IN THE MATTER OF AN APPLICATION FOR A HEARING AND REVIEW OF DECISIONS OF THE ONTARIO DISTRICT COUNCIL OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA PURSUANT TO SECTION 21.7 OF THE SECURITIES ACT, R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF DISCIPLINE PROCEEDINGS PURSUANT TO BY-LAW 20 OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

BETWEEN

STAFF OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

- AND -

STEPHEN TAUB

REASONS AND DECISION

Hearing:	April 2, 2007	
Panel:	Robert L. Shirriff Q.C.	- Commissioner, Chair of the Panel
	Margot C. Howard	- Commissioner
	James E. A. Turner	- Vice-Chair
Counsel:	Robert Brush Abbas Sabur	- for Stephen Taub, the Applicant
	Andrew P. Werbowski Ricardo Codina	- for Staff of the Investment Dealers Association, the Respondent
	Yvonne B. Chisholm	- for Staff of the Ontario Securities Commission

REASONS AND DECISION

I. OVERVIEW

[1] This is an application for a hearing and review of two decisions of the Ontario District Council (the "District Council") of the Investment Dealers Association of Canada (the "Association" or the "IDA") pursuant to section 21.7 of the Ontario *Securities Act* R.S.O., 1990, c. S.5 (the "Act").

[2] On October 21, 2005, IDA Staff commenced disciplinary proceedings against Stephen Taub (the "Applicant"), alleging various breaches of the Association's by-laws and rules (the "IDA Disciplinary Proceeding"). The Applicant sought a declaration from the District Council that the IDA lacked jurisdiction to proceed against him because he was no longer a member of the Association. IDA Staff sought a preliminary declaration that the District Council lacked jurisdiction to grant the relief sought by the Applicant because it would require the District Council to refuse to apply the Association's by-laws.

[3] The District Council denied the Applicant's motion and granted the relief sought by IDA Staff. The District Council held that the IDA is not a statutory body which exercises a statutory power of decision. The District Council further determined that recognition under the Act does not constitute a conferral of jurisdiction, but merely imposes upon the IDA a duty to regulate.

[4] The Applicant requests this hearing and review before the Ontario Securities Commission (the "Commission") on the basis that:

a) the District Council erred in concluding that the IDA retains jurisdiction over former members; and

b) the District Council erred in concluding that it did not have the jurisdiction to grant the relief requested by the Applicant.

[5] The Applicant takes the position that the Association no longer has jurisdiction to proceed with the IDA Disciplinary Proceeding against him on the basis that he has resigned from his employment in the securities industry, has no intention of returning to work in the industry and is no longer a member of the IDA.

[6] IDA Staff and staff of the Commission ("Commission Staff") argue that the Association's relationship with its members, and the source of its jurisdiction, is contractual. As such, they submit that the Applicant seeks to resile from his contractual commitment by resigning as a member to avoid disciplinary proceedings and effectively preclude the Association from fulfilling its mandate to protect investors and foster integrity of the capital markets.

II. HISTORY OF DISCIPLINARY PROCEEDINGS AGAINST THE APPLICANT

(a) The Applicant

[7] The Applicant first became a registered representative in or about June 1988. He was involved in the securities industry from 1988 to 2004.

[8] In 1995 and in 2001, the Applicant and his respective employers, R. Brant Securities Limited ("Brant") and Research Capital Corporation ("Research"), completed and signed a Uniform Application for Registration/Approval ("the Applications") prior to the Applicant commencing employment as a registered representative with each of Brant and Research.

[9] The Uniform Application provides that it: "is to be used by every individual seeking registration or approval from a Canadian Securities Commission or similar authority and/or self-regulatory organization…"

[10] Under the heading "certificate and agreement of Applicant and Sponsoring Firm", the Applicant and his respective employers certified that the statements in the Uniform Applications were true and correct and undertook to notify the IDA in writing of any material change, as prescribed by any by-law or rule of the Association.

[11] In question 4 of the Applications, the Applicant sought approval from the Association. Further, as indicated in the Applications, the Applicant and his sponsoring member firms agreed as follows:

> We agree that we are conversant with the by-laws, rulings, rules and regulations of the self-regulatory organizations listed in question 4.
>
> We agree to be bound by and to observe and comply with them as they are from time to time amended or supplemented and we agree to keep ourselves fully informed about them as so amended and supplemented. We submit to the jurisdiction of the self-regulatory organizations and, wherever applicable, the governors, directors and committees thereof, and we agree that any approval granted pursuant to this application may be revoked, terminated or suspended at any time in accordance with the then applicable by-laws, rulings, rules and regulations.

[12] The Applications were approved by the Association. Until September 2004, the Applicant was employed in the investment industry, was a member of the IDA and received all of the benefits of being a member of the IDA.

[13] In or about September 2004, the Applicant ceased being a registered representative and a member of the IDA. The Applicant has not been registered with the IDA since that time and has indicated that he has no intention of returning to an occupation regulated by the IDA or to be a member of the IDA.

(b) Decisions Under Review

[14] IDA Staff commenced disciplinary proceedings against the Applicant on October 21, 2005, alleging various breaches of the Association's by-laws and rules. The original set-date appearance occurred on November 25, 2005 before the District Council, at which time a five week hearing was scheduled to commence on September 26, 2006.

[15] IDA Staff alleged that, from November 1998 to June 2003, the Applicant contravened IDA By-law 29.1 by, among other things, facilitating "trading activity that appeared to be or was consistent with market manipulation or deception" and "circumventing" IDA and SEC rules by opening accounts and accepting orders from clients outside his jurisdiction of registration."

[16] An order setting out a timetable for various procedural matters was made, on consent of the parties, at a pre-hearing conference on February 21, 2006. The order included a provision that the Applicant would deliver his response to the Notice of Hearing by a certain date.

[17] On March 24, 2006, IDA Staff served a motion record seeking an order allowing an amendment to the original Notice of Hearing.

[18] On June 8, 2006, IDA Staff served a motion record seeking an order requiring the Applicant to deliver forthwith his response in the IDA Disciplinary Proceeding because he had not complied with the consent order requiring that he file his response by a certain date.

[19] On June 12, 2006, the Applicant brought a motion seeking a declaration that the IDA lacked jurisdiction to proceed against him because he was no longer a member of the Association.

[20] On June 15, 2006, IDA Staff delivered a responding motion record to the Applicant's motion.

[21] On June 19, 2006, IDA Staff brought a motion seeking a preliminary declaration that the District Council lacked jurisdiction to grant the relief sought by the Applicant.

[22] The procedural motions were heard on June 25, 2006. On consent, IDA Staff's motions to amend the original Notice of Hearing and to require a response from the Applicant in the IDA Disciplinary Proceeding were adjourned. The District Council denied the Applicant's motion and granted the declaratory relief sought by IDA Staff.

[23] The Applicant seeks a review of these two decisions.

III. ISSUES

[24] The issues that we have to determine in this hearing and review are:

1. What is the standard of review applied by the Commission in reviewing a decision of the IDA?

2. Did the District Council err in concluding that the IDA retains jurisdiction over former members?

3. Did the District Council err in concluding that it did not have the jurisdiction to grant the relief requested by the Applicant?

IV. ANALYSIS

1. What is the standard of review?

[25] The parties agree that the Commission may substitute its decision for that of the District Council, if it is satisfied that the District Council erred in law.

[26] The Act specifically provides a mechanism for review by the Commission of a decision of a recognized self-regulatory organization ("SRO") such as the IDA. Section 21.7 of the Act reads as follows:

> 21.7 (1) The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or recognized clearing agency may apply to the Commission for a hearing and review of the direction, decision, order or ruling.
>
> (2) Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director.

[27] The Act also provides that the Commission may confirm the decision under review or make such other decisions it considers proper. Subsection 8(3) of the Act reads as follows:

> 8(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

[28] Where the basis of the application is a decision of a recognized stock exchange, recognized SRO or similar body pursuant to section 21.7 of the Act, the Commission will accord deference to factual determinations central to the SRO's specialized competence. (*Re Shambleau* (2002), 25 O.S.C.B. 1850 at 1852; aff'd (2003), 26 O.S.C.B. 1629 (Ont. Div.Ct.)).

[29] The Commission has previously held that by reason of subsection 21.7(2) of the Act, the Commission exercises original jurisdiction (as opposed to a limited appellate jurisdiction) when exercising its powers of review under subsection 21.7(1) of the Act. (*In the Matter of an Application for a Hearing and Review of Decisions of the Ontario District Council of the IDA, Re: Dimitrios Boulieris* (2004), 27 O.S.C.B. 1597 at para. 28; aff'd [2005] O.J. No. 1884 (Ont. Div. Ct.) ["*Boulieris*"]).

[30] The Commission is, therefore, free as a legal matter to substitute its judgment for that of the District Council. (*Security Trading Inc. and the Toronto Stock Exchange* (1994), 17 O.S.C.B. 6097 at 6105 ["*Security Trading Inc*."]; *BioCapital Biotechnology and Healthcare Fund and BioCapital Mutual Fund Management Inc*. (2001), 24 O.S.C.B. 2659 at 2662; and *Re Boulieris, supra* at paras. 29-30.)

[31] In this regard, such a hearing and review may be considered broader in scope than an appeal, which is usually limited to determining whether there has been an error in law or whether a rule of natural justice has been contravened.

[32] However, in practice, the Commission takes a more restrained approach to appeals under subsection 21.7(1) of the Act. The Commission will interfere with a decision of an SRO only if one of the following grounds are present:

1. the SRO has proceeded on an incorrect principle;
2. the SRO has erred in law;
3. the SRO has overlooked some material evidence;
4. new and compelling evidence is presented to the Commission that was not presented to the SRO; or
5. the SRO's perception of the public interest conflicts with that of the Commission.

(*Re Canada Malting* (1986), 9 O.S.C.B. 3565 at 3587; *Security Trading Inc.*, *supra* at 6105; and *Re Boulieris, supra* at para. 31).

[33] The Commission will not substitute its own view for that of an SRO just because the Commission might have reached a different conclusion in the particular circumstances.

[34] The Applicant has appealed the decisions of the District Council on the basis that the District Council erred in law in making those decisions. As a result, we will interfere with the decision of the District Council in the circumstances before us, only if we determine that the District Council erred in law.

2. Did the District Council err in law in concluding that the IDA retains jurisdiction over former members?

(a) Submissions of the Applicant

[35] The Applicant agreed with IDA Staff and Commission Staff that the IDA is not a statutory body which was created by enabling legislation. The Applicant also conceded

that the IDA derives its authority from the contractual commitment of its members to abide by its by-laws, rules, regulations, and other regulatory requirements.

[36] The Applicant argued, however, that this contractual relationship cannot be used to extend the IDA's jurisdiction as a recognized SRO beyond the limits imposed by the Act.

[37] The Applicant submitted that Part VIII of the Act creates a "special category" of SRO in Ontario by permitting organizations such as the IDA to apply to the Commission for recognition under section 21.1 of the Act. The IDA sought and received recognition by the Commission as a self-regulatory organization. By opting into the statutory scheme established under Part VIII of the Act, the IDA "linked" its activities to a statutory securities scheme and, in doing so, submitted to the jurisdiction of the Act and gave up exclusive control over the conduct of its affairs and the nature of its regulatory functions.

[38] The Applicant submitted that recognition by the Commission, and in particular the effect of subsection 21.1(3) of the Act, effectively limits and restricts the Association's pre-existing contractual jurisdiction. Citing section 21.6 of the Act, the Applicant submitted that a recognized SRO can only impose requirements that are within its jurisdiction. As such, any by-law, rule, regulation, or other regulatory requirement of a recognized SRO that is not in compliance with the jurisdictional limits imposed by s. 21.1(3) of the Act is of no force or effect. According to the Applicant, By-law 20.7, by seeking to extend the Association's jurisdiction to former members, is *ultra vires* its powers and hence unenforceable.

[39] The Applicant relied heavily upon the decision of the Ontario Court of Appeal in *Chalmers v. Toronto Stock Exchange* (1989), 70 O.R. (2d) 532 ["*Chalmers*"] as authority to interpret the language used by the Legislature in s. 21.1(3) of the Act. In *Chalmers*, the Toronto Stock Exchange (the "TSE") had commenced proceedings against a former registered representative as a result of conduct that occurred while he was employed by a member firm. The Court of Appeal was asked to determine whether a by-law passed by the TSE that purported to give it jurisdiction over former members and former employees of members was contrary to section 10(1) of the *Toronto Stock Exchange Act, 1982*, S.O. 1982, c. 27, which stated:

> 10(1) For the purposes of the object of the Corporation, the board of directors has the power to govern and regulate,
>
> […]
>
> (c) the business conduct of members and other persons authorized to trade on the exchange and of their employees and agents and other persons associated with them in the conduct of business […]

[40] In interpreting this section, the Court of Appeal noted that the TSE is a creature of statute, taking its existence from the *Toronto Stock Exchange Act*. The court held that there was nothing in the statute which authorized the TSE to regulate persons who are former members or employees. Therefore, the by-law which purported to extend the

jurisdiction of the TSE to former employees of a member for a period of twelve months from the date of their resignation was not compatible with the TSE's enabling statute and was *ultra vires* and of no force and effect. The Applicant also referred us to the decision of the Saskatchewan Financial Services Commission ("SFSC") in *Wade Douglas MacBain, Karl Edward Newfeld and Frederick Henry Smith and the Investment Dealers Association* (February 6, 2006) ["*MacBain*"]. In *MacBain*, the SFSC followed *Chalmers* and held that the Association had no statutory authority to regulate former members and that any by-law purporting to do so was *ultra vires* its powers.

[41] By way of comparison, the Applicant also referred us to subsection 64(5) of the Alberta *Securities Act*, R.S.A. 2000, c. S-4. Subsections 64(4) and (5) read as follows:

> 64(4) A recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with the by-laws, rules, regulations, policies, procedures, interpretations and practices of the self-regulatory organization.
>
> (5) The authority of a self-regulatory organization to regulate the operations and the standards of practice and business conduct of its members and their representatives under subsection (4) extends to:
>
> (a) any former member,
>
> (b) any former representative of a member, and
>
> (c) any former representative of a former member,
>
> with respect to that person's operations and conduct while a member of the self-regulatory organization or a representative of a member of the self-regulatory organization.

[42] The Applicant submitted that unlike the language used in the Alberta legislation, the plain and ordinary meaning of subsection 21.1(3) of the Act cannot be interpreted as extending the jurisdiction of recognized SROs to former members. Absent explicit language to that effect, the Applicant submitted that the Commission is bound by the decision of the Court of Appeal in *Chalmers*.

(b) Submissions of IDA Staff

[43] IDA Staff argued that the District Council correctly determined that the jurisdiction of the IDA is contractual, not statutory, and that recognition by the Commission does not limit the Association's ability to regulate former members in accordance with its by-laws. IDA Staff distinguished the *Chalmers* decision on the basis that the Association has no enabling statute like the *Toronto Stock Exchange Act* which created and empowered the IDA. Since the Association is not a statutory body, its by-laws cannot be *ultra vires* an enabling statute.

[44] IDA Staff submitted that subsection 21.1(3) of the Act does not limit the Association's jurisdiction to current members. That provision merely imposes a duty on recognized SRO's to "regulate the operations and standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices". This is precisely what the Association has done. By-law 20.7 expressly enables the Association to regulate former members for the five year period following resignation or termination of membership, and is not inconsistent with subsection 21.1(3) of the Act.

[45] IDA Staff also submitted that interpreting subsection 21.1(3) in the manner suggested by the Applicant would have the result of allowing members and their representatives to reap the benefits of membership in the Association while retaining the ability to avoid sanctions for any misconduct by simply resigning before disciplinary proceedings are commenced. Such an interpretation, in the submission of IDA Staff, would undermine the Association's ability to discipline its members and would be inconsistent with its stated policy to protect the public interest.

[46] Finally, IDA Staff noted that, in submitting the Applications, the Applicant has agreed to a contractual relationship that gives the Association jurisdiction over his conduct. Accordingly, the Applicant agreed to be bound by, comply with and observe the by-laws, rules, regulations and other regulatory requirements of the Association. IDA Staff submitted that the Applicant's position on this appeal is inconsistent with that agreement.

(c) Submissions from Commission Staff

[47] Commission Staff submitted that the Ontario Court of Appeal has clearly recognized that the source of the IDA's jurisdiction and authority is contractual. Recognition of the IDA as an SRO by the Commission pursuant to section 21.1 does not alter the source of the IDA's jurisdiction or authority, nor the nature of its relationship with its members. The IDA's ability to proceed against former members is grounded in its contractual relationship with those members, as defined by its by-laws, rules, regulations and other regulatory requirements and is a proper exercise of its jurisdiction.

[48] Commission Staff distinguished the *Chalmers* decision on the basis that the TSE's authority is based on its enabling legislation, the *Toronto Stock Exchange Act*, while the source of the IDA's jurisdiction and authority is contractual and not determined by statute. Commission Staff submitted that the *Chalmers* decision hinged on a conflict between an enabling statute and a by-law created by an SRO. Since the Association is not a statutory body, no such conflict exists in the matter before us.

(d) Legal Analysis

[49] The source of the IDA's authority has been canvassed by several provincial appellate courts and is now well-settled. The IDA is not a statutory body and does not

exercise a statutory power of decision. The IDA's authority derives from its by-laws, rules, regulations and other regulatory requirements to which members agree as a contractual matter when they obtain membership.

[50] The authority of the IDA was confirmed in *Ripley v. Investment Dealers Association*, [1991] N.S.J. No. 452 (N.S.C.A.) (QL) at 6, where the Nova Scotia Court of Appeal held that:

> The Investment Dealers Association (IDA), as explained at some length in the appellant's factum, is an unincorporated association which oversees the investment and brokerage business in Canada, serving as the professional organization of, and regulating, member brokerage houses and their employees. It is not specifically empowered under any statute, although its existence is recognized in some securities legislation. It has its own constitution, by-laws and regulations to which its members bind themselves by contract to comply. The IDA establishes requirements for capitalization, procedures for purchase, sale and registration of securities for clients, audit procedures and other matters that govern the internal and external operations of national and local investment firms. The IDA also sets standards of qualifications for, and for the discipline of, persons engaged in the industry. Its authority does not extend to regulating the actual issuance of securities: that is vested in provincial securities commissions and the various stock exchanges sold. The sale of securities is regulated by statute in all Provinces. It is the persons and the firms who sell the securities that are regulated by the IDA.

[51] Likewise, in *Morgis v. Thomson Kernaghan & Co.* (2003), 65 O.R. (3d) 321 at para. 10, the Ontario Court of Appeal used similar language to describe the Association's authority:

> Membership in the IDA is voluntary. It is based on the contractual commitment of members to abide by the constitution, regulations, rules and by-laws of the association. The IDA is not created by and does not derive its authority from statute. Rather, it operates under the authority of its own constitution and is recognized under some securities legislation.

[52] Section 21.1 of the Act empowers the Commission to recognize an SRO if the Commission is satisfied that it is in the public interest to do so. A recognized SRO is required to "regulate the operations and standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices." Section 21.1 of the Act provides in part:

> 21.1 (1) The Commission may, on the application of a self-regulatory organization, recognize the self-regulatory organization if the Commission is satisfied that to do so would be in the public interest.

[…]

(3) A recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices.

(4) The Commission may, if it is satisfied that to do so would be in the public interest, make any decision with respect to any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized self-regulatory organization.

[53] The Commission recognized the IDA as a self-regulatory organization under section 21.1 of the Act on December 14, 1994. This recognition was subsequently renewed by the Commission for the period up to and after October 31, 1995. The recitals to the initial recognition included the following:

> WHEREAS the IDA is an unincorporated association in which membership is voluntary. It has approximately 111 investment dealers as members, all of whom, to the extent they trade in securities or act as underwriters in Ontario, are registrants under the Act and are subject to the regulatory oversight of the Commission. The IDA represents its members and is organized for the purpose of regulating the operations and the standards of practice and business conduct of its members and their representatives with a view to promoting the protection of investors and the public interest. The IDA regulates the conduct of its members and their trading in securities through rules set forth in its by-laws and regulations.
>
> (*In the Matter of the Investment Dealers Association of Canada* (1994), 17 O.S.C.B. 5961).

[54] In *Morgis*, the Court of Appeal found that the terms and conditions of the recognition "vest considerable supervisory control of the IDA in the Commission." Among other things, the terms and conditions of recognition "require the IDA to enforce compliance by its members with the rules of the IDA, as a matter of contract and without prejudice to any discipline by the Commission under Ontario securities law." In commenting on the effect of the Commission recognizing the IDA as a self-regulatory organization under the Act, the court observed the following:

> […] The IDA's relationship with the Commission and its recognition as a self-regulatory organization under s. 21.1 of the Act link its activities to a statutory securities scheme which, under s. 1.1 of the Act, is designed to provide protection to all investors in Canada from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and

> confidence in capital markets… those factors inform the analysis of the IDA's status and duties as a regulator, notwithstanding that its relationship with its members is contractual in nature.
>
> (*Morgis*, *supra* at paras 12 and 32).

[55] According to its constitution, the IDA's public interest mandate is to adopt and promote high standards of business conduct among its members and, once established, to enforce compliance with those standards. The constitution of the Association includes the following objects:

> 2. […]
>
> (b) To encourage through self-discipline and self-regulation a high standard of business conduct among Members and their partners, directors, officers and employers and to adopt, and enforce compliance with, such practices and requirements as may be necessary and desirable to guard against conduct contrary to the interests of Members, their clients or the public;
>
> (c) To establish, and enforce compliance with, standards and requirements relating to capital market participants for the protection of Members, their clients and the public;
>
> […]
>
> (IDA Rule Book, *Constitution*, section 2).

[56] The Act expressly provides that in carrying out its function as a recognized SRO, the IDA may impose additional requirements within its jurisdiction provided it does not contravene Ontario securities law. Section 21.6 of the Act provides as follows:

> 21.6 No by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or recognized clearing agency shall contravene Ontario securities law, but a recognized stock exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or recognized clearing agency may impose additional requirements within its jurisdiction.

[57] This is precisely what the IDA has done. By-law 20.7 expressly provides for the IDA's continuing jurisdiction over former members for a period of 5 years from cessation of membership:

(1) For the purposes of By-law 19 and By-law 20, any Member and any Approved Person shall remain subject to the jurisdiction of the Association for a period of five years from the date on which such Member or Approved Person ceased to be a Member or an Approved Person of the Association, subject to subsection (2).

(2) An enforcement hearing under Part 10 of this by-law may be brought against a former Approved Person who re-applies for approval under Part 7 of this by-law, notwithstanding expiry of the time period set out in subsection (1).

(3) An Approved Person whose approval is suspended or revoked or a Member who is expelled from membership or whose rights or privileges are suspended or terminated shall remain liable to the Association for all amounts owing to the Association.

(IDA Rule Book, *By-laws*, By-law 20.7).

We do not agree with the Applicant that this provision is beyond the jurisdiction of the IDA as a result of section 21.6.

[58] As a recognized SRO, the IDA may adopt by-laws that are binding on the Association's members. The enactment of the IDA's constitution and By-law 20.7 is within the jurisdiction of the Association to govern its members and is grounded in its contractual relationship with them. This power to impose additional requirements is expressly recognized in section 21.6 of the Act. In our view, section 21.6 does not limit or restrict what by-laws, rules, regulations or other regulatory requirements the IDA may adopt, provided such provisions do not contravene Ontario securities laws. In our view, By-law 20.7 does not contravene Ontario securities laws.

[59] We reject the Applicant's submission that the Court of Appeal's decision in *Chalmers* applies in these circumstances. In our view, the application of *Chalmers* is restricted to domestic tribunals that are created and governed by enabling legislation. As was observed by the appellate courts in both *Ripley* and *Morgis*, the IDA is an unincorporated association. Unlike the TSE, the IDA does not depend upon a statute for its existence or powers. The Association through its by-laws, rules, regulations and other regulatory requirements establishes a regulatory framework to which each of its members agrees by contract. Unlike *Chalmers*, the by-laws of the IDA are not *ultra vires* an enabling statute. Accordingly, we distinguish the conclusions in *Chalmers* and we do not follow the conclusions in *MacBain*.

[60] As stated above, section 21.1 of the Act requires the IDA to "regulate the operations and standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices". Section 21.1 does not in any way attempt to define or restrict the provisions of such by-laws, rules, regulations or other regulatory requirements. To the contrary, the recognition of the IDA, in the words of Justice Cronk in *Morgis*, simply "inform[s] the analysis of the IDA's status and duties as a regulator,

notwithstanding that its relationship with its members is contractual in nature" (*Morgis*, *supra* at para. 32).

[61] In signing the Applications, the Applicant and his sponsoring firm submitted to the jurisdiction of the IDA and agreed to the by-laws, rules, regulations and other regulatory requirements of the Association. By-law 20.7 provides that the Association shall have continuing jurisdiction over former members in investigative and disciplinary proceedings for a period of five years following cessation of membership. In our view, the fact that the Applicant resigned from the Association does not bar the IDA from taking disciplinary proceedings against him under its by-laws. Accordingly, there is no error in law which would warrant the Commission overturning the decisions of the District Council.

[62] We would also add that the by-laws, rules, regulations and other regulatory requirements of the IDA constitute part of the fabric of securities regulation in this province and that it would be contrary to the public interest to allow the Applicant to avoid such regulation by simply resigning his membership in the IDA. We also agree with the submissions of IDA Staff referred to in paragraph 45 of these reasons, that the interpretation advanced by the Applicant would undermine the Association's ability to discipline its members and would be inconsistent with its obligations to protect the public interest.

[63] In view of our decision, it is unnecessary for us to determine whether the District Council erred in concluding that it did not have jurisdiction to grant the relief requested by the Applicant.

V. CONCLUSION

[64] In conclusion, we find that the IDA has made no error in law which would warrant the Commission interfering with the decision of the District Council in this matter. Accordingly, the Applicant's application is dismissed.

DATED at Toronto this 17th day of May, 2007.

"Robert L. Shirriff" "Margot C. Howard"

Robert L. Shirriff Margot C. Howard

"James E. A. Turner"

James E. A. Turner