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Commission des valeurs mobilières de l'Ontario
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IN THE MATTER OF THE *SECURITIES ACT*,

R.S.O. 1990, c. S.5, AS AMENDED

- and -

IN THE MATTER OF LUCY MARIE PARIAK-LUKIC

- and -

IN THE MATTER OF A HEARING AND REVIEW OF A DECISION OF A PANEL OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA, DATED JANUARY 2, 2014 AND MARCH 6, 2014

REASONS AND DECISION

(Section 27.1 and Subsection 8(3) of the Act)

Hearing:	January 15, 2015		
Decision:	June 22, 2015		
Panel:	Christopher Portner	-	Commissioner
Counsel:	Alexandra Clark Rob DelFrate	-	For Staff of the Investment Industry Regulatory Organization
	Kevin Richard	-	For the Respondent, Lucy Marie Pariak-Lukic
	Keir Wilmut	-	For Staff of the Ontario Securities Commission

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REASONS AND DECISION

I. BACKGROUND

A. Introduction

[1] On January 15, 2015, the Ontario Securities Commission (the "**Commission**") held a hearing to consider an application by Staff of the Investment Industry Regulatory Organization of Canada ("**IIROC Staff**") dated April 9, 2014 (the "**Application**") under section 27.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") for a hearing and review of the decision on the merits of a hearing panel (the "**Panel**") of the Investment Industry Regulatory Organization of Canada ("**IIROC**") dated January 2, 2014, *In the Matter of Lucy Marie Pariak-Lukic*, 2014 IIROC 01 (the "**Merits Decision**") and the Panel's decision on sanctions dated March 6, 2014, *In the matter of Lucy Marie Pariak-Lukic*, 2014 IIROC 11 (the "**Sanctions Decision**"). The Merits Decision was issued by the Panel following the conclusion of the hearing on the merits on December 11, 2013 (the "**Merits Hearing**") and the Sanctions Decision was issued by the Panel following the hearing relating to sanctions which was held on February 20, 2014 (the "**Sanctions Hearing**").

[2] In the Merits Decision, the Panel stated that the Respondent, Lucy Marie Pariak-Lukic ("**Lukic**"), was a registered representative with yourCFO Advisory Group Inc. Lukic advised clients regarding specific investments and also acted as a financial planner, advising clients with respect to appropriate asset-mix allocations, the use of leverage and other wealth-management and investment strategies relevant to a broad range of assets.

[3] Lukic made recommendations to certain clients about investment opportunities in second mortgages through Lakepoint Mortgage Investment Fund 1 Inc. ("**Lakepoint**"), a single purpose private company established to make loans to Trinity Diversified North America Limited ("**Trinity**"). Trinity was an unrelated private company which used the proceeds of the loans from Lakepoint to invest in second mortgages on residential properties in the Toronto area.

[4] The owner and promoter of Lakepoint was Lukic's husband, which fact and his remuneration were evidently disclosed to Lukic's clients. Lukic, her husband and her clients invested a total of approximately $3.0 million in Lakepoint.

[5] In or around November 2010, Trinity stopped making distributions to Lakepoint and Lakepoint's investors were advised that there would be no further payments. It is considered unlikely that Lukic and her husband and clients will recover their respective investments.

[6] In the Notice of Hearing issued by IIROC on February 6, 2013 (the "**Notice of Hearing**"), IIROC Staff alleged that Lukic had, between 2006 and 2007, recommended and/or facilitated off-book investments for clients:

(a) Without the knowledge or approval of her employer firm;

(b) Without fully disclosing a conflict of interest to her clients; and

(c) Without ensuring that a prospectus had been filed for the investment, or that the distribution properly qualified for a prospectus exemption;

contrary to IDA[1] by-law 29.1.

[7] IDA by-law 29.1[2] states that registered representatives, such as Lukic, "(i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board of Directors."

[8] In the Merits Decision, the Panel determined that Lukic "did make recommendations to her clients concerning their investments in Lakepoint; that she did not make reasonable inquiries to satisfy herself that the issue of the securities of Lakepoint to the clients was exempt from prospectus requirements under securities laws; and that this constituted conduct unbecoming and not in the public interest contrary to by-law 29.1." (Merits Decision at para. 11.)

[9] In the Sanctions Decision, the Panel ordered that Lukic:

(a) Pay a fine of $50,000 to IIROC;

(b) Be subject to close supervision by her employer for a period of six months;

(c) Re-write and pass the Canadian Securities Course and the Conduct and Practices Handbook examinations within one year; and

(d) Pay $45,000 to IIROC in partial payment of IIROC's costs.

[10] IIROC Staff requests that the Commission make an order:

(a) Imposing a two year suspension on the approval of Lukic with IIROC in addition to the sanctions imposed on her by the Panel; or

(b) Alternatively, remitting the question of the appropriate sanctions in this matter to the Panel for reconsideration in light of the Commission's decision.

[1] The Investment Dealers Association of Canada , one of IRROC's predecessor organizations.
[2] Now IIROC Dealer Member Rule 29.1.

B. **The Application**

[11] The Application is based on the following grounds:

(a) The Panel erred in law and proceeded on an incorrect principle by imposing a penalty that was unfit and inappropriate in all of the circumstances and which failed to place sufficient weight on the principle of general deterrence;

(b) The Panel erred in law, proceeded on an incorrect principle and overlooked material evidence by adopting an overly restrictive approach to the facts that should be considered in determining the appropriate penalty;

(c) The Panel erred in law and proceeded on an incorrect principle in holding that Lukic derived no personal benefit from the investments;

(d) The Panel erred in law, proceeded on an incorrect principle and overlooked material evidence by failing to attribute all of the losses suffered by Lukic's clients to Lukic's recommendation to invest;

(e) The Panel erred in law and proceeded on an incorrect principle by considering the "trauma" suffered by Lukic due to her participation in the IIROC hearing as a factor to be weighed in assessing sanctions;

(f) The Panel erred in law and proceeded on an incorrect principle by adopting a restrictive approach to the role of suspensions in determining appropriate disciplinary sanctions, which approach is inconsistent with the public interest;

(g) The Panel's failure to impose a suspension on Lukic's registration with IIROC is inconsistent with the approach of other Ontario securities regulatory bodies, including the Commission, to the facilitation of off-book investments and to participation in the illegal distribution of securities; and

(h) The Panel's failure to impose a suspension on Lukic's registration with IIROC is inconsistent with the public interest in light of the seriousness of her misconduct.

[12] Although the Application states that it is also made in respect of the Merits Decision, IIROC Staff confirmed in oral submissions that it was not seeking a review of the outcome of the Merits Decision on which IIROC Staff was successful although it takes issue with some of the comments and findings in the Merits Decision. An appeal lies from the Merits Decision and not from the reasons given for the Merits Decision (*Canadian Express Ltd. v. Blair* (1991), 6 O.R. 3(d) 212 (Div. Ct.)). IIROC Staff's submissions, both in writing and orally, focussed on its position that the Panel erred in the Sanctions Decision because the Panel did not impose a suspension on Lukic.

[13] In addition to the issues raised by the Application, Lukic requests that the Commission reduce the amount of costs that the Panel ordered her to pay (see paragraph [9](d) above).

II. THE ISSUES

[14] In considering the Application, I will address the following issues:

(a) The Commission's jurisdiction to intervene in this matter;

(b) The appropriate standard of review under section 21.7 of the Act;

(c) Whether IIROC Staff has established any of the grounds on which the Commission may intervene in the Sanctions Decision; and

(d) If there are grounds to intervene in the Sanctions Decision, what the appropriate disposition of the matter by the Commission should be in the circumstances.

III. POSITIONS OF THE PARTIES

A. IIROC Staff

1. Principle of General Deterrence

[15] IIROC Staff submits that the Panel erred in law and proceeded on an incorrect principle because without a period of suspension, the sanctions imposed by the Panel do not provide a sufficient general deterrent which should have been the Panel's primary concern. The Respondent's conduct was serious and had the potential to cause significant harm to both her clients and to the integrity of the markets generally. In IIROC Staff's submission, a suspension is required to deter others from engaging in similar misconduct.

[16] IIROC Staff also submits that, for a penalty to have an appropriate general deterrent effect, it must be in line with industry expectations and refers to *Mills (Re)*, [2001] I.D.A.C.D. No 7 ("***Mills***") in which a hearing panel of the IDA stated:

> Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention, rather than punishment.
>
> (*Mills*, *supra* at para. 6.)

2. Overlooked Material Evidence

[17] IIROC Staff submits that the Panel erred in law, proceeded on an incorrect principle and overlooked material evidence because it failed to consider the following factors which

IIROC Staff submits are aggravating factors that favour the imposition of a suspension, namely (i) the risks associated with the Lakepoint investment; (ii) the suitability of the Lakepoint investment for Lukic's clients; and (iii) the level of due diligence that Lukic conducted with respect to both Lakepoint and Trinity. IIROC Staff refers to Guideline 3.10 of the IIROC Dealer Member Disciplinary Sanction Guidelines dated March 2009 (the "**Sanction Guidelines**") which relates to outside business activities and states that suitability of the outside business activity if involving securities is one of the considerations in determining sanctions and that recommended sanctions include a "[p]eriod of suspension (in most egregious cases involving large value high risk off-book distributions)."

[18] IIROC Staff also submits that Lukic's clients' investments in Lakepoint consisted of illiquid common shares of a company which did not trade on a public exchange, that Lakepoint's only asset was an unsecured promissory note from Trinity and that the Lakepoint investment was clearly high risk in nature, and that it was open to the Panel to consider those facts in connection with the Sanctions Decision.

3. Personal Benefit to Lukic

[19] IIROC Staff submits that the Panel erred in law and proceeded on an incorrect principle by not considering the fees received by Lukic's husband (who was the owner, promoter and a director of Lakepoint) to be a personal benefit to Lukic. Lukic's husband earned a management fee of 1% per annum for managing Lakepoint, which fee exceeded $99,000 for the period from 2006 to 2010.

[20] IIROC Staff submits that the management fees earned by Lukic's husband was a personal benefit to Lukic as she led no evidence to the contrary and that, as set out in the Sanction Guidelines, the extent to which a respondent is enriched by the misconduct is a relevant consideration in determining an appropriate penalty.

4. Attribution of Losses to Lukic

[21] IIROC Staff submits that the Panel erred in law, proceeded on an incorrect principle and overlooked material evidence by failing to attribute all of the money lost by Lukic's clients in the Lakepoint investment to her misconduct. Although the Panel appeared to consider this factor, it failed to attribute all of the losses to Lukic's conduct stating that:

> …although we have some difficulty linking the loss suffered by Ms. Lukic's clients to the specific and narrow allegation in the count, we determine that the misconduct of Ms. Lukic was likely a contributing factor to the loss of the original investment in Lakepoint and that Ms. Lukic's clients will likely suffer from the insolvency of Trinity. The harm has been substantial. [Emphasis added.]
>
> (Sanctions Decision, at para. 43.)

[22] IIROC Staff submits that, if the full extent of the losses had been considered by the Panel in determining the penalty, a period of suspension would have been imposed on Lukic's registration status.

5. Trauma Suffered by Lukic

[23] The Panel expressed the view in the Sanctions Decision that it was unlikely that Lukic's misconduct would be repeated in view of the trauma that the Panel believed the proceeding had on Lukick and the sanctions imposed by the Panel (Sanctions Decision, at para. 58).

[24] IIROC Staff submits that there was no evidence of the trauma suffered by Lukic, and that it was not an appropriate factor to consider at the sanctions phase of the proceeding. In the latter regard, IIROC Staff refers to *Re Johnson*, 2007 LNBCSC 345 at para. 41 in which the British Columbia Securities Commission (the "**B.C. Commission**") held that the embarrassment and costs borne by the respondent in connection with a hearing were not mitigating factors in the determination of an appropriate sanction.

6. Overly Restrictive Approach to the Role of Suspensions

[25] IIROC Staff submits that the Panel erred in law and proceeded on an incorrect principle by giving insufficient recognition to the harm that resulted from Lukic's clients' participation in an illegal distribution of securities and in the sale of securities outside Lukic's firm. In the view of IIROC Staff, the Panel's insufficient recognition of these harms is reflected in the following finding by the Panel:

> The misconduct of Ms Lukic was not as a result of her dishonesty, or acting in bad faith, or any other kind of moral turpitude. It was not without regard for, or with reckless disregard of, her understanding of the best interests of her clients.
>
> (Sanctions Decision, at para 56.)

7. Sanctions Imposed Inconsistent with Decisions of Other Canadian Securities Regulators

[26] IIROC Staff submits that the Panel erred in law and principle and the Sanctions Decision is inconsistent with the public interest because the Panel's decision to not impose a suspension is inconsistent with decisions of other IIROC hearing panels, decisions of the Mutual Fund Dealers Association ("**MFDA**") and decisions of the Commission in which suspensions were imposed for similar conduct.

8. Sanctions Imposed Inconsistent with the Public Interest

[27] IIROC Staff submits that the sale of securities outside a dealer member constitutes a significant breach of the IIROC Dealer Member Rules and refers in this regard to the following statement by an IDA hearing panel in *Thomson (Re)*, [2004] I.D.A.C.D. No. 49 ("***Thomson***"):

> When a transaction is done off the books, the Association member loses the ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor.
>
> (*Thomson, supra* at para. 60.)

[28] IIROC Staff also submits that the Panel's approach was inconsistent with the public interest because it failed to place sufficient weight on the seriousness of Lukic's involvement with an illegal distribution of securities which the Commission has consistently held constitutes serious misconduct as it denies Ontario investors the protection afforded by the Act.

9. Costs

[29] IIROC Staff submits that there is no precedent that would support Lukic's submission that the Commission should reduce the costs award against Lukic to reflect her costs of responding to the Application. The costs award made by the Panel does not form part of the Application.

B. **Lukic**

1. Principle of General Deterrence

[30] Lukic submits that the Panel's approach to suspensions was appropriate, and that IIROC Staff is incorrect in its submission that the only way to achieve general deterrence in the circumstances is through the imposition of a suspension.

[31] Lukic also submits that IIROC Staff failed to acknowledge the evidence of Mario Frankovich, the Chief Executive Officer of Burgeonvest-Bick Securities Limited ("**Frankovich**"), which employed Lukic as a registered representative at the time of the Sanctions Hearing. Frankovich testified that the industry views suspension as a tool to deal with dishonesty and fines and other sanctions are a way to deal with honest people who make mistakes.

2. Overlooked Material Evidence

[32] Lukic submits that it is unfair for IIROC Staff to suggest that the Panel erred because they failed to consider (i) the risks associated with the Lakepoint investment; (ii) the suitability of the investment for Lukic's clients; and (iii) the level of due diligence that Lukic conducted with respect to both Lakepoint and Trinity.

[33] Lukic further submits that no evidence was led by IIROC Staff at the Sanctions Hearing with respect to the issues described in paragraph [32] above. In addition, IIROC Staff did not advise the Panel that they should consider these issues when questioned by the Panel during the Sanctions Hearing about whether the failure by Lukic to conduct due diligence on the underlying investment product was being asserted by IIROC Staff.

3. Personal Benefit to Lukic

[34] Lukic submits that it was a key observation of the Panel that Lukic received no personal benefit from her clients' investments in Lakepoint and that the Commission will not substitute its own view of the evidence for that taken by a Self-Regulatory Organization just because the Commission might have reached a different conclusion.

4. Attribution of Losses to Lukic

[35] Lukic submits that the Panel considered the issue of losses suffered by Lukic's clients and made a finding that Lukic's misconduct was likely a contributing factor and that IIROC Staff has failed to show how this finding amounted to the Panel having overlooked material evidence or to an error in law or principle.

5. Trauma Suffered by Lukic

[36] Lukic submits that the Panel appropriately considered the impact, trauma and anxiety caused by the IIROC proceeding against her and the spectre of a suspension hanging over her head for nearly two years. Lukic relies in this regard on the decision of the B.C. Commission in *Re Steinhoff*, 2014 BCSECCOM 23, the second of two cases relating to the same matter ("***Steinhoff No. 2"***)[3], in which the B.C. Commission stated:

> ¶ 33 In our opinion, the penalty we are imposing is appropriate in the circumstances and will adequately deter Steinhoff and other registrants from failing to meet suitability requirements.
>
> ¶ 34 It is worth noting that the proceedings in this matter covered nearly four years and cost Steinhoff thousands of dollars in legal fees. For a year and a half she has lived with the anxiety associated with a possible career-ending suspension. This is an experience Steinhoff will surely strive not to repeat.
>
> (*Steinhoff No. 2*, *supra* at paras. 33 and 34.)

[37] Lukic also relies on General Principle 3.5 of the Sanction Guidelines which includes the following statement:

> A first conviction may be seen as a measure of punishment in and of itself, given the attendant stigma attached to the process of charging, finding of guilt, and imposition of sanction.

6. Overly Restrictive Approach to the Role of Suspensions

[38] Lukic submits that, based on the findings of fact by the Panel and the decisions in *Steinhoff No. 2* and *Re Hazen*, [2006] IDACD No. 20 ("***Hazen***")[4], the Panel's approach to the role of suspensions was appropriate and consistent with the approach of Canadian Securities Regulators.

[3] See paragraphs 90 and 91 below for a brief discussion of the case.
[4] See paragraph 89 below for a brief discussion of the case.

7. Sanctions Imposed Inconsistent with Decisions of Other Canadian Securities Regulators

[39] Lukic submits that the Commission should accord a high degree of deference to the Panel in its findings of fact. In Lukic's submission, the Sanctions Decision is consistent with other IIROC decisions and, as the decisions of the MFDA and the Commission to which IIROC Staff referred were not put to the Panel during the Sanctions Hearing, it is not appropriate to suggest that the Sanctions Decision is inconsistent with those decisions.

8. Sanctions Imposed Inconsistent with the Public Interest

[40] Lukic submits that the Panel appropriately considered the protective and preventative purposes of sanctions for securities violations and that the Panel's perception of the public interest does not conflict with that of the Commission.

[41] Lukic also submits that the Panel acted reasonably and in line with the public interest and referred in this regard to paragraph 59 of the Sanctions Decision which is set out in paragraph [84] below.

9. Costs

[42] Lukic submits that her costs award should be reduced because she has incurred costs responding to IIROC Staff's application for a hearing and review, and has had to draw to the Commission's attention authorities not referred to by IIROC Staff. Lukic submits that a cross-application was not required, because the Commission may, pursuant to subsection 8(3) of the Act, make any order it considers proper.

C. OSC Staff

[43] Staff of the Commission ("**OSC Staff**") made submissions regarding the appropriate standard of review of the Sanctions Decision and the grounds on which the Commission would intervene in the Sanctions Decision. OSC Staff did not take any position as to whether Lukic had demonstrated that her case meets any of the grounds for intervention.

IV. REVIEW OF SUBSTANTIVE ISSUES RAISED BY THE APPLICATION

A. Jurisdiction to Intervene

[44] The Commission has the authority to review any direction, decision, order or ruling of a self-regulatory organization such as IIROC under section 21.7 of the Act which provides as follows:

> **21.7 (1) Review of Decisions** – 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) Procedure – 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.

[45] Subsection 8(3) of the Act provides that, on a hearing and review, the Commission may confirm the decision under review or make such other decision as the Commission considers proper.

B. Standard of Review and Grounds for Intervention

[46] The Commission exercises original jurisdiction similar to conducting a new trial and may admit new evidence in a hearing and review under section 21.7 of the Act.

[47] The grounds on which the Commission will intervene in a decision of a self-regulatory organization were established in *Re Canada Malting Co.* (1986), 9 0SCB 3566 (*"**Canada Malting***"). Based on the principles set out in *Canada Malting*, IIROC Staff must demonstrate that the case fits squarely within at least one of the following grounds before the Commission will intervene in the Sanctions Decision:

(a) The Panel proceeded on an incorrect principle;

(b) The Panel erred in law;

(c) The Panel overlooked material evidence;

(d) New and compelling evidence is presented to the Commission that was not before the Panel; or

(e) The Panel's perception of the public interest conflicts with that of the Commission.

(*Canada Malting*, *supra* at para. 21; *Re Hudbay Minerals Inc.* (2009), 32 OSCB 3733 ("***Hudbay***") at para. 114.)

[48] IIROC Staff submits that the Panel committed the following errors thereby entitling the Commission to intervene based on the test set out in *Canada Malting*:

(a) The Panel proceeded on an incorrect principle;

(b) The Panel erred in law;

(c) The Panel overlooked material evidence; and

(d) The Panel's perception of the public interest conflicts with that of the Commission.

[49] Although the scope of the Commission's authority on a hearing and review is well established, in practice the Commission takes a restrained approach to applications under section 21.7 of the Act, and will only substitute its decision for that of an IIROC hearing panel in rare circumstances (*Re Kasman* (2009), 32 OSCB 5729 at para. 43 ("***Kasman***"); and *Hudbay* at paras. 103-4, 114).

[50] The Commission recognizes the specialized expertise of an IIROC hearing panel and accords deference to factual determinations central to the panel's specialized competence, including matters of sanction (*Re Boulieris* (2004), 27 OSCB 1597, aff'd (2005), 28 OSCB 5174 (Div. Ct.); *McQuillan (Re)* (2014), 37 OSCB 8580 ("***McQuillan***") at paras. 39-43; *Kasman, supra* at para. 43).

V. ANALYSIS

1. Overlooked Material Evidence

[51] In the Sanctions Decision, the Panel held that it would determine the appropriate sanctions based on the allegations set out in the Notice of Hearing (see paragraph [6] above) and would not consider the issues of risk, suitability and due diligence because they were not part of the case on the merits. As noted by the Panel:

> The allegation against Ms Lukic consist[s] of one count. The count is quite narrow and does not include allegations that the investments in Lakepoint were high risk, or unsuitable for her clients, or that Ms Lukic did not undertake adequate due diligence inquiries as to the risks involved with the investments, or the second mortgages on which they were based, or Trinity, or its promoter. None of these matters were part of the case which Ms Lukic had to meet. Accordingly, we are not prepared to make any unfavorable inferences or conclusions regarding such matters in determining appropriate sanctions.
>
> (Sanctions Decision, at para. 10.)

[52] While acknowledging that the foregoing issues were not part of the case against Lukic on the merits, IIROC Staff submits that the Panel should have considered these issues when determining the appropriate sanctions and, by not doing so, the Panel erred in law, proceeded on an incorrect principle and overlooked material evidence. In support of its position, IIROC Staff submits that the Sanction Guidelines include various general considerations that a hearing panel can and should take into account in determining the appropriate sanctions including harm to the client, blameworthiness or the degree of participation, the prior disciplinary record, acceptance of responsibility, credit for cooperation and rehabilitative efforts.

[53] During the Sanctions Hearing, IIROC Staff did not apprise Lukic or the Panel of its intention to argue that the issues of risk, suitability and due diligence should be considered by the Panel when determining the appropriate sanctions and did not adduce any evidence with respect to these issues. To the contrary, during IIROC Staff's oral

submissions at the Sanctions Hearing, the Panel sought to clarify the allegations against Lukic. Instead of advising the Panel and Lukic that IIROC Staff's position was that the Panel should consider the issues of risk, suitability and due diligence, IIROC Staff agreed that these issues were not part of the allegations against Lukic (Transcript of Sanctions Hearing held on February 20, 2014, pages 39, line 2, to 42, line 1).

[54] Lukic was entitled to know the case she had to meet and might well have conducted her defence at the Merits Hearing and at the Sanctions Hearing differently if she had notice of IIROC Staff's intention to rely on the additional allegations relating to risk, suitability and due diligence in support of the sanctions sought.

[55] Based on the foregoing, I find that the Panel did not overlook material evidence, and did not err in law or proceed on an incorrect principle by not considering the issues of risk, suitability and due diligence in determining the appropriate sanctions.

2. Personal Benefit to Lukic

[56] The Panel found that Lukic received no personal benefit from her clients' investments in Lakepoint notwithstanding the fact that her husband received an annual fee equal to 1% of such investments in return for managing Lakepoint. (See also paragraph [19] above.)

[57] IIROC Staff, which did not allege that Lukic received compensation relating to her conduct, submits that the Panel should have determined that the fee received by Lukic's husband was a personal benefit to Lukic. IIROC Staff submits that, if the Panel had made that determination, the Panel should have imposed a period of suspension on Lukic. Although the Notice of Hearing alleged that Lukic had not disclosed the conflict of interest arising from her husband's role in the Lakepoint investment, that allegation was struck on consent of the parties at the commencement of the Merits Hearing.

[58] IIROC Staff submits that the extent to which a respondent is enriched by misconduct is a relevant consideration in determining the appropriate penalty. I note, however, that even if the matter of enrichment had been alleged, IIROC Staff has not established that a suspension must be imposed when the respondent personally benefits from the misconduct. General Principle 3.4 of the Sanction Guidelines only suggests that it may be appropriate to require disgorgement in cases where the registrant has benefitted financially from the misconduct.

[59] Based on the foregoing, I find that the Panel did not err in law or proceed on an incorrect principle by failing to impose a suspension on Lukic solely because she may have received a personal benefit from the fee received by her husband for managing Lakepoint.

3. Attribution of Losses to Lukic

[60] The Panel found that Lukic and her husband and clients will likely lose their original investments in Lakepoint in the aggregate amount of $3,000,000 as the result of the insolvency of Trinity (Sanctions Decision, para. 16).

[61] The Panel also made the following findings with respect to the losses suffered by Lukic's clients:

> ¶ 42 We are not prepared to speculate what might have happened had Ms Lukic informed her employer firm about the investments and sought its approval, or if Lakepoint had provided to investors prospectus level disclosure about Trinity and Lakepoint and its shares. We are not prepared to speculate what might have happened had someone performed adequate due diligence inquiries about Trinity and its promoter. Nor are we prepared to attribute to specific causes the losses that flow from the insolvency of Trinity.
>
> ¶ 43 However, although we have some difficulty linking the loss suffered by Ms Lukic's clients to the specific and narrow allegation in the count, we determine that the misconduct of Ms Lukic was likely a contributing factor to the loss of the original investment in Lakepoint and that Ms Lukic's clients likely will suffer from the insolvency of Trinity. The harm has been substantial. [Emphasis added.]
>
> (Sanctions Decision, at paras. 42 and 43.)

[62] General Principle 3.14 of the Sanction Guidelines provides that significant monetary losses are an aggravating factor to be taken into account when determining the appropriate penalty:

> The finding of a significant monetary loss by the respondent's clients or the Dealer Member firm arising out of the respondent's misconduct can be seen as an aggravating factor to the extent that investing has at its core capital preservation and returns. If that core function is significantly eroded by regulatory misconduct, then it should be taken into account when the appropriate penalty is imposed.

[63] Guidelines 1.5 (breaches of the Act*)* and 3.10 (Outside Business Activities) of the Sanction Guidelines also identify client losses as a factor to be considered in determining appropriate sanctions.

[64] In the Merits Decision, the Panel summarized Lukic's advice to her clients with respect to an investment in Lakepoint as follows:

> She advised clients about the anticipated yield, cash flow and security of the investments in Lakepoint. She compared and contrasted Lakepoint to other investment options available to her clients, including REITS and principal protected products, GIC's and bonds with their low current yields, and her unfavourable views on the stock market at the time. She discussed possible sources of funds for investments in Lakepoint, such as a mortgage

> on a client's home, or selling securities held at yourCFO [Advisory Group Inc.]. This went beyond just providing factual information.
>
> (Merits Decision, at para. 58.)

[65] Having concluded that Lukic provided advice to her clients with respect to the Lakepoint investment, the Panel then "determined that 'recommending' meant giving advice as part of a business activity carried on by an adviser." (Merits Decision, at para. 63.)

[66] It is clear from the foregoing analysis by the Panel that Lukic provided advice and recommendations to her clients in connection with their investments in Lakepoint. Of equal importance is the fact that Lukic's clients trusted and relied on her. As noted by the Panel:

> Some of the clients, certainly those in litigation with Ms. Lukic and her husband, maintained that they relied on Ms. Lukic as to whether their investment in Lakepoint was a good investment. All the witnesses took comfort in the fact that Ms. Lukic and her husband had invested in Lakepoint, and that Ms. Lukic and her husband were enthusiastic about investing in Lakepoint.
>
> (Merits Decision, at para. 50.)

[67] In my view, the Panel's finding that Lukic's misconduct was "likely a contributing factor" to the loss of her clients' investments in Lakepoint, understates what appears from the evidence to be Lukic's primary responsibility for advising her clients to leave the relative security of securities that were traded on regulated capital markets and invest in Lakepoint instead. That said, the issue of suitability was not in issue in the proceeding.

[68] Based on the foregoing, I find that the Panel did not err in law or proceed on an incorrect principle by failing to attribute the loss of the money invested by Lukic's clients in Lakepoint to her misconduct.

4. Trauma Suffered by Lukic

[69] The Panel referred to the effect of the proceeding on Lukic in its analysis of the appropriate sanctions as follows:

> We accept that the fine recommended by staff is in the public interest as an appropriate specific deterrent to the respondent and as a general deterrent to others. It sends the message that there will be painful financial consequences to conduct unbecoming, regardless of the absence of dishonesty or bad faith, which will be in addition to the time, trouble, costs and heart-ache to a respondent entailed in an investigation in the hearing with IIROC and other litigation that may flow from not following the rules.
>
> (Sanctions Decision, at para. 45.)

[70] The Panel also noted that:

> In view of the trauma we believe this IIROC regulatory proceeding has had on Ms Lukic, and the sanctions we are imposing, and the fact that if she were to make the same or similar mistake again in the future the consequences next time would likely be a suspension that could effectively end her career in the industry, we believe it is unlikely that her misconduct will be repeated. We believe she will be more cautious and questioning (and consultative with her employer firm) in the future whenever any potential investment activity out of the ordinary and usual course of her business with her employer firm might arise. [Emphasis added.]
>
> (Sanctions Decision, at para. 58.)

[71] As noted in paragraph [37] above, Lukic relies on General Principle 3.5 of the Sanction Guidelines which provides that "A first conviction may be seen as a measure of punishment in and of itself, given the attendant stigma attached to the process of charging, finding of guilt, and imposition of sanction." As submitted by IIROC Staff, there was no evidence that Lukic suffered any trauma which is consistent with the Panel's belief that the IIROC regulatory proceeding had caused trauma to Lukic.

[72] It should also be noted that General Principle 3.5 of the Sanction Guidelines refers to the attendant stigma attached to a regulatory proceeding and not trauma. As held by the B.C. Commission, the embarrassment and cost which a respondent incurs in connection with a hearing should not be viewed as mitigating factors in determining an appropriate sanction (*Re Johnson*, 2007 LNBCSC 345 at para. 41).

[73] In my view, the Panel's assessment of the effect of the proceeding on Lukic, some of which was speculative on the part of the Panel, should not have been a factor in the Panel's determination of the appropriate sanctions to impose on Lukic, particularly in light of both her breaches of the Act, to which I refer below, and the significant losses suffered by her clients.

[74] Based on the foregoing, I find that the Panel's apparent consideration of the effect of the IIROC regulatory proceeding on Lukic, particularly in the absence of evidence to that effect, constitutes an error of law.

5. Appropriate Sanctions

[75] The underlying purposes of the Act, which are set out in section 1.1, are to provide protection to investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.

[76] Pursuant to subsection 21.1(1) of the Act, IIROC is recognized by the Commission as a self-regulatory organization. IIROC's primary goals, as stated in the Commission's Recognition Order, are the protection of the investing public and the integrity of the securities markets (*In the Matter of Investment Industry Regulatory Organization of Canada (IIROC)*: *Recognition Order*, (2008) 31 OSCB 5615 at 5622-5623).

[77] The purpose of the Commission's public interest jurisdiction, as stated by the Supreme Court of Canada, is to "restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets." The Commission's role in imposing sanctions "is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets" (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132, at para. 43; *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600).

[78] An IIROC hearing panel's main concerns in determining appropriate sanctions are protective and preventive, namely:

(a) Protection of the investing public;

(b) Protection of IIROC's membership;

(c) Protection of the integrity of IIROC's process;

(d) Protection of the integrity of the securities markets; and

(e) Prevention of a repetition of conduct of the type under consideration.

(*Re Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26; General Principle 1 of the Sanction Guidelines.)

[79] The Supreme Court of Canada has held that general deterrence is an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive (*Cartaway Resources Corp. (Re)*, 2004 SCC 26).

[80] As recognized by an IIROC hearing panel in *Mills*, the adequacy of the sanctions imposed may be assessed in light of their deterrent effect on others:

> General deterrence may, however, provide a means of assessing the appropriateness of a penalty. In the course of its deliberations the District Council may consider the adequacy of a penalty in terms of its likely effect on others. Such consideration may indicate that a penalty is too low, or possibly too high, in the circumstances. General deterrence may thus serve as an additional factor assisting a District Counsel to weigh the appropriateness of the penalty under consideration and relate it more closely to industry understandings and expectations.
>
> (*Mills*, *supra* at para. 9.)

[81] As noted in paragraph [25] above, the Panel concluded that Lukic's misconduct was not the result of her dishonesty, or acting in bad faith, or any other kind of moral turpitude and was not without regard for, or with reckless disregard of, her understanding of the best interests of her clients. Based on (i) the foregoing considerations; (ii) the trauma that the Panel believed the proceedings had caused Lukic; and (iii) the sanctions that the Panel imposed, the Panel concluded that it was unlikely that Lukic's misconduct would be repeated.

[82] There are limited references in the Sanctions Decision to the protection of the investing public and to the issues of specific and general deterrence. Although the Panel referred to the principle of general deterrence, it did not specifically address the need to deter others from conduct similar to Lukic's and, accordingly, it is not clear what weight, if any, the Panel ascribed to the principle of general deterrence.

[83] The Panel stated its views relating to the appropriateness of a suspension as follows:

> ¶ 59 The panel do not believe that it is necessary for the protection of the public interest that Ms Lukic be removed from the capital markets, wholly or partially, or temporarily or permanently. In all the circumstances of this matter, including the sanctions we are imposing, we are not led to conclude that Ms Lukic's conduct in the future may well be detrimental to the integrity of the capital markets.
>
> ¶ 60 The disruption of the career of Ms Lukic in the industry or of the reliance of her clients on her and of their established relationships with her that would result from a significant period of suspension is not necessary or desirable in this case. Consequently, we do not believe that any significant period of suspension is necessary in this case, taking into account the purposes and objectives of sanctions, including specific and general deterrence.
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> ¶ 61 One of the panel members felt that a suspension for a period of two months would not be inappropriate having consideration to all of the facts, including the failure of Ms. Lukic to understand the nature and requirements of the Lakepoint investments, and the enormity of the clients' losses. The majority of the panel, however, felt that a short suspension would not really add much to the other sanctions, would be unduly disruptive to Ms Lukic' clients, and was unnecessary
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> (Sanctions Decision, paras. 59, 60 and 61.)

[84] In support of its submission that the Panel should have imposed a suspension, IIROC Staff referred to two provisions of the Sanction Guidelines with respect to the type of conduct for which Lukic was sanctioned. The first is Guideline 1.5 of the Sanctions Guidelines relating to breaches of the Act and any related provincial or federal legislation which recommends a suspension of between three months and ten years and a permanent ban if the conduct is egregious. The second is Guideline 3.10 relating to outside business activities which recommends a period of suspension for the "most egregious cases involving large value high risk off-book distributions."

[85] IIROC Staff referred to three decisions of IDA hearing panels which involved similar conduct and in which suspensions were imposed, namely, *Re Thomson*, [2004] IDACD

No. 49 ("***Thomson***"), *Re Pandelidis*, [2005] IDACD No. 16 ("***Pandelidis***") and *Re Morrison*, [2004] IDACD No. 63 (*"**Morrison***").

[86] *Thomson* involved the sale of a single unregistered security to 17 investors for a total investment of between US$252,000 and US$308,000 which, in the case of three of the investors, was also conducted off the books of Thomson's employer. The IDA hearing panel held that, in trading the security, the respondent breached the *Securities Act* of British Columbia (*Thomson, supra*, at paras. 74 and 84). The panel also held "that a registered representative is required to take reasonable steps to ensure that the security he or she is selling has had a reasonable level of due diligence performed on it" and "is required to take reasonable precautions to ensure that any transaction in which he or she is involved is transacted to the benefit of and best interests of his or her client." (para. 47). If there had not been certain mitigating factors, including the fact that the respondent was operating with the full knowledge and encouragement of his employer and utilized his own resources to recover the investors' money, the panel would have imposed a ten year suspension (para. 90). In light of the mitigating factors, the panel imposed a seven year suspension commencing on the date the respondent was no longer employed in the industry.

[87] In *Pandelidis*, the respondent recommended an off-book private placement to a client without ensuring that the investment complied with the *Securities Act* of Alberta. In imposing a five year suspension, the IDA hearing panel held that the respondent "had a high responsibility and duty to conduct due diligence on behalf of his clients before recommending the investment to his clients and…failed in this duty". The panel also cited *Thomson, supra*, with approval (*Pandelidis, supra*, at para. 12).

[88] *Morrison* arose out of the same events as *Thomson.* The respondent's conduct involved the sale of a single unregistered security to five clients for a total investment of US$56,000. The IDA hearing panel was considering a settlement agreement and not imposing sanctions after a contested hearing. Even though the panel was of the view that Morrison played a lesser role than Thomson, the panel was unwilling to approve the original settlement agreement as it did not include a suspension. In the result, the panel amended the settlement agreement with the respondent's consent to include a one year suspension, which was deemed served by the three years that the respondent had already been under close or strict supervision (*Morrison, supra*, at paras. 44, 56, 66 and 67).

[89] In *Hazen,* to which Lukic referred, the respondent recommended that a group of his Ontario clients invest in two private placements which were available for distribution in the United States through an accredited investor exemption, but were not available for distribution in Ontario. The respondent and his spouse invested $60,000 and the respondent's clients invested a total of $855,000. The IDA hearing panel, which conducted the hearing pursuant to an Agreed Statement of Facts and Penalty (with the exception of the issue of a period of suspension), found "that the imposition of a suspension, which by necessity causes a disruption in the ability to earn an income, is not required in a case where there has been no deliberate deception or reckless harmful behavior." (*Hazen, supra* at page 6.)

[90] Lukic also referred to the decision of the B.C. Commission in *Steinhoff No. 2* which, as noted above, was the second of two decisions relating to the same matter. In the first decision, *Re Steinhoff*, 2013 BCSECCOM 308 ("***Steinhoff No. 1***"), the B.C. Commission confirmed an IIROC hearing panel's findings that Steinhoff failed to meet suitability requirements and set aside the panel's finding that Steinhoff knowingly made false statements to her employer and the panel's decision on sanctions. In *Steinhoff No. 2*, in which the same panel considered the written submissions relating to penalties by the parties to *Steinhoff No. 1*, the B.C. Commission held that a suspension was not warranted in the circumstances and that Steinhoff's misconduct could be appropriately addressed through a fine alone (paras. 29 and 31).

[91] Lukic relies, in particular, on the following observations with respect to suspensions made by the B.C. Commission in *Steinhoff No. 1* which, Lukic submits, support the Panel's decision not to impose a suspension on her:

> ¶ 90 Suspension of any length beyond the range of a normal vacation is, for a registered representative, an extremely serious matter. A suspension of one year, what the IIROC panel ordered here, is tantamount to the termination of the registrant's career. At a minimum, it requires a registrant to build a book from scratch, a process that takes years and enormous effort. That assumes a clean slate. A person in their mid-fifties, like Steinhoff, attempting the task following the expiry of a mandated suspension, even a person with Steinhoff's apparent energy, is likely to find it impossible to build much more than a shadow of their former career.
>
> ¶ 91 Steinhoff made a serious mistake. Does the public interest demand she lose her career over it? She's been in the business now for 25 years. She has no previous regulatory sanctions. There is no basis to conclude that she acted dishonestly or for an improper motive, or has ever done so. Although her mistake unquestionably harmed the Ks, there is no evidence that she represents any ongoing threat to her clients, to potential new clients, to the reputation of the securities markets or of IIROC or its members. Although a significant sanction is appropriate given Steinhoff's contravention of the suitability requirements, the parties should address whether a suspension in these circumstances would be appropriate.
>
> (*Steinhoff No.1, supra* at paras. 90 and 91.)

[92] There are significant differences between the facts and findings in the Steinhoff matter and those relating to Lukic. The Steinhoff matter arose from the failure of Steinhoff to meet the suitability requirements of a couple in their 30s who had just sold their house for $125,000 and wanted to invest the proceeds of sale on a short-term basis. Lukic, on the other hand, was found by the Panel to have "failed to take reasonable steps to ensure that a prospectus had been filed for the investments in Lakepoint by [her] clients or that the distribution of securities to the clients had been properly qualified for a prospectus

exemption." (Merits Decision, para. 82.) Lukic was also found to have made recommendations to her clients concerning their investments in Lakepoint which, together with her aforementioned due diligence failure, "constituted conduct unbecoming and not in the public interest contrary to by-law 29.1." (Sanctions Decision, para. 3.) It should also be noted that the losses incurred by Lukic and her husband and clients ($3.0 million) substantially exceeded the losses suffered by the investors in *Steinhoff No. 1* ($125,000) and *Hazen* ($915,000).

[93] It is quite evident that the B.C. Commission in *Steinhoff No. 2* and the IDA hearing panel in *Hazen* were strongly influenced in coming to their respective decisions that suspensions were not warranted by two considerations. First, the respondent had not "acted dishonestly or for an improper motive" (*Steinhoff No. 1*) or that "there has been no deliberate deception or reckless harmful behavior" on the part of the respondent (*Hazen*). Second, that the effect of a lengthy suspension would risk the end of Steinhoff's career (*Steinhoff No. 2*) or cause a disruption in the respondent's ability to earn an income (*Hazen*).

[94] The Panel distinguished *Thomson* on the basis that:

> …an IDA panel hearing panel found that Mr. Thomson distributed securities to clients without a receipt for a prospectus having been issued, distributed securities off the books of his firm, and recommended the purchase of the securities without using due diligence to ensure that the securities were a legitimate investment. The allegations in that case were wider than the allegations in the matter before us.
>
> (Sanctions Decision, para. 51.)

[95] In my view, the facts in *Thomson* are quite similar to those relating to Lukic although, in its determination of the appropriate sanctions, the panel in *Thomson* emphasized the respondent's breach of the *Securities Act* of British Columbia (paras. 74 to 75 and 84), and not the respondent's failure to conduct due diligence with respect to the merits of the investment, which was not alleged against Lukic. Further, with the exception of *Hazen*, *Thomson* and the other authorities that have been cited recognize that the seriousness of the legislative breach is a significant factor to be considered in the determination of the appropriate sanctions.

[96] The Panel did not address the seriousness of Lukic's participation in an illegal distribution of securities contrary to the Act and, instead, found that her conduct "was a result of an inexcusable, and to [the Panel], an incomprehensible lack of understanding" that the investments in Lakepoint were securities (Sanctions Decision, para. 57). The Panel also made only passing reference to the fact that Lukic's misconduct took place over a two year period and was not an isolated occurrence.

[97] Similarly, in its considerations relating to the imposition of a fine, the Panel referred to the need to deter others from "conduct unbecoming", i.e., a contravention of by-law 29.1

which applies to a wide variety of conduct, and did not address the specific nature of Lukic's conduct (Sanctions Decision, para. 45).

[98] The Panel was clearly influenced by the decisions in *Steinhoff No. 2* and *Hazen* in concluding that the suspension of Lukic was not warranted as her misconduct was not the result of her dishonesty or acting in bad faith or any other kind of moral turpitude and a significant period of suspension would disrupt her career and the reliance of her clients on her. (Sanctions Decision, paras. 56 and 60.)

[99] The Panel appears to have been influenced by the testimony of Frankovitch, the Chief Executive Officer of Lukic's employer at the time of the Sanctions Hearing, who wrote a letter of support for Lukic and also testified at the Sanctions Hearing. Frankovitch stated his belief that the industry views suspension as a tool to deal with dishonesty, and implied that he would not retain Lukic if she had been suspended (Sanctions Decision, at paras. 35 to 38). Frankovitch's belief with respect to the industry's views with respect to the circumstances that would lead to the imposition of suspensions is not persuasive, cannot be taken as representative and, in any event, would be subject to IIROC's primary goals of protecting the investing public and the integrity of the securities markets.

[100] In *Re Sterling Grace* (2014), 37 OSCB at para. 164, the Commission disagreed with the position of the applicants in that proceeding "that only matters of integrity merit periods of suspension" and, found that in "appropriate circumstances, a lack of proficiency may require regulatory responses beyond that of education and supervision."

[101] The Panel's approach to determining the appropriate sanctions for participation in an illegal distribution of securities contrary to the Act, as illustrated by its finding that the conduct must be deliberate for a suspension to be imposed, is inconsistent with the Commission's approach. The Commission has held that significant sanctions will be imposed for unregistered trading in securities and participation in the illegal distribution of securities, and has consistently imposed market bans for such conduct (see *Re Innovative Gifting Inc.* (2014), 37 OSCB 1461 at para. 28). The Commission has imposed five year market bans when the respondent engaged in an illegal distribution of securities but was not involved in fraud (*Re Simply Wealth Financial Group Inc.* (2013), 36 OSCB 5099). Industry expectations of the consequences of a breach of the Act should not significantly differ because a respondent appears before IIROC and not the Commission.

[102] The Panel quite clearly had to consider the specific allegation set out in the Notice of Hearing that Lukic had recommended and/or facilitated off-book investments for clients without ensuring that a prospectus had been filed for the investment or that the distribution properly qualified for a prospectus exemption. In my view, the Panel has failed to adequately address this issue other than to state that Lukic's conduct was a result of an inexcusable and incomprehensible lack of understanding that the investments in Lakepoint were securities.

[103] The Panel also failed to adequately address the issue of general deterrence and appeared to be more concerned about the consequences of a suspension on Lukic and her clients' continuing ability to rely on her than it was on investor protection and market integrity.

[104] It is also my view that, by failing to recognize that her clients received securities in connection with their investments in Lakepoint, by failing to ensure that a prospectus had been filed or that the distribution properly qualified for a prospectus exemption and by both recommending and facilitating off-book investments which eliminated any oversight by her employer, Lukic demonstrated reckless disregard for the interests of her clients. In particular, the Panel should have given careful consideration to Guideline 1.5 of the Sanctions Guidelines, which recommends a period of suspension for breaches of the Act and a ban in egregious cases, and Guideline 3.10 of the Sanctions Guidelines, which recommends a period of suspension in egregious cases involving large value high risk off-book distributions.

[105] For the foregoing reasons, I find that the Panel erred in law and proceeded on an incorrect principle and that the Sanctions Decision is inconsistent with decisions of the Commission in which suspensions have been imposed for conduct similar to that of Lukic. I also find that the Panel's perception of the public interest conflicts with that of the Commission.

6. Costs

[106] In the Sanctions Decision, the Panel ordered that Lukic pay costs of $45,000 to IIROC (Sanctions Decision, para. 9).

[107] Lukic submits that I should reduce the amount of the costs award to reflect the costs she has incurred responding to IIROC Staff's application for a hearing and review. Lukic made no submissions regarding the quantum of those costs.

[108] In the Sanctions Decision, the Panel rejected Lukic's submissions that no costs should be imposed because Lukic had already incurred substantial costs of her own. With respect to Lukic's submissions regarding the conduct of the hearing by IIROC Staff, the Panel stated that:

> We found nothing in staff's presentation of its case that would cause us to reduce or eliminate the costs award for IIROC. The amount of the costs award recommended by staff is conservative and appropriate in the circumstances.
>
> (Sanctions Decision, at para. 47.)

[109] Lukic did not apply for a hearing and review of the Panel's costs award against her. In addition, she did not provide any authority in support of her submission that the Commission has a broad power under subsection 8(3) of the Act to engage in a hearing and review of a decision that is not the subject of the Application.

[110] Lukic did not make any submissions as to which of the *Canada Malting* factors entitles the Commission to intervene in the Panel's decision regarding costs and acknowledges that IIROC's costs regime does not entitle a successful respondent to costs. The Commission's costs regime similarly does not provide for an award of costs to a successful respondent.

[111] In any event, Lukic has not been successful in connection with the Application.

[112] For the foregoing reasons, I reject Lukic's submissions that I should engage in a review of the Panel's costs award, and that I should substitute my decision with respect to costs for that of the Panel.

VI. CONCLUSION

[113] For the foregoing reasons, I find that the Commission is entitled to intervene in the Sanctions Decision based on the test set out in *Canada Malting*. The Panel erred in law and proceeded on an incorrect principle in determining that a suspension was not required in all of the circumstances. In addition, the Panel's approach to determining the appropriate sanctions for Lukic's misconduct illustrates that the Panel's perception of the public interest is inconsistent with that of the Commission.

[114] I also find that it is in the public interest to allow the Application and to substitute my decision for that of the Panel to avoid the unnecessary cost to the parties of a further hearing before the Panel. No further evidence or argument is required for me to do so.

[115] IIROC Staff requests that a two year suspension on Lukic's registration be imposed. Having considered all of the circumstances of Lukic's conduct, I agree that it is appropriate and in the public interest that Lukic be suspended for two years from approval by, or registration with, IIROC in all categories anywhere in the industry, commencing 14 days from the date of the order which I will issue to that effect.

Dated at Toronto this 22nd day of June, 2015.

"Christopher Portner"

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Christopher Portner