

# Re O'Neill

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory  
Organization of Canada (IIROC)**

**and**

**The By-Laws of the  
Investment Dealers Association of Canada (IDA)**

**And**

**Patrick David O'Neill**

2010 IIROC 51

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Quebec District Council)

Heard: September 21, 2010  
Decision: November 11, 2010  
(81 paras.)

**Hearing Panel:**

The Honourable Benjamin J. Greenberg, Q.C., C. ARB., Panel Chairman  
Mr. François Demers, Panel Member  
Mr. Denis Gauthier, Panel Member

**Appearances:**

Maître Diane Bouchard, (the "Enforcement Counsel") on behalf of IIROC and the IDA

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## UNANIMOUS DECISION ON THE MERITS

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**A. HISTORY OF THE PROCEEDINGS**

¶ 1 It is useful to summarize the proceedings engaged in the present case, as well as, where applicable, the disposition of same.

¶ 2 After eighteen<sup>1</sup> complaints against the Respondent were formulated by his clients to Dundee Securities Corporation (the "**Firm**"), the details of which are more amply described below, which complaints in the form of "ComSet" Event Reports were communicated by the Firm to IIROC Staff on or about December 29, 2008, and the initiation of the investigation thereof by IIROC Staff on or about April 6, 2009, these "Standard Track" disciplinary proceedings were instituted against the Respondent by way of a "Notice of Hearing" dated June 4, 2010, signed by Ms. Carmen Crépin, the Vice-President of IIROC for the Province of Quebec. That Notice of Hearing was delivered to the Respondent's then residence by Registered Mail on June 7, 2010.

¶ 3 In addition to setting out in significant detail the specific acts of which the Respondent is accused, the said Notice of Hearing advised the Respondent that a Preliminary Hearing would be held/ at 10:00 AM on July 15, 2010 at the IIROC offices at 5 Place Ville Marie, Suite 1550, Montreal, Quebec.

¶ 4 That Notice of Hearing further called upon the Respondent to attend thereat and moreover to serve upon the Staff of IIROC a Response to the Notice of Hearing within 20 days of the delivery of same to him.

¶ 5 The Respondent did not serve a Response, either within the indicated delay or otherwise, and did not attend at the Preliminary Hearing on July 15, 2010.

¶ 6 At 6:51 in the morning of July 15, 2010, the Respondent sent an e-mail to the Enforcement Counsel, which was filed as Exhibit P-1 and reads as follows:

*"From: oneillp17@videotron.ca [mailto:oneillp17@videotron.ca]*

*Sent: Thursday, July 15, 2010 6:51 AM*

*To: Diane Bouchard*

*Subject: Without prejudice letter sent by Diane Bouchard dated June 4/2010*

*July 14,2010*

*Without prejudice*

*Mrs Bouchard,*

*Please be advised that I will not be able to attend the meeting you requested on July15/2010 based upon your Without prejudice letter dated June 4/2010 due to not having legal representation due to financial difficulties. Contrary to your reference as to failing to appear before persons conducting an investigation, I did inform Mr. Gauthier on each occasion that I would not attend and the reasons why. Your reference to not providing information to IIROC is inaccurate as information available was provided to Dundee Securities and in turn was passed along to IIROC . The content of the client letters of demand were the result of an organized effort by a few of these clients and their legal council to influence and convince the other clients to misrepresent their individual situations to their benefit. There are inaccurate statements in your presentation of respondent and background. I will contact you shortly."*

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<sup>1</sup> For the details, see Exhibits PI-5 (Tab A-7) and PI-6 (Tab E-4).

¶ 7 The derogatory acts of which the Respondent is accused can be grouped and summarized as follows:

- I. Failure to cooperate in the investigation;
- II. In regard to Client A, false trade confirmation - misleading the client by allowing her to believe that she had received an indemnity from the firm;
- III. In regard to client C:
  - i. forgery of changes of address of that client through photomontage of identical signatures;
  - ii. forgery of a July 30, 2006 letter through photomontage of identical signatures;
  - iii. preparation and production to client of false monthly statements of account;
  - iv. planning and implementing scheme to lead client to believe that he was receiving rental income; and
  - v. fictitious investment and misappropriation of \$200,000 from client.

¶ 8 We find a more formal elaboration of the eight counts brought against the Respondent by IIROC at Tab 3 of the Binder of Proceedings filed by the Enforcement Counsel at the Merits Hearing on September 21, 2010 (the "**BINDER**"). They read as follows:

- "1. *On or about August 13, 2009, the Respondent failed to cooperate in the IIROC investigation, notably by not appearing before the persons conducting the investigation despite several notices to appear, by not answering questions and by not providing the required information, the whole in contravention of IIROC Dealer Member Rule 19.5;*
2. *On or about August 18, 2008, the Respondent engaged in conduct unbecoming or detrimental to the public interest, contrary to IIROC Rule 29.1, when he submitted a false document to client A, leading her to believe that a buy transaction involving 2,000 shares of B had been canceled pursuant to the client's request;*
3. *Twice, namely on October 16, 2008 on December 12, 2008, the Respondent engaged in conduct unbecoming and contrary to the public interest, contrary to IIROC Rule 29.1, when he falsely allowed client A to believe that she had received compensation from the firm Dundee Securities Corporation (hereinafter, Dundee or the firm) with respect to the B shares, whereas he had drawn the cheques on the client's cash account;*
4. *Between September 2006 and November 2008, the Respondent engaged in conduct unbecoming and contrary to the public interest, contrary to IIROC Rule 29.1, when he knowingly misled client C by sending him forged statements that did not accurately reflect the status of his portfolios;*
5. *Between July 28, 2006 at November 30, 2008, the Respondent engaged in conduct unbecoming and contrary to the public interest, contrary to IIROC Rule 29.1, when he forged or used change of address documents falsified by photomontage of identical signatures, in order to redirect all of client C's mail to locations other than the latter's residential address, including locations where the Respondent had offices that had not been disclosed to the firm;*
6. *On or about July 30, 2006, the Respondent engaged in conduct unbecoming and contrary to the public interest, contrary to IIROC Rule 29.1, when he sent the firm's compliance department, at their request, a letter allegedly signed by the client, C, which proved to be a forgery;*
7. *Between June 2007 and November 2008, the Respondent engaged in conduct*

*unbecoming and contrary to the public interest, contrary to IIROC Rule 29.1, when he used a scheme to make his client C believe that he was receiving a monthly rental income, whereas the amounts in question came from the client's own funds drawn on his margin account with the firm;*

8. *On or about June 27, 2007, the Respondent engaged in conduct unbecoming and contrary to the public interest, contrary to IIROC Rule 29.1, when he proposed to client C an unauthorized off-book investment, which proved to be fictitious, in order to appropriate the client's funds in the amount of \$200,000."*

¶ 9 As the Respondent has not produced a Response or entered a Plea, the Hearing Panel has proceeded on the basis that the Respondent is presumed to have denied all the allegations made against him and to have pleaded "not-guilty" to all eight counts.

¶ 10 Consequently, the Enforcement Counsel was called upon to prove IIROC's Case against the Respondent.

¶ 11 At the Preliminary Hearing held on July 15, 2010, as the Respondent had failed to appear, the Enforcement Counsel presented a request pursuant to Rule 7.2<sup>2</sup> of IIROC'S Rules of Practice and Procedure ("**ROP**") to proceed with the Hearing in the absence of the Respondent and to accept as proven the facts and violations alleged by IIROC in the Notice of Hearing.

¶ 12 In a reasoned oral Decision *séance tenante*, the Hearing Panel rejected that request, mainly because IIROC had failed to comply with the requirement of a 45-day prior notice of the Preliminary Hearing and had thereby failed to respect the fundamental principle *audi alteram partem*.

¶ 13 The text of that oral Decision is as follows:

*"Décision*

*LE PRÉSIDENT:*

*La séance reprend, s'il vous plaît.*

*Bien, nous avons considéré ce qui nous a été demandé et je vous indique d'avance que tout ce que je vais énoncer sont les motifs et la décision unanime des trois (3) membres de la formation.*

*...*

*LE PRÉSIDENT*

*Quant à la demande de permission de procéder au fond sous l'égide de l'alinéa B de l'article 7.2, où la formation d'instruction est demandée d'accepter comme prouvés les faits et les contraventions allégués par la société dans l'avis, alors une telle permission par cette règle de procédure s'applique lorsque le prévenu fait défaut de se présenter. Il ne s'est pas présenté aujourd'hui et on ne demande pas de procéder au fond aujourd'hui. On considère que c'est un pro forma et que donc le délai de dix (10) jours aurait suffi selon la prétention de l'avocate de la société.*

*Dans son exposé, maître Bouchard nous a fait lecture de l'article 6.4 dans son deuxième alinéa qui concerne, à notre avis, une cause où la société a elle-même classé l'affaire comme une affaire complexe.*

*Si on regarde l'avis, onglet 1 du livret déposé aujourd'hui, c'est clair et sans question que la société a déclaré cette cause comme étant un "Standard Track", alors par voie*

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<sup>2</sup> 7.2 Failure to Serve Response

If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with Rule 7.1:

- (a) the Organization may proceed with the hearing of the matter as set out in the Notice of Hearing without further notice to and in the absence of the Respondent; and
- (b) the Hearing Panel may accept as proven the facts and violations alleged by the Organization in the Notice of Hearing, and may impose penalties and costs pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

ordinaire. Donc, c'est une cause par voie ordinaire et, à notre avis, c'est le premier alinéa de 6.4 qui s'applique et que la société aurait dû signifier (l'Avis d'audition) à monsieur O'Neill quarante-cinq (45) jours avant la date de l'audience si elle procédait au fond, ce qu'elle ne demande pas.

Pourtant, pour procéder à une date ultérieure, il faudra deux (2) choses, qu'un nouvel avis soit signifié à monsieur O'Neill en bonne et due forme, un avis formel et que cet avis lui soit signifié au moins quarante-cinq (45) jours avant la date fixée pour l'audience du fond.

Ce qui est en jeu ici n'est pas une simple formalité. C'est un des principes à la base de toutes procédures contradictoires, ce qu'on appelle en latin "audi alteram partem". La partie adverse étant présumée non coupable, avant que sa culpabilité ne soit prouvée, doit avoir une pleine opportunité d'être présent et de se défendre.

Il n'est pas ici et probablement ignore ses droits mais, nous, la formation, on doit respecter ce que sont ses droits.

C'est aussi l'intégrité de notre décision ultime que nous voulons protéger puisque si on procédait à défaut d'un nouvel avis et que donc qui veut dire que jamais pour une date ou l'autre, l'inculpé aurait eu un préavis de quarante-cinq (45) jours, ce qui pourrait fausser toute décision ultérieure qu'on pourrait rendre au fond et sur les sanctions. Et je crois que ça sera effectivement pas du tout prudent de procéder de la sorte.

Pour toutes ces raisons, nous exigeons que pour la fixation de la tenue de l'audition au fond, vous avez quatre (4) jours où nous sommes disponibles, choisissez-en un mais qu'il y ait un nouvel avis formel qui respecte le délai de quarante-cinq (45) jours puisque, aussi complexe que pourrait être la cause dans l'opinion du procureur de la société, c'est toujours une cause par voie ordinaire. Et donc, on doit respecter le premier alinéa de l'article 6.4.

Ceci est la décision unanime de la formation.

Merci."

¶ 14 The Hearing on the Merits was ultimately fixed for two days, September 21 and 22, 2010. Notice of same was served to the Respondent personally by Bailiff at the Respondent's residence on July 22, 2010, thus respecting the 45-day delay of the first paragraph of Article 6.4 of the ROP. That Notice and proof of Bailiff's service are found at Tabs 7 and 8, respectively, of the BINDER.

¶ 15 True to form, at 1:33 P.M. on the day preceding the Merits Hearing, the Respondent again sent an e-mail to the Enforcement Counsel, which was filed as Exhibit P-2 and reads as follows:

"From: Patrick O'Neill [mailto:[poneill@hotmail.ca](mailto:poneill@hotmail.ca)]

Sent: 20 septembre 2010 13:33

To: Diane Bouchard

Subject: file No.0011/Jan/09 Patrick O'Neill

**September 20, 2010**

**Without prejudice**

Ms. Bouchard,

In late July you delivered a package of documents by Baliff and Courier to 340 Berwick Drive to my attention. In your Without prejudice cover letter dated July 28th, 2010, you included a Confirmation Memo for a Notice of Hearing on September 21 and 22, 2010. You also included a copy of the Report prepared by Yolande Gervais dated January 29, 2010. I have on several occasions informed you and your associates that I financially cannot afford a lawyer. I am not bi-lingual and I have attempted since then to analyse and understand the information that you sent, however, due the fact that much of

*the information is in French only, or back and forth between French and English, I cannot understand what is being said. I contacted Yolande Gervais by phone to request an English copy as her Report was in French only, and during my brief conversation with her it was apparent she did not speak English. I am entitled to clearly understand the information that you sent. Under these circumstances I do not accept the facts that you have presented."*

¶ 16 In reply to that e-mail, the Enforcement Counsel sent an e-mail to the Respondent at 2:42 P.M. on September 20, 2010, which is part of Exhibit P-2 and states:

*"From: Diane Bouchard  
Sent: 20 septembre 2010 14:42  
To: Patrick O'Neill  
Subject: RE: file No. 0011/Jan/09 Patrick O'Neill*

*M. Oneil,*

*Do you have the intent to appear tomorrow morning before the Panel to explain your point of view.*

*Diane Bouchard".*

¶ 17 In response to that Reply, the Respondent e-mailed the following to the Enforcement Counsel at 7:46 AM on September 21, 2010, which is Exhibit P-3:

*"From: Patrick O'Neill [poneill@hotmail.ca]  
Sent: 21 septembre 2010 07:46  
To: Diane Bouchard  
Subject: RE: file No.0011/Jan/09 Patrick O'Neill*

*Ms. Bouchard,*

*My point of view is clear and I would re-iterate that I cannot understand the information you sent that was done in French, and I will be unable to do so under these circumstances."*

¶ 18 At the Hearing on the Merits, which lasted only one day, September 21, 2010, we heard the testimony of the expert in documents and handwriting, Madame Yolande Gervais, who filed an extensive and detailed Report<sup>3</sup>. We also heard the testimonies of the Respondent's former client, Mr. C. and of the IIROC investigator, Mr. Stéphane Gauthier.

¶ 19 As well, the Enforcement counsel filed into the Record a plethora of documents.

¶ 20 At the termination of the proceedings on September 21, 2010, the Hearing Panel declared the liability phase of the case as taken *en délibéré*. Since then, we have studied the documents filed and the stenographers' transcripts of the proceedings on July 15 and September 21, 2010, as well as the By-Laws of the IDA, IIROC Transition Rule No. 1, the ROP and the jurisprudence pursuant thereto; and on the whole have deliberated together.

## **B. THE FACTS**

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<sup>3</sup> See Exhibit P-5.

¶ 21 On October 28, 2002, the then Montreal Stock Exchange, further to an Application filed by the Respondent to the IDA on October 16, 2002 and acting pursuant to the authority delegated to it by the *Commission des valeurs mobilières du Québec*, re-inscribed the Respondent<sup>4</sup> as a "Registered Representative"<sup>5</sup>, thereby again permitting him to be employed as such by any Member of the IDA.

¶ 22 The Respondent was hired as a Registered Representative by the Montreal Branch of the Firm in 2002. He was dismissed for cause on December 23, 2008, the date upon which the Firm received the complaint from the Respondent's client Mr. C. That complaint precipitated the dismissal<sup>6</sup>. IIROC was informed of that complaint in a "ComSet Event Report" on that same date.

¶ 23 It is of interest to note that no client of the Respondent complained directly to IIROC. Rather, all eighteen complaints were made to the Firm, which in turn related those complaints to IIROC *via* the mechanism of ComSet Event reports.

**(i) Client Mr. C.**

¶ 24 Client C. is a 64 year old man who had retired in September 2006 and was financially comfortable, having a net worth in excess of \$5,000,000. In a letter dated June 27, 2007<sup>7</sup>, he described himself as a "sophisticated investor".

¶ 25 However, that characterization is contradicted in the *mise-en-demeure* that Mr. C.'s attorneys, Woods LLP, sent to the Firm on January 21, 2009, claiming a total of \$7,947,000 on behalf of Mr. C., his wife, his son and his holding company.<sup>8</sup>

¶ 26 Ultimately, the Firm paid out over \$7,000,000 to settle the claims of Mr. C., his family, his holding company and the other unrelated complainants.

¶ 27 Over time, the Respondent had gained the confidence of Mr. C., who trusted him implicitly and absolutely. They became friendly, spoke daily on the telephone, socialized regularly and played golf and tennis together.

¶ 28 Mr. C. so appreciated what he believed was the good care that the Respondent was taking of his financial interests, that he rented a condo located on Chemin du Bord-du-Lac Lakeshore, in Pointe Claire, to the Respondent and the latter's brother Robert to use as offices at a rental of about 50% of the fair market rental value of that condo.

¶ 29 To add insult to injury, the Respondent paid that reduced rental to Mr. C. by means of cheques drawn by the Respondent upon Mr. C.'s cash account at the Firm. Hence, unbeknownst to Mr. C., he was paying himself the reduced rental for his condo.

¶ 30 Moreover, the Respondent had his way with Mr. C.'s investment assets. He executed transactions without the consent or knowledge of Mr. C. and, each month, misrepresented to Mr. C. the assets position in the latter's accounts at the Firm.

¶ 31 To obscure that behaviour, the Respondent schemed to divert the true monthly statements of account sent by the Firm to Mr. C., as it did to all its clients.

¶ 32 In order to do so, the Respondent forged the signature of Mr. C. by "photomontage" in three change of address notifications, ostensibly made by Mr. C., sent to the Firm between July 28, 2006 and November 30, 2008.

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<sup>4</sup> See the documents at Tab A-4.

<sup>5</sup> Although in the documentation filed with the Hearing Panel, he is sometimes referred to as an "Investment Advisor".

<sup>6</sup> That was not the first time that the Respondent had been dismissed by a Member firm of the IDA. See Exhibits P-I-1 (Tab A-1) and PI-2 (Tab A-2), respectively his dismissals on December 21, 1995 by CIBC Wood Gundy Securities Inc. and on September 29, 1997 by RBC Dominion Securities Inc. (Richardson Greenshields).

<sup>7</sup> See Exhibit PO-15/4 (Tab G-7).

<sup>8</sup> See Exhibit PO-2 (Tab E-3).

¶ 33 When he testified, Mr. C. recognized the form of his various signatures that had been forged by the Respondent, but categorically denied having made those signatures.

¶ 34 Moreover, in her testimony, Madame Gervais, a highly qualified documents and handwriting expert, again categorically and as demonstrated in her Report, conclusively asserted that those various signatures, purporting to be by Mr. C., had in fact been forged.

¶ 35 The new addresses indicated in each of those three forged notifications were all under the control of the Respondent and of which and to which Mr. C. had, respectively, no knowledge and no access.

¶ 36 In that manner, the Respondent kept the Firm's true monthly statements of account to Mr. C. away from him and, in their place, fabricated his own monthly statements of account that he then furnished to Mr. C.

¶ 37 Those fabricated and untrue monthly statements of account contained great discrepancies as against the Firm's true statements of account that Mr. C. never received. At times, the total discrepancy between the Respondent's fabricated statements of account for a given month and the Firm's true statements of account for the same month was as great as \$2,425,491 in Mr. C.'s personal accounts and \$3,609,139 in his holding company's accounts.<sup>9</sup>

¶ 38 Probably the most audacious of the Respondent's dishonest schemes regarding Mr. C. was the "*Alpha*" matter.

¶ 39 He brazenly led Mr. C. to believe that the Canadian Banks and brokerage firms would be organizing a stock exchange to rival the TSX. Participation in the new *Alpha* stock exchange would be strictly limited and pro-rated among the various Banks and brokerage firms, he lied to Mr. C.

¶ 40 The Respondent went on: through the Firm, he explained, he personally would be permitted to invest \$400,000 in the new stock exchange and he foretold that the investment would double or triple within a short time.

¶ 41 Yet, he led Mr. C. on, he (the Respondent) could only afford to invest \$200,000, but was willing, as a special favour and privilege, to allow Mr. C. to invest the remaining \$200,000 of the Respondent's \$400,000 allocation.

¶ 42 Consequently, if Mr. C. wished to make that investment, he would have to make out his cheque for \$200,000 to the Respondent personally.

¶ 43 Mesmerized by the Respondent's lies and promises, Mr. C. willingly issued his cheque accordingly<sup>10</sup>. Needless to say, Mr. C. never again saw a nickel of that money.

¶ 44 The facts recited at paragraphs ¶ 24 to ¶ 43 above relate to Counts 4, 5, 6, 7 and 8, charges that, in relation to Client Mr. C., the Respondent engaged in conduct unbecoming or detrimental to the public interest, contrary to IIROC Rule 29.1, which stipulates:

"29.1. Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board.

For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer

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<sup>9</sup> Both as at November 30, 2008, without conversion of the amounts in the US dollar accounts. See Exhibits PO-9 (Tab D-1), PO-10 (Tab D-3), and the documents at Tab D-4.

<sup>10</sup> See the photocopy of the face and reverse of that cheque at Tab G-1.

Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member; and each of the foregoing individuals shall comply with all Rules required to be complied with by the Dealer Member.

**(ii) Client Mrs. A.**

¶ 45 Mrs. A. is an 86 year old retired lady who resides in Ontario and was a long-standing client of the Respondent.

¶ 46 While Mrs. A was out of the country during June 2008, unbeknownst to her the Respondent executed for her account at the Firm a buy transaction for 2000 shares in Company B. at the price of \$19.50 per share, for a total of \$39,100.<sup>11</sup>

¶ 47 That trade was unauthorized by Mrs. A. and, upon her return to Canada, she expressed her disagreement to the Respondent and insisted that the unauthorized trade for her account be reversed and cancelled.

¶ 48 The Respondent lied and pretended to Mrs. A. that the trade had been reversed<sup>12</sup> and credited to her account and that she would be compensated for the shortfall as the shares in question had dropped in value in the interim. However, at the end of August 2008, those shares were still in her account<sup>13</sup>.

¶ 49 To further his fabricated story, the Respondent arranged to have issued and transmitted to Mrs. A. a Firm cheque dated October 16, 2008 in the amount of \$24,000.<sup>14</sup> She was falsely led to believe that the said cheque was a partial re-imburement to her by the Firm.

¶ 50 However, in reality and again unbeknownst to Mrs. A., the Respondent had arranged to have that cheque issued and charged against Mrs. A.'s cash account at the Firm<sup>15</sup>. At the end of October 2008, the 2000 shares were still in her account.<sup>16</sup>

¶ 51 Then, on December 12, 2008, the Respondent repeated the same exercise as described in paragraph ¶ 49 above, this time for the sum of \$15,100<sup>17</sup>.

¶ 52 Moreover, as seen in that same Exhibit MS-10/4, on December 15, 2008, again unbeknownst to client Mrs. A., the Respondent executed the sale of those 2000 shares at a price of \$4.3605, for a total credit to Mrs. A's account of \$8,621.

¶ 53 Consequently, the transactions relating to the 2000 shares of Company B, effected by the Respondent without the client's consent or knowledge, resulted in a loss to Mrs. A. of \$30,479.<sup>18</sup> The Firm settled Mrs. A.'s claim by paying \$31,240.98 to her from its own funds, sustaining a loss of that amount.<sup>19</sup>

¶ 54 The facts recited at paragraphs ¶ 45 to ¶ 53 above relate to Counts 2 and 3, charges that, in relation to Client Mrs. A., the Respondent engaged in conduct unbecoming or detrimental to the public interest, contrary to IIROC Rule 29.1, which is cited at paragraph ¶ 43 above.

**(iii) Count 1 – Failing to Cooperate in the IIROC Investigation**

<sup>11</sup> See Exhibit MS-3/4 (Tab C-3).

<sup>12</sup> See e-mail that the Respondent sent to Mrs. A. on August 18, 2008, Exhibit MS-4 (Tab C-4).

<sup>13</sup> See Exhibit MS-5/3 (Tab C-5).

<sup>14</sup> See Exhibit MS-6 (Tab C-6).

<sup>15</sup> See Exhibit MS-8/4 (Tab C-7).

<sup>16</sup> See Exhibit MS-8/3 (Tab C-7).

<sup>17</sup> See cheque, Exhibit MS-9 (Tab C-8) and the December 31, 2008 monthly statement from the Firm to Client A., Exhibit MS-10/4 (Tab C-9).

<sup>18</sup> 2000 shares purchased at \$19.50 plus \$100 commission =	\$39,100
2000 shares sold at \$4.3605 less \$100 commission=	<u>\$ 8,621</u>
LOSS	\$30,479

<sup>19</sup> See Exhibit MS-1/1 (Tab C-1).

¶ 55 On April 6, 2009, Ms. Carmen Crépin wrote to the Respondent<sup>20</sup> and advised him that IIROC had begun an investigation concerning him in connection with nineteen ComSet Reports that had been filed with IIROC by the Firm, eighteen of which concerned client complaints and one concerned an internal investigation by the Firm.

¶ 56 IIROC Dealer Member Rule 19.5 declares:

*"Investigatory Powers*

*19.5 For the purpose of any examination or investigation pursuant to this Rule 19, a Dealer Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer, investor or employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules, may be required by the Corporation:*

- (a) To submit a report in writing with regard to any matter involved in any such investigation;*
- (b) To produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Dealer Member or the person, that the Corporation determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Corporation; and*
- (c) To attend and give information respecting any such matters;*

*And the person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any person subject to an investigation conducted pursuant to this 19 shall be advised in writing of the matters under investigation and may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath."*

¶ 57 From the testimony of Mr. Stéphane Gauthier and various Exhibits in the Record,<sup>21</sup> we note that the Respondent repeatedly failed to respond to Mr. Stéphane Gauthier's requests to meet with him in order to provide a video recorded statement regarding the pending complaints against the Respondent.

¶ 58 Mr. Stéphane Gauthier first communicated with the Respondent *via* a registered letter, Exhibit DC-1 (Tab B-1), addressed to the latter on June 11, 2009, at his then residence 340 Berwick Road in Beaconsfield, Qc., H9W 1C1, which was received and signed for on June 12, 2009. That letter directed the Respondent to attend at IIROC's Montreal Office at 5, Place Ville-Marie, Suite 1550, on Thursday, July 2, 2009 at 10:00 A.M. A copy of the entire IIROC Dealer Member Rule 19 was appended to that letter.

¶ 59 At Exhibit DC-1/5 (Tab B-1), we find a summary of a telephone message left by the Respondent in Mr. Stéphane Gauthier's voice-mail box at 7:10 A.M. on June 30, 2009, two days before the date fixed for the Respondent's attendance:

*"Compte rendu écrit du message téléphonique laissé par Patrick O'Neill le 30 juin 2009 à 7H10 am*

*PO confirme avoir reçu la lettre de convocation;*

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<sup>20</sup> See at Tab A-6.

<sup>21</sup> See Exhibits DC-1 (Tab B-1), DC-2 (Tab B-2) and DC-3 (Tab B-3).

*PO dit que pour des raisons financières il n'a pas été en mesure d'embaucher un avocat;*

*PO dit qu'il va réviser le dossier avec son avocat et me répondre;*

*PO qu'il a démissionné le 19 décembre et non qu'il a été congédié;*

*PO dit qu'il va rappeler plus tard;*

*S. Gauthier"*

¶ 60 As indicated by the Respondent in that telephone message, he did call back Mr. Stéphane Gauthier that afternoon and a summary of the telephone conversation is found at Exhibit DC-1/6 (Tab B-1).

*"Compte rendu écrit d'une conversation tenue avec O'Neill le 30 juin 2009 vers 15h15*

*Durée, environ 10 minutes*

*Appel reçu de Patrick O'Neill.*

- Il me parle qu'il a trouvé un avocat et que cela a tardé compte tenu de ses problèmes financiers;*
- Je lui ai alors demandé quel était le nom de son avocat, O'Neill me parle de son frère;*
- J'ai demandé à O'Neill si son frère est avocat et il me répond que non mais il s'occupe de cela.*
- J'insiste pour avoir le nom de son avocat pour finalement m'apercevoir qu'il n'en avait pas encore.*
- O'Neill dit qu'il recherche le soutien financier pour embaucher un avocat;*
- O'Neill mentionne qu'il ne réside plus sur la rue Berwick à Beaconsfield;*
- J (sic.)*
- O'Neill affirme qu'il n'a pas encore d'adresse fixe à me donner;*
- PO me mentionne qu'il y a encore quelqu'un qui reste sur la rue Berwick mais plus lui;*
- Il promet de me rappeler d'ici jeudi ou vendredi avec les coordonnées de son avocat.*
- PO me mentionne qu'il ne tente pas d'éviter la rencontre.*

*Stéphane Gauthier"*

¶ 61 By a further registered letter dated July 9, 2009, received and signed for by the Respondent on July 10, 2009,<sup>22</sup> Mr. Stéphane Gauthier, after reciting what had transpired after the sending of Exhibit DC-1 to the Respondent, again called upon the Respondent to attend for the same purpose at the same Montreal IIROC office at 10:00 A.M. on Monday, July 20, 2009.

¶ 62 Again, at 8:08 A.M. on the very day of the required attendance by the Respondent, the latter again left a message in Mr. Stéphane Gauthier's voice-mail box, the content of which is recited as follows at Exhibit DC-2/6 (Tab B-2):

*"Compte rendu d'un message téléphonique laissé par O'Neill le 20 juillet 09 à 8h08 dans la boîte vocale de S. Gauthier*

- O'Neill confirme avoir reçu notre lettre de convocation;*
- O'Neill affirme ne pas être en position pour nous rencontrer ni préparé.*
- O'Neill ne donne aucune raison valable;*

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<sup>22</sup> A copy of the entire IIROC Dealer Member Rule 19 was again appended to that letter.

- *O'Neill ne parle plus de son éventuel avocat;*
- *O'Neill dit qu'il va rappeler.*

*Stéphane Gauthier"*

¶ 63 There follow in that Exhibit DC-2 the content of a message left by Mr. Stéphane Gauthier for the Respondent on July 20, 2010 (Exhibit DC-2/7) (Tab B-2) and two further messages left by the Respondent in Mr. Stéphane Gauthier's voice-mail box (DC-2/8 and DC-2/9) (Tab B-2):

**DC-2/7:**

*"Compte rendu du message laissé par S. Gauthier à O'Neill*

*Date: 20 juillet 2009*

*Heure: 10H40 am*

*Boite vocale du (514) 426-4991*

*Je me suis nommé et j'ai demandé à O'Neill de me rappeler*

*Stéphane Gauthier"*

**DC-2/8**

*"Compte rendu d'un message téléphonique laissé par Patrick O'Neill le 21 juillet 2009 à 8h14 am.*

- *Confirme avoir reçu la lettre la semaine passée;*
- *Il était à l'extérieur (he was away)*
- *Il va me revenir prochainement;*
- *Il va me donner plus d'information lorsqu'il va m'appeler.*

*SG"*

**DC-2/9**

*"Compte rendu d'un message téléphonique laissé par Patrick O'Neill*

*Le mercredi 22 juillet 2009 à 12h49 am.*

- *Il me dit que je vais recevoir "a registered package" contenant de l'information au sujet des "letters of demand"*
- *Il va me revenir d'ici vendredi*

*SG"*

¶ 64 Mr. Stéphane Gauthier's third and last attempt to obtain compliance by the Respondent with regard to the latter's obligation to cooperate with the investigation of the complaints against him was Mr. Gauthier's letter delivered to the respondent by bailiff on July 23, 2009.<sup>23</sup>

¶ 65 In that letter, Mr. Stéphane Gauthier again summarized what had occurred after the sending of Exhibits DC-1 and DC-2 to the Respondent and, again for the third time, convoked the Respondent to attend for the same purpose at the same place at 10:00 A.M. on Thursday, August 13, 2009.

¶ 66 Once again, at 3:30 P.M. on August 12, 2009, the day preceding the scheduled interview, the

<sup>23</sup> See Exhibit DC-3 (Tab B-3). A copy of the entire IIROC Dealer Member Rule 19 was once again appended to that letter.

Respondent telephoned Mr. Stéphane Gauthier, ostensibly from Nova Scotia. The text of that conversation follows:<sup>24</sup>

*"Appel reçu de Patrick O'Neill le 12 août 2009 à 15h30*

*Transfert d'Émilie Robichaud*

*O'Neill voulait rejoindre le Chef des enquêtes: Stéphan Jacob.*

*O'Neill affirme téléphoner de la Nouvelle Écosse pour me dire qu'il ne pourra pas se présenter pour l'interrogatoire du 13 août 2009 car il n'a pas été en mesure de trouver un avocat car il n'a pas d'argent pour payer un "retainer". Il dit que son frère est avocat mais en Nouvelle Écosse et qu'il va s'organiser avec pour m'appeler.*

*Je lui ai mentionné qu'il n'était pas obligé de venir accompagné d'un avocat. Monsieur O'Neill a dit que son frère lui a dit qu'il était mieux d'en avoir un pour se présenter.*

*Monsieur O'Neill me parle encore du fait que Dundee ne m'aurait pas tout donné J'ai profité de l'occasion pour lui demander comment se faisait-il que je n'avais toujours pas reçu les documents qu'il devait m'envoyer. C'est son frère qui lui aurait dit de ne pas les envoyer.*

*J'ai mentionné à monsieur O'Neill qu'on était rendu à la troisième convocation et que s'il ne se présentait pas au rendez vous comme prévu, et même s'il me téléphone dans milieu de la semaine prochaine, le processus suivrait son cours malgré tout et que le dossier sera transféré aux avocats. Monsieur O'Neill m'a demandé ce qui allait se passer. J'ai répondu que le dossier serait soumis pour défaut de collaboration.*

*J'ai demandé à monsieur O'Neill s'il avait une nouvelle adresse à me fournir. Il m'a répondu de continuer à envoyer la correspondance à la même adresse soit au 340 Berwick à Beaconsfield. J'ai aussi demandé à O'Neill de me donner son numéro de téléphone 514-796-7889 (cellulaire).*

*Monsieur O'Neill répète souvent qu'il ne cherche pas à se cacher...*

*Stéphane Gauthier"*

¶ 67 That same day, and then on August 14, 2009, there followed one phone call and two e-mails from the Respondent to Mr. Stéphane Gauthier and one e-mail from Mr. Stéphane Gauthier to the Respondent.<sup>25</sup>

**DC-3/6**

*"From: [oneillp17@videotron.ca](mailto:oneillp17@videotron.ca)*

*Sent: 12 août 2009 16:16*

*To: [sgauthier@ocrcvm.ca](mailto:sgauthier@ocrcvm.ca)*

*Cc: [sjacob@ocrcvm.ca](mailto:sjacob@ocrcvm.ca)*

*Subject: Patrick O'Neill*

*Mr. Gauthier,*

*As per our conversation today and in previous conversations, I explained that I was having difficulty in obtaining legal representation due to financial constraints which delayed my ability to attend your requested meetings. I anticipate retaining legal representation shortly and will contact you either way at some point by the end of next week. I also will provide you with factual information as we discussed today.*

*Thank you for your understanding."*

<sup>24</sup> See Exhibit DC-3/5 (Tab B-3).

<sup>25</sup> See Exhibits DC- 3/6, 7, 8 and 9 (Tab B-3).

**DC- 3/7**

*"From: [oneillp17@videotron.ca](mailto:oneillp17@videotron.ca)*

*Sent: 14 août 2009 10:12*

*To: Stéphane Gauthier*

*Cc: Stéphan Jacob*

*Subject: Fwd: Patrick O'Neill*

*Attachments: Patrick O'Neill*

*Mr. Gauthier,*

*By mistake I sent this email to the wrong address yesterday. Please acknowledge that you have received it as I confirmed the new address with your office. Thank you."*

**DC-3/8**

***"Dossier 0011/JAN/09***

*Le 14 août 2009 vers 10h50 appel reçu d'O'Neill en provenance du (514) 940-3019. Il me dit qu'il va m'envoyer de l'information et me parle encore de développement la semaine prochaine. Je lui dis que puisqu'il ne s'est pas présenté à son 3e interrogatoire le 13 août 2009, le dossier sera transféré au contentieux pour défaut de collaboration.*

*O'Neill dit qu'il va m'envoyer la documentation avec ses commentaires."*

**DC-3/9**

*"From: Stéphane Gauthier*

*Sent: 14 août 2009 15:58*

*To: 'oneillp17@videotron.ca*

*Cc: Stéphan Jacob*

*Subject: RE: Patrick O'Neill*

*Mr. O'Neill:*

*On August 12, 2009, you called to tell me that, once again, you were not to attend your interview scheduled for the day after, which had already been postponed twice. You knew that your attendance in this administrative investigation was mandatory and that your failure to attend could result in disciplinary action.*

*On August 13, 2009, you failed for the third time to attend the interview you were compelled to, in order to answer questions related to the present investigation (Our file no. 0011/JAN/09). As you were advised in our letter dated July 23, 2009, we are referring this matter to our Enforcement Counsel for consideration of disciplinary action given your repeated failure to cooperate.*

*Stéphane Gauthier*

*Enquêteur principal*

*Service de la Mise en Application*

*Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM)*

*5, Place Ville Marie*

*Bureau 1550*

Montréal (Québec) H3B 2G2

Tel: (514) 878-2854 Ext. 265

Fax: (514) 878-6324

Courriel: [sgauthier@iroc.ca](mailto:sgauthier@iroc.ca)

¶ 68 At the Merits Hearing held on September 21, 2010, Mr. Stéphane Gauthier confirmed that he had never met or seen the Respondent.

## C. DISCUSSION

### (i) The Burden of Proof

¶ 69 As this is not a criminal prosecution, the criminal law evidentiary burden of "proof beyond a reasonable doubt" is inapplicable here.<sup>26</sup>

¶ 70 Consequently, the complainant is not called upon to prove the guilty intent (*"intention coupable"*) or *"mens rea"* of the Respondent.

¶ 71 The burden that applies to the complainant here is essentially that of the civil law, that is by the "balance of probabilities", which can also be stated as by a "preponderance of the evidence".

¶ 72 However, where in disciplinary proceedings a finding of culpability can lead to the revocation of a respondent's right to practice his profession or professional vocation, the evidence against him must be cogent, clear and convincing.

### (ii) The Counts brought against the Respondent

¶ 73 From the manner in which the Respondent failed to conform to Mr. Stéphane Gauthier's repeated convocations and, moreover, his failure to appear at the Preliminary Hearing on July 15, 2010 and the Merits Hearing on September 21, 2010, the Respondent's strategy is clear to us.

¶ 74 That strategy is: deny, deny, deny; delay, delay, delay; and hope that the problem will go away, as in fact it did in the cases of his earlier dismissals and suspension based upon client complaints. It is also of interest that the phone calls placed by the Respondent to Mr. Stéphane Gauthier were either before 9:00 A.M. or after 4:00 P.M. Eastern Time, when he probably assumed that Mr. Stéphane Gauthier would not be there to take the calls as the Montreal IROC office would not be open. That too, it appears to us, was a tactic adopted by the Respondent.<sup>27</sup>

¶ 75 The Members of the Hearing Panel are frankly surprised that, after his earlier terminations and suspension, the Respondent was re-inscribed as a Registered Representative in October 2002.<sup>28</sup>

¶ 76 The evidence before us is abundantly clear, cogent, convincing, and damning against the Respondent. He is clearly dishonest, a liar, a forger and a perpetrator of fraud in relation to Clients Mr. C. and Mrs. A.

¶ 77 In the face of the mountain of uncontradicted evidence before us, we are thoroughly convinced and have concluded that the Respondent must be declared guilty of each and all of the eight Counts brought against him herein by IROC.

¶ 78 More than that, even though we realize full well that each case is affected by its own specific facts and circumstances, after the recent debacles in the Quebec financial world, such as Norbourg, Earl Jones and others, we are perplexed as to why no criminal charges have been brought against the Respondent. Nonetheless, we here are obliged to limit ourselves to our disciplinary jurisdiction.

## D. THE NEXT STAGE OF THESE PROCEEDINGS

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<sup>26</sup> *Belhassen c. Avocats*, [2000] D.D.O.P. 238, 10 et 11 (T.P.); *Osman c. Médecins*, [1994] D.D.C.P. 257, 263 (T.P.); *Psychologues c. Da Costa*, [1993] D.D.C.P. 266, 270 (T.P.); *Notaires c. Champagne*, [1992] D.D.C.P. 268, 280 (T.P.).

<sup>27</sup> See at paragraphs 58, 61 and 62 above.

<sup>28</sup> See at paragraphs 20 and 21 above, as well as Exhibits PI-1, PI-2, PI-2/2 and PI-4 (Tabs A-1, A-2, A-3 and A-4).

¶ 79 The Hearing Panel hereby instructs IIROC, after confirming with us as to our availability for the holding of a Sanctions Hearing, to fix a date for same and then communicate this DECISION to the Respondent and provide to him an appropriate period of Notice for the convocation and the holding of the Sanctions Hearing.

**E. CLOSING PROVISION**

¶ 80 Each duplicate original of this DECISION, signed by the three Members of the Hearing Panel, is equally valid and authentic and may serve as such for all legal purposes.

**F. CONCLUSIONS**

¶ 81 **FOR ALL THOSE REASONS:**

We, the Members of the Hearing Panel, **unanimously find the Respondent, Patrick David O'Neill, GUILTY** on each and all of the eight Counts brought against him in this case.

We **ORDER IIROC**, after confirming with us as to our availability for a **Sanctions Hearing**, to fix a date for same and to **communicate** this **DECISION** and a **Notice** of the Convocation of the **Sanctions Hearing** to the Respondent and provide to him an appropriate period of notification for the convocation and holding of the **Sanctions Hearing**.

SIGNED at Montréal, Québec, by the Members of the Hearing Panel:

November 11, 2010

The Honourable Benjamin J. Greenberg, Q.C., C. Arb., Panel Chairman

Mr. François Demers, Panel Member

Mr. Denis Gauthier, Panel Member

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