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File No. 2019-16

IN THE MATTER OF JOSEPH DEBUS

REASONS AND DECISION ON A MOTION

Hearing: February 19, 2021

Decision: August 31, 2021

Panel: M. Cecilia Williams Commissioner and Chair of the Panel

Appearances: Dalbir Kelley For Joseph Debus
Mark Persaud

Kathryn Andrews For Staff of the Investment Industry
Sally Kwon Regulatory Organization of Canada

Linda Fuerst For Staff of the Commission
Alexandra Matushenko

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REASONS AND DECISION

I. OVERVIEW

- [1] On April 16, 2019, Joseph Debus applied for a hearing and review (the **Hearing**) of the Investment Industry Regulatory Organization of Canada (**IIROC**) merits decision¹ and sanctions decision² against him. After a number of extensions of filing deadlines and adjournments, I heard Mr. Debus's application on January 27 and 28, 2021.
- [2] Prior to the end of the Hearing on January 28, 2021, Mr. Debus advised that he would be bringing a motion for my recusal on the basis of a reasonable apprehension of bias against both him and his counsel, Mr. Persaud.
- [3] Mr. Debus seeks an order:
- a. requiring me to recuse myself from continued participation in the Hearing; and
 - b. striking the panel that presided over the Hearing (*i.e.*, me alone) and remitting the matter back for a new hearing and review before a different panel.
- [4] I heard the motion on February 19, 2021.
- [5] Having applied the test for establishing reasonable apprehension of bias, I conclude that the issues raised by Mr. Debus do not give rise to a reasonable apprehension of bias on my part, as against either Mr. Debus or Mr. Persaud.

II. ISSUE AND ANALYSIS

A. Introduction

- [6] The issue I need to decide is whether Mr. Debus has established that my conduct during this proceeding demonstrates an actual bias or a reasonable apprehension of bias against him or Mr. Persaud.

B. Legal framework and test for establishing a reasonable apprehension of bias

- [7] Before I analyze that issue, I must address the legal framework and the test for establishing a reasonable apprehension of bias.
- [8] It is well established that "the judge being asked to disqualify himself on the basis of reasonable apprehension of bias and prejudgement is the judge who hears the disqualification motion".³ Therefore, it is appropriate that I hear this motion.
- [9] The burden of demonstrating actual or perceived bias lies with the party alleging bias.⁴ The threshold for establishing actual bias or a reasonable apprehension of bias is high.⁵ Commissioners are presumed to act "fairly and impartially in

¹ *Debus (Re)*, 2019 IIROC 5

² *Debus (Re)*, 2019 IIROC 18

³ *Khan (Re)*, 2014 ONSEC 3, (2014) 37 OSCB 1035 (**Khan**) at para 13, citing *Authorson (Litigation Guardian of) v Canada (Attorney General)*, [2002] OJ No 2050 (Div Ct) at para 1

⁴ *R v S (RD)*, [1997] 3 SCR 484 (**RDS**) at para 114

⁵ *Khan* at para 27

discharging their adjudicative responsibilities” and this presumption will stand unless there is any evidence to the contrary.⁶

[10] The applicable test for determining a reasonable apprehension of bias is:

“...the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information...[The] test is ‘what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.’”⁷

[11] Throughout these reasons, when I refer to “bias” I am referring to both a “reasonable apprehension of bias” and actual bias, unless I specify otherwise.

[12] The inquiry into bias is fact-specific⁸ and the issues raised in support of the recusal motion must be construed in the context of the entire proceeding.⁹

C. Has Mr. Debus met the burden for establishing that my conduct during this proceeding demonstrates bias?

1. Introduction

[13] I have grouped the evidence that Mr. Debus submits supports his bias allegation into the following categories:

- a. the manner in which I conducted this proceeding: including when reasons for my decisions were reserved, my decision not to allow new evidence at the Hearing, and by allegedly precluding Mr. Persaud from fairly presenting Mr. Debus’s case at the Hearing;
- b. my attitude towards Mr. Persaud’s health issues: including my references to Mr. Persaud’s health in reasons for decisions, my handling of the January 19, 2021 adjournment request, my alleged failure to accommodate Mr. Persaud, my alleged “attack” on Mr. Persaud during the Hearing and the timing of my order related to a motion for destruction of copies of a medical note relating to Mr. Persaud’s health filed in support of Mr. Debus’s third adjournment request; and
- c. my alleged partiality towards IIROC Staff and OSC Staff: including by failing to conspicuously address IIROC Staff’s and OSC Staff’s allegedly improper and unprofessional conduct with respect to Mr. Persaud’s health, allegedly failing to maintain my impartial adjudicative function, and condoning OSC Staff’s abdication of its proper role in the Hearing.

[14] OSC Staff submits that the motion should be dismissed because:

- a. Mr. Debus has failed to discharge his burden of establishing either actual or perceived bias on my part;

⁶ *Khan* at para 28, citing *Norshield Asset Management (Canada) Ltd. (Re)*, 2009 ONSEC 4, (2009) 32 OSCB 1249 at para 64

⁷ *Committee for Justice & Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 at 394

⁸ *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 (**Yukon**) at para 26

⁹ *RDS* at paras 114 and 141

- b. certain of Mr. Debus's factual assertions are incorrect; and
- c. a reasonable, informed person considering the entire record of the proceedings would reasonably conclude that I discharged my adjudicative duties fully, fairly, and impartially.

[15] IIROC Staff submits that:

- a. Mr. Debus has failed to demonstrate actual bias or meet the high threshold for finding a reasonable apprehension of bias;
- b. steps undertaken by me to control the Hearing, ask questions for clarification purposes, and issue rulings unfavourable to Mr. Debus do not constitute bias against Mr. Debus or Mr. Persaud; and
- c. the proper route for disagreements with any rulings made during these proceedings is through an appeal.

[16] I will now address in turn each of the three categories described above.

2. The manner in which I conducted the proceeding

(a) Error in law relating to reserving reasons for decisions

- [17] Mr. Debus submits that I consistently issued decisions with reasons to follow on his motions while issuing reasons with my decisions on motions by IIROC Staff or OSC Staff. That submission is factually inaccurate.
- [18] During this proceeding I have issued decisions with reasons to follow on two of six applications brought by Mr. Debus. The first was my decision, issued on April 9, 2020, not to issue a summons for documents from a third party. The second was my decision not to grant Mr. Debus's fifth adjournment request, which I heard orally on January 27, 2021.
- [19] I issued reasons with my decisions for two of Mr. Debus's requests for adjournment and extension of filing times, and granted two other requests, one for an extension of filing times and the other for an adjournment, orally with no reasons.
- [20] IIROC Staff and OSC Staff filed one joint motion in this proceeding, objecting to Mr. Debus's intention to adduce new evidence at the Hearing. I issued my decision on December 2, 2020, and my reasons for that decision on January 18, 2021.¹⁰
- [21] Mr. Debus did not articulate any reason why my alleged course of conduct in issuing decisions with reasons to follow created an apparent lack of impartiality. Regardless, the record of this proceeding does not reflect any such course of conduct.

¹⁰ *Debus (Re)*, 2021 ONSEC 1, (2021) 44 OSCB 553

(b) Improper refusal to allow evidence that was not before the IIROC panel

- [22] Mr. Debus submits that I improperly failed to allow new evidence at the Hearing that had not been before the IIROC panel, including with respect to his application to call an expert witness.
- [23] On October 10, 2020, Mr. Debus confirmed his intention to introduce new evidence at the Hearing. I had asked for this confirmation because the new evidence Mr. Debus had originally indicated he would introduce included the documents for which I had declined to issue a summons in my April 9, 2020 decision.
- [24] IIROC Staff and OSC Staff objected to the introduction of the new evidence. The motion to consider whether the new evidence could be introduced was heard in writing.
- [25] A hearing and review pursuant to s. 8(2) of the *Securities Act*¹¹ is a hearing "de novo", rather than an appeal. In other words, the Commission exercises original jurisdiction rather than a more limited appellate jurisdiction.¹² Unless a party establishes that it would be appropriate to introduce new evidence, the evidence before the panel in such a hearing is the record of the original proceeding buttressed by the parties' written and oral submissions.
- [26] The Commission has taken a restrained approach in exercising its discretion to allow new evidence to be introduced.¹³
- [27] While the Commission need not defer to an IIROC panel's decision, the Commission has chosen as a matter of practice to limit the circumstances under which it will substitute its own decision for that of a self-regulatory organization such as IIROC. The Commission has stated that it will only interfere with a decision of a self-regulatory organization in certain circumstances, one of which is where "new and compelling evidence was presented to the Commission that was not presented to the [self-regulatory organization]".¹⁴
- [28] It follows that any new evidence admitted on an application for hearing and review must be "new and compelling."¹⁵
- [29] On December 2, 2020, I ordered that Mr. Debus could neither examine his five proposed witnesses nor adduce additional documentary evidence. My reasons for the decision were issued on January 18, 2021.
- [30] Mr. Debus submits that I erroneously placed the burden on him "in an apparent haste to deny [him] procedural fairness". I did, orally at the September 30, 2020 attendance where this point was discussed with the parties, order that Mr. Debus bring a motion to introduce new evidence. However, my oral comments were

¹¹ RSO 1990, c S.5

¹² *Rudensky (Re)*, 2019 ONSEC 24, (2019) 42 OSCB 6141 at para 29, citing *Boulieris (Re)*, 2004 ONSEC 1, (2004) 27 OSCB 1597 at paras 29-30, aff'd 2005 CanLII 16629 (ON SCDC), [2005] OJ No 1984 (Div Ct) and *Vitug (Re)*, 2010 ONSEC 7, (2010) 33 OSCB 3965 at para 43, aff'd 2010 ONSC 4464 (Div Ct)

¹³ *Northern Securities Inc. (Re)*, 2013 ONSEC 48, (2014) 37 OSCB 161 (***Northern Securities***) at para 28

¹⁴ *Canada Malting Co. (Re)*, (1986) 9 OSCB 3565 at para 24

¹⁵ *Northern Securities* at para 30

clarified the next day, when I issued a written order reflecting the attendance and requiring only that Mr. Debus advise the Registrar and the parties of his intentions about any new evidence. Mr. Debus suffered no prejudice from any inconsistency between my oral comments and the written order.

- [31] My subsequent decision not to allow the introduction of new evidence was made on the basis of whether Mr. Debus had met the established test. Disagreement with the findings made against the interests of a party is not evidence of a reasonable apprehension of bias. The appropriate forum for addressing any concerns with that decision is an appeal.
- [32] With respect to the denial of a request for an expert witness, the record of the proceeding reflects that Mr. Debus did not formalize his intention to introduce an expert witness. I made no ruling on that issue.

(c) Allegedly precluding Mr. Persaud from fairly presenting Mr. Debus's case

- [33] Mr. Debus submits that I prevented his counsel Mr. Persaud from fairly presenting his case by interrupting and deciding how Mr. Persaud should proceed.
- [34] One of the Commission's important objectives is that proceedings be conducted in a just, expeditious, and cost-effective manner.¹⁶ At the outset of the Hearing I advised the parties that I had read their written submissions and that there was no need to repeat them. During the course of the Hearing I advised Mr. Persaud that there was no need to read into the transcript information that was already part of the original record of proceedings. I also indicated when I felt Mr. Persaud had addressed a point and he should move on to other issues. In addition, I asked Mr. Persaud questions to clarify his written and oral submissions.
- [35] The transcripts of the Hearing indicate that I was mindful of the time available, two days having been scheduled for the Hearing, and the need to ensure that there was sufficient time for all of the parties to make oral submissions, including time for Mr. Persaud's reply submissions, if any. This was consistent with my obligation to ensure a just and expeditious hearing for all of the parties.
- [36] The case Mr. Debus cites for the premise that questioning by a trier of fact can form the basis of a reasonable apprehension of bias, *Brouillard v The Queen*¹⁷, is distinguishable. That case involved a judge questioning a witness, and the manner and content of the questioning raised bias concerns. This is not the case here. My questions were appropriately directed to counsel in an effort to clarify his written and oral submissions.

¹⁶ *Ontario Securities Commission Rules of Procedure and Forms*, (2019) 42 OSCB 9714, r 1

¹⁷ [1985] 1 SCR 39 (**Brouillard**)

3. My attitude towards Mr. Persaud's health

(a) References to Mr. Persaud's health in reasons granting adjournments

- [37] Mr. Debus submits that on two occasions, when giving reasons for my decisions to grant his adjournment requests, I made gratuitous references to Mr. Persaud's health.
- [38] The first occasion relates to reasons issued on May 21, 2020¹⁸, for my decision on May 8, 2020, to grant an adjournment. At the commencement of the Hearing on January 27, 2021, Mr. Debus brought to my attention an error in my May 2020 reasons, in which I referred to Mr. Persaud's "personal and health" concerns. Later on January 27, 2021, after reviewing those reasons and the material in support, I advised that the inclusion of "and" was a typographical error and would be corrected. The Notice of Correction was issued on February 8, 2021. The error cannot reasonably be interpreted as demonstrating bias, a conclusion that is supported by the fact that Mr. Debus did not raise the concern when the reasons were issued.
- [39] The second occasion relates to my August 18, 2020 reasons granting Mr. Debus's third request for an adjournment.¹⁹ In those reasons, I balanced Mr. Persaud's right to privacy with Mr. Debus's obligation, imposed by the Commission's Rules, to establish that the high bar set in Rule 29(1) of "exceptional circumstances" warranting a further adjournment had been met.
- [40] The two previous adjournments had been granted due to Mr. Persaud's unspecified health issues. In support of the third motion to adjourn, Mr. Debus filed a medical note with the Tribunal, which provided specificity that had not previously been communicated. As I explained in my reasons, the medical note was a significant factor in my determining that the test for an adjournment had been met.
- [41] In striving to achieve the appropriate balance I marked the medical note as confidential under Rule 22(4) of the Commission's *Rules of Procedure and Forms* and subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019*²⁰. I did so without having been asked. I included in my reasons only those details from the note that were necessary to support my conclusion that the standard of "exceptional circumstances" had been met. This balancing was in no way gratuitous or disrespectful to Mr. Persaud.

(b) Handling Mr. Debus's January 19, 2021, request for an adjournment in a manner that disregarded Mr. Persaud's health concerns

- [42] Mr. Debus advised on January 19, 2021, just over a week before the Hearing was to begin, that he was seeking a further adjournment of the Hearing. I informed the parties the following day, through the Registrar, that I would hear oral submissions regarding the request at the start of the Hearing on January 27, 2021. Mr. Debus did not ask at the time that his request for an adjournment be dealt with in a different manner. He now says my refusal to deal with the

¹⁸ *Debus (Re)*, 2020 ONSEC 13, (2020) 43 OSCB 4479

¹⁹ *Debus (Re)*, 2020 ONSEC 20, (2020) 43 OSCB 6577

²⁰ SO 2019, c 7, Sched 60

adjournment motion prior to the hearing date disregarded Mr. Persaud's medical difficulties and that proceeding with the adjournment motion and the Hearing on January 27 put Mr. Persaud, his associate Mr. Kelley, and Mr. Debus at risk as they had to participate in the Hearing together by videoconference from Mr. Persaud's offices.

- [43] The fact that previous requests for adjournment had been heard in writing did not guarantee that future adjournment requests would be dealt with in the same way. Commission panels have the discretion to manage their process as they deem appropriate to achieve the objective of conducting a proceeding in a just, expeditious and cost-effective manner. Commission panels have, where appropriate in the circumstances, heard a request for an adjournment at the start of a hearing and proceeded with the hearing if the request was denied.²¹
- [44] Hearing oral submissions regarding the adjournment request at the start of the Hearing was not inconsistent with Commission practice and does not give rise to a reasonable apprehension of bias.
- [45] Mr. Debus had known, since the September 30, 2020 attendance in this matter, that the Hearing dates were peremptory on him. He also knew, from reasons issued on earlier adjournment requests, that the bar for granting an adjournment is high and that one's choice of counsel is not absolute. Mr. Debus had full opportunity on January 27, 2021, to make submissions about whether a further adjournment was warranted in the circumstances. My reasons for the decision denying the request for an adjournment can be found at section III.B of the Hearing Reasons and Decision.²²
- [46] The adjournment request, and the Hearing that immediately followed, were held by videoconference, so that all parties could attend in a manner consistent with public health measures. There was no requirement that Mr. Debus, Mr. Persaud and Mr. Kelley be physically together in Mr. Persaud's office for the adjournment request or Hearing. That decision was their choice.
- [47] Mr. Debus has failed to establish that the manner in which his adjournment request was heard could reasonably be seen to demonstrate bias. The fact that an adjudicator has ruled against a party or that a party disagrees with a finding of an adjudicator does not constitute bias. The appropriate forum for any disagreement with my decision is an appeal.

(c) Alleged failure to accommodate Mr. Persaud

- [48] Mr. Debus submits that I failed or refused to accommodate Mr. Persaud in any way despite being aware of his serious health issues. That is factually inaccurate.
- [49] During this proceeding Mr. Debus has been granted four extensions of dates for the filing of various materials and four adjournments of the Hearing date, all in some way related to Mr. Persaud's lack of availability for health-related reasons.
- [50] In response to Mr. Debus's September 2020 adjournment request due to Mr. Persaud's health issues, I raised for Mr. Debus's consideration whether proceeding with the Hearing in writing would accommodate those concerns. Mr. Debus responded that an oral hearing was required.

²¹ See, e.g., *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40, (2020) 43 OSCB 35

²² *Debus (Re)*, 2021 ONSEC 22

- [51] During the Hearing on January 27 and 28, 2021, I provided accommodations to Mr. Persaud, including:
- a. agreeing on January 27 that Mr. Persaud attend the Hearing by audio only;
 - b. delaying the start of the Hearing on January 28 to accommodate Mr. Persaud's arrival; and
 - c. recessing for an hour on January 28 to provide Mr. Persaud with an opportunity to prepare oral reply submissions.

[52] Mr. Persaud was accommodated on multiple occasions. Mr. Debus's dissatisfaction with my decisions is insufficient to give rise to a reasonable apprehension of bias.

(d) Alleged "attack" on Mr. Persaud in an angry tone

[53] Mr. Debus submits that I "attacked" Mr. Persaud by speaking to him in an angry tone about his not looking at his camera on two occasions during the Hearing.

[54] The transcript of January 27, 2021 shows that I advised Mr. Persaud he was turned away from the camera in case he was not aware of the fact. I told him that it was "quite all right" and that I was not "reading anything into it", merely bringing it to his attention.²³

[55] Later that same day, I advised Mr. Persaud again, in case he was not aware, that he had his back to the camera and it was "making it...a little hard to hear". In this instance, I also told Mr. Persaud that "it's quite all right".²⁴

[56] There have been circumstances where, in addition to other factors, a judge's sarcastic remarks when questioning a witness²⁵ or disparaging and disrespectful remarks to counsel,²⁶ were found on appeal to rise to the level of reasonable apprehension of bias.

[57] There is nothing in either exchange above that Mr. Debus cites in support of this ground for his motion that reflects any such behaviour on my part. I disagree with Mr. Debus's submission on this point.

(e) Timing of the order for the destruction of copies of the medical note

[58] At the start of the Hearing on January 27, 2021, Mr. Debus brought a motion for an order directing IIROC Staff and OSC Staff to destroy copies of the medical note. I reserved my decision until I had had an opportunity to consider the parties' submissions on the motion.

[59] Mr. Debus says that the timing of my decision showed bias as it was only after the motion for my recusal that I addressed this serious issue. I disagree.

[60] I made my decision to grant the order during the course of the Hearing and had planned to communicate it prior to the Hearing's close. Mr. Debus advised of his intention to bring this recusal motion at the end of the Hearing but before I was

²³ Hearing Transcript, Debus (Re), January 27, 2021 at 30

²⁴ Hearing Transcript, Debus (Re), January 27, 2021 at 95

²⁵ *Brouillard*

²⁶ *Yukon*

able to communicate my decision about the medical note. Rather than leave this sensitive matter outstanding, I told the parties of my decision before the completion of the Hearing. There is nothing inherently insensitive about my decision to leave communication of a decision on a preliminary motion to the end of a two-day hearing, and my decision was not impacted in any way by the bringing of the bias motion by Mr. Debus.

4. My alleged partiality towards IIROC Staff and OSC Staff

(a) Failure to conspicuously address allegedly improper and unprofessional conduct by IIROC Staff and OSC Staff toward Mr. Persaud

- [61] In response to Mr. Debus's fourth adjournment request in September 2020, I asked IIROC Staff and OSC Staff for submissions. In response, they filed a joint submission dated September 24, 2020, opposing the request. In addition to outlining the test for granting an adjournment and referring to previous extensions and adjournments granted, IIROC Staff and OSC Staff submitted that, in the absence of evidence in the form of a medical note as had been provided for the previous adjournment, the Hearing should proceed.
- [62] In my July 28, 2020 order granting the preceding adjournment, I placed significance on the medical note, which had for the first time provided some specificity to support the conclusion that there were exceptional circumstances warranting a third adjournment. Given those reasons, a submission from IIROC Staff and OSC Staff that similar evidence supporting the existence of exceptional circumstances was required was neither surprising nor unprofessional. Nor was there anything in the language of the submission that suggested a callous or disrespectful attitude to Mr. Persaud, let alone one that warranted my intervention.
- [63] On October 2, 2020, Mr. Debus wrote to IIROC Staff and OSC Staff and asked that they destroy their copies of the medical note. IIROC Staff and OSC Staff refused, and instead suggested that Mr. Debus provide a redacted copy of the medical note.
- [64] Mr. Debus now says that IIROC Staff and OSC Staff were unprofessional in their response, that I should have commented to that effect, and that my failure to do so suggests bias.
- [65] I was not privy to this communication among the parties at the time. It is therefore irrelevant to the question of whether my conduct at the Hearing gave rise to a reasonable apprehension of bias. Accordingly, it is unnecessary, and would be inappropriate, for me to express a view as to the professionalism of the communication among the parties.

(b) Alleged failure to maintain my impartial adjudicative function

- [66] Mr. Debus submits that I failed to maintain my impartial adjudicative function, which supports a conclusion of a reasonable apprehension of bias against him and Mr. Persaud. The two instances Mr. Debus cites in support of this submission are: my characterization of Mr. Persaud's statements during the Hearing about IIROC Staff's and OSC Staff's conduct, including as they relate to IIROC Staff's use of the term "agent", as "bald assertions"; and my statement that I did not

agree with Mr. Persaud's characterization of IIROC Staff's submission about revisiting the stay of the IIROC sanctions decision as a "threat" against Mr. Debus.

- [67] During IIROC Staff's oral submissions on the second day of the Hearing, Mr. Persaud interjected to object to IIROC Staff's use of the term "agent" when referring to the paralegal who had acted for Mr. Debus during the IIROC hearing. Mr. Persaud stated that the term was incorrect and IIROC Staff should be directed not to use it. Mr. Persaud also stated that IIROC Staff was intentionally identifying the representative as an "agent" rather than a paralegal in a disingenuous attempt to apply certain jurisprudence and to mislead the panel. Mr. Persaud said he was "pointing out a pattern of conduct by counsel that should be dealt with, and they should be called on the carpet, because my client continues to have to deal with improper conduct by counsel".²⁷
- [68] I reminded Mr. Persaud that IIROC Staff was making submissions, that it was entitled to make submissions as he had done the preceding day, and that he would have a full opportunity to respond in his reply submissions. I asked that he hold any response to IIROC Staff's submission until his reply submissions.²⁸
- [69] I then stated that Mr. Persaud "[had], on a number of occasions, made some bald assertions about improper conduct by counsel"²⁹ and I asked that he either particularize those allegations so that counsel could respond or desist in making the comments.³⁰
- [70] During the Hearing, Mr. Persaud made numerous statements that IIROC Staff and/or OSC Staff had engaged in misconduct or were in violation of their professional obligations.³¹ An attempt by OSC Staff on January 27, 2021 to obtain particulars from Mr. Persaud about OSC Staff's alleged breach of their professional responsibilities did not elicit any specific details from Mr. Persaud.
- [71] The term "bald" is used frequently by courts and other adjudicative bodies to describe the nature of assertions or allegations. It is a convenient and concise term that does not by itself reasonably support the conclusion that it carries a pejorative connotation.
- [72] As an adjudicator I have an obligation to ensure that proceedings before me are conducted in a fair and orderly manner. My comments to Mr. Persaud were made in that context. It was appropriate to request that any allegations of improper conduct be specified so they could be properly addressed.
- [73] As for IIROC Staff's use of the term "agent", IIROC Staff submits that it was not deceptive, deliberately misleading, or disingenuous and that its use of the term neither had implications for the Hearing nor any effect on me. "Agent", IIROC Staff submits, is one of two categories of persons identified in IIROC's Consolidated Rules who may represent a party in an IIROC proceeding.³² IIROC Staff also submits that it made numerous references to Mr. Debus's

²⁷ Hearing Transcript, Debus (Re), January 28, 2021 at 21 line 24 – 22 line 6 and at 22 lines 16-20

²⁸ Hearing Transcript, Debus (Re), January 28, 2021 at 23 lines 1-4 and lines 15-18

²⁹ Hearing Transcript, Debus (Re), January 28, 2021 at 23 lines 4-5

³⁰ Hearing Transcript, Debus (Re), January 28, 2021 at 23 lines 10-15

³¹ Hearing Transcript, Debus (Re), January 27, 2021 at 14-16, 20-22, 51, 96, 98-101, and 107-108

³² *IIROC Consolidated Enforcement, Examination and Approval Rules*, r 8203(6), 8402 "oral hearing", 8405(1), (3)-(8), 8406(3)-(4), (9), 8416(2), 8420(3), 8423(1) and (8)

representative being a paralegal.³³ In addition, IIROC Staff submits that I was unaffected by IIROC Staff's use of the term as I noted at the end of its oral submissions that the only new issue to be addressed by Mr. Debus in reply submissions was "with respect to the issue of a panel's obligation regarding a paralegal."³⁴ I find that, pursuant to IIROC's Rules, the use of the term agent is appropriate when describing a licensed paralegal.

- [74] I now turn to my comment that I did not agree with Mr. Persaud's characterization that it was a "threat" for IIROC Staff to submit that consideration be given to lifting the stay on the sanctions imposed on Mr. Debus.
- [75] I ordered the stay of the sanctions at an appearance in this proceeding on August 21, 2019. At that appearance, IIROC Staff did not object to the stay on the understanding that the Hearing would proceed without delay.³⁵ IIROC Staff's submission that consideration should be given to whether the stay should be lifted came approximately 17 months later, in response to Mr. Debus's fifth adjournment request.
- [76] In the circumstances, IIROC Staff's submission was neither surprising nor inappropriate and was not, in my view, communicated as a threat to Mr. Debus. Whether the stay of the sanctions levied by the IIROC panel over a year earlier should have remained in effect was a legitimate issue to consider when addressing a request for a further adjournment.
- [77] It is possible that an objective observer might consider either or both of my statements above as an indication of momentary impatience. Even if that were the case, it would not give rise to a reasonable apprehension of bias. As the Court of Appeal for Ontario has held, "[i]t takes much more than a demonstration of judicial impatience with counsel or even downright rudeness to dispel the strong presumption of impartiality."³⁶

(c) *Condoning OSC Staff's abdication of its role*

- [78] Mr. Debus submits that OSC Staff abdicated its proper role in the Hearing by acting as co-counsel to IIROC Staff and making joint submissions, instead of providing independent legal advice to the Panel. Mr. Debus submits that this was improper and that I improperly condoned the conduct.
- [79] This submission is founded upon a fundamental misunderstanding of OSC Staff's role. OSC Staff does not advise the tribunal. OSC Staff is a party in a hearing and review proceeding.³⁷ The panel has its own counsel, who are completely independent of OSC Staff.
- [80] There was nothing improper about OSC Staff's conduct during the Hearing. OSC Staff was free to make whatever submissions it chose to during the hearing, including joint submissions where appropriate in the interest of efficiency.

³³ Hearing Transcript, Debus (Re), January 28, 2021 at 17 lines 6-8 and 16-18, at 18 lines 5-6 and 9-13, and at 24 lines 13-17

³⁴ Hearing Transcript, Debus (Re), January 28, 2021 at 45 lines 10-12

³⁵ Hearing Transcript, Debus (Re), August 21, 2019 at 6 lines 16-28

³⁶ *Kelly v Palazzo*, 2008 ONCA 82 at para 21

³⁷ *TD Securities Inc. (Re)*, 2013 ONSEC 29, (2013) 36 OSCB 7492 at para 7

III. CONCLUSION

[81] For the above reasons, I find that there is no reasonable basis for an apprehension of bias. The motion is dismissed.

Dated at Toronto this 31st day of August, 2021.

"M. Cecilia Williams"

M. Cecilia Williams