



**Decision and Reasons**

Case # 200501

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 and 24 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

**RE: ROBERT ROY PARKINSON**

**DISCIPLINARY HEARING**

Heard: March 17, 2005  
Panel Decision: April 29, 2005  
Toronto, Ontario

**DECISION and REASONS**

Hearing Panel of the Ontario Regional Council:

Thomas J. Lockwood, Q.C.	Chair
David Sharpe	Industry Representative
Dennis Gregoris	Industry Representative

Appearances:

Robert DelFrate	)	For Mutual Fund Dealers Association
	)	of Canada
Robert Roy Parkinson	)	Not in attendance personally or by
	)	counsel

1. THE ALLEGATIONS

By Notice of Hearing, dated the 17<sup>th</sup> day of January, 2005, the following allegations were made against Robert Roy Parkinson (“the Respondent”):

(a) Between November 2000 and February 2003 inclusive (the “material time”), the Respondent engaged in business conduct which was unbecoming and detrimental to the public interest by soliciting and accepting from clients a total of \$314,000.00, more or less, and failing to return or otherwise account for these monies, contrary to Rule 2.1.1 of the Mutual Fund Dealers Association of Canada (“MFDA”);

(b) During the material time, the Respondent provided false account statements and order forms to clients, contrary to MFDA Rule 2.1.1; and

(c) On or about February 26, 2003, the Respondent engaged in business conduct which was unbecoming and detrimental to the public interest by abandoning his business as an Approved Person without notice to his clients or to the Member, thereby frustrating the ability of the Member and the MFDA to investigate his conduct, contrary to MFDA Rule 2.1.1.

2. SERVICE

The Notice of Hearing provided for a First Appearance by teleconference before the Hearing Panel at 121 King Street West, Suite 1000, Toronto, Ontario on Wednesday, February 23, 2005, at 10:00 a.m. At that time, the Respondent did not appear. Further, no one appeared on his behalf.

At the First Appearance, Enforcement Counsel described the attempts that had been made to that date by Staff to serve the Notice of Hearing on the Respondent. No decision was made on February 23, 2005, as to the adequacy of service. A Hearing Date was set for March 17, 2005. Subsequent to February 23, 2005, the MFDA issued a Press

Release and posted a copy on its website, advising as to the time and place of the Hearing.

The Respondent did not appear on March 17, 2005. No one appeared on his behalf.

At the commencement of the Hearing on March 17, 2005, Enforcement Counsel filed a Service Brief, which was marked as Exhibit 1. He also made submissions as to the adequacy of service.

We find that the following steps were taken by Staff to effect service of the Notice of Hearing on the Respondent:

(a) On January 17, 2005, a true copy of the Notice of Hearing, together with a letter addressed to the Respondent, enclosing a copy of the MFDA's Rules of Procedure were sent by registered and ordinary mail, addressed to Robert Roy Parkinson, c/o Ken and Bonnie Parkinson, R.R. 2, Denfield, Ontario, N0M 1P0. The letter advised the Respondent that a Disciplinary Hearing had been commenced against him and set out in detail his consequent rights and obligations.

(b) On the 20<sup>th</sup> day of January, 2005, Canada Post Corporation delivered a copy of the Notice of Hearing, along with the letter to Ken Parkinson, the father of the Respondent, at the Denfield address. It is to be noted that the Denfield address was one given by the Respondent to the Ministry of Community and Business Services in connection with 1441213 Ontario Inc., an entity incorporated, apparently by the Respondent, on November 22, 2000, in which he was the sole Director and Officer.

(c) Following delivery of a copy of the Notice of Hearing and the explanatory letter, Laura Gerber, the sister of the Respondent, contacted Enforcement Counsel and

requested a copy of the Notice of Hearing. She was provided same by letter, dated February 2, 2005 (see Exhibit 1).

(d) The Hearing Panel was advised that when Laura Gerber contacted that MFDA to request a copy of the Notice of Hearing, she stated that she did not know where her brother, the Respondent, was and that a missing persons report had been issued.

(e) Exhibit 1, Tab 4 consists of a series of printouts from the National Registration Database. This printout shows that the database does not contain a last known address for the Respondent.

(f) A copy of the Notice of Hearing was posted on the MFDA website and a Press Release was issued by the MFDA containing information with respect to the time, location and purpose of the First Appearance on February 23, 2005.

(g) As indicated, when the Respondent did not appear on February 23, 2005, a further Press Release was issued, posted on the MFDA website, advising of the time and place of the Hearing.

(h) The Director of Mutual Fund Operations for the sponsoring dealer of the Respondent provided evidence (see Exhibit 2) that, as of the 11<sup>th</sup> of March, 2005 (the date of the swearing of the Affidavit), the Respondent's "whereabouts are currently unknown."

After hearing submissions and reviewing the documentary evidence, we are, unanimously, of the opinion that the delivery and publication of the Notice of Hearing, in the manner described above, constitutes good and sufficient service on the Respondent. We made an Order to this effect, pursuant to Rule 4.2(1)(d) of the MFDA Rules of Procedure.

3. MANNER OF PROCEEDING

Rule 13.5 of the MFDA Rules of Procedure provides as follows:

“(1) Where a Respondent, having been served with a Notice of Hearing, fails to attend the hearing of the proceeding on its merits, the Hearing Panel may proceed in accordance with Rule 7.3.”

Rule 7.3 provides that where a Respondent fails to attend the Hearing on the date and at the time and location specified in the Notice of Hearing, the Hearing Panel may:

- “(a) proceed with the hearing without further notice to and in the absence of the Respondent; and
- (b) accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of By-law No. 1.”

Enforcement Counsel advised the Hearing Panel that he wished to proceed with the Hearing in the absence of the Respondent but seek to prove the Allegations by means of admissible evidence. We agreed with that approach.

4. PRESENTATION OF EVIDENCE

The main evidence before the Hearing Panel with respect to this matter consisted of an 86 paragraph Affidavit of Colin Scott Gladwish (“Gladwish Affidavit”), the Director of Mutual Fund Operations for IPC Investment Corporation (“IPC”), the sponsoring dealer for the Respondent during the relevant period of time. Accompanying and forming part of the Gladwish Affidavit was an Exhibit Book containing 73 separate Exhibits.

Rule 1.6(1) of the MFDA Rules of Procedure provides, in part, that:

“(1) . . . a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence.”

Rule 13.4 provides that:

“(1) The Hearing Panel may allow the evidence of a witness or proof of a particular fact or document to be given by sworn statement unless an adverse party reasonably requires the attendance of the witness at the hearing for cross-examination.”

Accordingly, we marked the Gladwish Affidavit as Exhibit 2. It formed admissible evidence before us.

Enforcement Counsel advised the Hearing Panel that, in the Gladwish Affidavit, Staff had removed client names and had used initials. This was to protect client confidentiality. He advised that this was not possible to do with the Exhibit Book. He, therefore, sought an Order, under Rule 1.8(2) of the MFDA Rules of Procedure.

Rule 1.8(2) provides as follows:

“A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.”

Rule 1.8(5) provides as follows:

“Exhibits, documents and transcripts relating to that part of a hearing that is held in the absence of the public shall be marked “Confidential” and shall be kept separate from the public record, and access to this material shall only be by order of the Panel.”

After considering the submissions of counsel, the Exhibit Book was marked as Exhibit 3 and, pursuant to a combination of Rule 1.8(2) and (5), it was marked “Confidential”.

We also marked, as Exhibit 4, a Corporation Profile Report relating to 1441213 Ontario Inc.

5. THE EVIDENCE

The Gladwish Affidavit revealed the following:

From January 1996 to April 2003, the Respondent was registered as a Mutual Fund Salesperson with the Ontario Securities Commission. In September 1999, IPC became the sponsoring dealer for the Respondent. He worked at a branch office in London, Ontario.

Between November of 2000 and February of 2003, the Respondent induced at least 25 clients to make investments in a product by the name of “Glengarry Investments” (“Glengarry”). The evidence showed that approximately \$380,000.00 was given to the Respondent by his clients to invest in Glengarry during the relevant period of time. Of this amount, it appears that the Respondent repaid approximately \$42,000.00, leaving approximately \$337,000.00 that, at the date of the Hearing, had not been repaid by the Respondent and remained unaccounted for. IPC entered into settlements with all of the clients who had invested in Glengarry through the Respondent and, as of December 15, 2003, had paid the sum of \$340,673.22 to these clients.

The evidence showed that Glengarry was not a product known to or approved by IPC for sale by IPC salespersons. It was not a product that was sold by any other person or company. The Respondent would recommend Glengarry to clients seeking to invest in a GIC-like product but wanting a higher rate of interest. The payments on account of Glengarry were made directly to the Respondent or to “Glengarry Investments” or a variation thereof. IPC was unable to find any evidence that the monies received by the Respondent from his clients were ever placed in any *bone fide* investment.

The investments in Glengarry did not appear on account statements sent to clients by IPC. The Respondent provided separate account statements for Glengarry to his clients. These account statements were printed by the Respondent either on IPC letterhead or on copies of IPC letterhead, which the Respondent had altered by replacing

the IPC masthead with the name “Glengarry”. The Respondent provided his clients with standard IPC Order Entry Forms when they wanted to make an investment in Glengarry.

6. CLIENTS

The Gladwish Affidavit contained a summary of the statements and evidence provided by clients who had been identified as having made investments in Glengarry. A summary of their evidence follows:

a) CLIENTS WG and PG

At all material times, WG and PG lived in Thamesford, Ontario and were clients of the Respondent. They provided two cheques to the Respondent, each in the amount of \$20,000.00 and each made payable to “Glengarry Investments”. The first cheque was dated November 28, 2000 and the second February 19, 2001.

The Respondent provided WG and PG with at least three statements of account activity concerning their purported investment in Glengarry. The first statement was on the letterhead of “Glengarry Investments”, showing a \$20,000.00 investment in a product described as “LT GIC 001”, for a term of twelve months at an interest rate of twelve percent. The second statement shows a further investment in Glengarry Investments in a product described as “LT GIC 002”, for a term of twelve months, also at an interest rate of twelve percent. The third statement is on the letterhead of “Investment Planning Counsel of Canada”. It shows an investment in Glengarry as of November 11, 2002. This third statement shows a slightly different account number and describes both products as “LT GIC 001” and shows a purported renewal of investment at an interest rate of 8.25 percent. It also shows an alleged portfolio balance of \$43,083.00.

WG and PG were repaid \$4,759.00. Thus, their net loss was \$35,241.00, excluding any interest considerations.

b) CLIENT JW

JW lived in Parkhill, Ontario and was a client of the Respondent. JW provided to the Respondent a cheque, dated December 8, 2000, for \$3,000.00, payable to “Glengarry GIC”. This cheque was deposited into an account at a London, Ontario Branch of TD Canada Trust (the “Account”). The Account was apparently in the name of 1441213 Ontario Inc./Glengarry Investments. Exhibit 4 shows that 1441213 Ontario Inc. is a company incorporated on the 22<sup>nd</sup> day of November, 2000, in which the Respondent was the sole Officer and Director.

Exhibit 15 was a copy of a statement of account activity, which the Respondent provided to JW in November of 2002. The statement was on the letterhead of “Investment Planning Counsel of Canada”, listing Investment Planning Counsel of Canada as the dealer and the Respondent as the representative. The investment is purportedly in a product described as “LT GIC 001” and, in November of 2002, was for a term of twelve months at an interest rate of 4.25 percent. The funds of JW were not returned by the Respondent or otherwise accounted for.

c) CLIENT HH

HH was a client of the Respondent. HH has been diagnosed with Alzheimer’s and lived in a nursing home. Her son, WH, held a Power of Attorney over her affairs. On March 5, 2001, WH met with the Respondent to discuss investing \$50,000.00 of his mother’s money from the sale of her house. The Respondent was advised that they were interested in “a low interest rate and low risk investment”. The Respondent recommended Glengarry. He was provided with a cheque, dated March 29, 2001, in the amount of \$50,000.00. The cheque was on the account of HH and was signed by WH as her attorney, and was made payable to “Glennngarry Investments”. The cheque was deposited into the Account.

HH, through her attorney, WH, received at least two statements of account activity from the Respondent. Both statements were on the letterhead of “Investment

Planning Counsel of Canada”, listing IPC as the dealer and the Respondent as the representative. The first statement shows an investment in Glengarry in the amount of \$45,000.00 in a product described as “LT GIC 001”. The account statement of September 30, 2002, showed that this investment had been renewed on May 1, 2002, for twelve months at an interest rate of 5.25 percent. The second shows an investment in Glengarry in the amount of \$5,000.00 in an investment product described as “ST GIC 001”. The September 20, 2002 statement showed that this alleged investment was renewed on May 1, 2002, for a period of twelve months at an interest rate of 3.25 percent.

The \$50,000.00 provided to the Respondent by HH, through her attorney, WH, has neither been returned to HH nor otherwise accounted for.

d) CLIENTS BW and KW

BW and KW lived in Parkhill, Ontario and were clients of the Respondent. They provided three cheques to the Respondent, believing they were making an investment in Glengarry, which the Respondent led them to believe was a short-term savings vehicle which earned “better interest than the bank”.

The first cheque was dated June 11, 2001, for \$5,000.00, and was made payable to “Glengarry Investments”. The second cheque was dated October 3, 2001, for \$4,000.00 and was payable to “Glen Gary Investments”. On April 30, 2002, BW and KW redeemed \$8,308.00 from the Glengarry investment. In June of 2002, BW and KW gave a third cheque to the Respondent, in the amount of \$3,500.00, payable to “Glengarry Investments”.

When these alleged investments were made, the Respondent, on occasion, provided copies of IPC Order Entry Forms. Exhibit 26 was an IPC Order Entry Form, dated October 4, 2001, showing a transaction in the amount of \$4,000.00 for a “GG GIC 6 MNTH TERM”. A further IPC Order Entry Form was dated June 4, 2002, showed a transaction in the amount of \$3,500.00 for a “GG GIC Pool”.

BW and KW provided a total of \$12,500.00 to the Respondent to be invested in Glengarry. They redeemed \$8,301.01. The remaining funds were not returned to them by the Respondent nor were they otherwise accounted for by him.

e) CLIENT EH

EH lived in London, Ontario and was a client of the Respondent. EH died on March 22, 2003. KH is EH's niece. In 1999, KH was granted a Power of Attorney over EH's affairs and had managed her investments since that time. KH had also been a client of the Respondent since 1997.

EH's money was originally invested in mutual funds with BPI and CI Funds. In or about October 2001, the Respondent recommended that some of the money be transferred to Glengarry. The Respondent advised KH that the returns would be higher and the money would be more easily accessible if anything were to happen to her aunt.

KH provided three cheques to the Respondent. On each occasion she thought that she was making an investment in Glengarry. The first cheque was dated August 7, 2001, for \$20,000.00, made payable to "Glengarry Investments". The cheque was deposited into the Account. The second cheque was dated October 29, 2001. It was made payable to the Respondent personally for \$4,975.00. The third cheque was dated January 8, 2002, for \$36,000.00. It was also deposited into the Account. For this last investment, EH received a copy of an IPC Order Entry Form, dated January 8, 2002, purportedly showing an investment in the amount of \$36,000.00 for "GG Short Term GIC". Of the total investment of \$60,975.00, \$8,000.00 was redeemed. The remaining funds were neither returned by the Respondent nor otherwise accounted for.

f) CLIENT JK

JK lived in St. Mary's, Ontario and was a client of the Respondent. JK provided three cheques to the Respondent to be invested in Glengarry. JK thought that she was making an investment in Disc Golf. She said that the Respondent advised her that Glen Garry was an ex-police officer and that the Respondent could get a better rate of return if

he invested through him.

The first cheque was dated April 26, 2000, for \$2,000.00 and was made payable to the Respondent. The second cheque was for \$2,500.00 and was also made payable to the Respondent. The third cheque was dated December 5, 2001, in the amount of \$4,700.00 and was made payable to “Glen Garry – 1441213”.

JK provided a total of \$9,200.00 to the Respondent to be invested in Glengarry. The Respondent neither returned these funds nor otherwise accounted for them.

g) CLIENT JB

JB lived in London, Ontario and was a client of the Respondent. She provided \$19,000.00 to the Respondent in September of 2001, to be invested in Glengarry. She received a statement of account activity describing the investment as “LT GIC 001” for a term of 144 months [sic] at an interest rate of 8.5 percent. IPC was listed as the dealer and the Respondent as the representative. These funds have not been returned to JB by the Respondent or otherwise accounted for.

h) CLIENT MP

MP lived in Ailsa Craig, Ontario and was a client of the Respondent. On October 29, 2001, he provided the Respondent with a cheque for \$6,000.00 payable to “Glengarry Investments – 1441213”. This cheque was deposited into the Account. For this, he received an IPC Order Entry Form, dated November 1, 2001, showing a transaction in the amount of \$6,000.00 for both “Short Term” and “Mid Term” funds. He also invested a further \$1,000.00 and received an IPC Order Entry Form for this amount.

The Respondent has neither returned the \$7,000.00 to MP nor otherwise accounted for the funds.

i) CLIENTS FP AND SP

FP and SP lived in Ailsa Craig, Ontario and were clients of the Respondent. They

provided two cheques to the Respondent in November of 2001. On both occasions, they were led to believe by the Respondent that they were making an investment in Glengarry.

The first cheque, dated November 23, 2001, was for \$10,000.00 and was made payable to “Glengarry Investments 1441213”. The cheque was deposited into the Account. The second cheque was dated November 30 [2001], for \$10,300.00, and was made payable to “Glen Garry Investments”. FP and SP received two IPC Order Entry Forms. The first was dated November 22, 2001, with respect to an alleged transaction in the amount of \$10,000.00 for “Glengarry Investments Cashable” in the name of FP. The second Order Entry Form was dated November 30, 2001, with respect to an alleged transaction in the amount of \$10,300.00 for a “GG GIC” in the name of SP.

FP and SP provided a total of \$20,300.00 to the Respondent to be invested in Glengarry. The Respondent has neither returned the funds nor otherwise accounted for them.

j) CLIENTS KP AND BP

KP and BP lived in Denfield, Ontario. KP provided a cheque to the Respondent, dated February 11, 2002, for \$15,000.00, payable to “Glen Garry Investments – 1441213”. This cheque was deposited into the Account. KP made further investments in Glengarry in the amount of \$2,500.00 and \$1,500.00, respectively. KP made withdrawals of \$1,000.00 and \$2,000.00.

BP also provided to the Respondent a bank draft, dated May 6, 2002, for \$42,274.17, payable to “Glengarry Investments”.

Together, KP and BP provided a total of \$61,274.17 to the Respondent to be invested in Glengarry. They redeemed a total of \$3,000.00 of that amount. The balance was neither returned to them by the Respondent nor otherwise accounted for.

k) CLIENT MH

MH lived in Lucan, Ontario and was a client of the Respondent. The Respondent attended on her at home when her GIC came due at the bank. He explained that Glengarry was a “very good company to invest in due to there being much higher interest rates at the time I was investing.” MH provided to the Respondent a cheque, dated March 7, 2002, in the amount of \$5,000.00, made payable to “Glen Garry Investments”. This cheque was deposited into the Account. MH received from the Respondent a copy of an IPC Order Entry Form, dated March 7, 2002, showing a purchase in the amount of \$5,000.00 for “GG 5YR GIC”. The Respondent has neither returned the \$5,000.00 to MH or otherwise accounted for it.

l) CLIENT JP

JP lived in Goderich, Ontario and was a client of the Respondent. She provided to the Respondent a cheque, dated April 21, 2002, in the amount of \$17,232.00, made payable to “GlenGarry 1441213”, for a purported investment in Glengarry. The Respondent has neither returned the said \$17,232.00 to JP nor otherwise accounted for it.

m) CLIENT KP

KP lived in Ailsa Craig and was a client of the Respondent. KP provided two cheques to the Respondent to be invested in Glengarry. The first cheque was dated October 24, 2001, for \$4,000.00 and was made payable to “GlenGarry Investments”. The cheque was deposited into the Account. The second cheque was dated July 4, 2002, in the amount of \$6,000.00, payable to “GlenGarry”. This cheque was also deposited into the Account. With respect to the first alleged investment, KP received an IPC Order Entry Form, dated October 25, 2001, indicating a purchase of \$1,000.00 for a “Glengarry T-Bill” and \$3,000.00 for a fund entitled “Glengarry Balance”.

In total, KP provided \$10,000.00 to the Respondent to be invested in Glengarry. The Respondent has neither returned these funds nor otherwise accounted for them.

n) CLIENT AG

AG lived in London, Ontario and was a client of the Respondent. Towards the end of October 2002, AG was planning on buying his first home and asked the Respondent to cash out most of his investments. The house transaction did not proceed. Consequently, AG asked the Respondent if there was anything that he could offer him that was “guaranteed and easily liquidated if needed”. The Respondent advised him that Glengarry was “guaranteed at 4.25 percent”. AG provided to the Respondent a cheque, dated October 25, 2002, for \$14,000.00, payable to “Glengarry Investments”. The cheque was deposited into the Account.

When AG received a statement from IPC, the investment did not appear on it. He contacted the Respondent, who assured him that he still had the investment but that it was “invested elsewhere and therefore wouldn’t appear on the IPC statement.” He arranged a meeting to discuss the investment with the Respondent. The meeting occurred in February of 2003. At that time, AG was provided with documentation showing that he had a non-registered account. The account number was 144121300. It showed an initial investment in a product described as “LT GIC 001”. Although only \$14,000.00 was “invested”, the statement on IPC letterhead showed that \$15,000.00 was invested for a term of 12 months at an interest rate of 4.25 percent. It also showed that \$5,000.00 of the investment had been redeemed. The Respondent has neither returned the remaining funds to AG nor otherwise accounted for them.

o) CLIENT MM

MM lived in London, Ontario and was a client of the Respondent. MM was looking for a short-term no fee investment. The Respondent suggested Glengarry. Thereupon, MM provided to the Respondent a cheque, dated November 7, 2002, for \$5,000.00, made payable to “Glen Garry Investments”. The cheque was deposited into the Account.

MM subsequently received a statement of account activity showing an investment in “Glengarry Account #144121300” in a product described as “ST GIC 001”, for a term

of 3 months at an interest rate of 4.0 percent. The Respondent has neither returned the \$5,000.00 to MM nor otherwise accounted for it.

p) CLIENT KG

KG lived in Toronto, Ontario and was a client of the Respondent. KG provided two cheques to the Respondent, believing that he was making an investment in Glengarry. The Respondent told KG that Glengarry was a “holding company to purchase the GIC’s”.

The first cheque was dated November 15, 2002, for \$15,000.00, and was made payable to “Glengarry Investments”. This cheque was deposited into the Account. The second cheque was dated December 12, 2002, for \$7,000.00 and was made payable to “Glengarry Investments”. On February 25, 2003, KG met with the Respondent and provided instructions that \$7,000.00 be transferred from his Glengarry holdings to a money market fund in his RRSP account. He subsequently learned that this transfer never occurred.

The \$22,000.00 provided by KG to the Respondent was neither returned nor otherwise accounted for.

q) CLIENT LP

LP lived in Toronto, Ontario and was a client of the Respondent. On November 15, 2002, LP provided a cheque in the amount of \$2,000.00 to the Respondent, made payable to “Glengarry Investments”. The cheque was deposited into the Account. The Respondent told LP that the investment was in a short-term GIC, which would earn 4.5 % annually. He also told LP that Glengarry was a holding company that purchased GIC’s. The Respondent has neither returned the \$2,000.00 to LP nor otherwise accounted for the funds.

r) CLIENT TLT

TLT lived in Rodney, Ontario and was a client of the Respondent. In February,

2003, TLT provided the Respondent with a bank draft in the amount of \$1,500.00, payable to the Respondent. She believed that she was obtaining an investment in Glengarry. The Respondent has neither returned the \$1,500.00 to TLT nor otherwise accounted for the funds.

s) CLIENT DB

DB lived in Aylmer, Ontario and was a client of the Respondent. The evidence presented to the Hearing Panel with respect to DB consisted of an Implementation Check List and an IPC Order Entry Form received from the Respondent. The Implementation Check List shows investments of \$4,500.00 in a short-term GIC pool and \$4,000.00 in a mid-term GIC pool. The Check List also shows redemptions totaling \$3,500.00. The IPC Order Entry Form was dated January 4, 2002, showing a redemption of \$1,500.00 from the “GG Short-Term Pool”. Although the evidence is not conclusive, it would appear that DB provided \$8,500.00 for investment purposes to the Respondent, \$3,500.00 of which was subsequently redeemed. The remaining funds have neither been returned nor accounted for by the Respondent.

7. DISAPPEARANCE OF THE RESPONDENT

The Gladwish Affidavit shows that on February 26, 2003, the Respondent failed to show up for work, without notifying anyone at IPC, either before or after his absence. A preliminary investigation was immediately commenced by IPC and, on March 10, 2003, the Respondent was terminated for cause. A Missing Persons Report was subsequently filed by a family member.

8. APPLICABLE RULE

The three allegations, set out in the Notice of Hearing, allege a breach of MFDA Rule 2.1.1. This Rule states:

“Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and

- (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.”

9. THE LAW

Enforcement Counsel presented the Hearing Panel with Written Submissions as well as a very extensive Casebook, for which we are indebted.

While certain of the terms in Rule 2.1.1(a), (b) and (c) are not defined, it is clear that, by any rational standard, the Respondent breached each of these provisions. The evidence, as outlined above, shows that from November of 2000 to February of 2003, the Respondent engaged in a pattern of despicable conduct towards a large number of clients who looked to him for secure investments. As the Alberta Securities Commission stated in the case of Showers (Re):

“It is hard to imagine more serious types of misconduct by a mutual fund salesperson towards his clients.”

Re: Showers (Re) [2004] A.S.C.D. No 1180 at para. 63.

Allegation No. 1

In virtually every instance, the Respondent advised his clients that their monies would be invested in a GIC-like investment known as “Glengarry Investments.” The evidence showed that Glengarry was not an actual investment product. The majority of the monies received were deposited into an account over which the Respondent had apparent sole authority. His conduct included a pattern of forgeries, misappropriations of clients’ monies, misrepresentations, deceptions and concealment, over a period of time in excess of two years.

We are unanimously of the view that the first allegation has been clearly established and we find that between November of 2000 and February of 2003, inclusive, the Respondent engaged in business conduct which was unbecoming and detrimental to the public interest by soliciting and accepting from clients a total of \$314,000.00, more or

less, and failing to return or otherwise account for these monies, contrary to MFDA Rule 2.1.1.

### Allegation No. 2

The evidence is also clear that between November 2000 and February of 2003, the Respondent provided numerous false account statements and order forms to clients, contrary to MFDA Rule 2.1.1. We agree with the submission of Enforcement Counsel that the Respondent's actions were calculated, deceitful and dishonest.

We are unanimously of the view that Allegation No. 2, set out in the Notice of Hearing, has been established.

### Allegation No. 3

Allegation No. 3 raises the issue as to whether the Respondent, by abandoning his practice without notice and disappearing, engaged in business conduct which is unbecoming or detrimental to the public interest.

Section 22 of MFDA By-Law No. 1 provides, in part, as follows:

“22.1 For the purpose of any examination or investigation pursuant to this By-Law, [an] Approved Person of a Member . . . 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 the books, records and accounts of such person relevant to the matters being investigated; 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.”

In this case, the Respondent disappeared without notice to his clients, to IPC or to the MFDA. It is clear that the Respondent failed to co-operate. It is also clear that this failure to co-operate undermined the ability of both the MFDA and the Member to fully investigate this matter and determine the real extent of all of the underlying events.

Does this failure to co-operate amount to business conduct which is unbecoming and detrimental to the public interest? In our view, it does. As the Ontario Divisional Court found in the case of Artinian v. College of Physicians and Surgeons of Ontario:

“Fundamentally, every professional has an obligation to co-operate with his self-governing body”.

Re: Artinian v. College of Physicians and Surgeons of Ontario (1990) 73 O.R. (2d) 704

In the factual circumstances of this case, we are of the view that the conduct of the Respondent amounted to business conduct which was unbecoming and detrimental to the public interest contrary to MFDA Rule 2.1.1. Consequently, we find that Allegation No. 3 has been established.

10. PENALTY

Enforcement Counsel, in his written and oral Submissions, sought the following sanctions:

1. A permanent prohibition on the authority of the Respondent to conduct securities related business;
2. A fine in the amount of \$150,000.00;
3. Costs in the amount of \$7,500.00.

11. FACTORS TO BE CONSIDERED

The Supreme Court of Canada, in the case of Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at paragraph 59, held that the primary goal of securities regulation is the protection of the investor. The Court also found that other goals included:

“... ensuring public confidence in the system.”

In the Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission) [2001] 2 S.C.R. 132, the Supreme Court of Canada found that the role of the Ontario Securities Commission, under its public interest jurisdiction, is:

“. . . to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.”

We believe that, where the circumstances warrant, the role of this Hearing Panel is similar to that of the Commission.

We agree with the Submissions of Enforcement Counsel that in determining the appropriate sanctions, we should, *inter alia*, take into account the following considerations:

- (a) the protection of the investing public;
- (b) the integrity of the securities markets;
- (c) specific and general deterrence,
- (d) the protection of the MFDA’s membership, and
- (e) the protection of the integrity of the MFDA’s enforcement processes.

See Derivative Services Inc. (Re), [2000] I.D.A.C.D No.26

Mills (Re), [2001] I.D.A.C.D No. 7 (“Mills”)

We, further, agree with the comments made by the Ontario District Council of the I.D.A. at paragraph 6 of the Mills Decision to the effect that:

“Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Associations’ disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the

conduct and respondent before it, reflecting that its primary purpose is prevention, rather than punishment.”

There are a series of Decisions setting out the specific factors that a Hearing Panel should consider. These were summarized by the Alberta Securities Commission in the case of Lamoureux (Re) [2002] A.S.C.D. No. 125, as follows at paragraph 11:

“The Commission and other securities regulatory authorities in Canada have also expressed their view that, when making orders under s. 198 or 199 of the Act or comparable provisions in other jurisdictions, to protect the public, we consider a broad range of factors such as:

- “the seriousness of the allegations proved against the respondent,
- the respondent’s past conduct, including prior sanctions, mitigating factors,
- the respondent’s experience in the capital markets, the level of the respondent’s activity in the capital markets
- whether the respondent recognizes the seriousness of the improper activity
- the harm suffered by investors as a result of the respondent’s activities
- the benefits received by the respondent as a result of the improper activity
- the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction
- the damage caused to the integrity of the capital markets in the jurisdiction by the respondent’s improper activities
- the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity
- the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets and
- previous decisions made in similar circumstances.”

We have expressed above our views as to the seriousness of the conduct of the Respondent as established by the admissible evidence before us. Unquestionably, his actions were planned and deliberate. His status as a Registrant permitted him to gain the trust of his clients. He abused this trust in the most fundamental fashion. The fact that IPC repaid to the Respondent’s client over \$340,000.00 is a positive reflection on IPC. In our view, it does not, in any way, mitigate the conduct of the Respondent.

It is, in our view, incumbent upon this Hearing Panel to communicate to the Respondent, to the public and to the mutual fund industry as a whole, that serious consequences will be befall those who breach their position of trust and who take advantage of their role as a Registrant. In our view, there clearly should be a permanent prohibition of the authority of the Respondent to conduct securities related business in any capacity and we so Order.

12. FINES

We have set out above our views as to the principles which should guide us in imposing fines upon the Respondent. The only mitigating factor that we are aware of is that this would appear to be the first time that there has been any disciplinary action taken against the Respondent.

On the aggravating side, we considered the following:

1. The Respondent has not made any restitution to any of his clients;
2. There was no evidence before us of any remorse on the part of the Respondent;
3. The events took place over a lengthy period of time, namely from at least November of 2000 to February of 2003;
4. It was not a single transaction, but a whole series of dishonest transactions. We have detailed above the conduct of the Respondent towards 23 clients. The total of the funds paid to the Respondent by the clients over the material time was approximately \$380,000.00, of which, at the date of the Hearing, approximately \$337,000.00 remained unaccounted for;
5. The Respondent's improper activities caused, in our view, severe damage to the integrity of the capital markets, not only in Ontario but right across the country; and
6. While, owing largely to the disappearance of the Respondent and the consequent inability of Staff to fully determine all of the facts, it is not clear that all of the approximately \$380,000.00 made its way into the Account. However, we are

satisfied that the logical inference is that the funds were either received by the Respondent or for his benefit.

#### Allegation No. 1

In light of the above and in light of the penalties which we are imposing with respect to Allegations No. 2 and No. 3, in our view, the appropriate penalty for Allegation No. 1 is a fine of \$250,000.00 and we so order.

#### Allegation No. 2

We have found that, on numerous occasions, the Respondent fabricated account statements and order entry forms and provided these false documents to his clients in order to both mislead and deceive them. In our view, the actions of the Respondent were calculated, deceitful and dishonest. They were done over a lengthy period of time. These false account statements and order entry forms assisted the Respondent in obtaining the monies referred to in Allegation No. 1.

In imposing a fine with respect to Allegation No. 2, we are mindful of the fine which we imposed with respect to Allegation No. 1 as well as the totality principle. We have also reviewed the Decision of the Quebec District Council of the IDA in the case of McCaffrey (Re), Bulletin No. 3151, May 15, 2003, as well as the Decision of the Ontario District Council in the case of Bishop (Re), Bulletin No. 3276, May 4, 2004.

In those cases, the Panel was dealing with, *inter alia*, individual Counts of falsification of documents including issuing fictitious account statements. In the case of McCaffrey (Re), the Quebec District Council imposed a fine of \$65,000.00 for each Count, noting that the violations “extended over several months” (paragraph 18) and that the Respondent, in that case, did not obtain personal profit. In the Bishop (Re) case, the Panel found that the Respondent had committed 16 violations of the By-Laws, Regulations and Policies of the IDA between January 2000 and December of 2002. It imposed a global fine of \$410,000.00.

In light of the above, we believe that the appropriate fine with respect to Allegation No. 2 should be \$75,000.00 and we so Order.

### Allegation No. 3

Enforcement Counsel provided us with a series of Decisions from the Investment Dealers Association of Canada, outlining the views of various Panels as to the appropriate fine to be imposed in the case of an individual who refused and/or failed to attend and give information in respect of an investigation, conduct similar to that which we found to be established against the Respondent in Allegation 3 of the current Notice of Hearing.

The Decisions cited were the following:

- (a) Re: Robb, Bulletin No. 2908, January 15, 2002 (Pacific District Council);
- (b) Re: Grundy, Bulletin No. 2978, April 11, 2002 (Alberta District Council);
- (c) Re: Katz, Bulletin No. 2985, April 17, 2002 (Ontario District Council);
- (d) Re: Stauffer, Bulletin No. 3071, November 11, 2002 (Ontario District Council);
- (e) White (Re), Bulletin No. 3181, August 6, 2003 (Ontario District Council); and
- (f) Crittal (Re), Bulletin No. 3335, September 27, 2004 (Alberta District Council).

In each case, the District Council imposed a fine of \$50,000.00. We find these cases to be of guidance. Consequently, we impose against the Respondent with respect to this Allegation a fine in the amount of \$50,000.00.

### 13. COSTS

Section 24.2 of By-Law no. 1 provides that:

“A Hearing Panel may in any case in its discretion require that the . . . Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel and any investigations relating thereto.”

Staff of the MFDA requested that an Order for Costs be made against the Respondent in the amount of \$7,500.00, representing “a substantial portion of the costs

attributable to conducting the investigation and this Hearing . . . “ We believe that the imposition of costs in the circumstances of this case is appropriate and order costs to be fixed in the amount of \$7,500.00.

14. PENALTIES IMPOSED

1. A permanent prohibition of the authority of the Respondent to conduct securities related business in any capacity;
2. A fine in the amount of \$250,000.00 with respect to Allegation No. 1;
3. A fine in the amount of \$75,000.00 with respect to Allegation No. 2;
4. A fine in the amount of \$50,000.00 with respect to Allegation No. 3; and
5. Costs in the amount of \$7,500.00.

"Thomas J. Lockwood, Q.C."

Thomas J. Lockwood, Q.C.  
Chair

"David Sharpe"

David Sharpe  
Industry Representative

"Dennis Gregoris"

Dennis Gregoris  
Industry Representative