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Securities
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Citation: Eley (Re), 2021 ONSEC 19
Date: 2021-08-20
File No.: 2020-35

**IN THE MATTER OF
DOUGLAS JOHN ELEY**

**REASONS FOR DECISION
(Section 21.7 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: January 14 and 15, 2021

Decision: August 20, 2021

Panel: Wendy Berman
Raymond Kindiak
Craig Hayman
Vice-Chair and Chair of the Panel
Commissioner
Commissioner

Appearances: Jay Naster
Robert DelFrate
Gavin MacKenzie
Alexandra Matushenko
For Douglas John Eley
For Staff of the Investment Industry
Regulatory Organization of Canada
For Staff of the Commission

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REASONS FOR DECISION

I. OVERVIEW

- [1] This is an application by Douglas John Eley (**Eley**) for a hearing and review of two decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**): a merits decision dated January 28, 2020¹ and a sanctions decision dated October 6, 2020² (respectively, the **Merits Decision** and the **Sanctions Decision** and collectively, the **IIROC Decisions**).
- [2] Pursuant to the IIROC Decisions, Eley was disciplined for engaging in conduct unbecoming of a registrant by inappropriately altering signed client documents and knowingly misrepresenting that clients had signed documents. Among other sanctions imposed, his registration as an advisor was suspended for 12 months.
- [3] Eley asks that the IIROC Decisions be set aside, or failing that, the Commission direct that a new hearing be held before a differently constituted IIROC hearing panel, or failing that, the Commission grant an order varying the Sanctions Decision.
- [4] On October 7, 2020, Eley filed a motion to stay the IIROC Decisions pending the disposition of the application.
- [5] On November 16, 2020, the Commission granted a stay of the IIROC Decisions until the disposition of this application on the condition that his registration shall be subject to close supervision by his sponsoring firm and the sponsoring firm shall submit written monthly close supervision reports to IIROC.³
- [6] After hearing submissions from the parties on January 14 and 15, 2021, we reserved our decision on the application. On March 5, 2021, we issued an order dismissing the application for reasons to follow.⁴
- [7] These are our reasons. While we differ with the IIROC Panel's approach in some limited instances, none of these differences warrant intervention in the IIROC Decisions.
- [8] In our view, the IIROC Panel neither erred in law, nor proceeded on an incorrect principle, nor misapprehended or otherwise overlooked material evidence. The IIROC Panel applied the appropriate onus of proof on IIROC Staff, properly considered all material evidence and excluded irrelevant evidence. The IIROC Panel appropriately relied on direct evidence of Eley making certain alterations to previously signed client documents as well as circumstantial evidence of other alterations in determining that Eley was responsible for the improper alterations to client documents.
- [9] The IIROC Panel's approach to determining sanctions appropriately considered the relevant factors and circumstances and was consistent with applicable principles, guidelines and prior decisions.

¹ *Eley (Re)*, 2019 IIROC 35

² *Eley (Re)*, 2020 IIROC 35

³ (2020) 43 OSCB 8793

⁴ (2021) 44 OSCB 1994

[10] In all the circumstances, the decisions of the IIROC Panel on both merits and sanctions were reasonable.

II. BACKGROUND

[11] Eley has been registered with IIROC since 2000, first as an investment representative and then as a registered representative commencing in 2004, with the exception of the period 2013 to 2015 during which he was not registered.

[12] In November 2016, IIROC commenced an investigation into Eley's conduct and, on November 22, 2018, commenced disciplinary proceedings against Eley by issuing a Notice of Hearing and Statement of Allegations.

[13] The disciplinary proceedings related to allegations that Eley altered previously signed client account documents contrary to IIROC Dealer Member Rule 29.1, including managed account agreements and mutual fund switch tickets.

[14] IIROC Dealer Member Rule 29.1 provides, among other things, that registered representatives, such as Eley, shall observe high standards of ethics and conduct and shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

[15] The merits hearing was conducted over nine days in September 2019 and the sanctions hearing was conducted on September 14, 2020. Eley was represented by counsel throughout the IIROC proceedings, including the merits and sanctions hearings.

[16] Three witnesses testified at the merits hearing, including a senior investigative officer with the enforcement department of IIROC, a vice-president (and former director of compliance and audit) of Echelon Wealth Partners Inc. (**Echelon**), the dealer firm where Eley worked during the material time, and Eley. Ten volumes of documents were submitted by both parties as evidence, including client files, client account documentation, email and letter correspondence, notes and transcripts.

[17] On January 28, 2020, the IIROC Panel issued the Merits Decision. The key findings of the IIROC Panel are as follows.

[18] The IIROC Panel found that Eley had engaged in business conduct and practices unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1, by inappropriately altering documents after they had been signed, and by knowingly misrepresenting that clients had signed documents when that was not the case.

[19] The IIROC Panel relied on extensive documentary evidence and witness testimony in making the following key findings:

- a. the account documentation was completed to facilitate the transfer of approximately 250 clients, firstly to a new dealer and then from another registered representative to Eley. Eley, two temporary assistants and another registered representative were involved in the completion of the account documentation;⁵

⁵ Merits Decision at paras 18 and 82

- b. altered previously signed client documentation was contained in numerous clients' files for which Eley was the responsible advisor;⁶
- c. Eley admitted altering certain previously signed client documents, including: new client application forms by adding account numbers, his signature, advisor number and date; a managed account agreement by adding client risk level and client investment objectives; and mutual fund switch tickets by adding trade instructions and his initials. Eley denied making any other alterations or knowing that such documents had been altered;⁷
- d. the alterations to the new client application forms were innocuous and acceptable industry practice as such changes had no bearing on the terms of the client-advisor relationship;⁸
- e. the alterations to managed account agreements and mutual fund switch tickets were inappropriate as they affected the terms of the client-advisor relationship and compromised the integrity of the client records;⁹ and
- f. the circumstances in which the alterations took place, the nature of the alterations and the absence of any evidence of another person making such changes, led to the overwhelming inference that Eley was responsible for improper alterations to client documents, by making, or instructing others to make, the alterations or by otherwise having knowledge of the alterations to documents.¹⁰

[20] In determining that Eley's conduct was unbecoming or detrimental to the public interest, the IIROC Panel considered the particular facts and circumstances, including, among other things:

- a. Eley's experience, role and responsibilities;
- b. the nature, extent and purpose of the alterations to client documents;
- c. the surrounding context of the ongoing transfer of 250 clients ultimately to Eley as the registered representative;
- d. the nature and extent of Eley's involvement in the ongoing client transfers and the completion of the related account documentation; and
- e. the absence of any client complaints and the absence of any evidence of client harm.

[21] The IIROC Panel also considered the public interest, including the risk to investors and public trust in the investment industry, arising from alterations to signed client documentation.¹¹

⁶ Merits Decision at para 70

⁷ Merits Decision at paras 18, 22 and 35

⁸ Merits Decision at paras 70 and 71

⁹ Merits Decision at paras 56, 72 and 74

¹⁰ Merits Decision at paras 77 and 79

¹¹ Merits Decision at paras 96, 98 and 100

- [22] On October 6, 2020, the IIROC Panel issued the Sanctions Decision and imposed the following sanctions against Eley:
- a. a suspension from registration with IIROC for a period of 12 months, effective 10 days from the date of the Sanctions Decision, and an order prohibiting him from taking employment in any capacity with any IIROC dealer member during the suspension period;
 - b. an 18-month period of close supervision should Eley obtain re-registration;
 - c. a fine of \$50,000; and
 - d. costs of \$50,000.¹²
- [23] The sanctions hearing was conducted on September 14, 2020 with one witness testifying on behalf of Eley and the parties making oral and written submissions. IIROC Staff sought a permanent investment advisor ban, a permanent ban from employment in any capacity with a registered investment dealer, a fine of \$25,000 and costs of \$75,000.
- [24] The IIROC Panel considered a number of aggravating and mitigating factors in making its decision on sanctions, including:
- a. the nature, extent and circumstances of the misconduct;
 - b. Eley's prior disciplinary record, in particular that Eley was the subject of IIROC proceedings in 2014 and banned from being a registrant for six months for inappropriate alteration of client documents, which included inflating client net worth, falsely endorsing client signatures on account related documentation and use of pre-signed forms;¹³
 - c. the lack of any evidence of client harm or any financial benefit to Eley;
 - d. the fact that Eley acted in some cases for the convenience of his clients and at their direction; and
 - e. Eley's conduct since the matters at issue, in particular that there had not been any issues or complaints regarding Eley's conduct as an investment advisor for more than four years (since May 2016).¹⁴
- [25] The IIROC Panel determined that in light of these circumstances and the harm to the integrity of the regulatory system, a suspension of 12 months was warranted in the public interest to deter Eley and other like-minded persons from engaging in similar misconduct.¹⁵

III. PRELIMINARY ISSUE

- [26] We first address a preliminary issue about the admissibility of additional evidence.
- [27] Eley seeks to introduce additional evidence on this application, which is comprised of five affidavits with attached documents. These documents were not

¹² Sanctions Decision at para 48

¹³ Sanctions Decision at paras 33 and 44; *Eley (Re)* 2014 IIROC 52 at paras 11 and 12

¹⁴ Sanctions Decision at paras 31, 32 and 39

¹⁵ Sanctions Decision at paras 34, 37, 43 and 48

part of the record at the merits or sanctions hearings (with the exception of a portion of one affidavit).

- [28] Eley previously sought to introduce these affidavits at the sanctions hearing. The IIROC Panel declined to admit the affidavits (with the exception of a portion of one affidavit) because:
- a. the proposed evidence was irrelevant to the issue of sanctions and costs and was an attempt to re-open the panel's findings on the merits;
 - b. the proposed evidence contained no new evidence as this evidence was available at the time of the merits hearing; and
 - c. allowing the proposed evidence would encourage parties to split their case and undermine the credibility and efficiency of the IIROC disciplinary process.¹⁶
- [29] Four of the affidavits were from individuals that Eley had stated an intention to call as witnesses at the merits hearing and later chose not to call. The fifth affidavit related to additional documents disclosed by IIROC Staff to Eley after the conclusion of the merits hearing but prior to the Merits Decision.
- [30] IIROC Staff filed a motion opposing the admission of the affidavits. OSC Staff supports the motion.
- [31] We heard submissions on the motion at the commencement of the hearing of the application. We declined to admit the affidavits and the attached documents as evidence in the application. The following are our reasons for that decision.
- [32] There is no general right of a party to introduce additional evidence on an application for hearing and review of a decision of a self-regulatory organization. However, the Commission has original jurisdiction to make a decision and may, in its discretion, admit additional evidence that was not part of the record in the self-regulatory organization's proceedings.¹⁷
- [33] Such discretion must be exercised in accordance with the Commission's statutory oversight role, which recognizes the enforcement capability and regulatory expertise of a recognized self-regulatory organization such as IIROC.¹⁸
- [34] The Commission has taken a restrained approach, generally declining to admit additional evidence unless such evidence is new and compelling. Such caution promotes fair, just and efficient proceedings by ensuring the review process does not provide a party the opportunity to re-litigate the original proceedings before the Commission on an augmented evidentiary record.¹⁹
- [35] Eley acknowledges that the proposed affidavit evidence is neither new nor compelling evidence.²⁰ However, he submits that if the Commission determines it has grounds to intervene in respect of the Merits Decision and/or the Sanctions Decision, the Commission need only be satisfied that the evidence is relevant.

¹⁶ Sanctions Decision at para 16

¹⁷ *Northern Securities Inc. (Re)*, 2013 ONSEC 48, (2014) 37 OSCB 161 (**Northern Securities**) at paras 27-30; *HudBay Minerals Inc. (Re)*, 2009 ONSEC 15, (2009) 32 OSCB 3733 (**HudBay**) at paras 111 and 112

¹⁸ *Securities Act*, RSO 1990, c S.5, s 2.1

¹⁹ *Northern Securities* at paras 28 and 30

²⁰ Written Submissions of Douglas John Eley dated December 23, 2020 at para 4

- [36] We disagree. The Commission must be cautious in admitting additional evidence given the important principles of fairness, efficiency and finality in proceedings and recognition of a self-regulatory organization's expertise, authority and regulatory process.
- [37] A relevance standard sets too low a bar. The Commission must be satisfied that the additional evidence is new and compelling or there are other exceptional circumstances which warrant admission of the evidence.
- [38] The additional evidence proposed to be introduced is neither new nor compelling. Four of the affidavits contained evidence from individuals that were available to testify at the merits hearing and the fifth affidavit contained documents that were available prior to the Merits Decision. No evidence was provided, nor were any arguments made by Eley, that demonstrated any exceptional circumstances warranting admission of this evidence.
- [39] Permitting Eley to introduce the affidavits would, in our view, threaten the fair and orderly conduct of litigation and undermine the integrity of IIROC's disciplinary process.
- [40] For these reasons, we declined to admit the additional evidence.

IV. ANALYSIS

A. Introduction

- [41] We turn now to our analysis of the principal issues raised by Eley's application:
- a. Has Eley established any grounds on which the Commission ought to intervene in the Merits Decision or the Sanctions Decision?
 - b. If there are such grounds to intervene, is it appropriate to set aside one or both of the IIROC Decisions?

B. Applicable Standard of Review

- [42] Eley brought this application under s.21.7(2) of the *Securities Act* (the **Act**),²¹ which provides that any person directly affected by a decision of a self-regulatory organization such as IIROC may apply for a review of that decision.
- [43] On such application, the Commission may confirm the IIROC decision or make such other decision as it considers proper.²² The Commission's review of an IIROC decision is a hearing *de novo* or a new hearing, rather than an appeal. The Commission exercises original jurisdiction rather than a more limited appellate jurisdiction.²³
- [44] Despite this broad authority, the Commission has, as a matter of practice, taken a restrained approach to the review of decisions of a self-regulatory organization such as IIROC. This approach is consistent with the Commission's statutory oversight function and its recognition of the specialized knowledge, expertise, and important role of, self-regulatory organizations.²⁴

²¹ RSO 1990, c S.5

²² Act, ss. 8(3) and 21.7(2)

²³ *HudBay* at paras 106 and 107; *Vitug (Re)*, 2010 ONSEC 7, (2010) 33 OSCB 3965 at paras 43 to 47

²⁴ Act, paragraph 4 of section 2.1; *Northern Securities* at para 57; *Rudensky (Re)*, 2019 ONSEC 24, (2019) 42 OSCB 6141 (***Rudensky***) at paras 29 to 30

- [45] The Commission accords deference to decisions within an IIROC panel's area of expertise, including factual determinations and interpretation and application of IIROC rules, and will not intervene in such decisions simply because the Commission might have made a different decision.²⁵
- [46] The Commission has previously interfered with the decision of a self-regulatory organization only where it has determined that one of the following five grounds has been satisfied:²⁶
- a. the hearing panel proceeded on an incorrect principle;
 - b. the hearing panel erred in law;
 - c. the hearing panel overlooked material evidence;
 - d. new and compelling evidence is presented to the Commission that was not presented to the hearing panel; or
 - e. the hearing panel's perception of the public interest conflicts with that of the Commission.

[47] Eley submits that the first three grounds are met with respect to the Merits Decision and the second ground is met with respect to the Sanctions Decision.

C. Merits Decision

- [48] We will first address the Merits Decision. Eley submits that the IIROC Panel erred in the following ways, each of which we will consider in turn:
- a. admitted and relied on evidence of misconduct not alleged in the proceedings;
 - b. reversed the onus of proof;
 - c. improperly drew inferences based on circumstantial evidence and misapprehended or overlooked material evidence; and
 - d. refused to order disclosure of relevant documents.

1. Did the IIROC Panel Proceed on an Incorrect Principle by Admitting and Relying on Evidence of Misconduct not Contained in the Allegations?

- [49] Eley submits that the IIROC Panel proceeded on an incorrect principle and contrary to the principles of procedural fairness by admitting and relying on evidence of purported misconduct not alleged in the Statement of Allegations, being alterations to dealer representative forms and new client application forms.
- [50] IIROC Staff submits that the IIROC Panel committed no error in admitting and considering all the evidence relating to alterations of client account documentation. IIROC Staff submits that the Statement of Allegations provided sufficient factual details in support of the alleged contraventions for Eley to fully understand the case against him. Accordingly, the IIROC Panel's consideration of the dealer representative forms and new client application forms did not offend the principles of procedural fairness.

²⁵ *Northern Securities* at paras 57-61; *HudBay* at para 103

²⁶ *Canada Malting Co (Re)*, (1986) 9 OSCB 3565 at para 24; *Rudensky* at para 32

- [51] OSC Staff adopts the submissions of IIROC Staff on this point.
- [52] In our view, the IIROC Panel properly admitted and considered this evidence. The Statement of Allegations contained allegations relating to alterations of client documents, including account documentation for client transfers. Dealer representative forms and new client application forms are part of the account documentation required for client transfers.
- [53] The Statement of Allegations contained various facts in support of the allegation that Eley altered client documents between May 2015 and November 2015 contrary to IIROC Dealer Member Rule 29.1, by stating that (emphasis added):
- a. Eley altered important previously signed **client documents**. These documents included investment management agreements and pre-signed mutual fund trade tickets;²⁷
 - b. Eley provided **account documentation to former clients to facilitate the transfer of such clients**. The account documentation included forms required to allow the former clients to open portfolio managed accounts with Eley;²⁸
 - c. Eley altered the **account documentation** after clients had signed as follows: he changed the dates on which clients purportedly signed **account documentation** on multiple occasions, he completed the fee schedule on some occasions and on one occasion he added client objectives and risk tolerances;²⁹ and
 - d. Eley altered and used previously signed client mutual fund switch tickets.³⁰
- [54] In addition, Eley received voluminous disclosure before the merits hearing, which included the full account documentation for client transfers and IIROC Staff's five-volume document compendium prior to the merits hearing. The dealer representative forms and the new client application forms were included in both the disclosure and the compendium.
- [55] The statement of allegations on which an IIROC proceeding is based must contain the material facts alleged in support of the alleged contraventions.³¹ Consistent with principles of natural justice, this provides the respondent sufficient notice of the conduct at issue to understand the case and make full answer and defence.³²
- [56] The Statement of Allegations contained facts relating to alleged improper alterations of two categories of previously signed client documents: (1) account documentation to facilitate client transfers; and (2) mutual fund switch documents. In addition, the Statement of Allegations contained facts detailing the nature of alleged alterations made to account documentation (addition of

²⁷ Exhibit 1, Record for Hearing and Review, Tab 2, Statement of Allegations at para 1

²⁸ Exhibit 1, Record for Hearing and Review, Tab 2, Statement of Allegations at para 7

²⁹ Exhibit 1, Record for Hearing and Review, Tab 2, Statement of Allegations at paras 9-11

³⁰ Exhibit 1, Record for Hearing and Review, Tab 2, Statement of Allegations at paras 12-13

³¹ IIROC Consolidated Rules, r 8414(2)

³² *Brown (Re)*, (2004) 27 OSCB 7955 at para 25; *Brooks v Ontario Racing Commission*, 2017 ONCA 833 at para 13

- dates, client objectives and risk tolerances and completion of fee schedules) and to the mutual fund switch tickets (alterations to re-use for future transactions).
- [57] Dealer representative forms and new client application forms are part of the account documentation required for client transfers and relate directly to the allegations and particulars contained in the Statement of Allegations.
- [58] In our view, the IIROC Panel properly admitted and considered this evidence.
- [59] In reaching its findings and arriving at its decision, the IIROC Panel appropriately undertook a contextual analysis of the evidence relating to the allegation of improper alterations of account documentation for client transfers.
- [60] Although the IIROC Panel relied on this evidence as part of its contextual analysis, it ultimately determined that it could not make any finding as to whether Eley was involved in alterations to the dealer representative forms on the basis that the alleged activity was outside the material time referenced in the Statement of Allegations³³ and to the new client application form on the basis that there was no reference to this particular incident in the Statement of Allegations.³⁴
- [61] We do not agree with the IIROC Panel in this regard. In our view, the Statement of Allegations contained allegations relating to alterations of account documentation for client transfers. Accordingly, it was open to the IIROC Panel to make findings related to dealer representative forms and new client application forms which are part of the account documentation necessary for client transfers.
- [62] We note that alterations to multiple dealer representative forms occurred both during and prior to the material time referenced in the Statement of Allegations. Some of the alterations to the dealer representative forms for Client C referenced in the Merits Decision occurred in June 2015,³⁵ which was within the material time.
- [63] We also note that the IIROC Panel incorrectly referenced the second document as a new client application form. The document was a managed account agreement,³⁶ a document referenced in the Statement of Allegations.
- [64] These errors by the IIROC Panel had no impact on its ultimate finding that Eley was responsible for alterations of previously signed client documents in contravention of Dealer Member Rule 29.1. These errors may only have resulted in findings of additional instances of improper alterations to support imposing more onerous sanctions. No party argued that the IIROC Panel erred by failing to impose more onerous sanctions.
- [65] Based on the foregoing, we find that the IIROC Panel neither erred in law nor proceeded on an incorrect principle, by considering the evidence related to dealer representative forms or new client application forms.

³³ Merits Decision at paras 57 and 61

³⁴ Merits Decision at para 65

³⁵ Merits Decision at para 58

³⁶ A managed account agreement is also sometimes referred to as an investment management agreement.

2. Did the IIROC Panel Err in Law by Reversing the Onus of Proof?

- [66] Eley submits that the IIROC Panel erred in law by failing to require IIROC Staff to prove the allegations on a balance of probabilities and, in effect, requiring Eley to prove he did not make or authorize the alterations to client documents.
- [67] We are satisfied that the IIROC Panel did not reverse the onus of proof. It is clear from the Merits Decision, read in its entirety, that the IIROC Panel understood and applied the onus on IIROC Staff to prove Eley's involvement in the alteration of previously signed client documents on a balance of probabilities.
- [68] Eley testified before the IIROC Panel. Eley admitted making certain additions to documents previously signed by clients and denied making, authorizing, or having knowledge of certain other alleged alterations to client documents.³⁷
- [69] The IIROC Panel accepted Eley's admissions that he added dates, risk tolerance and investment objective information to a previously signed client managed account agreement³⁸ and determined that such alterations, which affected the client-advisor relationship, were inappropriate.³⁹
- [70] The IIROC Panel found that 10 client files contained alterations to previously signed client managed account agreements.⁴⁰
- [71] The IIROC Panel accepted Eley's admissions that he added account numbers, his signature, advisor number and date to new client application forms previously signed by clients. The IIROC Panel, however, found these alterations were innocuous and acceptable industry practice as such changes had no bearing on the terms of the client-advisor relationship.⁴¹
- [72] The IIROC Panel also accepted Eley's admissions that he added trade instructions and his initials to pre-signed mutual fund switch tickets. Eley denied using the mutual fund switch tickets to effect any fund transfers and denied knowing that some of these tickets were sent to the fund company.⁴²
- [73] Eley denied making, authorizing or having knowledge of any of the other alleged alterations to client documents, which included additions or changes related to dates, addition of management fees and advisor codes, one additional instance of adding investment objective and risk factor information and one instance of deleting a joint account holder name on a managed account agreement.
- [74] The IIROC Panel did not accept his denial and outlined the basis for this determination in its decision. The IIROC Panel also outlined the basis on which it rejected Eley's suggestion that others were capable of making these alterations.
- [75] The IIROC Panel considered all the evidence relating to the circumstances in which the alterations took place (including Eley's involvement in sending and receiving account documentation for client transfers); the nature, and extent of the alterations; the purpose of the altered documents (including that many were to facilitate the transfer of client files from another registered representative to

³⁷ Merits Decision at paras 22 and 35

³⁸ Merits Decision at para 35

³⁹ Merits Decision at para 72

⁴⁰ Merits Decision at para 38

⁴¹ Merits Decision at para 71

⁴² Merits Decision at paras 21 and 48 to 51

Eley); Eley's admissions; the responsibilities and authority of the temporary assistants; and the absence of any direct evidence of another person capable and motivated to make such changes.

- [76] The IIROC Panel also compared various versions of the account documentation sent to and received from clients and later sent to the dealer and determined that these documents were altered after the clients signed.
- [77] The IIROC Panel weighed all of the direct and circumstantial evidence and concluded that this evidence as a whole led to the "inescapable conclusion" that Eley was responsible for the improper alterations to client documents, by making, or instructing others to make, the alterations or by otherwise having knowledge of the alterations to documents.⁴³
- [78] Certain portions of the Merits Decision read in isolation risk creating the impression that the IIROC Panel misapprehended the onus.
- [79] For example, the IIROC Panel asks, "who else could or would have made the alterations?"⁴⁴ and makes statements such as "there is no testimony or explicit evidence implicating Mr. Eley in the changes, neither is there any evidence as to who else made the changes"⁴⁵ and "there is no evidence to support Mr. Eley's suggestion that the temporary assistants could have been capable of making the inappropriate alterations without direction."⁴⁶
- [80] Additional precision in the Merits Decision, such as clarifying that these statements related to the alterations which Eley denied making and not the alterations which he admitted making, may have assisted the reader and removed any confusion.
- [81] However, the Merits Decision must be read as a whole with these portions in context and without unduly parsing phrases or sentences. When this is done, it is clear that such statements form part of the IIROC Panel's considerations and basis for its rejection of both Eley's denial of the remaining alterations and his suggestion that others were capable and motivated to make the alterations. The lack of any direct evidence (testimony of witnesses other than Eley or documents) demonstrating that someone else made the changes or was motivated to make the changes was one of many factors considered by the IIROC Panel.
- [82] We are satisfied, upon reading the Merits Decision as a whole, that the IIROC Panel applied the appropriate onus of proof on IIROC Staff and did not shift the onus from IIROC Staff to Eley. We dismiss this ground for review.

3. Did the IIROC Panel Err in Law by Making an Improper Inference based on Circumstantial Evidence or Overlook Material Evidence?

- [83] Eley submits that the IIROC Panel improperly drew inferences and made findings of misconduct based on circumstantial evidence. Eley asserts that the IIROC Panel was required to determine that his responsibility for the alterations to

⁴³ Merits Decision at paras 67, 77 and 79

⁴⁴ Merits Decision at para 77

⁴⁵ Merits Decision at para 66

⁴⁶ Merits Decision at para 68

client documents was the only rational inference that could be drawn from the circumstantial evidence.

- [84] Eley further submits that the IIROC Panel misapprehended and/or overlooked relevant evidence in two aspects. The first is the involvement of other individuals in completing account documentation for client transfers. The second is whether alterations were readily observable at the time they were made. Eley says that it was improper for the IIROC Panel to rely on its own comparison of various versions of client documents.
- [85] IIROC Staff submits that the IIROC Panel properly considered the whole of the evidence and appropriately relied on compelling circumstantial evidence to reach the conclusion that Eley was responsible for the improper alterations to client documents. OSC Staff adopts the submissions of IIROC Staff.
- [86] In securities regulatory proceedings, misconduct can be proved by both direct and circumstantial evidence. A tribunal is entitled to draw inferences from the circumstantial evidence provided such inferences are reasonably and logically drawn from a fact or a group of facts established by the evidence.⁴⁷
- [87] In our view, there was ample direct and circumstantial evidence from which the IIROC Panel was entitled to draw the inference that Eley was involved in the improper alterations to client documents despite his denial. In all the circumstances, this was a reasonable conclusion.
- [88] The IIROC Panel did not misapprehend or overlook evidence relating to the involvement of others in the preparation and completion of client account documentation. Instead, it explicitly considered this evidence as part of the factual matrix which supported its conclusion that Eley was ultimately responsible for the improper alterations.
- [89] The IIROC Panel reviewed a large volume of documentary evidence, including client documents, emails and other documents as well as the testimony of three witnesses, including Eley. The IIROC Panel relied on both direct evidence of Eley making certain alterations to client documents as well as circumstantial evidence in respect of other alterations in reaching its determination that Eley was responsible for the improper alterations to client documents, by making, or instructing others to make, the alterations or by otherwise having knowledge of the alterations to documents.
- [90] A review of the Merits Decision indicates that the IIROC Panel considered the following direct and circumstantial evidence regarding the client documents:
- a. The account documentation was completed to facilitate the transfer of approximately 250 clients (700 client files) during a four-month period, firstly to effect the transfer of these clients of Eley from his prior dealer to another registered representative (Ms. M) at Echelon and then from Ms. M to Eley.⁴⁸

⁴⁷ *Hutchinson (Re)*, 2019 ONSEC 36, (2019) 42 OSCB 8543 at paras 60 and 61; *Finkelstein v Ontario (Securities Commission)*, 2016 ONSC 7508 (Div Ct) at paras 17-20

⁴⁸ Merits Decision at para 82

- b. Eley was involved in the client transfers. He directly sent account documentation to clients and received signed documents from clients or was copied on these emails.⁴⁹
- c. Two temporary assistants, hired by Eley, also assisted with the account documentation for client transfers. Eley stated that the account documentation was completed, and alterations were made either by Ms. M and the temporary assistants, or by him.⁵⁰
- d. Eley stated that any alterations to account documentation were made with client authorization, to ensure the information was complete and accurate or to correct a clerical error.⁵¹
- e. Client files contained alterations to managed account agreements previously signed by clients.⁵² These alterations included:
 - i. ten instances of changes or additions to advisor name and/or advisor code and signature dates;⁵³
 - ii. two instances of additions of investment objectives and risk tolerance information. Eley admitted in his testimony to making alterations to add investment objectives and risk tolerance information to one of these managed account agreements. Eley stated that the alterations were authorized by the clients and consistent with the information in the new client application forms;⁵⁴
 - iii. one instance of a deletion of a joint account holder name on a managed account agreement and change of date beside the remaining account holder signature. Eley denied making or having knowledge of these alterations;⁵⁵ and
 - iv. six instances of additions of management fees. Eley stated that the management fee schedules were completed with client authorization. Eley denied making alterations to the managed account agreements to add the amount of the management fees or having knowledge that the alterations had been made.⁵⁶
- f. The altered managed account agreements were sent to Echelon and forwarded to Echelon's carrying broker to open the managed accounts. The director of compliance at Echelon testified that any changes to

⁴⁹ Merits Decision at paras 18, 33, 37, 58, 75 and 82

⁵⁰ Merits Decision at paras 18 and 66

⁵¹ Merits Decision at paras 18 to 20

⁵² Merits Decision at para 38

⁵³ Written submissions of IROC Staff dated December 23, 2020 at para 14; Exhibit 2, Supplemental Record for Hearing and Review, Tab 6, Evidence Chart dated October 30, 2019 at 714-743

⁵⁴ Exhibit 2, Supplemental Record for Hearing and Review, Tab 6, Evidence Chart dated October 30, 2019 at 726, 727 and 737

⁵⁵ Merits Decision at paras 20, 62 and 63. The IROC Panel incorrectly referred to this document as a new client application form.

⁵⁶ Merits Decision at paras 38 and 63; Written submissions of IROC Staff dated December 23, 2020 at para 14; Exhibit 2, Supplemental Record for Hearing and Review, Tab 6, Evidence Chart dated October 30, 2019 at 723, 728, 733, 740 and 742

investment objectives or management fees would require a client signature.⁵⁷

- g. Eley admitted in his testimony to making alterations to previously signed new client application forms to add account numbers, his signature, advisor number and date.⁵⁸
- h. Nine client files contained alterations to previously signed mutual fund switch tickets.⁵⁹ The alterations included:
 - i. three pre-signed mutual fund switch tickets for client MT were altered to add trade instructions. Eley admitted that the trade instructions were in his handwriting and that he initialled each ticket. Eley denied being aware that the mutual fund switch tickets were photocopies or alterations to previously used switch tickets. Eley testified that in one case he put the switch ticket in the file as “a note to file or memo order” and in another case he entered the trade instructions of the client on the switch ticket but did not know the ticket had been photocopied. In both cases, the switch ticket was sent to the fund company for execution. Eley denied using mutual fund switch tickets to make any fund transfers and denied knowing that the tickets were sent to the fund company;⁶⁰ and
 - ii. two pre-signed mutual fund switch tickets, one for client H and one for client M, were altered to add trade instructions. Eley admitted that he added the trade instructions on the pre-signed tickets but denied knowing the tickets were a photocopy or knowing that the ticket for client M was sent to the fund company. Eley stated that the trade instructions were added with client authorization;⁶¹
- i. Eley was required by the terms of his supervision at Echelon to execute all trades electronically. There was no evidence that the mutual fund switch tickets were used to execute trades in the client accounts and the director of compliance at Echelon testified that she was not aware of any unauthorized trades by Eley in client accounts;⁶²
- j. Twenty client files contained alterations to dealer representative forms to add Eley’s registered representative code and email address. These forms were sent to the fund companies as notification that Eley was the registered representative.⁶³
- k. Other than admissions of certain alterations as outlined above, Eley denied making any of the other alterations to previously signed client documents or knowing that these documents had been altered.⁶⁴

⁵⁷ Merits Decision at paras 35 and 39

⁵⁸ Merits Decision at para 71

⁵⁹ Merits Decision at para 52

⁶⁰ Merits Decision at paras 21 and 48-51

⁶¹ Merits Decision at paras 53

⁶² Merits Decision at paras 43, 45 and 50

⁶³ Merits Decision at paras 31, 57 and 61; Exhibit 2, Supplemental Record for Hearing and Review, Tab 6, Evidence Chart dated October 30, 2019 at 758-764

⁶⁴ Merits Decision at para 63

- [91] The IIROC Panel also compared various versions of the account documentation and mutual fund switch tickets and determined that these documents were altered after the clients signed.⁶⁵ We see nothing improper in such a comparison being made by the IIROC Panel.
- [92] The IIROC Panel accepted Eley's admissions that he added dates, risk tolerance and investment objective information to a previously signed managed account agreement⁶⁶ and determined that such alterations, which affected the client-advisor relationship, were inappropriate.⁶⁷ The IIROC Panel determined that regardless of actual harm, alterations to pre-signed client documents create risk of abuse and risk to compliance supervision and investigation of client complaints.⁶⁸
- [93] The IIROC Panel accepted Eley's admissions that he added trade instructions to previously signed mutual fund switch tickets and determined that such alterations were inappropriate regardless of whether the document was used to effect a trade or the trade was authorized by the client. The IIROC Panel determined that such alterations provide a misleading impression of what transpired in the client file (that the client had signed the document on the revised date and provided written authorization for the added trade instructions) and create risk of misuse.⁶⁹
- [94] The IIROC Panel also accepted Eley's admissions that he added account numbers, his signature, advisor number and date to new client application forms previously signed by clients. The IIROC Panel, however, found these alterations were innocuous and acceptable industry practice as such changes had no bearing on the terms of the client-advisor relationship.⁷⁰
- [95] The IIROC Panel did not accept Eley's denial of any involvement in, or knowledge of, the other alterations to client documents. The IIROC Panel explained the basis for this determination in its decision.
- [96] The IIROC Panel considered and weighed all the evidence, both direct and circumstantial, and concluded that it was "simply implausible" that Eley was not aware of the alterations to the account documentation and that there was no evidence to support his suggestion that the temporary assistants could have been capable of making the inappropriate alterations without direction.⁷¹
- [97] The IIROC Panel relied on the direct evidence that Eley made certain alterations to previously signed client documents as well as the circumstantial evidence, which included evidence relating to the purpose for completion of the account documentation (being to facilitate the transfer of Eley's clients to Echelon and to him from another registered representative); the nature of the alterations to the documents (which impacted the client relationship); Eley's involvement in the completion of the documentation together with the two temporary assistants and

⁶⁵ Merits Decision at paras 34, 35, 48, 59, 64 and 67

⁶⁶ Merits Decision at paras 35 and 38

⁶⁷ Merits Decision at para 72

⁶⁸ Merits Decision at paras 96 and 97

⁶⁹ Merits Decision at paras 56, 74 and 96

⁷⁰ Merits Decision at para 71

⁷¹ Merits Decision at paras 67 and 77

Ms. M; the experience, responsibilities and authority of Eley and the two temporary assistants.

- [98] The IIROC Panel determined that the totality of the evidence led to the “inescapable conclusion” that Eley was responsible for the improper alterations to client documents, by making, or instructing others to make, the alterations or by otherwise having knowledge of the alterations to documents or turning a “blind eye with implicit approval” to such alterations.⁷²
- [99] In our view, there was ample direct and circumstantial evidence from which the IIROC Panel could draw these conclusions. In addition, its refusal to accept Eley’s denial with respect to certain alterations and to draw the inference that he made or authorized these alterations was reasonable and logical.
- [100] Finally, in our view the IIROC Panel did not overlook or misapprehend material evidence that supported Eley’s position that he did not make or have any knowledge of certain alleged alterations.
- [101] We do not agree with Eley’s position that the IIROC Panel overlooked (i) evidence of the participation of the two temporary assistants and the other registered representative in the preparation and completion of the account documentation to facilitate the client transfers and (ii) evidence demonstrating the alterations were not easily observable.
- [102] The IIROC Panel explicitly considered the involvement of others in the preparation and completion of the account documentation. The IIROC Panel also considered the absence of any other direct documentary evidence or witness testimony as to who made the other alleged alterations to client documents, whether Eley or someone else, and considered whether it was plausible that someone other than Eley made or authorized these alterations (as suggested by Eley).⁷³
- [103] The IIROC Panel did not overlook this evidence. Instead, it considered this evidence as part of the factual matrix which supported its conclusion that Eley was ultimately responsible for the improper alterations.
- [104] The evidence which Eley submits demonstrates that the alterations to client documents were not easily observable consists of:
- a. testimony of the director of compliance and audit at Echelon that she subsequently learned of a “white out” alteration to a mutual fund switch ticket during the compliance investigation (and that she brought this information to the attention of the chief compliance officer); and
 - b. testimony of the IIROC investigator that during the investigative interviews the ultimate designated person and the director of compliance and audit at Echelon stated that they did not observe document alterations during the material time.
- [105] Although the IIROC Panel did not explicitly reference this evidence, we are satisfied, upon reading the Merits Decision as a whole, that the IIROC Panel

⁷² Merits Decision at paras 67, 77 and 79

⁷³ Merits Decision at paras 66-69 and 76-78

considered all the material evidence relating to the circumstances of the completion of the client documents.

- [106] In any event, we do not view this evidence as material to the issue of who made the alterations. These individuals may not have been in a position to observe any alterations given the nature of their oversight functions or may not have compared the various iterations of the client documents at the time.
- [107] We note that the director of compliance and audit testified at the merits hearing that she did not maintain copies of mutual fund switch tickets and therefore would not be able to tell whether a mutual fund switch ticket was a copy of a prior signed ticket. She also testified that she would have concerns if a mutual fund switch ticket was altered after the client signed and that any changes or additions of trade instructions would require a new client signature.⁷⁴
- [108] We are satisfied, upon reading the Merits Decision as a whole, that the IIROC Panel's finding that Eley was responsible for the improper alterations was based on its assessment of the totality of the evidence and that the IIROC Panel drew reasonable inferences from the circumstantial evidence and neither overlooked nor misapprehended any material evidence. We dismiss these grounds for review.

4. Did the IIROC Panel Err in Law by Refusing to Order Disclosure of Relevant Documents?

- [109] Eley submits that the IIROC Panel erred in law by denying his motion for disclosure of two internal memoranda prepared by the IIROC investigator, one recommending the commencement of the investigation of Eley and the second recommending proceedings be brought against Eley.
- [110] At the merits hearing, Eley argued that these documents were relevant to the credibility of the IIROC investigator witness and the propriety of the conduct of the IIROC investigation. Eley's position was that the IIROC investigator conducted an unauthorized investigation and misled OSC Staff by stating that IIROC was investigating Eley when no formal investigation had been authorized.
- [111] Eley relied on correspondence between IIROC Staff and OSC Staff. In that correspondence, IIROC Staff advised of its investigation of supervisory controls at Echelon and its concerns regarding the use of potentially pre-signed or altered documents for client accounts for which Eley was the registered representative. IIROC Staff sought assistance in obtaining certain documents from a dealer for its ongoing investigation.⁷⁵
- [112] Respondents in IIROC proceedings are entitled to disclosure of the "fruits of the investigation" to ensure that they can make full answer and defence. Internal analyses, opinions or discussions of IIROC Staff will be irrelevant to the merits unless the respondent can demonstrate a sufficient connection between such documents and their ability to make full answer and defence.⁷⁶

⁷⁴ Exhibit 1, Record for Hearing and Review, Tab 33, IIROC Hearing Transcript, Eley (Re), September 16, 2019 at 4720-4721 and 4727

⁷⁵ Exhibit 1, Record for Hearing and Review, Tab 19 at 2668

⁷⁶ *Kitmitto (Re)*, 2020 ONSEC 15, (2020) 43 OSCB 4910 at paras 23 and 32

- [113] The IIROC Panel reviewed the two memoranda and the above correspondence and determined that the documents were not relevant to the merits or any possible procedural unfairness related to the conduct of the investigation or witness credibility.
- [114] We see no basis for challenging the decision of the IIROC Panel in this regard. Eley received complete disclosure of the information and documents gathered during the IIROC investigation. The memoranda contain analyses and recommendations of IIROC Staff regarding commencement of the investigation and ultimately the proceedings against Eley.
- [115] Further, in our view, IIROC properly described the nature of its investigation and its concerns regarding Eley's conduct arising from such investigation.
- [116] Eley also submits that the memoranda were relevant to demonstrate investigative deficiencies and unfairness, including, among other things, the failure to interview certain supervisors at Echelon and efforts to obtain evidence of misconduct beyond the issues and time frame in the underlying IIROC business conduct compliance review which precipitated the investigation.
- [117] In our view, this evidence falls far short of demonstrating any impropriety in the course of the investigation or any other sufficient connection between the internal memoranda and Eley's ability to have made full answer and defence in the IIROC proceedings.
- [118] The IIROC Panel's decision to deny Eley's motion for disclosure of the internal regulatory memoranda was reasonable and there is no basis for intervention by the Commission in this regard.

D. Sanctions Decision

- [119] We will now address the Sanctions Decision. Eley submits that the IIROC Panel erred in three ways, each of which we will consider in turn:
- a. refused to admit certain evidence;
 - b. imposed sanctions that are excessive and unduly harsh; and
 - c. failed to consider settlement discussions when making its costs award.

1. Did the IIROC Panel Err in Law by Refusing to Admit Evidence?

- [120] Eley submits that the IIROC Panel improperly refused to admit the five witness affidavits, described above, at the sanctions hearing.
- [121] Eley acknowledges that these affidavits were relevant to the issues at the merits hearing but submits that the evidence was also relevant to the issue of "determining the specific conduct for which [he] was to be sanctioned".⁷⁷
- [122] Four of the affidavits were from individuals that Eley had stated an intention to call as witnesses at the merits hearing and later chose not to call, being two temporary assistants, Ms. M and the chief compliance officer of Echelon. The fifth affidavit related to additional documents disclosed by IIROC Staff to Eley after the conclusion of the merits hearing but prior to the Merits Decision.

⁷⁷ Written Submissions of Douglas John Eley dated December 11, 2020 at para 143

- [123] The affidavits of the two assistants and Ms. M contained statements about their individual conduct and involvement in the completion of the account documentation for client transfers (and the mutual fund switch tickets for the registered representative affidavit only) and their views about Eley's conduct, knowledge and involvement. In addition, the affidavits contained statements about their concerns with the factual findings in the Merits Decision.
- [124] The IIROC Panel considered the affidavit of the chief compliance officer in two parts. The first part contained statements about his role, responsibilities and his observations and understanding of Eley's conduct following the material time. The second part disputed certain witness testimony at the merits hearing and certain factual findings and inferences made by the IIROC Panel in the Merits Decision.
- [125] The IIROC Panel reviewed the five affidavits, received written and oral submissions from the parties and adjourned to deliberate. The IIROC Panel declined to admit the affidavits with the exception of the first part of the chief compliance officer's affidavit.
- [126] In excluding much of the affidavit evidence, the IIROC Panel determined that it was irrelevant to the issues at the sanctions hearing, contained no new evidence (as this evidence was available at the time of the merits hearing) and amounted to an attempt to re-open its findings on the merits. The IIROC Panel concluded that admission of this evidence would undermine the credibility and efficiency of IIROC's disciplinary process.
- [127] A panel should consider all evidence relevant to the determination of sanctions and costs while ensuring that any efforts to re-open and re-litigate the findings on the merits are not permitted.⁷⁸
- [128] In our view, the decision of the IIROC Panel to exclude the affidavit evidence was reasonable and neither constitutes an error in law nor provides any other basis for our intervention. The affidavit evidence (except for the admitted portion of one affidavit) related entirely to the merits and amounted to a collateral challenge of the IIROC Panel's findings of misconduct at the merits hearing. Therefore, we reject this ground for review.

2. Did the IIROC Panel Err in Law by Imposing Sanctions that are Harsh and Excessive?

- [129] Eley submits that the IIROC Panel erred in law and proceeded on an incorrect principle by relying upon certain factual findings for which there was no evidence as a basis for imposing a suspension, including that:
- a. Eley "altered client documents after signature, specifically dates when the documents were purportedly signed, so that the records in the client files were not accurate" when there was no evidence that Eley deleted the dates and there was evidence that none of the deleted dates were in fact the date that the client signed the document;

⁷⁸ *Northern Securities* at para 40; *Northern Securities Inc. v Ontario (Securities Commission)*, 2015 ONSC 3641 (Div Ct) at para 13; *FactorCorp Inc. (Re)*, 2013 ONSEC 34, (2013) 36 OSCB 9582 at paras 80-82

- b. Eley engaged in a “pattern of improper additions and alterations to clients’ file records” when the evidence demonstrated there was no pattern of misconduct;
- c. Eley added management fees and investment objective and risk tolerance information to previously signed managed account agreements when there was no evidence that Eley completed the management fee schedules and the evidence demonstrated that the management fees and the change to client objectives and risk tolerances were authorized by the clients; and
- d. Eley used previously signed mutual fund switch tickets to facilitate transfers when there was no evidence that the tickets were ever used by Eley to facilitate a transfer.

[130] We do not agree. We note that similar arguments were raised by Eley before the IIROC Panel and rejected.⁷⁹ In our view, these submissions inappropriately parse various portions of the Sanctions Decision, misapprehend the basis for the IIROC Panel’s determination of the appropriate sanctions and amount to an attempt to challenge the factual findings from the Merits Decision.

[131] The IIROC Panel considered the protective, preventive and prospective nature of sanctions and the applicable principles, including the importance of fostering investor protection and improved industry standards and practices, strengthening market integrity and confidence in the market, the seriousness of the misconduct and the need for specific and general deterrence.⁸⁰

[132] The IIROC Panel considered the full circumstances, including the nature, extent and circumstances of the misconduct, Eley’s experience and prior disciplinary record, the lack of any evidence of client harm or financial benefit to Eley, that Eley acted at the direction of the client in some cases and Eley’s satisfactory conduct for more than four years since the matters in issue.

[133] The IIROC Panel’s approach to determining the appropriate sanctions is consistent with the purpose and principles applicable to regulatory sanctions, the IIROC Sanction Guidelines and prior IIROC decisions imposing significant sanctions for alterations to previously signed client documents and use of pre-signed client documents.⁸¹

[134] The Commission has, as a matter of practice, taken a restrained approach to the review of sanctions issued by IIROC. This approach is consistent with the Commission’s statutory oversight function and its recognition of the specialized knowledge, familiarity, and expertise of IIROC hearing panels on standards of practice and business conduct of its members, the regulatory framework and sanction guidelines.⁸²

[135] In our view, the IIROC Panel’s decision on sanctions and costs appropriately reflected the principles applicable to sanctions and was reasonable. We find no error warranting our intervention and dismiss this ground of the application.

⁷⁹ Sanctions Decision at para 42

⁸⁰ Sanctions Decision at paras 29 and 30.

⁸¹ IIROC *Sanction Guidelines; Erikson v Ontario (Securities Commission)*, [2003] OJ No 593 at paras 55-56 and 59

⁸² *Ricci (Re)*, 2015 ONSEC 7, (2015) 38 OSCB 2364 at paras 34 and 35

3. Did the IIROC Panel Make an Error in Law by Failing to Consider Settlement Discussions as a Factor in Determining the Costs Award?

- [136] Eley submits that the IIROC Panel failed to consider the content of settlement discussions between Eley and IIROC Staff prior to making its costs order of \$50,000 and accordingly the costs award should be varied.
- [137] We see no basis for challenging the costs order of the IIROC Panel. We are satisfied that the IIROC Panel properly exercised its discretion and that the costs award is reasonable in the circumstances.
- [138] At the sanctions hearing, among other things:
- a. IIROC Staff submitted evidence of its costs totalling approximately \$132,000 and sought a costs award of \$75,000; and
 - b. Eley submitted that there had been settlement discussions between the parties and did not provide any information or evidence on the content of these settlement discussions.
- [139] The IIROC Panel heard submissions on whether settlement discussions were a factor it should consider in respect of any costs order. Eley submitted that the fact of settlement discussions should be a relevant factor in determining costs if the sanctions ordered were less than the terms offered by IIROC Staff during the settlement discussions. IIROC Staff submitted that neither the fact of settlement negotiations nor the content of the settlement negotiations was relevant to the determination of a costs award.
- [140] The IIROC Panel considered these submissions and ultimately determined the costs award without requesting or receiving any evidence or further submissions respecting the content of the settlement negotiations between Eley and IIROC Staff.
- [141] In our view, it was reasonable, in circumstances where IIROC Staff was entirely successful, to award costs without consideration of the content of prior settlement negotiations between the parties. We see no basis for our intervention in respect of the costs order.

V. CONCLUSION

- [142] As we have determined that there are no grounds on which we should intervene in the Merits Decision or Sanctions Decision, we did not consider the issues of liability or sanctions afresh and substitute our own decision.
- [143] In any event, we would have reached the same result as the IIROC Panel and found that Eley was responsible for making improper alterations to previously signed client documents, either by making, authorizing or having knowledge of such alterations, and thereby contravened IIROC Dealer Member Rule 29.1.

[144] For the above reasons, we issued an order on March 5, 2021 dismissing Eley's application for hearing and review. We confirm that the stay order remains in effect for 10 days following the release of these reasons in accordance with the subsequent order issued on March 10, 2021.⁸³

Dated at Toronto this 20th day of August, 2021.

"Wendy Berman"

Wendy Berman

"Raymond Kindiak"

Raymond Kindiak

"Craig Hayman"

Craig Hayman

⁸³ (2021) 44 OSCB 2313