DECISION OF A PANEL APPOINTED PURSUANT TO *THE FINANCIAL AND CONSUMER AFFAIRS AUTHORITY OF SASKATCHEWAN ACT*

In the Matter of

***The Securities Act, 1988,* SS 1988-89, c S-42.2**

and

In the Matter of

Jack Louis Comeau

and

Pinnacle Wealth Brokers Inc.

and

Grasswood Property Finance Ltd.

(the Respondents)

RE: SANCTIONS AND COSTS

Hearing on:	February 23, 2022
Before:	Howard Crofts, Panel Chairperson Peter Carton Norman Halldorson (referred to as the "Panel")
Appearances:	Connor Smith on behalf of Staff ("Staff") of the Financial and Consumer Affairs Authority of Saskatchewan (the "FCAA") Simon Bieber and Julia Wilkes on behalf of Jack Louis Comeau ("Comeau") and Pinnacle Wealth Brokers Inc. ("Pinnacle")) No one appearing on behalf of the Respondent, Grasswood Property Finance Ltd. ("Grasswood")
Date of Decision:	April 29, 2022

I. INTRODUCTION

a. Procedural Background

1. This is the Panel's decision in respect to sanctions and costs for Comeau and Grasswood. A virtual hearing in respect to sanctions and costs was held on February 23, 2022 that was consistent with the *Guidelines for Managing Hearings during a Pandemic* [*Guidelines*]. These *Guidelines* supplement and amend, to the extent necessary, Part 11 and Rule 11.1 of *Saskatchewan Policy Statement 12-602*, *Procedure for Hearings and Reviews* [*Local Policy*]. Comeau appeared and participated in the hearing. Grasswood did not participate in any way in the proceeding despite receiving notice. Pinnacle Wealth Brokers Inc.("Pinnacle") had settled its involvement in this matter by way of a Settlement Agreement on March 2, 2020.

2. Prior to the hearing on sanctions and costs, on February 23, 2022 this Panel released its decision on the merits in this matter [*Merits Decision*] on December 7, 2021. The short forms used in the *Merits Decision* are carried over and used in this decision.

3. In the *Merits Decision*, we set out the background to this matter including testimony and exhibit evidence that the Panel received during the hearing on the merits. While the full background will not be reproduced here, the Panel has taken this background into account in considering the issues of sanctions and costs in this decision. In addition, in this decision, the Panel will analyze and discuss facts that are of particular importance to crafting sanctions and costs orders that are fair, reasonable, and proportionate.

b. Background from *Merits Decision*

4. The Statement of Allegations issued by Staff on June 27, 2018 and as amended on August 30, 2019, alleged that Comeau illegally sold securities to twenty-eight Pinnacle clients and Other Investors. During the Merits hearing this Panel heard that Comeau sold investors securities ("Grasswood Bonds") off book from Pinnacle, as well as other alternative investment securities that were Pinnacle products.

5. Three investors, identified during the merits hearing as Pinnacle Clients 1, 11 and 20, and an administrative assistant working in the Securities Division of the FCAA appeared and testified as Staff witnesses regarding their investment dealings with Comeau or in relation to this matter.

6. Comeau testified on his own behalf regarding his dealings generally with clients and specifically with regard to his dealings with Pinnacle Clients 1, 11 and 20. His former administrative assistant also testified with regard to her duties when she worked for Comeau.

7. Also during the Merits hearing, the Panel learned that Grasswood failed to file a Preliminary Prospectus relating to issuance of its Grasswood Bonds and found it in contravention of section 58(1) of

The Securities Act, 1988, SS 1988-89, c S-42.2 [the *Act*] and section 6.1 of *National Instrument 45-106* [*NI 45-106*].

8. This Panel's Merits decision found that Comeau contravened:

(a) Sections 27(2)(b), 33.1(1) and 55.11 of the *Act*, section13.3 of *National Instrument 31-103* [*NI 31-103*] in his dealings with Pinnacle Client 1;

(b) Sections 33.1(1) of the *Act* and section 13.3 of *NI 31-103* in his dealings with Pinnacle Client 20; and

(c) Section 4.1 of *National Instrument 33-109* [*NI 33-109*] when he failed to report his off book activities with his involvement in selling Grasswood Bonds.

9. This Panel dismissed the allegations with regard to Pinnacle Client 11 as they were statute barred by the limitations period in the *Act*.

10. The evidence brought forward by Staff and Comeau during the merits hearing set the stage for this hearing on sanctions and costs and the Panel's decisions herein.

c. Staff's Requests in respect to Sanctions and Costs in the Amended Statement of Allegations and Written and Oral Submissions

11. In the Amended Statement of Allegations dated August 30, 2019, Staff sought various permanent market access prohibitions against Comeau and Grasswood. In particular, Staff requested an order that the following prohibitions apply to Comeau permanently, and to Grasswood for a period of five (5) years:

a. all of the exemptions in Saskatchewan securities laws do not apply to either party;

b. they cease trading in securities or derivatives in Saskatchewan (*Act*, s. 134(1)(d));

c. they cease acquiring securities or derivatives for and on behalf of residents of Saskatchewan (*Act*, s. 134(1)(d.l));

d. Comeau to cease giving advice respecting securities, trades, or derivatives in Saskatchewan (*Act*, s. 134(1)(e));

e. Comeau shall resign any position that he holds as a director or officers of an issuer, a registrant or an investment fund manager (*Act*, s. 134(1)(h)(i));

f. Comeau is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager (*Act*, s. 134(1)(h)(ii));

g. Comeau not be employed by any issuer, registrant, or investment fund manager in any capacity that would entitle him to trade or advise in securities (*Act*, s. 134(1)(h)(iii)); and

h. Comeau be prohibited from becoming or acting as a registrant an investment fund manager or a promoter (*Act*, s. 134(1)(h.1)).

12. Staff's Amended Statement of Allegations also requested an administrative penalty (*Act*, s. 135.1) in the amounts of $75,000 from Comeau, $15,000 from Grasswood and $25,000 from Pinnacle and that all three parties pay the costs of or relating to the hearing in this matter (*Act*, s. 161).

13. The Amended Statement of Allegations also seeks financial compensation (*Act*, s. 135.6), but this issue will be considered after a hearing takes place in respect to the issue of financial compensation.

14. In their written and oral submissions, Staff reduced the request for administrative penalties to $60,000.00 from Comeau and requested that Comeau pay costs of the hearing in the amount of $71,970.60. The request for an administrative penalty from Pinnacle was removed since matters with Pinnacle had been settled with the Settlement Agreement.

II. SUBMISSIONS BY THE PARTIES AS TO SANCTIONS, ADMINISTRATIVE PENALTIES AND COSTS

a. Staff's Submissions

15. In their written and verbal submissions regarding sanctions against Comeau, Staff submitted that the only mitigating factor in Comeau's favour was that the matter did not involve traditional fraud. Staff also submitted that this matter involved several aggravating factors, including:

a. The proven allegations are serious and involved an element of deception and dishonesty. Comeau misled Pinnacle Client 1 by selling him off book products when he had Pinnacle Client 1 sign a Risk Acknowledgement form telling him that he had no obligation to tell him that the investments were suitable for him;

b. Comeau had Pinnacle Client 1 sign a Disclaimer form which stated that he did not receive any benefit, equity position or ownership in the Grasswood Bonds when in fact he had invested $150,000 in Grasswood Bonds through his holding company;

c. Comeau told Pinnacle Client 1 that the Grasswood Bonds were secured by a mortgage on the Grasswood Estates land when in fact the Grasswood Bonds were unsecured securities;

d. The quantum of off book sales (in excess of $2.5 million) of Grasswood Bonds sold to Pinnacle Clients and Other Clients was not insignificant, including $300,000 of the bonds sold to Pinnacle Client 1;

e. Comeau failed to inform Pinnacle Client 20 about all of the risk factors associated with alternative investments;

f. Comeau lied about changes he made to Pinnacle Client 20's KYC forms to inflate dollar values thereby qualifying her as an accredited investor and therefore eligible to purchase alternative investments;

g. Comeau failed to provide Pinnacle Client 20 with copies of KYC forms, subscription agreements and offering memorandums that she signed for alternative investments that she purchased;

h. Comeau sold Pinnacle Client 20 five alternative investments at a cost of $43,550 which represented the majority of her financial assets and were not suitable for her because she did not qualify as an accredited investor or ineligible investor when he had her purchase $10,000 or less in each of the five securities;

i. Comeau failed to complete follow up suitability assessments in general for Pinnacle Clients 1 and 20;

j. Comeau's actions were premeditated in that he intentionally sold off book. Comeau knew he had an obligation to update his business activities on the NRD to keep his regulator and employer aware of changes, but failed to do so;

k. Comeau has shown that he is not fit to participate in capital markets and would pose a significant risk to investors should he be permitted to do so at any point in the future; and

l. Comeau's actions demonstrated a pattern of inability and unwillingness to comply with Saskatchewan securities laws having had two previous infractions with the Mutual Fund Dealers Association of Canada ("MFDA") in December 2013 and January 2017, which subjected him to market access bans and fines and a permanent ban on MFDA securities related business respectively.

16. In their submissions regarding the administrative penalty, Staff identified that section 135.1(2) of the *Act* provides for a maximum penalty of $100,000 and requested $60,000 be paid by Comeau and $15,000 by Grasswood.

17. Staff offered that they did not oppose an appropriate carve out exception to any ban or suspension that might be imposed on Comeau should he seek the same for the purpose of managing his own personal investment accounts.

18. Staff also filed case law that they argued supported their position on sanctions. This case law will be discussed more below.

19. Regarding costs, the Registrar of the FCAA provided a bill of costs for Panel member per diems and court reporter and transcription services in the amount of $71,970.60. Staff requested that Comeau be required to pay these costs, but did not provide any submissions on the law of costs, nor did Staff provide arguments as to why all of the costs should be ordered to be paid in the present circumstances.

b. Comeau's Submissions

20. Comeau provided written and oral submissions that differed significantly from Staff. Comeau submitted that the only aggravating factor in Comeau's behavior was that in selling Grasswood Bonds off book, his only benefit was to continue, or ensure the success of the Grasswood Estates project and protect his own $150,000 investment in the Grasswood Bonds. Comeau offered the following mitigating factors as reasons why this Panel should consider significantly reduced sanctions, penalties and costs, including:

a. At the beginning of the hearing, Staff asked for an adjournment, but was not granted by this Panel, that would have delayed the hearing process and added cost and stress to Comeau;

b. Staff's allegations were numerous, but few were proven;

c. Throughout the hearing process, Staff brought forth several motions which were lost, and therefore were not necessary;

d. The Statements of Allegations alleged that 28 investors had invested in excess of $4 million dollars in Grasswood Bonds and other alternative investment products but only allegations involving investments with a value of $343,550 were proven;

e. The allegations relating to Pinnacle Client 11 were statute barred by the limitation period provisions in the *Act* and therefore should never have been brought;

f. The investigation and hearing proceedings had caused Comeau unnecessary stress, reputational harm and personal difficulties;

g. Comeau employed a rigorous due diligence process to all investments he sold and made sure that all investments sold to clients were suitable for them in the circumstances;

h. Comeau had not received any commission income from the sale of the Grasswood Bonds;

i. Comeau had cooperated with all aspects of the investigation and hearing process;

j. Comeau was already subject to industry market bans by virtue of the settlement agreement with the MFDA; and

k. Comeau was 65 year of age, had retired in 2018, would no longer be working in the investment industry in the future and therefore was not a risk to investors.

21. Comeau submitted that as a result of the foregoing mitigating factors, the permanent market access ban, administrative penalties and cost awards against him sought by Staff are disproportionate and punitive and would not fairly respond to the Panel's actual findings against Mr. Comeau or his personal circumstances.

22. Comeau requested a carve out to any market access prohibitions of any duration imposed by the Panel to allow him to manage his own personal investment accounts and Staff indicated in their submissions they would not oppose this request.

23. Comeau also referenced case law in support of his argument for no or reduced sanctions, penalties and costs and these will be taken into consideration in our analysis.

c. Grasswood Submissions

24. As previously noted, Grasswood made no appearance, was not represented during these proceedings and made no submissions or representations on its behalf. Grasswood's lack of participation in these proceedings and circumstances will be analysed later in this decision.

III. DECISIONS OF THE PANEL

25. Having considered all of the written and oral submissions of the parties, the circumstances of his contraventions and aggravating and mitigating factors noted in section IV of this decision below, the Panel orders the following market access sanctions, administrative penalty and costs on Comeau:

a. All of the prohibitions listed in paragraph 11 (a) through 11 (h) apply to Comeau for a period of **six (6) years**;

b. The requested carve out to allow Comeau to allow him to manage his own investments is granted.

c. Comeau pay an administrative penalty of **$35,000**; and

d. Comeau pay costs of the hearing in the amount of **$14,000**.

26. Having considered all of the factors relevant to Grasswood in this matter, the Panel orders the following market access sanctions, administrative penalties and hearing costs apply to Grasswood:

a. Grasswood is banned from issuing securities of any type or form for a period of **three (3) years**;

b. Grasswood shall pay an administrative penalty of **$12,500**; and

c. Grasswood shall pay costs of the hearing in the amount of **$3,500**.

27. Our analysis and reasons for the above decisions follow.

IV. ANALYSIS AND REASONS FOR THE PANEL'S DECISIONS

a. Legal Framework and Sanctions Relating to Comeau

28. With regard to sanctions against Comeau, this Panel is cognizant that the primary goal of securities legislation is the protection of the investing public and maintaining the integrity of capital markets and therefore, penalties imposed by regulators for contravention of securities legislation should be focused on preventing future harm to the capital markets and investors.

29. The Panel also recognizes it must ensure that any sanctions that are imposed are proportionate in respect to the circumstances of the matter including the responsibility of the Respondent.

30. These general principles, and other specific factors, that securities decision makers should consider when crafting sanctions have been articulated in numerous cases. The Panel's analysis includes reference to cases both outside of our jurisdiction and recent Saskatchewan cases that have been decided.

31. First, in *Rezwealth Financial Services (Re)* 2014 LNONOSC 450 (2014), the Ontario Securities Commission ("ON Commission") articulated the law on sanctions, including a list of factors that should be considered when deciding on sanctions, as follows:

> [46] The Commission's mandate is to: (i) provide protection to investors from unfair, improper, or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the *Act*).
>
> [47] The Commission has a public interest jurisdiction to order sanctions restricting respondents from participating in the Ontario capital markets in the future (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43). The Commission's role when imposing sanctions is not to punish past conduct, but to restrain "future conduct that is likely to be

prejudicial to the public interest in having capital markets that are both fair and efficient" (*Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at p. 1611).

[48] The Commission must ensure that the sanctions imposed are proportionate to the circumstances of the case and the conduct of each respondent. Factors that the Commission has considered in determining appropriate sanctions include:

> (a) the seriousness of the allegations;
>
> (b) the respondent's experience in the marketplace;
>
> (c) the level of a respondent's activity in the marketplace;
>
> (d) whether or not there has been recognition of the seriousness of the improprieties;
>
> (e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;
>
> (f) any mitigating factors;
>
> (g) the size of any profit made, or loss avoided from the illegal conduct;
>
> (h) the size of any financial sanctions or voluntary payment when considering other factors;
>
> (i) the effect any sanction might have on the livelihood of a respondent;
>
> (j) the restraint any sanctions may have on the ability of a respondent to participate without check in the capital markets;
>
> (k) the reputation and prestige of the respondent;
>
> (l) the shame or financial pain that any sanction would reasonably cause to the respondent; and
>
> (m) the remorse of the respondent.

32. In this jurisdiction, *In the Matter of Ronald James Aitkens – Sanctions Decision*, (June 19, 2019) FCAA [available online at CanLii.org as 2019 CanLii 149034 (SKFCAA)] [*Re Aitkens*], the FCAA panel analyzed and set out similar principles for a legal framework for sanctions. The panel's review of the law was both thorough and instructive, and is directly relevant to our analysis in this case:

[17] Sections 134 and 135.1 of the *Act* list the sanctions that the Panel may impose where it finds that it is in the public interest to do so. The Panel must exercise this jurisdiction in a manner consistent with the purposes set out in section 3.1 of the *Act*.

[18] Section 3.1 of the *Act* provides that "the purposes of this *Act* are to provide protection to investors and to foster fair, efficient capital and derivatives markets and confidence in capital and derivatives markets".

[19] As noted in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 (at paras 41-43, 45), all sanction orders are aimed toward the objectives of protecting investors, protecting the capital markets and preventing future harm; they are not meant to be punitive or remedial. Their primary goal is deterrence, both specific and general – specific deterrence from future misconduct by the respondents being sanctioned, and general deterrence from similar future misconduct which may be contemplated by others: *Re Cartaway Resources Corp.*, 2004 SCC 26 (at paras, 52-53, 55-56, 60-61).

[20] In *Euston Capital Corp. v. Saskatchewan Financial Services Commission*, (2008) SKCA 22, the Saskatchewan Court of Appeal referred to the *Asbestos* decision and stated at paras 48 and 49:

> 48 On the "public interest" issue, the appellants' submissions are grounded on the Supreme Court of Canada's decision in *Committee for Equal Treatment of Asbestos Minority Shareholders*, supra. In that case, the Court considered the nature and scope of the Ontario Securities Commission's jurisdiction to intervene in the public interest pursuant to s. 127 of the *Securities Act*, R.S.O. 1990, c. S. 5. Section 127 is the Ontario equivalent of s. 134 of the Saskatchewan *Act*, the provision under which the Commission purported to act here in imposing the cease trading orders on the appellants and making exemptions from securities laws unavailable to them.
>
> 49 The Supreme Court held that sanctions imposed under s. 127(1) must be preventive and prospective in character. It said s. 127 could not be used merely to remedy misconduct alleged to have caused harm or damages.

[21] *In the Matter of The Securities Act*, R.S.O. 1990, c. S.5 as amended and *In the Matter of Lehman Cohort Global Group Inc., et. al.*, the Ontario Securities Commission commented on the imposition of sanctions under securities laws as follows:

> [23] The Commission's dual mandate is (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act).
>
> [24] The Commission's objective when imposing sanctions is not to punish past conduct, but rather to restrain future conduct that may be harmful to investors or Ontario's capital markets. This objective was described in *Re Mithras Management Ltd.* as follows:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the *Act*. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. (*Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at pp. 1610-1611)

[22] In *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 (at paras, 154, 156), the Alberta Court of Appeal said that the sanctions must be "proportionate and reasonable" in the circumstances and that money sanctions in particular must be "proportionate to the offence, and fit and proper for the individual offender".

[23] We are also mindful that "If sanctions under this legislation are so low as to communicate too mild a rebuke to the misconduct, or perhaps a licensing fee for its occurrence, the opposite to deterrence may result": *Maitland Capital Ltd. v. Alberta (Securities Commission)*, 2009 ABCA 186 (at para. 21).

[24] *In the Matter of Darcy Lee Bergen* (October 31, 2000), a hearing panel of the Financial and Consumer Affairs Authority of Saskatchewan (the "FCAA") adopted the following list of factors as some of the factors that should be considered when imposing sanctions:

> a) the seriousness of the respondents' conduct;
>
> b) the harm suffered by investors as a result of the respondents' conduct;
>
> c) the damage done to the integrity of the capital markets in the province by the respondents' conduct;
>
> d) the extent to which the respondent was enriched;
>
> e) the factors that mitigate the respondents' conduct;
>
> f) the respondents' past conduct;
>
> g) the risk to investors and the capital markets posed by the respondents' continued participation in the capital markets of the province;
>
> h) the respondents' fitness to be a registrant or to bear the responsibilities associated with being a director, officer, or advisor to the issuers;
>
> i) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to capital markets;

> j) the need to deter those who participate in the capital markets from engaging in inappropriate conduct; and
>
> k) orders made by the Commission in similar circumstances in the past.
>
> [25] Although these factors are relevant in determining the appropriate sanctions, the applicability and importance of each factor will vary according to the facts and circumstances of the case. The Panel must ensure that the sanctions imposed in each case are proportionate to the circumstances and the conduct of each Respondent. Sanctions should also be proportionate to past decisions of the FCAA Hearing Panels.

33. As in *Re Aitkens,* we note that past decisions of other securities decision makers in jurisdictions outside Saskatchewan may also be of assistance in crafting proportionate sanctions. This is especially so in situations like the present case where there may not be many decisions in this jurisdiction that have imposed sanctions for the same or similar conduct. In reviewing such cases, care should be had to take into account any legislative or other relevant differences in the regulatory frameworks.

34. This Panel also looked to two recent cases in this jurisdiction - *[Francois] Blouin, Re*, 2021 CarswellSask 426 (WL) and *[Gaetan] Blouin, Re*, 2021 CarswellSask 392 (WL). In comparison to this matter, both of the Blouin cases involved:

a. Off book sales of securities to Saskatchewan investors;

b. Significant sales of securities (Francois Blouin - $1.485,000; Gaetan Blouin - $690,000); and

c. Contravention of sections 27(2) and 33.1(1) of the *Act*, section 13.3 of *NI 31-103* and section 4.1 of *NI 33-109*.

35. Also in comparison to this case, in the two Blouin cases, market access bans of five years and three years, administrative penalties of $40,000 and $32,500 and costs of $8,500 and $6,000 were imposed on Francois and Gaetan Blouin respectively.

36. In addition to the Francois Blouin case, Staff cited three other cases to the Panel for comparison. In *Bergen, Re,* 2021 CarswellSask 391 (WL), [*Re Bergen*] where a ten year market access ban, a $50,000 admin penalty and costs was imposed and the two other cases – *Re Rustulka*, 2021 ABASC 15, and *Re Noronha,* 2017 IIROC 16 – the panels imposed permanent market access bans, substantial disgorgement orders and admin penalties and costs.

37. To further put the present matter in context, we reviewed the following cases where certain circumstances were similar to the present case. The decisions in these cases will help us compare a

number of precedents to the present case and assist in arriving at fair and proportionate sanctions. Those cases are:

- ***Re Pariak-Lukic*, 2015 ONSEC 18** – was an appeal of an Investment Industry Regulatory Organization of Canada ("IIROC") decision where the IIROC Panel originally imposed a $50,000 fine, but no suspension. The maximum fine amount under IIROC's governing rules is $5,000,000 (by comparison, while not termed a fine, the maximum administrative penalty under section 135.1 of the *Act* is $100,000). The respondent sold approximately $3,000,000 worth of investments off-book, approximately 10 times more than was proven in the present case. The respondent also derived a personal benefit as the respondent's husband received an annual fee equal to 1% of the investments. The IIROC Panel found that there was no outright dishonesty. On appeal, the ON Commission held that the IIROC Panel erred in not imposing a suspension in the circumstances, noting that the losses were substantial and that the respondent's clients trusted and relied on her. The respondent also did not understand the nature of the investments she was selling to her clients. The wrongful conduct took place over a 2-year period and was not an isolated incident. The ON Commission stated that the respondent "demonstrated reckless disregard for the interests of her clients" (para. 104) and that in such "egregious cases involving large value high-risk off-book distributions" (para. 104), a suspension should be imposed. IIROC Staff requested a 2-year suspension, and the ON Commission agreed a 2-year suspension was appropriate in the circumstances.

- ***Re Marek*, 2017 ONSEC 41 aff'ing *Marek (Re)*, 2017 IIROC 13** – also an appeal of an IIROC decision. The respondent made off book transactions in respect to two clients without the knowledge or approval of his employer. The conduct was found to be both intentional and deceptive in nature, the respondent knew his responsibilities and that his conduct was wrongful because he was previously registered as a Branch Manager. His sales to the clients totalled $57,800 (far less than in the present matter). Aggravating factors included the intentional and deceptive nature of the conduct as well as the breaches of trust between the respondent, his clients, and his employer. The only mitigating factor was no prior regulatory history. The IIROC Panel imposed a fine of $50,000, a 1-year suspension, retraining, and 12 months of close supervision upon any re-registration. The ON Commission upheld these sanctions.

- ***Re Debus*, 2019 IIROC 18** – the respondent conducted off book trades in respect to two clients. His employer became concerned and therefore placed him under close supervision requirements and disciplined him by prohibiting him from selling a certain product. In spite of the prohibition, he encouraged a client to purchase the product and then helped facilitate the purchase, while not disclosing these actions to his employer. His conduct was found to be intentional, deliberate, deceptive, and involved concealment. Factors weighing in his favour were that he relied on his job

to support his family and that after the investigation and prior to the hearing, he worked under strict supervision without further incident, demonstrating he was respecting the rules and had potential for rehabilitation. The Panel ordered a fine of $40,000 and a 9 month suspension followed by 12 months of strict supervision.

- ***Re Pandelidis*, [2005] IDACD No 16 (QL) [*Re Pandelidis*]** – also an IIROC case where the Panel found that the respondent engaged in conduct that involved repeated intentional deception and concealment of his conduct from his employer. The respondent intentionally and knowingly provided false information to his clients, placed himself in a conflict of interest and preferred his own interests over those of his client. The matter also involved transactions regarding products that were not permitted for sale in Alberta. The respondent argued that he should not be subject to a suspension but the IIROC panel disagreed and imposed a fine of $75,000 and a 5 year suspension with no ability to be reinstated until all monetary penalties and costs had been paid. In addition, future reinstatement was conditional upon re-writing and passing the Canadian Securities Course, 12 months of strict supervision, and 12 months of close supervision.

i. Reasons for Market Access Prohibition Sanctions ordered for Comeau

38. With the above cases providing helpful context in respect to proportionality, we turn now to the specific facts of the present case. While the allegations proven against Comeau relate to only two investors, his conduct in this case was serious and an appropriate sanction order must adequately consider this factor. Like many of the cases cited above, Comeau sold off book and did not inform his employer or the FCAA of this conduct when he did not file the required updates to his business activities through the NRD.

39. The proven volume of the sales conducted by Comeau also contributes to the seriousness of his conduct. Comeau sold $300,000 worth of Grasswood Bonds off book to Pinnacle Client 1 and while this is not as high a volume as many of the cases cited above where lengthy market access bans were ordered, the Panel still considers this to be a high volume amount and aggravating in nature. More concerning was the $43,550 of unsuitable investments he sold to Pinnacle Client 20; these sales represented over 70% of her entire life savings of $60,000 which the Panel considered to be a very serious violation of his suitability obligations to this client.

40. The Panel found the aggravating factors submitted by Staff to be compelling and in particular, that Comeau had previously been sanctioned by MFDA and agreed via a settlement agreement with the MFDA to a permanent ban on MFDA securities related business and these are taken into consideration in our sanctions decision.

41. The Panel acknowledges some of the mitigating factors offered by Comeau in relation to Staff's various motions that were not granted to be of some merit and these are also taken into consideration in our sanctions decision.

42. After considering all the circumstances and weighing the above-noted factors to gauge the seriousness and gravity of this case, and after considering the precedents cited to better assess proportionality, the Panel is of the view that it is appropriate to impose a market access prohibition of **six (6) years** as opposed to the permanent ban requested by Staff. The Panel believes such sanctions are consistent with the objects of the *Act* and adequately take into account the purposes of sanctions, including protection of investors, protection of capital markets, and preventing future harm. We also believe that these sanctions are reasonable and proportionate and will provide the appropriate level of general and specific deterrence.

43. Comeau requested that he be exempted from whatever market access bans this Panel imposes and to allow a carve out from any ban or suspension against him to allow him to manage his own personal investment accounts and Staff have no opposition to such a carve out. Given the agreement of the parties, the Panel grants the requested carve out exemption.

ii. Reasons for an Administrative Penalty to be ordered for Comeau

44. Section 135.1 of the *Act* provides authority to impose an administrative penalty up to a maximum amount of $100,000 when it is in the public interest to do so. The relevant provisions read:

> 135.1(1) The Commission may make an order pursuant to subsection (2) where the Commission, after a hearing:
>
> > (a) is satisfied that a person or company has contravened or failed to comply with:
> >
> > > (i) Saskatchewan securities laws; … and
> >
> > (b) considers it to be in the public interest to make the order.
>
> (2) In the circumstances described in subsection (1), the Commission may order all or any of the following:
>
> > (a) that the person or company pay an administrative penalty of up to $100,000;
> >
> > …

45. In *Cartaway Resources Corp. (Re)*, 2004 SCC 26, [2004] 1 SCR 672, the Supreme Court of Canada discussed this "public interest" jurisdiction and how the concept of general deterrence may be taken into account in relation to administrative penalties in securities matters. The Court held that because sanctions,

such as administrative penalties, are regulatory in nature, they need to be aimed at preventing future harm rather than punishing prior conduct. General deterrence is an important consideration in crafting orders in this regard. The Court reasoned:

> 58 “Public interest" is not defined in the Act. This Court considered the scope of a securities commission's public interest jurisdiction in *Asbestos*, *supra*. At issue in *Asbestos* was the Ontario Securities Commission's jurisdiction to intervene in Ontario's capital markets, for purposes of protection and prevention, if it is in the public interest to do so pursuant to s. 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5. This Court held that the discretion to act in the public interest is not unlimited. In exercising its discretion, the Commission should consider "the protection of investors and the efficiency of, and public confidence in, capital markets generally" (*Asbestos, supra*, at para. 45). Because s. 127 is regulatory, its sanctions are not remedial or punitive, but rather are preventative in nature and prospective in application. As a result, this Court held that s. 127 could not be used to redress misconduct alleged to have caused harm to private parties or individuals: *Asbestos*, *supra*, at paras. 41-45. It should be observed that our Court was not considering the function of general deterrence in the exercise of the jurisdiction of a securities commission to impose fines and administrative penalties nor denying that general deterrence might play a role in this respect.
>
> …
>
> 60 In my view, nothing inherent in the Commission's public interest jurisdiction, as it was considered by this Court in *Asbestos*, *supra*, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative. Ryan J.A. recognized this in her dissent: "The notion of general deterrence is neither punitive nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behaviour in others" (para. 125).

46. Administrative penalties may be imposed to encourage future compliance with the *Act* and *Regulations* and to deter others from future misconduct. Administrative penalties are not meant to be punitive, retributive, or denunciatory in nature, and cannot be focused on punishing past conduct, but they can be imposed to help protect the public through general and specific deterrence (*Thow v British Columbia (Securities Commission)*, 2009 BCCA 46, at para 38, 90 BCLR (4th) 36).

47. It has also been held (*Alberta (Securities Commission) v Brost*, 2008 ABCA 326, at para 54, 440 AR 7 [*Brost*]) that when considering the amount of an administrative penalty, the amount should not be so low that it would “amount to nothing more than another cost of doing business.”.

48. In final submissions Staff submitted that an administrative penalty of $60,000 is appropriate in this case and relies on the cases discussed above, which are a combination of IIROC cases and from this and other jurisdictions. There are relevant differences between IIROC’s regulatory framework and the *Act*, in that the IIROC maximum fine amount pursuant to their governing rules is $5,000,000 per contravention

(Rule 8210(1)(iii) of IIROC's *Rule 8200 – Enforcement Proceedings*) while the maximum amount of an administrative penalty pursuant to the *Act* is $100,000. Legislatures in other jurisdictions have increased their administrative penalties beyond $100,000 (for e.g. British Columbia, Alberta, and Ontario) which may be signaling an intent that higher penalty amounts may be necessary in certain circumstances to fit the sanctions with the gravity of the situation and the need to deter similar conduct and encourage future compliance (*Brost* at para 54). The maximum administrative penalty in Saskatchewan remains at $100,000 and the Panel has remained mindful of this when comparing the precedents filed by Staff.

49. Since administrative penalties are also a type of sanction, we must ensure that the administrative penalty that is ordered is reasonable and proportional.

50. As the discussion of Staff's cases above demonstrates, fines ordered by IIROC Panels in those cases ranged from $40,000 to $50,000 when the maximum amount was $5,000,000 per contravention. In *Re Pandelidis* noted above which involved facts more egregious overall than the present case, a $75,000 fine was ordered when the maximum amount was $5,000,000 per contravention.

51. There was also an administrative penalty ordered in *Re Bergen* from this jurisdiction where substantial off book trading occurred. In that case, Staff requested the maximum penalty of $100,000. After weighing the various factors, the decision maker in that case ordered an administrative penalty of $50,000. Again, the circumstances in *Re Bergen* were more serious overall than the circumstances here.

52. Having considered: the seriousness of Comeau's actions and his contraventions of the *Act*; the need to deter similar conduct in the future; the need to protect investors and the efficiency of, and public confidence in, capital markets; and precedents where off-book trading occurred and fines or administrative penalties were ordered, this Panel's decision is to order an administrative penalty of **$35,000.** The Panel believes this penalty is fair, reasonable, and proportional for reasons that include the following:

a. His contraventions of the *Act* and *NI 33-109* are serious, and this was not Comeau's first regulatory misconduct;

b. Comeau cooperated during the hearing process;

c. Some of Staff's motions that were not granted contributed to the length and complexity of the proceedings, were not initiated by Comeau and likely caused him additional cost in his defence;

d. The amount is sufficient to address the seriousness of the contraventions and to prevent similar conduct in the future;

e. The penalty is sufficient to protect investors and capital markets;

f. The penalty is in the range of penalties imposed by other jurisdictions in comparable cases brought forward by IIROC and other jurisdictions referenced herein; and

g. When compared to the penalties imposed in other cases in this jurisdiction (*Re Bergen, Re Francois Blouin, Re Gaetan Blouin)* where there were similar contraventions of the *Act* and National Instruments and the quantum of investment funds lost was comparable in some of the cases, a penalty of **$35,000** in the present case represents a penalty amount that is fair, reasonable, and proportional.

iii. Reasons for Hearing Costs to be ordered for Comeau

53. Section 161 of the *Act* outlines the scope of the Panel's authority in respect to ordering costs. The ordering of costs is discretionary as is the amount ordered. In *Re Aitkens*, a panel of the FCAA set out various factors that may be considered in exercising its discretion in respect to costs. Citing to the *Act*, *The Securities Regulations*, c S-42.2 Reg 1 [*Regulations*], and the *Local Policy*, the panel stated:

> [54] Clause 161(1)(a) of the Act allows the Panel, after conducting a hearing, to order a person or company to pay costs of or related to the hearing if it is satisfied that the person or company whose affairs were the subject of the hearing has not complied with any provision of the *Act*.
>
> [55] Subsection 161(2) of the *Act* outlines what costs the Panel may impose. These include:
>
> > (a) costs incurred with respect to services provided by a person appointed or engaged pursuant to sections 8, 12 or 14;
> >
> > (b) costs of matters preliminary to the hearing;
> >
> > (c) costs for time spent by the Commission;
> >
> > (d) fees paid to a witness.
>
> [56] Subsection 176(1) of The Securities Regulations (c. S-42.2 Reg l) requires a person or company to pay to the Authority any amount set out in Table 1 of Appendix A thereto. Part 6 of Table 1 to Appendix A states:
>
> The costs of or related to a hearing or an investigation that the Commission may order pursuant to section 161 of the *Act* include the following:
>
> > (a) costs for time spent by the Commission [...] to a maximum of $1,500.00 for each day or partial day;
> >
> > (b) disbursements properly incurred by the Commission or the staff of the Commission, including travel costs;
> >
> > (c) fees to an expert or witness, in the amount of the actual fees paid, to a maximum of $200.00 per hour for each person involved; and
> >
> > (d) travel costs paid to a witness.

…

[58] Section 20.2 of [the Local Policy] sets out factors that a panel may consider in exercising its discretion under section 161 of the *Act*. Subsection 20.2 provides:

> 20.2 Factors Considered When Awarding Costs
>
> 20.2 In exercising its discretion under section 161 of the *Act* to award costs against a person, a Panel may consider the following factors:
>
> (a) whether the respondent failed to comply with a procedural order or direction of the Panel;
>
> (b) the complexity of the proceeding;
>
> (c) the importance of the issues;
>
> (d) the conduct of Staff during the investigation and during the proceeding, and how Staff's conduct contributed to the costs of the investigation and the proceeding;
>
> (e) whether the respondent contributed to a shorter, more efficient, and more effective hearing, or whether the conduct of the respondent unnecessarily lengthened the duration of the proceeding;
>
> (f) whether any step in the proceeding was taken in an improper, vexatious, unreasonable, or negligent fashion or in error;
>
> (g) whether the respondent participated in the proceeding in a way that helped the Authority understand the issues before it;
>
> (h) whether the respondent participated in a responsible, informed and well-prepared manner;
>
> (i) whether the respondent co-operated with Staff and disclosed all relevant information;
>
> (j) whether the respondent denied or refused to admit anything that will have been admitted; or
>
> (k) any other factors the Panel considers relevant.

54. Before addressing the appropriate costs order in the present case, there is one aspect of the above citation from *Re Aitkens* that warrants further comment. Paragraph 56 states that a person is required to pay any amounts set out in Part 6 of Table 1 to Appendix A. In considering the various provisions at issue, the Panel does not take this to mean that it has no discretion in respect to these amounts or that these amounts must always be ordered by panels in every case. Close inspection of the provisions reveals why. The Legislature has used the mandatory language "shall" in subsection 176(1) of the *Regulations* when referencing payment of prescribed "fees": "A person or company shall pay to the Commission the fees set out in Table 1 of Appendix A". Table 1 of Appendix A then largely contains specific fees associated with various licensing and registration requirements. However, Part 6 of Table 1 of Appendix A does not relate

to fees per se, but instead to various types of costs related to hearings. Part 6 is the only part in Table 1 of Appendix A that does not relate to specific fees outside the context of hearings. And, like subsection 161(1) of the Act, Part 6 specifically utilizes the permissive language "may" instead of mandatory language such as "shall" in respect to costs: "The costs of or related to a hearing or an investigation that the Commission may order pursuant to section 161 of the *Act* include the following…" This all suggests that an order of costs, including any amounts ordered to be paid pursuant to Part 6 of Table 1 of Appendix A (subject to the legislated maximum amounts in Part 6), remains a discretionary matter for panels.

55. We also note that Part 6 of Table 1 of Appendix A is open ended in nature, stating that the type of costs that can be ordered in respect to a hearing "include the following". This suggests that the Panel can order that amounts be paid in respect to other types of costs related to a hearing, which brings us back to subsection 161(2) of that *Act* cited in *Re Aitkens*. Subsection 161(2) delineates in more general language the ultimate boundaries of a panel's authority in respect to costs.

56. All of the factors cited in *Re Aitkens*, including those expressly set out in the *Local Policy*, are important in considering 1) whether a costs order should be made; and 2) the amount of costs that should be ordered. In *Re Aitkens*, the panel decided to make a costs order considering that it found that the various respondents had not complied with the *Act*. The background facts involved fraud and various other serious breaches of the *Act*. In respect to the amount of costs, the panel ordered that the full amount in the bill of costs submitted by Staff ($30,319.51) be paid in the case because the matter was complex requiring significant time to consider, the respondents did not attend any of the hearings, and the respondents did not participate in the proceedings in a way that assisted the panel in understanding the issues. After weighing all the factors, few weighed in favour of reducing costs, the panel held that the bill of costs submitted by Staff was both reasonable an appropriate. *Re Aitkens* then is demonstrative of a situation where an award of full costs might be appropriate.

57. There are other cases by panels where full costs have not been ordered and where costs requested by Staff have been reduced in light of various considerations. In *Re Bergen*, a case that involved serious misconduct on behalf of the respondent with many investors losing significant sums of money, Staff requested costs of $25,501.05 be paid by the respondent. The costs included time spent by investigators and Staff counsel in the matter, as well as various disbursements. The respondent argued that he should only pay 25% of the costs because he cooperated during the proceedings and that some of the costs of the investigation related to other respondents. After weighing the various factors and taking into account the respondent's submissions, and after noting that one of the respondents had already been ordered to pay $10,000 in costs, the Commission chose not to order the full amount of costs requested by Staff. Instead, the Commission ordered costs in the amount of $5,049.75, approximately 20% of the total amount requested by Staff.

58. Another, and more recent, example of a situation where a Panel found reason not to impose a full costs order was in *Re Pastuch* et al – Decision on Sanctions, (December 18, 2014) FCAA [available online

at CanLii.org indexed as 2014 CanLii 150149 (SKFCAA)] [*Re Pastuch*]. This matter also involved very serious conduct by the respondent, including fraud and millions lost to investors. The matter was complex and the respondent's conduct throughout the proceedings was particularly difficult and obstructive. The panel stated that the respondent "consistently and persistently initiated steps and proceedings that can only be described as a deliberate abuse of process." Staff submitted two bills of costs totaling over $71,000, however the panel decided to impose a lesser amount of just over $46,000 because the panel did not want the costs order to "negatively impact" the potential for eligible investors to collect financial compensation.

59. Having cited the applicable law, we turn to consider whether a costs order should be made and, if so, in what amount. Staff has requested costs in the amount of $71,970.60 supported by a document titled Registrar's Statement of Hearing and Panel Costs ("Statement of Costs"). The $71,970.60 is made up of Panel Member per diems ($55,800.00) and Court Reporter/transcription costs ($16,170.60). These amounts do not include any costs for time spent by FCAA Staff, investigation time or witness costs incurred in bringing this matter forward.

60. That said, Comeau conducted himself throughout these proceedings in a professional manner. He did not cause delay in the proceedings, did not operate in any improper, vexatious, unreasonable, or negligent manner, did not obstruct the proceedings and was cooperative. He also attended the proceedings. In general, Comeau's approach and conduct during the proceedings was reasonable, compared to Staff's approach which caused delay and complexity during the proceedings.

61. Staff did not provide any submissions in respect to their request for costs beyond a bare request for the full amount set out in the Statement of Costs, and therefore did not provide the Panel with compelling argument as to why ordering Comeau to pay the full amount of costs set out in the Statement of Costs would be appropriate in light of the various factors that this Panel may consider in exercising its discretion as to costs.

62. The Panel is of the view that imposing a costs order of some amount is appropriate in this case. Comeau has been found to have not complied with the *Act* and his conduct resulted in the need for an investigation and a hearing.

63. After weighing all the relevant factors, and considering various reasons why costs amounts were reduced in cases such as *Re Bergen* and *Re Pastuch*, the Panel is of the view that there are reasons why the requested cost amounts should be reduced in this case and that a reasonable and appropriate costs amount in this matter is **$14,000**, or approximately 20% of the total costs of $71,970.60.

b. Legal Framework and Sanctions Relating to Grasswood

64. As noted earlier in this decision, Grasswood contravened section 58.1 of the *Act* by failing to file a preliminary prospectus when it distributed Grasswood Bonds. The relevant facts in this case relating to

Grasswood will help to put its involvement in this matter into context. While Grasswood did not participate in the hearing, we know that:

- In 2009 Grasswood Property Estates Ltd., a company then controlled by Marty Fletcher, acquired land south of Saskatoon to develop it as residential real estate;

- Grasswood Property Finance Ltd., was used to raise capital for this development by way of a public distribution of bonds through an offering memorandum coupled with a mortgage to Grasswood Property Estates Ltd.;

- Grasswood Property Finance Ltd. was provided with notice of the proceedings but did not participate in any way;

- The Grasswood Property Finance Ltd. public distribution was unlawful in that it did not follow a validly filed prospectus nor properly rely on exemptions;

- Comeau came to know of Marty Fletcher when he was introduced to him by a brother in law; and

- Mr. Comeau was found to have breached the *Act* in many material ways which have been articulated above and in the Merits Decision.

65. While we know the foregoing about Grasswood, there are many facts that we do not know, including:

- Current information about the control and ownership of either of the two Grasswood companies, the current state of development of the property in terms of the past sale of lots or the lots remaining to be sold, the value of the development or what may reasonably be recoverable from any remaining unsold lots;

- How the funds raised through the unlawful distribution were used; whether they were used properly or diverted for improper purposes;

- The current state of the mortgage between Grasswood Property Estates Ltd. and Grasswood Property Finance Ltd. despite knowing that it continues to be registered on property;

- What, if any, other legitimate business operations are being conducted by either Grasswood company;

- What, if any, innocent third party stakeholders – which could include shareholders, employees, contractors, prospective purchasers, and third party lenders – might have a legitimate interest in either Grasswood company;

- What, if any, other legal proceedings involving these corporations exist; and

- Although we have strong reason to suspect that Grasswood Property Estates Ltd. benefited enormously from this entire series of events, we do not know the extent of that benefit.

66. Even though there are unknowns to the Panel about Grasswood, contravention of section 58.1 of the *Act* is a serious matter that warrants sanctions with the view to protecting the integrity of public markets in Saskatchewan.

67. In addressing the legal framework that is relevant with regard to Grasswood's contravention of the *Act*, the analysis of the legal framework for imposing sanctions (paras. 28 – 34 above), administrative penalties (paras. 44 – 51 above) and costs (paras. 53 – 59 above) on Comeau are also relevant for Grasswood, however the Panel also looked at both this and other jurisdictions for cases that focus directly on contravention of section 58.1 of the *Act*.

68. Some other jurisdictions have taken a more flexible rather than definitive approach to this issue. The preference has been for permanent bans with leave to revisit the ban, or bans put in place until and unless conditions are met. When ordering sanctions against Grasswood, this Panel is desirous of imposing fair and reasonable sanctions without being so punitive that commerce is affected. In this case, the Panel wishes to protect the public without restricting the continued development of the Grasswood Estates property to the extent that it is not yet completed.

69. Section 158 of the Saskatchewan *Act* provides options for this Panel to consider when imposing sanctions that under certain circumstances can allow for such flexibility. Section 158 of the *Act* reads as follows:

> **Decisions of the Commission**
>
> 158(1) The Commission or the Director may direct, in any decision, that:
>
> > the decision or any portion or provision of it comes into force:
> > (i) at a future fixed time;
> > (ii) on the occurrence of any contingency, event or condition specified in the order; or
> > (iii) on the performance, to the satisfaction of the Commission, the Director or a person named in the order for the purpose, of any terms that the Commission or Director may impose on any party interested; and
>
> (b) the whole or any portion of the decision shall be in force for a limited time only or until the occurrence of a specified event.
>
> (2) Instead of making a decision final in the first instance, the Commission or Director may make an interim decision and reserve further directions, either for an adjourned hearing of the matter or for further applications.

(2.1) The Commission or the Director may impose any conditions the Commission or Director considers necessary on any decision made by the Commission or Director.

(3) Where, in the opinion of the Commission, it would not be prejudicial to the public interest, the Commission may, on the application of an interested person or company or on its own motion, make an order on any terms and conditions that it may impose revoking or varying any previous decision made by it.

(4) Where, in the opinion of the Director, it would not be prejudicial to the public interest, the Director may, on the application of an interested person or company or on the Director's own motion, make an order on any terms and conditions that the Director may impose revoking or varying any previous decision made by the Director. [emphasis added]

70. There are no reported decisions from the Panel or the Courts interpreting section 158. So our further analysis will be on the equivalent wording of sections 158(2.1) and 158(3) of the *Act* in the legislation of other provinces, and jurisprudence from other jurisdictions where similar cases have been dealt with. In particular the Panel will focus on cases from British Columbia and Alberta involving corporate entities in real estate development schemes and the power of panels to impose conditions and to revoke or vary a past decision.

71. In British Columbia, the *Securities Act*, RSBC 1996, c 418 (the *BC Act*) is the governing legislation. The *BC Act* is broadly similar to the Saskatchewan *Act*, it contains a prospectus requirement in section 61 and allows the panel to make a wide variety of enforcement orders including market bans. Of special interest to us is section 171 of the *BC Act* which says:

Discretion to revoke or vary decision

[171] If the commission, the executive director or a designated organization considers that to do so would not be prejudicial to the public interest, the commission, executive director or designated organization, as the case may be, may make an order revoking in whole or in part or varying a decision the commission, the executive director or the designated organization, as the case may be, has made under this Act, another enactment or a former enactment, whether or not the decision has been filed under section 163.

72. This section has been expressly relied upon when there is uncertainty regarding a corporate respondent when an individual has clearly violated securities regulations.

73. In *Re Inverlake*, 2016 BCSECCOM 258 ("*Re Inverlake*"), the British Columbia Securities Commission (the "BC Commission") had to consider the appropriate sanctions for two corporate entities and one individual after finding that the individual and both corporate entities had breached the prospectus requirement of the *BC Act* and had raised a combined total of roughly $2,000,000 in violation of securities regulations.

74. The *Re Inverlake* case arose out of a property development scheme where the individual involved, a Mr. Yong ("Yong"), was accused of fraud and distributions without a prospectus. On the facts he used

two corporations, Inverlake Property Investment Group Inc. ("Inverlake") and Wheatland Business Park Ltd. ("Wheatland"), a bare trustee, to acquire real estate from a numbered Alberta corporation. The Alberta corporation was controlled by Yong's brother and business associate. The circumstances of the acquisition of the Inverlake properties were highly suspicious in that the agreement to purchase and title records showed different owners of the property. Although the purchase and sale agreement was between Inverlake and the Alberta number company, when the transaction closed the individual who had been listed as the registered owner in the land titles records held a vendor take back mortgage on the property. In order to finance the purchase Yong solicited investments from the general public in Inverlake by selling shares in this corporation. The shares were sold and the property was registered in the name of Wheatland under a bare trust agreement. This agreement purported to define the relationship between the investors and Yong and detail the beneficial ownership interest in the land held by each investor. The allegation was that the land purchase and sale agreement was a sham and that the deal had been structured so as to show an inflated price for the property. On the evidence the value of the Inverlake land declined substantially after the bare trust agreement was signed, the mortgage payments were not made and the individual vendor foreclosed on the mortgage. The Panel found that Yong, Inverlake, and Wheatland, had all made illegal distributions of securities without a prospectus, but found that there was insufficient evidence on the allegation of fraud against Yong.

75. When it came time to impose sanctions, the BC Commission imposed a permanent ban on Inverlake: "The real property owned by Inverlake has been foreclosed on. All of the investors have lost their investments in Inverlake. It is in the public interest to impose permanent market prohibitions on Inverlake." (*Re Inverlake* at para. 57). Inverlake did not participate in the proceeding (at para. 13). Although the decision is not completely clear on this point, it can be inferred that Inverlake as a corporate entity had ceased all operation due to its failure.

76. This was not the case for the Wheatland corporation; it actively participated in the sanctions proceeding and claimed to be separate and apart from Yong. The Panel was concerned about Wheatland's claim that it was not associated with Yong and issued a permanent ban against it with the ability to apply to vary or revoke the ban. The Panel's reasons on this point were as follows:

> Wheatland says that we should impose no market prohibitions on it as Yong is now no longer a director of the company. However, we are troubled by the lack of clarity before us with respect to the exact status of Wheatland. The only evidence that we have, provided by Wheatland itself, is that Yong is the sole shareholder of Wheatland. We do not have an understanding of what Yong's share ownership entails, what the economic interests of all parties are (including Wheatland itself, given the bare trust nature of the investment structure) and whether future issuances of securities by Wheatland are in any way in the public interest. As a consequence, we consider it is in the public interest to impose permanent market prohibitions on Wheatland. We do this cognizant that Wheatland may apply under section 171 of the Act for a revocation or variance of this order in the future if it believes that such revocation or variance is not prejudicial to the public interest. [at para. 61, emphasis added]

77. There was uncertainty about Wheatland's full involvement in the matter, other than it clearly made illegal distributions which were securities violations; the BC Commission ordered a permanent ban but left the door open for the company to apply to revoke or vary the permanent ban in the future.

78. Section 171 of the *BC Act* is often used to revisit previous decisions and vary or revoke the original order; usually, the original order relates to a pre-hearing asset freeze. While there is no equivalent asset freeze legislation in Saskatchewan, it is still useful to look at the criteria that the BC Commission uses to decide whether to revoke or vary an order. In *Re Leyk*, 2019 BCSECCOM 136, the Commission provided a very concise summary of how it approaches these applications:

> [23] Section 8.10(a) of the Hearings Policy sets out procedures with respect to applications under section 171 of the Act. It states, in part:
>
> > …Before the Commission changes a decision, it must consider that it would not be prejudicial to the public interest. This usually means that the party must show the Commission new evidence or a significant change in circumstances.
>
> [24] The Commission has consistently applied the requirement, outlined above, that in order to satisfy that it would not be prejudicial to the public interest to revoke or vary a decision of the Commission, a person must show new evidence or a significant change in circumstances.
>
> [25] In *Pyper (Re)*, 2004 BCSECCOM 238, the respondent applied under section 171 to vary the sanctions imposed upon him. The Commission panel stated:
>
> > For an application under section 171 to succeed, the applicant must show us new and compelling evidence or a significant change in the circumstances, such that, had we known them when we issued our sanctions decision, we would have made a different decision.
>
> [26] In *Re Steinhoff*, 2014 BCSECCOM 211, the panel followed *Pyper* and at paragraph 9 adopted the two-prong test used in *Foresight Capital Corporation*, 2006 BCSECCOM 529 and 2006 BCSECCOM 531 to determine whether evidence is "new" evidence:
>
> > …first, the evidence must be relevant to the allegations in the notice of hearing; second, the applicant must explain why the evidence was not reasonably available for use at the hearing.
>
> [27] In *Re McIntosh*, 2015 BCSECCOM 162 at paragraph 12 the panel stated:
>
> > Section 171 of the Act does not provide an unfettered opportunity for a respondent to re-litigate the liability or sanctions portion of an enforcement hearing. A party seeking a variation must meet the threshold outlined in s. 8.10(a) of BC Policy 15-601, and identify new evidence, or a significant change in circumstances, before the Commission will change a decision. [emphasis added]

79. To summarize: in *Re Inverlake* the BC Commission was faced with a request to impose market access sanctions against two corporations. Inverlake, the company in which members of the public had directly invested, was permanently prohibited from participating in the capital markets. On the evidence Inverlake's assets had been foreclosed on and the investors had lost their investment. Inverlake did not participate in the proceeding. The public interest was not served by allowing Inverlake continued market access. The BC Commission also imposed market access prohibitions against Wheatland. Wheatland was the bare trustee holding company that held title to real estate. Although Wheatland participated in the proceeding there was significant uncertainty regarding beneficial interests in the corporation. The concrete evidence was that Yong, the apparent master mind behind the problematic market behaviour, continued to be the sole shareholder of Wheatland. The BC Commission imposed a permanent market prohibition against Wheatland, but did so on the understanding that the order could be varied or revoked if new and compelling evidence came to light or if circumstances changed significantly.

80. In very similar circumstances the BC Commission made a less restrictive order in the sanctions decision in *Re Wong*, 2017 BCSECCOM 57 (*"Re Wong"*). *Re Wong* also involved a real estate development investment scheme: land was purchased through a series of fraudulent transactions involving sham corporate entities controlled by two sisters – Ms. Wong and Ms. Soo (the "Sisters") – before being marketed to the public through a joint venture agreement and a bare trust holding corporation (the merits decision is reported as *Re Wong,* 2016 BCSECCOM 208). The Sisters used sham corporations in a series of transactions that allowed them to show inflated values for the property. The Sisters marketed the real estate development investment at the inflated values by selling units in the joint venture agreement to the public. The Sisters did not disclose what they initially paid for the lands or their beneficial interests in the transactions leading up to the public sale. The BC Commission concluded the Sisters had committed securities fraud, permanently banned them and their sham corporations from participating in the capital markets, and ordered the Sisters to disgorge roughly $10,000,000. However, the BC Commission declined to make any order at all against the bare trust corporation Wheatland Industrial Park Inc. ("Wheatland II") in which members of the investing public continued to have a beneficial interest. The BC Commission's reasons for declining to make any order against Wheatland II were:

> [66] We do not find a similar risk [to investors and markets] with respect to Wheatland. Wheatland's only contravention was illegal distributions, and it acted at all times under the control and direction of the sisters. It took no action independently from the sisters.
>
> [67] The executive director's request for a market ban on Wheatland is not based on any specific concerns, but out of an abundance of caution given Wheatland's fund-raising history.
>
> [68] Now that Wheatland is no longer directed or controlled by the sisters, we have no evidence that Wheatland poses any risk to the capital markets. Accordingly, we decline to order any market ban against Wheatland.
>
> …

> [111] At all relevant times, Wheatland only acted under the control and direction of the sisters. The sisters and their families no longer direct or control Wheatland. Its issued shares are held in trust now for the benefit of the Wheatland investors. To require Wheatland to pay any money under section 161(1)(g) [the disgorgement section] would only punish the investors. We find it is not in the public interest to make a section 161(1)(g) order against Wheatland. [emphasis added]

81. To summarize the bottom line orders made by the BC Commission: the Sisters were permanently prohibited from trading in or purchasing securities, from acting as directors and officers of issuers and registrants, from acting as a promoter, from acting in a managerial or consultative capacity in connection with securities markets, from engaging in investor relations, and from participating in the exempt securities markets. The BC Commission made very narrow carve outs to the general prohibitions to allow the Sisters to hold private investments and operate private corporations for their own personal activities. In addition, the Sisters were ordered to disgorge nearly $10,000,000 and each was subject to a $6,000,000 administrative penalty. Both the sham corporations used in the scheme – who participated in the proceeding using their own separate counsel – were permanently banned from trading in and purchasing securities, permanently excluded from the exempt securities market, and permanently prohibited from engaging in investor relations. Each of the two corporations was also held jointly and severally liable for its fair share of the disgorgement order. But Wheatland was not subjected to any sanctions at all. In circumstances where Wheatland's only securities contravention was a distribution without a prospectus, where the bad actors were no longer in control of Wheatland, where there was no future risk to the public, and where imposing sanctions would only serve to add additional harm to innocent investors, the BC Commission concluded that no sanctions were in the public interest.

82. Alberta has a variation and revocation section in its legislation, section 214 which reads as follows:

> **214(1)** The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order revoking or varying any decisions made by the Commission under this Act or the regulations or any former Securities Act or regulations.

83. In *Kustom Design Financial Services Inc.*, *Re*, 2011 ABASC 244 the Alberta Securities Commission ("Alberta Commission") expressly made a variation order in a matter where professionals were involved in investment schemes. Two of the individuals involved sought carve out variation orders from the original complete ban to allow them to continue operating their respective "Professional Services" corporations and a second corporation that had a legitimate, unrelated, mortgage that it was collecting. The carve outs were granted and allowed the individuals to continue to act as director of these corporations. This case expressly relied on the variation section in Alberta's *Securities Act*, RSA 2000, c S-4.

84. Also of interest in this case is the condition attached to the variation order where the Alberta Commission required that the individuals change the name of their professional corporations to remove all reference to “Kustom” from the corporation’s name. The Commission also made it a condition of removing the ban from the second corporation that it only operate so as to continue managing its single legitimate mortgage and that it dissolve and discontinue once the mortgage was repaid.

85. Although no reference was made to these cases, or the equivalent legislation in Saskatchewan at the time, a similar approach was taken by a Saskatchewan panel in the unreported sanctions decision in *Re SHEC Energy Corporation* (November 21, 2017) (Financial and Consumers Affairs Authority of Saskatchewan). SHEC Energy Corporation was found liable for a violation of section 58.1 of the *Act* for failing to file a prospectus and other securities legislation violations. In that decision the Panel imposed a five-year ban on the respondent trading its securities, but allowed that the cease trade order would be rescinded “if and when SHEC became compliant with the *Act*” (at para. 11 point 6). SHEC subsequently became compliant and the order was lifted to allow the corporation to continue operating so it could develop and take its technology to market.

i. Reasons for Market Access Prohibition Sanctions ordered for Grasswood

86. The Panel interprets section 158 of the *Act* as conferring a broad discretion to make conditional orders as the circumstances of the case require. The Panel exercises its discretion in this matter and has relied on the frameworks from British Columbia and Alberta for guidance while being mindful that the sanctions should be fair, reasonable and proportionate.

87. Grasswood’s failure to file a prospectus is a serious violation of Saskatchewan’s securities laws. A market access sanction against Grasswood is appropriate to protect the investing public and to maintain the integrity of capital markets. This will prevent further contraventions of securities legislation and future harm to the capital markets and investors. Moreover, as discussed in the *Merits Decision* at paragraphs 131-133 there is no evidence in this case of Grasswood attempting to honour the reporting obligations for exempt market distributions found in *NI 45-106*. Failing to honour the requirements for exempt market distributions are also serious violations of Saskatchewan’s securities laws. On this point we would echo the concern raised by the Alberta Securities Commission in *KCP Innovative Services Inc., Re*, 2009 ABASC 521 (CanLii):

> … we note that the accredited investor exemption has been a frequently abused capital-raising exemption and that further demonstrated abuses such as occurred here may put in jeopardy the very existence of this and other exemptions used to raise capital without the involvement of a registrant or the filing of a prospectus. [at paragraph 33]

88. Having said that, as noted above in paragraph 65, there are many facts about Grasswood, and Grasswood Property Estates Ltd. that the Panel did not hear about. While the Panel is alive to the risk of abuse highlighted by this case, it is also alive to the possibility that Grasswood Property Estates Ltd. is engaged in a legitimate property development business. In part the Panel's blind spot is due to Grasswood's failure to participate in this proceeding. But it may also be due, in part, to the fact that Staff choose not to make Grasswood Property Estates Ltd. a party to this proceeding to give the Panel more context regarding its involvement in this matter. In the circumstances the Panel is mindful that our decision should not be so permanently restrictive to hinder commerce, specifically in this case, the continuing development of the Grasswood Estates project to the extent that the development is not yet fully developed.

89. Having considered the legal framework for imposing a market access ban, including the alternative approaches taken in British Columbia and Alberta, the Panel orders that Grasswood shall cease trading in securities and derivatives, for a period of **three (3) years**. The Panel further orders that the exemptions in Saskatchewan securities laws do not apply to Grasswood for a period of 3 years.

90. Given the significant factual uncertainty in this case, the Panel wishes to highlight that any "interested person or company" may apply pursuant to section 158(1) of the *Act* to the Panel to vary or revoke these orders in the event that they have unintended consequences contrary to the public interests.

ii. Reasons for an Administrative Penalty to be ordered for Grasswood

91. Section 135.1(2)(a) of the *Act* allows for a maximum administrative penalty in Saskatchewan of $100,000. Staff's oral submissions called for Grasswood to also pay an administrative penalty of $15,000 however it did not provide specific reasons for this amount.

92. Throughout, Grasswood did not participate in the hearing but was kept apprised of these proceedings. Accordingly, the Panel is of the view that it should also be sanctioned for its actions and therefore orders Grasswood pay an administrative penalty of **$12,500**.

93. In imposing this penalty, the Panel is of the view that it is sufficient to place the protection of the public first and foremost and is not so low that the amount is nothing more than "the cost of doing business". The Panel believes that this amount is in line with penalties imposed in other cases, should be sufficient to deter others from future misconduct, and that the amount appropriately serves the principles of general deterrence and protection of the investing public.

iii. Reasons for Hearing Costs to be ordered for Grasswood

94. The *Local Policy*, Part 20 provides for respondents who have been found to have contravened Saskatchewan securities laws to pay the cost of investigating and prosecuting such matters. Staff was silent on Grasswood specifically being responsible for any of the costs incurred in this matter. While they

did not participate in any of the proceedings, the evidence that Grasswood failed to file a prospectus is uncontradicted, Section 20.2 of the *Local Policy* sets out a number of factors that Panels can consider when ordering costs, including the following that are relevant in this case - the complexity of the proceeding, the importance of the issues and that the Respondent did not participate in the proceedings which contributed to the lack of facts and evidence available to the Panel. For these reasons, the Panel is of the view that the company is responsible for some of the cost and orders that Grasswood pay **$3,000** of the total costs incurred.

V. SUMMARY OF SANCTIONS, ADMINISTRATIVE PENALTIES AND COST ORDERS

95. In summary, the Panel orders that Comeau be subject to the following restrictions for a period of **six (6) years:**

a. Pursuant to subsection 134(1)(a) of the *Act* all of the exemptions in Saskatchewan securities laws do not apply;

b. Pursuant to subsection 134(1)(d) of the *Act* he shall cease trading in securities or derivatives in Saskatchewan, with the exception that he shall be permitted to trade in securities or derivatives for his own personal investment activities and accounts including indirectly through Comeau Holdings;

c. Pursuant to subsection 134(1)(d.1) he shall cease acquiring securities or derivatives for and on behalf of residents of Saskatchewan;

d. Pursuant to subsection 134(1)(e) of the *Act* he shall cease giving advice respecting securities, trades, or derivatives in Saskatchewan;

e. Pursuant to clause 134(1)(h)(i) of the *Act* he shall resign any position that he holds as a director or officer of an issuer, a registrant or an investment fund manager with the exception that he be permitted to continue as a director or officer of Comeau Holdings provided that its business be limited to administering the outstanding Grasswood Bonds and personal investments permitted under paragraph 95 b.;

f. Pursuant to clause 134(1)(h)(ii) of the *Act*, and subject to paragraph 95 e. above, he is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

g. Pursuant to clause 134(h)(1)(iii) of the *Act* he shall not be employed by any issuer, registrant, or investment fund manager in any capacity that would entitle him to trade or advise in securities; and

h. Comeau be prohibited from becoming or acting as a registrant an investment fund manager or a promoter (*Act*, s. 134(1)(h.1)).

In addition, Comeau is ordered to pay an administrative penalty in the amount of **$35,000**; and he shall pay hearing costs in the amount of **$14,000**.

96. For Grasswood, the Panel orders that:

a. Pursuant to subsection 134(1)(a) of the *Act* all of the exemptions in Saskatchewan securities laws do not apply for a period of **three (3) years**;

b. Pursuant to subsection 134(1)(d) of the *Act* it shall cease trading in securities or derivatives in Saskatchewan for a period of **three (3) years**;

c. Pursuant to subsection 134(1)(d.1) it shall cease acquiring securities or derivatives for and on behalf of residents of Saskatchewan for a period of **three (3) years**;

d. it shall pay an administrative penalty in the amount of **$12,500**; and

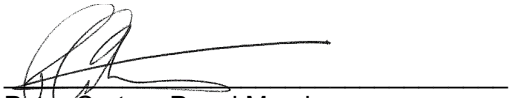
e. it shall pay hearing costs in the amount of **$3,000**

97. What remains in this matter is Staff's request that Comeau pay financial compensation to each person or company found to have sustained financial loss as a result, in whole or in part, of the Respondent's contraventions of Saskatchewan securities laws. The Panel directs that this issue be the subject of a future hearing in accordance with the procedures set out in Part 13 of the *Local Policy*.

98. This is a unanimous decision of the Hearing Panel.

Dated at Regina this 29 day of April, 2022.

Howard Crofts, Chairperson



Peter Carton, Panel Member

Norman Halldorson, Panel Member