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 28

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

Heard: June 3 and 16, 2010 at Vancouver, BC
Decision: June 22, 2010
(57 paras.)

Hearing Panel:
Stephen D. Gill, Brian Field, Barbara Fraser

Appearances:
Ryan W. Parsons & Paul J.B. Smith, for the Association
Gregory N. Harney, for the Respondent

DECISION

INTRODUCTION

¶ 1 By a Notice of Hearing dated April 8, 2010, (the "Notice of Hearing") the Investment Industry Regulatory Organization of Canada ("IIROC"), alleges that Carolann Steinhoff (the "Respondent") committed contraventions of the IIROC Dealer Member Rules while registered as a Registered Representative ("RR") at Wellington West Capital Inc. and working at a Wellington Branch in Victoria, British Columbia. The alleged contraventions are set forth in seven Counts, and the Notice of Hearing includes some forty-seven paragraphs entitled "Particulars", being a summary of the facts alleged and to be relied upon by IIROC at the hearing. The hearing of this matter is set for August 3, 2010 for five days.

¶ 2 By Notice of Motion dated June 2, 2010 (the "Motion") the Respondent seeks an order:

(a) Prohibiting the publication or release of information or documents relating to this proceeding, in particular the Notice of Hearing and Particulars; and

(b) Striking out the "Particulars" contained in the Notice of Hearing.

¶ 3 By Response dated June 2, 2010 IIROC Staff opposed all of the relief sought in the Motion.

BACKGROUND

¶ 4 IIROC was formed in 2008 to combine the operations of the Investment Dealers Association of Canada (the "IDA") which was formed in 1916, and Market Regulation Services Inc. IIROC's purpose is, amongst other things, to regulate the operations, standards of practice, and business conduct of its members and their representatives in the securities industry, with a mandate to serve the public interest in protecting investors and market integrity. Members and Approved Persons of IIROC bind themselves contractually to comply with, amongst other things, IIROC's By-laws, Regulations and Rules. Members and Approved Persons of IIROC agree to submit to IIROC's governance and disciplinary jurisdiction. The British Columbia Securities Commission (the "Commission") recognizes IIROC as a self-regulatory body ("SRO") under the *Securities Act*, R.S.B.C. 1996, c. 418 (the "Act").

¶ 5 In *Dass v. Investment Dealers Association of Canada*, 2008 BCCA 413, 85 B.C.L.R. (4th) 53, the Court described the IDA, IIROC's predecessor, as follows:

> 5. The IDA is a voluntary organization. Its relationship with its members is contractual. It is recognized as a "self-regulatory body" (I will adopt the acronym used by the parties, "SRO") pursuant to s.24(a) of the *Securities Act*, R.S.B.C. 1996, c. 418 (the "Act"), and as such plays a role in the regulation of the securities industry nationally. Its nature and functions were comprehensively described in *Ripley v. Pommier* (1991), 108 N.S.R. (2d) 39, 294 A.P.R. 38 (N.S.C.A.), leave to appeal to S.C.C. refused, (1992) 113 N.S.R. (2d) 90 (note), 139 N.R. 399 (note), at paras. 21-23 as follows:
>
> > [21] The Investment Dealers Association (IDA) […] is an unincorporated association which oversees the investment and brokerage business in Canada, serving as the professional organization of, and regulating, member brokerage houses and their employees. It is not specifically empowered under any statute, although its existence is recognized in some securities legislation. It has its own constitution, by-laws and regulations to which its members bind themselves by contract to comply. The IDA establishes requirements for capitalization, procedures for purchase, sale and registration of securities for clients, audit procedures and other matters that govern the internal and external operations of national and local investment firms. The IDA also sets standards of qualifications for, and for the discipline of, persons engaged in the industry. Its authority does not extend to regulating the actual issuance of securities: that is vested in provincial securities commissions and the various stock exchanges sold. The sale of securities is regulated by statute in all Provinces. It is the persons and the firms who sell the securities that are regulated by the IDA.
> >
> > [22] The nature of associations such as the IDA was considered by the Supreme Court of Canada in the case of *Orchard v. Tunney* (1957), 8 D.LR. (2d) 273:
> >
> > > In the absence of incorporation or other form of legal recognition of a group of persons as having legal capacity in varying degrees to act as a separate entity and in the corporate or other name to acquire rights, incur liabilities, to sue and be sued, the group is classified as a volunteer association. There are many varieties of this class ranging from business partnerships, labour unions, professional, fraternal and religious societies to social clubs … (page 278)
> >
> > [23] Principles governing the relationship among the various members of voluntary organizations such as the IDA were considered in *Stephen v. Stewart*, [1944] 1 D.L.R. 305 where MacDonald, C.J.B.C., said in the British Columbia Court of Appeal:

> A volunteer organization, having no legal entity, has its most familiar form as a members club. Decisions on such clubs show that the relation of members to each other is purely contractual, the contract being found in the constitutional rules which they adopt. (page 311)

To similar effect is *Morgis v. Thomson Kernaghan & Co.* (2003), 65 O.R. (3d) 321, 174 O.A.C. 104 (C.A.), leave to appeal to S.C.C. refused (April 8, 2004), No. 29950 [2004 CarswellOnt 1439 (S.C.C.)] ["*Morgis v. Thomson Kernaghan & Co*. cited to O.R.]. In that case, the court confirmed at para. 10 that

> Membership in the IDA is voluntary. It is based on the contractual commitment of members to abide by the constitution, regulations, rules and by-laws of the association. The IDA is not created by and does not derive its authority from statute. Rather, it operates under the authority of its own constitution and is recognized under some securities legislation.

¶ 6 The Respondent, Ms. Steinhoff, has been continuously registered as a "Registered Representative" with the IDA, and then IIROC, since 1988. It is not disputed that the Respondent, in applying for registration with the IDA, and IIROC, confirmed that she understood and was conversant with the By-laws, Rules, Rulings and Regulations, and agreed to be bound by, observe and comply with the Rules, and submit to the jurisdiction of IIROC.

The 2003 Notice of Hearing

¶ 7 The Respondent has previously been the subject of disciplinary proceedings. In January, 2003 the IDA commenced disciplinary proceedings against the Respondent for alleged contraventions of the IDA By-laws in connection with events between January, 1996 and January, 1999. In accordance with its usual practice, the IDA posted on its website a Notice to the Public of the disciplinary proceeding, and the (Revised) Notice of Hearing. The 2003 Notice of Hearing contained a detailed summary of the facts alleged and intended to be relied upon by the IDA at the hearing.

¶ 8 In a decision pronounced April 22, 2003 (and published), an IDA Hearing Panel held that the Respondent had contravened IDA By-law 29.1 in executing an unauthorized transaction consisting of four trades. On review, in a decision released November 24, 2004 (2004 BCSECCOM 666), the Commission found that the IDA Panel erred in law, overlooked material evidence, and relied on speculation as to facts not in evidence; and erred by failing to consider all the circumstances in determining whether the Respondent's trading in Ontario without registration was a contravention of IDA By-law 29.1. The Commission set aside the IDA Panel's findings and its penalty decision.

The 2009 Notice of Hearing

¶ 9 In a Notice of Hearing dated June 30, 2009, IIROC staff alleged that the Respondent committed certain contraventions of Rule 29.1 of the Rules in connection with events between January, 2004 and October, 2008. In accordance with its usual practice, IIROC published on its website notice of the disciplinary proceedings, and a copy of the 2009 Notice of Hearing, which contained a heading "Particulars" and there followed a summary of the facts alleged and to be relied upon by staff at the hearing.

¶ 10 A lengthy hearing was held in November and December 2009, and a decision on liability was issued March 5, 2010, and, as is usual, was published: (2010) IIROC No. 8. The Hearing Panel's decision is some 173 paragraphs, and concluded that IIROC had made out its case on each of the three Counts included in the 2009 Notice of Hearing. We are advised that the hearing on penalty is scheduled for July 6, 2010. The Respondent states she has instructed her counsel to appeal the IIROC Panel's decision.

The 2010 Notice of Hearing

¶ 11 In November, 2008 as a result of information received, IIROC commenced an investigation of the

Respondent with reference to two of her clients. As part of that process the Respondent was interviewed by IIROC staff.

¶ 12 IIROC Staff reviewed all of the relevant evidence obtained by IIROC in its investigation of the complaint made by the two clients, and concluded it was appropriate to initiate disciplinary proceedings against the Respondent in connection with the complaint. A draft notice of hearing was sent to Respondent's counsel on January 28, 2010.

¶ 13 The Notice of Hearing, dated April 8, 2010 was issued and served. The Notice of Hearing sets forth seven Counts alleging that the Respondent, in her dealings with the two clients, has violated IIROC Dealer Member Rules 29.1, 1300.1(a), (p), (q), and 1300.4. The Notice of Hearing contains on page 3 a heading entitled "Particulars", and there follows an extensive summary of the facts alleged, and to be relied upon by IIROC Staff at the hearing. As permitted by the Rules, the Respondent delivered a Response to the Notice of Hearing on 27 May, 2010.

¶ 14 In the letter dated April 8, 2010 from IIROC Staff to the Respondent's counsel, it stated that an Enforcement Notice would be published on Friday, April 9, 2010, at which time the Notice of Hearing would be posted on IIROC's website. We are advised this is standard practice. In response to this, the Respondent's counsel requested a delay in IIROC's publication of the Notice of Hearing on its website so that counsel could advise and take instructions from the Respondent, who was then in London and difficult for counsel to reach. IIROC agreed to delay publication of the Notice of Hearing on its website until 14 April, 2010.

¶ 15 On or about 13 April, 2010 counsel for the Respondent delivered to IIROC a draft Statement of Claim (in B.C. Supreme Court) and advised IIROC Staff that he intended to apply to the Supreme Court for an order, amongst other things, enjoining IIROC Staff from posting the Notice of Hearing on its website. On 27 May, 2010 the Respondent commenced an action in the Supreme Court (the "Action"). The same day her counsel delivered a motion in the Action seeking, among other things, injunctive relief against IIROC Staff. We are advised that the application in the Action has been adjourned.

¶ 16 On or about April 20, by agreement, the hearing of the merits in relation to the Notice of Hearing was set for 3 August, 2010.

¶ 17 On 27 May, 2010 the Respondent applied to this Hearing Panel, by motion, for the relief we have outlined in paragraph 2 herein. Affidavit materials have been filed by the Respondent in support of her motion, and by IIROC Staff in opposition to the motion. The Panel has also received written outlines of submissions, and extensive briefs of authorities. The hearing of the merits of the motion was held on Thursday, June 16, 2010; the Panel reserved its decision.

¶ 18 The Respondent, in her affidavits, alleges that publication of the Notice of Hearing would have catastrophic consequences for her. She alleges she will suffer irreparable harm and her professional reputation will be destroyed unnecessarily if her name is published in the Notice of Hearing. She alleges publication by IIROC will be emotionally devastating, destroy her clients' confidence in her, and the allegations will destroy her career. She alleges that the publication of previous disciplinary proceedings resulted in significant loss of business.

¶ 19 However the Respondent also states that she has one of the largest books of business in the industry for an individual broker, in terms of number of clients and assets under administration. She states there has only been this one complaint about suitability since the market downturn. She has been working as an investment advisor for approximately twenty-two years, has a master's degree, is a certified financial planner, and has completed approximately thirty professional courses relating to securities, ethics, business leadership, and financial planning. She states she has consistently placed in the top one percent of producers in her field.

¶ 20 In its affidavit materials filed in opposition to the motion, IIROC states they view the alleged facts set out in the Notice of Hearing, which IIROC relies on to support allegations of improper conduct by one of its Approved Persons, to be matters of public interest and not confidential matters between the Approved Person and IIROC, or anyone else. Further, they state that the two clients involved reviewed the Notice of Hearing in

detail prior to it being issued and did not express any concerns with respect to the confidentiality of any of the information contained in the Notice of Hearing.

¶ 21 In response to statements in the Respondent's affidavits, IIROC states they are currently pursuing 14 "suitability cases" in Western Canada (including the Respondent) and that the Respondent's case is simply the first to make it to the stage of delivery and publication of a Notice of Hearing.

¶ 22 The Respondent also alleges in her affidavit material that she believes IIROC is biased against her because of comments she made in 2002 to a Committee, and suggests that the IIROC investigation lacked objectivity. IIROC in its affidavit material states that neither Mr. Funt nor IIROC counsel recall or are familiar with comments by the Respondent to the "Wise Persons Committee" or to leading business magazines. They state in any event that the recommendation to pursue disciplinary proceedings in this matter was based on the evidence gathered in the IIROC investigation, and was not in any way based on any previous comments the Respondent may have made about the IDA or IIROC.

ANALYSIS

Should IIROC Be Prohibited from Publishing the Notice of Hearing

The IIROC Recognition Order

¶ 23 The Commission recognized IIROC on the terms and conditions set out in the IIROC Recognition Order: 2008 BCSCCCOM 275. In Schedule 1, Criteria for Recognition, paragraph 2 states:

> **2. Public Interest**
>
> IIROC must regulate to serve the public interest in protecting investors and market integrity. It must articulate and ensure it meets a clear public interest mandate for its regulatory functions.

¶ 24 With respect to Rules, the Criteria for Recognition stipulate:

> **9. Rules**
>
> (a) IIROC must establish and maintain Rules that:
>
> (i) are necessary or appropriate to govern and regulate all aspects of its functions and responsibilities as a self-regulatory entity;
>
> (ii) are designed to:
>
> (A) ensure compliance with securities laws;
>
> (B) prevent fraudulent and manipulative acts and practices;
>
> (C) promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith;
>
> (D) foster cooperation and coordination with entities engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities;
>
> (E) foster fair, equitable and ethical business standards and practices;
>
> (F) promote the protection of investors; and
>
> (G) provide for appropriate discipline of those whose conduct it regulates;
>
> (iii) do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of

IIROC's regulatory objectives;

(iv) do not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized; and

(v) are not contrary to the public interest.

¶ 25 With respect to disciplinary matters, the Criteria for Recognition stipulate:

10. Disciplinary Matters

The process for discipline must be fair and transparent.

¶ 26 With respect to disciplinary matters, Appendix A to the Recognition Order, entitled Terms and Conditions states:

10. Disciplinary Matters

(a) Subject to paragraph (b), IIROC must

(i) promptly notify the Commission, the public and the news media of:

(A) the specifics relating to each disciplinary or settlement hearing once the hearing date is set, and

(B) the terms of each settlement and the disposition of each disciplinary action once the terms or disposition is determined; and

(ii) ensure that disciplinary and settlement hearings are open to the public and news media;

(b) Despite paragraph (a), IIROC may, on its own initiative or on request, order a closed-door hearing or prohibit the publication or release of information or documents if it determines that it is required for the protection of confidential matters. IIROC must establish written criteria for making a determination of confidentiality.

¶ 27 From the foregoing, it can be seen that in performing its regulatory functions, IIROC must monitor and enforce compliance with the Rules by its Members and others subject to its jurisdiction, to serve the public interest in protecting investors and market integrity. It must ensure it meets a clear public interest mandate for its regulatory functions.

¶ 28 Regarding disciplinary matters, the process for discipline must be fair and transparent. Further, IIROC must promptly notify the commission, the public, and the news media of the specifics relating to each disciplinary hearing once the hearing date is set, and the disposition of each disciplinary action once the disposition is determined. IIROC must also ensure that disciplinary hearings are open to the public and news media.

¶ 29 The terms of Appendix A, para. 10(b) provides that notwithstanding the foregoing, IIROC may order a closed-door hearing or prohibit the publication of information or documents if it determines it is required for the protection of confidential matters.

¶ 30 Rule 1 of the Rules of Practice and Procedure state:

1.2 General Principle

These Rules should be interpreted and applied to secure a fair hearing and a just determination in the interests of justice, with a view to securing such result in a timely and cost effective manner.

¶ 31 The following Dealer Member Rules, and Rules of Practice and Procedure set out some of the information that must be included in the Notice of Hearing:

(a) Rule 6 of the Rules of Procedure, which governs the commencement of IIROC's enforcement proceedings, requires all disciplinary proceedings to be commenced by Notice of Hearing;

(b) Rule 6.5 of the Rules of Procedure stipulates that a Notice of Hearing must state, amongst other things:

(i) The alleged violation of the Rules; and

(ii) The **facts** in support of the alleged violation; and

(iii) **Any other information** IIROC may consider advisable; and

(c) Rule 20.50 of the Rules, which governs public access to hearings, states that:

(i) Disciplinary hearings **shall be** open to the public unless the Hearing Panel orders the exclusion of the public; and

(ii) An order excluding the public shall only be made where the Hearing Panel is of the opinion that the desirability of avoiding disclosure of intimate financial, personal or other matters in the interest of any person affected, or in the public interest **outweighs** the desirability of adhering to the principle that hearings be public (Rule 20.50(2)).

¶ 32 Mr. Funt, in his Affidavit No. 1, states:

> "14. On its website, behind the hyperlinks titled "Enforcement" and "Notices", IIROC provides the following information to the public about Hearing Notices: 'A Notice of Hearing is a public document that outlines alleged facts and misconduct and gives information on where and when a hearing into these matters will take place.' Consistent with this information, and in light of the IIROC Recognition Order, the Public Notice Requirement, and the terms of Rule 6 of the Rules of Procedure, promptly after a disciplinary hearing date is set IIROC posts on its website the relevant Notice of Hearing.
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> 15. In response to paragraph 43 of the R.R. Affidavit, based on my experience, IIROC's policy and practice of:
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> (a) posting on its website public notice of upcoming hearings;
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> (b) having those hearings open to the public; and
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> (c) publishing on its website:
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> (i) the name of the IIROC member alleged to have breached the Rules;
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> (ii) the particular Rule(s) alleged to have been breached; and
>
> (iii) the alleged facts relied on by IIROC.
>
> are consistent with the standard policies and practices of other securities regulators in this regard, including the Commission (see sections 15 and 19 of the Securities Regulations, B.C. Reg. 196/97, and the Commission's BC Policy 15-601 – Hearings, sections 2.3 and 5.5), each of the other Securities Commissions in Canada, the Securities and Exchange Commission (U.S.A.) and the Financial Industry Regulatory Association (U.S.A.).

¶ 33 The Respondent has been a licensed representative for some 22 years. When she agreed to join the IDA, and later IIROC, she agreed to abide by the Dealer Member Rules and the Rules of Practice and Procedure.

Those practices and procedures were in full force and effect in respect of the two prior disciplinary proceedings in which the Respondent was named. The IDA, and IIROC, published the Notices of Hearing, and disciplinary decisions on its website. Its disciplinary hearings are open to the public and the news media. The process is fair and transparent.

Common Law Principles on Openness of Proceedings

¶ 34 Counsel for the Respondent and counsel for IIROC have both made extensive written submissions, with authorities, on the law that applies where an individual is subject to the powers of a disciplinary tribunal. It is common ground that tribunals of this type are bound to observe the requirements of natural justice. A number of cases were cited to us where, in the particular circumstances of each case, orders were made to prohibit the publication of certain information, such as the identity of the complainants, or the identity of the accused individual. In *W. (C.) v. M. (L.G.)* (2004) B.C.S.C. 1499; 36 B.C.L.R. (4th) 181, the plaintiff brought an action for damages for sexual assault and made an application, without notice to the defendant, seeking orders to maintain anonymity in the conduct of her action. The court stated:

> "7. I begin my analysis by recognizing the important principle that generally speaking the court must administer justice in public. In order to maintain public confidence in our system of justice it is critical that the proceedings of the court be open to the public and not conducted in secret. Public scrutiny protects the integrity of the process and promotes respect for and confidence in the judicial system.
>
> 8. The principle of open courts and the right of the public to obtain information about the courts is tied to the right of freedom of expression guaranteed in s.2(b) of the *Charter (Canadian Broadcasting Corp. v. New Brunwick (Attorney General)*, [1996] 3 S.C.R. 480 (S.C.C.).
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> 9. I am satisfied, however, that this important principle of the openness of the court process is subject to an overarching principle: the fundamental object of the court is to see that justice is done between the parties. There are circumstances where the principle of the open court must give way in order to achieve justice. The question is what those circumstances are and, if they exist, how far the principle of an open court must yield in order to ensure that justice may be done.
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> 10. I have reviewed a number of decisions in an attempt to identify the factors that the court should take into account in weighing the public interest in maintaining an open court system with the litigant's interest in maintaining, as far as possible, her anonymity.
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> …
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> 15. At para. 15, Mr. Justice Macfarlane referred to what Dickson, J. had said in *MacIntyre v. Nova Scotia (Attorney General)* (1982), 132 D.L.R. (3d) 385 (S.C.C.) at p. 403:
>
> > In my view, curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance. One of these is the protection of the innocent.
> >
> > (my emphasis)
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> …
>
> 25. I think the following principles can be distilled from the cases I have referred to:

1. The principle that the court's process must be open to public scrutiny must give way when it is necessary to ensure that justice is done.

2. There must be some social value or public interest of superordinate importance in order to curtail public accessibility.

3. The onus is on the person seeking to restrict public accessibility to demonstrate that the order is necessary in order to achieve justice. The test is not one of convenience but of necessity.

4. The mere private interest of a litigant to avoid embarrassment is not sufficient to displace the public interest in an open court process.

5. The categories of circumstances that may be viewed as constituting a social value of superordinate importance should not be considered closed. They include:

   (a) where disclosure of the litigant's name or identity would effectively destroy the right of confidentiality, which is the very relief sought in the proceeding;

   (b) where persons entitled to justice would be reasonably deterred from seeking it in the court if their names were disclosed;

   (c) where the administration of justice would be rendered impracticable if the public were not excluded;

   (d) where anonymity is necessary in order to ensure a fair trial;

   (e) where anonymity is necessary to protect innocent persons and little public benefit would be served by disclosure of the names of the innocent;

   (f) where disclosure of the identity of the plaintiff would cause that person to suffer damages in addition to those already suffered as a result of the wrong for which the plaintiff is seeking compensation.

6. In my view there must be evidence related to the particular applicant to support the alleged necessity for anonymity rather than mere statements of generality.

7. Finally, it is my view that the principle of the open court should be displaced only to the extent that it is necessary to preserve the superordinate social value.

¶ 35 We agree with the submission of counsel for IIROC that in adjudicative proceedings, covertness is the exception and openness and transparency the rule. The transparency and integrity of the administration of justice would be significantly injured if the desire of a litigant to remain anonymous were routinely permitted to trump the strong presumption in favour of open proceedings.

¶ 36 We have carefully reviewed all of the materials that have been submitted on this application. We cannot identify a social value or public interest of superordinate importance that would curtail or restrict public accessibility to this tribunal's processes.

¶ 37 As Justice Joyce stated (in *W. (C.) v. M. (L.G.)*) in para. 25, point 4 "the mere private interest of a litigant to avoid embarrassment is not sufficient to displace the public interest in an open court process." In our view this principle applies directly to the complaints of the Respondent. She has concerns about potential harm if her name is published, and concerns about her professional reputation. She has concerns that publication may cause her distress, or professional difficulty. These are private interests, and do not meet the test of necessity.

¶ 38 At the same time, the Respondent states she has one of the largest books of business in the industry for an individual broker, and has consistently placed in the top one percent of producers in her field. We are cognizant of the fact that public disciplinary hearings were initiated and published both in 2003 and in 2009, and there was media attention. However we view this as part and parcel of the tribunal process being open to public scrutiny. We see no impediment to justice being done if IIROC follows its usual procedure of publication.

¶ 39 In our view, the Respondent has not made out a case where public accessibility should be curtailed. Such an order is not necessary in order to achieve justice. In our view the Respondent's concerns fit under the category of "convenience" but not of "necessity".

¶ 40 IIROC disciplinary hearings are to be open to the public, subject to an order under Rule 20.50(2). Appendix A to the BCSC Recognition Order, at s.10(b) states:

> … IIROC may, on its own initiative or on request, order a closed-door hearing or prohibit the publication or release of information or documents if it determines that it is required for the protection of confidential matters. IIROC must establish written criteria for making a determination of confidentiality."

¶ 41 Dealer Member Rule 20.50(2) states:

> "The hearings prescribed in subsection (1) shall be held in the absence of the public where the Hearing Panel is of the opinion that the desirability of avoiding disclosure of intimate financial, personal or other matters, in the interest of any person affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be public."

¶ 42 In our view the Respondent has not made out a case for the protection of "confidential" matters that outweighs the principle that hearings be public. We have carefully reviewed the Notice of Hearing. The summary of the facts alleged, which commences on page 3 at paragraph 1, has convenient headings to indicate the nature of the facts alleged in each section. There is no doubt there is considerable detail provided in the facts alleged. The facts alleged clearly spell out the case which the Respondent has to meet. While the facts alleged are very detailed, in our view they are appropriate and they do not disclose any of the Respondent's confidential matters, such as intimate financial, personal or other confidential information. The information contained in the Notice of Hearing concerns the Respondent's provision of financial services to members of the public, for which she is required to be publicly licensed. Her actions, and the allegations against her, are matters of public interest.

¶ 43 It should be noted that these are not "pleadings" which are governed by the Rules of the B.C. Supreme Court. IIROC is required to state, in a Notice of Hearing, the facts put forth in support of the alleged violations. Further, the Rules give IIROC a discretion: they can also provide "any other information" IIROC may consider advisable. In our view the facts alleged in the Notice of Hearing do not overstep the mark for this proceeding.

¶ 44 By the Notice of Hearing, IIROC provides the public with information as to an approved person's alleged misconduct. Accordingly, public disclosure of the kinds of the specific allegations in the Notice of Hearing serves the public interest, and it is IIROC's standard practice.

¶ 45 In our view, an individual such as the Respondent, participating in the securities business, has no vested interest or right as against the public interest. As with the Commission, IIROC's mandate is to serve the public interest and protect market integrity. We do not see anything particularly unusual about the facts alleged in the Notice of Hearing, and we accept IIROC's counsel's submission that it is in the public interest to know the allegations against the Respondent.

¶ 46 The facts and matters alleged in the Notice of Hearing do not constitute the kind of superordinate social values or public interest warranting a publication ban in respect of the Notice of Hearing. There is no significant difference between the nature of the allegations against the Respondent, and those commonly made

against others subject to financial industry disciplinary proceedings. We agree with the submission of counsel for IIROC that granting the publication ban sought by the Respondent in these circumstances would reverse the standard practice in the industry, and be contrary to the Dealer Member Rules, the terms of the IIROC Recognition Order, and the strong presumption in favour of open and transparent adjudicative proceedings.

¶ 47 The Respondent also submitted that publication of the Notice of Hearing should not occur until there has been a determination of her case on the merits. While that procedure has been followed in some other cases that were cited to us, and in some cases publication was withheld while an appeal was prosecuted, we do not see any basis for such an order in this case. Those other cases are distinguishable, in our view, on their peculiar facts. IIROC's mandate is to hold public hearings unless a case can be made out for the required protection of confidential matters. In our view, no such case has been made out here. We accept that the public has an interest in transparency in disciplinary proceedings and has a right to know IIROC's allegations against an individual doing business with the public in a highly regulated industry. The Respondent has agreed to be bound by IIROC's Rules and Regulations. She can hardly complain when IIROC follows its standard practice in accordance with its Rules and Regulations.

¶ 48 IIROC exists and has been recognized as an SRO to serve and protect the public interest, not the personal interests of its Approved Persons. The public has a right to know details of disciplinary allegations before they are brought to a hearing, and to see how IIROC pursues those allegations at a hearing. It is clear that publication of the Notice of Hearing on IIROC's website is the means through which IIROC staff meets these important public objectives. We agree with IIROC's counsel's submission that without such public disclosure and access there can be no effective public accountability or credible self-regulation.

¶ 49 Having carefully considered the whole of the evidence on this point, we have reached the conclusion that IIROC should not be prohibited from publishing the Notice of Hearing in the normal manner.

Should the "PARTICULARS" in the Notice of Hearing be Struck

¶ 50 In the Notice of Hearing, there is a section entitled for convenience "PARTICULARS". In that section, IIROC sets out the specific **facts alleged** to support the counts in the Notice of Hearing. Whether they are called "Particulars", or "Facts Alleged", they comply with the requirements set out in Rule 6.5 of the Rules of Practice and Procedure. It is also clear to any reader that these are unproven allegations.

¶ 51 In the Notice of Hearing the Respondent has received a detailed account of the facts alleged, and to be relied upon by staff at the hearing. She has received these allegations well in advance of the disciplinary hearing, and thus will be able to properly prepare for the case she has to meet. As permitted by the Rules, the Respondent has filed an equally detailed Response to the Notice of Hearing. The Response is some thirty paragraphs, including seven paragraphs which contain certain alleged quotes of communications between the Respondent and the clients. It appears to be as detailed as the facts alleged in the Notice of Hearing.

¶ 52 One of the Respondent's principle complaints is that IIROC publishes the Notice of Hearing on its website, but does not publish a Response. This is IIROC's usual practice. There does not appear to be any requirement or rule that IIROC publish Responses to its Notice of Hearing.

¶ 53 However, as IIROC counsel pointed out, the Respondent can seek out the media and give them her version of events, or her answer to the allegations in the Notice of Hearing. Further, it is open to the Respondent to publish on her website her position in answer to the allegations made by IIROC. Counsel for IIROC pointed out a recent case in Ontario where a Respondent took such action.

¶ 54 The Respondent also alleges in her materials that she is of the view that IIROC is biased against her. We have carefully reviewed the materials that have been submitted to us on this application. In our view, when all of the circumstances are viewed objectively, we see no indication of bias. Further, IIROC in its affidavit has denied that it relied upon anything other than its investigation of the clients' complaints before deciding to issue a Notice of Hearing. The allegation of IIROC's bias has not been made out.

¶ 55 We have reached the conclusion, after considering all of the evidence, and the submissions of counsel,

and authorities cited, that the "PARTICULARS" in the Notice of Hearing should not be struck.

SUMMARY

¶ 56 In summary, for the reasons we have set out, we order that the Respondent's application is dismissed. We direct IIROC staff to publish the Notice of Hearing following its standard practice.

¶ 57 These reasons may be signed in counterpart.

Dated this 22nd day of June, 2010.

Stephen D. Gill

Brian Field

Barbara E. Fraser