length in connection with that Count. It is not necessary to repeat that examination here.

¶ 49 Taking into account the whole of the evidence on this subject, we have reached the conclusion that IIROC has discharged its burden of proof on Count 1 in the Notice of Hearing and that Mrs. Steinhoff did, as alleged in that Count, “encourage, instruct or condone” the use of the cut and paste procedure to create fake documents

¶ 50 In our view it is beyond argument that this amounted to business conduct or practice that was unbecoming or detrimental to the public interest and a breach of Bylaw 29.1.

## COUNT 2

### (a) *The two emails*

¶ 51 Count 2 essentially rests on two emails that Mrs. Steinhoff acknowledges having sent – the first, on March 13, 2007, to Trish Terrell (the “First Email”) and the second, on March 14, 2007 to Tjerk De Gruijter, with copies to Ms. Terrell and Ms. Reside (the “Happy Face Email”).

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<sup>14</sup> Transcript of evidence, November 25, 2009, page 116, lines 21 and 22.

<sup>15</sup> There was some evidence that in fact, under applicable Wellington policies, an LOA may not have been required in the circumstances. In our view even if this were the case, it is irrelevant to the issues raised by Count 1.

¶ 52 Both emails relate to a requirement of Wellington’s compliance department for an existing corporate client, P. Inc., that already had two cash accounts guaranteed by its principal, Dr. P, to provide a new guarantee in connection with the opening of a margin account.

¶ 53 The First Email is as follows:

Just go to the file and get the guarantee and change the date on it, and fax it to them. thx

¶ 54 In the Happy Face Email Mrs. Steinhoff wrote:

Just get a new form; cut out his signature from something we have already and paste it on form and fax. Send him one in the mail to sign and when u get it back, send it to head office.

Trish or Bonnie: please show Tjerk how to cut and paste signatures. Thx: -)<sup>16</sup>.

¶ 55 It is important to say that neither email resulted in the creation of any fake document and none was faxed or otherwise sent to Wellington’s head office in Winnipeg and represented as genuine. The messages in them, however they are to be characterized, did not result in any action on the part of those to whom they were addressed.

¶ 56 IIROC’s contention is that despite this, by writing and sending these two emails Mrs. Steinhoff engaged in business conduct that was unbecoming or detrimental to the public interest; or failed to observe high standards of ethics and conduct in the transaction of her business contrary in either case to IDA By-law 29.1.

¶ 57 As to both emails Mrs. Steinhoff’s position is, in essence, that they are not what they appear to be.

¶ 58 Some background is helpful.

(b) *The background*

(i) The “Fortis Strategy”

¶ 59 It seems that not long before March 13, 2007 a company called Fortis Inc. had announced an intention to make a public offering of subscription receipts. Each subscription receipt, which would in due course be exchangeable for one Fortis common share, was being offered at a price somewhat below the market price of the underlying common shares. In the circumstances Mrs. Steinhoff, who had managed to obtain an allotment of subscription receipts for allocation among her clients, recommended to certain of them that they adopt a strategy of selling the Fortis common shares short at the higher price and buying the subscription receipts at the lower price so that, when the time came to settle the short sales, this could be done by delivering the lower-cost subscription receipt shares, thus earning a profit.

¶ 60 One of the clients to whom Mrs. Steinhoff recommended this strategy was P. Inc., the personal investment corporation of Dr. P., a Victoria medical specialist. It seems that in April 2004 P. Inc. had opened two cash accounts, one denominated in Canadian and the other in U.S. currency. In connection with their opening Dr. P. executed a personal guarantee of P. Inc.’s obligations to Wellington. The guarantee is in evidence. It is fair to say that its terms are fairly comprehensive. Dr. P. “unconditionally” guaranteed payment to Wellington “of all debts and liabilities which the Customer [i.e. P. Inc.] has incurred or is under or may in future incur or be under” arising from dealings between Wellington and P. Inc. “for [sic] any kind whatsoever”.

¶ 61 To take advantage of Mrs. Steinhoff’s “Fortis Strategy” P. Inc. needed to open a margin account. This required, among other things, the completion of a New Client Application Form and a personal guarantee from Dr. P of P. Inc.’s obligations to Wellington in connection with the account. Because the closing of the Fortis offering was imminent, there was some urgency to getting all of this done as soon as possible. It seems that Dr. P completed the New Client Application form on March 12, 2007 but, for whatever reason – perhaps because Mrs. Steinhoff, knowing of the original guarantee, did not think this was necessary - did not at the same time execute a new guarantee.

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<sup>16</sup> This the “happy face” symbol.

(ii) *Opening the margin account for P. Inc. – March 13, 2007*

¶ 62 Pressure to complete the opening of the new margin account for P. Inc. began to mount on the morning of March 13, 2007. At 11.27 a.m. that day Trish Terrell emailed Jenna Brown in the documentation department in Winnipeg, about the account, saying “I just faxed you this account. Carolann has asked for it to be opened as soon as possible.” As we understood the evidence it was sometimes possible, in cases of urgency, to get a new account opened by faxing copies of originally signed required documents to Winnipeg with the originals going more or less immediately by inter-office mail. There was a daily inter-office mail delivery.

¶ 63 At all events, a few minutes later Ms. Brown replied:

I need the Client to sign an updated Guarantee. Compliance will not approve the account with out the Guarantee. (Originally the account was opened as a cash account.)

¶ 64 Ms. Terrell forwarded Ms. Brown’s email to Mrs. Steinhoff and Mr. de Gruijter and asked whether either of them had a signed guarantee for Dr. P.

¶ 65 Mrs. Steinhoff responded within a few minutes. She sent the First Email.

¶ 66 Almost immediately Ms. Terrell forwarded the First Email to Jane Trites who, as we have noted, had once worked as an assistant to Mrs. Steinhoff but had in December 2006 moved over to join Mr. Schneider’s “team”. Ms. Terrell asked: “Do you think I should?????” She did this, she said, because when she first began working at Wellington, Jane Trites had trained her and she wanted to get Ms. Trites’ advice about what she was being asked to do. Ms. Trites replied that she “wouldn’t be comfortable” doing that and asked what date was on the original guarantee. Ms. Terrell answered that the original was dated in 2005” (she was wrong) and added “and we don’t have the original – likely head office does.”

¶ 67 We pause here to note that Ms. Trites testified that over a period of more than a year while she was working for Mrs. Steinhoff, she had herself engaged in the creation of fake documents of various kinds. That evidence relates largely to the matters alleged in Count 1, so we do not explore it in any detail here. She explained her apparent change of heart on March 13, 2007 by saying that she thought that there was an important distinction between, on the one hand, the documents that she had faked, which merely involved recording a client’s instructions and, on the other, taking a legal document from a client's file that had been used for an account, and changing that.

¶ 68 Following their exchange of emails there was a conversation between Ms. Terrell and Ms. Trites. Ms. Trites said she thought that Ms. Terrell should forward the First Email to the compliance department in Winnipeg and, because Mr. Schneider was the co-branch manager at the time and “he needs to be aware of the direction you are being given”, she should also send a copy to Mr. Schneider.

¶ 69 Shortly after this Ms. Terrell emailed Lesley Walters-Sagher, a compliance manager in Winnipeg, saying: “As per Carolann’s request below, I don’t feel comfortable doing this. Is this something I should be doing? Carolann wants the account opened today. Please let me know how to proceed.” Ms. Walters-Sagher replied: “Never alter a client document, unless of course a client initiates such changes and initials prior to the receipt of the documentation into our files at WWCI. A new form would be required in this case.” In response, shortly after 11:00 a.m. Ms. Terrell emailed Ms. Walters-Sagher enquiring whether there was any way “to open this account without a new guarantee?”

¶ 70 There does not seem to have been a direct response to Ms. Terrell’s question. For all practical purposes, however, her direct involvement in the matter ceased at this point, her role being transferred, it seems, to Mr. De Gruitjer.

¶ 71 The margin account for P. Inc. had not been opened by the end of the day on March 13.

(ii) *Opening the margin account for P. Inc. – March 14, 2007*

¶ 72 The pressure to get the account opened continued the following morning with several requests from Ms. Baker, the person handling the Fortis issue in Winnipeg, to Mr. De Gruijter to get the account opened as soon as

possible and, it seems clear, mounting frustration on his part over his difficulty in achieving this. In response to an email enquiry from Mrs. Steinhoff at around 8.30 as to what he would be occupied with that day, Mr. De Gruitjer a few minutes later explained that, among other things, he was or would be trying to contact Dr. P. to get him to sign and initial “this form”. We understood this to be a reference to the guarantee.

¶ 73 Mr. De Gruitjer’s frustration is reflected in an email that he sent to Ms. Baker around 11:00 a.m. that morning, in which he said: “I’m trying to get everything opened as soon as possible. Compliance is giving us trouble on [X] and [Y]. They’re talking about opening [P. Inc.’s] right now, but I don’t know if they will. I don’t know how to proceed with this. . .”

¶ 74 Around the same time Mr. De Gruitjer emailed Mrs. Steinhoff saying: [Dr. P] has not gotten back to me. I can therefore not get him to sign anything . . . This sucks . . . Shannon Baker wants everything done now. I don’t know what to tell her other than to wait”.

¶ 75 An hour later Mrs. Steinhoff sent the Happy Face Email.

(c) *The First Email considered*

¶ 76 It is perhaps convenient here to repeat the language of the First Email sent, it will be recalled, on March 13:

Just go to the file and get the guarantee and change the date on it, and fax it to them. thx

¶ 77 There is no language in the First Email that is vague, uncertain, ambiguous or unclear. None of the words, whether taken alone or in the context of the email as a whole, requires any interpretation. There is an explicit, peremptory, unconditional and precise instruction to take certain clearly identified action. Nothing is left in doubt. As a matter of language, at least, it speaks for itself, with ringing clarity. Since Mrs. Steinhoff admits having composed and sent it, that would seem to satisfy IIROC’s burden of showing by evidence that is “clear, convincing and cogent” that Mrs. Steinhoff did what she is alleged in Count 2 to have done. It is indeed difficult to imagine evidence that is clearer, more convincing or more cogent. There is nothing “fragile or suspect” about it.

¶ 78 But, as we have noted, Mrs. Steinhoff says that the First Email does not mean what it seems to mean on the surface – it must be understood in context and that context changes everything. As we understood Mrs. Steinhoff the context had two elements, one general and the other specific. As to the first, she and her assistants were at the time increasingly frustrated with the administrative demands of Wellington in giving effect to the simplest client requests and many in the Victoria branch office considered the document department at the head office to be slow, unresponsive and inconsistent. This sense of frustration was fairly well established in the evidence and we accept it. The second, and specific, context was what in Mrs. Steinhoff’s view was the seemingly unnecessary and, in the circumstances to use her word, “superfluous”<sup>17</sup> insistence of the compliance department upon a new guarantee signed by Dr. P. given the urgent need to open a margin account for P. Inc. so that it could take advantage of the Fortis Strategy. We have already described this background. There was also a third element, perhaps most succinctly described by her in one communication as “the poisonous environment in this office”.

¶ 79 Mrs. Steinhoff has been consistent in invoking the “context”, and in her account of its elements, more or less from the very beginning. She adverted to it in her first response on March 14, 2007 to an initial enquiry from Ms. Walters-Sagher at the outset of the latter’s internal review and thereafter; in her interviews with the investigators from IIROC; and in her evidence at the hearing before us.

¶ 80 In principle, of course, Mrs. Steinhoff is correct when she contends, as we understand her in effect to do, that non-verbal context can have a decisive impact upon the meaning of words. That is obvious and we accept it.

¶ 89 Mrs. Steinhoff’s account of the impact of the context on the meaning and purpose of the First Email is,

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<sup>17</sup> Transcript of evidence, November 24, 2009, page 82, lines 6 to 11.

however and with all respect, inconsistent, confusing and, to a degree, incoherent. In fact, there are several different accounts. She has claimed that the first Email was sent as a “joke” or in “jest” as opposed to an instruction to be acted on. She also claims that it was a question designed to elicit information and not an instruction.

¶ 90 We will return to this. Before doing so, however, we point out, for what it is worth, that both Trish Terrell, the addressee of the First Email and Mr. Schneider, to whom she sent a copy of her email to Ms. Walters-Sagher to which the First Email was attached, testified that they understood it literally, that is, to mean what it seems to mean and to be what it seems to be. Ms. Terrell’s direct evidence was that she took it as an instruction from Mrs. Steinhoff and that at no point did she think that Mrs. Steinhoff was joking or that the instruction was not intended to be acted upon. Mr. Schneider’s evidence was that upon seeing it he immediately assumed it was a genuine instruction. Although Ms. Trites did not give oral evidence about how she understood the First Email, her advice to Ms. Terrell – to send it to compliance – suggests that she, too, took it at face value.

¶ 91 It is true that Ms. Terrell agreed on cross-examination that she knew that Wellington’s head office would not accept a guarantee without an original signature, and that what she understood Mrs. Steinhoff to be instructing her to do, “wouldn’t work”. Ms. Terrell explained that she did not in the circumstances discuss the First Email with Mrs. Steinhoff because their relationship had by that point deteriorated to such an extent that she felt unable to discuss the matter with her and that by March 13 she had more or less decided to resign her employment at Wellington – a step she took the next day. It is also true that Mr. Schneider made no attempt to discuss it with Mrs. Steinhoff. It seems clear that at this time they were barely on speaking terms and the hostility between them was obvious to all around them.<sup>18</sup> Indeed, a few days later Mr. Schneider privately expressed to a senior officer of Wellington his view that Mrs. Steinhoff should be terminated for cause immediately.

¶ 92 It was not explicitly contended on Mrs. Steinhoff’s behalf that the failure of Ms. Terrell and Mr. Schneider to question her as to her meaning or intent in sending the First Email or that the tension, to put it at its lowest, in their relationships (and that of Ms. Trites) with her, deprives their evidence that they took it at face value of any or at least much significance. This was, however, distinctly implied. We take the point that they may in some general sense have been motivated, or at least influenced, by their unflattering view of Mrs. Steinhoff.<sup>19</sup> We do not think, however, that this is a reason to consider their evidence on this particular aspect of the matter to be untrue. At the same time, however, it is not decisive of any issue that we must decide.

¶ 93 We turn, then, to what we have said are Mrs. Steinhoff’s inconsistent and confusing accounts of the way in which the context changes the meaning of the words that she chose to use.

¶ 94 Mrs. Steinhoff first explained the First Email (and the Happy Face Email) as a joke or jest on March 16, 2007 in response to an enquiry from Ms. Walters-Sagher. She wrote:

Dear Lesley.

Since you are not in receipt of any documents whatsoever from any member of my team that have in any way been changed, altered, amended or modified, you surely must have come to your own conclusion by now that Trish Terrell's attempt to malign me with the e-mails she forwarded to you are nothing more than a vindictive parting blow by a petty, immature, malicious muck-raker.

The allusions to changing documents are an inside joke we have here in the office, and they have been rendered to you totally out of context. I attempted to impart some comic relief with these

<sup>18</sup> Cf. paragraph [24] above.

<sup>19</sup> Mrs. Steinhoff described Ms. Terrell as “a petty, immature, malicious muck-raker” (paragraph [60] below) and as a disgruntled former assistant” (paragraph [77], below); and as to Mr. Schneider, she testified that she came to have concerns as to his honesty and that she did not trust him: Transcript of evidence, November 24, page 29, lines 17-18.

comments which were made in jest (happy face on e-mail), from the exasperation my assistants were feeling in dealing with compliance to get accounts opened and business conducted. You were not privy to the verbal exchange between the parties cited in these emails. which would put the comments in the proper context.

....

¶ 95 Shortly after sending this email Mrs. Steinhoff sent another, to her assistants and Ms. Huston, with a copy to Ms. Walters-Sagher, in which she said, among other things:

Unfortunately an issue has arisen whereby Trish, on her departure, forwarded e-mails to Compliance concerning our inner-office jesting on dealing with what seems to be their onerous demands with respect to documentation.

¶ 96 On March 26, 2007 Ms. Walters-Sagher told Mrs. Steinhoff that three current or former staff members whom she had interviewed (but whom she did not identify) “did not confirm that your emails were understood by them to be in jest”.

¶ 97 Mrs. Steinhoff was interviewed by IIROC investigators on three occasions – April 2, 2008, May 15, 2008 and October 29, 2008. The subject of the First and Happy Face Emails was canvassed at both the first and the second interview.

¶ 98 At the first interview Mrs. Steinhoff was asked why she had sent the First Email. She answered that it was “basically just said in jest” and added: “There's no way that you can get a guarantee faxed to Head Office. As I said . . . new accounts they will not open unless they have the original signed signatures of everything in Head Office.” She continued that she and her assistants knew that “you cannot get a new account opened unless every piece of original documentation is in Head Office, including the guarantee” and added “we were just sick and tired of Compliance . . . that's why I said you have to have the context here.” And she repeated that the First Email “was just sent in jest”.

¶ 99 The “joke” or “jest”, as we understand it, is this: because everyone knew that the tactic would not work since a re-dated guarantee would never be accepted by compliance, no-one could possibly have understood it as being seriously meant or taken it at face value. But as we have already noted, nobody who saw it at the time took it this way. Any jocular or jesting qualities it may have are deeply buried in the language.

¶ 100 Mrs. Steinhoff also said at her first interview that after she sent the First Email, she went out to her staff and “asked them if you could just change the date on the guarantee . . . I said, Is that possible? Will they accept that since nothing else has changed on it?” She continued: “I came out immediately and said, I am just joking, do not do anything with that. Send it by courier March 14.” She said that her staff looked into it, talked to compliance and told her that it could not be done and a new guarantee would be needed.

¶ 101 Several things seem noteworthy about this evidence. Mrs. Steinhoff is the only person among all those who gave evidence and who were in the office on March 13 and 14 who recalls her coming out of her office and saying what she claims to have said; and in any event, her evidence is unclear as to whether it happened on March 13 or 14. Moreover, it seems to undermine the “joke” explanation in several ways. First, it suggests some uncertainty on her part as to whether the joke was indeed evident, without further explanation, even to those who were knowledgeable about the “context”. Secondly, it seems to advance a new and inconsistent theory, not so far as we are aware previously put forward - that the First Email was really an inquiry. But that, too, is somewhat perplexing, since according to Mrs. Steinhoff everyone, including she herself, knew that it would not work. Moreover, when she sent the First Email she had already seen Jenna Brown’s advice<sup>20</sup> that “I need the Client to sign an updated Guarantee. Compliance will not approve the account with out the Guarantee.” (Our emphasis). In these circumstances, an inquiry would seem to have been pointless. The answer was already known.

¶ 102 In her evidence in chief before us Mrs. Steinhoff seemed largely to abandon the “joke” or “jest” theory

<sup>20</sup> Above, paragraph [63].

of the First Email, using those terms to refer, rather, to the general atmosphere of disenchantment and frustration with head office that she claimed existed in the Victoria branch office. She said:<sup>21</sup>

There was . . . intense frustration with documentation at Wellington West. There was a lot of commentary that was going around the office concerning documentation and Compliance. That in fact is what I mean by jesting that was going on in the office.

Comments were flying a lot. We would get things back in the interoffice mail that one box hadn't been ticked off. Whatever. There was a lot of commentary surrounding and jesting surrounding the whole documentation department. That's what I meant. I mean, those comments were flying all the time.

¶ 103 This is virtually the only reference that Mrs. Steinhoff made in her evidence in chief to the subject of “jesting” and it seems to diverge somewhat from the sense in which she used that language in explaining to the IIROC investigators why she had sent the First Email. Instead, in answer to a question from her counsel about what she meant by the that email she adopted the “inquiry” explanation:<sup>22</sup>

A What I meant was we already had a guarantee on file for this account. I needed to get the account opened. *The thing that popped in my mind is to change the date, cross off the old date, put the new date on it somewhere, and see if that will be acceptable to head office to get the account opened*, since the client had already signed a guarantee.

Q To see if you could get the account opened. What was your thinking on whether or not a new guarantee was going to be required?

A *Well, I thought we could try this first and see if that would be acceptable.*

¶ 104 In cross examination, in response to a question as to whether her intention in sending the First Email was “serious, that you intended them to do just that, to change the date on it”, Mrs. Steinhoff said that she was “inquiring whether or not we could do that.” In light of this she was asked once more whether the First Email was a joke and she said: “No, it wasn't.”<sup>23</sup> Reminded that in her interviews with the IIROC investigators she had described both emails as having been sent in jest, she responded “I mean the second email.”<sup>24</sup> The following exchange ensued:

Q You never intended to say that you were joking in the first e-mail?

A I don't know what I -- you know, I really and truly can't, you know, really and truly if this had been followed up by an e-mail, ignore what Compliance told us that you can't do this and I said well, do it anyhow, that would be an instruction. When I was told that you can't do it this way, then we went to the next day.

Mrs. Steinhoff conceded<sup>25</sup> that her evidence on cross-examination on this point was different from that which she had given in her first interview with the IIROC investigators.

¶ 105 Pressed further on whether the First Email was an instruction or a question or was sent in jest, Mrs. Steinhoff answered:<sup>26</sup>

I wasn't sure. I mean, I just wasn't sure if that would be acceptable. Clearly it wasn't acceptable and trying to make light of the situation, that's what I mean by it. When you keep referring to the word "joke" and why I'm saying here, you know, "joke" is probably the wrong word, but when

<sup>21</sup> Transcript of evidence, November 24, 2009, page 119, lines 4-8 and 17 to 23.

<sup>22</sup> Transcript of evidence, November 24, 2009, page 83, lines 8 to 20.

<sup>23</sup> Transcript of evidence, November 25, 2009, page 128, line 3. In her response to Ms. Walters-Sagher on March 16, Mrs. Steinhoff referred to the “happy face on email” as evidence of the “jest”. The “happy face” appears on the Second Email, but not on the first.

<sup>24</sup> Transcript of evidence, November 25, 2009, page 137, line 6.

<sup>25</sup> Transcript of evidence, November 25, 2009, page 145, line 9.

<sup>26</sup> Transcript of evidence, November 25, 2009, page 150, line 7 to page 151 line 13.

you're trying to describe what was going on, it was, you know, kind of see if that works, sort of. That was the context. You had to have been there. There was a lot of stuff that was going down. There was a lot of tension. There were a lot of demands from Compliance. We were trying to -- you saw the e-mails from Shannon -- we were under pressure to get this thing in. See if that works.

So, you know, the spin that was on it was trying to be a little lighter. Maybe it would have worked. Maybe it would have worked. Clearly it didn't work. So it didn't go any further than that. I didn't follow up an hour later or the next morning and say well, why didn't you change that date anyhow? It was clear, and I don't have the communication, but it was communicated back to me that that wasn't going to work. And therein lies the attempt to get the courier. . . . You say things, but you don't, you know, you don't take them literally.

¶ 106 There is nothing on the face of the First Email that would indicate to Ms. Terrell that she was being instructed to change the date, fax the changed document to Winnipeg *and to ask whether this would be acceptable*. If that was Mrs. Steinhoff's purpose the obvious, simpler and more direct instruction would have been: "Ask compliance whether it is acceptable to simply change the date on the old guarantee". There would have been no need to refer to going to the file, getting the guarantee, changing the date and faxing the changed document to Winnipeg. Mrs. Steinhoff does not lack facility in the English language. It seems to us strange that if, as she claims, Mrs. Steinhoff was making or instructing Ms. Terrell to make an enquiry about whether changing the date on the old guarantee would be acceptable, she would simply have failed to use any interrogatory words at all.

¶ 107 In her testimony before us Mrs. Steinhoff seemed to acknowledge this problem. During the course of her cross-examination the following exchange took place between her and one of the members of the Panel:<sup>27</sup>

MR. LAY: Can I ask something? You said it was an inquiry, you were inquiring about the possibility of what you were able to do; is that correct?

THE WITNESS: It was more that I couldn't believe that we couldn't use the same guarantee because it was the same account, so it was -- I guess it was an instruction to do that, but obviously it was rejected, so --

MR. LAY: But it was an instruction, not an inquiry?

THE WITNESS: Well, it was -- I mean, in the day-to-day, you know, I think what happens is when I tell assistants, they will come back to me and say no, you have to do it this way, or you've got to do that, or you've got to have this signed and that signed. It's just all part of the day-to-day back and forth of stuff that goes on in the office. I don't know what, you know, I really and truly don't know, you know, what are the shades of grey and I don't know, I mean, it's -- in the context of what was going on at that time, getting the e-mails from Shannon, wanting to get the account open, it probably just occurred to me that we could do that because there's no, you know, there's no change on it.

MR. LAY: So it was an instruction?

THE WITNESS: I don't know if it was or not.

MR. LAY: Well, an inquiry is a question. Hi, can you please go to the file, fax copy, question mark, can you, could you, are we able to. Or an instruction is just a straight sentence, just go to the file and get the guarantee and change the date on it, fax it to them. That's an instruction not an inquiry.

THE WITNESS: Yeah, I suppose you could put it that way.

¶ 108 In response to that answer, counsel for IIROC asked Mrs. Steinhoff "what is the better way to put it?"

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<sup>27</sup> Transcript of evidence, November 25, 2009, page 127, line 4 to page 128, line 13.

Would you put it that it was an instruction or it was an inquiry?" She replied:<sup>28</sup>

When it comes to this type of administrative whatever I'm corrected or instructed. My assistants find out what the policy is and tell me whether or not we can do that. In this situation, I don't know, there was -- there has to have been some communication back to me that it wasn't accepted because it wasn't followed up with another e-mail, just do it anyhow. So clearly somebody communicated to me that won't be acceptable and that is why I instructed them to find [Dr. P] and send a courier. So once whatever information came back to me, it was clear because there's no e-mail, or maybe there is and Wellington West didn't provide it to us, that there is no e-mail coming back to me telling me that that won't be acceptable. So I presume the reason I didn't pursue that task is that somebody told me that is not acceptable, or they won't accept it, or maybe they will accept it with initials. That would have been communicated to me somehow, maybe verbally, maybe by a missing e-mail here, I don't know. But certainly it didn't happen. We didn't change a date on it, there was no further -- we didn't go down that path.

Despite having read and, several times, re-read that reply, we simply have no idea what Mrs. Steinhoff's evidence was.

¶ 109 There is one other piece of testimony that seems relevant to the issue under consideration here. On March 15, 2007, in response to an enquiry from Ms. Walters-Sagher, Mrs. Steinhoff wrote, among other things:

"I have never *ever* asked a staff member to change the date on a previously signed guarantee on the [P. Inc] account and then submit the guarantee to compliance with the new date. I did ask a staff member to fax a copy of the guarantee we had on file to compliance since it seems redundant and absurd to have a client sign another guarantee when they've already signed one. However, since the original signed guarantee was not acceptable to Compliance I asked an assistant to courier the form to [Dr. P] to sign as per the email I cc'd to you."

She added: "I am incensed by this line of questioning and incredulous that you are being trapped into this insidious soap opera by a disgruntled former assistant of mine."

¶ 110 Mrs. Steinhoff's assertion that she had "never *ever* asked a staff member to change the date on a previously signed guarantee on the [P. Inc] account and then submit the guarantee to compliance with the new date" was demonstrably untrue and she did not tell the truth when she made it. She conceded in her evidence at the hearing that in light of the First Email she was wrong to tell Ms. Walters-Sagher that. She testified that she should have said "that I did ask them to change the date and submit it, and was told that wouldn't be acceptable. I don't know why I said this. But I take full responsibility that I was wrong."<sup>29</sup> Her concession and admission do not, however, alter the fact that what she said was untrue and, in our view, knowingly so.

¶ 111 Whether Mrs. Steinhoff was wrong to say what she did on March 15 is not relevant here (though it may be significant in connection with Count 3). What is relevant, however, is the implication in her answer that the First Email was really intended as an instruction to Ms. Terrell -- not a jest, as she suggested to Ms. Walters-Sagher the very next day,<sup>30</sup> or a question, - but an instruction, intended to be acted upon.

¶ 112 So what do we have here? Mrs. Steinhoff has said that the First Email was sent in jest (but that in case the jest was not understood, she explained orally to her staff that it really was sent in jest, though she does not remember when she did this and the evidence was that if she did it, nobody seems to have heard her) -- though she is the only witness who says this - and that it was not; that it was an instruction and that it was not; that it was a question (though one to which, it seems, everyone knew the answer) and that it was not.

¶ 113 We are bound to say that we can find nothing in Mrs. Steinhoff's evidence about the First Email that offers a coherent and credible alternative to the plain meaning of the words that she used in it; and in particular,

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<sup>28</sup> Transcript of evidence, November 25, 2009, page 128, line 24 to page 129, line 23.

<sup>29</sup> Transcript of evidence, November 24, 2009, page 116, line 24 to page 117, line 3.

<sup>30</sup> See above, paragraph [94].

there is in our view no intelligible connection between the “context” that she refers to and any of the meanings that she has variously said she really had in mind. Her position is, in fact, quite unorthodox. She offers a sort of *a la carte* menu of possibilities of meaning and significance without committing herself to any one of them and, in effect, invites us to choose the one that appeals to us most.

¶ 114 The short answer to this invitation is that for various reasons that we have tried to indicate none of Mrs. Steinhoff’s explanations seems believable. In *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, the British Columbia Court of Appeal said that “the real test of the story of a witness [such as Mrs. Steinhoff] must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable” in the circumstances. In our view, none of Mrs. Steinhoff’s explanations of the First Email satisfies this test. We do not believe any of them.

¶ 115 On the evidence as a whole the only plausible meaning to attribute to the First Email is the meaning that is apparent on its face, namely, as an instruction to Ms. Terrell to change the date on an existing guarantee and to fax it to Wellington’s compliance department with a view to facilitating the opening of the margin account of P. Inc. It was neither an enquiry nor a jest nor was it intended by Mrs. Steinhoff to be either of those things. We do not believe her evidence as to this.

(d) *The Happy Face Email considered*

¶ 116 Once again, it is useful to set out here the language of the Happy Face Email. It is as follows:

Just get a new form; cut out his signature from something we have already and paste it on form and fax. Send him one in the mail to sign and when u get it back, send it to head office.

Trish or Bonnie: please show Tjerk how to cut and paste signatures. Thx: -).<sup>31</sup>

¶ 117 Mrs. Steinhoff sent the Happy Face Email to Mr. De Gruijter, with a copy to Ms. Terrell and Ms. Reside<sup>32</sup> in the late morning of March 14, 2007. Before she did so she had been told by Mr. De Gruijter that he was “trying to contact [Dr. P] to get him to sign and initial this form” and, later that morning, that “[Dr. P] has not gotten back to me, I can therefore not get him to sign anything.” It was shortly after this that Mrs. Steinhoff sent the Happy Face Email.

¶ 118 Mrs. Steinhoff and Mr. De Gruijter seem to agree that at some point she instructed him to courier a new guarantee to Dr. P and ask him to sign it and return it. There is, however, some lack of clarity about just when this happened. For present purposes it is unnecessary for us to decide this.

¶ 119 We have already noted that nothing was done pursuant to the Happy Face Email. Specifically, no fake document was created or sent to Wellington’s head office in Winnipeg, by Mr. De Gruijter or anyone else.

¶ 120 We have observed above, with reference to the First Email:

There is no language in the First Email that is vague, uncertain, ambiguous or unclear. None of the words, whether taken alone or in the context of the email as a whole, requires any interpretation. There is an explicit, peremptory, unconditional and precise instruction to take certain clearly identified action. Nothing is left in doubt. As a matter of language, at least, it speaks for itself, with ringing clarity. Since Mrs. Steinhoff admits having composed and sent it, that would seem to satisfy IIROC’s burden of showing by evidence that is “clear, convincing and cogent” that Mrs. Steinhoff did what she is alleged in Count 2 to have done. It is indeed difficult to imagine evidence that is clearer, more convincing or more cogent. There is nothing “fragile or suspect” about it.

Those observations are equally apposite to the Happy Face Email.

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<sup>31</sup> This is the “happy face”.

<sup>32</sup> The Second Email was copied to Ms. Reside at her home email address, apparently due to some automatic feature of Mrs. Steinhoff’s email system. We understood that Ms. Reside was away on vacation at the time. Nothing seems to turn on this.

¶ 121 As in the case of the First Email, Mrs. Steinhoff says that the Happy Face Email does not mean what it seems to mean on the surface. It must be understood in context. Her account of the context is substantially that which we have described<sup>33</sup> and we will not repeat that description here. In this case, however, Mrs. Steinhoff stakes her ground firmly on the “joke” or “jest” version of the true meaning of the Happy Face Email. She does not claim that it was really a question. In the words of her counsel’s closing written submission, “Ms. Steinhoff’s comments concerning cut and pasting of P’s signature were meant in jest in response to the often frustrating document/compliance requirements. [She] did not realistically expect or intend for her assistants to act on these instructions nor did they”.

¶ 122 The contention that the Happy Face Email was sent “in jest” was first advanced by Mrs. Steinhoff on March 16, 2007 in her response, quoted in paragraph [94] above, to Ms. Walters-Sagher<sup>34</sup>. She repeated it, with slight elaboration, at her second interview with investigators. On this occasion, she added that she had received a concerned telephone call from the wife of Wellington’s Chief Executive officer who, as we understand it, had learned of the Happy Face Email and told Mrs. Steinhoff that Mr. Schneider, Ms. Terrell and Ms. Trites had reportedly said that it was seriously meant.<sup>35</sup> Mrs. Steinhoff said that she said to the CEO’s wife:

Any rational human being would know that, first of all, if I was serious I am not stupid enough to put it in an email. I would’ve gone and whispered, Please send a whatever . . . so clearly it was in jest.

¶ 123 As we understand what Mrs. Steinhoff says she told her caller, it is, in essence, that the whole idea that she would have sent such a message with a serious intent is so preposterous, so manifestly ridiculous, that it is not entitled to any credence whatsoever. It is in that sense, it is said, that the words “joke” or “jest” are used.

¶ 124 In her direct evidence Mrs. Steinhoff testified, with respect to the Happy Face Email:<sup>36</sup>

What I mean was, I was trying to lighten up the situation. It was a very tense time. I was trying to just make light of the situation, add a little levity to the intense frustration that we were all feeling at that point in time. There was never any intention that this was to be a genuine instruction. I pressed the send button and regretted it as soon as I did. I immediately came out of my office and said, I'm not serious, or something to that effect, and told Tjerk to call a courier and have a courier go to [Dr. P]'s.

....

There was nothing to it. There was really nothing to it. I didn't think twice about it.

My intention was never to fool Compliance or to try to get something done that was wrong. That was never my intention.

I had no intention of -- it's unfortunate. The first time in my life I have ever even done anything like that. It's unfortunate. Certainly I'll never send an e-mail again with that type of -- everybody knew what I meant. Bonnie knew I was joking. Tjerk knew that it was to add levity.

Asked who was present when she said she was not serious, she mentioned Ms. Terrell, Ms. Reside and Mr. De Gruijter. She added: “It was really just to lighten up the office a little bit.”

¶ 125 Mrs. Steinhoff was asked in cross-examination how she thought that the Happy Face Email would “add levity to the situation”. She replied:<sup>37</sup>

What do you mean? It's clearly something that's impossible to do so it was to lighten the situation, the frustration. I've already gone through this. It was intended to lighten the situation.

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<sup>33</sup> See paragraph [54] above.

<sup>34</sup> See paragraph [94] above.

<sup>35</sup> Transcript of proceedings at second interview held on May 15, 2009, page 12, lines 21 to 27.

<sup>36</sup> Transcript of evidence, November 24, 2009, page 95, line 22 to page 96, line 8; page 97, lines 14 to 25.

<sup>37</sup> Transcript of evidence, November 25, 2009, page 162, line 8 to page 163, line 7.

We were having incredible frustration, not just with this account, you saw Piercey and another account, and on and on. It just singled out the communication about this one account and it was coupled with frustration about other accounts that we're trying to get open that day, and it was an tense environment, and there was a lot of pressure. There was nothing to this, nothing resulted from it. The intention clearly was to -- just a thought of the moment, you know, send it out, and press send. It's a world that we live in that unfortunately, with technological communication and e-mails, it's really easy to press "send" a little too early and then regret that you've done it. I sent it. I regret it. I regretted it immediately. I followed up immediately by saying you know I'm not serious, send a courier. That's what happened. We can say that a thousand times. That's what happened.

¶ 126 Mrs. Steinhoff was then reminded of the statement in her email to Ms. Walters-Sagher on March 16, 2007 that “I attempted to impart some comic relief with these comments which were made in jest (happy face on e-mail)”, and asked whether the presence of the happy face “was indicative that this email was a joke”. She replied:<sup>38</sup>

The happy face was the lightness of the whole interchange, to signify the lightness of what this was. Clearly, if I was serious about doing it, you know -- you've got to put it in context. It was like a lot of e-mails I send with happy faces on them. It's just kind of, you know, the lightness and to bring some levity to our situation.

And that's it. It's as simple as that.

¶ 127 It is not entirely easy to unravel Mrs. Steinhoff's evidence about whether the “happy face” on an email was invariably an indication of a jest, in the sense that it signified that an instruction or request was not to be taken seriously by the addressee. We have reviewed a large number of emails sent by her to which the “happy face” symbol was attached. More often than not, it seems, it was little more than a casual and largely vacuous sign of a sort of easy sociability having about as much meaning as the equally casual and commonplace – “have a nice day”. It is quite devoid of any particular significance in relation to the message to which it was attached.<sup>39</sup> It is almost a cliché and far from being a reliable or, we would have thought, any signal that the message is not to be taken seriously and we do not think that any reasonably mature adult would so regard it.

¶ 128 Three witnesses testified about how they understood the Happy Face Email: Mr. De Gruijter, Ms. Terrell and Ms. Reside.

¶ 129 Mr. De Gruijter alternated between saying that he did not know whether the Happy Face Email was to be taken seriously,<sup>40</sup> that he did not take it “super seriously”<sup>41</sup> and that he did know that it was not a joke but he hedged his answers because he did not want to jeopardize his future.<sup>42</sup> Because of the inherent contradictions in this evidence, considered in the light of the reservations that we have already expressed about Mr. De Gruijter's general credibility<sup>43</sup> we have taken no account of his evidence on this point.

¶ 130 Mr. De Gruijter also testified that on March 14 Mrs. Steinhoff came out of her office and orally instructed her assistants to “cut and paste” the guarantee<sup>44</sup> though he could not recall whether this happened before or after she sent the Happy Face Email. This evidence, if believed, might tend to support the view that the Happy Face Email was not a jest but was seriously intended by Mrs. Steinhoff – at least, that she thought

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<sup>38</sup> Transcript of evidence, November 25, 2009, page 163, line 24 to page 164, line 7.

<sup>39</sup> We should note that David Zwarich, one of the IIROC investigators, gave evidence about a review that he undertook of Mrs. Steinhoff's use of the “happy face” symbol which led him to a conclusion not significantly different from our own. See, for example, Transcript of evidence, November 16, 2009, page 32, line 2 to page 33, line 7. We do not, however, rely on Mr. Zwarich's analysis.

<sup>40</sup> Transcript of evidence, November 19, 2009, page 75, lines 9 to 15.

<sup>41</sup> Transcript of evidence, November 19, 2009, page 75, line 14.

<sup>42</sup> Transcript of evidence, November 19, 2009, page 80, line 20.

<sup>43</sup> Above, paragraph [21].

<sup>44</sup> Transcript of evidence, November 19, 2009, page 88 line 10 to page

that there was a significant risk that it might be misunderstood. It is not, however, corroborated by any of Mrs. Steinhoff's other assistants. Accordingly, for the reasons that we have already given we consider it quite unreliable and have given it no weight at all.

¶ 131 The Happy Face Email was copied to Ms. Terrell. She testified that when she saw it, she told Mr. De Gruijter "not to do what the email was saying to do".<sup>45</sup> She thought that she also told him that "compliance was already involved". She did not think that Mrs. Steinhoff was joking nor did she have any recollection of Mrs. Steinhoff coming out of her office and telling her assistants not to act on it but immediately to contact Dr. P and get him to sign a new guarantee.

¶ 132 Ms. Reside<sup>46</sup> was not involved in any of the activities relating to the opening of a margin account for P. Inc., and in particular in relation to the requirement for Dr. P to execute a guarantee. She was, in fact, unclear as to whether she had been at work on March 14 or had left that day to go on vacation. She agreed that she had seen the Happy Face Email but thought that this was probably some time later, after she returned from her holiday.

¶ 133 Ms. Reside was interviewed by IIROC investigators on December 14, 2007. The investigators asked Ms. Reside about the Happy Face Email. She said that she assumed that Mrs. Steinhoff was joking. Asked why, she replied:<sup>47</sup>

Because she wouldn't ask us to do that. She had never asked us to do that, so I would assume it's a joke. Also, because we can't send – like these documents have to be sent to head office. We couldn't send a document like that to head office its got to have the original signature on it. I'm sure it was out of pure frustration, we were all frustrated with – with Compliance. And yeah, I just assume she's joking. She's put a happy face on it.

¶ 134 Ms. Reside gave substantially similar evidence before us. Asked whether, when she saw the Happy Face Email, she had any reaction to the last sentence in it, Ms. Reside said that she did not take it seriously, not simply because of the "happy face" but because Mrs. Steinhoff "wouldn't have asked that in a serious way. I think it was just out of frustration." She explained the source of the frustration as being the difficulties with Wellington's compliance department and confirmed the accuracy of what Mrs. Steinhoff had described to Ms. Walters-Sagher as "inter-office jesting" about the demands of that department.

¶ 135 We have come to the conclusion that Mrs. Steinhoff's contention that the Happy Face Email was sent "in jest", to "lighten up the situation", or to "impart some comic relief" – all descriptions that she used to describe it or her reason for sending it – is simply not credible and we do not believe it. First, on its face, the email has none of the characteristics that could reasonably be considered likely to achieve the purpose claimed for it. Secondly, the evidence suggests that Mrs. Steinhoff more or less routinely used the happy face symbol as a casual and largely meaningless sign of a sort of easy sociability and there is nothing on the face of the Happy Face Email to suggest that it had any deeper or more profound particular meaning or would be understood to have one.

¶ 136 We are not persuaded that the "happy face" has, or was intended by Mrs. Steinhoff to have, the meaning or significance that she seeks to attribute to it. The claim that it is evidence of the jocular intent of the Happy Face Email is one that would not naturally occur to anyone. It has all the hallmarks of a concoction seized on by Mrs. Steinhoff in desperation after the fact and is so far-fetched that no sensible person would or could give it any credence. Nor are we persuaded by the contention that the instructions contained in the Happy Face Email – to Mr. De Gruijter to cut out a signature from an old form, paste it on to a new one and fax it to Winnipeg, and to Ms. Terrell or Ms. Reside to show him how to do it – were so ridiculous that no-one could possibly have considered them to be seriously meant.

¶ 137 In our view the meaning of the Happy Face Email is apparent on its face. It was sent, not to lighten the

<sup>45</sup> Mr. De Gruijter testified that Ms. Terrell told him to "do it". Transcript of evidence, November 19, page 24, line 6.

<sup>46</sup> Ms. Reside was called to give evidence by Mrs. Steinhoff and was cross-examined by counsel for IIROC.

<sup>47</sup> Transcript of evidence, December 3, 2009, page 76, lines 9 to 21.

atmosphere but to ensure that Mrs. Steinhoff's client, P. Inc. was able to deploy the Fortis Strategy and make a tidy profit based on her advice. Mrs. Steinhoff prided herself on the quality and efficiency of her service to her clients. Understandably, she was annoyed, frustrated and perhaps even outraged by the prospect that her client might be deprived of this opportunity because of what she considered the stubborn stupidity of Wellington's head office. She did what she thought was necessary to enable P. Inc. to make its gain.

¶ 138 It is significant in our view that the instructions she gave to Mr. De Gruijter in the Happy Face Email included a direction to send a guarantee form in the mail, not by courier, to Dr. P to sign and send back and once it was received to fax it to Wellington. This does not suggest that there was any great urgency about getting an originally signed document from him. The proper documents would be in place within a few short days, the phoney documents could then be dispensed with and nobody would be any the wiser. The emails would then be irrelevant since no-one would have any occasion to examine them.<sup>48</sup> Mrs. Steinhoff is not a fool. She calculated the risk of discovery and concluded that it was worth taking. Unfortunately for her, the calculation did not take into account the possibility that Ms. Terrell and Ms. Trites, whatever their motivation might have been, would set in motion a chain of events that led to her being where she is now. But for their actions, and the enquiry based on them that Mrs. Steinhoff received from Ms. Walters-Sagher on the afternoon of March 14 everything would have proceeded in an orderly and relatively leisurely way. But that email changed everything; and necessitated the creation of a new and somewhat more urgent plan. Hence the enquiries to Mr. De Gruijter the next day.<sup>49</sup>

¶ 139 For these reasons we conclude that IIROC has discharged its burden on this aspect of Count 2, that Mrs. Steinhoff did what she is alleged to have done, and that in the circumstances this amounted to business conduct or practice that was unbecoming or detrimental to the public interest and a breach of Bylaw 29.1.

### COUNT 3

¶ 140 The full text of Count 3 is set out in paragraph [1] above. The actual drafting of the Count is somewhat convoluted. In essence, however, it is alleged that Mrs. Steinhoff tried, in a variety of ways, to deceive Wellington and the IIROC investigators and in so doing to frustrate or obstruct their respective enquiries about the subject matter of Counts 1 and 2 by:

- (a) providing answers that were not true or complete:
  - (i) with respect to her actions and other circumstances relating to those Counts; and
  - (ii) with respect to her intentions in sending the First Email and the Happy Face Email;
- (b) altering a courier delivery receipt so as to support a version of the facts that she had previously given and presenting it in its altered version to IIROC investigators; and
- (c) suborning Ms. Reside to make "evasive or misleading statements" to Wellington and IIROC that were favourable to Mrs. Steinhoff and consistent with the story she had told them.

We shall deal with these allegations in reverse order.

#### *Ms. Reside*

¶ 141 In its closing submission with respect to Mrs. Steinhoff's alleged "coaching" of Ms. Reside, IIROC acknowledges that the evidence it relies on is "circumstantial by nature". What this means is that while IIROC

<sup>48</sup> Cf. Mrs. Steinhoff's account of what she told the wife of Wellington's CEO – above paragraph [122].

<sup>49</sup> We assume that Mrs. Steinhoff's instruction to Mr. De Gruijter to use a courier was given orally, at some time after she sent him the Happy Face Email shortly after 11:00 a.m. on March 14 telling him to put it in the mail. It is curious that if she gave him that instruction on that day, she would find it necessary on March 15 to ask whether, "yesterday", he had sent the form by courier or by mail and whether he had asked Dr. P to send it back by courier or mail; and that the first reference to a courier in any communication to Ms. Walters-Sagher did not come until after she had made this enquiry.

agrees that it has no direct proof that Mrs. Steinhoff coached Ms. Reside, it says there are proven facts from which, on the basis of common experience, we may infer that she did so.

¶ 142 By way of general background, on a cumulative basis Ms. Reside is Mrs. Steinhoff's longest serving assistant. Their relationship continues to this date.

(a) *Misleading Wellington*

¶ 143 Ms. Reside was interviewed on the telephone by Ms. Walters-Sagher on March 29, 2007, the day she returned to work following a vacation that began on March 15, 2007. Ms. Reside's recollection is that the call was initiated by Ms. Walters-Sagher, apparently without pre-arrangement.

¶ 144 Prior to the interview on March 29, 2009 Ms. Reside had been sent a copy of the Happy Face Email. She had also been sent, to her home email address, a copy of an email from Mrs. Steinhoff to Ms. Walters-Sagher on March 15, 2009, in which Mrs. Steinhoff had denied that she had ever herself used the cut and paste procedure or instructed a staff member to do so and invited Ms. Walters-Sagher, if she required further re-assurance, to talk to Ms. Reside, whom she described as her "senior assistant". She had also been sent Mrs. Steinhoff's email of March 16 addressed to all her assistants in which she referred to "an issue [that] has arisen whereby Trish, on her departure, forwarded emails to Compliance concerning our inner [sic]-office jesting on dealing with what seems to be their onerous demands with respect to documentation".

¶ 145 Finally, just before the interview Mrs. Steinhoff had forward to her by email designated as being of high importance and marked "confidential" an email string with Ms. Walters-Sagher. Attached to one of the emails in the string was a spread sheet apparently prepared by or for the latter detailing instances in which documents had been cut and paste by various of Mrs. Steinhoff's assistants. Ms. Reside's name appears on this list as a witness to some of these seemingly inauthentic documents.

¶ 146 There is no evidence of any conversation between Ms. Reside and Mrs. Steinhoff about this spreadsheet. In her direct evidence she denied that she had reviewed it before the interview. She also denied that she had discussed it with Mrs. Steinhoff either before or after the interview; and she also denied that she had discussed the interview with Mrs. Steinhoff after the interview.<sup>50</sup> She specifically denied that Mrs. Steinhoff had encouraged or coached her on what to say to Ms. Walters-Sagher. Under cross-examination Ms. Reside said that she did not know why the material had been sent to her. She thought it might be because her name was mentioned. She denied that the reason it had been sent to her was to prepare her for her interview on March 29, 2007. Mrs. Steinhoff was not asked about this subject and gave no evidence about it.

¶ 147 In our view there is no sufficient basis in the evidence for inferring that Mrs. Steinhoff and Ms. Reside discussed the spreadsheet, its significance and the general context in advance of the latter's interview for the purpose of ensuring that Ms. Reside "got the story straight", that is, so that Mrs. Steinhoff could "coach" her and so mislead Ms. Walters-Sagher.

(b) *Misleading the IIROC investigators*

¶ 148 We have described above the answers that Ms. Reside gave to the IIROC investigators on December 14, 2007 when asked about the Happy Face Email,<sup>51</sup> and the evidence she gave before us on the same subject.<sup>52</sup> A little later in her interview, the investigators returned to the subject, at which point Ms. Reside expressed her annoyance at what she considered to be their attempt to "get something out of me and you're going to use many different ways to try to get it out of me."<sup>53</sup> The interview quickly moved onto another subject and ended very shortly.

¶ 149 Under cross-examination at the hearing Ms. Reside denied that she had invoked the "happy face" as

<sup>50</sup> Transcript of evidence, December 3, 2009, page 15 lines 6 to 19. See also transcript of evidence, December 3, 2009, page 97, lines 6 to 1.

<sup>51</sup> See above, paragraph [133].

<sup>52</sup> See above, paragraph [134].

<sup>53</sup> Exhibit 14, page 29, lines 19-22.

evidence that Mrs. Steinhoff was joking because she knew that the latter had advanced the same explanation to Ms. Walters-Sagher.<sup>54</sup> She said that she had come to this conclusion because of “the whole context of the e-mail. What it said. The time we were going through at that time was just -- we were very frustrated and, yeah, I would just have assumed that was her humour. Not just because of the happy face, but the whole context of the e-mail.”<sup>55</sup>

¶ 150 We simply do not believe this. In our view, Ms. Reside did not tell the truth to the investigators and she did not tell the truth about this matter to us. As we have said<sup>56</sup> we consider that the claim that the “happy face” is evidence of the jocular intent of the Happy Face Email, is one that would not naturally occur to anyone; and we not think that it occurred naturally to Ms. Reside.

¶ 151 The conclusion seems to us unavoidable that Ms. Reside must have been coached by Mrs. Steinhoff to refer to the “happy face” as part of her explanation for why she regarded the Happy Face Email as having been intended as a joke. Putting this another way, although there is no direct evidence that Mrs. Steinhoff “coached” Ms. Reside to rely on the “happy face”, in our view it is reasonable in the circumstances to infer that she did so and we find that she did. We should add, in this connection, that we consider it significant that by December 14, 2007 Ms. Reside was the only one of those who were her assistants in the first two weeks of March 2007 who was still employed by her. The others had all departed on bad terms.<sup>57</sup> She was the only one, in other words, with a reason to support Mrs. Steinhoff’s claims. Mrs. Steinhoff conscripted a loyal employee to her cause.

#### *Altering the date on a courier receipt*

¶ 152 There is little doubt that at some point – it is unclear when – Mrs. Steinhoff inserted a date on a courier receipt for delivery of a package to Dr. P. The package contained a new guarantee for him to sign and return so that Wellington’s requirements in connection with the opening of the margin account for P. Inc. could be satisfied. Mrs. Steinhoff admits that she did this. The date that she inserted was “03 14 07” i.e. March 14, 2007. It thus appeared that the courier had collected the package from Wellington’s Victoria office on that day.

¶ 153 At her first interview with IIROC investigators on April 2, 2008 Mrs. Steinhoff explained that after she had sent the First Email she came out of her office, told her assistants that she was joking and gave the instruction to send a courier to Dr. P the next day.

¶ 154 On May 5, 2008 Mrs. Steinhoff, through her counsel, presented the IIROC investigators with a substantial binder of documents that in her view it was important for them to have in order to gain a complete understanding of the matters that they were investigating. Among the documents included in the binder was a photocopy of the altered courier receipt.

¶ 155 On May 15, 2008 the IIROC investigators met with Mrs. Steinhoff and her counsel, at her request, so that she could answer any questions they might have in the light of their review of the contents of the binder. The date that the courier had been sent out was the subject of a number of questions to and answers from her. She consistently maintained that the courier had gone on March 14, 2007 and several times she referred to the receipt, and the date on it, in support of that position. At no point did she reveal that she had inserted that date.

¶ 156 Mrs. Steinhoff told the IIROC investigators that she would check the records in the Victoria branch office to see if the guarantee was sent to Wellington’s head office in the overnight courier on March 14. On October 15, 2008, through her counsel, she sent the investigators a photocopy of the altered courier receipt with a green arrow stick-it note attached, pointing to the date box, which had been highlighted in yellow.

¶ 157 In fact, as the investigators subsequently discovered, the date that Mrs. Steinhoff inserted was wrong. Paragraph 74 of the Particulars accurately sets out the facts in this connection:

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<sup>54</sup> Transcript of evidence, December 3, 2009, page 91, lines 18 to 23.

<sup>55</sup> Transcript of evidence, December 3, 2009, page 90, lines 10 – 16.

<sup>56</sup> Paragraph [136].

<sup>57</sup> Ms. Huston was working in the Victoria branch office at the time, but as a receptionist. She became an assistant to Mrs. Steinhoff at the end of March 2007 and as we understand it continues in that capacity.

74. In fact, the courier was called to the Victoria branch at 10:31 a.m. on March 15th and the envelope with the Guarantee inside was picked up at 12:16 p.m on March 15th. The Guarantee was not successfully delivered until March 16th at P's home. The Guarantee was sent to Well HO on March 19th.

¶ 158 These are the bare facts concerning the altered courier receipt. The question is: what is their significance?

¶ 159 IIROC's contention, as we understand it, is that Mrs. Steinhoff inserted the "03 14 07" into the office copy of the courier receipt in order to lend credibility to her claim that the First Email (which was sent on March 13) was not intended by her as a serious instruction, that in fact she had emerged from her office immediately after sending it and told her assistants not to act on it and instructed Mr. De Gruijter that day to send a courier to Dr. P enclosing a new form of guarantee for his signature and return.

¶ 160 Mrs. Steinhoff first made this claim in an email to Ms. Walters-Sagher on March 15. In support of it, she forwarded an exchange of emails with Mr. De Gruijter that day:

Did you send out a new Guarantee form yesterday to sign as per my request to you yesterday when you informed that Compliance was holding up the opening because they wanted another Guarantee form signed. If so, how did you send it, by courier or by mail? Did you tell him to send it back by courier or by mail.

Mr. De Gruijter responded:

I sent it by courier, can get him to courier back or mail it back, either is possible since I can call him.

¶ 161 The clear implication of Mrs. Steinhoff's email is that she gave instructions for a new guarantee to be sent to Dr. P on March 14. Mr. De Gruijter's response, which was sent 10.12 a.m. on March 15<sup>th</sup>, interestingly makes no reference to when the instruction was given or the courier was sent. In fact, the courier was not called until about 20 minutes after this.<sup>58</sup>

¶ 162 Mrs. Steinhoff embellished, or elaborated upon, her contention in a variety of different ways at her first interview with IIROC investigators on April 8, 2008. She told them that she had initially intended that the new guarantee be sent to Dr. P on March 13 and had told Mr. De Gruijter to drive it out to him in her car, but learned that he was in surgery and so decided to wait until the following day. She said, as well, that she was embarrassed at the necessity to get Dr. P to sign additional documents and thought it important that she explain to him why the new guarantee was needed and so she wanted to speak to him first and was unable to do this until the morning of March 14. At her second interview on May 15 she provided further details. She said that she was finally able to speak to Dr. P that morning – she said that she had "an indelible memory" of doing so - and apologized for bothering him with the matter. Following this conversation she arranged for the courier to go out. She said that the courier waited while Dr. P signed the document and then returned with it to the Wellington office that day. (In fact, Mrs. Steinhoff had been told by Mr. De Gruijter in an email on March 16, 2007 that the new guarantee had not, even as at that date, been returned by Dr. P). She added: "And it was Eureka! We've got the guarantee back! That was the feeling in the office after all this bullshit." She went on to say that a fax copy was sent to Winnipeg and the original was sent in the inter-office courier that evening.

¶ 163 All of this was, in fact, untrue.

¶ 164 IIROC says that it was all a fabrication intended to lend plausibility to her story that she never intended the First Email to be taken seriously and so immediately gave instructions for a courier to be sent to Dr. P to get him to sign a new guarantee but that, for reasons beyond her control, this was not done until the next day. IIROC says that Mrs. Steinhoff's email to Mr. De Gruijter enquiring as to whether he had sent out the guarantee "yesterday"<sup>59</sup> was, in effect, a carefully constructed ruse designed in aid of her characterization of her intent.

<sup>58</sup> Particulars, paragraph 49.

<sup>59</sup> Above, paragraph [160].

Having formulated this characterization she clung to it in her interviews with the IIROC investigators; and she inserted the March 14 date into the courier receipt as additional support for her story; and she never disclosed that she did this.

¶ 165 Mrs. Steinhoff was questioned at some length before us about her insertion of the “03 14 07” in the courier receipt and her providing it to the IIROC investigators without disclosing the fact that this is what she had done. It is not necessary to explore that evidence in any detail. In essence, she said that March 14 date represented her best recollection of the relevant date and that she had inserted it with a view to being helpful to the investigators. In a significant departure from what she had maintained at her interviews, however, she testified to us that she really did not consider the date that the courier went out had any importance whatsoever. She did not, however, offer any explanation as to why she had never disclosed to the investigators that it was she who inserted the date.

¶ 166 In his second interview with IIROC investigators on July 31<sup>st</sup>, 2008 Mr. De Gruijter said that he had been trying to contact Dr. P by telephone to get him to come to the office and sign the guarantee or, alternatively, to find out where he should courier it to Dr. P for signature and return.<sup>60</sup> He also said that he thought that Mrs. Steinhoff had asked him to courier the form to Dr. P and he thought that she had done this on March 14.<sup>61</sup> In his evidence before us, however, while initially unsure as to when this had happened he ultimately agreed that he had been given the instruction on that day.

¶ 167 The substantive allegation in Count 3 with respect to the courier receipt is that Mrs. Steinhoff engaged in business conduct or practice that was unbecoming or detrimental to the public interest contrary to IDA By-law 29.1 and IIROC Dealer Member Rule 29.1 in that she attempted to frustrate and/or obstruct Wellington’s internal investigation and/or Staff’s investigation into the conduct alleged in Counts 1 and 2 by attempting to deceive Wellington and/or Staff investigators by altering a courier delivery receipt and then presenting it to Staff as evidence which corroborated previous statements she made to Wellington and Staff with respect to her actions relating to the allegations in those Counts.

¶ 168 This is a charge – fabricating a story designed to mislead and obstruct a lawful investigation and, in that connection, creating and tendering a false document - of high seriousness.<sup>62</sup>

¶ 169 There is little doubt that the effect of Mrs. Steinhoff tendering the altered courier receipt without disclosing that she had altered it was to prolong the investigation and to make necessary certain inquiries as to what had actually happened that otherwise would not have been required. There is also little doubt that she tendered it by way of support, or additional support, for a position that she had consistently maintained since March 2007. Indeed, there is little doubt from a review of her evidence to the IIROC investigators in April 2008 and, especially, in May of 2008, that the fact that the courier was sent out, and she gave instructions for it to be sent out, on March 14 was central to her contention about the nature and significance of both the First Email and, in particular, the Happy Face Email.

¶ 170 In connection with the Happy Face Email we explained our conclusion that Ms. Walters-Sagher’s email made it necessary for Mrs. Steinhoff to embark upon a new and more urgent plan to deal with Dr. P’s guarantee in place of the more leisurely course that until then she had been content with. It was this that created the urgency and the need to demonstrate to Ms. Walter-Sagher and, in due course, to the IIROC investigators, that the First Email and the Happy Face Email were intended to generate a lightening of the atmosphere and that she had proceeded smartly to do things properly. It was this that gave Mrs. Steinhoff’s contention that the key events had taken place on March 14, 2007, its centrality.

¶ 171 The carbon copy of the courier receipt that Mrs. Steinhoff somehow obtained in Wellington’s office did not support her story. It did not contain the critical date. So she wrote it in. A simple visual examination of the carbon copy as altered makes it evident – and it must have been evident to Mrs. Steinhoff – that her insertion, in

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<sup>60</sup> Exhibit 4, volume 2, Tab. 218, page 16, lines 12 to 23.

<sup>61</sup> Exhibit 4, volume 2, Tab. 218, page 27, lines 8-9.

<sup>62</sup> Cf. *Re Johnson*, 2007 BCSECCOM 437 at paragraphs [29] and [30].

original black ball-point ink, is quite different in appearance from the other writing on it, which has the usual appearance of carbon copied writing. This difference would not, however, be evident on a photocopy of the altered receipt. So, to conceal what she had done she carefully refrained from tendering original. Instead, she made a photocopy and gave it to the investigators as evidence to support her story, without any explanation of how the document had come into being in the form in which she tendered it. And then, later, she provided them with a second photocopy with her inserted date highlighted in yellow and indicated by a stick-it arrow.

¶ 172 In our view it is impossible to characterize these actions in any other way than as acts of unvarnished and calculated dishonesty deliberately undertaken for the purpose of misleading the investigators on a matter that was central to her case and, therefore, to their investigation.

¶ 173 Considering the whole of the evidence on this aspect of the matter, we have little hesitation in concluding that IIROC has, by evidence that is clear, convincing and cogent, discharged its burden of showing that it is more likely than not that Mrs. Steinhoff inserted the March 14 date into the courier receipt and tendered it to the investigators in a form that concealed what she had done and did so with a view to deceiving them in the conduct of their investigations.

*Providing untrue or incomplete answers to Wellington and to IIROC*

¶ 174 Count 3 also charges that Mrs. Steinhoff gave untrue or incomplete answers to Wellington and to the IIROC investigators about, first, her conduct and other related matters that form the subject of Counts 1 and 2 and, second, her intentions in sending the First Email and the Happy Face Email.

¶ 175 We have, in fact, already dealt with this aspect of Count 3 in our consideration of Counts 1 and 2 and it is not necessary, therefore, for us to embark upon any extended analysis. We have found that:

- (a) Mrs. Steinhoff was aware of the use of the cut and paste procedure and condoned it, at least in connection with her own account; and that her denials of such knowledge prior to March 2007 were untrue;<sup>63</sup>
- (b) Mrs. Steinhoff did not tell the truth to Ms. Walters-Sagher when she denied that she had ever asked a staff member to change the date on a previously signed guarantee;<sup>64</sup>
- (b) at least in the First Email and the Happy Face Email Mrs. Steinhoff explicitly instructed her assistants to employ the cut and paste procedure and that her denials the she did so were untrue;<sup>65</sup>
- (c) in connection with her claim that the First Email was a jest or an enquiry Mrs. Steinhoff did not tell the truth and that she did not tell the truth to Wellington or to the IIROC investigators about her intentions in sending it;<sup>66</sup>
- (d) in connection with her claim that the Happy Face Email was intended as a jest Mrs. Steinhoff did not tell the truth to Wellington or to the IIROC investigators about her intentions in sending it;<sup>67</sup>

The untruths that we have listed were not casual, inadvertent or immaterial inaccuracies of the kind that all of us commit from time to time. They went to the heart of the matters that were under investigation by Wellington and by IIROC and were in our opinion demonstrably calculated, deliberate and designed to mislead.

¶ 176 We have reached the conclusion, after considering the totality of the evidence that IIROC relies on in support of Count 3, that it has discharged its burden in that connection, that Mrs. Steinhoff did what she is alleged to have done in the respects that we have indicated and that in each of those respects, her conduct

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<sup>63</sup> See above, paragraphs [45] to [49].

<sup>64</sup> See above, paragraphs [109].

<sup>65</sup> Ibid. And see above, paragraphs [135] to [138].

<sup>66</sup> See above, paragraphs [114] to [115].

<sup>67</sup> See above, paragraphs [136] to [138].

amount to a breach of By-law 29.1.

## **SUMMARY**

¶ 177 In summary, for the reasons we have set out we have concluded that IIROC has made out its case, in the respects that we have indicated, on each of the 3 Counts included in the Notice of Hearing.

¶ 178 At various times, and in various ways, Mrs. Steinhoff has said or implied that in connection with the matters that have given rise to these proceedings, she has been a victim of malice, muckraking, vindictiveness, pettiness and jealousy on the part of others. All of that may very well be true. There was indeed evidence of these qualities and sentiments on the part of a number of those who testified before us. We have, however, seen nothing that establishes that any of these qualities or sentiments is a significant cause of the predicament in which she found herself. That is entirely due to her own words and her own acts and omissions.

¶ 179 We wish to add this. There has been no evidence, nor even a suggestion, that any of Mrs. Steinhoff's clients was harmed by any of the activities that form the subject of this decision. None of her clients has complained of any of these matters. We accept that she was motivated by a desire to serve them well. That does not, however, justify her thumbing her nose at the laws and regulations that govern her in the conduct of her business.

Leon Getz, Q.C.

Chris Lay

Don Teatro

March 5, 2010

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