Unofficial English Translation

Re St-Amant

In the matter of:

The Rules of the Investment Industry Regulatory Organization of Canada

The By-laws of the Investment Dealers Association of Canada

and

Natalie St-Amant

2011 IIROC 30

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

Hearing Dates: February 21, 2011; February 22, 2011; February 23, 2011; February 25, 2011; February 28, 2011; March 1, 2011; March 2, 2011; March 25, 2011; March 31, 2011; April 8, 2011
Date of Deliberation: April 11, 2011
(30 paragraphs)

Hearing Panel:
Me Jean-Pierre Lussier, Chair; Mr. Gilles Archambault; Mr. Marcel Paquette

Appearances:
Me Diane Bouchard, for IIROC
Me Julie-Martine Loranger, for Respondent

Decision

¶ 1 On May 19, 2010, IIROC commenced proceedings against the Respondent by means of a Notice of Hearing listing seven (7) violations of By-law 29.1 of the IDA (Investment Dealers Association of Canada).

¶ 2 In the summer of 2010, the Respondent filed a motion for cancellation of certain allegations in the Notice of Hearing. This motion was dismissed by the Hearing Panel at the end of August 2010 and dates were set for the hearing on the merits, which commenced February 21, 2011.

1. The alleged violations

¶ 3 The Notice of Hearing lists seven counts which read as follows:

1. In August 2005, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly with respect to Standard C of the Conduct and Practices Handbook, relating to professionalism, contrary to IDA By-

Law 29.1, when she purchased shares in public company A for her own account and directly from insider B, without prior disclosure of the projected trade to the firm;

2. Between 2005 and 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, contrary to IDA By-Law 29.1, relating to the merit and relevance of investment recommendations made with respect to the securities of A and C, considering that the Respondent and the representatives on the team, D and E, held these securities in their personal accounts, that she had purchased them through D knowing that he maintained privileged connections with insiders of these companies who were also clients of the team, and that as at December 31, 2005, 248 of the team's accounts held approximately 18.5% of the outstanding shares in A and 128 accounts held approximately 1.5% of the outstanding shares in C;

3. For the period from January to March 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest, contrary to IDA By-Law 29.1, and failed in her duty to protect the public in connection with numerous trades effected by a representative on the team, D, in the securities of F and G, on the instructions of client H, who happened to be a consultant for these companies, when she knew or should have known that the trades were or could be an indication of market manipulation;

4. In March 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standard C of the Conduct and Practices Handbook, relating to professionalism, contrary to IDA By-law 29.1, when she purchased securities in C for her own account, through a representative on the team, D, without prior disclosure of the proposed trade to the firm;

5. In April 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standards B and C of the Conduct and Practices Handbook, relating to professionalism, and under the rules set forth in the Handbook relative to the examination of complaints from three clients I, contrary to IDA By-Law 29.1, when in complicity with another representative on the team, D, she arranged for the settlement of the complaints of these three clients by compensating them, all of which without the knowledge of the firm;

6. In April and May 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standard C of the Conduct and Practices Handbook, relating to professionalism, contrary to IDA By-law 29.1, when she accepted reimbursement from representative D for her part of the compensation paid to the clients I, which included a payment by cheque and receipt in her personal account of securities in public company C directly from D, all of which without the knowledge of the firm;

7. In June 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standard C of the Conduct and Practices Handbook, relating to professionalism, contrary to IDA By-law 29.1, when she took part in a private placement in public company J for her own account, through a representative on the team, D, without prior disclosure of the proposed trade to the firm;

2. The evidence

¶ 4 For a better understanding of the decision, we thought it would be useful to summarize the essence of the evidence for each allegation. We do so based on the exhibits and testimony, principally of IIROC investigator Paul Rondeau and the Respondent.

a) Count 1

¶ 5 It has been put in evidence that, on August 19, 2005, the Respondent issued a cheque for $4,000 to the order of B for the acquisition of 13,000 shares in company A, of which B was an officer. B had an account at the Respondent's branch and his new client application form indicated that he was an insider of company A. B's account was assigned to a team of investment advisors, referred to as the Béland team, made up of – besides Alain Béland – Jean-Guy Ducharme and the Respondent.

¶ 6 The Respondent states that it was Béland who was behind the transaction and that she herself believed she was buying shares originating from the company, rather than shares held by B personally. She found out that this was the case when she realized that the shares were in escrow. She admits that she knew that B was at once a client of her team and the president of company A. She adds moreover that she paid the market price for the shares.

¶ 7 The Respondent was disciplined by her firm, Desjardins Securities (hereinafter referred to as DS), on September 7, 2006. Her penalty, according to the testimony of Diane Lamothe, Compliance Manager, Complaints and Litigation at DS, was imposed essentially for reimbursing a client for losses without the knowledge of the firm (which is the object of Count 5). However, the penalty letter also mentions her participation in private placements in a personal capacity without the knowledge of DS, namely the purchase of 13,000 shares in company A by remitting a personal cheque for $4,000 to B.

b) Count 2

¶ 8 The evidence has revealed that the Respondent, along with the other two members of her team (Béland and Ducharme) held a large number of shares in companies A and C. The three representatives, members of the same team, also had insiders of company A among their clientele, as well as the president of company C. Though clients of the team, these insiders were all served by the representative Alain Béland. As for the Respondent, besides the 13,000 shares in A acquired in November 2005, she purchased 40,000 shares in company C by means of a cheque for $10,000 made out to team member Béland on March 29, 2006.

¶ 9 Her fellow team member Béland, for his part, held a far greater number of shares in companies A and C. For example, in 2006, he acquired 188,000 shares in company C directly from that company's president, which transaction was the object of an insider report. Béland's spouse purchased 110,000 shares in company A, which shares were paid for by means of cheques made out to insiders of that company. However, it should be noted that these share purchases by Béland's spouse took place in November 2004, namely before the Respondent joined the Béland team in June 2005. Team member Ducharme, for his part, also purchased 13,000 shares in company A by remitting a personal cheque to the president of A, who was a client of the Béland team.

¶ 10 The Respondent, when questioned by the IIROC investigator, as well as in her testimony at the hearing, admitted that the shares in companies A and C were not securities tracked by DS analysts. She also acknowledged that 248 of the team's account holders held securities in company A (accounting for 18.5% of the total shares in that company) and that 128 account holders of this same team held securities in company C (accounting for 1.5% of the total shares in that company). The Respondent has put into evidence that if one subtracts the securities of company A held by insiders, consultants and the team members, the securities held by the Béland team's clients account, not for 18.5% of the share total, but for approximately 9% of the total. The Respondent also put into evidence that almost all of the clients holding securities in A or C had filled out a new client application form in which they consented to a portion of their investments being speculative.

¶ 11 When questioned about the opinions or documents on which she allegedly based herself to recommend these trades to her clients, she mentioned presentations at the branch, both for company A as well as company C, financial statements of company C (unaudited), and various newspaper articles. She spoke regularly, she added, to a person acting as an investor relations officer for company A. She also asked Luc Girard, an analyst at DS, to appraise the value of the company A's securities, based on the financial statements, and the latter mentioned $1.00.

¶ 12 The branch manager, Jean-Luc Beaudoin, has testified to the effect that he himself had attended presentations on companies A and C. As regards company A, he attended more out of solidarity for a former colleague who now worked for the company. He did not believe much in the future of the product promoted by A and did not recommend this security to his clients. The same goes for company C. Other than giving the representatives of his branch his opinion, he made no further observations except to ask them to make sure they had documentation justifying their recommendations to clients. On this score, the representatives showed him newspaper clippings about the companies.

c) Count 3

¶ 13 The evidence has revealed that a client of the team (H) was acting as a consultant for companies F and G. This client bought and sold a very large number of securities in companies F and G, often on the same day. He would frequently purchase the securities for a higher price than he sold them for later the same day. In January 2006, between the 16th and the 30th, he executed 27 trades in the securities of company G and 7 trades in the securities of Company F, transactions that gave the appearance of market manipulation.

¶ 14 The Respondent stated that she knew that this client was making a lot of trades. He was a retired RCMP officer served by Alain Béland and the Respondent never thought at the time that he was engaging in market manipulation. She added that this client had a fee-based account, so she therefore had no interest in how much he was trading. She only realized in August 2006, after Alain Béland's dismissal, that H was engaging in market manipulation.

d) Count 4

¶ 15 The evidence has established that in March 2006, the Respondent acquired 40,000 shares in company C. She paid for these shares by means of a cheque in the amount of $10,000 made out to her fellow team member Alain Béland. The Respondent has admitted that she never filled out a purchase document and did not inform her branch manager of the trade beforehand.

e) Count 5

¶ 16 The Respondent admitted to the IIROC investigator, and again at the hearing, that she reimbursed three clients who had complained about the fact that despite orders to sell company C shares, orders given to her fellow team member Jean-Guy Ducharme, who failed to execute them, they had suffered a loss of $47,776. The reimbursement was made by means of a cheque in the same amount signed by the Respondent and made out to the CN Employees Credit Union. Alain Béland had previously worked for this credit union and the compensated clients had an account there. Neither the Respondent, nor the other two members of her team informed the branch manager or any other representative of the firm before reimbursing the clients.

¶ 17 The Respondent has stated having met one of the clients when the latter filed a complaint in December 2005. She learned through Alain Béland that Jean-Guy Ducharme had not sold the company C shares despite requests to this effect from four clients, all from the same family. She knew that Jean-Guy Ducharme was at fault and she suggested to Alain Béland that the clients be reimbursed. She did not talk about compensating the clients without the firm's knowledge, but she confined herself to suggesting to Béland that they be compensated. She felt responsible for the omissions of her fellow team member Ducharme because, in the past, she had been required to reimburse from her commissions the losses incurred by a client who had purchased Air Canada debentures from a representative whose clientele she had inherited. Alain Béland, says she, suggested going

through the CN Credit Union, where the client had an account. The Respondent advanced funds from her own line of credit. She arranged with Béland to have the latter reimburse her for half the amount. Eventually, he remitted her a cheque for $14,428, plus a certificate for 60,000 shares in company C.

¶ 18 The Respondent acknowledges that she committed an error in judgment by not disclosing to the firm or to the branch manager this compensation of wronged clients. In fact, DS disciplined her for this on September 7, 2006. She was required to retake the Conduct and Practices Handbook exam, placed under strict internal supervision for one year, and ordered to make a $15,000 charity donation.

f) Count 6

¶ 19 The evidence for Count 6 is also related under Count 5. This count concerns the reimbursement by Alain Béland of half of the amount paid by the Respondent to the CN Employees Credit Union for transfer to the accounts of the clients who had complained. The Respondent has admitted that Alain Béland remitted her a cheque, plus a certificate for shares in company C, all without the firm's knowledge.

g) Count 7

¶ 20 The evidence has revealed that, in May 2006, the Respondent and her fellow team member Béland respectively purchased 68,000 and 107,000 shares in company J, for total amount of more than $218,000. The Respondent's share was $85,000. She wrote a cheque to Alain Béland to cover the purchase. They paid $1.25 for the shares, which were trading at 90¢ on the Exchange at the time. On the other hand, there were rights and appendages attached, at a rate of a half warrant per share.

¶ 21 The Respondent has stated that she made the cheque out to Alain Béland because he was the one negotiating with the company. She added that she was unaware that a representative could not purchase private shares on his own account without the prior authorization of the branch manager. She went on to say that she clearly did not intend to act without the firm's knowledge, since she deposited the shares in her account knowing that professional accounts (hereinafter referred to as pro accounts) are closely monitored.

3. Decision and reasons

a) Count 1

¶ 22 IIROC has pointed out that the facts underlying this count were admitted both to the firm and before the Hearing Panel. This was an off-book purchase and the deposit of the share certificate appeared in the Respondent's account. The purchase was made directly from an insider who is also a client of the team and the Respondent did not check whether any buy and sell orders from clients of the team had been executed in this security at the time she purchased the shares. The Respondent did not request any prior authorization from the branch manager.

¶ 23 The Respondent, through her attorney, has argued that the shares had been purchased at the market price and that she never attempted to conceal this private placement since she deposited the shares in her Pro account. Also, she did not do any trading in this security in her clients' account during this period; she was reprimanded by her firm; furthermore, the industry had not yet established the rules and regulations respecting the monitoring and handling of private off-book placements. It was only following a decision by the British Columbia Court of Appeal in 2006 that a subcommittee was formed to study the matter and a directive ultimately issued. The Respondent cannot therefore be charged with violating a rule that did not exist yet.

¶ 24 The Respondent also maintained that she has always acted in good faith and that By-law 29.1 can only be violated if one can prove a kind of moral turpitude or, at the very least, bad faith on the part of the offender.

¶ 25 Since this argument of the Respondent was invoked on all counts, our Hearing Panel began by examining the scope of By-law 29 and the degree of proof necessary to successfully charge a respondent with violating this provision. Let us start with the scope of By-law 29.1. For the benefit of the reader, we reproduce this provision below:

"29.1. Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a 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 of Directors.

For the purposes of disciplinary proceedings pursuant to the By-laws, each Member shall be responsible for all acts and omissions of each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member; and each of the foregoing individuals shall comply with all By-laws, Regulations and Policies required to be complied with by the Member."

¶ 26 The language of this article is general, we admit. For instance, a registered representative must "observe high standards of ethics and conduct", and "not engage in any business conduct or practice which is unbecoming or detrimental to the public interest", but the by-law does not specify what these high standards of ethics and conduct are, or again what constitutes a practice unbecoming or not in the public interest.

¶ 27 Yet this type of general language is practically the rule in disciplinary law, a *sui generis* legal system to which one may not import the principles of criminal law. On this subject, our Hearing Panel feels it useful to recall what the Québec Court of Appeal wrote about a disciplinary offence with which an attorney was charged[1]. Speaking on behalf of the Court, Justice Baudouin wrote that a general provision stipulating that a gesture derogatory to the honour or dignity of the profession or the discipline of its members constitutes an offence, while allowing some flexibility in the appreciation of the facts by the discipline committee. The following excerpt is eloquent on this question:

[TRANSLATION]

I subscribe to the opinion of the first judge, as well as that of the Tribunal des professions (Béliveau v. Corporation professionnelle des avocats, (1990) D.D.C.P. 247), to the effect that disciplinary law is a *sui generis* legal system and that it is wrong to at all costs want to introduce to it the methodology, rationale and all of the principles of penal law. The complaint before a Discipline Committee is not a criminal or quasi-criminal proceeding (cf. R. v. Wigglesworth, (1987) 2 R.C.S. 541). The professional transgression, for its part, is not a criminal transgression either (cf. Y. Ouellette, "L'imprécision des Codes de déontologie professionnelle", (1977) 37 R. du B. 670; P. ISSALYS, "The Professions Tribunal and the Control of Ethical Conduct Among Professionals", (1978) 24 McGill L.J. 588; L. BORGEAT, "La faute disciplinaire sous le Code des professions", (1978) 38 R. du B. 3) and it is therefore not necessary, in my opinion, for texts on disciplinary offences to be written with the same formalistic and legalistic precision as texts of a penal nature. Section 107 does indeed constitute a disciplinary offence, namely that of posing an act contrary to the honour and dignity of the profession. It was written, by the lawmaker, to introduce a necessary flexibility to the appreciation that the Discipline Committee (which, need we remind you, is a peer committee) might have of the conduct of members of the Bar. This flexibility is moreover indispensable to the effective control of a profession that makes all its members officers of the court. The rules of ethics, and therefore the texts that determine the conduct that is considered unethical, do not need to restrictively enumerate each and every potential disciplinary transgression (Bolduc v. Roy, (1975) C.A. 505).

¶ 28 In short, it is frequent in disciplinary law to encounter general provisions that create offences to enable peers to appreciate the conduct of a professional brought up on disciplinary charges. By-law 29.1 is of this

[1] Béliveau c. Comité de discipline (Barreau du Québec) et Syndic du Barreau du Québec, C.A. Mtl no. 500-09-000946-913, decision of July 3, 1992;

nature. The high standards of ethics and conduct are left to the discretion of the peers, based on the accepted standards of the securities industry. The business conduct or practice which is unbecoming or detrimental to the public interest is also evaluated in accordance with the standards in force within the industry.

¶ 29 In short, disciplinary law is not penal law. It possesses certain of its attributes, notably for anything that concerns the prior disclosure of evidence, but it does not have all of the characteristics of penal law. This is the case with the burden of proof, for instance. The prosecution is not required to demonstrate beyond a reasonable doubt that an offence has been committed, as in criminal law. The standard is that of the preponderance of probability, although because of the nature of the allegations, one often talks about particularly convincing evidence. In this respect, we think it useful to cite the comments of Chief Justice Dickson of the Supreme Court of Canada who invokes degrees of probability depending on the nature of the dispute. He expresses himself as follows[2]:

> "The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion."

¶ 30 Therefore, for the prosecution to meet its burden, it must convince the Hearing Panel, with particularly convincing evidence, that the allegations against the Respondent occurred and that these facts contravene a standard of conduct within the industry, or constitute conduct or practice unbecoming.

¶ 31 Counsel for the Respondent has very ably argued that the evidence also had to convince the Hearing Panel that the Respondent had a blameworthy frame of mind. She spoke of moral turpitude or aggravated negligence. Invoking what she called the quasi-criminal character of disciplinary law, she argued that other hearing panels had ultimately acquitted respondents who were not of a blameworthy frame of mind. She drew our attention first to Argosy Securities Inc. & Sukhraj[3]. In that case, the Hearing Panel did not acquit Sukhraj but declared itself in agreement with the proposition that inadvertence does not necessarily entail evidence of conduct unbecoming. According to the Hearing Panel, for conduct to be unbecoming, there must be aggravated negligence.

¶ 32 A good example of a mere inadvertence that led to acquittal can be found in Doering[4]. That registered representative was found guilty of selling private placements to clients without the knowledge or consent of his firm. He was however acquitted of the count which alleged that he had failed to disclose to his firm that he was involved in a company outside of his brokerage work. The facts revealed that he was a director of a company, one of just three shareholders with a 37.5% interest in the company. He had neglected to inform the Compliance Department, during an investigation, that he had business activities outside of the firm. But three months later, he disclosed this information of his own accord. The Hearing Panel took into account that the Respondent had not disclosed his participation initially because the company was inactive, and he was not remunerated, and when he realized his mistake when reviewing the Conduct and Practices Handbook Course, he voluntarily revealed his involvement.

¶ 33 Estimating that the facts demonstrated mere negligence which, because of all the circumstances, would not have led the public to conclude conduct unbecoming, it was not appropriate to find the respondent guilty.

¶ 34 We will come back to this later, but for now we confine ourselves to mentioning that in the case at bar, the facts do not allow us to conclude that the Respondent's conduct would not have been viewed as unbecoming in the eyes of the public.

¶ 35 Through her attorney, the Respondent also referred our Hearing Panel to two other matters, those of Re :

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2 R. v. Oakes, [1986] 1 SCR 103;

3 reported in 2008 IIROC no. 22;

4 reported in (2007) I.D.A. C.D. no. 27;

Gareau[5] and Re : Bahcheli[6]. Once again, these two matters involved sufficiently specific facts to avoid erecting into principles the remarks regarding the state of mind of the respondents, which led to an acquittal. In Gareau, the respondent was found guilty of having made recommendations that were unsuitable to the investment objectives of a certain number of clients. He was however acquitted of one count alleging that he failed to inform the clients that the Bell Canada International Inc. debentures were convertible to common shares. The hearing panel, in a majority (the members were not unanimous), decided that this omission by the respondent was of such a nature as to be mere inadvertence, with no intention of personal gain and no conflict of interest. In our opinion, this majority decision of a hearing panel must not be interpreted as creating the obligation for the prosecution to prove malicious intent or reckless disregard for the clients.

¶ 36 The same goes for the Bahcheli matter, in which was evoked the idea of a clear and convincing burden of proof demonstrating a form of moral turpitude or bad faith. In that case, the respondent had talked with a third party who had strongly recommended the purchase of shares on behalf of two of the respondent's clients. The respondent followed the strong recommendation of the third party and the clients, through their agent, agreed to the transaction, which eventually resulted in a substantial loss for them. The respondent then went to the third party who had made the original trading recommendation to suggest that he reimburse the clients' losses. And the third party agreed and did so by remitting to the respondent a certificate for 50,000 shares in another company. The respondent without disclosing this to the firm deposited the share certificate in the clients' account to compensate for their losses. The Albertan hearing panel that heard this matter concluded that the respondent, while not acting correctly, had not engaged in conduct unbecoming under By-law 29 because he had not acted with moral turpitude or in bad faith.

¶ 37 In the opinion of our Hearing Panel, this decision is relatively isolated and the requirements of moral turpitude or bad faith overstep the demands of disciplinary law. The respondent's state of mind, we agree, must go beyond mere inadvertence to incur the latter's guilt. There must be negligence and the circumstances must allow the conclusion that, in the eyes of the public and industry members, the conduct was unbecoming.

¶ 38 Now if we go back to Count 1, it is not a matter in which the Respondent would have bought shares from the company treasury and deposited them in her own account, inadvertently omitting to inform her branch manager. If that had been the case, the Hearing Panel would probably have acquitted the Respondent.

¶ 39 The Respondent perhaps believed that she was purchasing shares from the company treasury. However, her cheque was not made out to the company, but personally to an insider of the company, a client of her team moreover. Furthermore, a very large number of her team's clients also owned shares in this company. The Respondent knew all that; she knew that her cheque was made to the order of an insider; she knew that many of her team's clients owned shares in this company; and finally, she knew that the insider himself was a client.

¶ 40 The Hearing Panel takes for granted that, in actual fact, there possibly was no conflict of interest. The fact remains that, at the material time, orders were being executed by the team to buy or sell this security. We are not convinced that the Respondent had dishonest intentions, but she knew or should have known that such a transaction could arouse suspicions of a conflict of interest and therefore required prior approval.

¶ 41 It has been argued that, at the material time, the regulatory standards with respect to private placements were unclear within the industry. Sylvain Perreault and Sylvain Thériault have testified to this effect.

¶ 42 It is accurate that the IDA (which later became IIROC) issued specific directives in this regard in 2008. But it is wrong, in our opinion, to claim that, in the eyes of the industry and the public in 2005, the Respondent's conduct was not unbecoming under By-law 29. The Conduct and Practices Handbook in force at the material time is quite sketchy, it is true, with regard to processing off-book trades. But elsewhere it is very clear about the personal business affairs of representatives. It states that a registered representative should avoid personal financial dealings with clients (keep in mind that the insider who sold shares to the Respondent was also a client) without prior disclosure to the firm so that the latter may monitor the situation and make sure it does not

5 reported in 2005 I.D.A.C.D. 25;
6 reported in 2004 I.D.A.C.D. 12;

give rise to a real or apparent conflict of interest.

¶ 43 Briefly put, by completing this transaction and depositing the securities in her account without informing the branch manager beforehand, the Respondent engaged in conduct unbecoming. That her intentions were not dishonest (she could have, if she had wanted to, concealed the transaction by not depositing the share certificate in her account) is certainly an important factor, which our Hearing Panel will take into account when determining a penalty, but the Respondent cannot be allowed to evade her ethical responsibility.

¶ 44 For all of these reasons, we consider that the Respondent must be found guilty on this count.

b) Count 2

¶ 45 This count concerns the relevance of the investment recommendations made with respect to the securities of two companies, given that the Respondent and the other representatives on the team themselves held securities in the company and that a large number of their clients (248 for company A, and 128 for company C) also held securities in these companies.

¶ 46 IIROC invokes a failure in the Duty of Care and questions the merit of recommending securities that are not tracked by the firm's analysts and which might give the appearance of a conflict of interest.

¶ 47 The Respondent submits that she believed in these securities, which she knew well, having attended presentations and spoken frequently with insiders, many of whom were also clients of the team. She had read numerous newspaper articles about the companies' development projects. She never recommended these securities to clients who were unwilling to devote a portion of their investments to speculative securities.

¶ 48 Our Hearing Panel has found that, in effect, clients who purchased these securities were willing to buy them, even knowing that they were speculative investments. All of these clients had opened accounts in which it is noted that they consent to speculative investments in varying degrees. The Respondent did research and attended presentations before making buy recommendations. She also consulted an analyst of the firm to have him determine the value of the companies' shares. Just because a security is not tracked by the firm's analysts does not mean that the buy recommendation is unacceptable.

¶ 49 It is true that the branch manager stated that he himself did not believe that the securities were a good investment and did not recommend these securities to his own clients; but this does not mean that a buy recommendation was unsuitable per se. A security is speculative by nature, because the industry members do not all agree on its capacity to appreciate in value. Therefore, when a branch manager is not of the same opinion as a representative regarding the value of a security, it is incorrect to conclude that the recommendation made by this representative to a client who has consented to speculative placements goes against By-law 29.

¶ 50 We will come back later to the Respondent's responsibility with respect to actions taken by other members of her team; however, on this count, we have no evidence that the recommendations made by fellow team members Béland and Ducharme to the clients they served were of a different nature than those made by the Respondent herself. None of the evidence allows us to believe that Béland and Ducharme had different information than the Respondent regarding these securities or that they might have recommended their purchase to clients who had not consented to speculative placements.

¶ 51 For these reasons, we declare the Respondent not guilty on this count.

c) Count 3

¶ 52 The evidence has revealed that H, a client of the Béland team, had through representatives on the team been making numerous trades in the securities of two companies for which H was a consultant. These numerous trades all had the appearance of market manipulation. The team members took calls from this client and executed the unsolicited orders. The Respondent herself took orders from this client on occasion. In her defence, she has stated that she was unaware that this client was a consultant for these companies, was unaware of the trades that this client was making through her fellow team member Béland and had no concerns over market manipulation by a client who was a retired RCMP officer, and that she derived no benefit from the

trades, since the client had a fee-based account.

¶ 53 Our Hearing Panel considers that the Respondent knowingly turned a blind eye to the trades effected by her team's client. She could see the large volume of trading being done by this client, who bought and resold securities in the companies concerned, often at a loss and on the same day. It is true that this client was, at the outset, served mainly by her fellow team member Béland. However, one may not evade responsibility for a client of the team of which one is a member on the grounds that this client is generally served by another member of the team. Our Hearing Panel fully agrees with the views of another hearing panel seized of a matter involving a fellow team member, which wrote the following[7]:

> "[9] The Respondent did not open the accounts directly, or communicate with clients, or even execute the trades. But these were his team's clients and he was drawing commissions on all of these trades. Being part of a team implies both benefits and responsibilities. No member of a team may shirk his responsibility on the grounds that he acted unintentionally or that he had no active role with the team's clients. In the Respondent's case, there was negligence, even indifference, in the face of his fellow team member Pelletier's activities, and the omissions of his fellow team member Meffé. Such indifference is tantamount to tacit permission, to tolerance, to voluntarily turning a blind eye, and, as much as Pelletier and Meffé, he was fully involved both ethically and professionally."

¶ 54 In the matters before us, the Respondent may not free herself from liability based on the fact that H was a client served by Béland, and that the new account form for this client did not indicate his capacity as a consultant of companies F and G. Neither can she justify her inaction by her naïveté which allowed her to believe that a retired police officer was exempt from suspicion. This client, we remind you, was effecting large numbers of trades in the same securities in a very short time period. For example, between January 16 and 30 2006, as we stated in the summary of the evidence, the client made 27 trades in the securities of G, and 7 in the securities of F. If she did not know that this client of the team was engaging in market manipulation by using one or another of the representatives on her team she should have. Her inaction is tantamount to aggravated negligence in this regard. Our Hearing Panel therefore finds her guilty on this count.

d) Count 4

¶ 55 It is a fact that the Respondent purchased securities of company C for her own account through her fellow team member Béland by writing him a personal cheque. She also knew that many of the team's clients held securities in C and that Béland did a lot of trading in this security. She made this purchase without prior notification of her branch manager. On the other hand, the evidence has convinced the Hearing Panel that the Respondent did not intend to conceal this placement since she deposited the share certificate in her account.

¶ 56 Our Hearing Panel reiterates, without repeating them here, its findings regarding Count 1. Once again, this is not just about a private placement that someone neglected to inform the branch manager about beforehand. This is about a purchase made with a cheque issued in the name of a fellow team member who himself had an account at the branch and who effected numerous trades in the same security for clients of the team. Not to have wondered about the apparent conflict of interest constitutes turning a blind eye, and all of these circumstances lead us to a conclusion of conduct unbecoming in accordance with By-law 29 and, consequently, to a finding of guilty in the matter of the Respondent on this count.

e) Count 5

¶ 57 This count alleges that the Respondent compensated clients who suffered losses and who complained that a representative on the Respondent's team had failed to carry out their order to sell the shares, thus increasing their losses. The Respondent has admitted having met with the clients and proposing to compensate them because, as a member of the team, she felt responsible.

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7 Re Sénécal, decision of November 12, 2007;

¶ 58 Their method of reimbursement was at the very least unusual, to say the least. The Respondent advanced the full reimbursement amount, as her fellow team member Béland was unable to handle his share of the reimbursement at the time. She remitted a cheque to the manager of a credit union where Béland had worked in the past, in order for this manager to deposit the funds directly into the clients' account.

¶ 59 The Respondent, through her attorney, has argued that, since her intentions were not dishonest, she should be acquitted on this count, invoking Re Bahcheli[8] to this end. We provided a summary of this case in our discussion of Count 1, and one must agree that, in any case, the matter before us is clear. In Bahcheli, the representative incited a third party who had originated the investment to compensate the client for losses. In the matter before us, the Respondent not only personally reimbursed the clients contrary to Standard C of the Conduct and Practices Handbook, which stipulates that to reflect credit on the profession in one's personal business affairs implies "[avoiding…] paying clients' losses out of personal funds", yet she did so in a manner that is indicative of a scheme to avoid discovery. This was certainly conduct unbecoming in accordance with By-law 29 and our Hearing Panel therefore upholds this count as well founded.

f) Count 6

¶ 60 This count concerns the fact that Béland, to satisfy his share of the reimbursement of the clients referenced in Count 5, remitted part of his share to the Respondent in cash and another part in the form of a share certificate in Company C.

¶ 61 Evidently, the Respondent would have preferred receiving from Béland a cheque for his full share of the reimbursement. This share certificate was unwanted and one cannot hold it against the Respondent that she accepted this unsolicited share certificate.

¶ 62 What's more, this count concerns the same events as those that led to count 5. It seems redundant to us and we think that finding the Respondent guilty on this count would be duplicating a same series of events. For this reason, we have decided to acquit the Respondent on this count.

g) Count 7

¶ 63 Here again, the facts underlying this count are not in doubt. The Respondent has moreover acknowledged having effected a private placement by buying securities in company J without the knowledge or the consent of her branch manager. She did so with a cheque issued to the order of her fellow team member Béland. The Respondent has maintained that her intentions were not dishonest and that she did not try to conceal this purchase since she deposited the share certificate in her account. She added that she paid more than the market price for these shares. We emphasize that this is somewhat debatable since the shares she purchased had rights and appendages attached, at a rate of a half warrant per share.

¶ 64 Nevertheless, we reiterate what we wrote regarding Count 1. These are not shares purchased directly from the company treasury. The shares were paid for by means of a cheque to the order of her fellow team member Béland, whose exact ties to the directors of this company were unknown to her. This was not just failing to disclose an off-book trade. The manner in which the purchase was made contravened the standard regarding personal business affairs of representatives, as we already decided for Count 1. Our Hearing Panel therefore finds this count to be well-founded.

FOR THESE REASONS, THE HEARING PANEL:

¶ 65 ***DECLARES*** counts 1, 3, 4, 5 and 7 well founded;

¶ 66 ***DECLARES*** counts 2 and 6 unfounded;

¶ 67 ***SUMMONS*** the Respondent to a penalty hearing on a date that remains to be set.

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8 *Op. cit.*, note (6);

May 18, 2011

Gilles Archambault, Hearing Panel Member

Marcel Paquette, Hearing Panel Member

Me Jean-Pierre Lussier, Attorney and Hearing Panel Chair